



Ministry  
of Justice

# Response to the Competition and Markets Authority's Funeral Market Report

March 2021





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## Introduction

The funeral sector has a vital role in the care of the deceased and are often the first to engage with the bereaved at a highly vulnerable and sensitive time. The work of the funeral sector covers a wide array of professionals, from funeral directors and crematoria staff to coffin makers. There are over 7,000 funeral companies in the United Kingdom, ranging from small family firms to large corporations. Users accessing services provided by the funeral sector should have confidence that their loved ones are cared for and treated with respect, as well as ensuring that they are fully aware of their choices and the costs of arranging a funeral.

On 18 December 2020, the Competition and Markets Authority (CMA) published the final report of its market investigation into the funeral market (covering funeral directors and crematoria specifically). This is a significant contribution to the understanding of how this distinctive market operates. This document sets out the government's response to the final report and the CMA's recommendations.

## Background

The functions of funeral directors are largely unregulated, except in Scotland. Quality standards in the provision of funeral director services are not prescribed by law, and there is no statutory inspection regime in relation to the services provided by funeral directors.

However, there is a broader regulatory framework which funeral directors are required to comply. There is health and safety legislation covering the safe handling and storage of bodies by funeral directors and their staff. In particular, there is a section in the guidance specifically for managing the risks of infection in funeral premises<sup>1</sup>. It outlines what a facility may need in order to be able to perform hygienic preparations and embalming, as well as adequate body storage and temperature controlled spaces. The guidance also highlights other relevant health and safety risks in this area including manual handling (moving bodies) and the use of chemicals.

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<sup>1</sup> "Managing Infection Risks When Handling the Deceased." Issue by the Health and Safety Executive, 2018.

In response to the COVID-19 pandemic, there is also specific guidance that applies to the funeral sector more broadly. This guidance addresses the handling of the deceased and the management of funerals in the COVID-19 context.<sup>2</sup>

Embalmers must also comply with the Control of Substances Hazardous to Health Regulations 2002, which requires employers to control substances that are hazardous to health, such as formaldehyde.

The CMA reported that 69% of respondents to their survey thought that funeral directors are regulated.<sup>3</sup> The funeral sector itself has also reported that users are surprised to find that the funeral sector is not regulated for quality purposes.

Although the original impetus for the CMA's investigation was driven by concern over the rise in funeral costs in recent years, the CMA has indicated that their investigation into funeral prices (which includes funeral director prices and crematoria prices) has been hampered by the ongoing COVID-19 pandemic. The market has been distorted by the types of funeral services offered to, and required by, customers as a result of coronavirus restrictions, and the ability of funeral directors to meet these changing requirements.

Because of this distortion, the CMA's findings (and proposed remedies, set out at Annex A) with regard to pricing are likely to need further consideration once the market has stabilised. Furthermore, because of practical pressures on the funeral sector caused by the pandemic, the CMA were unable to collect the data it needs until the pandemic subsides.

In this response, we summarise the key findings and recommendations of the CMA's final report, the government response to these recommendations, and our next steps.

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<sup>2</sup> "Guidance for those Involved in Managing Covid-19 Deaths." Issued by the Cabinet Office, April 2020.

<sup>3</sup> CMA report, p.323, section 7.72.

## The CMA market investigation

On 1 June 2018, the CMA launched a review of the funeral industry amid concerns that prices had been rising substantially and that funerals had become unaffordable for many. In its interim report published on 29 November 2018, the CMA proposed a Market Investigation Reference to carry out an in-depth investigation.

After consulting with stakeholders and reviewing evidence, the CMA decided there were reasonable grounds to suspect that there were features which prevented, restricted or otherwise distorted competition within the UK funeral sector. There was a further concern that people using funeral services are not able to make the best choices and are vulnerable to exploitation.

The CMA therefore decided to refer the supply of services by funeral directors, at the point of need, and the supply of crematoria services for a single in-depth investigation under section 131 of the Enterprise Act 2002 and focused on the following high-level issues:

- how users choose funeral directors and crematoria services i.e. pricing concerns
- how the deceased are cared for, i.e. quality concerns

The investigation was launched on 28 March 2019.

In its final report, the CMA found that in the provision of funeral director services at the point of need and crematoria services, a number of features restricted or distorted competition, namely:

- low level of customer engagement caused by the intrinsically challenging circumstances surrounding the purchase of a funeral
- lack of easily accessible and clearly comparable information on the products and services provided by funeral directors, including their prices and levels of quality
- lack of visibility to customers of the level of quality of care given to the deceased by funeral directors

- high barriers to entry in the supply of crematoria services
- high levels of local concentration in the supply of crematoria services

The CMA found that, whilst in most instances the quality of care provided to the deceased was generally good, there were instances of poor quality.

