



SAIF's response to the CMA's Provisional Decision Report 16.10.20

This is the response of the National Society of Allied and Independent Funeral Directors ("SAIF") to the CMA's Provisional Decision Report published on 13 August 2020 (the "PDR") in relation to its funerals market investigation.

SAIF has already commented in various submissions on many of the potential concerns identified by the CMA during the market investigation process. This response summarises SAIF's main concerns with the PDR and supplements previous arguments made.

1 Executive summary

The CMA in its PDR lays out evidence of consumer harm arising from certain quarters of the funeral services sector, notably consumers served by corporate funeral businesses. SAIF endorses the CMA's findings and echoes its desire to impose effective and proportionate remedies to address the harm identified.

However, the PDR then proposes a raft of onerous measures that, for the most part, apply equally and in undifferentiated fashion across all funeral directors in the UK. The PDR's "one-size-fits-all" approach does not follow well-established regulatory practice of treating small and medium-sized enterprises ("**SMEs**") differently from large corporate businesses. In doing so, the remedies risk a perverse and unintended consequence: distorting competition in favour of the corporate funeral businesses. In particular, the remedies proposed do not reflect marked differences between micro, small, medium and large corporate funeral businesses: their management structure, their drivers, the way in which they are run and their priorities (e.g. that corporate funeral businesses are primarily concerned with shareholder return), and the fact that corporate funeral businesses charge substantially higher prices.

Having reviewed the PDR in detail, SAIF is also concerned that the adverse effects on competition ("**AECs**") are unsubstantiated, and the CMA does not provide adequate justification for the "flat tax" remedies proposed across the board. In this respect, the CMA's level of sampling and evidence presented in the PDR is inadequate and tends to focus on evidence collected from the corporate funeral businesses. Not enough evidence has been gathered from independent funeral directors – the CMA visited only 15 "smaller" funeral directors – less than 1% of the market. Such scant sampling cannot be used as justification for sweeping remedies to be applied across the whole industry. The CMA has also relied on the reports of SunLife and Royal London to substantiate numerous of its findings without any weight given to incentives of SunLife and Royal London to overstate funeral costs to show need for their products.

In addition to these broad concerns, SAIF has specific concerns with each of the remedies proposed. These concerns are set out in further detail in this response however, in brief:

- (i) **Remedy 1 (Price / commercial terms transparency):** SAIF considers that the proposed measures are not practicable, and the CMA has not given sufficient thought to how these will work in practice and their effect. SAIF considers that the measures are geared towards the package formula of corporate funeral businesses, and impracticable for independent funeral directors, who are motivated to care for the bereaved and their loved

ones in a bespoke fashion. SAIF considers that narrower transparency measures are required to ensure that any obligations are not onerous and so that there are not unintended consequences for consumers.

(ii) **Remedy 2 (Quality and standards):** SAIF is a proponent of quality and standards but considers that this remedy is unnecessary as 80% of the market is already voluntarily regulated and such regulation is properly enforced by the existing trade associations. SAIF and its members are also concerned about the increased cost of a proposed registration regime and the resulting increased operational costs. Finally, SAIF considers that any new regulatory body created by the proposed remedy will not have the expertise to effectively regulate the industry. If the CMA considers that an inspection and registration regime is necessary, SAIF believes it would be best operated by existing trade associations with delegated authority from the CMA. SAIF would welcome the opportunity to discuss with the CMA how this would work in more detail.

(iii) **Remedy 3 (Ongoing reporting obligations):** SAIF considers that the ongoing reporting obligations should not apply to the SME segment. The ongoing requirements are onerous and are not proportionate to the role the SME segment plays in the issues that the CMA has identified.

2 SAIF is concerned that the CMA's "one-size-fits-all" remedies risk distorting competition in favour of the large corporate players

As the CMA is aware, unlike other markets it more typically investigates, the funerals market in the UK is generally highly fragmented but has three key large corporate players, which operate a large number of branches across the UK: Co-op has 1,053 branches, Dignity has 831 branches and Funeral Partners has 178 branches. These corporate funeral businesses only account for 33% of the funerals branch network in the UK, with Co-op, the largest corporate funeral business, having a share of 17%, followed by Dignity with a share of 13% and Funeral Partners with a share of 3%.¹

Beyond that, there is "*a long tail of small firms*",² the vast majority of which (74%)³ have only one branch. This means that 67%⁴ of the market comprises of independent funeral directors, many of whom are members of SAIF. The independent funeral directors range from very small, family-owned businesses (with one branch only) to larger privately-owned businesses that operate a maximum of 32 branches and are therefore still considerably smaller than the corporate funeral businesses.

As the CMA is aware, SAIF was established in September 1989 with the aim to ensure that independent funeral directors would succeed as multi-generational firms in the UK. This was at a time when corporate funeral businesses were embarking on aggressive acquisition strategies risking the viability of smaller, typically family-owned, funeral directors.⁵ Today, SAIF continues to safeguard the interests of independent funeral directors by representing more than 965 independent funeral homes across the UK with over 1,800 branches.

There are significant differences between corporate funeral businesses and the independent segment. Such differences have not been adequately considered in the PDR and in SAIF's view,

¹ PDR, para. 2.72.

² PDR, para. 2.77.

³ PDR, para. 2.81.

⁴ PDR, para. 2.78.

⁵ For further details on the history of SAIF and its role as a trade association of independent funeral directors, please refer to SAIF's website available at <https://saif.org.uk/about-saif/>.

the CMA's "one-size-fits-all" remedies risk distorting competition in favour of the large corporate players.

2.1 The CMA's approach does not follow well-established regulatory practice to treat SMEs differently from large corporate businesses

The PDR does not distinguish between the large corporate funeral businesses with thousands of employees and the smaller independents, which typically have one or two employees.

This approach cuts across well-established regulatory practice to treat SMEs differently to large corporate businesses. It is ordinarily accepted that the definition of SME captures businesses with less than 250 employees. The European Commission has developed a more nuanced definition, which is based on size and turnover/balance sheet – although the 250-employee limit remains. The European Commission also defines any business with less than 50 employees and turnover of less than EUR10m as "small" and less than 10 employees and turnover of less than EUR2m (a definition which would capture the majority of SAIF's members) as "micro".⁶ Such definitions are commonly used in regulatory settings to ensure that the unique issues that these smaller businesses face are accounted for. It is commonly accepted that SMEs require differential treatment. This is because:

- (i) SMEs suffer disproportionately from fixed costs as default risk is negatively associated with size;
- (ii) SMEs have limited ability to access finance given credit constraints and other forms of competitive disadvantages; and
- (iii) the costs of screening, monitoring and liquidation (in case of default) for small / informationally opaque firms are higher.

