Appendix D – The role of intermediaries in the process of choosing a funeral director

1. We have examined the extent to which certain circumstances of a person's death – whether the death was expected, where the death occurred, the actions of intermediaries (in particular, care homes, hospices and hospitals, and the involvement of the coroner) – may influence the choice of funeral director.

2. This appendix is organised as follows:

   (a) We summarise our understanding of how some key circumstances of a person's death can affect the time available for, and nature of, the choice of funeral director;

   (b) we examine the roles which may be played by care homes, nursing homes, hospices and hospitals in end of life care and planning, and the extent to which this may have a bearing on the choice of funeral director;

   (c) we then consider whether competition may be adversely affected through the involvement of care homes, hospices, hospitals and by any formal or informal arrangements they may have with funeral directors; and

   (d) we end with an assessment of how competition may be affected by the involvement of coroners (or, the Procurator Fiscal in Scotland).

Circumstances of a death

3. The circumstances of a death can affect the process of choosing a funeral director. One Large funeral director told us 'The context of a death can have a great bearing on client behaviour, beginning with whether it was a sudden or anticipated death.'

Whether a death is expected

4. The death of a loved one is often expected. One in three respondents (33%) to a 2018 survey carried out [✂] for a Large funeral director [✂] said they had recently organised a funeral for someone whose death was *sudden and completely unexpected*. However, 40% said the death had followed a short period of illness and 27% that it had followed an extended period of illness (ie, for two-thirds of respondents, the death had been to some extent anticipated).

5. In cases where a death is expected, a choice of funeral director may have been made before death and potentially communicated to a care provider. We

have been told by funeral directors that, for people in a care environment, end-of-life plans may be in place which might include details of a preferred funeral director.[1] Care providers have also told us this, although the percentage of residents that have stated a preferred funeral director on admission appears to vary across care homes.[2]

6. It does not necessarily follow that unless a death is sudden and/or unexpected, people will plan the funeral ahead of the death or make their choice of funeral director based on an objective assessment: the immediate period preceding a death can be very busy, distressing, and stressful, making it difficult for people to make choices, as illustrated by two funeral customers we spoke to, who had gone through this process. One customer explained that 'We moved [my father] into a care facility, so it was not a hospice, but they did have other people with ongoing and quite demanding treatments, so we moved him in there, so he was literally just round the corner from me, but he was undergoing treatment still, so, although he sort of deteriorated quite rapidly, unfortunately he died without a will or having any funeral plans arranged. We hadn't even discussed anything further than I knew that he would want to be cremated because my mum and my brother were, but when everything actually happened, it was sooner than we expected. We were planning to get everything done in the upcoming weeks, but it happened slightly quicker than anticipated. So, we didn't really have anything in place or even had the appropriate conversation with him.'

7. Another customer described her experience as follows: 'At the time of my husband's death I had been sat beside his bed for eight days, I had had very little sleep and I did not know if I was coming or going. Plus, I then ended up with bronchitis and pharyngitis […] The reason we had not made any funeral arrangements was because my husband had signed a body donation with an organisation who welched on it at the last minute. When he died, they said "No", because he had Alzheimer's.'

8. Amongst respondents to the Market Investigation consumer survey who had compared funeral directors, most had not done so until after the death of the deceased person.[3]

9. When death is unexpected, this will also tend to make the process of choosing a funeral director harder. For example, at its hearing, the National

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[1] See paragraph 41 and corresponding footnotes.
[2] See paragraph 28 and 29.
[3] CMA Market Investigation consumer survey, Tables 85-87, Question FD14. Base: all who compared funeral directors (n=48). Just six respondents said they had first compared the services of two or more funeral directors prior to the death.

Society of Allied and Independent Funeral Directors (SAIF) told us that 'In the case where a sudden death had occurred, particularly a death of a young person, because of the level of shock it may be several days before the family is in a position to make any decisions. In such circumstances, they might seek advice from friends, family or local GP for guidance'.[4] This is further illustrated by case studies from our Market Study consumer research where immediate relatives of the deceased were too shocked to make decisions, instead relying on other relatives to do so.[5]

The place of death

10. When the death occurs in a care home (around 22% of deaths) or a hospice (6% of deaths),[6] an immediate removal of the deceased by a funeral director is usually necessary, because these settings may have limited or no body storage facilities. The Human Tissue Authority (HTA) told us that it thought it unlikely that care homes would have refrigerated storage for bodies, and hospices may have limited or no refrigerated body storage facilities.[7]

11. The need for a funeral director to remove the deceased as soon as possible was also discussed at a round table with 'progressive' funeral directors, who told us that some care homes and hospices do not have any mortuary facilities.[8] A large funeral director ([✂]) told us that 'in the event of someone passing away at home or at a nursing home or hospice, customers normally instruct a funeral director (which could be a funeral director that is recommended, that they are aware of, or that is the closest) quickly to take the deceased into their care. This is done prior to making any formal arrangements for the funeral… [this approach] reflects the need for a decision to be taken quickly on the removal of a body where the death takes place at

[4] Summary of hearing with SAIF, 18 July 2019.
[5] Market Study consumer research, case studies 3 and 5.
[6] Public Health England Palliative and End of Life Care Profiles for 2018. Public Health England's Classification of place of death guide defines a 'care home' as including residential and nursing homes, run privately, by the NHS or by local authorities; 'hospice' includes many charitably funded independent hospices, such as Sue Ryder homes and Marie Curie Centres, and specialist palliative care centres. The guide notes that some hospices are located within NHS hospitals, which may not be clearly identified on the death certificate, in such circumstances the place of death is usually recorded as 'hospital'. Also, hospices increasingly work in the community, but information on who was caring for the patient at the end of their life is not recorded on the death certificate. The guide states that, as a result, mortality statistics underestimate the true number of people who receive hospice care at the end of their life.
[7] The HTA is the regulator for human tissue and organs. At the end of 2019, approximately 180 mortuaries were licensed by the HTA, including public and hospital mortuaries. The HTA pointed out that in its usage, the term 'mortuary' usually refers to a place in which post mortem examinations are carried out, as distinct from somewhere that is only a 'body store', and that funeral directors may use the term mortuary in reference to the area where embalming appears on the premises.
[8] Roundtable with 'progressive' funeral directors, 21 August 2019.

home or in a nursing home or hospice due to the lack of appropriate facilities to store the deceased'.

12. We have heard from customers that if the choice of funeral director has not already been made before the death, the decision can be very time-pressured when the death takes place in a hospice or care home.[9] One funeral director who took over arranging a funeral from another funeral director told us that its customer, who had not even considered choosing a funeral director when her husband died in a hospice, had been told by the hospice at 1.30pm that he needed to 'be gone' by 5pm. The customer ended up making a knee-jerk decision when the hospice called at 5pm, and subsequently changed funeral director as her experience with the initial funeral director was poor. The CMA's Market Study consumer research found that a group of respondents were under time pressure for practical reasons if the deceased's body needed to be moved quickly (typically if they died at home or in a care home).[10]

13. As noted above, even where the decision about a funeral director is made before death, customers may be doing so at a time which is nonetheless very difficult. For example, the decision might be made at the point of moving into a care home. The CMA found in its Care Homes market study that choosing a care home is often an extremely difficult decision for people to make, often made at a point in their lives when they are particularly vulnerable. The Residential Care Home market study consumer research found that there was often very little prior consideration of care needs and options by prospective residents, their representatives and their families. Frequently, decisions on care are faced for the first time following a sudden illness, injury or loss of a carer meaning they are often made with urgency under extremely distressing circumstances.[11] Under such circumstances, it may be difficult for people to shop around for a funeral director, and unlikely that they do so.

14. Similarly, when a death takes place at home (around 24% of deaths),[12] although there is no requirement for immediate removal,[13] this situation is likely to place pressure on the family to contact a funeral director for removal[14] (unless the removal is carried out by a funeral director on behalf of the coroner in cases where they are involved). We heard from one funeral customer whose relative died at home during a hospital home visit. The customer was told by the visiting 'medical professional' that she was able to

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[9] As described by certain funeral customers we spoke to.
[10] Market Study consumer research, paragraph 4.3.6.
[11] CMA Care Homes market study, November 2017.
[12] Public Health England Palliative and End of Life Care Profiles for 2018.
[13] See eg advice from Cancer Research.
[14] As the findings from paragraph 4.3.6 of our Market Study consumer research indicate.

certify death and that the body had to be moved immediately, and the customer therefore felt under pressure to choose a funeral director with insufficient time to make an informed choice.

15. When the death occurs in a hospital (around 45% of deaths)[15] or other care setting with body storage facilities or a mortuary (the HTA noted that some hospitals have body storage facilities and do not have mortuaries), the bereaved are likely to usually have a little more time to consider their choice of funeral director since we understand that most hospitals have body storage facilities and/or mortuaries. SAIF confirmed that if a death occurred in hospital, the deceased would be cared for in the hospital mortuary until the body was moved to the funeral director of the family's choice.[16] A large funeral director ([✂]) told us 'For deaths in hospital, there is arguably more time for families to make their decision in relation to which funeral director to use, since hospitals generally have mortuaries in order to store the deceased.'[17]

16. However, some hospitals can experience capacity issues at their body storage facilities/mortuary, or have no facility at all, and in this case may instruct a funeral director to store the deceased on their behalf. The HTA said that its understanding is that mortuaries are more likely to operate at or near capacity during winter periods, and at this time bodies could also be stored for longer periods. It carried out a study on capacity in HTA-licensed mortuaries in 2015.[18] The study noted that in their contingency arrangements, establishments may use temporary storage including transfer to funeral directors. It noted that 60% of mortuaries had to invoke their contingency arrangements at least once during the year and that around one-quarter of establishments may transfer bodies to funeral directors for contingency storage.

