

## Appendix W - Remedies

### Introduction

1. This appendix covers a number of measures that until March 2020 we were considering could form part of a package of measures to address the AECs and resulting customer detriment identified during our investigation, but that we subsequently decided not to pursue further. This is because we considered it was not reasonable and practicable to specify and implement these remedies due to the disruptive impact that the COVID-19 pandemic has had on the funerals sector and on the ability of parties to engage with our market investigation.
2. To address our concerns in relation to the high prices of funeral director and crematoria services, we were considering the following remedies:
  - (a) A complex package of information and transparency remedies.
  - (b) Local authority procurement of funeral director services.
  - (c) Price control regulation of funeral director services at the point of need.
  - (d) Price control regulation of crematoria services.
3. These potential remedies were a combination of enabling measures (ie remedies that operate principally to enable competition by removing obstacles to competition or stimulating actual or potential competition) and measures that seek to control outcomes (ie remedies that control the detrimental effects arising from an AEC).
4. In many markets, we would normally expect that the various information and transparency measures would have the potential to mitigate the AECs and the resulting customer detriment associated with high prices to some degree. This is on the basis that better information and greater transparency could normally be expected to help increase customer awareness and to help customers make better informed decisions. However, we were acutely aware that the impact of such information and transparency measures in this sector was likely to be more limited than is the case in many other sectors, for example, due to the inherently challenging circumstances in which consumers arranging a funeral typically find themselves (see, in particular, Section 3). While we could expect such measures to make some improvements for some customers, we considered that such customers were likely to be in the minority.

5. Consequently, we were mindful of the potential need for measures that control outcomes, for example, in the form of price control regulation. This was particularly the case given the difficult circumstances in which funeral customers make decisions, as well as the high degree of concentration in the supply of crematoria services.
6. Similarly, and given the lack of visibility to customers of the level of quality of care given to the deceased by funeral directors, we were acutely aware that the impact of information and transparency remedies may be limited in their ability to address concerns in relation to the back of house quality of funeral services. Consequently, we were actively considering the establishment of a broad quality regulatory regime for funeral director services.
7. While we recognise the potential benefits of enabling measures, given the nature of the features we have identified, as well as the scale and persistence of the customer detriment we have found, in the absence of the impact of the pandemic on our investigation, we consider that we would have likely consulted on measures that control outcomes, such as in the form of price control regulation. We have not identified a reason to suggest that, as a matter of principle, measures such as those that directly constrain prices could not have formed part of an effective and proportionate package of remedies capable of comprehensively addressing the AECs and resulting detrimental effects we have found.
8. However, as set out in more detail below, our assessment of the measures referred to in paragraphs 2 and 6 above was curtailed by the impact of COVID-19 on the funerals sector and our investigation. Consequently, we decided it was not reasonable and practicable to properly specify and implement these measures as part of a package of remedies within the timeframe of this investigation.
9. We first describe in more detail the impact of COVID-19 on our consideration of these potential remedies in general. We then discuss in more detail some of the important design and implementation considerations associated with these remedies. Finally, we set out our view as to what a broader regulatory regime could entail if the UK government and relevant devolved administrations decide to expand the registration and inspection regime that we are recommending to form a broader regulatory regime.

## **Impact of COVID-19 on the development of remedies**

10. In developing the remedies described in paragraphs 2 and 6 above, we have faced a number of challenges:

- (a) COVID-19 has impacted upon (and may continue to impact in the longer term) the types of services offered to and required by customers and the ability of funeral directors to efficiently meet these changing requirements. Any changes in the nature of customer demand may impact upon the structure of the sector. This means that our findings, and the remedies required to address those findings, will require further consideration once the sector is more stable. It was not possible to assess such medium to longer term effects of the pandemic, if any, on the funerals sector within the statutory timeframe for this investigation.
- (b) The combination of a high number of deaths from pandemic-related factors, and unprecedented restrictions, imposed by government and the devolved administrations in order to combat the pandemic, on the freedom of people to leave home in order to work or associate together, has severely disrupted the normal operation of the funerals market. This has meant that such evidence as is available cannot be relied upon to give the kind of information needed to design certain remedies, and so has limited our ability within the statutory timeframe for this investigation, to design and consult upon a number of remedy options, including price control regulation. Further, we received representations from funeral directors and crematorium operators telling us that they were unlikely to have the capacity to service extensive information requests whilst they continued to deal with the challenges of COVID-19. This is particularly important for the design of price control regulation of funeral director and crematoria services.
- (c) COVID-19 has impacted – and continues to impact - the financial performance and position of funeral directors and crematorium operators. However, we consider the full impact of the pandemic on the financial performance of funeral directors and crematorium operators will not yet be reflected in their financial results. This has significant ramifications for the design and implementation of a price control regulation of funeral director and crematoria. Accordingly, we decided that it would not be practicable for us to design effective and proportionate price control regulation at the current point in time.
- (d) The development of the design of a number of our proposed remedies requires significant engagement with funeral director and crematoria operators, as well as important third parties, such as trade associations, the UK government and devolved administrations and local authorities. Prior to the pandemic, we had extensively engaged not only with funeral directors and private operators of crematoria, but also with government and local authorities. All of these stakeholders have been considerably affected by the pandemic and therefore, many were unable to engage

with us in the months following March 2020 which would have been a critical period for developing the remedies, particularly price control regulation. The ability of parties to engage with us has continued to be impacted throughout the remainder of the investigation, particularly for smaller firms and local authorities. We considered that their ability to engage with us would continue to be significantly hampered until our statutory deadline.

- (a) The development of a number of our proposed remedies, particularly the information and transparency remedies, would be greatly enhanced by engagement with consumers through an extensive programme of research and testing. It would have been extremely challenging to undertake such a broad programme of consumer research and testing under the current restrictions imposed by government in response to the pandemic.

