

Funerals Market Investigation

Westerleigh Group's response to the CMA's Provisional Decision Report

1. Introduction

1. On 13 August 2020, the CMA published the Provisional Decision Report ("**PDR**") in its funerals market investigation. This submission sets out Westerleigh's response to the CMA's competitive assessment set out in the PDR, including the CMA's proposed findings of adverse effects on competition ("**AECs**") and customer detriment. As with our submissions throughout the market investigation, our comments in this response are focused on the aspects of the PDR which relate to the supply of crematoria services. Westerleigh has prepared a separate response to the remedies package proposed by the CMA in the PDR ("**Remedies Response**"). These responses should be read in conjunction.
2. Westerleigh's response to the PDR is based on its experience as a private sector crematoria operator, caring for over 42,000 funerals per annum and providing exceptional care to the bereaved. Our business strategy is built around developing new and improved crematoria across the UK, providing a high quality offering to customers as an alternative to the older local authority facilities which make up the large majority of the market. The AECs identified in the PDR do not reflect our experience of competing in the local areas in which we are present and are not supported by the evidence gathered by the CMA.
3. The crematoria sector has been transformed by sustained private sector investment in recent decades, with new entry occurring regularly and at significant scale. This has increased competition in many local areas and significantly improved customer outcomes. These improved outcomes for bereaved families include higher quality facilities, shorter waiting times, longer service times and increasing personalisation of cremation services. Local authority crematoria have also been forced to respond to this emerging competition and the enhanced customer expectations it has driven. This is inconsistent with the picture the PDR paints of the extent and nature of competition between crematoria in the UK.
4. We are disappointed by the CMA's failure to take due account of the evidence and responses that Westerleigh has provided during the market investigation, and the selective nature of the analysis presented in the PDR. Furthermore, we believe that the CMA has disregarded important evidence which shows that the crematoria market has been operating in customers' interests in recent years, contrary to the CMA's finding of customer detriment.
5. After over two years of investigation, the CMA continues to show a poor understanding of how the market functions and the issues arising in the market, including the interaction between public and private sector providers in a market comprised predominantly of local authority operated crematoria. The CMA fails to recognise the importance of quality in customers' decisions and the impact of improving quality on customer outcomes, continuing to take the misguided position that cremation is determined almost entirely based on location. This position is unsustainable as an increasing amount of evidence contradicts it,

which the CMA has largely ignored or otherwise misinterpreted. Instead of promoting competition and customers' interests, the CMA's assessment of the sector does the opposite, failing to understand at a basic level what drives consumer welfare in the sector.

6. We are also extremely concerned by, and strongly reject, the CMA's suggestion that Westerleigh's customers have "overpaid" for our cremation services. The manner in which the CMA has produced its estimate of customer detriment is entirely misguided and is in fact extremely harmful to customers, as it has no regard to qualitative factors. The evidence shows that around a third of Westerleigh's customers travel further than they need to in order to attend our higher quality facilities, and we have consistently high customer satisfaction scores from customer feedback (99% in 2019). In these circumstances the CMA has no basis to assert that Westerleigh's customers are "overpaying". Rather, our prices reflect the relative quality of our services and the overall value proposition offered to customers. Moreover, the headline figures cited by the CMA for private sector operators are simply not applicable to Westerleigh, even based on the CMA's own analysis (which incorrectly inflates Westerleigh's profitability).
7. Nevertheless, without prejudice to our views on the AECs and customer detriment provisionally identified by the CMA, and as explained more fully in our Remedies Response, we are broadly supportive of the remedies package proposed by the CMA in the PDR. The evidence we have provided to the CMA shows that properly informed customers will make active choices, taking account of the different aspects of crematoria offerings (including quality, distance and price). We are, therefore, very supportive of measures to enhance information availability at and before the point of purchase.
8. On the other hand, we do not believe that the evidence and analysis presented in the PDR provide a sufficient basis for the imposition of price regulation, which would carry with it a high likelihood of producing worse outcomes for customers in the long term, particularly for Westerleigh's customers. These risks are exacerbated by the ongoing pandemic, but by no means specific to it. In particular, a highly intrusive intervention of this nature would risk undermining, or potentially reversing, the improvements in quality and customer experience that are evident across the sector as a result of recent private sector investment. We therefore believe the CMA has reached the right outcome in not taking forward its earlier proposals in this regard, and do not believe that a supplementary market investigation reference ("**SMIR**") would be warranted.
9. Furthermore, if the CMA were to undertake a SMIR, it could not be focused only on the question of price regulation. Rather, in accordance with the provisions of the Enterprise Act, the CMA would first need to reassess whether there are any AECs in the crematoria sector based on an objective review of the available evidence at the relevant time. In doing it would need to fundamentally revise the approach taken in the current market investigation to gathering and analysing the evidence in several key areas (see further section 4 of the Remedies Response).

2. Executive summary

10. Westerleigh rejects the CMA's provisional findings that there are AECs in the supply of crematoria services in the UK. The essence of the CMA's provisional AEC finding is that weak competitive constraints in local crematoria markets across the UK, combined with high barriers to entry, have resulted in a market in which the vast majority of crematoria have substantial local market power. The CMA has not supported this finding with adequate evidence and has equally failed to take account of substantial evidence, presented by multiple parties, that contradicts its provisional conclusions. The CMA has therefore failed to discharge its statutory duty to establish an AEC to the requisite standard.
11. The characterisation of competition in the crematoria sector outlined in the PDR is completely at odds with Westerleigh's experience of operating and competing in the market. Westerleigh's business model as a new entrant in many local areas is predicated on differentiating itself through offering high quality services and facilities to compete for customers with other, nearby, crematoria. In doing so, Westerleigh attracts customers that are willing to travel further than necessary in order to hold their funeral at a modern, fit-for-purpose, facility. Yet, the CMA's position is effectively that (i) the vast majority of customers choose which crematorium to use based only on proximity or familial ties; (ii) as a result, crematoria across the UK are essentially guaranteed a certain level of demand and therefore do not need to compete with local rivals, either on price or quality; and (iii) crematoria are further protected from competition as a result of high levels of local concentration and high barriers to entry.
12. There are several tensions and deficiencies in the CMA's analysis which undermine the provisional conclusions reached in the PDR and in particular fail to recognise Westerleigh's differentiated business model, relying on evidence or analytical approaches that have little relevance or application to Westerleigh.

Failure to rationalise private sector investment with AEC findings

13. **First**, the CMA accepts that private sector operators such as Westerleigh "*differentiate themselves through their newer buildings, facilities and grounds*" and invest heavily (between £3.4m to £8.5m) when developing new crematoria and then make substantial subsequent investment in maintaining high standards and improving the quality of the offering, including expanding the range of facilities.¹ But the CMA fails to explain why Westerleigh would pursue this strategy if it was irrelevant to its ability to attract customers.
14. In other words, if the vast majority of customers simply choose their closest crematorium, regardless of quality, why would private sector operators invest so heavily in their facilities in order to "*differentiate themselves*" from incumbent local authority crematoria? The CMA's failure to address this tension undermines its finding that the features of the market it has

¹ PDR, paragraphs 4.58 and 6.192.

identified amount to an adverse effect on competition or otherwise have resulted in customer detriment.

Flawed finding that barriers to entry are 'high' and amount to an AEC

15. **Second**, the CMA acknowledges that there has been significant new entry into the crematoria sector in recent decades, with close to 60 crematoria opening (an increase of close to a quarter) over the last 10 years alone. Yet, at the same time, the CMA asserts that barriers to entry are so high that they amount to an AEC. This is flatly contradicted by the evidence which shows that, in accordance with a well-functioning market, capacity has significantly expanded in order to address a gap in the market in terms of the quality of facilities available, as well as outstripping – and most likely driving to a significant degree – growth in demand for cremation services in the same period.²
16. The CMA cannot find 'high' barriers to entry in these circumstances, nor that those barriers which do exist amount to an AEC: it is clear that those barriers have not restricted competition.

Flawed local concentration analysis and failure to establish link to customer outcomes

17. **Third**, the CMA's analysis of local concentration is entirely circular and based on a flawed methodology whose design leads to an inevitable finding of 'high' concentration. Specifically, by using catchment areas based on 30 minutes cortege drive time, which also serves as a central measure under the planning regime for assessing whether there is sufficient 'need' for a new crematorium, the CMA's analysis simply describes the outcome of the planning regime. The CMA's assessment therefore provides no meaningful information on the extent of local competition or how the market functions. This 'baseline' catchment used by the CMA lacks any relevance or application to Westerleigh, whose own average catchment area is significantly larger, and whose relevant geographic market (evidence shows) is significantly larger still.
18. In any event, the CMA accepts that there is no evidence of any correlation between allegedly high levels of concentration and worse customer outcomes, as would be required to find an AEC.³

Failure to properly assess quality

19. **Fourth**, despite recognising the considerable investment by the private sector, the CMA still fails to recognise the huge gulf in the quality of facilities and customer experience across crematoria in the UK that this has brought about. The CMA's analysis suggests that customers holding a funeral at a busy, underfunded, local authority facility (likely built in the 1950s, 1960s or before and located in a densely populated urban area) receive the same experience and quality of service as those that use a modern, purpose-built, crematorium in large, peaceful,

² Westerleigh's new entry specifically has led to it more than doubling in size, having opened 18 new facilities over the last 10 years alone.

³ Incidentally, these findings also undermine the AEC finding as regards barriers to entry.

grounds purposefully situated in order to offer the bereaved a tranquil environment in which to say goodbye to their loved ones, and that the new crematoria built by Westerleigh and others have simply served the role of providing additional capacity. This is plainly incorrect.

20. Over a two-year review, the CMA has failed to adequately assess and understand the true state of crematoria provision in the UK. As a result of this and other errors, the CMA continues to fail to recognise the significant improvements in customer outcomes that private sector investment has delivered, or to properly consider pricing evidence alongside qualitative considerations.

Inadequate assessment of customer decision making and failure to recognise importance of marginal customers

21. **Fifth**, the CMA's provisional conclusions regarding customer decision making remain predominantly based on a flawed consumer survey with an extremely small sample size and which is not representative of Westerleigh's customers. The CMA has misrepresented the results of Westerleigh's own customer survey ("**Westerleigh's Survey**") as being corroborative of the CMA's own results, while ignoring those aspects of Westerleigh's Survey which undermine the CMA's findings without adequate explanation.
22. The CMA's analysis also fails to recognise the importance of marginal customers – i.e. those that actively compare and are willing to switch between alternative crematoria – in driving competition. In these circumstances, the CMA has failed to establish that a lack of customer engagement amongst some customers is sufficient to amount to an AEC.

False conclusions drawn from profitability analysis

23. **Sixth**, the CMA's analysis of Westerleigh's profitability fails to recognise that for a firm to remain valuable to investors (and for a minimum level of investment incentives to occur), a ROCE greater than the WACC is a pre-requisite, not an indicator of market power or customer detriment. [✂].
24. Given the significant margin for error on a large number of inputs in relation to which the CMA's methodology unduly inflates Westerleigh's profitability (both by overestimating Westerleigh's ROCE and underestimating its true cost of capital), the CMA cannot conclude that Westerleigh is earning "*significant economic profits*" in these circumstances.⁴ [✂] Westerleigh's returns are consistent with a well-functioning, competitive, market. [✂].

Prejudicial assessment of customer detriment

25. **Seventh**, the CMA's assessment of customer detriment is deeply flawed. As noted above, Westerleigh strongly rejects the notion that its customers have 'overpaid' for its cremation services, which are priced taking account of the relative quality of Westerleigh's facilities and services and the substantial investments which Westerleigh makes in developing and improving its crematoria. Given that the CMA's analysis takes no account of qualitative factors, it is in no position to assert otherwise. The unfairly prejudicial results which the CMA

⁴ PDR, paragraph 9.279.

incorrectly presents in the PDR as being representative of the whole sector should be withdrawn. Even using the CMA's flawed methodology, [✂].