From a policy perspective, it is important that SMEs receive differential treatment because SMEs form an integral part of economies: they successfully generate employment and are often innovative and able to pivot when required.

Regulatory requirements in the UK very often include different requirements for SMEs. Some examples include:

- (i) financial regulation and corporate reporting obligations are nuanced for SMEs. SMEs have reduced filing obligations to UK Companies House, e.g. availability of abridged accounts (which contain only a sub-set of the information included in a full balance sheet/P&L account), option not to file a director's report or an auditor's report on their accounts;
- (ii) alternative accounting standards apply to SMEs with a requirement to comply with only 10% of the full set of IFRS Standards. The IFRS for SMEs seek to re-balance the undue cost burden of reporting, which is proportionately heavier for smaller firms;
- (iii) tax rules provide special treatment for SMEs, e.g. SMEs are exempt from paying VAT on their domestic sales, receive a preferential corporate income tax and Research & Development relief; and
- (iv) the GDPR recognises that smaller businesses require different treatment to large or public enterprises. Article 30 of the regulation declares that organisations with fewer than 250 employees will not be bound by GDPR (subject to very limited exceptions).

⁶ European Commission, User guide to the SME Definition, 2020, available at <https://ec.europa.eu/docsroom/documents/42921>.

There are numerous more examples where regulation is nuanced for SMEs. Yet, the PDR does not differentiate between independent funeral directors, which are all SMEs, and corporate funeral businesses in the customary and appropriate way. SAIF considers that such differentiation would be entirely appropriate, particularly in circumstances where there are significant differences between large corporate funeral businesses and independent funeral directors.

2.2 There are marked differences between large corporate funeral businesses and the independent funeral directors

There are significant differences between independent funeral directors and large corporate funeral businesses:

2.2.1 Independent funeral directors are managed locally and are not focused on shareholder value in the same way as larger corporate funeral businesses. Firstly, corporate funeral businesses have duties to act in the best interest of corporate shareholders and, understandably, act accordingly. They are corporate entities managed by professional directors, who make strategic commercial decisions within the realms of their fiduciary duties to the company and its shareholders. The management of the corporate groups is vertical in the sense that it takes place at the holding level from their headquarters and is then applied universally to all local subsidiaries. Their strategy is not tailored or made for local branches. [✂].

In contrast, the management structure of independent funeral directors is horizontal with local managers, who are firmly embedded in their local communities, taking the strategic commercial decisions at the level of each branch. The local managers report to the owners of the independent funeral homes, who focus on their reputation and quality of their services, rather than the financial value. In fact, independent funeral directors are active members of their local communities – they are typically family-owned businesses that have served their communities for generations. They are motivated by elements not measured by financial metrics: namely, caring for the bereaved, taking care of their community, and safeguarding their reputation and trust. This is evidenced by various altruistic initiatives they have taken from organising fundraising events to making charitable donations.⁷

This is not to criticise the individual directors of such corporate funeral businesses, but it is a factual difference between corporate funeral businesses and independent funeral directors that the CMA's investigation should take into account. Just as the CMA recognises that a customer does not always act "rationally" to save the most money in accordance with textbook economic principles, independent funeral directors do not act purely according to profit motives to the exclusion of social welfare goals.

2.2.2 In fact, the CMA found that, in general, corporates charge substantially higher prices than independents. While it might initially have been supposed that large corporate funeral businesses have economies of scale that lower their costs and enable them to charge lower prices, in line with their different drivers and priorities, the opposite is true. The large corporate funeral businesses charge significantly higher prices than the independent funeral directors – the CMA has estimated that corporate funeral businesses' fees are approx. £800 to £1,400 higher than those of independent funeral directors.⁸

⁷ For example, SAIF organises alongside its member, Daniel Robinson & Sons, an annual charity golf day to raise funds for the treatment costs of local children born with cerebral palsy.

⁸ PDR, para.11.

As SAIF has previously noted,⁹ this is also evidenced by the price comparison survey conducted by Ipsos Mori, which consistently found that independent funeral directors were significantly more price competitive than corporate funeral businesses. SAIF considers that the price differential stems from the differences in ownership: Dignity is listed on the London Stock Exchange, Co-op is a cooperative, while Funeral Partners is majority-owned by a private equity firm (Montagu Private Equity). Accordingly, corporate funeral businesses are under tight external pressures to ensure year on year improvement in financial performance and to generate a return for shareholders. In contrast, the independent funeral directors generally operate either as family-owned companies or sole traders with different priorities, and with financial performance being driven by a simple need to remain profitable. This is also evidenced by Telegraph's (undercover) investigation into Co-op,¹⁰ which found strong evidence to suggest that this corporate funeral business has been using unethical practices to drive customers towards more expensive funeral packages in order to drive up profit in light of the effect of Covid-19 on its margins. Specifically, the undercover investigation found that Co-op has been promoting its most expensive funeral package options by changing the features of the basic ones to render them less attractive. [REDACTED].

2.2.3 Independent funeral directors do not have the full protection of limited liability, given c.50% of SAIF's members operate as sole traders or partnerships and therefore do not have the protections and support available to larger corporate funeral businesses. Thirdly, corporate funeral businesses enjoy the full protection of the corporate veil. Shareholders have limited liability in contrast to many independent funeral directors, who are less sophisticated business operators that, as noted by the CMA in the PDR, continue to operate as family-owned companies, sole traders or partnerships.¹¹ Yet, the work of independent funeral directors is highly complex as they deal with multi-cultural bereaved customers who frequently require tailored funeral services. With no strategic planning, lack of access to advisory services and sometimes even without websites, independent funeral directors run these highly complex businesses driven by their community ethos and personal passion. The European Commission has indeed described these issues as "structural barriers," with which SMEs are often confronted and which justify their preferential treatment by regulatory bodies.¹² All commercial risk, regulatory obligations or financial distress (indeed as shown by the detrimental impact of the Covid-19 pandemic) are exclusively born by them.

3 Inadequate justification in the AEC analysis for a "flat tax" approach to remedies

The CMA provisionally found that there are AECs in the funeral directors' market. In particular, the CMA provisionally found in the PDR that the following features restrict or distort competition within the supply of funeral director services: low level of customer engagement caused by the challenging circumstances in which they purchase a funeral; lack of easily accessible information on products and services including quality and prices; and lack of visibility to customers of the level of quality of

⁹ SAIF Response to CMA Funerals Market Study Statement of Scope 2018, page 9.