## **Recommendations**

The CMA decided that in the circumstances of the ongoing pandemic they would recommend a number of 'sunlight remedies'. These would shine a light on the pricing and back of house practices of the sector, designed to support users when choosing a funeral director or crematorium and send a clear message to the sector that they consider its behaviour and activities should continue to be scrutinised.

The CMA will be implementing a number of remedies around the transparency of pricing (detailed in Annex A). They also recommended that the sector should continue to be scrutinised by the CMA, which will have access to information on funeral directors' and crematoria's revenues and volumes. Following consultation, the CMA are expected to bring forward an order to implement these recommendations in June 2021.

### **Recommendation 1**

That the CMA Board actively monitor market outcomes in the funerals sector. To do this they should:

- publish an annual review of market outcomes in the funeral sector
- consider at the earliest opportunity, when the impact and consequences of COVID-19 on the funerals sector are sufficiently understood and the sector is more stable, whether to consult on a future market investigation reference

The CMA also made one recommendation to government.

## **Recommendation 2**

The UK government, and the devolved administrations in Northern Ireland and Wales, should establish in England, Northern Ireland and Wales an inspection and registration regime to monitor the quality of funeral director services, as a first step to the establishment of a broader regulatory regime for funeral services in these nations (Scotland already has a similar regime).

## **Government response**

### **The Funeral Sector**

The funeral sector, in one form or another, has provided a valuable service to the country for centuries. The funeral sector is often made up of unsung heroes within the community, with much of their work unseen by the public. The government recognises the hard work of the funeral sector, and further appreciates its dedication through the particular challenges of the COVID-19 pandemic. Funeral directors have met the demands of this particularly challenging period, often providing informal bereavement support in addition to their usual services. We also recognise that users usually interact with the sector at some of the hardest and most sensitive times in their lives, and consequently are particularly vulnerable to any bad practices where these may exist.

### **Government recognises the issues raised by the CMA's market investigation report.**

While the government understands the challenges that the sector is currently facing, we accept the CMA's findings on both the need for price transparency and improved quality standards in order to improve both competition and users' experiences and choice.

The CMA itself did not indicate whether a future regulatory regime should be UK-wide or that Wales and Northern Ireland should develop their own regime. In Scotland, the Scottish Government's burials and cremations policy and the enactment of related legislation provides its own regime to regulate funeral directors. We shall continue to work with those administrations going forward.



**Recommendation 1 - The CMA Board should actively monitor market outcomes in the funerals sector.**

The government welcomes the CMA's actions under this broad recommendation, recognising that they have reserved the right to conduct further investigations if these measures are found not to be fully effective. We support the objectives behind these proposals, to aid customers when making choices about funerals and to ensure that the pricing, business and commercial activities of funeral directors and crematoria, as well as the quality of the service that funeral directors provide, are exposed to greater public and regulatory scrutiny.

**Recommendation 2 – The UK government, and the devolved administrations in Northern Ireland and Wales, should establish an inspection and registration regime to monitor the quality of funeral director services, as a first step to the establishment of a broader regulatory regime for funeral services in these nations (Scotland already has a similar regime).**

The CMA recommends that the government establish a statutory registration and inspection body to monitor the quality of the transportation and care of the deceased (summarised as 'back of house' services) provided by funeral directors. The CMA examined the current self-regulation of the industry by the established trade bodies, the National Association of Funeral Directors (NAFD) and the National Society of Allied and Independent Funeral Directors (SAIF) and expressed concerns around conflicts of interest and the lack of reach to non-affiliated funeral directors (approximately 80% of funeral directors are members of a trade body).

The government agrees in principle to a form of registration and inspection and believes that such a move in the long-term would assist in achieving the overall objective of an improved customer experience.

The circumstances of the COVID-19 pandemic has brought the government and the funeral sector into a closer working relationship than ever before. From this experience, all parties recognise where improvements can, and should, be made. However, there is a recognition that wholesale regulation would take considerable time to implement, and may not be effective or proportionate in achieving the objective of improving customer experiences. In addition, funeral director businesses are diverse in size and operations and this will need to be taken into account in developing a regulatory framework, as will any particular effects of cultural and faith practices in preparing funerals.