Failure to acknowledge evidence of a market operating in customers interests

26. **Finally**, Westerleigh is disappointed that, throughout its review, the CMA has failed to acknowledge the significant improvements in customer outcomes which have been delivered in the crematoria sector in recent decades, driven by private sector investment. This is not simply a matter of assertion on Westerleigh's behalf but is clearly borne out by the evidence available to the CMA. New entry in many local areas has resulted in greater levels of competition and capacity in the sector than ever before, increased customer choice, higher quality standards, greater levels of innovation and differentiation between providers. These trends have resulted in shifts of customers between crematoria (including significant loss of volumes for incumbent crematoria which have faced nearby entry), increasing price pressure and reducing levels of profitability. This evidence is all consistent with a well-functioning market which is subject to a normal competitive process and, ultimately, which is operating in customers' interests.
27. For these reasons the CMA should abandon its provisional AEC findings as regards the crematoria sector. The remainder of this response highlights several important errors and omissions in the analysis presented in the PDR, which should be corrected before the CMA publishes its final report. Westerleigh has previously submitted detailed representations on the CMA's analysis in response to the CMA's working papers, which are not repeated in full in this response but are equally applicable to the PDR.⁵
- 3. The CMA's AEC findings do not reflect the evidence relating to Westerleigh**
28. The CMA's AEC findings in the PDR are set out as applying to all crematoria operators and local areas in the UK. This is not, however, borne out by the evidence available to the CMA and it has failed to adequately consider how the analysis differs between different types of operators and areas of the UK. Instead, the CMA's analysis is predicated on a false assumption that all crematoria operators are homogenous. This is particularly objectionable for an operator in Westerleigh's position, which has invested significantly in developing new crematoria in recent years, entering local areas in competition with incumbent crematoria and delivering significantly improved outcomes for customers in those areas. The suggestion that Westerleigh's continued development activity is somehow causing an adverse effect on competition is perverse. Without Westerleigh's investment, it is clear that customers in these areas would have experienced worse outcomes.
29. Westerleigh's investment is, effectively, discounted from the CMA's analysis as a result of its flawed assessment of quality (addressed further in section 8 below). Westerleigh is also deeply frustrated that the CMA has, repeatedly, overlooked or sought to downplay evidence provided by Westerleigh regarding its own business and competitive position, in favour of

⁵ For the avoidance of doubt, any aspects of the CMA's analysis that are not addressed in this response or Westerleigh's previous submissions may not be deemed as being accepted by Westerleigh.

evidence relating to other operators and which is not applicable to Westerleigh. This underlying flaw in the CMA's approach and analysis is highlighted where relevant throughout this response and includes, for example:

- (a) The significant amounts of evidence which Westerleigh has submitted on the competition it faces (and drives) in the local areas in which it operates, which has largely been disregarded in the analysis in the PDR in favour of an overly simplistic and narrow 'fascia counting' exercise, which is used to draw provisional conclusions on the extent of competition in all local areas in the UK. Moreover, the CMA's approach is based on catchment areas which are significantly narrower than Westerleigh's own catchment areas (see section 5 below).
 - (b) Westerleigh's Survey, which was commissioned to provide a more objective and accurate assessment of the behaviour and views of Westerleigh's customers than the CMA's own survey, which has been either overlooked or misrepresented in the PDR (see section 7 below).
30. Furthermore, even on the CMA's own analysis, Westerleigh is found to have returns on capital employed which are consistent with a competitive market (see section 9). The same is true of all but a single other private sector operator. In these circumstances, there is no basis for the CMA to use profitability concerns as the foundation for AEC findings which apply to the whole sector. Westerleigh is also incorrectly asserted to have been 'overcharging' its customers based on an unfairly prejudicial analysis which has little bearing to the value proposition which Westerleigh offers its customers or the investments it has made in offering high quality facilities and services (see section 10). In these circumstances, the CMA does not have a robust basis to make AEC findings, at least in so far as they apply to Westerleigh.⁶

4. The crematoria 'market' is functioning in customers' interests

31. As well as failing to take due account of Westerleigh's position and evidence, Westerleigh is disappointed that, despite reviewing the crematoria sector for over two years, the CMA has continued to fail to acknowledge several key features of the market and its recent development that are operating to improve customer outcomes.⁷ In particular, the PDR fails to take account of the role of quality and innovation, driven by the private sector, and their impact on competition and outcomes for bereaved families.
32. Westerleigh's record of investment in developing, upgrading and maintaining high quality facilities in recent years, coupled with trends in customer behaviour, provide clear evidence of a dynamic market that is evolving to meet customers' changing expectations. Extensive

⁶ Certainly, the evidence and analysis the CMA has presented would be inadequate to apply highly interventionist pricing remedies of the form contemplated, but not taken forward, in the PDR to Westerleigh.

⁷ Westerleigh has previously made submissions on the CMA's failure to adequately consider recent developments in the market. See for example Westerleigh's response to the CMA's working papers published on 30 January 2020, dated 2 March 2020 ("**Main WP Response**"), Section 3.5.

new entry at different levels of quality and, increasingly, new product offerings are symptomatic of this dynamism. The market now provides customers with a range of price and quality options, including a rise in the availability of lower cost options (from both the public and private sector) and the emergence of differentiated packages offered by funeral directors which have further increased customer choice.

33. The CMA continues to overlook these trends and, as a result, presents a distorted view of the market. The CMA must recognise and reflect in its final analysis that the crematoria sector (and the funerals sector more widely) has evolved significantly in recent years, and continues to do so, including in the areas set out below.

4.1 Recent investment by the private sector in the crematoria sector has greatly improved customer outcomes

34. The PDR acknowledges that private sector investment has delivered increased capacity in recent decades. In the last ten years alone, around 60 new crematoria have opened (an increase of close to a quarter), the vast majority of which were developed by the private sector. However, the CMA has continued to refuse to acknowledge the benefits which this sustained investment has brought to customers: new entry in many local areas across the UK has resulted in a significant increase in competition and customer choice, including through the creation of new crematoria with modern designs, superior quality facilities and grounds, increased service options and longer service lengths, which contrast with the traditional 'conveyor belt' service which many will be familiar with.
35. As a result, more people have a convenient local facility and have a choice between two or more local facilities than ever before, which span a range of price points and relative quality levels. The critical nature of this investment (including for customer outcomes) has been highlighted especially in light of the ongoing Covid-19 pandemic, with the crematoria sector having been able to cope with the significant pressures arising from a significantly increased death rate in a manner which simply would not have been possible even 10 years ago.
36. The CMA seeks to present this wave of investment as simply addressing, and allowing the sector to keep up with, a growth in demand for cremations.⁸ This is incorrect. The crematoria opened in the last 10 years have increased capacity by over 100,000 cremations per year⁹, far in excess of the growth in cremations recorded by the CMA in the same period (even before taking into account re-provisioning and new chapels which substantially increase capacity¹⁰). This increase in high quality provision has itself stimulated demand and thereby caused the cremation rate to increase. In addition, the CMA has failed to acknowledge that this

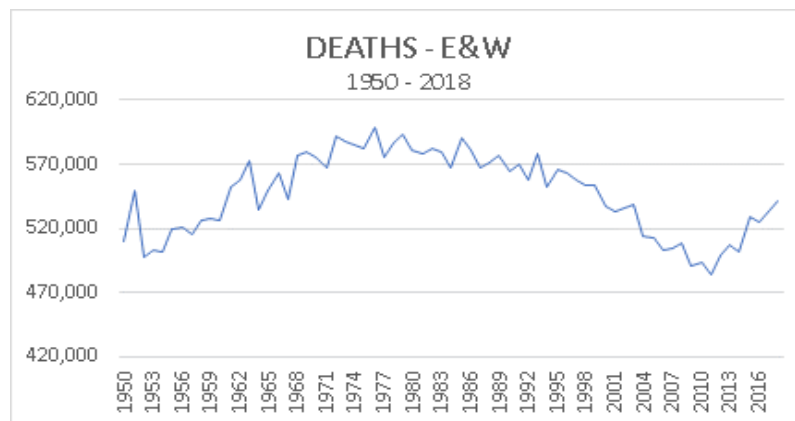
⁸ PDR, paragraphs 2.19 to 2.21.

⁹ Based on an average capacity of 1,800 cremations per annum for each crematorium.

¹⁰ For example, Westerleigh has opened three new chapels at existing sites at Westerleigh Crematorium, West Suffolk Crematorium and Basildon Crematorium, during the last four years, effectively doubling capacity at these sites.

investment has taken place during a period when death rates have been significantly lower than previous decades, as shown below.

Figure 1 – Death rate, England & Wales (1950-2018)



Source: Office of National Statistics, Death registrations for England and Wales

37. The CMA's analysis also fails to acknowledge that private sector investment has greatly alleviated the pressure on busy local authority sites, which have seen significantly reduced average volumes as a result.¹¹ This has meant that many local authorities have been able to increase slot lengths at their facilities, which together with the injection of higher quality new provision, has significantly improved customer outcomes (see further section 8 below). Westerleigh has previously submitted evidence to the CMA of certain local authorities improving their existing crematoria, whether by refurbishing or re-providing them, in response to competition and increased customer expectations.¹² This has improved overall standards in the sector.
38. Westerleigh has emphasised throughout the market investigation the importance of ensuring that the CMA's review and any remedies ultimately imposed do not hinder continued investment in the sector.¹³ It is regrettable, therefore, that the CMA's consideration of remedies in the PDR gives no attention to this issue. As set out in Westerleigh's Remedies Response, this would need to form a central part of considering the case for any SMIR. In Westerleigh's view, the best thing the CMA could do to promote competition and consumer welfare would be to ensure that the sector continues to invest in the manner seen in recent decades.

4.2 Expanding customer choice: growth of lower cost options (simple funerals and direct cremation services) and new business models

39. There is currently greater availability of lower cost cremation services than ever before, with direct cremation, reduced cost early morning slots and low cost funeral options (offered by

¹¹ Main WP Response, paragraph 20(b) compares the number of cremations serviced at the ten busiest crematoria between 2006 and 2018. The 2018 figures demonstrate a (material) decrease on average of 19%.

¹² Main WP Response, paragraph 20(c).

¹³ See further section 3 of Westerleigh's Remedies Response.

Cremation without Ceremony, Simplicity Cremations and Pure Cremation, among others) increasingly being taken up by price sensitive customers. These changes in market structure have emerged relatively recently, but are accelerating, including as a result of the Covid-19 pandemic, increasing customer choice and exerting stronger competitive constraints on providers of traditional cremation services.

40. The CMA notes that the documentary evidence it has reviewed indicates direct cremation as meeting some specific needs.¹⁴ However, the CMA has downplayed the actual impact of the development and evolution of low-cost options, which are not merely reflective of a "*degree of competitive response*",¹⁵ but part of a wider trend in the industry and reflective of changes in customer behaviour.
41. As Westerleigh has previously explained,¹⁶ the CMA's analysis (which is based on 2018 data) fails to capture the importance of this uptake in lower cost options. Reduced fee services and direct cremation are becoming increasingly popular and prevalent, expanding from a very low base at an exponential rate over recent years.¹⁷ Westerleigh has rolled out lower cost options across all its sites and has reduced prices significantly. This has been driven by the rise in demand, but also by funeral directors increasingly offering low cost packages, incorporating the funeral services as well as cremation (for both unattended and attended services) and crematoria operators competing closely in this growing segment.
42. There has been a significant increase in the number of direct cremations Westerleigh is providing, in particular, with uptake having further increased during the Covid-19 pandemic. Westerleigh had expected direct cremations to increase to [X], or [X]% of its total cremations in 2020, compared with [X] ([X]%) in 2019, and [X] ([X]%) in 2018. Based on revised estimates as at August 2020, it now expects direct cremation in 2020 to increase to [X] or [X]% of its total cremations in 2020, [X].
43. Whilst the CMA has previously recognised that direct cremation is likely to grow further as a proportion of all funerals,¹⁸ recent research by Sunlife has found that, once customers are made aware of direct cremation as an option, 42% would consider it for their own funeral.¹⁹ This is in line with international comparators where the proportion of direct cremations is

¹⁴ Appendix I (*Qualitative evidence on constraint imposed on standard funerals by low-cost options*), paragraph 45. The CMA notes, at paragraph 41 that, Co-op's direct cremation product has resulted in a cannibalisation effect on its simple funerals, indicating substitutability between the two low-cost propositions, with market research reports reflecting growing awareness and use of direct cremation, which could increase further.

¹⁵ PDR, paragraph 5.46.

¹⁶ Main WP Response, paragraphs 20(d) and 20(e).

¹⁷ This has also resulted in limited price increases at Westerleigh, which have been in line with inflation in recent years (and in the past were in line with cost inflation in the sector).

¹⁸ Appendix I, paragraph 46, the CMA has cited Sunlife's Cost of Dying Report 2018, which identifies three possible groups to whom direct cremation might appeal; WP on international comparisons, paragraph 55(a).

¹⁹ SunLife Cost of Dying Report 2020, page 13, <https://www.sunlife.co.uk/siteassets/documents/cost-of-dying/SL-cost-of-dying-report-2020.pdf/>.

significantly higher – for example, the USA has a direct cremation rate of 38%.²⁰ With increased awareness among customers of available options, the rise in low-cost funerals is expected to continue even after the effects of Covid-19 have subsided.

44. New business models and alternative funeral types have also gained in popularity, further disrupting competition in the sector by decoupling the funeral or memorial service from the cremation itself. For example, certain service providers now focus only on specific aspects of a traditional funeral service, allowing customers to choose options that suit their preferences and budgets, while funeral directors have begun offering attended services at standard chapels or in their funeral homes, alongside a direct cremation. Other operators, for example woodland burial sites, have also begun to offer "cremation services" where the funeral takes place at the woodland burial site with the operator arranging the cremation. The variety of options had been gaining in popularity and social acceptance by customers and have been embraced more widely during Covid-19 due to government social distancing restrictions.
45. This is clear evidence that the crematoria sector has been evolving dynamically in response to customer demands, providing a greater range of choice of price points and service offerings. These changes must be factored in by the CMA in its current assessment of whether the features of the market it has identified can properly be considered as AECs (and in any future consideration of whether a SMIR would be appropriate).