## **Information and transparency remedies**

- 11. In this section, we set out the remedies we identified to improve the availability and transparency of information on funeral services but decided not to pursue due the impact of COVID-19.
- 12. These remedies would have involved:
  - (a) making it easier for customers to assess and compare the prices and services offered by funeral directors and crematorium operators;
  - (b) improving customer awareness of funeral price and service information and funeral planning prior to the point of need;
  - (c) requiring funeral directors to disclose their commercial relationships with coroners; and
  - (d) supporting customers if they choose to switch funeral director.

### ***Online platform***

- 13. If taken forward, this remedy would have required funeral directors and crematorium operators to work with a new or existing body, approved by the CMA, to develop an independent, online platform to support customers in their assessment and comparison of funeral services.

*How the measure could have addressed the AEC and resulting customer detriment*

14. The establishment of an independent, online platform would make it easier for customers to assess and compare the prices and quality of funeral services, and thus encourage some customers to shop around and procure the funeral services that best meet their needs and budget.

*Remedy design issues*

15. The key remedy design issues we considered were:
  - (a) the purpose of the platform;
  - (b) the type of information that should be displayed on the platform; and
  - (c) how the platform should operate to be effective when assisting customers in the assessment and comparison of funeral services.

*Purpose of platform*

16. We received conflicting views on the purpose of the platform. Some parties told us that the platform should be an information tool. Other parties told us that the platform should operate in a similar manner to price comparison websites (PCWs) in another markets, such as energy or insurance.
17. We considered that the platform could have evolved to eventually operate as a PCW, where customers could have compared and assessed providers, configure funeral services to meet their needs and budget and purchase those services if they wished to.
18. In the short to medium term, the platform could have been established to serve as a key information resource for customers prior to or at the point of need. The platform could have provided customers with information about funeral services and providers in their local area, and customers could have used this information to prepare themselves for the arrangement meeting with their chosen funeral director. The platform could also have been used by the funeral director during the course of the arrangement meeting to help customers consider their options and choose the funeral services that best meets their needs and budget. We did not think that the platform, at this stage, would have enabled customers to purchase funeral services – this could have been done via other sales channels offered by their chosen funeral director and/or crematorium operator.
19. To enable the platform to perform this function effectively, we thought that it should have been independent of funeral directors and crematorium

operators; not be run for profit; and be accessible on all devices and operating systems.

20. In the longer term, the platform could have been developed into a fully functional PCW, which would have enabled customers to purchase funeral services.

#### *Information on platform*

21. The platform could have displayed price and service quality information to enable customers to make a comprehensive assessment and comparison of funeral services and providers. The platform could also have provided general advice on funeral planning.
22. We outline below the type of price and service information that we think would have helped customers in selecting the provider and funeral services that best meets their needs and budget.

- *Price information*

23. The platform could have displayed the price information that we intend to require funeral directors and crematorium operators to make available to customers at their premises and on their websites (if available) as part of our remedies package.
24. A number of parties raised concerns regarding the inclusion of third-party costs and crematoria availability on the platform.
25. Inclusion of third-party costs on the platform would have provided customers with, as much of an understanding as possible of, the final price that they are likely to pay for their chosen funeral package. As the short to medium term function of the platform was to act as an information resource to customers, an estimate or range for third party price would have likely been sufficient. In the longer term, when considering the development of the platform into a PCW, actual, real time prices would have likely been necessary to enable customers to complete their purchase on the platform.
26. On crematorium slot availability, a number of parties raised concerns about the challenges of incorporating crematorium slot availability into the platform. In the short to medium term, when such a platform would have been an information resource primarily to inform customers of prices, crematorium slot availability would not have been necessary. Therefore, an approach such as outlined by Dignity, that the platform should display the different prices for different available crematorium slot options could have provided sufficient

information. In time, it would have been necessary for the platform to evolve to provide for real time crematorium slot availability to be incorporated into the platform, if it was to operate as a PCW.

- *Service quality information*

27. The service quality information displayed on the platform could have covered both the front of house and back of house standards of funeral directors and crematorium operators, in order to enable customers to conduct a holistic assessment and comparison of providers.
28. The information could have included:
  - (a) standard of front of house and back of house premises, facilities and equipment;
  - (b) professional competence of staff;
  - (c) care of the bereaved – this would likely reflect customer reviews or comments; and
  - (d) customer service (eg availability of staff/hours of business, parking facilities, public transport links, accessibility (for customers with disabilities) and website and marketing materials).
29. This information could either have been provided to the body responsible for establishing and operating the platform or been input directly into the platform by the provider, subject to verification of the accuracy of the information by the body responsible for establishing and operating the platform.
30. We considered that service quality could have been effectively displayed to customers via a rating or scoring system, which could have been combined with the facility to allow customer comments, although any form of comment or review system would have required monitoring to ensure that the comments/reviews were genuine.

#### *Operation of platform*

31. We explain below how we envisaged the platform would have worked for those customers requiring information on funeral services (if we had taken this remedy forward).
32. For those customers requiring the services of a funeral director or crematorium operator, we envisaged that they could have entered their

postcode (or the postcode of the deceased) to view all funeral directors and/or crematorium operators within a selected radius.

33. The customer could either have selected a common funeral package or configured their own package by adding or removing components from the available packages. The results could have been displayed by a number of variables, such as distance, price or quality rating. The customer could then have clicked on a specific funeral director or crematorium operator for further information, such as payment terms and customer reviews.
34. The platform could then either have redirected the customer to the provider's website or provide them with contact details, so that the customer could obtain further information or arrange a meeting with their chosen provider.
35. To encourage customers to use the platform, we thought that funeral directors should have signposted the platform on their websites (if available) and at their premises.