Arrangements with care providers and coroners' contracts

17. In addition to comments about time pressures, we also received some submissions about, and heard criticisms in relation to, formal and informal arrangements that specific funeral directors have with care providers (including care homes, nursing homes,[19] hospices and hospitals), arguing that

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[15] Public Health England Palliative and End of Life Care Profiles for 2018.
[16] Summary of hearing with SAIF, 18 July 2019.
[17] The very small number and size of contracts that the large funeral directors have for providing mortuary facilities to hospitals (as summarised in the later section on the role of care homes hospices and hospitals) is also consistent with this.
[18] Storage capacity and contingency arrangements in mortuaries: guidance for designated individuals in HTA-licensed establishments, November 2015.
[19] References in this appendix to 'care homes' also includes 'nursing homes'.

these may be harming competition between funeral directors. Similarly, we have received submissions about the effect of police/coroner contracts.[20]

18. When the coroner is involved after a death – for example, if the death is sudden and unexplained[21] – families are likely to have additional time to choose a funeral director.[22] In its hearing, SAIF indicated that the time taken by coroners' offices to investigate cases is increasing, although it noted that this does not preclude funeral arrangements being made during that period.[23] In 2019, 40% of all registered deaths (in England and Wales) were reported to the coroner, and post-mortems were carried out in 39% of those cases.[24]

19. The broader role which care homes, hospices and hospitals may have in influencing customers' choice of funeral director, the role of formal and informal arrangements with care providers, and the role of coroners are discussed in more detail below.

Role of care homes, hospices and hospitals

20. In our Issues Statement we indicated that we would consider the role of intermediaries, such as care homes, hospices and hospitals, in influencing customers' choices.[25]

21. Given consumers' position of vulnerability, and the fact that some consumers may need to make decisions under considerable time pressure when a death occurs in a care home or hospice, staff in these settings can be influential in consumers' decision making.[26] More generally, the advice of care homes and hospices as a trusted advisor is something that families may value deeply.

22. We have sought to test how influential such staff are in consumers' decision-making, including through discussions with care provider representatives (some of whom sought further information from their wider membership), individuals with experience and/or expertise in the care sector, questions asked in the Market Investigation consumer survey, and interviews with people who contacted us about their experience of arranging a funeral. We

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[20] Co-op response to CMA interim report, 4 January 2019, paragraph 2.9; Fairer Finance response to the CMA's statement of scope for its funeral market study (page 2); Dignity response to the CMA's issues statement, paragraph 5.25.
[21] https://www.gov.uk/after-a-death/when-a-death-is-reported-to-a-coroner.
[22] See eg information on the Dignity website.
[23] SAIF noted that the risk in making arrangements is they might need to be cancelled if the delays are extended.
[24] Ministry of Justice's annual coroner statistics report.
[25] CMA Funeral directors and crematoria services market investigation – statement of issues (April 2019), paragraph 76.
[26] CMA Funerals market study: final report and decision on a market investigation reference (paragraph 3.9); see also Market Study consumer research, case study 6.

have also sought evidence on the existence of formal and informal referral arrangements between care providers and funeral directors through a call for evidence aimed at funeral directors (the 'call for evidence') and other means,[27] in light of concerns expressed to us about the existence of such arrangements.

Care providers' perspective

23. We have spoken to a number of care provider organisations to better understand the nature of information relating to funeral choices that is discussed with, or provided to, people in their care (or their relatives), in the later stages of people's lives. The picture that emerges is that information/support to assist people in choosing a funeral director and arranging a funeral is not routinely disseminated across all types of care provider, and where it is provided, it is not in a standardised form. That said, discussions about funeral arrangements and choice of funeral director may take place in the context of formal end of life care planning processes/discussions.

24. We have heard from these organisations that, in general, care providers are unlikely to recommend particular funeral directors, although they may provide a list of funeral directors. The National Care Forum (NCF) sent a survey of questions supplied by the CMA to its members. It received 21 responses (a 20% response rate). One question asked: 'Does any information you provide include recommendations for particular funeral directors?'. The NCF told us that 'Overwhelmingly, respondents said they do not include recommendations for funeral directors.'[28] Another care provider representative suggested that care homes are unlikely to become involved in choosing a funeral director as a result of a clamp-down by the Care Quality Commission (CQC) on care providers getting involved in the financial or legal affairs of residents, with involvement in choosing a funeral director seen as part of that 'no-go' area.

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[27] While noting that informal arrangements in particular are very difficult to evidence (for example because they may relate to specific staff in a particular care home), during the Market Investigation we have: (a) Carried out a call for evidence targeted at funeral directors asking about such arrangements ('funeral directors call for evidence'), which was publicised by SAIF, the NAFD and The Good Funeral Guide to their respective members. In response we received comments relating to around 42 (alleged) formal and informal arrangements. The number shown relates to the number of arrangements implied by the responses received, rather than the number of responses received, although some responses mentioned the existence of such arrangements in general, rather than naming specific care providers – these responses have been counted only once in the total shown. (b) Received submissions from funeral directors about informal arrangements between funeral directors and care providers (in addition to the responses to the call for evidence); (c) Asked questions in information requests and hearings to the large funeral directors and trade associations.

[28] The minority that did were small, localised providers in rural areas with only 2 or 3 funeral directors nearby.

Role of the Care Quality Commission in end of life care services

25. The CQC inspects and rates end of life care services in hospitals, community health services and hospices, and assesses quality of end of life care as part of its approach in other settings, including care homes and GP practices. Amongst many other factors, the CQC's frameworks seek to address how people who may be approaching the end of their lives are supported to make informed choices about their care; they also examine whether people's decisions are documented and delivered through personalised advance care plans.[29] The frameworks do not, however, focus specifically on supporting people with funeral planning or making funeral choices.

26. The CQC's sector-specific guidance for hospices for adults[30] assesses whether those close to the patient are offered information on how to access bereavement support; whether staff have an understanding of the practical arrangements needed after the death of a family member; and whether people's spiritual, religious, psychological, emotional and social needs are taken into account. It also assesses whether the service provider ensures that care after death includes preparing the body for transfer to the mortuary or funeral director's premises.

Care homes, nursing homes and hospices

27. An individual with experience and expertise in the care sector told us that most of the conversations care home staff have with people about funerals or about their funeral plans arise in the context of end of life care and care plan arrangements, and that such conversations are likely to take place in the first couple of weeks after someone is admitted to a care home. The individual noted that the discussions tend to be about the general sort of funeral people would like to have rather than particular funeral directors. She also suggested that care home staff are unlikely to initiate discussions about specific funeral directors. She did not believe that care home staff give recommendations on the choice of funeral director, as this is a personal matter – in her experience, they do not feel comfortable recommending a particular funeral director.

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[29] See CQC's assessment framework *Key lines of enquiry, prompts and ratings characteristics for healthcare care services*. This assesses how acute and community health service patients who may be approaching the end of their life are supported to make informed choices about their care. The CQC's *Acute core service – end of life care* assesses what emotional support and information is provided to those close to people who use services and whether people are given the opportunity to create an advance care plan. This is underpinned by the *Bereavement Care Service Standards*, a professional standard developed by Cruse and the Bereavement Services Association, which provides a practical tool against which to benchmark what services such as hospitals and hospices offer. The standards set the criteria for what clients, carers etc can expect from bereavement care services.

[30] *Sector specific guidance for hospices for adults*.

28. Twenty members of the NCF indicated the percentage of current residents that stated a preferred funeral director when admitted to one of their care homes (it should be noted that some care providers which were surveyed provide services for vulnerable people of working age, as well as older people). The results are set out in Table 1 below.

Table 1: Percentage of residents that stated a preferred funeral director

Number of residents	*What is the percentage (%) of current residents that stated their preferred funeral director when admitted?*
55	0
Respondent skipped question	Respondent skipped question
41	5
126	10
50	10
970	15
41	20
4	25
48	25
110	25
74	25
58	30
51	30
44	38
58	60
66	75
23	75
47	90
58	95
57	98
47	100

29. A care home provider and member of The Registered Nursing Home Association (RNHA) indicated that a pre-admission assessment question is asked to all new residents of his homes to find out whether they have a pre-paid funeral plan, or a preferred funeral director - he suggested that most do. If an answer is not recorded at that stage, the question is asked at the start of the end of life planning stage, or at 'best interest' assessment stage. There is generally no other involvement in terms of helping the resident choose a funeral director or asking about their choice of funeral director. The representative we spoke to noted that care home operators do not want to be seen to favour any particular funeral director, although they may sometimes provide a list of local providers. Another care home said that 50% of its residents had indicated a preferred funeral director.

30. Similarly, Hospice UK (HUK) suggested that the nature of any advice given by its members is likely to be of a general nature, rather than a recommendation for a particular funeral director, noting that they are cautious about any preferential relationships. HUK also pointed out that 80% of hospice care is in people's homes, therefore, the majority of funeral arrangements will be made from people's homes.

31. The National Care Association told us that providers do not get involved in arranging funerals, as that is not their remit. In exceptional circumstances, if a provider is asked about a funeral director in the locality, they may know of directors in the locality to which they may signpost people.

32. The NCF told us that there may be occasions after the death of a resident when there is no family or other person to arrange the funeral, in which case the care home will decide what to do in terms of arranging the funeral.