4.3 Limited growth in cremation fees in recent years

46. While the CMA emphasises historic increases in cremation fees in the PDR it fails to acknowledge that price increases in recent years have been more in line with inflation (and in the past were in line with cost inflation). In Westerleigh's case, at the majority of its sites, annual price increases in 2019 were below those adopted in previous years and in some cases were below inflation. This is in addition to the trend for increasing uptake for lower-cost options, set out above.²¹
47. This is largely due to increasing competition, new entry and increasing quality of services, trends which are all expected to continue. Due to the increased uptake of lower cost services during 2020, which as noted above cannot be attributed only to Covid-19, Westerleigh's average revenue per cremation has reduced by [X]% compared with 2019.
48. By cutting its analysis off in 2018, the CMA has therefore failed to present an accurate picture of price outcomes for customers. Westerleigh would urge the CMA to update its evidence base in this respect before issuing its final decision.

²⁰ NFDA Cremation and Burial Report, 2020.

²¹ The average Westerleigh fee increased by 2.9% in 2019 and by 2.4% in 2020, during a period (2018 to 2019) where RPI has varied between 2.1% and 4%. See Westerleigh's Main WP Response, sections 3.5 and 6.

5. No AEC arising from local concentration

49. At the heart of the CMA's provisional AEC findings in relation to the crematoria sector is its assessment of local concentration and specifically its finding that "*the vast majority of local markets for crematoria services are concentrated, many highly so*".²² This conclusion is based on a flawed methodology for assessing local competition which fails to reflect the realities of the crematoria sector and is particularly misguided when considered alongside evidence specific to Westerleigh. The CMA sets a standard for "effective competition" which is wholly disconnected from the relevant market context and all but impossible to meet.
50. As explained below, there are several important areas of concern, including:
- (a) The CMA's analysis is underpinned by an assumption that customers should have a choice of at least four crematoria to experience the benefits of competition. This sets an unrealistic standard in the context of the crematoria sector. Ultimately, the CMA's flawed approach demonstrates that, despite having investigated the sector for over two years, it has failed to understand the economics which drive competition between crematoria.
 - (b) This error is further compounded by the fact that much of the CMA's analysis is based on its analysis of 30-minute cortege drive time catchment areas, which are unduly narrow, have no relevance to Westerleigh which has much wider catchment areas, fails to capture the geographic areas over which crematoria compete and does not reflect customer behaviours. Evidence shows that Westerleigh's customers are prepared to travel much further for what is an infrequent event (arranging a funeral) and to obtain better quality.
 - (c) Fundamentally, the CMA's analysis fails to understand that what drives competition between crematoria is the existence of marginal customers, which make active choices between rival crematoria and which are critical to the economic viability of crematoria. This feature of the market means that the CMA's analysis needs to be broadened to properly capture the extent of local competitive constraints. It is important to note in this regard that, as the CMA accepts in the PDR, around a third of Westerleigh's revenues derive from customers that choose to travel further than they need to attend a Westerleigh crematorium.
51. In any event, the CMA has not established any causal link between the allegedly high levels of local concentration it provisionally identifies and the pricing concerns it sets out in the PDR, or indeed any other allegedly 'poor' customer outcomes. This means that its conclusion that crematoria operators are exercising market power in local areas with fewer competitors is not robust. As such, even based on its flawed methodology, the CMA has failed to establish an AEC arising from 'high' levels of local concentration.

²² PDR, paragraph 4.103.

5.1 Unrealistic and unsubstantiated view of the number of crematoria required for effective competition

52. The CMA's assessment of local concentration is underpinned by the CMA's assumption that any local area in which there is fewer than four rival crematoria raises prima facie competition concerns.²³ The CMA offers no explanation, or evidence supporting, using a fascia counting approach of this nature as the primary basis for assessing local competition, beyond the fact that it is a standard the CMA has used previously in retail merger cases.
53. This approach – and the threshold the CMA is applying – has been used by authorities in merger cases only to determine which overlapping areas (post-merger) would have fewer alternatives, in respect of which anti-competitive effects cannot easily be ruled out and merit further analysis. Fascia count is not, however, meant to serve as a proxy for the detailed analysis required to draw robust conclusions on the effectiveness of local competition. By basing its analysis on this approach, the CMA has also overlooked a vital distinction between the retail sector and crematoria, which is a key driver of customer behaviour: funerals are infrequent events, and families are understandably willing to travel further and consider their options over a much wider geographic area than they are for services which are consumed regularly and frequently.
54. This itself is unacceptable, but even in the context of its fascia counting exercise, the CMA must provide a clear explanation of why, in the market under review, it believes that four rival crematoria are required to deliver effective outcomes for customers. As set out in the CMA's own retail merger guidelines, the appropriate 'threshold' for identifying potentially problematic areas "*depends on the characteristics of the market*" and should be supported by empirical evidence on the relationship between outcomes for customers and the number of firms in the market.²⁴
55. The CMA appears to have given no consideration to whether the characteristics of the crematoria sector are such as to require four competitors for effective competition, and to have ignored Westerleigh's previous representations regarding the unfounded nature of this assumption.²⁵ As Westerleigh has explained, the CMA's approach would mean that there would need to be hundreds more crematoria developed across the UK for the CMA to accept that there was "sufficient" competition. The CMA therefore appears to have defined an entirely arbitrary benchmark in order to find an AEC. This is unsustainable and must be addressed before the CMA takes its final decision.
56. Furthermore, the CMA has elsewhere in the PDR considered evidence on the relationship between the number of firms and customer outcomes and found no clear relationship between local areas which have four or more crematoria and better customer outcomes: this

²³ PDR, paragraph 4.81.

²⁴ CMA62, Retail mergers commentary, 10 April 2017.

²⁵ See Westerleigh's Main WP Response, section 4.2.

should therefore be a clear signal that its local concentration analysis is fundamentally misguided and does not provide evidence of an AEC. This issue was highlighted in response to the working papers but has, again, been overlooked by the CMA in the PDR.

57. Finally, while the CMA seeks to rely on the fact that a "*more conservative threshold has been adopted by the CMA in some cases*"²⁶, the opposite is also true. For example, in the private hospitals inquiry – which is much closer in market characteristics to the crematoria sector than the retail mergers the CMA seems to have based its approach on – the CMA proceeded on the basis of a "conservative" initial filtering exercise which identified only private hospitals with fewer than two rivals as requiring further assessment.²⁷ In other words, the presence of three rivals was sufficient to conclude that there was effective competition. During that investigation, the CMA (correctly) used fascia count only to identify areas for further assessment, rather than to draw conclusions or as a substitute for robust analysis.

5.2 Unduly narrow catchment areas which only describe the outcome of the planning process

58. The CMA's erroneous assessment of the number of rivals required for effective competition is further compounded by its decision to only assess competition within very narrow, 30-minute cortege drive time, catchment areas. Westerleigh has already explained at length why such an approach is inappropriate for the purposes of assessing local competition between crematoria, which are not repeated in full in this response.²⁸ However, the following points bear emphasis.
59. First and foremost, the CMA's analysis in the PDR is entirely circular and seemingly designed to produce an inevitable outcome of finding an AEC. Specifically:
- (a) As discussed further in section 6 below, the CMA relies on the fact that the planning regime requires operators to show a qualitative "need" based on the number of people who the proposed crematorium will serve within a 30-minute cortege drive time to find that there are "high" barriers to entry.²⁹
 - (b) At the same time, the CMA bases its assessment of local concentration on the same measure (i.e. 30-minute cortege drive time), even relying on the same aspects of the planning regime to support this approach.
 - (c) The CMA fails to recognise, however, that it is simply a function of the planning regime that most crematoria will not have large numbers of rivals within a narrow 30-minute cortege drive time area: if that were the case, it is unlikely planning permission would have been obtained. The CMA's assessment therefore provides no meaningful

²⁶ PDR, paragraph 4.81.

²⁷ I.e. consistent with the approach typically taken in retail mergers, where fascia counting is commonly applied as a filtering mechanism at Phase 1 due to the limits of a Phase 1 merger timetable.

²⁸ See for example Westerleigh's Main WP Response, section 4.3. The points made in Westerleigh's previous submissions on the CMA's working papers are equally applicable to the PDR.

²⁹ PDR, paragraph 4.64.

information on the extent of local competition or how the market functions, it simply describes the outcome of the planning process.

60. The CMA's flawed logic thus undermines its assessment of local competition. The CMA cannot simply assume (as it does in the PDR) that the requirements of the planning regime amount to an absence of effective competition: this requires an in-depth analysis of how competition operates in each local area.
61. Second, importantly, Westerleigh's own average catchment area is significantly greater than the 30 minutes cortege drive time used by the CMA. By applying 30 minutes to all providers uniformly, the CMA's analysis is predicated on the incorrect assumption, which the CMA continues to advocate in the face of overwhelming evidence to the contrary, that providers are homogenous. While the CMA now incorporates a "sensitivity" of 40 minutes cortege drive time (24 minutes normal drive time) in its catchment area analysis, in Westerleigh's view this remains overly narrow. Given Westerleigh's actual catchment area, 40 minutes should be the *starting point* for any local analysis of Westerleigh.³⁰ In any event, as explained below, once a more realistic view is taken of the number of crematoria required for effective competition this sensitivity shows that there is effective competition in most local areas across the UK.
- (a) Third, the CMA has not attempted to define a geographic market or understand the trade-offs made by customers required for such an analysis. As Westerleigh has outlined, an 80% catchment area can only be a starting point as it will almost always understate the extent of a geographic market.³¹ Most disappointingly, Westerleigh has submitted evidence showing the trade-offs made by its customers, which the CMA has failed to take into account. The evidence compellingly shows that customers are willing to travel significantly further both for increased quality, and in response to reductions in quality.
- (b) Fourth, the CMA accepts that evidence provided by Westerleigh and other operators shows that crematoria "*benchmark with rivals located over 30 minutes away (at cortege speeds)*". This is an important concession, which shows that competition takes place over wider geographic areas than the CMA's local concentration analysis would suggest. It is therefore particularly important that no conclusions are drawn from the results of that analysis. Regrettably, however, this is precisely what the CMA does in the PDR.³²

³⁰ Evidence submitted by Westerleigh shows that the relevant geographic market is significantly wider than this as customers travel further for increased quality when aware of it and are willing to travel further in response to changes in quality.

³¹ It represents an effective tool to rule out concerns when assessing a large number of areas (i.e. if no concerns arise on an 80% catchment then no concerns arise on an actual geographic market) but cannot be used to reach conclusions on areas of potential concern.

³² While the CMA pays lip service to having taken into account potential constraints from rivals located further away (for example, Appendix E, paragraph 36), as set out below it has failed to do so in any meaningful way.

- (c) Fifth, the CMA continues to rely on its consumer survey to assert that "*four-fifths of customers travelled up to 30 minutes to use a crematorium*".³³ As Westerleigh has highlighted, the CMA's survey did not specify whether this was at normal driving speeds or cortege speeds (as the CMA accepts in the PDR).³⁴ Given that the CMA's position is that cortege speed is "*not a concept that could easily be understood*" by customers³⁵, it has to be assumed that most customers would respond in relation to normal driving speeds (with 30 minutes equating to 50 minutes cortege drive time).
- (d) This is corroborated by Westerleigh's Survey, which found that [80-90%] of respondents indicated the crematorium used was within 30 minutes normal (50 minutes cortege) drive time.³⁶ The CMA appears to dismiss this evidence solely on the basis that data on actual distances travelled were slightly lower than suggested by responses to Westerleigh's Survey. Yet the CMA does not recognise either that its own survey has no relevance for Westerleigh or that customers point to a willingness to travel significantly further than the distance actually travelled. The fact remains that the evidence shows that a significant proportion of Westerleigh's customers travel further than 30 minutes cortege time, meaning that the CMA's catchment areas significantly understate the geographic areas over which Westerleigh's crematoria compete.

5.3 Failure to capture local competitive constraints

62. Of equal concern to the CMA's methodology for its local concentration analysis is its failure to go beyond simple fascia counting exercises to assess how competitive constraints operate in local areas across the UK. It is apparent that – contrary to the CMA's standard approach of using fascia counting exercises only as an initial screening exercise to identify *potentially* problematic areas – in the PDR this is, in effect, the sum of the CMA's assessment. Indeed, the results of the CMA's largely uninformative fascia counting exercises form the primary basis for its AEC finding.³⁷
63. For example, no further analysis is undertaken specifically of those crematoria which have less than three rivals in their catchment area to assess the extent of competitive constraints which they face from further afield or whether those markets are characterised by poorer outcomes for customers (which they are not). This contrasts notably, for example, to the private hospitals inquiry where those hospitals captured by the initial filtering exercise (which as noted above screened out any areas with three or more rivals) were then subject to a more

³³ PDR, paragraph 4.42(a).

