

The Competition and Markets Authority's Funerals Market Investigation Final Report

Scottish Government response

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Scottish Government
Riaghaltas na h-Alba
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Background

The Competition and Markets Authority's (CMA) Funerals Market Investigation sought to investigate prices and quality of funeral services. The investigation was carried out under section 131 of the Enterprise Act 2002, under which the CMA has power to make a market investigation reference.

The purpose of the investigation was to ensure that those who purchase funeral services can be confident that prices are reasonable and quality is appropriate. The investigation focused on assessing how people approach the purchase of a funeral, and on competition between funeral directors and crematorium operators. The CMA further considered the geographical concentration of funeral director and crematorium services, price levels over time, and profits.

The investigation commenced on 28 March 2019, and was extended for six months in March 2020. The CMA published its Provisional Decision Report on 13 August 2020, and its [final report](#) on 18 December 2020. The coronavirus (COVID-19) pandemic necessarily impacted the funeral sector, and the CMA investigation itself, during the development of its report.

Within its interim and final reports, the CMA report expresses serious concerns about the sector. Overall, it observes that most people “find it extremely difficult to engage with the process of purchasing a funeral” (p. 6). Consequently, people will often follow a personal recommendation when choosing a funeral director, or use one that they (or the family) have used in the past. Furthermore, most people incorrectly believe that funeral directors are regulated.

The CMA report concluded that the funeral market is not working well, with a number of features that restrict or distort competition. A lack of competition has resulted in price rises well in excess of inflation for a considerable time. The report highlights the excess profits made in the period 2014 – 2018, leading to an average consumer detriment of £400. The CMA notes this is likely to be a conservative figure.

The concerns identified by the CMA have led it to suggest a series of “‘sunlight’ remedies”, intended to mitigate these concerns. In developing these remedies, the CMA's stated

objective is to support customer decision-making 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” (p. 12). As such, the CMA’s remedies include a key focus on pricing and ‘back of house’ practices. This document provides the Scottish Government’s response to the CMA’s report.

CMA remedies for the funeral industry

The CMA considered a number of “remedies” to address the issues it identified. In doing so, it noted that tools to enhance market competition may not be sufficient in the context of the funeral industry, given customers’ approach to decision-making around funeral planning. The CMA acknowledged that the COVID-19 pandemic has restricted not only its ability to carry out this investigation, but also its ability to fully develop and implement remedies.

The CMA report remedies include considering a future market investigation following the COVID-19 pandemic. More specifically, the CMA offers remedies related to pricing, regulation, and CMA Board actions. These are described below, with the Scottish Government’s responses to each.

CMA future market investigation

Mindful of the importance of ensuring funeral customers have more robust protections in future, the report recommends that the CMA Board should consider consulting on a future market investigation when the impact and consequences of COVID-19 on the funerals sector are sufficiently understood and the sector is more stable.

Scottish Government’s Response

We are grateful for the CMA’s thoughtful consideration of the funeral industry, particularly in the challenging context of COVID-19. We note that, in this context, the CMA was necessarily limited in the remedies it could currently develop. In light of the evidence of lack of competition and consumer detriment, the Scottish Government strongly supports the recommendation that the CMA consider consulting on a future market investigation. We support, and commit to continuing to work with, the CMA in any future market investigations it consults on.

The Scottish Government accepts the overall findings of this report, and supports the measures to improve consumer protection, promote more competition, increase transparency and reduce consumer detriment. The powers to implement the majority of these recommendations, including those related to pricing, are reserved to the UK Government. We also note the need for quality standards within the funeral industry to improve. The

recommendation to establish an independent inspection and registration regime is within the devolved powers of the Scottish Government, and is an area where the Scottish Government has already made important strides (see below).

CMA pricing remedies

The CMA report outlines the following remedies in relation to price:

- 1) [The CMA] shall require funeral directors to provide customers with price information in the form of:
 - a) 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);
 - b) 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;
 - c) 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
 - d) 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).
- 2) [The CMA] shall 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).
- 3) 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; and, any¹ gift, charitable donation or

¹ Except those that are de minimis

payment in kind to third parties such as hospitals, care homes and any other similar institutions.