33. The RNHA said that a care home might use a different funeral director to the one identified by the resident or their relatives if someone dies at the weekend, and the body is to be moved out of the area to the preferred funeral director (often to the area the resident previously lived). In particular, especially in rural areas, there can be issues with getting a second GP to certify the death, meaning the body will need to be kept locally until certification. This can generate an additional fee to be paid to the first funeral director.

34. Despite the general views expressed above, it seems clear that information provision may vary widely at a local level. For example, HUK noted that the activities of hospices are very decentralised, with 220 charitable hospice providers across the UK. It also said that some hospices may produce information at a local level and may partner with Citizens Advice.

Hospitals

35. We understand from NHS England that all hospitals (in England) have bereavement offices which provide information and support to bereaved families and relatives. The information is developed at Trust level, rather than centrally. Bereavement booklets/guides are routinely produced by palliative and end of life teams, and include information on issues such as death registration, arranging tissue donations and contacts for bereavement offices. It is standard practice to include advertisements for a range of local funeral directors in those booklets. We are aware of examples of advertisements by funeral directors and other organisations being included within such booklets in return for funeral directors contributing to the cost of printing and publication of the booklet, or collectively funding the booklets, along with examples of Trusts stating in their booklets that the Trust does not endorse any of the organisations included.

36. An independent consultant in palliative and end of life care was of the view that hospitals (and hospices) do not normally recommend a particular funeral

director.[31] Another specialist consultant explained that hospitals provide bereavement leaflets and that those typically contain advertisements for funeral directors, but this is open to all funeral directors and is transparent.

Other submissions

37. The Individual Funeral Company stated that 'some funeral directors buy benches for hospices or work at a lunch club in a local church one day a week. If someone was to ask a hospice or Vicar which funeral director they should use, these funeral directors would be at the front of their minds.' It goes on to note that 'as GPs, Coroners, hospice staff and care home staff are in positions of trust, their recommendation could be tainted if a funeral director has made a time or financial contribution to them.'[32]

38. Funeral Guide submitted that 'With the majority of deaths in the UK taking place in hospitals, care homes and hospices, an unquantifiable number of bereaved families are currently being directed to a particular funeral director by individual staff members at these institutions. Such recommendations are not impartial and are motivated by the depth of the relationship between the funeral director and the staff member'.[33]

Consumer survey and other evidence

39. The Funerals Market Investigation consumer survey found that only 4% of all respondents found out about the funeral director they used from care home, nursing home, hospice or hospital staff.[34] It also found that only 1% of all respondents reported that a recommendation by such staff was the most important factor when choosing a funeral director.[35]

40. Evidence from Dignity and Co-op points to more frequent involvement from such staff: [✂]% of Dignity customers in 2018 got contact details for their funeral director from a nursing home, hospital or doctor, and Co-op research suggests that, across the market, for around [✂]% of customers the main reason for their funeral director choice is a recommendation from a care home, hospice, hospital or doctor.[36] The importance that the large funeral

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[31] Additionally, the NAFD said that 'Hospice/hospital bereavement offices … have different policies. Typically, they will point to a bereavement guide with advertising for local funeral businesses in and suggest contacting three to get indicative prices and an idea of one that is preferred. Where officers feel strongly about one business or another, they may offer an opinion if one is sought.'
[32] Response: The Independent Funeral Company.
[33] Response: Funeral Guide.
[34] Market Investigation consumer survey, additional analysis of data at Question FD4.
[35] Market Investigation consumer survey, additional analysis of data at Question FD6a.
[36] For Co-op, this figure is around [✂]%.

directors may place on attempting to gain recommendations from or business via intermediaries is discussed at paragraph 67.

41. As noted by care provider representatives above, care homes and hospices will usually have in place end-of-life plans which may include details of the family's preferred funeral director, and this view is supported by information provided by NAFD, SAIF and Funeral Partners.

(a) The NAFD said: 'When a patient is admitted to a nursing home or they begin to receive palliative care, best practice is to ask them to nominate a funeral director.'

(b) SAIF told us: 'If you have someone who is clearly coming towards the end of their natural life and they are in a professional care environment, whether that be a hospital, a hospice, or a nursing home, the chances are - and this would be led by the organisations that monitor those standards of care - that that organisation will have clarity, because they will ask the family up front, "If anything happens, who should we ring?" The family will then have a prompt to think about this and come up with an answer, so that it is on the patient's care documentation that if anything happens, the deceased will go to X.'

(c) Funeral Partners said that 'in general terms and across the business nationally, deaths which occur in hospital, or a private residence, would normally have first contact self-initiated directly by the customer. By contrast, deaths which occur in a nursing home, hospice or care facility would tend to be initiated by an intermediary (care facility staff acting on the recorded instructions of the family as to their chosen funeral director to be notified in the case of their loved one's death).' It also told us 'it is normal practice for all care facilities to take instruction from the family at the commencement of care as to what to do in the case of the person in care passing away'.

42. In our Market Investigation consumer survey, 8% of respondents overall said that staff at the care home (4%), nursing home (3%) or hospice (1%) contacted the funeral director about collecting the body of the deceased from where they died,[37] although this was usually done following consultation with someone known to the deceased.[38] However, in three cases, an unrelated

[37] Market Investigation consumer survey, Tables 115-117, Question FD18. 43% of respondents contacted the funeral director themselves and 36% said a relative of the deceased had made contact.
[38] CMA Market Investigation consumer survey, additional analysis of data at Questions FD18, FD19a and FD19b.

third party[39] had decided which funeral director to contact without any reference to someone the deceased knew.

43. Information submitted by Co-op, Dignity and Funeral Partners also indicates that care homes and hospices will sometimes make the first contact with a funeral director.

(a) Co-op estimated that in approximately [✂]% of cases the deceased comes into their care via formal or informal arrangements with intermediaries.

(b) Dignity said that 'Generally the first contact with the funeral director is initiated by the customer but on occasions a third party (such as a care home) may request that the funeral director brings a deceased into care.'

(c) Funeral Partners provided analysis showing that for a sample of 100 at-need funerals, 59% of first contact was self-initiated by the customer, and 41% of first contact was initiated by an intermediary (20% by a nursing home, 21% by a hospice). This is based on the most recent 100 funerals at a [✂] branch (which was chosen at random).

44. In addition to what we heard from care providers (see paragraphs 27 to 34) we have also heard from funeral directors that some care providers will often have their own preferred local funeral director that they will call in instances where:

(a) The family's preferred funeral director is 'too far' for the doctor to travel to issue the death certificate (a process which may not take place for several days). As noted above, the NAFD stated that GP practices prefer that their deceased patients are not moved too far away if they will be required for certification purposes. We have also been told that 'there is often a delay of a few days before the doctor issuing the cause of death certificate sees the deceased and subsequently there is a need for the body to be kept in appropriate climate controlled facilities. The body is therefore held at the premises of the funeral director to allow the doctors to conveniently complete their legal duties and issue certification in the locality of the place of death.'

(b) The family's wishes are not known, and/or they cannot be contacted. One large funeral director ([✂]) stated that there were many informal arrangements in the sector to deal with such occurrences (and more widely around transfer of the deceased), while another one ([✂]) said that

[39] Care/nursing home staff: n=2; coroner/Procurator Fiscal: n=1.

it was very rare that it would collect and take a deceased into its care without any contact from the deceased's family. This would happen on the rare occasion where someone dies in a nursing home, care home or hospice and where the family of the deceased, or the deceased themselves, have not (prior to death) specified a chosen funeral director, and where, following death, the care facility were unable to contact the family to take instruction, and where the care home do not have facilities to hold the deceased.'

45. Some of the submissions we received indicate that some care homes, nursing homes and hospices may be selecting or organising the transfer of the deceased to the care home's preferred provider in all or most cases, rather than in only the circumstances outlined in paragraph 44. For example, a funeral director submitted that, 'In recent years it has become a common scenario for some community hospitals, hospices and care homes to have either formal or informal arrangements with a local funeral director to remove a deceased patient or resident to their premises at the point of death.' Another funeral director told us that 'It is lucky if we even get a call, because most nursing homes will just call their set funeral director; they will have a relationship with the local funeral director, for example, and they will just call them and not really give the family any choice, it will just be "This is our funeral director that we use in this situation"'.

46. In relation to hospitals, it seems that the hospital does not usually contact a funeral director on behalf of the family[40] – the deceased is instead usually moved to the hospital storage facility or mortuary. However, our call for evidence highlighted two means by which a hospital may be influential in customers' choice of funeral directors.

(a) One funeral director who responded to our call for evidence identified a hospital where 'The bereavement officer guides families towards a particular firm.' As noted above, hospital bereavement services can be influential by providing a list of funeral directors;[41] and

(b) In some cases hospitals do not have mortuaries or facilities to store the deceased (or have limited body storage space – see paragraph 16) and

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[40] In our Market Investigation consumer survey 3% said that staff at the hospital contacted the funeral director about collecting the body of the deceased from where they died. Market Investigation consumer survey, Tables 115-117, Question FD18. Base: all UK adults age 18+ involved in making at need burial or cremation funeral arrangements since J/A/S/O 2017 who used a funeral director (n=279).

[41] Additionally, a large funeral director ([✂]) told us that 'When a death occurs in hospital, the family will have access to a dedicated person such as a patients' affairs officer or bereavement officer, who will advise what may need to be done in relation to administrative matters such as registering a death and making funeral arrangements. Hospitals tend to have a policy of having a list of local funeral directors (either alphabetically or by location) and may advise the family to call more than one funeral director before deciding on a provider, and they may advise the family to ask the funeral director about costs.'

formally contract with a specific funeral director to provide this service or have informal arrangements with funeral directors to do so.