¹⁰ The Telegraph, 'Co-op Funeralcare staff use 'tricks' to boost profits after lockdown', Daniel Foggo, Callum Adams and Katherine Rushton, 29 September 2020, available at <https://www.telegraph.co.uk/news/2020/09/28/co-op-funeralcare-staff-use-tricks-boost-profits-lockdown/>.

¹¹ PDR, para. 2.83.

¹² In its guidance, the European Commission refers to the '*structural barriers*' that SMEs must also overcome such as lack of management and technical skills, rigidities in labour markets and a limited knowledge of opportunities for international expansion. See European Commission, User guide to the SME Definition, 2020, page 5, available at <https://ec.europa.eu/docsroom/documents/42921>.

care given to the deceased. The CMA considered that these AECs result in customer detriment to the extent that customers of "*Large funeral directors*"¹³ have overpaid by approximately £400 per funeral. The CMA stated that similar statistics are found for "*a number of Smaller firms*".¹⁴ Despite this finding in relation to "*a number of Smaller firms*" the CMA made the broad sweeping statement that "*customers of a proportion of the remaining 58% of the market are also likely to have been overpaying for a funeral, to a similar extent*".¹⁵

In proposing remedies, the CMA must have regard to whether the remedies are effective at addressing the customer harm and are proportionate. In SAIF's view, the CMA provided inadequate justification for what is akin to a "flat tax" on *all* funeral directors in the UK. As set out in more detail in this section 3, the CMA has insufficient and inappropriate evidence to suggest that customers have been overcharged across the whole industry including in relation to services from independent funeral directors. Despite this, the CMA's remedies apply almost equally across the market risking disproportionate and unintended consequences.

3.1 The CMA's level of sampling and use of evidence lacks detail and should not be relied upon for AEC findings and remedies applied to independent funeral directors

As stated above, the CMA noted in its PDR that the market for funeral services at the point of need "*is not functioning well*" and that it has a number of features that "*restrict or distort competition*".¹⁶ In SAIF's view, the CMA's level of sampling and evidence is not appropriate, credible or proportionate for its overarching findings in relation to *all* funeral directors in the UK – both corporate funeral businesses and independent funeral directors.

More specifically, the CMA noted in its PDR that it has "*liaised closely*"¹⁷ with the Co-op, Dignity and Funeral Partners, without making a similar statement with regards to the independent part of the funerals market. This is also shown by the CMA's extensive references to their views and statements in the PDR with no equal focus on the independent part of the sector. Instead, the CMA stated that it has "*sought to gain an understanding of how competition works across the UK and across the full spectrum of funeral directors, from very large to very small; from premium priced to low cost; and from "traditional" to "modern"*".¹⁸ SAIF considers that this is not enough. Turning to the CMA's methodology in more detail as described in the PDR:

3.1.1 The CMA visited less than 1% of smaller funeral directors. In the PDR, the CMA states that it visited 15 "*smaller*" funeral director branches out of c. 6,200 listed as open in the dataset purchased by the CMA.¹⁹ This represents less than 1% of the estimated total funerals market in the UK, but the CMA considered this sample sufficient to make conclusions for the whole industry and propose remedies that apply to *all* funeral directors. This contrasts with the level of sampling of the Scottish Inspector of Funeral Directors as part of the Scottish market investigation into funerals, who visited 55 funeral directors out of c.400, representing more than 10% of the Scottish funerals sector, even though the rest of the UK has up to three times the number of funeral directors than Scotland does and the Scottish regulator has fewer resources available than the CMA to make on-site visits.

¹³ Which the CMA states include 13 Large Funeral directors.

¹⁴ PDR, para. 8.33.

¹⁵ PDR, para. 8.33.

¹⁶ PDR, para. 8.24.

¹⁷ PDR, para. 1.24.

¹⁸ PDR, para. 5.4.

¹⁹ PDR, paras. 2.71 and 5.4.

3.1.2 The questionnaires that the CMA did send were highly technical and unsuitable for the independent segment. The CMA sent questionnaires to a "*variety of funeral directors other than the three largest*";²⁰ however, SAIF understands that the CMA received a limited number of responses. While written evidence by way of responses to the questionnaires has some benefits, the CMA's highly technical questionnaires, accompanied by complex spreadsheets, were an unsuitable tool for collecting evidence from SAIF's members, the majority of which are unsophisticated, family-owned businesses, who were not able to appropriately interpret, and therefore engage with, the CMA's questionnaires. Indeed, SAIF is aware that, in some instances, the assistance of professional accountants was required to enable these businesses to respond to the CMA's highly technical questionnaires with corresponding costs.²¹

3.1.3 The CMA also relied on anecdotal evidence from an unspecified number of people. CMA notes that it spoke to "*a number of people*"²² about their experience in arranging a funeral in order to reach its conclusions. Whilst these stories may have provided some colour around the workings of the industry, SAIF does not consider it appropriate and adequate for such light, anecdotal and unsubstantiated evidence from an unspecified number of people to be relied upon in reaching the CMA's conclusions in relation to the proposed remedies.

3.2 The CMA erroneously relied heavily on insurers' reports, who are in direct competition with funeral directors

The CMA has extensively relied on the reports of SunLife and Royal London to substantiate various of its findings in the PDR. For example, these reports were used as evidence of significant price increases across all segments of the industry.²³ In SAIF's view, this is not accurate and provides an over-simplified view of how pricing works in the industry. In particular, SunLife's Cost of Dying report overstated the typical cost of a basic funeral by more than £1,000, causing unnecessary concern amongst customers.²⁴

As previously mentioned by SAIF,²⁵ SunLife and Royal London are insurance companies that sell life insurance products, some of which are aimed specifically at providing finance to pay funeral costs. Accordingly, they are incentivised to report high funeral costs and present the facts in a way that shows a need for their products. Further, both SunLife and Royal London produce studies without distinguishing between the corporate funeral businesses and independent funeral directors despite their obvious differences. SAIF has previously requested a reassurance from the CMA that they are not basing any regulatory remedy on these insurers' figures, but no such reassurance has been forthcoming. SAIF has also asked the CMA to reflect in the PDR the decision of the Advertising Standards Authority (the "**ASA**"), following a complaint it lodged against SunLife, holding that SunLife breached the ASA's Advertising Codes and requiring SunLife to be more transparent in its calculation methods of funeral costs. The CMA rejected SAIF's request on the basis that the ASA's

²⁰ PDR, para. 5.4.

²¹ By way of example, one of SAIF's members, a small, family-owned independent funeral director, spent c.£5,000 on engaging a professional accountant, who assisted it in understanding and responding to the CMA's highly technical questionnaires.

²² PDR, para. 1.28.