#### *Remedy implementation issues*

36. We considered a number of implementation issues, including the governance structure that could be put in place and the likely cost of the platform. We thought that the operator of the platform should be independent of funeral directors and crematorium operators to ensure that the platform is an independent, impartial tool that is developed in the interests of customers. We also considered that this would require a governance structure and standards to support the establishment of the platform or to approve a structure and standards proposed by the body tasked with establishing and operating the platform. Although we thought the CMA could retain oversight over the process to create the platform, an alternative would be to approve a new or existing body to manage the project and supervise the operation of the platform once established.
37. We also thought that the remedy would be most appropriately implemented by an Order. Under such an Order, we envisaged we would require funeral directors and crematorium operators to provide all of the pricing and service quality information that is necessary to populate the platform.

#### ***Improving customer awareness of funeral price and service information and encouraging funeral planning prior to the point of need***

38. If implemented, this remedy would have required a recommendation to government to:



- (a) develop and disseminate guidance on funeral planning to customers through the use of trusted intermediaries at times when customers are more likely to be receptive to information about funerals; and
- (b) include death and bereavement on the National Curriculum.

*How the measure could have addressed the AEC and resulting customer detriment*

- 39. By improving customer awareness of funeral price and service information and funeral planning, and using the proposed online platform as a trusted source of information, we thought that some customers would have been more likely to consider funeral planning prior to the point of need and would have been better prepared to assess and compare the prices and services offered by funeral directors and crematorium operators at the point of need. This would result in some customers being somewhat more likely to choose the provider and services that best meets their needs and budget.
- 40. The dissemination of guidance to specific groups of customers by trusted intermediaries at specific points in time when they are more likely to be receptive to information about funerals would have helped increase awareness of funeral planning amongst customers. As well as making it easier for customers to purchase funeral services that better meets their needs and budget, an increase in funeral planning prior to the point of need could have reduced stress and anxiety at the point of need, as the bereaved would have been better prepared to arrange the funeral for the deceased.
- 41. In addition, the inclusion of death and bereavement in the National Curriculum would have helped to encourage more open and earlier conversations about death, bereavement and funerals in society, thus further increasing the likelihood of customers engaging in funeral planning prior to the point of need.

*Remedy design issues*

- 42. The key remedy design issues we considered were:
  - (a) what information should have been included in the guidance to be disseminated to customers;
  - (b) who would have been best placed to develop the guidance; and
  - (c) how and when the guidance should have been disseminated to customers.

*What information should have been included in the guidance?*

43. The guidance on funeral planning could have included the following information:
- (a) An overview of the funeral process, from death to final arrangements regarding burial or the scattering of ashes, including:
    - (i) distinguishing between the essential aspects of a funeral and those that can be included at the discretion of the customer; and
    - (ii) an explanation of the circumstances where customers can switch funeral director.
  - (b) An explanation of the different types of funeral and crematoria services.
  - (c) A checklist of questions or key requirements that customers might wish to ask/cover during their arrangement meeting with the funeral director.
  - (d) Price and service information on local funeral directors and crematorium operators, including payment terms.
  - (e) Financial and bereavement support available for customers.
  - (f) Information on the proposed online platform.
44. The guidance could have been provided to individuals in paper form and also published on the websites of trusted intermediaries, funeral directors, crematorium operators, trade associations and customer groups.

*Who would have been best placed to develop the guidance?*

45. A body such as the Care Quality Commission (CQC), working in collaboration with equivalent agencies in Scotland, Wales and Northern Ireland,<sup>1</sup> may have been an appropriate body to have developed the guidance on funeral planning.
46. 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 in other settings, including care homes and GP practices. Amongst many other factors, the CQC seeks to address how individuals who may be approaching

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<sup>1</sup> The CQC is an executive non-departmental public body of the Department of Health and Social Care. It was established in 2009 to regulate and inspect health and social care services in England. The Regulation and Quality Improvement Authority, the Care Inspectorate and the Care Inspectorate Wales perform similar functions in Northern Ireland, Scotland and Wales respectively.

the end of their life are supported to make informed choices about their care, and the CQC also examines whether those individual's decisions are documented and delivered through personalised advanced care plans.<sup>2</sup> The CQC does not, however, currently focus specifically on supporting people with funeral planning or making funeral choices.

47. Further, the CQC's [sector specific guidance for hospices for adults](#) 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.

*How and when should the guidance have been disseminated to customers?*

48. There are key points in time at which customers may be more receptive to receiving guidance on funeral planning and at which there are appropriate intermediaries to provide this guidance, including:
- (a) when an individual enters a care home or hospice (the intermediary will likely be the care home/hospice manager or another appropriate member of staff);
  - (b) when death is anticipated (GP or other medical professional);
  - (c) when death has just occurred (funeral director, coroner and registrar);
  - (d) when an individual purchases a pre-paid funeral plan (pre-paid funeral plan provider);
  - (e) when an individual writes a will or engages in estate planning (solicitor or other legal services provider);
  - (f) when an individual becomes eligible for a state pension (government);  
and

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<sup>2</sup> The CQC's assessment framework: [key lines of enquiry, prompts and ratings characteristics for healthcare care services 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 framework](#) 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 and carers can expect from bereavement care services.

- (g) when opening a bank account or applying for another financial product, such as a loan or mortgage (bank or other financial services provider).
49. The guidance could also have been disseminated and publicised by funeral directors, crematorium operators, trade associations, consumer groups (eg Citizens Advice), charities (eg Age UK, Compassion in Dying) and local authorities.

#### *Remedy implementation issues*

50. We considered that such a remedy could be implemented through a recommendation to government and thought that the cost of developing guidance on funeral planning would have been low, as much of the information is publicly available. While there may have been a greater cost associated with disseminating the guidance, we thought this risk could have been mitigated by encouraging customers (where possible) to access an online version of the guidance, as this would limit the volume of paper versions that require printing and circulating.