47. Co-op has submitted that evidence from the CMA consumer survey indicated that the evidence of consumers being locked-in to a funeral director at an early stage is not strong, stating that:

> In our view, the finding from the CMA consumer survey that 11% of customers switched after the deceased was collected, in circumstances where a large proportion of customers have contacted a funeral director with a clear reason to prefer them, with only 2% choosing a funeral director because the deceased is already in their care suggests that barriers to switching are low in practice.[42]

48. However, we find that the results from the consumer survey indicate that the propensity for consumers to switch is low. Eight in ten consumers (81%) said that the funeral director who collected the body of the deceased also made all the other arrangements for the funeral.[43] Nearly all these respondents (96%) had also not considered switching at any point, usually because they were already using the funeral director they wanted to use or did not feel it was necessary.[44]

49. We have therefore considered the potential impact of arrangements between funeral directors and care providers on the choice of funeral director by consumers.

Evidence

50. Below we set out the available evidence of how often arrangements between funeral directors and care providers occur, and the evidence regarding whether these arrangements affect whether consumers shop around, as well as:

(a) the extent to which the deceased may be moved to a funeral director of the care home's choice, rather than the family's;

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[42] Response: Co-op Intermediaries, paragraph 2.2.
[43] Market Investigation consumer survey, Tables 139-141, Question FD21. Base: all UK adults age 18+ involved in making at need burial or cremation funeral arrangements since J/A/S/O 2017 who used a funeral director (n=279).
[44] Market Investigation consumer survey, Tables 142-144, Question FD22a. Base: all where the same funeral director collected the body of the deceased and made the other arrangements for the funeral (n=227).

(b) the extent to which funeral directors impose costs or make it more difficult for consumers to switch or shop around;

(c) our views on whether and when care homes might tend to choose funeral directors with higher costs or lower quality;

(d) the prevalence and possible harms from hospital arrangements for the removal of the deceased;

(e) the importance funeral directors place on attempting to gain recommendations from intermediary organisations; and

(f) the existence of referral fees and inducements.

51. Responses to our call for evidence, and submissions we received, highlight possible informal arrangements at around 19 care homes and 12 hospices across the country. However, some respondents have made generalised comments about these arrangements being common – for example, one funeral director told us 'most nursing homes will just call their set funeral director.' The NAFD said that 'Anecdotally these arrangements are very common. Firm evidence is hard to find, as most are informal agreements rather than formal contracts. Given the number of deaths that occur in these locations, it is possible that the influence is significant but quantifying this is virtually impossible.' The Modern Funeral noted that it is 'difficult to track back-handers'.[45] Others have suggested informal arrangements are less prevalent than in the past (see paragraph 85).

52. We have also sought to gather evidence from Co-op, Dignity, and Funeral Partners. They have told us that they have only a limited number of informal arrangements with organisations, including care homes and/or hospices.[46]

The extent to which the deceased may be moved to a funeral director of the care home's choice

53. On the question of whether care providers are recommending or choosing a particular funeral director of their choice, we have limited evidence, although some of the responses to our call for evidence suggest that some care homes may be doing so, for example, by recommending families to instruct specific

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[45] Response: The Modern Funeral.

[46] For the year 2018, Co-op indicated it has [✂] informal arrangements with care homes and hospices; Co-op indicated that it carried out [✂] removals in connection with these arrangements, gaining at least [✂] funerals from them. Dignity listed [✂] informal arrangements with a variety of organisations (eg hospitals, medical schools, maternity unit, local authorities). This includes [✂] hospices which account for approximately [✂] removals between the two. Funeral Partners identified [✂] informal contracts 'where there has been no formal bidding process, or a formal contract has not been issued'. These cover local authorities, coroners, hospices and hospitals.

funeral directors to carry out the removal as a matter of course. For example, one respondent told us that a care home 'tells bereaved families that their designated funeral directors is [✂]. Which is a very expensive [✂] funeral home'. A funeral customer we spoke to told us that she and her husband, who died in a care home, had not chosen a funeral director when he died. She explained that when he died, the care home said: 'We use [✂] [funeral directors]' and advised her to 'go home get some sleep and we will sort it all out'. Also, as set out in paragraph 45, some of the submissions we received suggested that some care homes, nursing homes and hospices may be recommending or organising transfer of the deceased to the care home's preferred provider in all or most cases.

54. On the other hand, information from care provider representatives, the submissions from the large funeral directors set out above, and the Market Investigation consumer survey evidence suggest that such practices are not common.

The extent to which funeral directors impose costs or make it more difficult for consumers to switch or shop around

55. The extent to which these arrangements may change the probability with which customers shop around, or lead to them choosing a different funeral director than they would have done is not clear. The NAFD said that 'Consumers don't tend to change funeral director, so early contact with the bereaved family increases the likelihood that they will stay with that funeral director. Once a funeral director has been instructed with a collection, many families feel that it would be complicated to change.'

56. Co-op provided information which indicated that for those (relatively few) informal arrangements where Co-op was able to estimate the number of funerals gained as a result, the number of funerals gained was around [✂]% of the number of removals.[47] Dignity and Funeral Partners told us that they did not systematically record the number of funerals gained as a result of such arrangements.

57. Our Market Investigation consumer survey asked whether the funeral director that collected the body of the deceased person (either after it was released by the coroner/Procurator Fiscal or from where they had died) had also made all the other arrangements for the funeral. The majority of respondents, 81%, said that the same funeral director did make all the other arrangements.[48] Of those, 74% said the reason they decided not to use a different funeral director

[47] Informal arrangements with hospices, hospitals and care homes only.
[48] Market Investigation consumer survey, Tables 139-141, Question FD21.

business was because they were already using the funeral director they wanted to use, 22% said they did not feel any need to/it wasn't necessary, 4% did not want to delay the funeral arrangements, 2% could not face/did not want the additional emotional upheaval, 1% had no idea this was something you could do, 1% did not want to incur additional costs and 1% indicated these were the wishes of the deceased.[49]

58. Some of the comments in reply to our funeral directors call for evidence implied that customers may feel uncomfortable changing funeral director or may feel obliged to use the initial funeral director.

Financial costs to the consumer

59. In relation to the issue of financial costs to the consumer as a result of such removals, Co-op told us 'we would only charge the family if we were asked to arrange the funeral…If the first contact is from a hospice or nursing home then no charge is levied at all'. A submission we received commented that [✂].

60. Dignity indicated that where it has collected a body from a care home, and the family chooses another funeral director, Dignity will not impose any charges on the family, but will charge that funeral director for collecting the deceased and bringing them into care. Dignity noted that 'It does not always manage to recover its fees in these circumstances as this largely depends on the practice and attitude of the new funeral director.'

61. Funeral Partners noted that it has a charge 'that we apply to third party funeral directors who request we collect the deceased and bring them into our care on their behalf. The standard charge for this service is £[✂]. This charge could also be applied if we had been asked by a third party, such as a nursing home, to bring a deceased into our care if the family subsequently chose to use another funeral director to carry out the funeral.' Funeral Partners also said that 'Local arrangements with specific third-party funeral directors may exist where a different fee as agreed with the third-party funeral director.'

62. We received a submission from a funeral director stating that a hospice in [✂] 'has an arrangement with the local [✂] & local [✂] to alternate to take the deceased into their care. Apparently both firms 'profess' to do this as a service to the community. I was asked to organise a funeral for a lady that had been taken into [✂] care – they then proceeded to tell me their charge would be £[✂]. This means the family would be paying twice for their relative to be collected, although they hadn't given permission for this to happen.' The

[49] Market Investigation consumer survey, Tables 145-147, Question FD22b.

implication here is that, even though the funeral director may be charged, the cost may ultimately be passed onto the family.

Whether care homes choose funeral directors with higher costs or lower quality

63. Turning to the question of whether care homes might tend to choose funeral directors with higher costs or lower quality, we first note that some funeral directors and the trade bodies have suggested that care home and hospice staff have good experience and evidence about funeral director quality (such as the respectfulness of staff) and that their recommendations may therefore be helpful (and by implication pro-competitive). Linked to this, SAIF told us that some funeral directors hold open days for care home staff to advertise their quality. Funeral Partners notes that it does not believe 'conflicts of interest arise through general community engagement' if there are 'no financial commissions or inducements on either side'. In relation to at-need funerals, 'Funeral Partners does not have a policy of offering commission on any product or service and it does not encourage 'upselling''.[50]

64. However, we have also heard concerns from funeral directors that some care homes have arrangements with expensive funeral directors, denying families the opportunity to choose 'better value' funeral directors.

Hospital arrangements for the removal of the deceased

65. In relation to the prevalence and possible harms from hospital arrangements for the removal of the deceased, evidence from Co-op, and Funeral Partners suggests that such arrangements are not common. Dignity clarified that in its experience, it is rare for hospitals to make first contact with a funeral director.

66. However, responses to our call for evidence and a small number of direct submissions did include comments which argued that harm arises from the arrangements that exist, because:

    (a) Families are unwilling to move the deceased, perhaps in part because they think there will be extra costs, or they 'feel obliged';

    (b) The funeral director carrying out the hospital service (ie removal and mortuary storage) sometimes contacts the family, giving them an opportunity to offer their funeral directing service. We have also heard criticism of occasions where the funeral director instructed by the hospital has made contact with the bereaved to offer their services to carry out the

[50] Response: Funeral Partners, page 15.

entire funeral, with one respondent arguing that the contracted funeral director 'shouldn't be aware of personal details of the deceased's relatives to enable them to make contact. This is a severe breach of GDPR rules.'[51] In contrast, some of the responses (from funeral directors carrying out these contracts) say that they do not approach the next of kin, or that they make clear to the customer that they can choose a different funeral director. All the Largest funeral directors highlighted restrictions on their ability to advertise that they are the hospital contractors or to contact the bereaved.