²³ PDR, para. 2.29 *et seq.*

²⁴ SAIF Working Paper Response (Tranche 1), page 3.

²⁵ See, for example, SAIF Working Paper Response (Tranche 1), pages 3 and 4 as well as SAIF Response to Interim Report, page 2.

adjudication is "*not relevant to the CMA's investigation*".²⁶ However, SAIF submits that the CMA has used SunLife's (and Royal London's) reports as a basis to make broad sweeping recommendations about the whole industry in the PDR making the insurers' reports very relevant to its investigation.

3.3 The CMA's "one-size-fits-all" approach carries a high risk of disproportionate and unintended consequences

The CMA's "one-size-fits-all" approach to assessing the sector is not well thought through, appropriate or proportionate and cuts across established regulatory practice – common across various UK regulators – to differentiate the treatment of SMEs and large corporate businesses. The CMA has failed to consider the unique characteristics of the funerals sector and its different segments. As explained in detail in section 2.1 above, there are significant differences between the corporate funeral businesses and independent funeral directors, most prominently in terms of their culture, cost of operating, ownership structure, and price drivers. Small family-owned businesses do not have the same financial resources, corporate support, advisors and personnel in order to comply with the onerous and burdensome regulatory obligations proposed by the CMA in its PDR. These are "structural barriers" which should ordinarily be accounted for by treating SMEs differently from large corporates.

SAIF has repeatedly submitted²⁷ that the CMA's proposed approach will have a detrimental impact on the funerals industry. SAIF is deeply concerned that the costs associated with compliance will lead to market exit from some of its smaller members, with devastating effects on the local communities and competition within them – in other words, the CMA's proposed regulatory proposals will have a counterproductive effect, which goes against the CMA's primary duty to promote competition for the benefit of the customers.

4 SAIF's specific concerns with the remedies proposed by the CMA in the PDR

In addition to SAIF's general concerns as set out above, SAIF has specific concerns with each of the remedies proposed by the CMA in the PDR. These concerns are set out in detail below.

4.1 Remedy 1: price, commercial information and transparency

The first remedy that the CMA proposes is the price and commercial information transparency remedy. This remedy would apply equally to *all* funeral directors and would require them to disclose certain price and other commercial information to customers and prohibit funeral directors from entering into certain arrangements.²⁸

4.1.1 Price transparency

SAIF is already a proponent of price transparency among members to aid customers. For example, most recently it is proposing a rule for its members that they must publish pricing details on an open access digital forum (whether a member's own website, Facebook page or local third-party website). In principle, SAIF agrees that customers and the industry would benefit from additional price transparency even though it is not the principal way in which most customers choose a provider. However, SAIF considers that the specific price standardisation measures provisionally proposed by the CMA are geared towards the package formula of corporate funeral businesses, and impracticable for independent funeral

²⁶ See email exchange between Nicola Brown (and members of CMA's distribution list 'funerals@cma.gov.uk') from the CMA and Terry Tennens and Claire Day from SAIF dated 7 August 2020.

²⁷ See SAIF Response to Interim Report, pages 6, 15.

²⁸ SAIF notes that there are also suggested transparency measures for crematorium operators. As SAIF does not represent crematorium operators, it does not address these measures in this response.

directors, who are motivated to care for the bereaved and family and loved ones in a bespoke fashion. They also "compete" for customers on this personal touch / personalised service basis, not on offering "[X]".

In detail:

(i) **Some of the proposed measures are not practicable and risk distortion of competition in favour of corporate funeral businesses.** The proposed price transparency measures require the publication of detailed pricing information based for "simple", "standard" and "mostly common sold" funeral packages.

SAIF supports the PDR concept with respect to "simple" and "unattended funerals", respectively, as all funeral providers offer a version of these and issues of definition are manageable. SAIF considers that the only appropriate price transparency requirements would involve the inclusion of prices for funeral types that are offered by the majority of directors: "simple" and "unattended funerals" (direct to cremation). For these funerals, there are certain key elements that are always included, and it would be possible for such information to be regularly updated and published for use by customers.

For "standard" and "most commonly sold", a number of issues arise, SAIF sees the following issues:

(a) **The proposed remedy will not properly aid the customer that consults with an independent funeral director in exercising its choice of provider.** The requirement to disclose pricing information for the most commonly sold and standard funeral packages, respectively, is impracticable and does not reflect the way in which funerals are sold, how independents compete, and how their customers typically come to choose an independent provider. While it is common for funeral directors to offer "simple" or "basic" packages, not all funeral directors otherwise package their funeral offerings. As noted, the independent segment in particular is more focused on personalised offerings, while [X]. It is not clear to SAIF members, in their extensive experience with bereaved customers, how customers are supposed to engage meaningfully with mass-market concepts of "standard" or "most commonly sold" to assist in their exercise of choice and comparison between providers when the customer leaning towards an independent is likely to be informed by concepts as such personal and trust (this does not arise to the same degree with "simple" and "unattended funerals").

(b) **Requiring disclosure of non-core disbursements is onerous and will have a disproportionate cost on SMEs of keeping track of a plethora of third-party pricing information.** If the CMA considers that aside from "simple funerals" and "unattended funerals", some transparency measures are required, any requirements should be strictly limited to the "core" disbursements. SAIF considers that such "core" disbursements should be defined as crematorium or burial ground fees, clergy or celebrant fees and doctors' certification fees. This is because these "core" disbursements are relatively standard, not based on the individual circumstances of the deceased, and are updated either quarterly or annually and therefore would require constant monitoring. In contrast, all other disbursements such flowers, special performers and piper, require the funeral directors to be in close contact with the various third party providers, who charge different fees most of which depend on the individual circumstances of the deceased and/or the type of funeral service required. A requirement to disclose all elements of a non-simple funeral including all disbursements, apart from being impracticable, disproportionately

affects independent funeral directors, who are more likely to engage third parties for a range of services (e.g. limousines, hearses) as opposed to the corporate funeral businesses, who are more likely to have most required services in-house.

(c) [REDACTED]. While SAIF acknowledges that for corporate funeral businesses, the administrative burden of this remedy may be easily borne, the CMA has not given sufficient thought to how this remedy would work in practice and potential that this remedy carries to distort competition in favour of the corporate funeral businesses. Without the above amendments, SAIF considers that the CMA's proposed remedy will have unintended consequences for its members. As indicated above, the disclosure of funeral packages as described by the CMA [REDACTED]. To the extent the CMA nonetheless believes that it is necessary to have pricing packages [REDACTED] that facilitate comparison between funeral providers, SAIF notes as follows: the chief harm identified by the CMA is overcharging by the corporate funeral businesses, which would be remedied by more customers switching away from overcharging corporates and towards other (smaller) competitors such as SAIF's members. While [REDACTED], SAIF considers that the proposed price transparency measures in their current one-size-fits-all form will risk the opposite effect, they will distort competition in favour of the [REDACTED].