#### ***Other information and transparency remedies we considered***

##### *Disclosure of coroner's contracts*

51. This remedy would have required funeral directors to disclose to customers where they have a contract with a coroner for the collection of the deceased from the place of death and transportation to the mortuary (ie coroner's removal) and/or transfer of the deceased to and from local hospitals or alternative mortuaries for post-mortem examination (ie coroners transfer).

##### *Supporting customers who choose to switch funeral directors*

52. This remedy would have required funeral directors to inform customers of:
- (a) Their right to switch funeral director, specifically that they would not be required to retain the funeral director that collects, transports and stores the deceased at their premises; and
  - (b) the fees that they would be charged if they chose to switch funeral director – these fees should have reflected the costs that the original funeral director had incurred prior to the switch, which should primarily be for the collection, transportation and storage of the deceased.

53. This information would have been provided to customers before or during the arrangement meeting and before any payment was made by the customer to secure the services of the funeral director.

## **Local authority procurement of funeral director services**

54. This remedy would have comprised a recommendation to local authorities to tender for funeral director services, in order to provide their residents with access to funeral services at a pre-agreed fixed rate, which is below the typical local price.

### ***How the remedy could have addressed the AEC and resulting customer detriment***

55. A number of local authorities across the UK operate arrangements to give local residents access to funeral services at a pre-agreed fixed rate, below the typical local price. Under such schemes, the local authority does not itself provide the funeral services. The funeral services are provided to the bereaved by a funeral director, normally on terms, and at a price, agreed with the local authority through a tendering or appointment process. As a consequence, there is a generally a contract for each individual funeral between the bereaved and the funeral director.<sup>3,4</sup>
56. The recommendation to local authorities to tender for funeral director services would mitigate, to some extent, the adverse effects of weak customer engagement that we have found due to factors, such as emotional distress, unfamiliarity with the funeral arranging process and time pressure. This remedy would, to some degree, ease these limitations on choice, because local authorities, in their procurement activity, are not subject to the demand-side features which typically limit customer engagement when purchasing an at-need funeral.

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<sup>3</sup> Nottingham and Cardiff have operated resident schemes since the mid-1990s; others are a more recent response to concerns about funeral poverty. The 'Respectful Funeral Service' branding and approach appears to be expanding in availability across a number of Scottish local authorities. We are aware of schemes in East Ayrshire, Dundee, West Lothian and Renfrewshire. East Ayrshire Council has previously publicly commented on the successful introduction of its scheme ([East Ayrshire press release](#)). A number of local authorities told us that they were actively considering whether, and how, to introduce such a scheme in future.

<sup>4</sup> Existing local authority schemes take differing approaches to product specification and the services which are made available to customers. In some (for example the Nottingham scheme), the product specified is a more comprehensive funeral package than the large funeral directors' 'simple' funerals products, in particular with respect to options for viewing the deceased and the inclusion of a limousine. Some other local authority schemes appear to involve a narrower product specification. Approaches taken by local authorities to appointing providers also vary, between tendering: for (a) the appointment of a single chosen provider; and (b) the appointment to a panel of a number of 'partners' who agree to provide the specified service, at prices which may differ between each partner. In these cases, the customer ultimately chooses which funeral director to use from amongst the 'partners' on the panel.

57. To the extent that local authorities are effective in generating rivalry for the tenders they offer, this remedy could supplement competition ‘in the market’ with a degree of competition ‘for the market’, reflecting local cost and demand conditions. The remedy might also give funeral directors some added predictability as to the volume of business which they can expect in a particular area. To the extent that, by winning a local authority tender, funeral directors have the prospect of carrying out higher and more predictable volumes of funerals, this may result in lower (average) costs and may help reduce the prices which they agree with the local authorities, and ultimately charge to customers.

### ***Remedy design issues***

58. The Coronavirus (COVID-19) pandemic limited our ability to develop this remedy, as to do so would require extensive engagement with Local Authorities, whose capacity to engage with us was materially impaired due to the challenges faced in dealing with the pandemic.
59. The types of remedy design issues that we would have needed to consider, but were not able to examine include:
- (a) The detailed tender design and process;
  - (b) the scope of funeral services to be provided under such a scheme, including major disbursements, such as cremation or burial costs;
  - (c) whether to appoint one funeral director for each scheme or a panel of funeral directors;
  - (d) the requirements of the contractor(s) in terms of availability, facilities, processes and experience;
  - (e) the appropriate nature and level of marketing activity, including whether appointed providers should be required to commit to a level of marketing spend or activity, and/or the role of local registrars and local authorities in raising awareness of the schemes;
  - (f) competitive neutrality between local authority and private crematoria;
  - (g) how the administration of such schemes might be funded; and
  - (h) how the availability and nature of local authority schemes would interact with elements of the CMA’s possible transparency and information remedies.

### ***Remedy implementation issues***

60. We considered that the remedy could be implemented by:
- (a) a recommendation to local authorities (or to government, who then instructs local authorities to tender for funeral director services); or
  - (b) the CMA requiring, by order, local authorities to tender for funeral director services.
61. We considered that implementation of the remedy through a recommendation to local authorities (or to government) was more appropriate than an Order, as this would enable local authorities to implement the scheme in a manner that takes account of local demand and supply conditions.

### **Price control regulation of funeral director services and crematoria services**

62. We have found evidence of customer detriment in the form of high and increasing prices, well above the rate of inflation, over a sustained period and also returns (for a substantial proportion of the sector) above the level which one would expect to see in a well-functioning market. This points to a substantial and enduring detrimental effect on customers. By the time the COVID-19 pandemic started to disrupt the course of our investigation, our emerging view, based on the evidence that we had gathered, was that price control regulation could have formed part of an effective and proportionate package of remedies. The aim of such price control regulation would have been to reset high prices to bring them closer to competitive levels and provide an ongoing restriction on future price increases.