The importance of recommendations/endorsements from intermediaries

67. In our view, internal documents from Co-op, Funeral Partners and Dignity highlight the importance they place on attempting to gain recommendations from or business via intermediary organisations.

68. For example, Dignity has told us that [✂]. An example of this is the 'ACP document', discussed below, which Dignity has stated was prepared for marketing purposes.

69. A May 2019 Co-op discussion document records: 'Research indicates that healthcare providers (hospitals, care homes and hospices) are the locations most likely to have the opportunity to influence at need selection. Within these, hospices and care homes are responsive to outreach and are willing to recommend funeral providers they see as good quality. [✂]. A 2018 Co-op internal document also notes that [✂]. And a 2015 internal document states [✂].

70. Co-op had stated that its strategic approach 'has been to move away from material "donations" or support, to a relationship-based approach. Building strong bonds with our Network so we can ensure greater understanding of our role, developing their knowledge and continuation of care'.

71. In 2018 Dignity developed an [✂] (the 'ACP document') to be offered to NHS Trusts, hospitals, care homes and bereavement services free of charge, in exchange for that funeral director signposting its pre-need and at-need funeral services to palliative care patients.

72. The draft ACP document appears to be prepared by an NHS Trust, carrying the NHS trust logo on the front page. [✂].

[51] These comments were made in relation to hospitals, hospices and care homes, although other evidence [✂] suggests that formal contracts with care homes are not common.

73. Samples of a draft [✂] were provided by Dignity to nine NHS Trusts and three care home groups. However, Dignity has told us that none of these organisations decided to adopt the ACP document and it was never published.

74. A palliative care consultant at one Trust said that handing out the document was not about giving people choice and the Trust decided against adopting the draft. One reason why the consultant refused to do so was that they 'did not have a sense of quality control.' The consultant noted that the people they care for in the area are generally poor and should have the maximum choice when choosing their funeral options and the consultant did not have that assurance with the proposed system.'

75. Dignity has submitted that:

> The ACP document provided useful factual information to consumers with terminal illnesses including information on powers of attorney, making a will and planning a funeral. Dignity's initial proposal was that Dignity would fund this publication in return for an advert for its funeral services. However, in principle, the intermediaries could have decided that they would prefer the document to be jointly funded by a number of local funeral directors in return for advertisements in the document with the intermediary being free to note that it does not endorse any of the organisations included.
>
> This type of funding arrangement is referred to as being common in NHS Trusts at paragraph 37 of the paper, without any adverse inference being drawn about the publication having a distorting effect on the competitive process. Care providers are responsible for supporting patients in documenting their advance care plan and initiative like the ACP document raise awareness and encourages funeral planning. As noted in its previous submissions to the CMA, Trusts can and do develop their own such documents with advertising space. A number of NHS entities also produce guides on what to do when someone passes away and sells advertising space in these to local funeral directors.[52]

76. However, as discussed in paragraph 36, we have received submissions which indicate that 'it is standard practice to include advertisements for a range of local funeral directors in these booklets' and 'hospitals provide bereavement

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[52] Response: Dignity Funerals.

leaflets and these typically contain advertisements for funeral directors, but this is open to all funeral directors and is transparent'. We also consider, based on our review of the ACP document and the evidence we received from one of the care providers involved and Dignity, that it is likely that this was intended to be used to channel palliative care patients to one funeral director (ie Dignity) only. Therefore, our position remains that such arrangements as the one described above may be expected to have a distorting effect on customers' choices.

Existence of referral fees and inducements

77. We have received a small number of submissions that funeral directors have provided local care providers with inducements in order to win business. One submission stated: 'On the subject of backhanders, I heard that an FD provided the hospice in [✂] with £5000 of electronic goodies for their nurses' Xmas raffle' and we were told about a donation in kind having been made to a care home where a relative worked which, it was claimed, amounted to a conflict of interest.

78. Co-op told us that it does not generally make direct or indirect payments or donations to third party intermediaries in exchange for referrals, although it noted that heads of terms had been agreed with [✂] Hospice in connection with an 'innovative preferred partnership arrangement' which would involve (transparent[53]) direct referral payments for at-need funerals (and funeral plans) where the hospice facilitates an introduction to Co-op and a service is taken up.[54] The planned arrangement would have seen Co-op establish its own funeral director's office inside the Hospice 'to manage referral generations'. Co-op's Business Case for the partnership states that, 'From this relationship we expect to increase volumes [of at-need funerals] by a minimum of [✂] per annum by year 3'. Evidence from Co-op's internal emails shows that it was envisaged that more such agreements like the one with [✂] Hospice would be sought in future and that there would be substantial financial benefits arising to the hospice for promoting the model. Co-op envisaged the arrangement as [✂].[55] Co-op's Business Case set out how the partnership would provide [✂]. One specific mechanism to achieve this, as set out in the draft contract between Co-op and [✂], was for [✂] to receive additional commission payments (on top of those arising from funeral

[53] An internal document discusses [✂].
[54] The proposal was exclusive in so far as it anticipated that the hospice would not introduce its patients to Co-op's competitors, though families would remain free to use their preferred funeral director.
[55] Similarly, Co-op's Strategy and Transformation Director referred to the [✂] partnership as [✂].

referrals) of between £[✂] and £[✂] for each hospice to which it successfully promoted the partnership model.

79. Co-op has told us that, 'Partnership discussions with [✂] reached an advanced stage but the services were never provided. The partnership was put on hold so that it could be considered fully in light of the findings of the CMA's investigation. Both parties have since mutually agreed to cease discussions about the partnership.' It also noted that, [✂], pending the CMA's final Report.'

80. Co-op submitted that 'transparent relationships between funeral directors and intermediaries such as care homes, hospices and hospitals are of benefit to consumers, enabling them to start discussions early around end of life planning.' Therefore, it submitted that 'empowering intermediaries to support and assist consumers (within a clear set of transparent standardised parameters), can materially benefit and mitigate the extent to which emotional vulnerability affects the way that they purchase funeral services'.[56]

81. Co-op stated that it intended its relationship with [✂] to involve the hospice's employees sign-posting patients and their families to Co-op 'whilst making it clear that there is no obligation to purchase any products or services from Co-op'.[57]

82. [✂].

83. The level of these proposed referral fees suggests that if the agreement had been implemented there could have been be strong incentives on [✂] to discuss Co-op services with a view to a referral and not to encourage people to look elsewhere. These incentives, coupled with the de facto exclusive nature of the agreement, could have given the impression that the intermediary specifically endorsed the funeral director in question over and above any others. Indeed, evidence from Co-op's internal documents suggests that it anticipated being 'the official funeralcare provider, which means we will handle what we hope will be the majority of funerals for patients passing away while under the care of the hospice, unless a family specifically wishes to use another funeral care provider.' The draft contract stipulates that [✂]. Given the strong incentives the intermediary would have to make referrals, the de facto exclusive nature of the agreement, and considering the vulnerable position of people and their families in such

[56] Response: Co-op Intermediaries, paragraphs 2.4 – 2.6.
[57] The Business Case states that the 'In-patient unit the nursing staff, welfare team, spiritual care, volunteers will introduce the partnership and signpost patients and their families'.

situations we find that such arrangements could have a significant distorting effect on customers' choices.

84. Dignity told us that 'it does not have a practice of making payments or donations to care homes, nursing homes, hospices, or other organisations that may require removal/transport of the deceased. However, regional or area managers/individual branches may choose to make small charitable donations to these organisations.'[58]

85. Rowland Brothers Funeral Directors told us that, while payments for referrals used to happen, the introduction of the Bribery Act 2010 curtailed these practices. Rowland Brothers said: 'Certainly various large organisations had to stop that, otherwise they would find themselves in jail for a few years. It does not stop them buying nice beds and nice TVs and running bingo evenings and things like that for the residents.'

Clause 9.2 of the NAFD Code of Practice

86. Clause 9.2 of the NAFD's Code of Practice stated: 'Members shall not solicit funeral instructions, nor employ any person to do so, nor shall they offer or give reward for recommendation.' In February 2019, the NAFD removed clause 9.2 from its Code of Practice.[59] [60]

87. In its November 2018 Interim report, the CMA found that the interpretation by some funeral directors of this clause, and the slowness of the NAFD to clarify its position on the interpretation of the clause, risked distorting the market for comparison websites (since it appeared to deter some funeral directors from joining comparison websites).[61] While the CMA did not ask the NAFD to remove clause 9.2 from its Code of Practice, in March 2019 the NAFD advised the CMA that it had decided to permanently remove clause 9.2 from its Code of Practice. The NAFD explained that 'Following our meeting with you in December 2018, at which you raised concerns about the potential for paragraph 9.2 to cause market disruption, the NAFD Executive Committee voted to extend the partial suspension of paragraph 9.2 and to remove it from our Code of Practice entirely.'