(ii) **The proposed measures do not reflect the unique nature of the funerals industry and will result in the sale of less-personal funerals.** The funerals industry is unlike any other industry²⁹ and the circumstances of purchase are unique. As the CMA has noted itself in the PDR, "*consumers are likely to be affected by multiple factors in parallel*";³⁰ price is one factor for customers, however it is by no means the most important factor. SAIF considers that the suggestion that the disclosure of pricing for funeral packages will correct a perceived lack of competition in the market, suggests that the CMA considers that price is the determining factor for customers. The Market Study Consumer Research used by the CMA has shown that when choosing a funeral director, customers are primarily focused on service and ensuring that their loved one has "a proper send-off" according to his/her wishes.³¹ For this reason, a personal recommendation is very commonly used in the industry as a means to identify a funeral director. However, the PDR suggests that the reliance on personal recommendations is a failing of competition in the market, which also shows the low level of customer engagement.³² SAIF submits that, on the contrary, for the funerals sector, and particularly the independent funerals segment, as opposed to other markets, this recommendation is a recognition of their professional standing in the local community and a testament to their reputation and high-quality services. It by no means demonstrates that customers do not actively engage in the selection process. It merely demonstrates that this is a market where price is not the key determining factor.

Forcing all directors to present their offerings as packages and reducing the industry to a market where price is everything will result in a commercialisation of the industry and will ultimately result in less-personal funerals. SAIF considers that customers will lose out in this scenario.

²⁹ See SAIF Response to CMA Funerals Market Study Statement of Scope pages 1-2, SAIF Response to Interim Report page 10; SAIF Hearing Summary, pages 1-2.

³⁰ PDR, para. 3.88.

³¹ PDR, Section 3.

³² PDR, para. 8.9.

(iii) **Introducing a legally binding regime for detailed price disclosures is not necessary.** As noted above, SAIF agrees that the funerals industry would benefit from additional price transparency measures. However, it does not consider that the remedy proposed by the CMA is appropriate for independent funeral directors. This is primarily for three reasons:

(a) **The independent segment of the market is not responsible for large price increases.** As SAIF has previously noted, independent funeral directors' prices have increased in line with inflation while third party disbursement costs have increased much more significantly. In SAIF's experience, disbursements have risen from c.15% to 50%, or even 60% of total funeral costs, largely inflated by corresponding increases in burial and cremation charges. As shown in the annual "Cremation Fee League Tables" published by the Cremation Society of Great Britain,³³ crematorium costs have increased significantly year on year across the UK. By way of example, the crematorium costs in Bath increased from £375 in 2005 to £934 in 2020, i.e. by 150% in the last fifteen years. Similarly, the costs in Cambridge doubled, climbing to £840 this year from £407 in 2005 while in various regions, namely Oxford, Beckenham, Chichester, Nuneaton, Leatherhead and Northampton, the costs rocketed to £1,070 from c.£380 in 2005 (i.e. an increase of 180% in the last fifteen years). Despite these staggering increases in crematorium costs, no regulation or price caps for crematoria has ever been proposed by the CMA or other UK regulators. Since funeral directors act as an intermediary for crematoria and other third parties vis-à-vis customers, these increased costs have made their way onto funeral directors' invoices, representing between 30-50% of their costs, and have meant that funeral directors bear the brunt of media attention for price increases in the industry.³⁴ On top of this, given these third-party services are usually paid in advance (e.g. burial costs are usually paid 2-3 weeks in advance of the funeral) or at the time of service, funeral directors have to finance them from their own cash flow and overdrafts with only a small number taking a deposit from customers (SAIF understands that this is common practice for the corporate funeral businesses). This means that in the event of customer's default, it is the funeral directors who bear the severe financial consequences as well as the burden of contractual liabilities under their contracts with third-party providers. It is important to note that these increases have affected independent funeral directors significantly more than corporate funeral businesses who often have a crematorium in house.

(b) **The independent segment is already regulated, and can be further regulated, by SAIF.** Alongside the provisions in its current Code of Practice, which require independent funeral directors to have an itemised price list, explain their full range of services including the availability of a simple funeral package and give clear written estimates early on to customers,³⁵ SAIF is planning to introduce additional price transparency requirements by, amongst other, making online publishing of prices for a minimum of two funeral formats (likely "unattended" and "simple" funerals) mandatory for its members either on their own website or on another open digital platform and requiring all members to provide electronic copies of their price lists at the request of the customers. SAIF also intends to standardise the

³³ Cremation Fee League Tables, 2005 and 2020, Pharos International Statistics prepared for Cremation Society of Great Britain.

³⁴ See SAIF Response to the CMA Papers on regulating price on Funeral Directors services, page 10.

³⁵ SAIF's Code of Practice, articles 4.2 and 6.

descriptions of the five core elements of the funeral services (namely, coffin, transfer from place of death, care of deceased, hearse on funeral and taking instructions/arranging services) through two distinct funeral formats ("unattended" and "simple" funerals) to allow for more effective price comparisons by customers across the various funeral packages. The current plan is for such measures to be tabled at SAIF's Special General Meeting on 6 October 2020 (subject to Covid-19 restrictions) after being postponed from May 2020 due to the peak of the coronavirus pandemic. The same initiative has also been taken by the National Association of Funeral Directors ("**NAFD**"). SAIF estimates that it represents up to 35% of funeral directors in the UK and therefore increased transparency requirements under SAIF's Code of Practice will significantly increase pricing transparency within the sector as a whole. As such, SAIF does not consider that the transparency remedy proposed by the CMA is necessary.

