Competition and Markets Authority
Funeral Market Investigation

9th September 2020

Dear Sir or Madam

I write on behalf of Freeman Brothers Funeral Directors, and firstly would like to thank you for the opportunity to respond to your provisional decision document issued on 13th August, and the associated appendices.

We do not feel it is realistic- due to the sheer quantity of information contained therein- to address all the points raised, and therefore will limit our comments to those places where we are most able to make what we hope are meaningful contributions. [✂].

We would refer you to our previous submissions for any information you might require about Freeman Brothers as a business.

<u>Quantity and content of information produced and length of time given to respond</u>
We have consistently commented that the timescales given throughout the market study have not been generous, and have impeded the ability of some stakeholders, especially smaller funeral directing firms, to have their voices heard in what is meant to be a consultative process. The same is true here. A deadline of four weeks to digest and respond to a 472-page document, and slightly less time than that for the 23 associated appendixes (without which a large portion of the main document is not able to be interpreted) is, frankly, ludicrous, and is also directly discriminatory to any organisation other than the very largest. In a small company such as Freeman Brothers, the staffing capacity to read and understand all these documents, especially with a relevant level of expertise for the technical portions, does not exist. The nature of some of the appendices is such that we would suggest it requires specialist interpretation- which will, again, be out of reach of all but the largest firms.

As well as the short timescale, we would also suggest the timing of the release of the documents is itself not ideal. After the very difficult and busy start to the year, many funeral directing firms will be balancing the necessity to give staff a much-needed break, encouraging them to take leave to ensure they do not have a build-up of absences later in the year. Many principals may therefore be carrying out day-to-day businesses activities which might usually be delegated and will also be planning for a potential second peak of COVID-19.

We do feel it necessary to question why the CMA is consistently structuring its investigation procedure in a way which can only prove advantageous to the largest firms who not only make up a minority of the market- 42%, according to your document[1]. While we will later discuss the wisdom of attributing a figure to a supposed customer detriment, if we accept the CMA's argument that it exists, by your own volition it is based on your analysis of larger firms, versus only a 'likelihood' for other firms. We would strongly argue that your process is skewed to the benefit of the firms who have been the most significant transgressors of any overpricing in the funeral market, and ask how this can possibly be appropriate.

<u>Comments on monitoring of Funeral Director activity</u>

[1] Provisional Decision Report, point 8.33

We note that the potential remedies provided in the document at points 9.154/9.160/9.258 (provision of number of funerals and total revenue per quarter) are based on firms which have a certain number of branches- namely five or more- to be required to report and ten or more to provide these figures in both split and aggregated forms.

It seems to us that the largest firms are in a better position to collect such data. We note there is no analysis of the cost to any business for collating and submitting this data other than an assumption that it will not be large. The burden on smaller firms is likely to be more onerous through the disproportionate nature of the introduction of any new reporting system thereupon. Larger firms may already be in a reporting environment (if, for example, they are a PLC) but in any case have larger structures where this data already needs to be collated for distribution 'upwards'- in smaller businesses where the principal is a working member of staff, he or she is far less likely to need this data to be formally gathered for internal purposes. Additionally, larger businesses can rely on expertise within a parent company (for example, Co-operative Funeralcare can take advice from regulated businesses under the parent company, such as Travel and financial services). Once again, it is smaller businesses which seem to be bearing the burden of larger companies' apparent transgressions.

<u>The suggestions that funeral directors have been overcharging by £400 per funeral and making excess profits</u>
There are many comments that we could make about this conclusion in light of the data provided to support it. The first, and most obvious of these, is to ask how the CMA can possibly consider this figure to be valid, given that- by your own admission- only 42% of the market, plus 'a sample of 'independent' funeral directors' were analysed in financial terms[2]. We do not dispute that larger funeral providers might have charged inflated prices for their services over time. However, this cannot be extrapolated to the marketplace as a whole. We would further refer to the evidence throughout the Provisional Decision Report[3] that 'smaller' funeral directors often have strategies taking into account the costs charged by local competitors with the aim of 'not being the most expensive'. If the most expensive local competitor is a large company whose prices are significantly overinflated, then it is inevitable that a company which deploys this strategy may well be charging a larger cost than they might 'need to'.

However, even this basic justification ignores some important factors. Firstly, there is no way of understanding the extent to which this sample of the smaller companies' pricing strategies are representative of the majority, not only of these firms, but of the marketplace as a whole.