- 4) [The CMA] shall 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, in order to protect vulnerable customers from being channelled towards a funeral director that may not fully meet their needs.

Scottish Government Response:

The Scottish Government agrees with the CMA findings in relation to pricing and transparency and welcomes the remedies outlined in the Final Report. Mindful of the consumer detriment noted in the report we also welcome the CMA commitment to monitor the impact of the remedies.

The issue of funeral poverty was also highlighted in the report and the Scottish Government has already taken a range of actions to tackle this and in particular to make the costs of a funeral more transparent. In May 2019 we published [guidance on funeral costs](#), under section 98 of the Burial and Cremation (Scotland) Act 2016. This Act makes provision for Scottish Ministers to publish "guidance on the costs associated with making arrangements for a funeral" and that "the guidance may in particular cover the desirability of such costs being affordable" (section 98). This sets out steps that local authorities, funeral directors and others can take to make information on charges more transparent and accessible in order to help people choose the products and services that are right for them. The Scottish Government worked closely with local government and the funeral industry to develop the guidance. Alongside the formal consultation, we spoke with a broad range of individuals and organisations across Scotland. The guidance was established in cooperation with the funeral industry, rather than being introduced through legislation.

We remain mindful that issues related to pricing of services (and more generally, consumer protection) is a power reserved to the UK Government². The Scottish Government commits

² Scotland Act 1998, Schedule 5, Section C7

to working with the CMA and other UK nations to support the implementation of remedies which will protect the bereaved as they engage with the funeral industry.

CMA regulatory remedies

The CMA report makes the following recommendation in relation to regulation:

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

Scottish Government Response:

We welcome the recognition of the steps the Scottish Government has already taken to establish a regulatory regime for funeral services, including the CMA's description of the current Scottish regulatory landscape for funeral directors (pg. 60-61 and Appendix B). At time of writing, the Scottish Government has made important progress on establishing this regime, with additional steps identified.

The [Burial and Cremation \(Scotland\) Act 2016](#) was passed by the Scottish Parliament in March 2016. The Act modernises the legislative framework for burial, cremation and funeral arrangements in Scotland, repealing various pieces of antiquated legislation. The Act provides for codes of practice for funeral directors, burial authorities and cremation authorities, the appointment of inspectors, and a licensing scheme for funeral directors' businesses, as well as the development of regulations as appropriate.

As an example of the latter, the Scottish Government made The Cremation (Scotland) Regulations 2019, which came into force on 4th April 2019. These regulations provide a statutory framework for the management and operation of crematoriums, cremation applications, handling of ashes, etc. The cremation regulations also take account of the recommendations in the [Report of the Infant Cremation Commission](#) (2014) chaired by Lord Bony, and Dame Eilish Angiolini's findings of the [National Cremation Investigation](#) (2016).

The Scottish Government has drafted and consulted on a [Funeral Director: Code of Practice](#) (the Code), as per Section 97 of the Burial and Cremation (Scotland) Act 2016. The Code was developed by a Short Life Working Group which included representatives from the funeral industry. The Code will enhance funeral directors' standards of care for deceased people and standards of support for bereaved people in Scotland, by setting requirements across a range of different areas. Funeral directors will be inspected against the Code. The consultation received 86 responses, primarily from members of the industry and included responses from the UK's largest trade associations. The analysis of the Scottish Government's public consultation on the Code can be found [here](#).

Continuing to seek a collaborative approach with the funeral industry, in early March 2021, the Scottish Government hosted a series of focus groups with small, independent, rural, or non-traditional funeral directors to attain their perspectives on the draft Code. Further, the Scottish Government is currently in discussions with islands-based funeral directors to understand their views. Results from the consultation analysis and these discussions with the industry will inform the Scottish Government's revisions to the Code. When finalised and when it has come into force, the Code will apply to all funeral directors carrying out the activities of a funeral director in Scotland, regardless of where their business is based.

