

## **FUNERALS MARKET INVESTIGATION**

### **Summary of the response hearing with the Co-op held on Friday 9 October 2020**

#### **High-level comments on the PDR**

1. The Co-operative Group Limited (Co-op) said that it agreed with many aspects of the Provisional Decision Report (PDR) and proposed remedies, but there were aspects of the report which gave it cause for serious concern. It strongly disagreed with the Competition and Markets Authority's (CMA) characterisation of funeral services as commoditised goods provided by a supplier rather than as a service. The quality of time spent in caring for the bereaved and arranging a bespoke funeral, and Co-op's care of the deceased, were critical elements of its service.
2. Co-op said that the PDR took a backward-looking view of the market – there had been significant shifts in customer behaviour and the market was becoming increasingly competitive. COVID-19 had accelerated these changes further and impacted costs. Co-op considered that the CMA had overstated the competition problems in the market and was therefore reaching the wrong conclusions as to whether price remedies would be needed. Further, there was no legal basis for a supplementary market investigation reference (MIR). Co-op was concerned that the CMA's approach could trigger a race to the bottom.

#### **Evidence base and analysis**

3. Co-op considered that the CMA's evidence base had a number of significant weaknesses which fell materially short of the standards required, and its analysis of the market had some serious limitations. Co-op said the CMA had failed to properly account for the strength of competition at the local and national level and the existence of many new entrants. According to Co-op, the CMA had also introduced evidence at a very late stage which was not robust. The summaries of the NatCen round table and Kate Woodthorpe meetings, upon which the CMA placed undue weight, contained anecdotes and conjecture which were not supported by data of any kind. Similarly, the Rapid Evidence Assessment (REA) was based on research papers with very

small sample sizes. New evidence had been introduced which did not reflect the way in which customers behaved when engaging in the purchase of a funeral. The evidence did not support a finding of an adverse effect on competition of this scale.

## Changes in the market

4. Co-op had seen significant changes in the market over recent years: increased price sensitivity, customers responding to quality changes, increased availability and uptake of low-cost funerals, increased use of online, increasing secularisation and personalisation.
5. Co-op believed that the funerals market showed many of the characteristics of a well-functioning market including declining market shares, which indicated switching between funeral directors, and declining profitability for the largest providers. In addition, prices had decreased in real terms since 2016, professional fees had fallen at a real compound average growth rate between 2016 and 2018, and, low-cost options had also had a significant impact on the market. Co-op could also clearly see evidence of substitution particularly between the simple funeral and other funeral types. Overall levels of customer satisfaction also pointed to a well-functioning market. Co-op noted that the take-up rate of simple funerals had been higher amongst the three larger providers than the smaller funeral directors.
6. Co-op had seen competition increasing, particularly from independents, new entrants and low-cost providers, from both physical premises and online. For Co-op, these changes had led to product innovation, a higher uptake of low-cost funerals, a lower market share, falling prices and ultimately declining profitability. COVID-19 had accelerated these changes further and the pandemic had had a profound impact on the sector. Over the last six months Co-op had had to adapt to significant levels of operational disruption and a greater number of funerals. It had seen changes in the way clients interacted with its business, in particular a significant shift away from face-to-face contact to the use of telephones and online. It had incurred significant staff costs and had also had to provide additional mortuary capacity in key urban areas and obtain supplies of professional PPE to protect its staff. Its clients had been forced to choose direct cremations and simple funerals due to severe restrictions. Co-op had witnessed how distressing this had been for its clients who had not been able to have the funeral they wanted, or which they believed a loved one had desired. During the COVID-19 pandemic around [X] per cent of Co-op's funerals were direct cremation or simple services. The uptake of additional services during this time had been modest at [X] per cent for flowers [X] per cent for memorial items. The current profitability forecast for Co-op was [X].

7. Co-op said that whereas funeral prices had decreased in recent years, disbursement costs had continued to increase at a steady pace and now comprised around 36 per cent of funeral costs. Co-op said that the business had become considered uncompetitive by clients and that its turnaround plan seeks to address that.
8. Co-op noted that the CMA had highlighted fundamental issues in the crematoria market, but these were not addressed in any way. Crematoria fees were a large part of customer expenditure and crematoria fees had continued to rise. The cost of public cremation had risen by a third since 2010. The rationale for price regulation was stronger for crematoria than for funeral directors, but was not proposed. Co-op was also surprised that no supply side remedies, for example, changes to the planning regime, had been proposed and it believed that the CMA should consider making recommendations on changes to the planning regime to lower barriers to entry and increase capacity in the UK.

## **Detriment**

9. Co-op stated that the CMA's calculation of customer detriment was materially wrong and misleading, noting that the headline figures are likely to be taken out of context and misread. The calculation was based on opaque methodology that appears fundamentally flawed and highly likely to significantly overstate the level of detriment.

## **Consumer vulnerability**

10. Co-op acknowledged that a number of customers are vulnerable in this market and that affects their ability to make choices; however, grief and bereavement do not necessarily mean that all clients are vulnerable. Vulnerability is far more nuanced than the CMA had made out. Co-op is increasingly building in checks for vulnerable customers and affordability. Co-op said that the CMA had not gathered and tested the necessary evidence on vulnerability over the course of its inquiry.

## **Daily Telegraph allegations**

11. Co-op said that the allegations made in the Daily Telegraph were unrepresentative of its business which was characterised by high levels of customer satisfaction and extremely low volumes of complaints relating to sales practices. Co-op does not have a culture of applying pressure selling techniques but has a culture of offering choice. Co-op said that it does not incentivise the sale of any individual product items in its at-need business.