Secondly, we have previously commented on the poor quality of data the CMA had obtained from smaller businesses, to the extent that previous reports acknowledged they could not be sure that datasets reported as inclusive of disbursements actually were so. We note that point 7.166 acknowledges the funeral market is 'extremely fragmented', that there is 'limited comparable pricing information and *a multitude* of very small firms' (our emphasis), which represents a 'significant challenge' to obtaining the data which has been used for this analysis, and yet it has been used regardless.

Further, it is noted in point 7.168 that Dignity and the Co-op have made a 'noticeable change in behaviour' in minimising price increases in recent times but that for other funeral directors, the trends are 'less clear'. Instead of accepting the two clear inferences from this: that the larger firms

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[2] Provisional Decision Report, point 7.108
[3] For example, at point 5.40

were those who sought to increase prices consistently over time and were able to cease doing so when faced with scrutiny (due to accumulated reserves and other derived benefits of this action); and that other, smaller firms, have tended to increase their prices to meet the needs of the business and the inherent fluctuations it might be experiencing (see below), the CMA has instead relied on unsatisfactory and poorly comparable data derived from a minority of the market in making broad statements about all of it.

We dispute the statement that 'a clear picture'[4] can be derived of a market when the ability to analyse all of its component parts is so lacking. The CMA claims that '10 of the 13 Large firms have returned profits that were persistently higher than their cost of capital over the past five years' and it is from this that the £400 excess figure is derived, yet table 35 does not support this, instead suggesting that only four of these 13 are making profit in excess of £400 per funeral, including only two outside of the largest three. The effect of taking an average of all funerals in this cohort when two of the three largest are at the 'top end' seems to be the suggestion that overpricing exists in a way in which the data cannot bear out. This is reinforced by your assertion, continued from the point above, that while you say you *know* you about the largest firms, you only '*believe*… that many (small firms) have been pricing above the competitive level' (our emphasis) [5]. We would again return to our central tenet that the larger firms have been the significant transgressors and you now have the data to evidence this. To tar all firms with the same brush is disingenuous and irresponsible.

As we stated in a previous submission, staffing costs are a significant factor for any funeral business, and we broadly agree that the staff costs per funeral figure outlined at 7.143 would be reflective of our costs as a business[6]. However, as stated in 7.144, staff utilisation is likely to be the primary driver of staff cost per funeral. You do not extrapolate from this to the conclusion that smaller firms may well have larger staffing costs per funeral- and yet this seems self-evident. We would also add that, for a smaller business, providing a 24-hour 'on call' service has a disproportionate cost. A requirement to pay two or three staff to be available out-of-hours when they may only carry out one or two collections per week is a significant cost compared to a business which is of a size that they can employ the same number of staff to carry out 30 out-of-hours collections per week. Yet the vast majority of funeral businesses see a requirement for provision of this service and so to exclude this, and other considerations around minimum staffing levels from the CMA's modelling, seems to be short sighted.

We are not persuaded by the arguments raised by the Co-op and Dignity around larger businesses spending more on staff due to management structures. If, as the CMA suggests 'the number of funerals carried out per staff member (is) likely to be the primary driver of staff cost per funeral', then Dignity's assertion that their 'staff costs are higher than smaller funeral directors they acquire as a result of layers of management and central costs'[7] shows that they are operating an inefficient business which should be benefitting from the economies of scale which their significant market share provides. That they are not doing so, and yet were still able to make significant profits, tells us plenty about the attitudes of those who operate the company. Again, to judge our whole industry by the attitude of one player, however large, is unfair.

<u>The effect of using inflation as an effective tool for examining changes in profits over time</u>

We note from point 15 of the Executive Summary of the Provisional Decision Report that one of the factors which the CMA has considered in deeming that funerals are being charged at higher-than-

[4] Provisional Decision Report, point 7.167

[5] Provisional Decision Report, point 7.172 and 7.174

[6] [✂]

[7] Provisional Decision Report, point 7.148(e)

expected prices is evidence of annual price increases in excess of inflation. We would suggest that this analysis is overly simplistic for two reasons.

Firstly, it does not take into account the fact that some costs may have been higher or lower at their outset. For example, a company may introduce a product which it sells at double the price that it 'could'. An increase in this product's cost at only inflationary rates does not prevent it from being too expensive. Similarly, a company may introduce a new service to the market at a discounted, introductory rate before doubling its cost a year later. However, this new cost may put it in line with other comparable services offered by competitors, so a fifty percent increase may be far in excess of inflation, but is academic in price comparison terms.