4.1.2 Prohibition on certain arrangements and disclosure of interests

In principle, SAIF agrees that a prohibition on funeral directors entering into certain arrangements with third parties is adequate in some circumstances. In SAIF's view, the funeral directors' arrangements with third parties can be divided into two broad categories: (i) inappropriate payments or inducements to third parties, and (ii) appropriate and professional agreements designed to ensure the proper treatment of the deceased and contracted to support and serve public bodies, for example, H.M. Coroners. In relation to the first category, SAIF agrees with the CMA's provisional decision to prohibit these types of arrangements with hospices, care homes and other similar institutions, as well as with the soliciting of business from coroner and police contracts. In fact, in its Code of Practice, SAIF already prohibits its members from making payments or inducements to third parties.³⁶ However, SAIF does not agree with the CMA's "umbrella" prohibition of all types of arrangements with third parties, including those falling under the second category. In fact, this category involves arms' length contractual arrangements with third parties (usually entered into following formal tender procedures), including hospices, care homes and other similar institutions that have no mortuaries and hence require the funeral directors' assistance at the time of a patient's death. Funeral directors are instructed to collect the deceased from the place of death in consideration for a fixed fee until the relatives of the deceased appoint the funeral director of their preference. These arrangements do not allow funeral directors to solicit business from the family of the deceased; in fact, they are based on legally binding contracts with clearly defined terms and conditions including stringent non-solicitation clauses.³⁷

SAIF also agrees with the requirement that funeral directors disclose the ultimate owner of the business and where a funeral director has any interest in a price comparison website, having been an active campaigner of "transparency of ownership" in the industry. SAIF's Code of Practice also already requires this.³⁸

Further, SAIF does not agree with the disclosure of charitable donations, contributions and gratuities. SAIF considers that this requirement will disproportionately affect independent and local funeral directors and will create an administrative burden.

³⁶ SAIF's Code of Practice, article 2.2.

³⁷ By way of example, certain members of SAIF have successfully participated in tenders procured by the Cambridge University Hospitals Trust, under which they are instructed to collect the bodies of the deceased and take care of these until a funeral director is appointed by the relatives of the deceased.

³⁸ SAIF's Code of Practice, article 2.4.

As noted at section 2.2.1 above, independent funeral directors are ingrained in their local communities. They are frequently involved in altruistic endeavours within their local communities, such as making donations to local organisations, running fundraisers for local charities, and sponsoring local football teams. These charitable endeavours are undertaken by independent funeral directors given they are community-facing organisations, which seek to play their part in supporting local charities in their local community. Requiring the disclosure of all charitable donations will be nothing more than an administrative burden for independent funeral directors and SAIF finds it hard to see how such a remedy could be justified.

4.2 Remedy 2: Improving the quality of funeral directors' back of house standards

The CMA proposes to recommend to the UK government that it establish an inspection and registration regime to monitor the quality of funeral director services. This remedy would apply equally to *all* funeral directors and would eventually involve the introduction of minimum standards, monitoring and enforcement and the collection of information.

In principle, SAIF agrees with the CMA that the funeral industry would benefit from a common high standard applicable to all funeral services, and it welcomes the UK Government's input in setting the standard. However, SAIF thinks that the introduction of an inspection and registration regime operated by a new independent body that applies to independent funeral directors would not be appropriate or proportionate to achieve the CMA's stated aims. In the alternative, if the CMA considers that such regime is necessary for the funerals market, SAIF submits that the trade associations (i.e. SAIF and the NAFD) are better placed to implement this regime given their expertise, reputation and trust amongst funeral directors.

In detail:

4.2.1 80% of funerals in the UK are conducted by a funeral director that is voluntarily regulated. While SAIF does not represent the entire sector, it estimates that it represents approximately 50% of independent funeral directors in the UK (amounting to approximately 35% of the industry as a whole). Corporate funeral businesses, as well as some large independents, are represented by a separate body, the NAFD. SAIF estimates that the NAFD represents most of the corporate funeral businesses and approximately 30% of the sector with a total of c. 4,000 members. SAIF estimates that the NAFD's members conduct around 40% of all UK funerals while SAIF's members conduct 40%. As estimated by the CMA in its PDR, NAFD and SAIF's membership represents between 75% and 85% of funeral director branches in the UK³⁹ and approx. 80% of funerals conducted each year.

This means that 80% of funerals conducted each year are *already* regulated. Those regulated by SAIF must meet certain minimum standards, provide information on prices and packages, as well as keep their premises and equipment to a high standard. Under SAIF's Code of Practice,⁴⁰ all members are required to, amongst other, "*provide the highest professional standards in all elements of the service they provide to each individual client*",⁴¹ and keep adequate, acceptable and well-maintained premises and equipment.⁴² SAIF's membership is also subject to a Quality Assurance Assessment during which SAIF ensures that the applicant member complies with legal requirements, correct procedures, and best

³⁹ PDR, para. 1.124.

⁴⁰ SAIF's Code of Practice, March 2018, available at <https://saif.org.uk/wp-content/uploads/2019/07/Code-of-practice-March-2018.pdf>.

⁴¹ SAIF's Code of Practice, article 1.2.

⁴² SAIF's Code of Practice, articles 7-8.

practices before being admitted as a member. SAIF accepts new businesses (with less than a 12-month trading experience) as probationary members for a year to ensure that, before becoming full members, they abide by the highest standards. SAIF also carries out quality assurance inspections of their members' premises every two years with SAIF implementing risk-based inspections based on the performance of its members in January 2020.

Both SAIF and the NAFD also operate complaint resolution schemes. As regards SAIF's scheme, the "SAIF Consumer Protection Scheme" offered in conjunction with the Centre for Effective Dispute Resolution (CEDR) allows customers to make complaints against SAIF's members. SAIF takes all complaints extremely seriously. When SAIF receives a complaint against a member through this process, it conducts a thorough investigation and then determines the necessary disciplinary action required. Since 2010, SAIF has received 76 complaints in total, which have been resolved through a variety of disciplinary actions, ranging from revisions of price lists to refunds and compensations or even charitable donations and apology letters. In the rare case that SAIF considers that it is warranted by the severity of the complaint, SAIF has expelled members – 11 members have been expelled so far – or even referred matters to relevant local police forces.⁴³ Further, SAIF provides practical guidance to its members as well as first class training and education through the Independent Funeral Directors (IFD) College ensuring in that way that its members have adequate, industry-recognised qualifications.⁴⁴

The CMA's proposed remedy is unnecessary, disproportionate and too onerous for independent funeral directors in circumstances where such a large proportion of the industry is already regulated. The CMA is not suggesting that this regime apply to crematoria operators because "*certain aspects of crematoria operations are already regulated*."⁴⁵ SAIF finds it difficult to understand why the same logic has not been applied to funeral directors whose voluntary regulation is arguably more rigorous.

4.2.2 A new regulatory regime will raise barriers to entry (and success) and could lead to market exit. The PDR proposes that the regime apply to *all* funeral directors although the PDR suggests some "*flexibility in the manner in which funeral directors are required to demonstrate compliance ... which reflects their size, capacity and capability*."⁴⁶ While SAIF agrees that some differentiated requirements based on size are indeed appropriate, SAIF does not think that the CMA has properly thought through how drastic an impact the introduction of a regulatory regime will have on independent funeral directors.

