

Funerals market investigation – summary of responses to the Provisional Decision Report

1. This document provides a summary of the submissions we received in response to the Provisional Decision Report (PDR) published on Thursday, 13 August 2020.

Background

2. The PDR sets out the evidence we have gathered and analysis we have carried out so far in the course of the funerals market investigation, together with our provisional findings and provisional remedies. On 13 August, we invited interested parties to submit reasons in writing as to why the provisional findings and provisional remedies should not become final, or, as the case may be should be varied.
3. We received 128 submissions in response to this consultation. This document is an aggregated and anonymised summary of the views provided in 111 of these submissions, received from a range of parties, including celebrants, consumers, consumer bodies, funeral directors and local authorities. Non-confidential versions of the remaining 17 submissions can be found on the Competition and Markets Authority (CMA) website.
4. We would like to thank everyone that responded to our working papers.

Consultation process

5. The National Society of Allied and Independent Funeral Directors (SAIF) encouraged its members to respond to the CMA's provisional decision report (PDR), posting a number of requests for them to do so on its website. As part of its communication with its members, SAIF also stated in an email to its members headed 'IMPORTANT: the future of YOUR independent funeral business is at stake' that "the CMA is proposing a 'one size fits all' remedy for the whole UK funeral profession..." The email included four bullets summarising the points that SAIF's members should make in their response to the PDR. These included "perceived risks" that the CMA's remedies would "impact on your client's customer journey, when according to the CMA, three layers of funeral packages will need to be discussed in full detail, even if the customer is clear what they want" and also that funeral firms with five

branches or more “will be required to report quarterly to the CMA with “*with financial revenues, profits, volume...*”

6. The extracts from the bullets highlighted in paragraph 5 contains details which do not accurately reflect our transparency remedy proposals and are incorrect. In particular, there was no proposal in the PDR that funeral directors should provide profitability information as part of any monitoring obligation. Similarly, there was no proposal in the PDR to make the provision of specific packages mandatory or to mandate that funeral directors should discuss each package option ‘in full detail’ with their clients. Rather, the PDR proposed that where funeral directors provide specified packages, they would be required to provide information including a description of what was included/excluded and the total price of the package. In addition, the PDR proposed that funeral directors must also provide customers with a disaggregated full price list in the circumstances specified.
7. Against this background, we set out below an overview of the responses received on this issue.
8. The National Association of Funeral Directors (NAFD) made a similar call to its members (in which it asked them to comment on specific aspects of the PDR). The responses it received from its members were enclosed in an Appendix to the NAFD’s submission, which is published in full on our website. These views have not been summarised in this document.
9. The submissions we received in response to this consultation are set out below.

Price and information transparency

Funeral packages

10. Forty-two funeral directors expressed concerns and objections at what they described as the CMA’s ‘one-size-fits-all’ proposal which was variously characterised as ‘unrealistic’, ‘unworkable’, ‘impractical’ and ‘impersonal’.
11. Other points raised by respondents, including the following:
 - a) discussing funeral packages would unnecessarily waste the time of the client and the funeral director in cases where the family already knew the wishes of the deceased and the services that they wanted.
 - b) Each client is unique and needs to be treated with care and empathy. Funeral packages stifle choice, remove care and familiarity at the point of local contact, and would increase prices. Packages would only work well for

corporate funeral directors whose objectives were to turn around funerals in the fastest amount of time, with the greatest amount of profit.

- c) One funeral director told us that it already provided at least five options for families to choose from and that it could alter or extend its range as necessary to meet their client's requirements.
- d) One funeral director told us that it offered two packages (direct cremation and a basic funeral) as well as a bespoke option. It found that most of the bereaved liked to know all the options available to them. The funeral director said that, in circumstances where the client had clearly stated that they did not wish to know about the first two options, that it would like the flexibility to only have to briefly describe the direct cremation and basic funeral options.