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[58] Dignity continues: 'For example, donations by branches in the North East region totalled around £[✂] in 2018, with individual donations values of around £[✂] per organisation. By contrast, branches in the Anglia and Scotland regions [✂] in 2018.'
[59] https://nafd.org.uk/wp-content/uploads/2019/10/Code-of-Practice-leaflet-amended-Feb-2019.pdf
[60] The NAFD's Funeral Director Code (2020) states the following two expected outcomes under 'Publicity and the ethical procurement of business': O(5.3) 'You do not make unsolicited approaches in person, by telephone or through a third-party agent to members of the public in order to publicise your business (eg through selling funeral plans) or another business;', and O(5.4). 'Clients are informed of any financial or other interest which an introducer has in referring the client to you;'.
[61] Funerals market study interim report and consultation, 29 November 2019.

88. Co-op told us that 'until recently [any donations made to a nursing home or hospice as a direct or indirect result of a transfer] would have been in contradiction to section 9 of the NAFD Code of Practice.' Dignity submitted that 'the solicitation of funerals from third parties is prohibited by the NAFD Code of Practice, and as a member of the NAFD, Dignity does not engage in such practice…Dignity is not aware of this being an issue in the industry.'

89. It is possible that the existence of Clause 9.2 up until recently (and a similar, extant clause in SAIF's Code of Practice[62]) explains the relatively limited number of specific referral arrangements involving fees or other inducements that we are aware of. We consider that it is possible that the removal of Clause 9.2 could result in new arrangements being instigated by funeral directors. Co-op has submitted that it does not think that 'the evidence to support this is strong'.[63] However, because the clause was removed just over a year and a half ago and generally there is little evidence of informal arrangements, we believe that despite the lack of evidence there is still scope for the removal of Clause 9.2 to result in new arrangements.

Summary of key findings

90. Overall, the evidence we have examined so far indicates that:

(a) In general, where care homes or hospices need to arrange for a funeral director to collect the deceased, the funeral director is chosen by the family. This view is based on what we have been told by care provider representative organisations, Large funeral directors and the trade associations, and is supported by our Market Investigation consumer survey responses.[64]

(b) There is evidence – from our funeral directors call for evidence and from submissions made directly to us – of cases of the deceased being moved from care homes or hospices either without families' consent or with families finding it difficult to assert their own preferences, with this perhaps not always being justified by practical reasons.

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[62] SAIF's Code of Practice 2020, clause 2.2, states 'Members shall not solicit or offer any inducement of any nature for instructions for funeral services or any other associated services (ie: pre-paid funeral plans, memorials etc); nor shall they engage or reward any other party - whether an individual, a partnership, a company or other formal or informal association or group - to do so on their behalf.'
[63] Response: Co-op Intermediaries paragraphs 2.3.
[64] The totality of the evidence is also consistent with the Market Study consumer survey evidence which found that only small proportions of consumers chose a funeral director on the basis of a recommendation or because the deceased was already in their care.

(c) Dignity, Co-op[65] and Funeral Partners have told us that they have very few informal arrangements with care providers.

(d) In relation to hospitals, the evidence – which is from the Largest funeral directors and a small number of direct submissions, and our call for evidence – suggests that arrangements for removal from hospitals to a funeral director's premises are affecting very small numbers of families at the moment, but it is possible that the impact on affected customers could be significant.[66] It is also possible that these arrangements might become more common in future if hospital mortuary facilities become more capacity constrained, or are closed.[67]

(e) There is evidence that some staff in care homes, hospices and hospitals provide recommendations to their residents and the relatives of their residents, although our survey evidence indicates that this is not common practice, and this is supported by the evidence we received from care providers. Evidence from the Largest funeral directors indicates that they carry out marketing activity designed to build relationships with or generate business via care providers. We consider that such care providers are seen as influential in driving the choice of funeral director. Although one of the main trade association's code of practice has in the past included restrictions on payments, donations or other inducements to third party intermediaries for recommendations, such restrictions have been removed from its code of practice, and we have seen evidence that some of the larger suppliers have sought to deepen their relationships with intermediaries in a way which may have a significant impact on customers' choices.

Police and coroners

91. When a death is sudden or unexplained it must be reported to the coroner in England, Wales and Northern Ireland. The Scottish equivalent to the coroner is the Procurator Fiscal. Coroners are judicial office holders. They are

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[65] Co-op noted that its submission on this point is based on the information they were able to collate, which may not be complete.
[66] See, for example, paragraph 66.
[67] The HTA's 2015 survey on capacity in HTA licensed establishments considered future pressures on storage capacity (from paragraph 72). It states that 'whilst some establishments did not need to use contingency arrangements last winter, subsequent changes indicate that they may need to in future years. Significant changes within NHS Trusts, such as the reconfiguration or expansion of services, and within local authorities, such as the closure of a public mortuary, may impact other establishments in the area. This may lead to bodies having to be moved to alternative storage facilities…In addition, the demographic of the United Kingdom is changing and the requirement for longer-term storage of bodies may increase across the country in coming years, as migrant populations increase and there are more cases where bodies require repatriation or families need to be located.'

completely independent and are appointed directly by the Crown. A coroner has qualifications and substantial experience as a lawyer, a doctor, or sometimes both. Coroners are members of the judiciary and are not employed by the local authority. However, the local authority does fund the coroner's service. Coroners have the power to have a body brought into the public mortuary and keep it there while they carry out investigations. It is in this context that local authorities (and in some cases the police) have ongoing contracts or informal arrangements and ad-hoc agreements with funeral directors to provide services to the coroner or the Procurator Fiscal.[68] The distinction between formal and informal is not always easy as there is a spectrum in how these contracts are agreed (see Annex 1). We consider that the distinction between informal/formal is not important in the context of the summary of evidence below.

92. Coroners investigate deaths that have been reported to them if they think that:

- The death was violent or unnatural;
- the cause of death is unknown; or,
- the person died in prison police custody or another type of state detention.

When a death is reported to a coroner, they:

- Decide whether an investigation is needed; and (if it is)
- investigate to establish the identity of the person who has died; how, when and where they died; and any information they need to register the death; and
- use information discovered during the investigation to help prevent other deaths.

93. In total, 40% of all registered deaths in England and Wales were reported to the coroner in 2019 according to the Ministry of Justice's annual coroner statistics report.[69] Of these, 39% required a post-mortem, corresponding to 16% of all registered deaths in England and Wales in 2018. At present we understand that a funeral director on behalf of the coroner is generally involved in providing transport to the coroner's mortuary in cases where a post-mortem is required. Contracts can also be to transport and store the deceased at the funeral director's own mortuary in the event that: the death

[68] https://secure.manchester.gov.uk/info/626/coroners/5530/general_information_about_the_coroners_service
[69] Coroners Statistics 2019 (England and Wales).

was on the weekend, the coroner's mortuary is over-capacity or the death is not deemed suspicious but initial investigations are still ongoing. Some coroners also have separately tendered contracts that provide transport from the coroner's mortuary to the funeral director's storage facilities. We received some complaints about the operation of coroners' contracts.

94. We sought information on the coroners' contracts of 134 local authorities as part of the questionnaires we had sent them on the operation of their crematoria. Annex 1 provides an overview of the local authorities' processes for contracting; it also assesses the relationships between: (i) the cost per removal and the number of bids received; (ii) the contract size and the number of bids; and (iii) the contract size (average removals per year) and the cost per removal. We also asked Dignity, Co-op and Funeral Partners for information on their formal/informal coroners' contracts.

95. We have grouped evidence regarding coroners' contracts into three broad categories:

(a) Evidence regarding how local authorities have procured these services;

(b) evidence regarding the nature of the consumer's contact with the funeral director (eg during the removal or storage of the deceased); and

(c) evidence regarding whether funeral directors provide coroners' contracts below cost in order to gain access to customers, and whether this is linked to higher prices for these customers.

Submissions received

96. Of the 134 local authorities that have responded to our information requests, 103 answered the questions about coroners' contracts[70] and 68 of these indicated some kind of contract/procedure for coroner removals either managed by the local authority or somebody else,[71] 39 of which gave some detail on how the contract/procedure for coroner removals functioned. The average annual removals covered by coroner contracts from the local authority responses are 853 per year.

[70] 29 local authorities responded to the questions in relation to Public Health Funerals with 1 further response being too ambiguous to determine if they were referring to Coroner contracts or Public Health Funerals.
[71] Contracts were mentioned to be managed by other Councils, directly by the Coroner's office and one by the hospital.

97. In addition to the local authorities that we did not contact (because they do not run crematoria),[72] there is some uncertainty around the 31 local authorities we contacted who did not provide any response to our questions on coroners' contracts. It is therefore not clear whether or how these local authorities procure funeral director services with regard to coroner investigations. However, in the context of other responses it is likely that it is either handled directly by the coroner's office, local police[73] or a different Council. It is also possible (although seems unlikely) that some local authorities do have coroner's contracts but misunderstood our questions.

98. In response to our information requests, Dignity, Co-op and Funeral Partners reported a total of [✂] formal coroner contracts and [✂] informal contracts. Co-op provided some annual removal figures for its coroner contracts and these ranged from [✂] to [✂] removals per year.

Evidence regarding how local authorities have procured these services

99. More than three-quarters of the local authorities that responded with numerical data[74] have substantial coroner's contracts (ie involving 100+ deaths per year). Most coroners' contracts have multiple funeral director bidders, but the bids of winning funeral directors vary widely.

100. Around two-thirds of local authorities that gave details on how the contract functioned had either tendered or used a quotation exercise (see Annex 1). However, there is evidence that on some occasions these services are not being competitively procured. For instance, two local authorities did not have a contract or a clear process for procuring coroner removal services and one council uses a historic contract.[75] This appeared to be a more common occurrence in the past with several local authorities mentioning using historic contracts before their most recent tenders. Also, four contracts that were tendered did not attract a single bidder (and a further five only received one bid). It is not clear why these circumstances arise or whether these local authorities end up paying higher fees.