Subject to quality, client satisfaction and volume measures being met, colleagues can qualify to receive a small sum for the sale of funeral plans. Co-op said that it monitored and measured performance to celebrate good performance, but also to flag poor performance. If it had fallen below its own professional standards it would apologise unreservedly and take the appropriate action. In light of the allegations, Co-op will be conducting a cultural diagnostic across the business.

## **New products**

12. Co-op said that it had recently launched two new products: firstly a good value essentials funeral with limited flexibility but which still offered a dignified low-cost option supported by the Co-op's high standards of care of the deceased; and secondly, a new tailored funeral that allowed clients to personalise a funeral to assist in response to the restrictions brought about by COVID-19. Its Direct Cremation proposition remains unchanged. Each option was priced and offered to clients transparently. To support the launch, Co-op had conducted a comprehensive staff training programme. This framework gave Co-op greater oversight and control at the point of sale. All options were priced and transparently presented to clients.
13. Co-op was also launching a new and improved website with simpler and clearer client journeys. This would provide more price transparency and would be followed by a funeral configurator in November which would enable clients to build a bespoke and personalised funeral online.

## **Remedies**

### ***Quality and price transparency***

14. Co-op supported a quality regime with clear standards and effective monitoring and enforcement, including sanctions and a full statutory regulator.
15. It was also supportive of, and welcomed, a carefully crafted package of remedies improving transparency and in sales practices. Co-op considered that pricing information should be provided in a consistent format to enable like-for-like comparisons. The collection and dissemination of quality information was of equal importance, so that customers could make informed choices given the inter-dimensional relationship between service, quality and price. Co-op believed that remedies targeted towards improving transparency, addressing sales practices and risk to quality could effectively and proportionately address the CMA's competition concerns without the need to resort to any type of price regulation. Co-op believed that a package of quality and transparency remedies should be implemented without delay and then

assessed before contemplating further price regulation which should be a measure of last resort. Co-op considered that consultation on the details of a quality regime should commence quickly by the appropriate people.

16. Co-op said remedies to address price transparency would be positive for the sector. However, care needed to be taken to ensure that consumers had the right information to be able to compare on a like-for-like basis and make an informed decision. It was concerned that an unconscious bias would be introduced by identifying the most commonly sold package. Care also needed to be taken not to stifle innovation. Funeral directors should therefore be allowed to frame their offers as they considered commercially appropriate, but also provide the same information in a form that allowed direct comparison. Co-op said that was its preferred option as this would give flexibility.
17. In terms of providing a standardised price list, Co-op considered the key point was not to overload the customer with disaggregated price information. Standardised price lists should also reference quality. Co-op was firmly of the view that price information, which should be consistent for all operators, should be prominently displayed in the funeral home and published online. Co-op did not think it was possible to define a standard package because customers wanted to personalise funerals.

#### ***Referral arrangements/payments etc and donations***

18. Co-op understood the concerns others may have regarding arrangements of payments to incentivise institutions to refer customers to funeral directors. However, it considered that its contract with St Christopher's Hospice, which had not commenced and which is now terminated, would have brought significant benefits to those persons diagnosed with a terminal illness. It was not an arrangement that would have prevented anybody from going to their funeral director of choice – it was about “making sure there was open engaged conversations for those who were on the pathway to death”. The terms of the contract and the money to be donated under it were to be made completely transparent at the outset.
19. Co-op said that the number of deaths in England and Wales involving a hospice was around six per cent and so its contract with St Christopher's Hospice would not have been a huge revenue stream. By comparison the number of deaths involving a coroner, which employed removals contracts, stood at around 46 per cent. Co-op has other strategic priorities which would take far bigger precedence than such relationships, therefore, Co-op was relatively relaxed about the proposed remedy.

20. With regard to donations, Co-op asked the CMA to consider whether there should be a published de-minimis level on donations, and queried how the CMA intended to distinguish between volunteering and freely giving one's time when considered what needs to be declared.

### ***Monitoring and reporting***

21. Co-op did not object in principle to monitoring or the provision of data, but its stated preference, as the UK entered a second wave of COVID-19, was not to have the burden of reporting at this time. It noted that the information the CMA was seeking only related to prices and volumes and queried how this would inform good decision making if there was an absence of information on customer and quality outcomes. The monitoring regime would not provide useful evidence for any future MIR and care needed to be taken that the data required was not disproportionate. Monitoring on price and volumes alone risked distorting behaviours and compromising the focus on care.
22. Co-op noted that the CMA appeared to be adopting a two-tier approach for the reporting of financial data, by exempting operators with less than 10 branches, which meant that a large proportion of funeral directors would not be subject to reporting. It believed this would distort the CMA's view of the market. Determining operator size by the number of branches would not accurately capture the most significant operators as a small number of branches might provide high funeral volumes, and, this would also exclude those operating largely online.

### ***Price regulation***

23. Co-op did not consider that the evidence in the PDR supported the need for price regulation, which was an onerous remedy, and believed that substantial evidence had been ignored. It noted that price controls were not used anywhere in the world in the funerals industry. There was significant potential for unintended consequences if the CMA sought to pursue price regulation such as incentives to strip out costs to drive prices down. Quality and service would undoubtedly be compromised leading to a low-quality conveyor belt industry with compromised levels of care.
24. According to Co-op, the CMA's view that funeral services were interchangeable commodities disregarded the value of care and quality, and this had led it to anticipate the need for price remedies. This view was premature and failed to recognise a market that was increasingly competitive with shifting consumer behaviour. It also failed to recognise that, if applied well, non-price remedies would further improve competition.