Price transparency

- 12. Thirty-four funeral directors (and one celebrant) said in their response to the PDR that they supported increased price transparency; two funeral directors said that they did not.
- 13. We received a number of comments about the existing level of price transparency in the supply of funeral director services.
 - a) a celebrant noted that funeral director charges were not always transparent and that some of the costs the bereaved faced were unexpected;
 - b) one funeral director said that, although the issue of price was very rarely raised by the client themselves, it did raise the issue with them.
 - c) another funeral director told us that when it had previously advertised its price it had a detrimental effect on its business, not because its prices were too high, but because they were perceived to be too low (the argument being that because the funeral directors prices were low, prospective clients considered that the quality of service must be low too).
- 14. Of the submissions commenting on the merits of publishing pricing information online the following comments were made:
 - a) one funeral director said that it should be mandatory for every funeral director to have a website on which its full price list should be displayed. This would ensure that bereaved families would have full access to all funeral costs without first having to speak to, or directly engage, the funeral director.
 - b) two funeral directors and one consumer in their responses to the PDR expressed support for standardising pricing information.

- c) two funeral directors said that most funeral homes already published their prices online as well as having them displayed and available in their offices, commenting that those that did not were unlikely to be members of either SAIF or the NAFD.
15. Other responses on the practicality of this remedy responded as follows:
- a) some funeral director commented that it was not possible to make price comparisons between different funeral directors because the level of service and investment varied too much. Others considered that having prices online would only be beneficial if families were able to compare services on a like-for-like basis or to judge quality.
 - b) another said that the funerals it conducted were diverse in range and venue and that it would be impractical and confusing to offer every client a full price list.
 - c) another considered that a 'one-size fits all approach' to price transparency was not plausible, also commenting that families did 'shop around'.
 - d) one funeral director commented that publishing prices online led to the undercutting of prices by local competition and that this adversely impacted on the quality of services and premises that could be provided by local funeral directors.
 - e) one funeral director believed that publishing funeral directors' prices online would be confusing because funeral directors would not disclose all of their prices in their marketing and advertising.
 - f) one funeral director noted that while the younger generation might look online to find prices, the older generation would not.
 - g) another funeral director commented that the use of a common platform to display prices might necessitate small businesses to have to employ extra IT help and advice. The additional cost of this would have to be passed onto customers.
16. Some funeral directors expressed views on the range of services to which the transparency remedy should apply:
- a) one funeral director said that prices could be manipulated by omitting particular items, such as the coffin or crematoria fees, in marketing materials. This could mean the actual cost paid by the client would be more expensive than it might first appear.

- b) one said that there should be a requirement to include mandatory disbursements in the headline prices.
 - c) another thought funeral directors should not only be required to provide pricing information relating to its services and those of local crematoria, but also burial fees (which it noted could vary hugely).
17. In relation to crematoria, we received comments from only one local authority on this issue. They did not object to the proposal that crematoria should publish price information.

Transparency of ownership

18. We said in our PDR that transparency of ownership is particularly important following a change of business ownership, where a large funeral director acquires, or has previously acquired, an independent funeral director and the acquired business trades under the name of the independent funeral director.
19. The comments we received on this potential remedy were supportive of the proposals, with some responses highlighting particular aspects of the remedy that were considered important:
- a) eleven funeral directors (and a celebrant) thought the ownership of funeral homes should be transparent. Three of these funeral directors said that where a small family funeral director had been acquired, the new business ownership should be clearly displayed on its premises and in its advertising. This would ensure families knew who they were dealing with before they contacted or engaged a particular funeral director. One of these funeral director also noted that when larger organisations made acquisitions, they often retained the name of the acquired business. It added that trade associations had not been effective at addressing this issue.
 - b) one funeral director believed that funeral directors should be required to inform customers if they had a business interest in any price comparison website.

Prohibition of certain arrangements in exchange for services or payments with third parties

20. We provisionally decided to prohibit funeral directors from engaging in arrangements or any exchange of services with, or payments to, hospices, care homes and other similar institutions which encourage or incentivise those institutions to refer customers to the funeral director.

21. All of the responses that commented on this issue that we received expressed their support for this proposed remedy, with 15 funeral directors stating that payments to hospices, care homes and other similar institutions (to encourage or incentivise those institutions to refer customers to a funeral director) should be prohibited.
22. We also received supportive comments about care providers having to inform customers about their relationships with funeral directors, including the need for transparency around charitable donations by funeral directors to third parties.