However, secondly, it does not take into account the wide variety of reasons for which a business may need to increase costs over any given period. Some of the key costs for funeral businesses, which are not so different from those faced by other types of business, increase in excess of inflation every year. Let us take fuel as an example. Fuel is a significant cost to funeral businesses. Paul Bolton's House of Commons Briefing Paper on Petrol and Diesel Pricing, published on 16th June 2020[8], suggests that the retail price of diesel increased by just over 45% in the period January 2007-January 2020. A company cannot be expected to absorb such a cost increase.

Another cost to businesses is that seen when they start up, or expand. Funeral vehicles are an example of a substantial investment. Many funeral directors starting in business will hire vehicles from carriagemasters or competitors at the outset and then seek to obtain their own fleet once they have accumulated sufficient funds to enable them to do so. It is not necessarily easy to do this on credit. Smaller firms are less likely than larger ones to be able to access finance for a variety of reasons including a smaller likelihood to have audited financial statements, an increase in automated decision-making and, ironically, a lack of assets to use as security. Banks, who 'traditionally dominate' the market in lending to SMEs, have reduced this lending since the global financial crisis of 2008, according to the Financial Conduct Authority[9]. A funeral director will probably charge the same cost for a limousine whether he or she owns it or hires it. However, a vehicle which is owned by the business is, once paid for, an ongoing source of profit (less maintenance costs and depreciation). Limiting a company's ability to accumulate and subsequently expend funds on such items is therefore counterproductive in the long run as it reduces its ability to profit from its own assets, and therefore other items may increase in cost, as the need to earn a certain amount of money will not decrease and so will simply have to be derived from other areas.

We would further suggest that, given the inherent instabilities of the funeral sector, and the fact that prospective client numbers are entirely without a funeral business' control, mean that a prudent attitude towards charges, which enable the build-up of reserves, means that business standards do not have to drop due to cost-cutting in years where death rates (and resultant turnover) are lower. It would not be fair to offer customers who die at quieter times a poorer service, or to not make necessary improvements to facilities and premises because of a reliance on larger numbers of deaths which does not materialise.

Further, key components of a funeral director's profit will rely upon factors solely dependent upon client choice, such as coffin style and use of limousines. Even two years which see very similar numbers of funerals of may see a huge variation in profits dependent on such choices. Again, it is the smaller businesses who are most likely to be impacted here. Let us imagine a very small funeral business, which perhaps undertakes one funeral a week, and usually carries out the arrangements for one local group or family who (for demographic or other reasons) prefers a very expensive type

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[8] https://commonslibrary.parliament.uk/research-briefings/sn04712/
[9] https://www.fca.org.uk/publication/research/future-funding-sme-uk.pdf

of funeral. In one year, they may not undertake any funerals for that group, in the next they may arrange two or three. This could have a substantial effect on their profits in these years without them doing anything differently.

Additionally, changes in client preferences over time can have significant impacts. Two otherwise identical funerals might vary in cost by £500 or £600 just by substituting one coffin for another[10]. For example, in 2006, 1% of the funerals service by Freeman Brothers had a willow coffin. By [✄]. Assuming the coffin choice was the only difference, all of these funerals will be more expensive than if the customer had chosen a simple veneered coffin, and yet this is wholly outside our control and we cannot predict if this trend will continue. **That the CMA's modelling does not allow for the innovations in the funeral sector which add to funeral costs over and above inflationary pressures, in spite of your acknowledgements that client choice has diversified, is a significant omission.** This is even more important if, as we assume, the inference of Appendix Q (profitability methodology) is that as soon as a business has enough profit to reasonably cover predicted costs and costs of capital employed, any additional income above this is 'excess'.

It may well be that some types of business are accurately able to forecast their income and outgoings. However, for funeral directors, this is not straightforward because their revenue stream is based on numbers of people dying, which are always unpredictable and can only ever be forecast based on modelling and extrapolation.

Death rates can fluctuate considerably even without events such as the recent COVID-19 pandemic. Between 2006 and 2019, there have been fluctuations of over 5% in the number of deaths in consecutive years in England and Wales. The difference between the lowest number of deaths in a year during this period (in 2011) and the highest (2018) is nearly 56,000- 11.5% of the 2011 figure.[11] Further, as we have seen this year, when unexpected events affecting death rates do occur, there is an expectation of a certain level of preparedness on the part of sectors such as funeral service provision. It could be argued that having been able to build up reserves sufficient to obtain PPE at five or even ten times the usual cost per item might be a sign of 'excess' profits in the past; however, it could also be argued that it shows foresight on behalf of businesses who truly understand how their levels of work can fluctuate even in 'normal' circumstances.