SAIF is concerned that the regulatory regime will raise operational costs and barriers to entry and success in the funerals market in the UK, which may ultimately lead to market exit. In addition, as stated in section 3 above, SAIF is concerned that the CMA has not adequately engaged with the independent segment regarding the impact of such a regime. Whilst SAIF does recognise that the CMA has engaged with some market participants on the likely costs associated with establishing a quality regulatory regime, the feedback that the CMA summarises in the PDR comes primarily from Dignity and Co-op, who both

⁴³ By way of example, a Plymouth-based independent funeral director, who overcharged a customer, was required by SAIF to refund £1,500 and pay an additional £1,500 in compensation. The same funeral director, after having committed another breach of SAIF's Code of Practice, was ultimately expelled by SAIF in March 2020 as well as referred to the relevant local police forces.

⁴⁴ For further details on the training provided by IFD College, please refer to SAIF's website, available at <https://saif.org.uk/why-join-saif/education-training/>.

⁴⁵ PDR, para. 9.113(b).

⁴⁶ PDR, para. 9.109.

indicated that funeral directors would be able to comply with the new regime without incurring unreasonable costs.⁴⁷ What is likely to be considered "reasonable" for corporate funeral businesses like Dignity and Co-op is vastly different from what SME funeral directors would consider to be reasonable. For the SME segment, which are generally managed horizontally at the branch level with no support from any holding group structure, operating a very small number of funerals per year, any additional costs and distractions may result in financial difficulties.

As explained at section 4.1.1(i) above, for independent funeral directors, increased regulation will, at best, lead to increased operating costs. They might need to outsource regulatory requirements, engage third parties and/or hire additional staff. This is also shown by the costs incurred by couple of small, independent funeral directors, who, as noted in section 3.1.2 above, had to engage professional accountants to respond to the highly technical questionnaires sent by the CMA during its market investigation.

SAIF considers that at its worst, the increased operating costs of the regulatory regime may call in to question the long-term viability of SME funeral directors, especially when considered in conjunction with the additional remedies that the CMA proposes in its PDR. This is because the SME segment of the market operates with smaller teams (the large majority of which would be considered "micro" businesses with only 1-2 employees), higher costs and lower margins. Increased operating costs will either need to be taken from profits or be passed onto customers, and neither of these options will lead to customer benefits. They will result in either increased costs or more likely, independent funeral directors exiting the market. As SAIF has previously noted to the CMA, the review could result in up to one third of smaller independent operators closing or selling their businesses⁴⁸ and the ultimate effect will be a decrease in competition overall. To the extent these businesses are sold, the purchasers will, in all likelihood, be the corporate funeral businesses, who have the funds to make acquisitions and who are able to absorb the cost of additional regulation. This will "*shrink the independent segment of the market*" and ultimately, SAIF believes, will "*enable corporate operators to raise funeral prices.*"⁴⁹ Further, SAIF considers that the regulatory regime will also disincentivise new entry particularly at the smaller end of the market, where increased operating costs will need to be factored into prospective business plans.

4.2.3 A new independent body will lack the expertise to effectively regulate the independent segment of the industry. As mentioned in detail at section 4.1.1(ii) above, the funerals industry is a unique industry. The primary motivator for independent funeral directors is to help the bereaved and ensure their loved ones are treated with dignity and given a "proper send-off". They are proud of their work and any attempt at regulation must ensure that they are able to do their jobs effectively without commercialising the industry.

SAIF has been successful as a trade association (that also regulates its members through its Code of Practice) because it is made up of trusted industry participants. In particular, managers and/or owners of independent funeral homes across the UK with a proven track record of experience, good reputation in the industry, acute commercial acumen and strong leadership skills can apply to become an Executive Member of SAIF. The process for nomination is very thorough, fair and purposeful, allowing anyone who satisfies the above eligibility criteria to be elected by SAIF's National Executive Committee.

⁴⁷ PDR, para. 9.131.

⁴⁸ See SAIF Response to Interim Report, page 6.

⁴⁹ See SAIF Hearing Summary page 4 as well as comments on pages 4-5 of the same document.

As previously submitted,⁵⁰ SAIF has worked hard to establish successful relationships with its members and has amassed enormous goodwill amongst them. A new independent regulator is unlikely to have the benefit of the same expertise and goodwill and will be viewed with suspicion by the industry. SAIF understands from its discussions with the CMA that many of its members either did not cooperate or were unable to provide information to the CMA as part of its market investigation. In SAIF's view, this demonstrates the likely resistance that a new regulator will encounter from the industry.

SAIF considers that independent funeral directors are better regulated by SAIF which understands their needs as the premier trade association in the industry. As noted at section 4.2.1 above, SAIF regulates its own members and enforces its Code of Practice. However, SAIF recognises the benefit of independent regulation of the corporate funeral businesses. This is because corporate funeral businesses are driven by different motivators and are ultimately more commercial in nature. As described in detail at section 2.2.1 above, corporate funeral businesses are motivated by the need for consistent annualised growth and improvement in their financial performance due to the external pressures exercised by their shareholders. This makes them adopt aggressive M&A strategies, charge significantly higher prices (compared to independent funeral directors) and follow rigorous organic growth initiatives. In addition, corporate funeral businesses have the financial ability to absorb the cost of regulation and the benefits of regulating the corporate funeral businesses would outweigh any detriments.

In the alternative, if the CMA considers that an inspection and registration regime is necessary for all funeral directors in the UK (and not just for the corporate funeral businesses), SAIF believes that this would be best operated by the trade associations. In SAIF's view, the CMA can capitalise on the expertise, reputation and goodwill of the trade associations in the industry by delegating these regulatory functions to them whilst setting by itself the applicable rules and standards through regular consultations with the trade associations. The CMA has noted in the PDR that a model whereby trade associations represent and regulate their members simultaneously would "*create conflicts of interest*".⁵¹ SAIF does not agree with the CMA's conclusion, primarily for two reasons: first, the trade associations already (voluntarily) regulate their members through their codes of practice and regular inspections and are able to take various disciplinary actions to remedy improper conduct. There is no reason why SAIF would therefore treat its own members more leniently than non-members, given it already imposes strict requirements on its members. Second, the new regulatory regime will involve the inspection and enforcement of standards and rules that are set independently by the CMA to all funeral directors in the UK without any involvement of the trade associations. SAIF's proposed model ensures that not only the statutory standards of an independent regulator, such as the CMA, apply to all funeral directors in the UK (irrespective of their membership in a trade association) but also the unique characteristics of the industry are prioritised through the strengthened role of trade associations. SAIF would welcome the opportunity to discuss this further with the CMA.