³⁴ Although the CMA appears to rely on the evidence to support its position regardless, seemingly on the perverse basis that because *operators* refer to cortege speeds in internal documents, *consumers* responding to the survey must have been reporting cortege speeds. PDR, paragraph 4.43.

³⁵ Competition between crematoria WP, footnote 2.

³⁶ In contrast to the CMA's survey, Westerleigh's Survey clearly distinguished between normal drive time and cortege drive time speeds.

³⁷ PDR, paragraph 8.18(c).

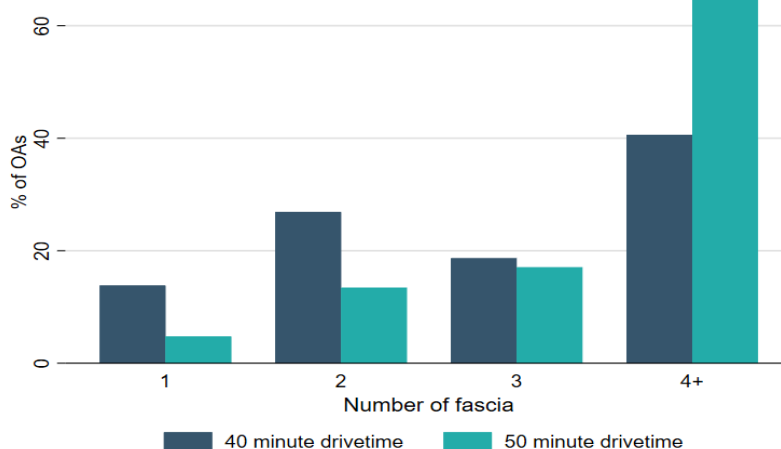
detailed, area-by-area, assessment to determine the extent of local competitive constraints in each case.

64. One important area in which the CMA does go beyond a simple supplier-centred fascia counting exercise is to consider the extent to which customers have a choice of crematoria. This is key to determining whether crematoria face effective competitive constraints, much more so than how many rivals they have within a narrow 30-minute cortege drive time area. The results are revealing: taking a more realistic view of customers' willingness to travel and the number of crematoria required for effective competition, they show that the large majority crematoria face significant competitive constraints. Specifically, 70% of customers have a choice of two or more crematoria within a 40-minute cortege drive time (28% have a choice of four or more).
65. Westerleigh has replicated the CMA's analysis for those output areas within a 40-minute and 50-minute drive time catchment of Westerleigh's sites.³⁸ The analysis shows that customers have considerable choice and supports Westerleigh's submissions that it faces strong competition (for example, the very high proportion of customers that are located in catchment areas that overlap with competitors).³⁹ On a 40-minute catchment area, the majority of Westerleigh's potential customer base have a choice of three or more rival crematoria, and the vast majority have a choice of at least two. When the catchment is widened to 50 minutes, the vast majority of Westerleigh's customers have a choice of three or more competitors.

³⁸ As outlined above, a 40-minute drive time catchment is an appropriate starting point for assessing competition around Westerleigh's sites given its own actual catchment. Evidence from Westerleigh's Survey points to a much wider area that customers are willing to travel and supports a geographic market closer to 50 minutes drive time (or beyond) and this is included as a reasonable sensitivity.

³⁹ Importantly, it also shows the sensitivity of the CMA's results to: (i) a narrow 30-minute cortege speed catchment area that has no meaning or relevance for Westerleigh and other operators, and (ii) misguidedly assuming that an 80% catchment area is equivalent to Westerleigh's geographic market. The 80% catchment is a starting point that is narrower than the geographic market. Evidence overwhelmingly corroborates that the geographic market for Westerleigh's sites is greater than 40 minutes. This means that should it worsen its competitive offer, the sales it would lose within a 40-minute catchment would be sufficient to drive its incentives to maintain the quality of its offer.

Figure 2 - Percentage of UK output areas with rival fascia within 40-minute and 50-minute drive times



66. Beyond this customer-centred approach, the CMA's consideration of local competitive constraints in section 6 of the PDR is largely superficial or otherwise materially deficient. In particular:
- (a) The CMA's consideration of the geographic closeness of crematoria suffers from the same central flaw as that noted above: it simply describes the outcome of the planning regime, without providing any meaningful information on the strength of competitive constraints.
 - (b) The CMA incorrectly dismisses the relevance of evidence showing that Westerleigh and other operators actively compete to attract customers from outside their immediate catchment area. As Westerleigh has explained, it is these marginal customers that drive competition in the crematoria sector and are critical to the viability of its crematoria. Westerleigh's Survey compellingly shows the extent to which customers can be considered marginal. Westerleigh has previously set out several criticisms of the CMA's selective consideration of the evidence on qualitative gain, which apply equally to the PDR.⁴⁰ For example:
 - (i) The CMA suggests that Westerleigh's documents do not show that Westerleigh takes actions to encourage out-of-area customers to use its crematoria.⁴¹ This is simply not correct. Westerleigh's business model is focused on growing volumes at its crematoria, in particular by attracting those out-of-area customers on the basis of its superior quality offering. Westerleigh uses significant market intelligence and analysis to assess and monitor this, as is reflected throughout Westerleigh's internal documents, and the data is used to target marketing and local engagement. The CMA's

⁴⁰ Westerleigh's Main WP Response, section 5.2.1.

⁴¹ PDR, paragraphs 6.103 to 6.104.

conclusions are based on a superficial reading of selective internal documents provided by Westerleigh. Those documents contain numerous examples of Westerleigh [REDACTED].⁴²

- (ii) The CMA has used the qualitative gain of adjacent private sector crematoria (Westerleigh and Dignity) to claim that qualitative gain and losses cancel each other out.⁴³ It is unclear what support the CMA seeks to draw from this claim. It is of course the case that families within the catchment areas of Westerleigh's crematoria may choose to use neighbouring facilities, but this does not mean that qualitative gain is not occurring. Rather, this reflects the trade-offs that customers make and the fact that neither crematoria nor customer preferences are homogenous, with some customers having a preference for a lower quality, lower price option. The fact that Westerleigh's higher quality crematoria will not attract all customers, even within its immediate catchment, serves to increase the importance of Westerleigh's own qualitative gain, and the need to attract business from outside the catchment area for Westerleigh's crematoria to continue growing and/or maintaining its market share.

- (iii) Westerleigh has explained that its qualitative gain is of great importance to the profitability of many of its sites and that without attracting customers on the basis of comparative quality, it is unlikely that these sites would be commercially viable. The CMA has dismissed this argument based on a self-serving analysis of the number of funerals which a crematorium could expect to conduct on the basis of customers for which it is the closest crematorium.⁴⁴ This appears to be based on an underlying assumption that private crematoria will capture all of these 'in area' customers. This is clearly deficient: as the CMA recognises elsewhere no crematorium will capture all 'in area' customers.⁴⁵ Moreover, as Westerleigh has explained its crematoria typically need to overcome entrenched familial and historical attachments to incumbent local authority crematoria.⁴⁶ The CMA's analysis therefore does not show that, contrary to Westerleigh's submissions, Westerleigh does not need to compete to win marginal customers.

- (c) The CMA's analysis of the impact of entry is highly selective, and the CMA has incorrectly dismissed or downplayed evidence of competition in areas where new entry occurs, including evidence put forward by Westerleigh in response to the

⁴² See for example Westerleigh's Main WP Response, paragraph 132. As noted above, qualitative gain accounts for [REDACTED] of Westerleigh's business activity and is therefore central to its operation and viability.

⁴³ PDR, paragraphs 6.128 to 6.129.

⁴⁴ PDR, paragraphs 6.132 to 6.140.

⁴⁵ For example, PDR 6.98.

⁴⁶ See for example Westerleigh's Main WP Response, paragraph 27.

working papers.⁴⁷ Westerleigh has a history of opening new crematoria and competing strongly in markets historically served by incumbent crematoria, providing increased choice for customers and winning business from the incumbent crematoria. The CMA's analysis significantly understates the extent to which new entrants take market share over a prolonged time and shows a misunderstanding of how the market functions.

- (d) Furthermore, while the CMA claims that Westerleigh has "*not provided factual evidence that contradicts the evidence provided by the local authorities*" cited by the CMA in the PDR as part of its qualitative analysis⁴⁸, this is incorrect. Westerleigh provided detailed factual information on the competition between the relevant Westerleigh crematorium and the relevant local authority facility as well as excerpts from Westerleigh's internal documents, used to inform day-to-day decision making, to support its submissions. This evidence is clearly of more value than the vague anecdotal evidence relied upon by the CMA (which provides no "*factual evidence*" whatsoever). The CMA has not approached this evidence in a fair and objective manner.

5.4 Failure to establish link between 'high' concentration and customer outcomes

67. Even on the basis of its flawed assessment of the extent of local competitive constraints, the CMA has failed to establish any clear link between alleged deficiencies in local competition and customer outcomes. The CMA has therefore failed to establish that 'high' levels of local concentration give rise to any adverse effects on competition.
68. Specifically, the CMA acknowledges that the evidence "*does not show significant differences between prices and the number of rivals*" in local areas and that "*crematoria in local areas where concentration is lower...do not offer consistently lower prices (or higher quality)*".⁴⁹ Similarly, the CMA finds that for "*crematoria with at least one rival, fees do not vary significantly with the number of competitors*".⁵⁰
69. While the CMA appears to claim that these results are indicative of an absence of a well-functioning market⁵¹, it fails to recognise that they are in fact corroborative of Westerleigh's submissions that the CMA's threshold of requiring four rivals in a local area to find "effective" competition is inappropriate in the crematoria sector. In fact, the evidence strongly indicates

⁴⁷ See Westerleigh's response to the CMA's entry analysis, dated 10 March 2020.

⁴⁸ PDR, paragraphs 6.158.

⁴⁹ PDR, paragraph 7.286.

⁵⁰ PDR, paragraph 7.238.

⁵¹ PDR, paragraph 7.241: "In a well-functioning market, we would expect crematoria with more rivals to offer lower prices and/or higher quality".

that provided a crematorium has at least one local rival, the competitive outcome will be similar regardless of how many rivals it has.

70. These results also reflect what Westerleigh has been informing the CMA throughout the investigation: the starting point for assessing competition in the provision of crematoria services should be to recognise that it remains a predominantly public sector market. The CMA cannot analyse public sector provision as if it is responsive to commercial objectives. Indeed, the responses received by the CMA from local authorities demonstrate that this is not the case.⁵²
71. This is not to say that competition does not work effectively, but that it must be assessed having regard to the reality of the market, which is that the quality and pricing of local authority facilities have an important impact on quality and pricing in the overall market. Where private sector providers enter, they cannot compete by providing a lower price or lower quality service, but over time their investment improves customer outcomes across the sector by elevating customer expectations and forcing public sector providers to respond. This is precisely what has occurred in the crematoria sector. As set out in the PDR, improved quality offerings from the private sector have led to reciprocal effects in the public sector in many local areas, through (among others) feedback from funeral directors and customers.
72. It is disappointing that the CMA's analysis in the PDR has failed to grasp how competition works in the crematoria sector, instead wrongly applying tools used for assessing competition in private sector retail markets and drawing erroneous conclusions as a result.

5.5 Summary

73. In Westerleigh's view, the basic nature of the CMA's analysis in the PDR is insufficient to sustain the provisional conclusions that the CMA reaches regarding the state of competition between crematoria across the UK: given that it has not properly examined local competitive conditions it has not established an AEC to the requisite standard. Put simply, the CMA cannot jump from an assessment of the number of crematoria in a local area to a finding that there is an AEC.
74. Moreover, the implication of the methodology used by the CMA is that it would not be able to find sufficient competition in the vast majority of the UK unless there were a (wholly unrealistic) massive increase in provision and crematoria located very close together. This is divorced from reality and fails to take account of the specific characteristics of the crematoria sector. Certainly, this could not form the basis for the imposition of highly intrusive remedies of the nature contemplated in the PDR. For this reason, and as set out further in Westerleigh's Remedies Response, if the CMA were to undertake a future SMIR, it would need to fundamentally revise its approach to assessing local competition in the crematoria sector in

⁵² Specifically, the evidence the CMA presents from local authorities shows that the vast majority of local authorities do not set prices taking account of normal competitive considerations (such as a need to maintain market share), but rather have regard to wider considerations. See PDR, paragraphs 6.47 to 6.50.

order to objectively determine any local areas where there is an absence of effective competitive constraints.