We should suggest that if any funeral business should be able to have more accurate ideas of how many funerals they will carry out in any given period, the largest funeral businesses would be best-placed through economies of scale. They will also be protected from the effects of minor variations in death rates or client choice. Therefore, if they have been overcharging, it is even harder to justify- but there is nothing to say that smaller firms have- deliberately or otherwise- acted in the same way in a market whose inherent unpredictabilities make any attempts at calculating future income far more difficult when numbers are smaller and variations have more significant impact.

As point 2 of the Provisional Decision Report's Executive Summary acknowledges, 'the coronavirus (COVID-19) pandemic (has) caused… immediate, and possibly long-term implications for the behaviour, economics and structure of the sector.' We would contend that some of the ways in which funeral businesses will be affected will place them in common with other business types: in resulting in an assessment of how viable many business models are. We believe there is a growing awareness that all types of businesses, regardless of sector, should legitimately build and hold

[10] It is worth noting that the profit margin may be higher for cheaper coffins although the 'raw profit' might be higher for expensive ones.

[11] https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/monthlyfiguresondeathsregisteredbyareaofusualresidence

capital reserves to provide future security not only for predicted events but also those which cannot be forecast. Whilst the CMA's focus on return-on-capital may measure a sector's competitiveness, this focus seems far less relevant in a world in which long-term commercial survival has been brought sharply into focus. Businesses must be prudent in order to continue to be viable- a sector with a decreasing quantity of viable businesses surely cannot be judged as successful by any measure.

<u>The introduction of a standards monitoring regime</u>
We would firstly like to state that we believe the levels of care that we provide are far above 'acceptable' levels, and that also as a member of both NAFD and SAIF we regularly submit all of our premises, including 'behind the scenes' facilities, to scrutiny. We have no problems with describing or showing our facilities to customers and there have been occasions where people have asked us to see where their loved one will be kept and prepared, and we are always happy to facilitate such visits, often at short notice. We are also very comfortable with families of deceased people being involved with the care of their loved ones when this is requested. Our comments on this area of the report are made in this context.

We would be in favour of an inspection regime which ensures that all funeral directing firms are adhering to a set of objective standards which can be applied regardless of the size of the business if it can be demonstrated that this is necessary. However, as point 18 of the Executive Summary of the Provisional Decision Report states, while it may be 'likely' that some funeral directors are not adhering to expected standards, we do not know how many firms this may be, how far short of the standards they might be, and what would be required for them to remedy this situation to reach acceptable levels.

As we have previously stated, although it does not necessarily follow that the cheapest firms are offering the lowest standards, the opposite- that the highest standards cannot be achieved without some reflection in the company's pricing strategy- is far more likely to hold true. It must be borne in mind that improvement of standards would require some investment by a business and, for many funeral businesses, all their profits are derived from the core activity of carrying out funerals. Therefore, those businesses which have smaller margins and require improvements would need to increase their costs. Also, a business which has always had a strategy of charging higher prices in order to ensure it gives top-of-the range 'back of house' standards (for example, full refrigerated storage or the development and training of a team of fully-qualified in-house embalmers), and which has always been transparent about pricing (and so has not operated in an unethical way) may find that any compulsion to reduce prices because of expectations around market averages affects their ability to operate with this strategy. Both of these are examples of how requiring standards to be increased whilst also expecting firms to lower costs could be counter-productive and should be avoided.

We note that the proposed regime outlined in points 9.100 and 9.101 is likely to be time consuming to set up and maintain, given that a significant quantity of work will have to be carried out to define and then locate every funeral business, and ensure that businesses whose work overlaps with that of funeral directing businesses (such as carriage masters and repatriation companies) are appropriately classified before anything else is able to take place. It will require a huge amount of staffing time to visit and inspect every funeral home in the UK- or even in England, Wales and Northern Ireland. Regulatory bodies are costly. We note that, for example, OFGEM (which is funded by the businesses it regulates) budgeted to spend £82m in 2019-20[12]. If funeral businesses are expected to fund such a body, then the resultant outgoings will be an underlying running cost and so, if there is a

[12] https://www.ofgem.gov.uk/ofgem-publications/101455

simultaneous monitoring of costs, this may lead to a decrease in profits but the cost of a funeral service itself to the customer may not decrease.