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[72] Given that we were already contacting a large number of local authorities as part of our crematoria work, we did not consider it necessary to separately contact other local authorities about their coroner contracts. There are 408 principal councils in the UK, if district councils and Scottish Councils are removed (as we understand from the responses we have received that a high proportion of them do not manage coroner contracts) this suggests that the remaining number of councils not contacted by us, who might run coroner contracts, is 184. We therefore consider that we have received a sufficient number of responses to enable us to reach views on the theories of harm that we have identified.

[73] Dignity told us: "The police will phone the nearest available FD from an approved list of FDs in their local area – this is known as a 'Police Contract' call."

[74] 26 out of 39 gave numerical data.

[75] One local authority told us: "[✂] has a longstanding arrangement with a funeral director for the removal of bodies". It noted that it has not market tested the current contract since it falls below procurement thresholds and the company it uses provides excellent service.

101. Four out of the 39 are handled by the police using a rota system, one uses an approved contact list and two have set up an in-house removal service. It is unclear if using these alternative methods provide better outcomes overall, but some of these stemmed from a lack of interest from funeral directors in the tendered contract or from an unsuccessful tender exercise.

102. The information that we received from Dignity, Co-op and Funeral Partners largely related to formal contracts ([✂] out of [✂]), and the nature of the informal contracts they have relating to coroners is unclear.

Evidence regarding the nature of the consumer's contact with the funeral director

103. In the responses from local authorities that we received, some of them provided contracts that had specific clauses banning solicitation to varying degrees. This does not mean that the remaining local authorities do not have such clauses as there was not a specific question asking them about any restrictions imposed as part of the contract. We were made aware that a clause of this type (ie banning solicitation) may not be being enforced and it is alleged that in one area the contracting funeral director is actively using the contract to gain customers despite being strictly forbidden from doing so.

104. We have received evidence that some funeral directors are engaging in solicitation. The Independent Funeral Company submitted that it has been made aware of a funeral director that, when collecting a person on behalf of the coroner, 'is handing family members a business card and saying "Call this number and we will talk you through everything."'[76] Quaker Social Action noted that 'we too have heard of cases where a funeral director appointed in this way left a glossy brochure with the family, therefore we believe more also needs to be done to enforce these clauses.'[77]

105. In the responses from Dignity, Co-op and Funeral Partners we received greater clarity on non-solicitation clauses. The restrictions included requiring unmarked ambulances and being prohibited to give any contact details.[78] There were also some contracts where the providers did not mention any restrictions. Dignity's response mentioned restrictions for [✂] out of the [✂] formal coroner contracts. The remaining [✂] may also have some solicitation restrictions but this cannot be verified as we do not have the contracts for each of these. Co-op did not respond with details of restrictions for each

[76] Response: The Individual Funeral Company.
[77] Response: Quaker Social Action.
[78] For example, "Removals must be made in unmarked ambulances and staff are prohibited from giving out Dignity's contact details".

contract but gave examples of some non-solicitation clauses. [✂] out of the [✂] formal coroner contracts in Funeral Partners' response mentioned non-solicitation restrictions; the remaining contracts may also have non-solicitation clauses but similarly we do not have the contracts to verify this.

106. We did not obtain any evidence of funeral directors price discriminating against the bereaved customers that have been gained through a coroner's contract.

107. The NAFD submitted that although non-solicitation clauses prohibit funeral directors from promoting their services, they do not, and should not, prevent family members from choosing the funeral director who took their deceased loved one into their care. They stated that many families do this either because they have been impressed by the funeral director's performance or because they don't want to go to the trouble of finding another provider.[79]

Evidence regarding funeral directors providing coroners contracts below cost

108. There is evidence that at least some funeral directors are bidding for coroner's contracts at a price below the costs incurred in delivering them. Our analysis of the pricing information we have obtained from the local authorities shows that:

(a) The typical price for a removal is between £51 and £120.[80] We do not have sufficient specific cost data to estimate what overall proportion of these contracts may have included bids below cost.

(b) We have evidence of below-cost bidding from the three funeral directors who bid £0 to provide the service to the local authority and won the tender. Also, at one local authority, which uses a rota system, the funeral director does not charge the council if it undertakes the funeral. The local authority told us that its rationale was to ensure that the funeral director does not receive payment twice. In Funeral Partners' response, [✂] of their [✂] contracts were provided at [✂] and the remaining three were provided at £[✂]. There was no evidence that any funeral director actually pays the local authority to carry out the service.

109. We sought to understand whether there is evidence that funeral directors engage in below-cost bidding because they are able to get higher conversion rates from providing these services. Co-op did not provide information on its

[79] National Association of Funeral Directors: Response to PDR, page 8.
[80] Interquartile range of the LA responses based on 30 responses with pricing information.

conversion rates (for carrying out the funerals for the families that needed the coroner's services) due to not centrally recording this information. Dignity also does not track this information but gave some estimates of conversion rates, provided by some regional managers, which varied from [✂]% to [✂]%[81] across regions. Funeral Partners provided some estimates of its conversion rate per contract, with the majority being between [✂]% and [✂]%, with one outlier of [✂]%.

110. We received a submission stating that 'coroner removals should not be offered at uncommercial rates to secure funerals [since] these practices distort decision-making and risk pointing customers toward higher priced and/or poor value operators.' [82]

111. To understand whether funeral directors with higher prices are more likely to win coroners' contracts, we have sought to understand whether certain types of funeral directors win these contracts more often. By comparing the responses from local authorities to those from Dignity, Co-op and Funeral Partners, we found 11 out of the 39 local authorities that gave coroners' contract details contract in some capacity with the Largest providers. Therefore, 27 (excluding the local authorities that do not use any funeral director and choose in-house provision) must be provided by other funeral directors. We note that this is broadly in line with the overall proportion of funerals that are served by funeral directors other than the Largest across the UK.

112. One of the smaller funeral directors ([✂]) noted that these contracts disadvantage smaller funeral directors, and that the complex paperwork required is beyond the average smaller funeral director's ability. It also noted that 'the local authority seems focussed on the lowest cost only and appears more comfortable dealing with larger groups.'

Summary of key points

113. The key points arising from the above are:

(a) We have some evidence relating to approximately a third of the coroners in the United Kingdom and their arrangements with funeral directors.

[81] It is unclear if Dignity's figures cover all of the contracts they provided.
[82] Co-op Group Limited in response to the CMA's Statement of Issues paragraph 5.25.

(b) Approximately 41% of deaths involve the coroner. Where the funeral director takes the deceased to the coroner's premises, there may be an opportunity for the funeral director to make contact with the bereaved.

(c) We are aware of some local authorities that received few or no bidders for their contracts, although they have not provided much explanation as to why.

(d) We know that some funerals are performed by the same funeral director who has an arrangement with the coroner, but conversion rates do not appear particularly high, although we only have information on this from Dignity and Funeral Partners based on a fairly small number of contracts.

(e) Some funeral directors bid for coroners' contracts below cost. We do not have evidence on whether customers gained through coroner contracts pay higher prices, but we know that many contracts are won by funeral directors other than the Largest funeral directors.

(f) We understand that many contracts have non-solicitation clauses, but we have received some evidence that such clauses are not always respected or enforced. In other words, despite these non-solicitation clauses, we have evidence of some funeral directors trying to approach the bereaved and encouraging them to employ them for the funeral.

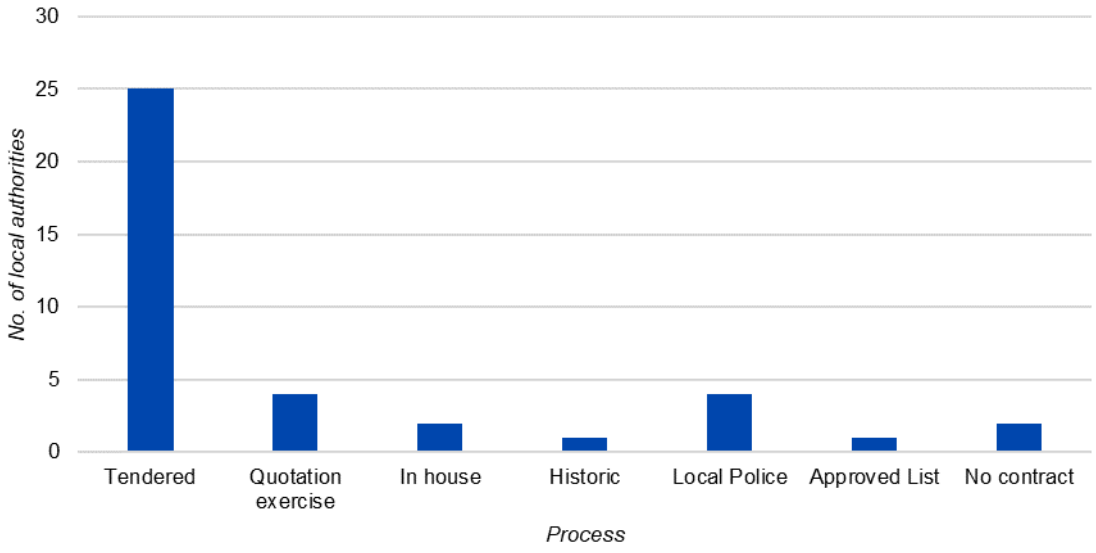
Annex 1: Detail of the coroners' contracts analysis

Summary statistics about the coroner contracts

1. The analysis in this annex is based on local authorities' responses to questions on their coroners' contracts, which were asked as part of the questionnaires we sent them on the operation of their crematoria.