### ***Price control regulation of funeral director services***

63. The form of price control regulation that we considered would have:
- (a) set a maximum price for a defined 'benchmark' package consisting of funeral products and services. Funeral directors would have been required to make the 'benchmark' package available for sale, at any price up to the maximum cap level, and to ensure the benchmark package was actively marketed and promoted to its customers;
  - (b) required funeral directors to pass on the cost to customers of any intermediary services, such as cremation and burial fees, without a mark-up/profit margin added to those costs; and

- (c) included compliance and reporting obligations for funeral directors, which would have enabled the CMA to monitor compliance with price control regulation.
64. We were anticipating that such price control regulation could be accompanied by a recommendation to government for the establishment of a new regulatory body which would eventually assume responsibility for the price control regulation.
65. We consulted on a proposed benchmark package and on whether certain products or services should be included or excluded from the package. Many parties told us that we would need to provide further detail with regard to the specification of the products and services in a benchmark package, for example time-based restrictions for some services or the type of coffin to be included in the package. Some parties commented upon the perceived risk of “over-specifying” the package which might result in customers paying for more products and services than perhaps they otherwise would have chosen or needed. Some parties also questioned whether the introduction of price control regulation would be a proportionate remedy and opined that other remedies might be able to address any AECs and resulting detrimental effects on customers. Finally, many parties submitted that price control regulation may cause unintended consequences in this sector, while others questioned how any price control could be effectively enforced given the large number of funeral directors in the UK.
66. We considered all of the points raised, including and in particular, the risk of unintended consequences. Our view was that these risks could be capable of being effectively mitigated through further analysis, consultation and detailed specification of the price control regulation, absent the challenges presented by Coronavirus (COVID-19). However, having regard to the disruption to normal market conditions caused by the Coronavirus (COVID-19) pandemic, we decided that it was not practicable: to continue to design a price control remedy within the time frame of our investigation<sup>5</sup>; to set an initial maximum price level; or to decide which methodology to adopt.

### ***Price control regulation of crematoria services***

67. We also considered a form of price control regulation for crematoria which would have:

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<sup>5</sup> Whether implemented by Order or by a recommendation



- (a) set a maximum price for a defined 'benchmark' package of cremation products and services. Crematoria would have been required to make the 'benchmark' package available for sale, at any price up to the maximum cap level, and to ensure the benchmark package was actively marketed and promoted to its customers;<sup>6</sup>
  - (b) been applicable to either all crematoria in the UK, or alternatively, all private crematoria in the UK;
  - (c) have a maximum price, which
    - (i) could be initially determined using pricing data from the sector and referenced to inflation, cost base and profitability data;
    - (ii) might be adjusted over the duration of its enforcement period; and
    - (iii) could be set either for the UK as a whole, for each devolved nation or regionally; and
  - (d) included compliance and reporting obligations for crematoria to enable the CMA to monitor compliance with price control regulation.
68. As with our considerations in relation to funeral directors, we were anticipating that any such price control regulation would have been accompanied by a recommendation to government to establish a new regulatory body to eventually assume responsibility for any price control regulation.
69. We also considered issuing additional guidance to Local Authorities regarding how they should interpret and implement their cost recovery obligation. Such guidance may have been accompanied by obligations on local authorities to ensure full transparency in their price setting decisions.
70. On consultation, several parties suggested that a remedy which recommended that the government reform planning regulation for new crematoria could, either partially or fully, remedy the competition concerns we have found. Our preliminary view was that there are economic barriers and also potentially planning barriers to new entrants, and that reform of planning regulation would not directly and comprehensively address the customer detriment caused by high prices in some crematoria.
71. Parties commented on the elements of the proposed benchmark package and whether certain products or services should be included or excluded. Whilst there was broad agreement on some of the suggested products and services,

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<sup>6</sup> There could be more than one price cap.

there were also some suggestions for amendments, for example including the unattended scattering of ashes. There were also some further considerations required in regard to environmental surcharges and medical fees and whether these elements should be included in any benchmark package.

72. Parties had mixed views on the use of a benchmark package as the basis for setting a price control. Some parties stated that cremations were not a homogenous product and therefore a package of products and services could not be used as a basis for price regulation. Others felt that a benchmark package would be a suitable means of implementing price regulation in the sector. Other parties suggested that a direct or unattended cremation package of services would be preferable.
73. Some parties expressed concerns about whether the maximum price level would allow operators to achieve a normal rate of profit and how the maximum price level would take into account any variations in quality and associated capital investments
74. Parties expressed mixed views on the need for price regulation in the crematoria sector. There were some submissions that the rationale for price control regulation was stronger for crematoria than for funeral directors. Most private crematoria operators who responded were against the introduction of price control regulation and suggested that price regulation would not be a proportionate remedy to address any competition issues in the sector.
75. With regards to a recommendation to local authorities on their cost recovery obligations, some parties were of the view that this obligation was sufficient to restrict price increases for these operators. Other parties were of the view that local authorities were not currently acting upon this obligation and therefore any further guidance would not be effective. We consider that further detailed consideration and engagement with third parties would be needed in order to reach a view on the scope of any price control.
76. Memoria told us that we should not assume that high profits or customer detriment was associated with high prices, and that our own analysis suggested that some local authority crematoria with comparatively low prices earned significant excess returns as a result of their very high volumes of cremations. Memoria told us that a price cap remedy, of the kind we had discussed in our provisional findings, could be an ineffective remedy in these circumstances since any cap set at average levels (whether on a national or regional basis) could be above the prices charged by these types of crematoria. Memoria suggested that a more effective remedy in these circumstances might be a cap on the margins earned by crematoria, rather

than a cap on the prices charged.<sup>7</sup> Since we have decided not to pursue price regulation for the reasons we have explained, we have not considered whether this would require modifications to any approach to price controls or whether an alternative mechanism, such as a margin cap as proposed by Memoria, might be more effective.