6. No AEC arising from barriers to entry

75. The second AEC identified by the CMA in relation to the crematoria sector relates to allegedly 'high' barriers to entry, which the CMA claims arise from a combination of high sunk costs and the planning regime. Westerleigh does not dispute that building new crematoria involves sunk costs, or that the planning regime places some limitations on the locations in which new crematoria can be developed. However, developers in all markets face some challenges in opening new sites, and the CMA has significantly overstated the extent to which these issues have effects on competition in the crematoria sector.
76. In the first instance, the CMA has not explained on what basis the barriers to entry it identifies are assessed as 'high'. The CMA has explained the planning regime and need for a commercial return on investment (although it incorrectly conflates the two distinct issues), but has failed to follow its own guidance which requires that, in order to assess the effects on competition of any barriers to entry, the CMA must "*assess the impact that the entry barriers identified have had, are having or may have in the future*".⁵³
77. In fact, the evidence available to the CMA shows that the barriers to entry which exist are, indisputably, surmountable, as shown by the extent of new entry in local areas in the last twenty years. While, the CMA downplays this as "*some entry*" having occurred, an objective consideration shows that entry has been substantial in the context of a market which had previously seen limited development activity since the 1960s: around 71 crematoria have been opened in the last 20 years, representing an increase of close to one third, and around 60 in the last 10 years alone (an increase of close to a quarter).
78. New entry across the sector as a whole, and thus the threat of entry in any given local area, is higher for crematoria services than many other sectors across the UK economy.⁵⁴ Private sector operators have shown that competition is possible in a space which has previously been seen as a low cost part of public service, where the nature and quality of the experience hadn't significantly changed since the last tranche of crematoria development in the 1960s and 1970s. The private sector has reinvigorated the sector, bringing in new designs and facilities, in stark comparison to the typical local authority provision, delivering significantly improved customer outcomes in the process. Westerleigh alone has opened 17 new sites over the last 10 years and has had (and continues to have) a disruptive impact on the sector and in the areas where it has opened sites

⁵³ CMA3, paragraph 227.

⁵⁴ Net entry rates in the crematoria sector from 2010 to 2019 were 19%, placing the sector in the middle of the second quartile of all UK sectors. For the period 2010 to 2017, in which comparable data for other sectors is available, crematoria net entry was 13% (i.e. entry has been increasing in recent years). In the UK economy, at NACE R2 (4 digit SIC), 60 sectors have a net entry rate lower than crematoria. See Eurostat Business Demography Statistics.

79. In these circumstances, the CMA has no basis to assert that barriers to entry are 'high', or that they amount to an AEC. On the contrary, the evidence shows that the market has developed in accordance with a normal competitive process in the absence of significant barriers to entry: there has been a significant expansion of supply, unrestricted by the barriers to entry identified by the CMA, which has addressed both a gap in quality in the market (given historic underinvestment in the sector) as well as growth in demand for cremation services in recent decades.⁵⁵ This has led to a significant increase in competition between crematoria and customer choice reaching a level never seen before, which has also fuelled the growth in demand.
80. While the CMA seeks to downplay the relevance of the new entry that has occurred on the basis that this has simply met increases in demand, this argument is materially flawed. In the first instance, evidence of supply expanding to meet growing demand is a clear indicator of a well-functioning market. It is unclear on what basis the CMA seeks to argue that this would allow it to find an AEC. Second, as noted in section 4 above, the CMA's position is in any event incorrect: growth in capacity in the sector has actually outstripped the growth in demand by a considerable margin. Indeed, the absence of 'high' barriers to entry (as demonstrated by the scale of recent new entry) means that competition dynamics in local areas can change in the short term, with new entry typically resulting in significantly depleted volumes at existing sites. Westerleigh has experienced this itself at many of its sites and, as a developer, has driven new entry and increased competition in many local areas.
81. The CMA also seeks to downplay the scope for future entry, asserting that the evidence "*points towards a limited number of crematoria potentially entering the crematoria market across the UK in the foreseeable future*".⁵⁶ However, trends in development do not support this assertion and the CMA estimates that there are currently about 30 new crematoria under development: this represents a further 10% increase in supply in the coming years, even without taking account of expansion of capacity at existing sites. This provides further, convincing, evidence that the barriers to entry which do exist are not preventing new competition from emerging. The CMA has also provided no basis to consider that further developments will not be initiated, in addition to those already underway.
82. Westerleigh therefore strongly urges the CMA to reconsider its provisional conclusion that barriers to entry represent an AEC in advance of reaching its final decision.
- 7. No AEC arising from low levels of customer engagement**
83. Westerleigh acknowledges that customers organising a funeral face challenges as a result of the circumstances in which decisions must be made. However, Westerleigh believes that the PDR understates the level of customer engagement and makes a series of flawed conclusions regarding the basis on which customers, in particular Westerleigh's customers, choose a crematorium.

⁵⁵ As acknowledged at PDR, paragraph 2.19.

⁵⁶ PDR, paragraph 4.77.

84. As set out above, the key factor driving competition between crematoria is the behaviour of marginal customers, i.e. those with less entrenched preferences for a particular crematorium and which are willing to switch depending on the price and quality offering of available alternatives. The CMA's analysis in the PDR as regards the extent and decision-making of these customers – which is key to understanding how competition works in the crematoria sector – is notably lacking. As a result, Westerleigh does not consider that the evidence set out in the PDR is sufficient to sustain a finding of an AEC on the basis of low levels of customer engagement.⁵⁷
85. This is largely as a result of the CMA's continued over-reliance on its limited MI Survey, which forms the basis for many of the provisional conclusions drawn in section 3 of the PDR. Westerleigh has raised several concerns with the robustness of the evidence relied upon by the CMA, which are not addressed in the PDR. These points are not repeated in full in this response⁵⁸, but include:
- (a) The limited sample, of only 376 individuals, captured by the MI Survey, which represents the views of just 0.04% of customers/cremations over the two-year period used for its analysis. Such a limited sample cannot provide any meaningful information on customer behaviour.
 - (b) The MI Survey fails to capture the willingness of customers to travel, or to make trade-offs between quality attributes and distance travelled. As a result, it provides limited insights into how customers actually make decisions.
86. The CMA has defended its own survey as representative.⁵⁹ However, the CMA fails to address the fundamental weakness of that survey, being that it does not distinguish the operator of the crematorium that the customer used. This means that the CMA is unable to correlate responses with the type or quality of crematorium used and the CMA is drawing conclusions on customer behaviour driven predominantly from a survey of customers of local authority facilities (which account for approximately 70% of the market). This is unacceptable as a basis on which to draw conclusions regarding Westerleigh and is, again, predicated on the CMA's false assumption that all providers are homogenous.
87. In response to the working papers, Westerleigh submitted the results of a survey of its own customers, designed to address some of the key shortcomings in the CMA's own survey. The CMA has sought, incorrectly, to argue in the PDR that the results of Westerleigh's Survey

⁵⁷ In any event, as set out in the Remedies Response, this AEC would not warrant the imposition of price regulation and can be effectively addressed through information remedies of the nature proposed in the PDR.

⁵⁸ See further Westerleigh's Main WP Response, section 3.4, and Westerleigh's submission on its own customer survey, dated 19 June 2020.

⁵⁹ Westerleigh urges the CMA to take a step back and objectively assess the evidence in front of it. Even to the extent it might appear representative on any number of fields that the CMA compares to the wider population, such a small sample will never provide an accurate indication of the responses of the true population. The CMA's minimum threshold of 100 individuals cannot be independent of the population size from which that sample is drawn.

corroborate the CMA's findings. However, the CMA has been highly selective in its use of Westerleigh's Survey, ignoring altogether any results which contradict its provisional findings. It has also misrepresented the results in several important respects. In particular:

- (a) The CMA's survey does not capture whether drive-times reported by respondents are at normal or cortege speeds. As noted in section 5 above, the CMA ignores the more likely assumption that members of the public will consider distance and journey times in relation to normal driving speeds. Westerleigh's Survey clarifies this point, specifically asking respondents to report drive-times in normal driving speeds. Westerleigh's Survey found significantly greater distances travelled.
- (b) Westerleigh's Survey provides additional information on the trade-offs inherent in customers' decision making. When considering these trade-offs, the results show a willingness to travel significantly further.
- (c) The CMA reports that Westerleigh's Survey results show that the main factors driving consumers to travel further to use an alternative crematorium are related to quality. Yet these results do not feed into the CMA's assessment in any way. The CMA continues to present Westerleigh's results (of 311 respondents) alongside the results from its own survey with only 53 respondents (and more generally presents its own unrepresentative survey, from which no valid conclusions can be drawn regarding Westerleigh, alongside Westerleigh's Survey).
- (d) The CMA concludes based on its survey that "*customers tend to choose a crematorium on the basis of location... and the crematorium that they think is the closest*".⁶⁰ This is directly contradicted by results from Westerleigh's Survey which shows that location is less important in choosing a crematorium than a wide range of other quality attributes. This highlights acutely the risk of applying results from a sample of primarily local authority customers to Westerleigh.
- (e) The CMA uses its survey results to argue that customers perceive they have limited choice.⁶¹ Westerleigh's Survey directly contradicts this, showing that between two-thirds and [80-90%] of customers perceive they have a choice of two or more crematoria.
- (f) The CMA incorrectly states that Westerleigh's Survey shows that only [0-5]% of all customers actively compared between two or more crematoria and only [0-5]% considered using an alternative. This is incorrect and these results have been used in a misleading manner.⁶²

⁶⁰ PDR, paragraph 6.77.

⁶¹ PDR, paragraph 6.10-6.12.

⁶² These were corrected by Westerleigh as part of the put-back process and continue to be mis-used and misrepresented by the CMA in a way that is inaccurate. The CMA cannot doctor or misrepresent survey

88. Westerleigh's Survey received significantly more responses than the MI Survey. While the CMA accepts the limited base of respondents to the MI Survey, and states that "*to be given full evidential weight...estimates should have a base size of at least 100 respondents*"⁶³, it nevertheless presents results from the MI Survey where the base was significantly below 100, while ignoring results from equivalent questions asked in the Westerleigh Survey where the base was significantly above 100.⁶⁴ This shows a high degree of selectivity and subjectivity in the CMA's approach to the evidence, which cannot be maintained in the CMA's final decision.
89. The CMA has provided no good reason for preferring its own survey results over those submitted by Westerleigh. Specifically, the CMA states that in its view the MI Survey "*adopts the more robust survey methodology compared with the consumer research evidence submitted by parties to the case and, in turn, provides the more reliable results*". The reasons provided for this finding do not, however, apply to Westerleigh's Survey:
- (a) First, the CMA relies on the fact that the research submitted in evidence by parties to the case was conducted with samples drawn from pre-recruited respondent online panels, which the CMA considers raises a risk of "sample bias".⁶⁵ This is not the case with Westerleigh's Survey, which involved contacting customers who held a cremation at a Westerleigh site in 2018 or 2019 and for whom Westerleigh held an email address.
 - (b) Second, the CMA notes that eligibility for taking part in the surveys submitted by the parties was usually based on a looser definition of 'funeral arranger' than that adopted by the CMA, which may mean that respondents were less close to, or not involved at all in, key decisions about the arrangements. This is indisputably not the case in relation to Westerleigh's Survey, where: (i) the customers contacted were the legal applicant for the cremation on the statutory cremation form, and (ii) the survey questionnaire specifically sought confirmation that the respondent had "*sole or shared responsibility for making important decisions about the funeral and cremation*".
 - (c) The CMA notes that response rates to online surveys are often low. This is true but it does not apply to Westerleigh's Survey, which had a response rate close to 17%, well above the minimum threshold used by the CMA, and well above the response rate of previous CMA surveys that have been given significant evidential weight.

results to suit its own purposes. The CMA has also changed the quoted results from the put-back to present the results as relating to all customers rather than all respondents. Again, this is inaccurate.

⁶³ PDR, Appendix C, paragraph 27(c).

⁶⁴ For example, PDR Table 11 reports results from the MI Survey where the base of respondents was only 26. There is no suggestion in the surrounding text that the results have been treated with caution due to the limited sample size. The equivalent question asked in the Westerleigh Survey had a base of over 300, clearly providing a more robust estimate.

⁶⁵ PDR, Appendix C, paragraphs 32 to 34.

90. Westerleigh recognises that the results of its survey cannot be applied to draw conclusions across the whole sector, just as the CMA's cannot. The survey is of Westerleigh customers only, and Westerleigh has a very different business model and competitive proposition to the majority of the sector. What Westerleigh's Survey shows is that the CMA's survey, however representative the CMA may argue it is, is simply not relevant for Westerleigh and cannot be used to draw conclusions for Westerleigh. Westerleigh urges the CMA to recognise Westerleigh's Survey as compelling evidence of differentiation between providers in the sector, and that the results of its own survey must be treated with significant caution when applied to private sector operators and in particular to Westerleigh.