Prohibition on the solicitation of business through Coroner or Police contracts

23. We provisionally decided to prohibit soliciting for business through coroner and police contracts. To comply with this requirement, funeral directors would have to adhere to any non-solicitation clauses that are in their contracts with coroners and the police, and not solicit business if any such clauses were not included in the relevant contract.
24. One funeral director considered that the practice of Coroner's removals, whereby the deceased was collected by a funeral director and taken to its premises (rather than to the local hospital) put pressure on the family to use that funeral director. A celebrant also said that it was very difficult for families to reclaim the release of their loved one's body from a funeral director in such circumstances.
25. Respondents made the following points about this potential remedy:
 - a) 11 funeral directors (and a celebrant) considered that the solicitation of business through Coroner or Police contracts should be prohibited. The celebrant said consideration should also be given to prohibiting the spouses and families of funeral directors 'volunteering' or working in these establishments because these provided the funeral directors with a 'foot in the door'.
 - b) the Coroners service should be regulated to prevent this unfair practice continuing.
 - c) the standardisation of Coroners service agreements would be a large step forward in removing the problem.
 - d) Coroner removals should only be undertaken by the council.

- e) negative value tenders for Coroners contracts should be prohibited. The bereaved should be able to select the funeral director to care for the deceased, on behalf of the Coroner, whenever possible.

Improving the quality of funeral directors back of house standards

Support for an inspection and registration regime

- 26. We provisionally decided to recommend to the UK government and the devolved administrations in Northern Ireland and Wales to establish in England, Northern Ireland and Wales an inspection and registration regime to monitor the quality of funeral director services.
- 27. Thirty-seven funeral directors commented positively on the proposal:
 - a) one funeral director said that registration should be mandatory, commenting that if there was no regulation the industry would be left open to unscrupulous operators.
 - b) eight funeral directors considered that regulation was needed to ensure minimum standards, while another three noted that funeral homes, and more importantly families, would benefit from a regulator with far reaching powers;
 - c) two thought that an independent regulator would be able to filter out the more unscrupulous funeral directors and those with low standards and/or questionable practices.
 - d) five indicated that their support was conditional on the introduction of an inspection and licensing regime that was simple and unbureaucratic (and a fee structure that was proportionate and fair to small funeral directors). The requirement that funeral directors were licensed would assist the bereaved in selecting a funeral director that met the necessary standards.
 - e) another suggested that the findings of inspections should be reported to an independent regulator in order to promote better governance of the funeral sector.
 - f) one said that in theory it would be open to inspections from an independent regulator, but before supporting this change it would want to know how the licensing and inspection regime would work. In particular, it would want to know whether there would be consideration of the location, age and size of the business being regulated.
 - g) one funeral director, together with a celebrant, supported a regulatory body for England and Wales along the same lines as that already established in

Scotland. The funeral director hoped this would increase levels of service, standards and competence in the industry, particularly in relation to mortuary and back-of-house facilities. However, the funeral director also commented that funeral directors would seek to recover the additional costs of independent regulation and this would create an upward pressure on prices. The funeral director also said that the CMA should give some thought to what the long-term future and shape of organisations such as SAIF and the NAFD should be in the event that an independent regulator was established.

- h) one celebrant firmly believed that funeral directors and crematoria should be registered and monitored because they were dealing with the emotionally vulnerable in society.

Concerns about an inspection and registration regime

- 28. One funeral director said that it was already bound by SAIF's rigorous code of practice and that the introduction of another inspection and registration regime therefore demanded more careful thought before being implemented.
- 29. Two funeral directors believed that most funeral directors would welcome an effective licensing and registration regime with a clear set of minimum operating standards. However, they were concerned that a 'one-size fits all approach' to fix the whole sector would not work, arguing that it would not benefit funeral directors and would reduce consumer choice.
- 30. Another funeral director considered that an inspection and registration regime would not be capable of taking into account the more cost effective and personal services provided by independent funeral directors.
- 31. Eight funeral directors said that they were concerned about the perceived risk to the financial viability of small funeral directors if a new inspection and registration regime was put in place. Any regulation needed to be related to the size of the businesses concerned, otherwise the additional bureaucracy and the associated costs would adversely impact on smaller funeral directors, possibly forcing them to sell their businesses to the larger conglomerates. This would ultimately result in less choice for the bereaved, as well as having a detrimental effect on prices. The detrimental effect would be particularly marked in rural areas.
- 32. One funeral director said that differentiated levels of inspection were required for the national chains, the independents and the budget end of the funeral industry.