77. We considered all of the points raised by parties. Our view was that the issues and risks raised by parties could be capable of being effectively mitigated through further analysis, consultation and detailed specification of the price control regulation (absent the challenges presented by Coronavirus (COVID-19)). However, having regard to the disruption to normal market conditions caused by the Coronavirus (COVID-19) pandemic, we decided that it was not practicable to continue to design a price control remedy within the time frame of our investigation<sup>8</sup>; to set an initial maximum price level; or to decide which methodology to adopt.

## **Quality regulation of funeral director services**

78. We have decided to recommend to the UK government and the devolved administrations in Northern Ireland and Wales to establish in England, Northern Ireland and Wales a registration and inspection regime as a first step to the establishment of a broader regulatory regime for funeral director services.
79. In this section, we set out our view as to what that broader regulatory regime could entail if the UK government and relevant devolved administrations decide to expand the registration and inspection regime to form a broader regulatory regime.
80. The regime could include:
- (a) clear requirements for funeral directors in the form of statutory minimum standards;
  - (b) effective monitoring and enforcement of standards through a statutory licensing and inspection regime;
  - (c) an appropriate body to monitor and enforce standards; and
  - (d) the collection and dissemination of information to customers on the quality of services provided by funeral directors.

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<sup>7</sup> Memoria response to PDR, pages 34 and 35.

<sup>8</sup> Whether implemented by Order or by a recommendation

81. The introduction of statutory minimum standards for back of house services could ensure that funeral directors deliver acceptable levels of service to customers. We note that there are existing codes of practice for those funeral directors who are members of either NAFD or SAIF,<sup>9</sup> but these codes are voluntary, differ as between the two trade associations, and the membership does not cover the entire sector – we estimate that the membership of NAFD and SAIF together represents just over 75% of funeral directors,<sup>10</sup> and we have received representations from many funeral directors strongly objecting to the involvement of the trade associations in any future regulatory regime.
82. The introduction of a statutory licensing and inspection scheme, whereby only those undertakings who are granted authority by a designated licensing body could operate as funeral directors, could help ensure that funeral directors deliver acceptable levels of service to customers. In addition, the designated licensing body could work closely with providers to resolve effectively any problems relating to service quality.
83. Customers could be further supported in their engagement with the funerals sector by the collection and dissemination of information to customers on the quality of services provided by funeral directors, in order to enable them to access and compare information on funeral directors' service quality. This information could be published on the websites, and displayed at the premises, of funeral directors, disseminated by trade associations and voluntary groups and used by intermediaries, such as PCWs. The broad dissemination of this information may also encourage funeral directors to improve their back of house standards beyond any statutory minimum standards, in order to preserve or improve their reputation amongst customers.

### ***Scope of quality regulation***

84. In order to determine the services provided by funeral directors (and the aspects of service quality) that could fall under the scope of a quality regulatory regime, we have considered:
  - (a) the scope of the existing voluntary quality standards for funeral directors in the UK, specifically the codes of conduct of NAFD and SAIF, the

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<sup>9</sup> The two main trade associations representing funeral directors, NAFD and SAIF, both set standards of service through their codes of practice.

<sup>10</sup> Based on the overall numbers of funeral directors and branches in the UK estimated in an unpublished 2017 report, we estimate that between them, their membership represents just over 75% of funeral director branches (see [Funerals market study](#), paragraph 2.50).

accreditation scheme operated by the [Good Funeral Guide](#),<sup>11</sup> and the [draft Code of Practice for funeral directors](#) published for consultation in January 2020 by the Funeral Service Customer Standards Review (FSCSR);<sup>12</sup>

- (b) the standards currently in place for hospital and public (local authority) mortuaries as well as other establishments where ‘licensed activities’ take place, in England, Wales and Northern Ireland<sup>13</sup> – the [Human Tissue Authority \(HTA\)](#), amongst other responsibilities, is a specialist regulator for activities concerning the removal, storage, use and disposal of human organs, tissues and cells;
  - (c) the relevant health and safety guidelines in place for funeral directors’ premises in the UK – the [Health and Safety Executive \(HSE\)](#) provides guidance on [managing the risks of infection when handling the deceased](#);
  - (d) the regulatory regime for the funerals sector in Scotland and proposals for its further development, including the [draft Code of Practice for Funeral Directors](#), published for consultation in June 2019;<sup>14</sup> and
  - (e) the scope of quality regulation of funeral directors in international markets.
85. We consider that the following back of house services provided by funeral directors could fall under the scope of the regime:
- (a) Collection and transport of the deceased.
  - (b) Care, storage and preparation of the deceased.
86. In order to provide these services to an acceptable minimum level of quality, funeral directors will need to be able to demonstrate that they have:
- (a) suitable premises, facilities and equipment, including facilities for the storage and preparation of the deceased, having (or having access to) sufficient and appropriate refrigeration facilities, and (if embalming is to be carried out at the funeral directors’ premises) access to embalming facilities;

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<sup>11</sup> The Good Funeral Guide is a not-for-profit social enterprise company dedicated to supporting, empowering and representing the interests of dying and bereaved people living in the UK.

<sup>12</sup> The FSCSR is an industry group consisting of NAFD, SAIF, some large and independent funeral directors, charities and bereavement groups and customer facing organisations, which was established in November 2018 to seek an industry-wide consensus around how to improve customer outcomes in the funeral directing sector.