8. Failure to understand extent of competition on quality of crematoria services

91. Westerleigh has emphasised throughout the market investigation the importance of quality to both customers and competition between crematoria.⁶⁶ Westerleigh agrees with a number of the CMA's findings in the PDR in this respect, which have important consequences for the CMA's consideration of potential remedies (see further Westerleigh's Remedies Response). In particular:

- (a) **Quality is important to customers:** Consistent with Westerleigh's submissions throughout the investigation, the CMA acknowledges that "*it is important to customers that they receive a high-quality cremation service when saying goodbye to a loved one*".⁶⁷ This contrasts the CMA's more equivocal statements in this regard in the working papers. This means that it is particularly important that the CMA ensures that any remedies it proposes (whether in this or any future investigation) do not have a detrimental impact on quality outcomes, including by reducing operators' incentives to offer high quality services.
- (b) **An assessment of quality requires consideration of multiple aspects:** Westerleigh agrees with the CMA's findings that there are many, multi-dimensional, aspects of quality in the provision of crematoria services. Not all of these aspects are currently readily measurable or quantifiable across crematoria but, as the CMA accepts, this does not mean that they cannot be assessed.⁶⁸
- (c) **Crematoria providers offer differentiated services:** The CMA correctly acknowledges that there is differentiation across crematoria service providers in terms of the products and services offered and service quality, as well as the geographic areas

⁶⁶ See Westerleigh's Main WP Response, section 5.

⁶⁷ PDR, paragraph 6.58.

⁶⁸ PDR, paragraphs 7.8 and 7.210.

where they operate⁶⁹, changing its previously held view in the working papers that crematoria services are "*relatively homogenous*".⁷⁰

- (d) **Quality outcomes are high in the crematoria sector:** Importantly, the CMA has found that overall, crematoria are offering acceptable levels of service quality and that customers report high levels of satisfaction.⁷¹ This is a clear sign that competition is working in customers' interests: absent effective competition crematoria providers would not need to offer, or be incentivised to invest in, high quality services which meet the needs of the bereaved.
- (e) **Private sector operators offer higher quality:** Westerleigh also welcomes the CMA's finding that on some measurable aspects of quality (for example, slot lengths and availability of certain facilities such as visual tributes), private crematoria, are, on average, higher quality compared with local authority crematoria. The CMA also accepts that private crematoria "*which are typically newer than their local authority rivals, are able to differentiate themselves through their newer buildings, facilities and grounds*".⁷²

92. Despite these points of agreement, Westerleigh remains frustrated at the CMA's continued failure to undertake a meaningful assessment of several aspects of the overall quality of crematoria facilities and customer experience across the UK prior to releasing its provisional findings. It is difficult to comprehend why, over the course of a two year review of the sector, the CMA has not commissioned an independent evaluation of the quality of crematoria across the UK and has itself only visited a small handful of crematoria (a very small number (4) of which were the sites which make up the majority of the market – older local authority sites serving busy towns and cities).

93. While a comprehensive assessment of quality outcomes that includes all aspects of quality may be "difficult"⁷³, this does not excuse the CMA from conducting that assessment. Westerleigh is, in particular, extremely disappointed that the CMA still fails to recognise the huge gulf in the quality of facilities and customer experience across crematoria in the UK. This is important for several reasons:

- (a) First, it means that the CMA has failed to appreciate the importance of private sector investment in improving customer outcomes across the UK in recent decades. Specifically, the CMA's analysis suggests that customers holding a funeral at a busy local authority facility built in the 1950s or before (or even in a Victorian chapel) in a densely populated urban area receive the same experience and quality of service as those that using a modern, purpose-built, crematorium in large, peaceful, grounds

⁶⁹ PDR, paragraphs 7.3 and 7.177.

⁷⁰ Price Regulation WP, paragraphs 3 and 49; Outcomes WP, paragraph 7.

⁷¹ PDR, paragraph 7.227.

⁷² PDR, paragraph 6.192.

⁷³ PDR, paragraph 7.210.

purposefully situated in order to offer the bereaved a tranquil environment in which to say goodbye to their loved ones, and that new crematoria built by Westerleigh and others have simply served the role of providing additional capacity. As explained above, this is plainly incorrect.

- (b) Second, it provides important context for the CMA's consideration of the evidence on pricing and profitability outcomes. As Westerleigh has previously explained, properly examined and taking account of quality differentials, Westerleigh's prices are consistent with the quality of its crematoria services and offer good value to customers.⁷⁴ Even adjusting for just a single measurable element of quality (namely, chapel time) shows that Westerleigh's prices are similar to average local authority crematoria prices, before taking into account other quality differentials.
- (c) Third, a proper understanding of the importance of quality to customers and variations in quality across the UK is fundamental to any consideration of pricing regulation in the crematoria sector. As the CMA has acknowledged, in considering the practicality of imposing price control, it is necessary to both (i) "*capture adequately the diversity of products [on] offer*"⁷⁵; and (ii) take account of the risk that price regulation would distort incentives to invest in higher quality services.⁷⁶ The evidence base on which the CMA has based its provisional findings on qualitative factors would be wholly inadequate to form the basis for the implementation of highly intrusive pricing remedies. For this reason, and as set out further in Westerleigh's Remedies Response, if the CMA were to undertake a future SMIR, it would need to fundamentally revise the manner in which quality outcomes in the crematoria sector have been assessed including, specifically, the variation in quality which is evident across different providers.

94. Westerleigh's main concerns with the CMA's quality assessment (which have been set out in greater detail in previous submissions) are set out below.

8.1 Failure to understand the importance of quality to customers when choosing a crematorium and for competition between crematoria

95. While the CMA has accepted that quality is important to customers, it nevertheless argues that limited numbers of customers actually make a choice of crematorium on this basis and, therefore, that the "*scope for competition on the basis of quality is limited*" and crematoria "*generally appear to face limited competitive constraints when setting quality*".⁷⁷

⁷⁴ See Westerleigh's Main WP Response, section 6.3.

⁷⁵ CC3, paragraph 88.

⁷⁶ Price Regulation WP, paragraph 83(a).

⁷⁷ PDR, paragraph 6.79.

96. Westerleigh strongly disagrees with these findings, which are almost exclusively based on the CMA's flawed consumer survey, which is far from sufficient to form the basis for any conclusions (see section 7 above). Indeed, given that the CMA states that "*the extent to which customers shop around, the extent to which customers compare crematoria on the basis of quality, and ultimately, the extent to which customers will switch between crematoria in responses to differences in their relative quality are the key considerations to assess the extent to which quality is an important driver of competition*"⁷⁸ (emphasis added), one would have expected the CMA to have undertaken a significant amount of work to assess precisely these factors.
97. However, it has based its assessment of each three of these "key" factors solely on a single customer survey, which had a very limited number of respondents. Moreover, the CMA has largely ignored the evidence put forward by Westerleigh in this respect which shows, among others, that:
- (a) ***The extent to which customers shop around and compare crematoria on the basis of quality:*** Westerleigh's Survey showed that [70-80%] of Westerleigh's customers that chose to travel further than necessary to attend a Westerleigh crematorium did so on account of reasons related to quality.
 - (b) ***The extent to which customers will switch between crematoria in responses to differences in their relative quality:*** Westerleigh's Survey was (unlike the CMA's own survey) designed to assess the extent to which customers would be willing to switch crematoria "*in responses to differences in their relative quality*". Specifically, the survey asked questions to understand what customers would do in the event of a 'deterioration' in quality. The results showed that Westerleigh's customers are prepared to travel significantly further in response to changes in the quality available at their preferred crematorium, supporting Westerleigh's submissions both on competition over quality and customers' willingness to travel.⁷⁹ These results have been ignored in the PDR, without explanation.
 - (c) ***Customers do have a choice and when they do not actively compare or consider alternatives, it is because they are happy with the initial selection:*** to the extent there may be some inframarginal customers not actively considering alternatives or comparing, the CMA has not sought to understand why this is the case. Westerleigh's Survey shows that the majority of respondents considered an alternative or had a choice. Less than a fifth indicated a lack of choice. Importantly, for those that had a choice but did not consider alternatives, the majority did not do so because they were happy with the first crematorium chosen. This must be considered alongside results showing the proportion that would 'switch' if dissatisfied (as above).
98. These results emphasise the importance of ensuring that customers are well informed about the range of crematoria available in their local area, so that they can take properly informed

⁷⁸ PDR, paragraph 6.65.

⁷⁹ See further Westerleigh's submission on its customer survey dated 19 June 2020.

choices taking into account qualitative factors as well as proximity and price (see further Westerleigh's Remedies Response).

8.2 Failure to take account of evidence demonstrating competition on quality

99. The CMA has also failed to take sufficient account of a range of other evidence that demonstrates competition between crematoria taking place on the basis of quality.
100. In the first instance, the CMA has continued to fail to address a central tension in its reasoning.⁸⁰ Specifically, the CMA cannot square its finding that crematoria do not compete on the basis of quality with its acceptance that private crematoria seek to "*differentiate themselves through their newer buildings, facilities and grounds*".⁸¹ If customers do not decide on the basis of quality, then why would Westerleigh and other private operators invest significant amounts in order to develop and maintain high quality facilities, rather than developing low cost, low quality, crematoria?
101. Second, the CMA has failed to take account of internal documents that inform Westerleigh's day-to-day commercial decisions that show that it competes with local rivals on the basis of quality. This includes evidence showing Westerleigh benchmarking against competing sites on relative quality, responding to the needs of the local community and funeral directors by investing in improving the quality of its facilities, and its continued investment in developing high quality facilities at higher cost (including investment appraisals and capex that support this).⁸² The CMA has had no regard to this evidence in the PDR.
102. This is corroborated by Westerleigh's qualitative gain analysis of the location of customers – which feeds into Westerleigh's commercial decision making – showing significant numbers of customers choosing to travel further to access Westerleigh's better quality facilities (around a third of all its customers). Westerleigh's qualitative gain shows that there is healthy competition for customers on the basis of quality, and that customers do appreciate and value qualitative factors and actively make trade-offs between factors including price, quality and distance. Westerleigh has provided several examples of its opening of new crematoria near to existing local authority crematoria and competing successfully to grow market share on account of its superior quality.⁸³
103. The PDR also sets out, but fails to acknowledge, evidence of local authorities responding to competition by improving the quality of their offering. Specifically, the PDR explains that 120 local authority crematoria (i.e. nearly two thirds of local authority crematoria) had increased their slot length, either directly "*in order to match local rival crematoria*", or otherwise

⁸⁰ Westerleigh's Main WP Response, paragraphs 99 to 100.

⁸¹ PDR, paragraph 6.192.

⁸² See, for example, Westerleigh's Main WP Response, section 5.2.2; [X].

⁸³ As set out in section 5 above, the CMA's highly selective consideration of the evidence on qualitative gain in the PDR is materially flawed.

"following feedback from families and funeral directors".⁸⁴ In Westerleigh's experience it has been the improved quality offering (including longer slot lengths) available from private crematoria which has driven an increase in funeral directors and families' expectations. As such, in both cases this evidence shows the process of competition has driven overall improvement in customer outcomes.

104. The CMA has therefore fallen far short of the standard required to evidence its provisional conclusion that quality-based competition between crematoria is limited. On the contrary, this is the primary basis on which Westerleigh competes for customers. As Westerleigh has repeatedly emphasised, its business strategy as a new entrant in many local areas is to provide a higher quality offering in order to differentiate itself and gain volumes from incumbent facilities. The CMA's analysis misses this market reality.

8.3 Failure to capture extent of quality differential between private sector and local authority crematoria

105. Westerleigh has provided a significant volume of evidence to demonstrate the quality differential between private sector and local authority crematoria, beyond its arguments regarding the "qualitative pull" of its crematoria, and evidence from its Site Manager Reviews that corroborate and further support competition on quality.⁸⁵

106. While the CMA accepts that private crematoria offer higher quality on certain parameters, it continues to maintain there is no "*clear-cut evidence of systemic quality differentials*".⁸⁶ In Westerleigh's view this is a reflection of the quality of evidence gathering undertaken by the CMA rather than an accurate reflection of the state of provision of crematoria across the UK. The limited analysis presented in the PDR is inadequate to properly evaluate the quality differential which exists between Westerleigh's facilities and those operated by the vast majority of local authorities.

107. The CMA relies on the following unrepresentative evidence in this regard:
- (a) The Scottish Inspectorate regime ("**SIR**"), which Westerleigh has explained is focused on inspection of back of house quality and is not designed to assess quality from a customer perspective.
 - (b) Scores achieved on the ICCM Charter for Bereaved, which Westerleigh has repeatedly explained are concerned with changes in quality levels (primarily at local authority crematoria) and are not meant to serve as measures of absolute or comparative quality or customer experience.

⁸⁴ PDR, paragraph 6.70.

⁸⁵ PDR, paragraph 6.67(c).

⁸⁶ PDR, paragraphs 6.79(c).