2. Figure 1 sets out the process for the award of coroners' contracts. Twenty-five local authorities that gave details on how the contract functioned had tendered the contract; four used a quotation exercise; two have set up an in-house removal service; one uses a historic contract; four are handled by the police; one uses an approved list; and two local authorities did not have a contract.

Figure 1: Process for contract



Source: CMA analysis

3. All the data where we did not have specific details on how the coroner contract functions was excluded.[83] Therefore, the analysis is based on 39 out of 134 responses that gave specific details (this might be two or three lower as some responses were ambiguous on whether they were referring to coroners' contracts or Public Health Funerals).

[83] Excluded responses relating to: Public Health funerals, no responses and Not applicable/other council responses.

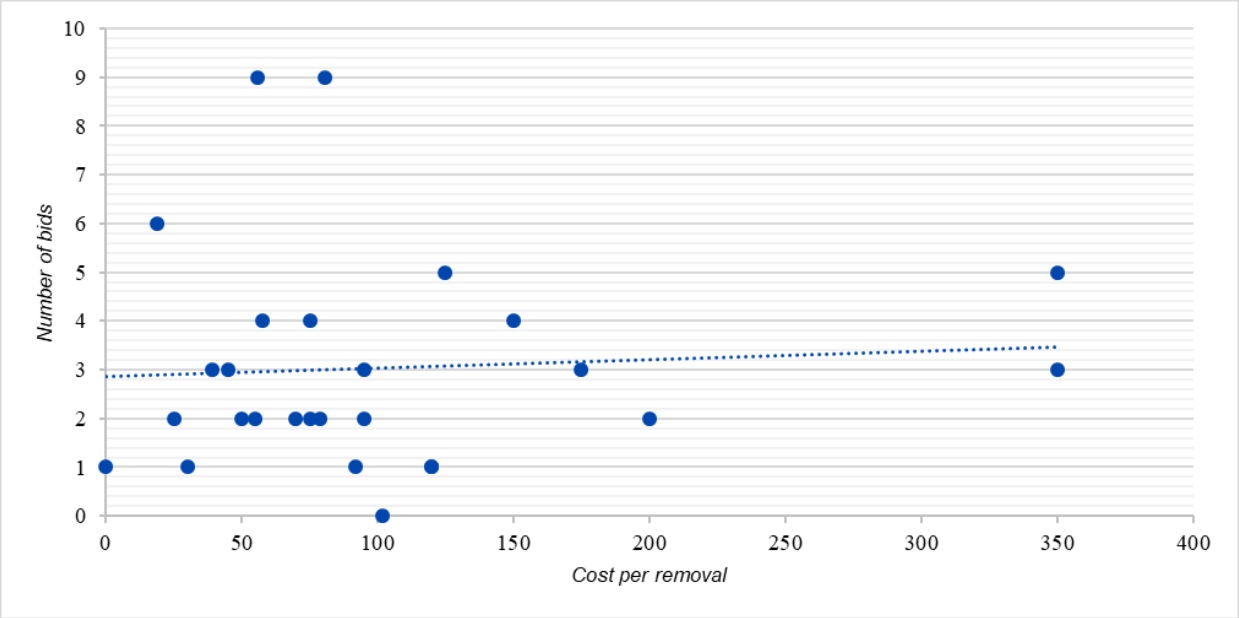
4. The average number of deaths covered per year was 853 per local authority. The 25th percentile was 133 and the 75th percentile 1,217 (based on 26 contracts).[84]

5. The average number of bids was 2.7. The 25th percentile was 1 and the 75th percentile 3.25 (based on 32 contracts).[85]

6. The assumed winning bid average equalled £98.31 per removal. The 25th percentile was £51.25 and the 75th percentile was £120 (based on 30 contracts). Several assumptions were used to reach these figures.[86]

7. As set out in Figure 2, there was no strong correlation between the cost per removal and the number of bids, ie when the number of bids is plotted against the cost per removal, no strong relationship is found.

Figure 2: Cost per removal to number of bids relation



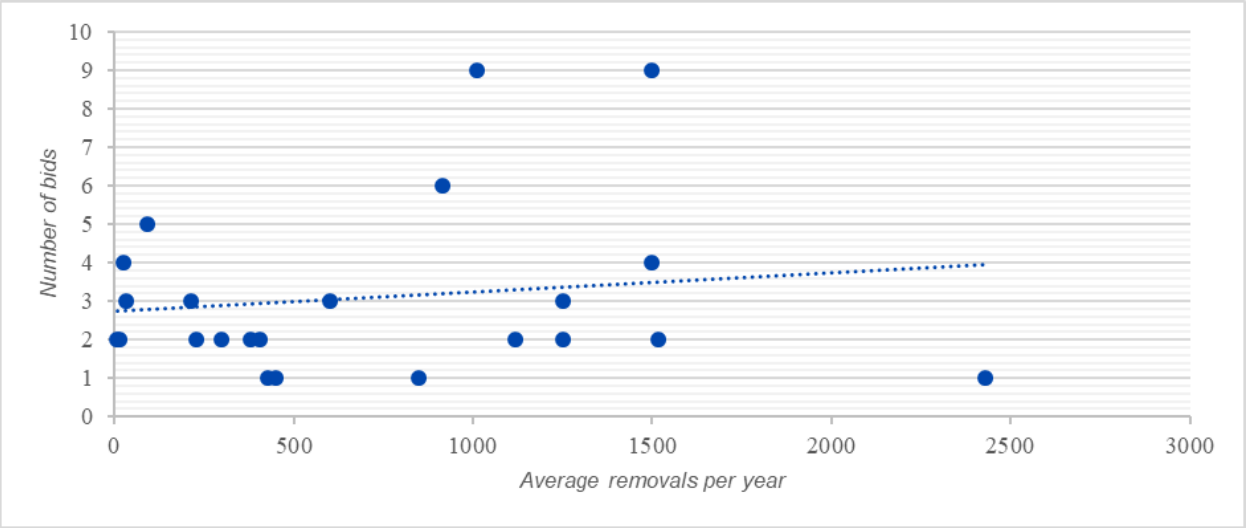
Source: CMA analysis

8. There was no strong correlation between the contract size and the number of bids, as set out in Figure 3, ie when the number of bids is plotted against the

[84] This data was very patchy, and there is an issue of lack of clarity on whether it was a public funeral or coroner contract.
[85] Four local authorities got no bids and used other methods such as in-house or help from the local police.
[86] Assumptions:
a. when it was unclear who won the contract the cheapest bid was used
b. when there were multiple "lots" we took an average
c. if all contracts accepted, we took an average
d. used the normal hours fee (if also gave out of hours cost)
e. when given a range we took the average
f. when no specific price per body (lump sum) we used their estimate per body cost.

contract size (in terms of average removals per year), no strong relationship is found.

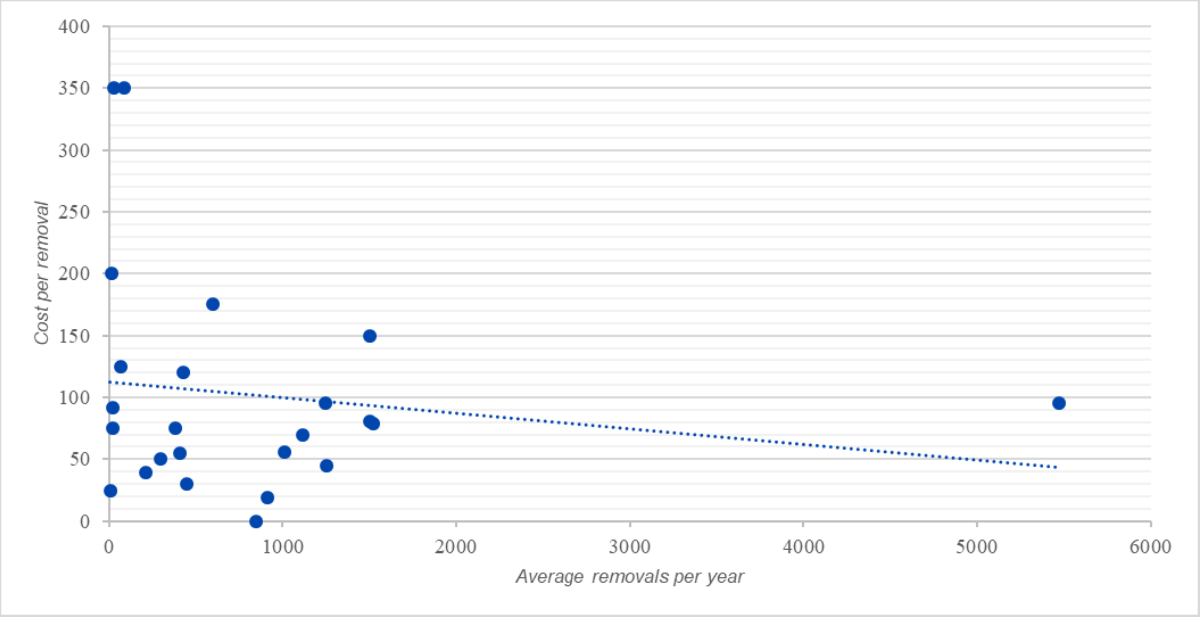
Figure 3: Contract size to number of bids relation



Source: CMA analysis

9. Figure 4 indicates that there was no strong correlation between contract size and cost, ie when the cost per removal is plotted against the contract size, no strong relationship is found.

Figure 4: Contract size to cost relation



Source: CMA analysis