<sup>13</sup> [Health Scotland](#) is responsible for these activities in Scotland.

<sup>14</sup> We note that the consultation on the draft Code closed on 20 September 2019 and the final Code may be different from the draft Code published for the purposes of consultation.

- (b) appropriate education and training, including continued professional development (CPD), the necessary accredited technical education and/or training for relevant staff<sup>15</sup> and management training for those with management responsibility;
- (c) appropriate governance processes and procedures to monitor quality standards, including suitable procedures to monitor premises, facilities and equipment and for the identification of the deceased; and
- (d) an appropriate complaint handling and consumer redress process to ensure that any incidences of funeral directors failing to meet the required standards can be effectively resolved and the customer appropriately recompensed.

87. Table 1 below outlines the scope of the potential regime. The regulatory framework set out in the table is based on an outcomes-based regulatory model, because we think that a predominantly outcomes-based regulatory approach will better take account of the diversity of funeral directors and their varying service delivery models. Where we have considered existing regulations and standards, we have modified them so that our regulatory framework specifically addresses the concerns that we have identified to date and to avoid the creation of duplicative or overlapping regulation.

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<sup>15</sup> This could include education and/or training for funeral directors, as well as for other staff, such as funeral arrangers/administrators and funeral service operatives/assistants/drivers/bearers.

**Table 1: Quality regulation of back of house standards**

<b>Back of house standard</b>	<b>Principle</b>	<b>Desired outcomes</b>
Collection and transport of the deceased	The deceased is treated with respect and dignity at all times during the collection from their place of death and transport to the funeral director's premises	<ul style="list-style-type: none"> <li>• Staff responsible for the collection and transport of the deceased are trained to do so in a manner that prioritises the respect and dignity of the deceased</li> <li>• Staff receive appropriate consent from the bereaved before collecting and transporting the deceased</li> <li>• The deceased and their possessions are appropriately protected/secured during collection and transport</li> <li>• Vehicles and equipment used for the collection and transport of the deceased are fit for purpose and regularly inspected</li> <li>• The funeral director has suitable procedures in place for the identification of the deceased</li> </ul>
Care, storage and preparation of the deceased	The respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<ul style="list-style-type: none"> <li>• Care, storage and preparation of the deceased complies with the HSE's guidance on managing the risk of infection when handling the deceased</li> <li>• The funeral director has, or has access to, via a third party, sufficient, clean, secure and refrigerated storage facilities that reflects anticipated body storage requirements</li> <li>• The deceased are stored individually*</li> <li>• Storage capacity includes contingency arrangements for a temporary increase in storage requirements</li> <li>• The bereaved is informed of where the deceased is stored</li> </ul>
Premises, facilities and equipment	All premises, facilities and equipment are suitable for ensuring that the respect and dignity of the deceased is maintained at all times at the funeral directors' premises	<p>Facility design</p> <ul style="list-style-type: none"> <li>• Premises, facilities and equipment are secure and accessible by authorised persons only</li> <li>• Premises, facilities and equipment are clean, well maintained and regularly inspected</li> <li>• The funeral director has, or has access to, premises, facilities and equipment can accommodate all body types and care services offered by the funeral director</li> </ul> <p>Embalming†</p>

Back of house standard	Principle	Desired outcomes
		<ul style="list-style-type: none"> <li>• Embalmers employed or otherwise engaged by the funeral director are appropriately qualified (eg certified by the British Institute of Embalming (BIE))</li> <li>• The funeral director has a separate area for embalming</li> <li>• Embalming facilities comply with HSE guidance on managing the risk of infection when handling the deceased and Control of Substances Hazardous to Health Regulations 2002</li> </ul>
Education and training‡	All staff have the necessary training and/or education to enable them to carry out their duties with respect and dignity for the deceased	<ul style="list-style-type: none"> <li>• Staff meet the necessary educational and technical requirements for their role</li> <li>• Staff regularly undertake the necessary training and other forms of CPD to maintain their professional competence</li> </ul>
Governance processes and procedures	The funeral director's governance arrangements enable them to monitor and uphold back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has appropriate governance processes and procedures in place in respect of back of house standards, including for the identification and location of the deceased, tracking the deceased's personal effects, management of ashes, any arrangements with third parties and the education and training of staff</li> <li>• Where embalming takes place, the funeral director explains the procedure and obtains the customer's permission prior to the procedure taking place</li> <li>• The funeral director undertakes regular inspections to monitor and uphold back of house standards and resolves any issues identified during inspections effectively and promptly</li> </ul>
Complaint handling and consumer redress	The funeral director's complaint handling and consumer redress process enables them to resolve any issues with back of house standards	<ul style="list-style-type: none"> <li>• The funeral director has a complaint handling process in place which: <ul style="list-style-type: none"> <li>○ is easy to use and understand;</li> <li>○ provides customers with a variety of methods to submit a complaint;</li> <li>○ requires them to investigate and resolve complaints promptly and fairly and, if applicable, provide appropriate redress in a timely manner;</li> <li>○ ensures that all staff dealing with complaints are appropriately trained; and</li> <li>○ ensures that all information relating to the complaint handling process is available to customers.</li> </ul> </li> <li>• The funeral director is a member of an independent ADR scheme</li> </ul>

Source: CMA analysis.



\* The individual storage of the deceased can take a variety of forms, including separate compartments, communal racking and individual trays. The guidance supporting the regulatory framework will explain to funeral directors how they can comply with this desired outcome.

† The requirements in relation to embalming are only intended to apply where the funeral director has embalming facilities at its premises.

‡ We think that education and training is necessary for the appropriate care of the deceased. However, we think that body tasked with registering and inspecting funeral directors should undertake a review of existing education and training provision available to funeral directors and consult with funeral directors before determining what education and training (if any) should be mandatory for funeral directors and their staff and how this will be delivered to them.