4.3 Remedy 3: Ongoing reporting obligations

The CMA has provisionally decided to require that funeral directors with five or more branches provide details to the CMA of the total number of funerals that it has conducted per quarter and the total revenue during that quarter. For funeral directors with more than

⁵⁰ See SAIF Response to CMA Working Papers (Tranche 1), page 18.

⁵¹ PDR, para. 9.121.

10 branches, this information must be provided in more aggregated form. The CMA will also be able to require this information from smaller providers where appropriate.

In SAIF's view, this ongoing reporting obligation should not apply to the SME segment. SAIF's view is set out in more detail below.

4.3.1 A tiered approach by number of branches is not well thought through and is likely to deter expansion. SAIF does not agree that the "number of branches" is the correct metric for any tiered reporting requirements. This is because:

(i) Number of branches does not necessarily mean that the business conducts more funerals per year or is in a better position to report to the CMA. Further, it does not mean they have the number of staff necessary to implement the onerous reporting obligations as the ones proposed by the CMA in the PDR.

(ii) A metric based on number of branches will disincentivise expansion by independent funeral directors to open more branches. In SAIF's view, the effect of an ongoing reporting obligation (and in fact the cumulative effect of all the CMA's proposed remedies) is that many small independent funeral directors will be looking for ways to ensure that they remain profitable and successful while implementing the expensive and burdensome recommendations proposed by the CMA. One such consideration will be whether plans to open additional branches will be paused if they result in additional reporting obligations. SAIF also believes that some independent funeral directors who operate five branches will consider whether the reporting obligations are so onerous that it makes sense commercially for them to close one of their branches. As such SAIF is concerned that this remedy will have the counterproductive effect of lessening competition in the industry and limiting innovation amongst the independent funeral directors.

If the CMA considers that an ongoing reporting obligation on all funeral directors in the UK remains necessary, SAIF considers that such obligations should be nuanced in line with well-established regulatory practice to treat SMEs differently from large corporate businesses.

4.3.2 An ongoing reporting obligation is unduly onerous on the independent segment of the funerals market and any suggestion that it is not onerous is not grounded in good evidence. SAIF considers that the CMA's proposed ongoing reporting remedy is unduly onerous on independent funeral directors and more broadly, all SMEs in the sector. In its PDR, the CMA provisionally found that the remedy is "*not onerous*"; however it does not provide any evidence to support this finding – in particular, as stated at section 3 above, there is no indication that the CMA has discussed in depth the proposed remedies including the burden of this remedy with any independent funeral director.⁵² SAIF agrees that corporate funeral businesses with the resources to be able to provide information to the CMA on a quarterly basis may be able to comply with this remedy with ease. However, for SMEs, this proposed remedy will result in at the very least, a lot of additional work or significant costs in engaging advisory services firms to assist with compliance. As SAIF has previously noted, "*over demanding regulation could see the micro to small rural funeral director exit the market due to the onus of reporting. The impact will be higher costs for those in rural and isolated regions of the UK*".⁵³

SAIF also considers that this remedy is not proportionate to the role that independent funeral directors play in any perceived issues that the CMA has identified in the funerals

⁵² PDR, para. 9.189.

⁵³ See SAIF Response to the CMA Papers on regulating price on Funeral Directors services, page 12.

industry nor is substantiated in evidence. As noted above at section 4.1.1(iii)(a), funeral directors are not responsible for the price increases that the CMA identifies in the PDR, with price increases from independent funeral directors being consistently limited to inflation-indexed rises or less, or the prices of third party services that the independent funeral directors include on their invoices as disbursements. Most independent funeral directors are motivated by their role in their community and the service that they can offer the bereaved.

5 SAIF's concerns with ongoing reflection on the appropriateness of a price cap

SAIF welcomes the CMA's decision not to pursue a price cap remedy considering the impact of Covid-19 on the funerals industry. However, given that the CMA would like to keep the possibility of this remedy open, SAIF wishes to reiterate the concerns that it has about price regulation in the funerals industry. In SAIF's view, it is not appropriate for independent funeral directors to be subject to price regulation either now or in the future. In brief, this is because:

5.1.1 Independent funeral directors have consistently offered lower fees than corporate funeral businesses. This is evidenced by various independent consumer reports, including Ipsos Mori's survey. As noted at paragraph 4.1.1(iii), independent funeral directors have also not increased their prices above inflation. Funeral directors have borne the brunt of criticism for price increases where those price increases are largely reflective of increases in disbursements. To make independents subject to pricing regulation would be to tar them with the same brush as the corporate funeral businesses who charge significantly higher prices.

5.1.2 Price regulation does not reflect the unique service-oriented nature of the funerals industry. It does not reflect the fact that customers consider service to be one of the most important factors of choosing a funeral director. Independent funeral directors pride themselves on their services and their care for the bereaved and the deceased, and price regulation would undermine their efforts to ensure that the funeral industry is not entirely commercialised. Besides, as SAIF has previously submitted,⁵⁴ a price cap would be extremely difficult to implement in practice given the wide range of operating models in the industry (from integrated businesses like Dignity and the Co-op to small husband and wife teams that are fully reliant on third party services).

5.1.3 Price regulation will inevitably lead to increased costs for funeral directors. As SAIF has reiterated numerous times in this response, independent funeral directors (which are by their nature much smaller businesses than the corporate funeral businesses) are not well placed to incur the additional costs associated with regulation. Additional operating costs will be onerous and may lead to market exit. The result will be that, in SAIF's view, corporate funeral businesses will expand their reach. While SAIF commends the CMA for acknowledging the impacts of Covid-19 on the funerals industry, it should be further noted that the additional costs of price regulation will compound the adverse effects that the industry is seeing as a result of the pandemic (the full extent of which is not yet known).

SAIF respectfully submits that any price regulation plans should not be reconsidered. This is at least until the full effect of the pandemic on the funerals industry is understood, which SAIF expects will not be known for many years.

⁵⁴ See SAIF, Response to CMA Papers on regulating price on Funeral Directors services, page 9.

6 What the CMA should do

For the reasons articulated in this response, SAIF submits that the CMA should carefully reconsider the remedies proposed and specifically whether the CMA has the requisite evidence to justify such broad reaching measures across the whole sector. At the very least, the CMA should nuance these remedies so that they take account the very different circumstances in this industry of the independent sector, in line the well-established public policy principle that regulation should, where possible, be less onerous for SMEs than for large corporates (which, in the case of funeral directors, on the PDR's evidence, are the source of customer harm).

In addition, should the CMA consider that further regulation is required in the sector, SAIF requests that the CMA enter into a dialogue with the existing trade associations to determine whether they form part of an inspection and enforcement regime (ultimately supervised by the CMA), rather than the cost and duplication of appointing an independent regulator to fulfil this function.