- (c) Customer satisfaction surveys, which the CMA itself states have limitations.⁸⁷
 - (d) A very limited selection of anecdotal evidence which is far from sufficient to draw broad conclusions about conditions across the UK.
 - (e) A very small number (8) of site visits conducted by the CMA during the course of the market investigation, of which only 4 were local authority sites (just 2% of the total), in relation to which the CMA has continued to refuse to be transparent about which sites it visited (thereby preventing operators in the market from commenting on their representativeness).
108. Westerleigh has previously responded at length on the deficiencies of the CMA's evidence base in this respect. These representations do not appear to have been considered given that the CMA's analysis has not changed materially between the working papers and the PDR.⁸⁸
109. Perhaps of greatest note (and concern) is the fact that, despite finding: (a) that the "*attractiveness/maintenance of the crematorium and gardens*" is the most important quality-related factor for customers⁸⁹; and (b) that private crematoria differentiate themselves through their newer buildings, facilities and grounds, the CMA's assessment of quality differentials has barely any regard to these key qualitative factors.⁹⁰ This is a significant omission which undermines the provisional conclusions drawn in the PDR. In fact, the only evidence the CMA appears to have gathered which objectively evaluates all crematoria in the UK on this basis is Westerleigh's 2016 survey of crematoria, which the CMA relies upon where it suits its analysis⁹¹ but inexplicably disregards entirely when assessing quality differentials.
110. Moreover, the CMA fails to take account of the very clear implication from its consideration of qualitative gain: private crematoria win a significantly higher proportion of out-of-area customers than local authority crematoria (c. 33% vs 20% on average).⁹² Regardless of the CMA's other conclusions from its analysis of qualitative gain (which Westerleigh disagrees with, for the reasons outlined above), the CMA must accept that this is convincing evidence of a clear quality differential: why else would so many more customers travel further and (sometimes) pay more to attend private crematoria than they do to attend local authority facilities? It is not acceptable for the CMA to simply ignore this evidence when assessing quality differentials, as it does in the PDR.

⁸⁷ PDR, paragraphs 7.67, 7.221 and 7.222.

⁸⁸ See further paragraphs 144 – 151 of Westerleigh's Main WP Response, which appear to have been largely ignored in preparing the PDR.

⁸⁹ PDR, paragraph 6.59.

⁹⁰ Beyond the CMA's limited site visits, which are inadequate to form a view of quality across all 304 crematoria in the UK and in particular of public sector provision

⁹¹ For example, PDR, paragraphs 6.129(b) and 7.219(a).

⁹² PDR, paragraph 6.111.

111. Westerleigh reiterates that anecdotal and superficial evidence collected by the CMA, whether during site visits or otherwise, on a remarkably limited number of crematoria, cannot credibly be used by the CMA to draw any conclusions, or infer the absence of a quality differential.

8.4 Relationship between higher cremation fees and higher quality cremation services

112. A range of different pricing points are consistent with a well-functioning, competitive market, in particular where operators offer differentiated products and services. Westerleigh maintains that given the superior quality of its crematoria offerings and its significant recent investment in developing new and improved facilities, its prices are consistent with the quality of its services.⁹³
113. Westerleigh disagrees with the CMA that, during the course of an investigation that has been ongoing for more than two years, a comprehensive analysis of the relationship between price and quality is not possible.⁹⁴ The CMA's limited analysis of this relationship in the PDR is inadequate, as it focuses only on very specific qualitative aspects limited to those which the CMA was able to easily obtain data for (e.g. slot length, availability of web streaming), but does not reflect the overall quality of different crematoria which is most important to customers. It is not surprising that on the very specific measures considered by the CMA there is no clear and consistent correlation higher cremation fees and higher quality. However, this basic analysis does not allow any meaningful conclusions to be drawn.
114. As noted above, given that the CMA has accepted that private sector operators differentiate themselves on the basis of "*newer buildings, facilities and grounds*", any objective consideration of the relationship between fees and quality must take this key factor (among others) into account. This underlines the central deficiency in the CMA's consideration of quality in the PDR, outlined above: its continued failure to undertake or commission an objective and comprehensive assessment of the quality of crematoria across the UK.

8.5 Summary

115. In summary, the CMA's overall provisional conclusions on quality outcomes, and general reluctance to accept the quality differential between local authority and private sector crematoria, are based on an extremely limited evidence base and are insufficiently robust to form the basis for conclusions on the range of quality across the sector. It remains unclear to Westerleigh why, despite the absence of sufficient evidence, the CMA has continued to significantly understate the extent and importance of the quality differential, at least as regards Westerleigh's crematoria. Even to the limited extent that the CMA has recognised the quality differential, it has remained unable to draw the correct conclusions from that evidence.
116. Westerleigh hopes that the CMA will address this deficiency in advance of reaching its final decision. In any event, it is an area which would require a fresh approach coupled with

⁹³ See Westerleigh's Main WP Response, section 6.3.

⁹⁴ PDR, paragraph 7.224.

(significant) further work if the CMA were to undertake a SMIR, to ensure that any conclusions reached were based on a proper understanding of the nature and extent of competition between crematoria.

9. Misguided application and interpretation of profitability analysis

117. Given the weakness of its analysis of local concentration and barriers to entry, the CMA's AEC findings for the crematoria sector, as well as its assessment of customer detriment, are predominantly based on its determination that "*a substantial portion of the sector have earned returns that are persistently and substantially above the level that one would expect to see in a well-functioning market*".⁹⁵ However, the evidence presented in the PDR does not support this provisional conclusion.
118. In particular, the CMA's interpretation of Westerleigh's profitability is conceptually flawed and applies a threshold for "excess profits" that is erroneously predicated on an assumption that a "well-functioning market" would provide operators with no incentive to invest in that market. Rather than addressing legitimate concerns in the sector, this approach has the potential to be incredibly harmful to customers.
119. [REDACTED]⁹⁶, [REDACTED].
120. [REDACTED].⁹⁷ [REDACTED].⁹⁸ [REDACTED].

Figure 3 – Westerleigh's ROCE: 2014-2018

[REDACTED]

121. As outlined below, Westerleigh does not consider any scenario with a smaller site size cap than 20 acres or including burial revenue and costs to be credible or appropriate. [REDACTED]. In assessing profitability, the CMA cannot continue to predicate its analysis on the false assumption that all providers are homogenous. Westerleigh is differentiated and has a business model that means it spends considerable time and investment identifying very specific sites that meet its criteria for quality. These investments must be recognised in any profitability assessment, since they are critical to generating revenue and Westerleigh being able to differentiate itself and compete with incumbents with existing historical and family ties with customers. [REDACTED]:
- (a) [REDACTED].
 - (b) [REDACTED].
 - (c) [REDACTED].

⁹⁵ PDR, paragraph 7.282.

⁹⁶ PDR, Appendix U, paragraph 212.

⁹⁷ The CMA only presents results which either include burials revenues and costs, which is misleading.

⁹⁸ [REDACTED].

- (d) [REDACTED].
- (e) [REDACTED].
122. The CMA must acknowledge that by excluding these assets entirely – and not even including them in a sensitivity – the margin of error is likely to inflate Westerleigh's returns.
123. [REDACTED].
124. [REDACTED].⁹⁹ [REDACTED].
125. [REDACTED].
126. More generally, the CMA's profitability analysis provides no evidence to support a finding of AEC(s) in the crematoria sector. In particular:
- (a) Only one of the four largest private sector providers, Dignity, exhibits significant excess profits.
 - (b) The CMA continues to apply profitability analysis to local authority providers whose objective function is not to make a profit shows limited understanding of the sector. The CMA has not addressed this fundamental weakness in its analysis.¹⁰⁰
127. As a result, the CMA fails to properly interpret the profitability assessment to consider what it actually shows about how competition operates in the sector. For example, are excess profits greatest at those sites charging the highest prices? While this may, perhaps, be the case for Dignity, this is not the case for Westerleigh at all or local authority sites. This has important implications for any future consideration of price regulation, which would, as a result, be very ineffective at reducing so-called excess returns. It would instead distort parts of the market in ways that would be extremely harmful to customers (see further Westerleigh's Remedies Response). Similarly, to the extent excess surplus generated by local authorities reflects marked down asset values or funding of other discretionary services, any price regulation merely risks harming customers of those facilities.
128. In short, profitability analysis requires careful interpretation, verification and stress-testing to avoid it leading to poorly informed conclusions and remedies that do more harm than good. The CMA cannot target concerns about the pricing conduct of a single operator within a market investigation without causing damage and customer harm to other parts of the sector.

⁹⁹ PDR, Appendix U, paragraph 149.

¹⁰⁰ Nor has it sought to provide supporting material to indicate whether the limited sample of local authority sites were generating a surplus in order to, for example, fund bereavement services, public health funerals or maintain closed cemeteries, or simply as a result of being aged facilities with significant asset value write-downs.

129. Westerleigh outlines below specific areas of concern with the CMA's profitability analysis as it applies to Westerleigh.

9.1 The CMA's analysis significantly overestimates Westerleigh's return on capital employed

130. The CMA continues to significantly overestimate Westerleigh's ROCE by applying assumptions that do not reflect Westerleigh's business model or its experience of the sector. Westerleigh has previously submitted detailed representations in this regard which are not addressed in the PDR or repeated in full in this response.¹⁰¹ However, the following points bear emphasis.

131. The site size cap applied by the CMA:

- (a) Westerleigh welcomes the CMA extending the site size cap from 10 to 20 acres. [REDACTED].
- (b) [REDACTED].
- (c) The CMA argues that 20 acres allows significant space for burials so when increasing the site size cap to 20 acres, the CMA includes burials.¹⁰² However, this is not supported by the evidence. [REDACTED].

132. The CMA's approach to land valuation:

- (a) Westerleigh welcomes the CMA's updates to the per acre land value but continues to have very significant concerns with the CMA's overall approach, which remains flawed. The CMA continues to outline the method of valuing a MEA¹⁰³ yet ignores this entirely in its own valuation method. The CMA's failure to appoint a land value expert reflects the fact it inexplicably took eight months following the start of the Phase 2 investigation and 18 months after beginning its review of the sector for the CMA to decide to tender for the expert.¹⁰⁴ Having failed to appoint an expert, the CMA chose instead to undertake the land valuation itself via a rudimentary desktop exercise that does not meet basic standards of valuation, is again predicated on a false assumption that all providers are homogenous and has significant margin for error. As Westerleigh has explained, in almost all cases this leads to Westerleigh's returns being artificially inflated, often far more so than other operators.

¹⁰¹ See Westerleigh's response to the CMA's profitability working papers, dated 17 June 2020.

¹⁰² PDR, Appendix U, paragraph 74.

¹⁰³ PDR, Appendix U, paragraph 30.

¹⁰⁴ The 'tender' process therefore allowed very little time for experts to respond, and as a result, the CMA's tender failed on two occasions. At this stage, Westerleigh would have expected the CMA to be transparent and approach the sector to obtain views on how best to obtain an objective valuation of the land. Given its recent investment in the sector, having developed close to 20 sites over the last 10 [REDACTED] carrying out extensive land acquisition work, Westerleigh has more expertise on crematoria land values than anyone else in the UK. Westerleigh could have assisted the CMA to find an appropriate means to value the land.

- (b) **Homogeneous land value across operators:** The CMA has used the same average acquisition cost per acre across all operators, again falsely assuming that all operators are homogeneous. Westerleigh has consistently noted to the CMA that it acquires sites consistent with its differentiated business model. The CMA appears to recognise this in valuing land: "*These transactions reflect the actual sites that firms have chosen in terms of size, location and layout, and the actual costs they have incurred to secure those in the open market*". Yet by applying an average to Westerleigh determined by the acquisition costs of operators across the sector it ignores "*the actual sites that [Westerleigh has] chosen in terms of size, location and layout*" [REDACTED]. The CMA assumes a land value of £103K/acre. However, the average cost per acre of Westerleigh's freehold land purchases over the last five years is [REDACTED].¹⁰⁵ [REDACTED].
- (c) **Uniform land value across the country:** the CMA has continued to apply a uniform land value across the UK and has now extended this to London on the assumption that operators would not seek a MEA in London but instead acquire either a smaller site in London or a site outside London. However, the CMA's approach of applying the same per acre land cost in London as elsewhere based on this reasoning will always systematically undervalue the London sites.¹⁰⁶
- (d) **Residential values:** The CMA notes that the C&W values, taking account of residential alternative use, are significantly above those of recent transactions. As outlined above, this is incorrect for Westerleigh and the CMA again applies the false assumption that all operators are homogenous. The C&W values are entirely consistent with the evidence provided by Westerleigh to the CMA on its recent acquisition costs. [REDACTED]. The CMA implicitly dismisses this evidence by relying solely on the views of Memoria.¹⁰⁷ Westerleigh cannot comment on Memoria's experience but is disappointed the CMA has ignored Westerleigh's evidence without justification. This suggests the CMA has adopted a selective approach to the evidence, preferring evidence which is more likely to produce a finding of 'excess' returns.
- (e) [REDACTED].
- (f) [REDACTED].¹⁰⁸

¹⁰⁵ [REDACTED].

¹⁰⁶ Suppose the acquired site in London was significantly smaller, for example, at only three acres. Applying the CMA's estimated per acre cost for London of £1.9 million gives an adjusted MEA land value for New Southgate of £5.7 million compared to the CMA's current artificially low valuation of only £2.1 million. This shows that using a per acre cost of £103K for London will always lead to a significant undervaluation [REDACTED]. Further, to assume that all operators acquire MEAs simultaneously is not conceptually correct. If Westerleigh was to replace its London site with a site outside London, holding other sites constant, it would lose much of its London business to other London sites.