In any event, given the ongoing circumstances of the COVID-19 pandemic, the government does not think that now is the time to move to wholesale regulation. However, the government and funeral directors are keen to make changes to address the CMA's recommendations in the short-term. We are confident from our engagement with the sector that they are very willing to co-operate in establishing both a consistent set of quality standards across the sector, and a mechanism for upholding and enforcing these. In the longer-term, more work is required to understand the likely benefits, risks and possible unintended consequences of a statutory scheme of registration and inspection. The government will continue to consider this, taking into account ongoing work with the sector and other stakeholders.

## **Next Steps**

Both users and the deceased have a right to dignity and respect. While the majority of funeral directors work hard to ensure that they receive both, we are keen to ensure that quality standards are as high as they possibly can be. The government will:

- work collaboratively with the sector (including sector groups and trade bodies) and user groups to develop an agreed set of quality standards (such as a voluntary code of practice), as part of a co-regulatory model, that could be introduced in

summer 2021, in parallel with the CMA's work on price transparency, to achieve a quicker outcome for users of funeral director services

- support the sector in developing a system to encourage all funeral directors to follow these quality standards and enable users to raise points of concern through a more formalised mechanism than at present
- commit to evaluating and reviewing the effectiveness of this co-regulation model
- monitor the effectiveness and success of the Scottish regulatory system that has just launched (and which applies to organisations who provide services in Scotland but may be based in Scotland and/or England), after a year

In the context of the ongoing pandemic, we believe that this is both a proportionate and appropriate approach. We are keen that action on quality standards is taken soon and believe that this is the best way of achieving this quickly in the current circumstances.

There also remains the possibility that once the CMA pricing transparency remedies are implemented and assessed, the CMA may decide to recommend formal price regulation. We will continue to work with the CMA to understand the impact of the planned remedies, their data gathering and the potential implications of any future recommendations on pricing regulation for the regulation of quality standards.

Although the CMA recommendations are about seeking improvements for users of funeral services, we are also keen to consider any lessons learned from the COVID-19 pandemic in terms of the funeral sector's response and data sharing with government. We want to use the strengthened relations and ongoing engagement with the sector as part of this work, as an opportunity for improved future planning and information exchange with government.

## **Annex A- The CMA's own remedies**

The CMA shall require funeral directors to provide customers with price information in the form of:

- an itemised price list of frequently purchased products and services in a standardised format in line with a template provided by the CMA (the Standardised Price List)
- the headline price (the Attended Funeral Price) of a combination of products and services, as specified by the CMA, which are provided by the funeral director and are generally considered to be sufficient to deliver an attended funeral (the Attended Funeral). The Standardised Price List will include the headline price and the disaggregated price of the Attended Funeral
- if the funeral director offers unattended funerals, the headline price (the Unattended Funeral Price) of a combination of products and services, as specified by the CMA, which are provided by the funeral director and are generally considered to be sufficient to deliver an unattended funeral (the Unattended Funeral); and an itemised price list of all the products and services that the funeral director offers that are not included in the Standardised Price List (the Additional Options Price List)

They will also require crematorium operators to provide customers and funeral directors in the local area, as well as to any funeral director upon request, with information on the price of:

- a standard fee attended service

- an unattended service (if offered)
- and any available reduced fee services (if offered)

In addition, the CMA will require funeral directors to disclose certain information about their business, financial and commercial arrangements to customers, including:

- the ultimate owner of the business
- any business or material financial interest in a price comparison website operating in the funerals sector
- any gift, charitable donation or payment in kind to third parties such as hospitals, care homes and any other similar institutions

The CMA will also prohibit certain arrangements, including any exchange of services with, or payments, benefits or gifts to hospitals, hospices, care homes or similar institutions, as well as the solicitation of business through coroner and police contracts. This will protect vulnerable customers from being channelled towards a funeral director that may not fully meet their needs.

To assist the CMA in monitoring the funerals sector, they will require (by means of an order) some funeral directors and all crematorium operators to provide the CMA with specific price and volume information on the goods and services that they provide to customers.

In particular:

- Funeral directors with five or more branches to provide to the CMA, every six months, details of a) the total number of funerals provided and b) the total revenue (excluding disbursements) in the previous six months.
- Funeral directors with ten or more branches must provide this information both in aggregate form and split by Attended Funeral, Unattended Funeral and any other types of funeral provided by the funeral director.
- All crematorium operators to provide details of a) the total number of cremations provided each quarter; and b) the total revenue during that quarter. This information must be provided in aggregate form and split by standard fee services (i.e. peak services from 10am to 4pm), reduced fee early morning attended services (i.e. services at 9am or 9.30am), unattended services and any other services provided by the crematorium operator.





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