Comments about the operation of an inspection and registration regime

33. Twelve funeral directors raised queries about the operation of a regulatory regime. These included questions regarding the cost, criteria and process for obtaining a license and/or becoming registered. Concerns about who would run the regulatory regime, how it would work, the grounds for a refusal and the consequences for a funeral director (and the families they served) if a license was refused.
34. Points raised by respondents included the following:
- a) one funeral director thought that the small number of funeral directors failing in their duty of care should be removed from the industry rather than imposing government regulations on the whole sector.
 - b) one funeral director expressed their concern that cemetery fees would remain unregulated.
 - c) one funeral director said they were concerned that regulation could inhibit new entry. They also queried why registration was necessary in an industry where there were few customer complaints.
 - d) one funeral director noted the disparity in levels of investment and service offered by funeral directors commenting that there should be a minimum level of care requirement. They also said that the increasing popularity of direct cremations in recent years had started a race to be the cheapest funeral provider.
35. Some funeral directors considered that the industry was already well regulated by the NAFD and SAIF. Some other respondents commented that:
- a) only those businesses with excessively high charges or that provided poor quality services needed to be regulated, not the entire industry.
 - b) another was worried about having to adhere to government standards and the effect this would have on its ability to offer a flexible and personal service.
 - c) There was also some concern expressed about the ability of the inspectors conducting the inspections. One funeral director commented that if the inspections were carried out by people who had not worked as a funeral director this was likely to result in unsympathetic reports and opinions.
 - d) one other funeral director said that if the regulator had the powers to close businesses that this would move the UK funeral industry towards a form of quasi-nationalisation;

The role of trade associations in a regulatory regime

36. Further points raised by respondents included the following:
- a) One funeral director stated that the trade associations should not be appointed to any sort of regulatory position. However, nine funeral directors said that they did not believe there was a need for an independent regulator, or a Government Inspector of funerals, because funeral directors already worked with both the NAFD and SAIF and were subject to thorough inspections.
 - b) An additional ten funeral directors considered that all funeral directors should be required to join one of the trade associations. Funeral directors who were not members of a trade association should be subject to a government inspection.
 - c) A further two funeral directors suggested that the CMA should work with the existing trade associations, taking advantage of their expertise, rather than creating a new regulatory body.
 - d) Another respondent proposed that the two existing funeral associations should be given more powers to regulate the sector formally.

Requirement to report specific revenue and volume information to the CMA

37. To enable the CMA to monitor the crematoria sector, we provisionally decided to require all crematorium operators to provide to the CMA details of:
- a) The total number of cremations provided each quarter; and
 - b) the total revenue during that quarter.
38. This remedy proposal was supported by three parties:
- a) a celebrant believed that all funeral directors should be required to provide basic financial information to the CMA and those with profits above a certain level should be required to supply more detailed financial information.
 - b) one funeral director was prepared to make its business accounts available for scrutiny at all times while another said it was content to provide any figures required, commenting that quarterly reporting did not feel onerous.
39. However, a number of funeral directors objected to the perceived burden that the remedy would impose on their business.

- a) several funeral directors told us that the requirement for funeral homes with five branches to submit quarterly data to the CMA was unnecessary and would create additional work for smaller funeral directors. They commented that larger funeral directors may be able to meet the cost of supplying the information required for monitoring purposes, but businesses at the five branch threshold or just beyond would struggle.
- b) the requirement for larger funeral directors with more than ten branches to provide segmented information relating to basic, standard and bespoke funeral numbers was over regulation. This would could result in skewed data which might not be representative of the funeral industry as a whole. Some thought that the proposed remedy would result in firms separating their businesses into smaller groups and running them under different names.
- c) one funeral director thought the criteria for reporting should be based on the average number of funerals a company conducted per annum.
- d) one funeral director posited that the CMA's proposal to require funeral directors to provide details of revenues, costs and profits would not provide a full picture of the funeral director's business and that an HMRC investigation would provide a better indication of how a company was trading.