## ***Effective monitoring and enforcement***

88. In thinking about how to effectively monitor and enforce compliance with quality regulation, we have considered existing licensing and inspection schemes in the funerals sector in the UK and abroad, as well as similar schemes in other regulated sectors in the UK.
89. We think that the introduction of a statutory licensing and inspection scheme for funeral directors would be an effective method of ensuring that funeral directors deliver acceptable levels of service to customers.
90. A licensing scheme could include the following elements:
- (a) Licensing of both businesses and individuals.
- (i) A licensing scheme could initially apply to businesses (as is the case with the development of a licensing regime in Scotland). The scheme administrator may later decide to extend the licensing scheme to individuals. We note that the regulation of both businesses and individuals would be consistent with the regulatory activity of the CQC in the care homes sector, where, like the funerals sector, quality of care is also difficult for customers to observe or assess.<sup>1</sup>
- (ii) For providers, licensing would likely be most effective at individual branch level, although there may be scope for regulation at an organisational level for larger providers (eg scrutinising the governance procedures and processes that are in place to monitor quality standards across all branches). Licence conditions could cover the key principles of our proposed regulatory framework (see Table 1).
- (iii) For certain individuals, such as funeral directors, it may be necessary for the licensing scheme to ensure that they have the necessary skills and experience to perform their role. The scheme may also extend to those within management (ie some form of 'fit and proper' test) to ensure that they are suitable for overseeing the work of others. For other members of staff, licensing may not be required, but it may be necessary for those individuals to undergo a criminal record check.

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<sup>1</sup> The CQC regulates care homes, managers of care homes and members of staff with director level responsibility.

- (b) An application or registration process to enable the scheme administrator to assess whether a business or individual meets the necessary conditions to be granted a licence.
  - (c) A periodic licence renewal process to enable the scheme administrator to assess a business or individual's ongoing compliance with licence conditions.
  - (d) The use of announced and unannounced inspections to enable the scheme administrator to monitor and enforce compliance.
  - (e) A robust enforcement regime, including a range of sanctions, such as fines and suspension and revocation of a licence, available to the scheme administrator to enable it to effectively enforce compliance with licence conditions.
  - (f) Publicly available information on licensees, such as a register, to ensure that customers only engage the services of a licensed funeral director.
91. A licensing scheme would need to be phased in over an appropriate period of time to avoid placing an undue burden on funeral directors and the scheme administrator.
92. An inspection scheme could include the following elements:
- (a) Announced and unannounced inspections at regular intervals to assess a provider's compliance with licence conditions and other relevant regulation – the time between inspections could reflect the risk of non-compliance.
  - (b) An assessment of both premises, facilities and equipment and the processes and procedures in place to uphold quality standards.
  - (c) A clear mechanism for disseminating the information collected during the licensing registration and inspection processes to customers to increase customer knowledge of and engagement with the sector. This could be in the form of an inspection report, including a rating or score, which could be published on the inspector's website; displayed on the funeral director's website and premises; disseminated by trade associations and voluntary groups; and used by intermediaries, such as PCWs.

### ***Service quality information***

93. The collection and dissemination of information to customers on the quality of services provided by funeral directors should cover both front of house and

back of house standards to enable customers to conduct a holistic assessment and comparison of funeral directors.

94. For back of house standards, we think that the information could include those aspects of quality that could fall under the scope of a regulatory regime, as outlined in Table 1.
95. For front of house standards, we think that the information could include:
  - (a) standard of premises, facilities and equipment used during the funeral service;
  - (b) professional competence of staff, including their expertise in planning and delivering funeral services;
  - (c) care of the bereaved; and
  - (d) customer service (eg availability of staff/hours of business, parking facilities, public transport links, accessibility (for customers with disabilities) and website and marketing materials).
96. There are a number of possible ways to collect information on service quality:
  - (a) Funeral directors could independently collect information to demonstrate the quality of the services they provide to customers.
  - (b) Funeral directors could complete an independent periodic survey which covers key elements of service quality. For example, following its investigation into retail banking, the CMA requires current account providers to publish results from an independent survey covering a number of Core Service Quality Indicators on their websites, in branches and in promotional leaflets – the underlying data is also made available to third parties, such as PCWs and finance platforms, to enable comparison services and encourage customers to compare providers and shop around.<sup>2</sup>
  - (c) The information collected by the body tasked with registering and inspecting funeral directors could be used to support customers in assessing the quality of services provided by funeral directors.

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<sup>2</sup> See [Retail banking market investigation. Final report](#), CMA, 9 August 2016, Figure 13.2.

97. We think that the body tasked with registering and inspecting funeral directors (once established) will be best placed to specify and collect information on service quality as part of its licensing and inspection activities.
98. Service quality information could be displayed on the websites and premises of funeral directors, as well as any other marketing information provided to customers, such as leaflets or brochures. Other key market participants, such as trade associations and customer groups, could also publish the information on their websites and other media.
99. As well as improving customer engagement, the publication of service quality information could also incentivise funeral directors to maintain or improve their standards, as the publication of information relating to quality standards could have a positive or adverse reputational impact on that provider. Therefore, the publication of service quality information may act as a mechanism for driving quality above and beyond the minimum legal standard establish under a quality regulatory regime.
100. The information to be published and assessed could include key performance indicators, potentially with target levels of performance, or customer satisfaction information, which could be limited to a score indicating overall satisfaction or willingness to recommend, or it might be developed to cover a range of separate areas of service. We are aware of existing scoring or rating systems operated by the CQC and the FSA, which aim to improve customer understanding and engagement by distilling a wide range of complex information into an easily digestible form.