¹⁰⁷ PDR, Appendix U, paragraph 36.

¹⁰⁸ [REDACTED].

(g) [REDACTED].

133. **The exclusion of leasehold land:**

- (a) The CMA continues to incorrectly exclude from the asset base land held under very long leasehold arrangements, despite the specific characteristics of Westerleigh's leasehold land that mean it, in effect, largely equivalent to freehold land (in terms of risk and return transfer, and significant investment made by Westerleigh in the land, and, in some cases, the fact it reverts to freehold land within the useful economic life period for the asset).
- (b) The CMA notes that capitalising leasehold assets would be offset by the removal of lease payments from the P&L. This is incorrect as Westerleigh pointed out in its response to the working papers. The CMA notes that replacing lease payments with land values introduces a further judgement without a compelling reason to do so. However, by doing so the CMA artificially inflates Westerleigh's profitability.¹⁰⁹ Westerleigh provides lease rental payments in Annex 1 to this submission. Factoring these into the ROCE calculation as a further sensitivity to demonstrate the effect of excluding leasehold sites reduces the ROCE by between [REDACTED] and [REDACTED] and is shown below.¹¹⁰ [REDACTED] using acquisition costs similar to those of Westerleigh and the professional valuers, Westerleigh's ROCE is below the cost of capital throughout the period [REDACTED]. As can be seen, the CMA's results are highly sensitive to the exclusion of leasehold land. To not even include this as a sensitivity appears unobjective.

Figure 4 – Westerleigh's ROCE 2014-2018 – Leasehold land sensitivity

Scenario: Excluding burials, land value capped at 20 acres,
leasehold land included, rental payments removed

[REDACTED]

134. **The inclusion of burial revenue and costs:**

- (a) The market investigation relates to cremation services, not burials. The CMA's rationale for including burial revenue initially was an initial response from Westerleigh that it was not possible to split overhead expenses between cremation and burial revenue streams. This initial response reflects the fact that the separate services operates at a site are not treated as separate profit centres and so costs are not monitored separately for these activities. It is both possible and straightforward to

¹⁰⁹ Should the CMA be concerned by the additional judgement, then it would be relatively straightforward to instead value leases at the NPV of future rental payments. As outlined in its response to the working papers, Westerleigh has looked at both approaches and both lead to similar valuations.

¹¹⁰ [REDACTED].

separate costs for the different activities. Westerleigh has provided this split to the CMA. There is no justification for burial revenues and costs to be included.

- (b) Westerleigh also notes that CMA has set up its scenarios to default to including burials where possible. When moving from its Base case to Scenario 1, the CMA increases the site size cap but simultaneously adds burials back in. Similarly, in Scenario 2, it increases the cost of land but adds burials back in. This is completely inappropriate. Burials should be excluded in all scenarios.

9.2 The CMA underestimates Westerleigh's WACC

135. The CMA continues to underestimate Westerleigh's WACC by deriving it from a set of comparator companies that bear no resemblance to Westerleigh's business. Westerleigh faces significant additional systemic risks to each of the comparator companies. The CMA appears to have acknowledged these additional risks but dismissed them as diversifiable without providing any reasoning to support such a conclusion. The CMA notes only that: "*while these risks may require significant management focus from Westerleigh... we do not agree that they represent systematic risks*". This lack of reasoning makes it very difficult for Westerleigh to engage meaningfully with the CMA's assessment, but the following points are emphasised:

- (a) It is inexplicable for Westerleigh's access to finance to be compared to publicly traded companies, which have access to a larger pool of investors (equity and corporate bond markets), increased liquidity, visibility and reduced uncertainty in determining value. Westerleigh's investments and assets are relatively illiquid and more difficult for an outsider to value, for which investors require greater returns. The CMA's crude assumption that Westerleigh has the same WACC as a listed company should be removed.
- (b) The CMA assumes that the greater planning risk, unpredictable volumes and growth in direct cremation could be diversified by investors in the market. Westerleigh does not see how this would be the case. For example, planning risks have a significant negative impact on the business thus investors are concerned by such risks and charge a premium to bear them. While these risks could be diluted by holding Westerleigh as a small part of a much larger portfolio, it is difficult to see how they could be diversified. Investors are not able to diversify the risk associated with discretionary local authority planning consent (and subsequent appeals process) or referral by a local authority to the Secretary of State (and the subsequent political decision taken).¹¹¹
- (c) The CMA's assessment of systematic risk seems backwards for Westerleigh relative to the comparator companies. The comparator companies are mainly active in both

¹¹¹ Westerleigh is unable to respond meaningfully to the CMA's dismissal of this point as no reasoning has been provided for why the CMA believes the planning risk inherent in Westerleigh business is not a systematic risk that generates a non-diversifiable risk premium.

funerals and cremation, i.e. are more diversified than Westerleigh. The CMA is imposing an expectation that Westerleigh's investors could diversify with other investments in the market. This is true but relative to the comparator group of companies that diversification has already occurred: it is an unfair comparison.

- (d) In its response to the working papers, Westerleigh provided an illustration of how its WACC is sensitive to various inputs used by the CMA, in particular the comparator group of companies, none of which reflect Westerleigh's business model, the risks it faces, or the sources of funding. Westerleigh believes it is highly likely to be subject to a higher cost of capital than these other firms (and likely any firm that is publicly listed and has the scale of these other companies), which the CMA has not taken into account. [REDACTED].

9.3 Errors and omissions in input data or CMA calculations that need to be corrected

136. Westerleigh has noted a number of errors in the input data or CMA calculations that need to be updated. Many of these were raised in Westerleigh's response to the working papers. Westerleigh appreciates the CMA may not have had time or sufficient data to fully take these on board and expects the CMA will want to do so now.

- (a) **Aylesbury Vale:** The CMA's approach to assets under construction is to include these as an asset at cost in the balance sheet (buildings: work in progress). See for example, the CMA's approach to Stirling in 2018 while it was being constructed. The CMA has mistakenly excluded Aylesbury Vale from assets under construction in 2018.¹¹²
- (b) **Capital expenditure on operating lease sites:**¹¹³ The CMA has capitalised leasehold buildings at insured value. However, it has mistakenly omitted the capital expenditure on leasehold buildings at [REDACTED] and [REDACTED]. While these are operating leases, Westerleigh has made considerable investment [REDACTED] into each site. The CMA notes that "*Westerleigh does not own the building*". While it is correct that Westerleigh does not own the freehold of the land on which the buildings are situated (in line with many of the other leasehold sites in Westerleigh's portfolio) it is not correct to ignore the investment which Westerleigh has made. Omitting this while including the revenue generated from the sites will significantly overstate the return on capital on these sites. The leases have relatively short terms and Westerleigh will need to generate a return on its investment and recover the investment over a short time period.
- (c) **Depreciation in-year**¹¹⁴: The CMA continues to depreciate for the full year of opening regardless of when a site was opened within the year. This is an error as property should be depreciated when available for use (i.e. when the site opens). For example,

¹¹² [REDACTED].

¹¹³ Westerleigh's response to the CMA's profitability working papers, dated 17 June 2020, paragraph 98 *et seq.*

¹¹⁴ Westerleigh's response to the CMA's profitability working papers, dated 17 June 2020, paragraph 95 *et seq.*

Westerleigh's Charing, Barham, Llanelli, Melrose and The Vale sites were all opened in November or December, yet the CMA applies a full year depreciation charge for the year of opening (despite being open only for a month). Westerleigh has taken a conservative approach and updated the analysis to remove year 1 depreciation only for those sites that opened after August. For sites that opened before August, the full depreciation charge is levied for the year 1 (as the CMA has done for all sites).

137. Westerleigh provides the CMA with the revised input data for these proposed corrections in Annex 1 and has revised the CMA's model to reflect the revised inputs.

9.4 Summary

138. [✂].

139. Furthermore, the CMA must not base its analysis on the false assumption that all providers are homogenous and must instead recognise and account for the differentiated nature of Westerleigh's business model (and the diversity of providers within the sector). [✂].

Table 1 - Summary of ROCE estimates for Westerleigh

[✂]

10. Flawed assessment of customer detriment

140. Evaluating customer outcomes is relevant to assessing the functioning of the competitive process in any market, including whether there is any AEC(s). However, as set out in the CMA's guidance, it is important that an evaluation of customer outcomes does not focus only on prices and profitability. Rather, such an evaluation must also take account of less quantifiable factors such as quality and innovation, which are "*no less important to customers*". Moreover, there will often be linkages between different parameters, meaning that they should not be considered "*in isolation*".¹¹⁵

141. However, despite finding that "*quality is more important than price to customers*"¹¹⁶, the CMA's assessment of customer detriment is solely limited to an assessment of alleged economic profits earned by crematoria operators, without any regard to qualitative factors which are relevant to assessing whether, overall, the market is operating in customers' interests. As set out in section 4 above, private sector investment has delivered significant improvements to customer outcomes, which the CMA has largely failed to recognise in the PDR. This is unacceptable and results in an inaccurate and unfairly prejudicial assessment that all crematoria in the UK are 'overcharging' customers, without taking account (for example) of whether the prices charged are reflective of the quality of service experienced by customers or investments undertaken. This, again, is reflective of the CMA's general failure

¹¹⁵ CC3, paragraphs 103 to 104.

¹¹⁶ PDR, paragraph 6.194.

- to properly assess or take account of qualitative factors in the PDR (as explained in section 8 above).
142. Moreover, the CMA's assessment of economic profits is, in itself, flawed and uninformative. The calculation assumes that all economic profits are automatically equivalent to customer overpayment. This shows no attempt to understand how profits are used. It incorrectly assumes profits are equivalent to shareholder dividends, ignoring retained earnings and investment. In Westerleigh's case, these profits are used to fund investment, both in new facilities and upgrading existing facilities. This is evident from the significant capital expenditure undertaken by Westerleigh [✂].
143. The CMA's approach assumes that the additional facilities and capacity that Westerleigh has invested in recent years have no value to customers. This makes no sense and is contradictory to the CMA's finding that customers value non-price factors to a much greater extent than price, indicating that the non-price factors are having a significantly greater impact on consumer welfare (and are key determinants of any measure of detriment). The CMA's approach not only ignores those factors that are actually important to determining consumer welfare in its assessment of detriment, it actually assumes improvements that result from such investment lead to detriment (because the investment that pays for that improvement is considered equivalent to overpayment).¹¹⁷
144. Westerleigh strongly rejects the finding that it has been overcharging its customers and this allegation must be withdrawn in the CMA's final report. In particular, the CMA's assessment of detriment must net off the benefits to consumers that have arisen from Westerleigh's investment. In Westerleigh's case, the evidence shows that increasing numbers of families are proactively choosing to use its sites on account of the superior quality offering available, and that Westerleigh's customers are overwhelmingly satisfied with the level of service and value received.¹¹⁸
145. Furthermore, even looking purely at profitability, the headline figures cited in the PDR for the private sector significantly overstate any so-called "overpayment" (as the CMA incorrectly labels it) as it applies to Westerleigh and appears to be driven by a single (other) private sector operator. [✂].
146. For these reasons, Westerleigh considers that the CMA's customer detriment analysis presented in the PDR is meaningless and appears to have included purely to bolster the CMA's provisional AEC findings (which are insufficiently robust for the reasons outlined in this

¹¹⁷ For example, Westerleigh's investment to fund facilities at Great Glen Crematorium which meet the needs of certain religious groups – resulting in significant value to customers in that local area, reflected in the business Great Glen attracts families from both inside the catchment area of competing crematoria, and from far away from the site – is only perceived by the CMA as a reflection of overpayment.

¹¹⁸ As noted above, Westerleigh has consistently high customer satisfaction scores from its customer feedback (99% in 2019), with narrative comments invariably highlighting the quality of Westerleigh's service including, in particular, the quality of the crematorium, setting and the attentiveness of our staff. Westerleigh also has regular dialogue with the funeral directors using its sites. These discussions highlight that customers and funeral directors value Westerleigh's service and quality.

response), rather than as a fair and objective assessment of customer outcomes. The CMA's "overpayment" calculation has no applicability to Westerleigh's cremation fees or the value which Westerleigh's customers derive from its cremation services, and the CMA's flawed analysis risks causing more customers harm than good, by directly lead to lower investment and reduced consumer welfare.

11. Conclusion

147. There are fundamental flaws in the CMA's analysis of the crematoria sector, many of which have been raised previously by Westerleigh and by other participants in the market investigation, which remain unaddressed in the PDR. These errors are so serious that the CMA cannot reasonably maintain the provisional views expressed in the PDR. It is therefore not open to the CMA to reach a conclusion that it has identified features(s) of the crematoria 'market' which give rise to an AEC pursuant to s134 of the Enterprise Act 2002.
148. Regardless of the remedial approach adopted by the CMA in the present market investigation, the CMA needs to reconsider its provisional findings as a matter of urgency to avoid drawing conclusions which could harm competition and investment into the crematoria sector, thereby reducing quality and choice for customers.