In terms of establishing an inspection regime, Scotland has been progressing towards this since appointing an Inspector of Crematoria in 2015, under the Cremation (Scotland) Regulations 1935. This appointment followed a recommendation made in the [Report of the Infant Cremation Commission](#). On 4 April 2019, the Inspector was re-appointed under the new legislation³, as Inspector of Cremation, with a broader remit extending to the whole cremation process (replacing the Inspector of Crematoria position).

In 2017, the Scottish Government appointed Scotland's first ever Inspector of Funeral Directors, fulfilling important recommendations by the [National Cremation Investigation](#) and [Infant Cremation Commission](#). The Inspector undertook a review of the funeral sector in Scotland, and in [2019 published a report](#) discussing a regulatory model for funeral directors.

³ Burial and Cremation (Scotland) Act 2016, s89(1)(b)

This report included a recommendation for Ministers to introduce and launch a licensing scheme for funeral directors in Scotland. This recommendation was accepted by the Minister for Public Health, Sport and Wellbeing.

Further progress was made in December 2020, when the Scottish Government appointed a Senior Inspector of Burial, Cremation, and Funeral Directors and an Inspector of Burial, Cremation and Funeral Directors. The Scottish Government will in due course recruit and appoint additional inspectors and create an inspectorate support team within government to provide administrative support for this work.

Finally, in May 2019 the Scottish Government published [Guidance on Funeral Costs](#), working with the funerals industry to improve the availability and transparency of information about the costs associated with arranging a funeral. As previously noted, the power to enact regulation around funeral pricing or costs is reserved to the UK Government.

As described, the process of developing Scotland's regulatory regime has been informed by our regular discussions with members of the funeral sector. We are working with our 4 Nations colleagues to share our learning so far about establishing an inspection and regulatory regime. We will continue to be in regular contact with government and industry stakeholders as we continue to progress this work.

It is acknowledged that the onset of the COVID-19 pandemic in early 2020 has necessarily led to delays in developing and establishing the regulatory regime described. When possible, the Scottish Government will take the next steps to implement the licensing and regulatory regime for the funeral sector.

CMA Board actions

The CMA makes the following recommendation to the CMA Board:

- 6) [The CMA] are making a recommendation to the CMA Board to
 - a) actively monitor market outcomes in the funerals sector, in order to identify and, where possible, address any harmful behaviour;

- b) publish an annual review of market outcomes in the funeral sector; and
- c) 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.

Scottish Government Response:

The Scottish Government welcomes these recommendations to the CMA Board. We also urge the CMA to consider the remedies available to it in respect of pricing, at the earliest opportunity, in order to protect consumers at a time when they are at their most vulnerable. We stand ready to support the CMA to undertake this work.

We particularly welcome the acknowledgement of the impact COVID-19 has had on the funeral sector, and wish to further highlight the impact of the pandemic on the people of Scotland. We recognise the findings of the CMA report which note how difficult funeral decisions are for the bereaved, and we offer our deepest sympathies to everyone who has lost loved ones. We also acknowledge that the sector has been a crucial part of the COVID-19 response and has provided excellent support to people across our communities during this extremely challenging time. The Scottish Government has recognised the work of the sector in a [letter](#) from then Minister for Public Health, Sport and Wellbeing.

Conclusion

Funerals are incredibly difficult events in our lifetimes. Every funeral celebrates and commemorates a life lived and a loved one no longer with us. The Scottish Government welcomes the CMA's Funerals Market Investigation, and the suggested remedies, which are intended to ensure that those who purchase funeral services can be confident that prices are reasonable and quality is appropriate. We accept the findings in this report, and support the measures to improve consumer protection, promote more competition, increase transparency and reduce consumer detriment. The Scottish Government looks forward to supporting the CMA in any future funeral market investigations it consults on.

Getting in touch

We would welcome comments on both the CMA's findings and on this response.

These can be submitted via email to burialandcremation@gov.scot

or to the Burial and Cremation Team at the following address:

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