Future market investigation reference

- 40. The proposed monitoring regime would also facilitate the CMA board's assessment of the funerals sector to support the CMA board in identifying more effectively when any consultation on a future MIR should be undertaken.
- 41. Three funeral directors said that a further market investigation reference (MIR) was not necessary, and. objected to the CMA reserving the right to conduct a future MIR.
- 42. One funeral director believed that the CMA's report would be soon out of date because of the impact of COVID-19 on the funeral sector. The respondent argued that funeral directors' businesses would be leaner, fitter, more efficient, tech savvy and responsive to clients' needs post Covid-19 and that this would lead to a reduction in prices.

Comments about the prospect of future price control

- 43. While the PDR said that it was important to keep on the agenda the possibility of price control remedies as a means of protecting funeral customers, we are not proposing a price control remedy. We have said that the CMA should come back to the option of a price control remedy when the circumstances of

the funerals industry have returned to a steady state, which may well be different from that existing before the onset of COVID-19. Nevertheless, we did receive comments from respondents on this issue.

- a) Two funeral directors and one celebrant stated in their response to the PDR that they supported price controls, one saying that they did not see the need to wait to introduce such controls while five funeral directors said that price controls would unnecessarily penalise the industry. They considered that making the bereaved aware of the range of choice and the right to go elsewhere if they considered prices were unreasonable was sufficient.
- b) One funeral director felt it was unfair that a government regulator should determine the price a funeral director could charge for its services, noting that third party costs had greater implication for the price charged to the consumer than its own charges.
- c) Another funeral director considered that the pricing of local authorities and councils varied greatly and should be capped.
- d) One funeral director was concerned that the long-term habits of bereaved families may have changed permanently as a result of Covid-19 and that price controls were not, therefore, necessary.
- e) Two funeral directors believed that any future price controls would have a detrimental effect on the industry in the long-term by driving down standards and removing choice. Another three funeral directors thought that price regulation could result in a reduction in the personalisation of funeral services and also impact unfairly on those funeral directors with higher fixed costs (for example in London and the south-east) than those based in less expensive parts of the country.
- f) A further two said that the introduction of a price cap which did not consider differences in quality and the standard of services provided by different funeral directors, would be detrimental to the future provision of such services and the survival of small, independent, family-run funeral directors.
- g) Other respondents commented that the combination of price controls and the imposition of a second registration fee (the first being the trade associations membership fee) would threaten the financial viability of small independent firms.
- h) One funeral director said that funeral directors that had invested significant sums in their businesses expected to be able to charge more for their services. If they were subject to price controls, they would not be able to cover their costs and invest in a quality service provision. This could lead to some

exit from the industry, leaving the large corporate providers as the only option for the bereaved in some areas of the UK.

- i) Two funeral director considered that the threat of price controls was an unknown and incalculable risk and that it would prevent its future expansion and deter entry into the market.

Other comments

44. We also received comments about a variety of other matters not captured under the above themes. These covered issues relating to the following:
- a) prepaid funeral plans and their impact on the financial viability of funeral directors.
 - b) training in the funeral sector.
 - c) the provision of funeral director services by local authorities.
 - d) funeral poverty and Department of Work and Pension payments.
 - e) unreasonable fees charged by funeral directors to clients wishing to switch to an alternative funeral director.
 - f) customers' ability to engage with the funeral purchasing process and their price sensitivity.
 - g) prices charged by funeral directors, with some emphasising the differences between larger and smaller funeral directors and others considering that price increases in the sector were reasonable.
 - h) the reliability of the profitability analysis and detriment calculation carried out by the CMA.
 - i) the CMA's reliance on data provided by the larger funeral firms.
 - j) upselling by some funeral directors.
 - k) concerns about poor competition between crematoria relating to the planning regime.
 - l) concerns about local authority crematoria using crematorium revenues to subsidise the provision of other local authority services.