These are not reasons not to monitor standards, but we feel the lack of visible work both on the likely costs of such a regulator, and the impacts on different-sized businesses of bearing this cost, means that it cannot currently be considered viable. This modelling needs to be done in detail and then an active consultation of the implications on different types of funeral business, with these figures as a cornerstone thereof, is definitely needed.

On the point of different-sized businesses, we would like to comment on the assertion at point 9.108 that 'Funeral Partners… were fundamentally opposed to any degree of flexibility for a regulatory framework which would apply different standards by provider (eg different standards applicable to supposed 'larger' firms versus supposed 'smaller' firms…)' and would like to suggest that the CMA should consider why this would be. Of course there is no reason why there cannot be a basic set of standards to which every company should be able to adhere. However, we would argue it is equally important that any regime's requirements are not so onerous that it proves impractical for the smallest firms to comply and, as a result, their owners look to divest themselves of the business- which will be of benefit to the larger firms who expand through acquisition strategies and retention of previous trading names.

It should not a be a surprise to anyone that the very large firms- which have- as we have argued throughout our submissions (and seen in the CMA's documentation)- experience of statutory reporting environments, related regulated businesses, excess layers in their staffing structure (with resultant capacity to carry out new tasks without the need to add costs through recruitment) and, most crucially, the largest reserves both because of economies of scale and excessive past pricing- should see only opportunity from a more highly-regulated environment. It is unlikely that they would express themselves in favour of any system in which they did not see themselves as being able to benefit, and it should be a cause of concern if the biggest transgressors of competitive activity, who have dominant market share, see any incoming regulatory system as an opportunity.

We suggest that if the CMA truly cares about competition in the funeral sector, it will ensure that any regime which seeks to regulate on standards will be proportionate, accessible, and applicable to firms of all sizes with enough flexibility to ensure that it does not disincentivise existing small businesses continuing to operate or new entrants to the market emerging, as this will only achieve a decrease in competition with the likely largest benefits being to a small proportion of large firms.

<u>Lack of proposed remedies which seek to change customer behaviours</u>
The CMA has never denied that a lack of preparedness by the public to make plans for their own, or close family members', funerals is a significant factor in their supposed reluctance to 'shop around' when the death does occur. This is in spite of the fact that 'the death of a loved one is often expected'[13]. In fact, the Provisional Decision document itself suggests that a lack of understanding of the deceased person's plans 'may make the bereaved risk averse and more likely to err towards expensive options' without the 'tacit permission' of the deceased to drop 'negotiable' elements of a funeral[14]. The assumption seems to be that funeral directors are aware of this, and so this is why they do not compete on price.

Aside from the point we have previously made that by competing on service, funeral directors are seeking to differentiate themselves in ways which are more important to their prospective clientele, we fail to see how the proposed remedies will alter this position. We would suggest that, even if

[13] Provisional Decision Report, point 3.9
[14] Provisional Decision Report, point 3.25

funeral directors were to commence competition on a price basis (and we cannot say if this is the desired outcome of the monitoring remedies, as we do not know how the data collected on pricing will be used), bereaved people will continue in their recognised behaviour, such as ‘go(ing) back to the funeral director that they or their family have previously used’[15], or choosing the ‘negotiable’ elements where they do not have an understanding of the wishes of the person who has died. We agree with the CMA that this is not a ‘failure’ on the part of customers, but it is a barrier. Companies can introduce tools for customers to use in comparison activity, but these are futile gestures if a significant percentage of clients continue as before and do not use them.

If the ultimate aim of increasing competition on price within the funeral market is to reduce the price that bereaved people are paying for funerals (rather than for competition’s sake), then we consider it a significant omission that we cannot see anything in these proposed remedies which seeks to tackle the important aspect of public reluctance to discuss death, dying, bereavement, and funeral choices, which leads to the behaviours outlined above and others mentioned in the report.

We hope this response is useful to you. If there are any questions arising from our comments and answers, or if we may be of assistance in any other way, please don’t hesitate to contact us. The details are in the signature of my email account from which this was sent.

Yours faithfully

Abi Pattenden
Manager
Freeman Brothers

[15] Provisional Decision Report Executive Summary, point 5