

**Funeral Partners' Response to the CMA's
Funeral Market Investigation Order 2021**

Pre-amble

Funeral Partners appreciates the ability to feedback as part of the CMA's formal consultation concerning its Funeral Market Investigation Order 2021 ("**Order**") which is accompanied by the Explanatory Note ("**EN**").

To the extent that Funeral Partners supports ongoing improvements in the industry for the benefit of consumers, we welcome the spirit of certain remedies articulated in the CMA's Order, however, we continue to disagree that these remedies are justified on the grounds of any AEC finding. Instead, our support is based on welcoming ongoing incremental improvements to the marketplace.

We continue to strongly disagree with certain aspects of the CMA's conclusions as articulated in its Final Report. We continue to maintain that the funeral market is competitive, with providers competing on quality as well as price to deliver good outcomes for consumers, who are overall very satisfied with the services in the market.

Notwithstanding these comments, Funeral Partners provides responses below associated with the Order and the EN. Our comments are intended to constructively support the CMA implement its remedies for the benefit of consumers.

Following a review of our comments, Funeral Partners is available to support any further questions which the CMA may have on our response, in order to support the final production of the Order.

Commentary

The Standardised Price List ("SPL")

In relation to the specifics of the SPL, we would note the following:

Interpretation

We do not think the definition of "Disbursements" is appropriate and we believe "Disbursements" should be defined as those costs which are set by a third party to the funeral director and are passed on by the funeral director to the Customer directly *without* the provision for a "mark-up".

We believe the definition of "Funeral Director" is too broad and the word "person" should be omitted from the definition. Instead, the words "business or trading entity" should be used. This new suggested wording will avoid individuals employed in the role of "Funeral Director" (but ultimately working for an individual funeral director firm) from being captured within the definition.

Attended Funeral

Collecting and transporting the deceased person from the place of death

This section must include "within office hours" given that a separate price for "out-of-hours" collection is stipulated in the "Additional Funeral Director Products and Services" section.

Care of deceased

In relation to the square brackets around "both" and "other premises" in the section concerning care of the deceased, we assume that there is no requirement to specify the actual location of other premises, given this may constrain the ability to move the deceased from the prescribed locations in the SPL in the event, for example, of increases in demand.

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Coffin

The SPL states that a “suitable” coffin for burial or cremation should be provided, and in the EN it states that “suitable” means a “wood veneer coffin or higher-grade coffin”. We do not believe that the Order or the EN should mandate that a wood veneer coffin (or higher-grade coffin) must be used for the Attended Funeral. It is standard industry practice to deploy “foil” veneers (wood effect) and we believe these should be deemed a “suitable” coffin for the purposes of the SPL and to keep prices lower for consumers.

Mandating the use of wood veneer coffins for the Attended Funeral could have the unintended consequence of increasing prices to the consumer, we therefore proposed the definition in the EN is amended to mandate the use of “wood effect foil veneer” (or higher grade coffin).

Date and time of funeral

In relation to the price for “taking the deceased person direct to your choice of cemetery”, we would note that this must be provided “at a date and time you agree with the funeral director”. Meanwhile, Part B (Paragraph 15) of the Order references “The opportunity to hold a service at the cemetery or crematorium at the time of committal”.

We assume the intent behind the wording of the SPL is such that there is mutual agreement on the date and time of the funeral between the Funeral Director and the client (as opposed to the Funeral Director prescribing when the funeral will take place).

In any event, the requirement on all providers must be clear on this point in order to ensure like-for-like comparisons between providers can be made.

We would propose the wording be amended to allow the Funeral Director to be able to restrict the times available to ensure efficiency can be maintained.

Hearse vehicle style and make

There is currently a requirement to include a description of the “vehicle style and make” of the hearse which will be used to transport the deceased to the cemetery or crematorium. We maintain that it is inappropriate to include the “make” of the hearse since this will constrain providers who may have a fleet made of up various makes. Constraining providers in this way could lead to significant inefficiency in fleeting funerals.

Burial fee typical cost

We are unclear how the typical cost for the burial fee will be determined – what are the criteria to include figures within this section? For example, is it the nearest burial ground, or is it all burial grounds within a certain proximity of the funeral home. Much more clarity is needed in regards to which figures should be placed within this section of the SPL.

We also believe it should be the case that burial authorities provide the required data for the SPL to funeral directors, in a similar way to the requirement placed upon crematoria operators to provide crematoria pricing information to funeral directors.

Additional Funeral Director products and services

We believe that the price for a funeral officiant must be classed as “Price on request”, since the prices will differ from officiant to officiant.

We are not clear whether the price for pallbearers is for an individual pall bearer or whether this is a set price for pallbearing. In any event, this needs to be clear for consumers and providers. It should also be noted that certain providers may wish to charge more for 6 bearers (as opposed to 4) and the SPL needs to be able to accommodate this charging model.

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The Register

We understand the rationale requiring Funeral Directors to maintain a register of certain payments. However, for the reasons below, we believe that the Order must be amended in order to make the register practical for Funeral Directors to administer and, at the same time, meaningful to consumers:

Gratuities

We do not believe that the register should include gratuity payments. Instead, we strongly believe that the Order should simply prohibit the payments of gratuities to any third party associated with the funeral industry. Prohibition would mean that there is no requirement to log gratuities on the register (since they could not exist) and it would ensure that all providers are operating in the same way when it comes to interacting with third parties and providing “tips”. Prohibition of gratuities would at the same time reduce any risk of gratuities becoming “disguised” or “tacit” arrangements to refer funerals to Funeral Directors (which the CMA also seeks to prohibit).

Were the register to log all gratuity payments made then, in certain areas where the payment of gratuities is common, this could result in payments being logged against, for example, individual gravediggers. We do not think this is an appropriate level of detail for the register and will become burdensome, in addition, we do not believe it is helpful to consumers.

In any event, if it is the case that certain gratuity payments are currently being given to third parties for specific tasks undertaken to support the funeral director’s work (such as assisting the Funeral Director with lifting the deceased) then we believe such payments for work undertaken should instead be fulfilled through the raising of a formal invoice by the third party. The invoice should be then submitted to the Funeral Director by the third party concerned so that the funeral director can process for payment via official channels.

Scope of the Register

In relation to the scope of the Register, we remain unclear as to whether the Register needs to declare donations linked only to the branch in which the Register is displayed or, alternatively, whether every payment across the entire Funeral Director’s portfolio of branches is required to be declared. See extracts from the EN below:

(69) “The register made available to Customers in the Branch must cover any charitable donations, contributions or payments of gratuities made by that Branch.”

(74) Funeral Directors are required to disclose on the register charitable donations from the Branch and/or made by another Branch or by another company within the same group of companies to which that Funeral Director belongs when made on behalf or in consultation with that Funeral Director.”

In any event, we think the requirement to display every single payment across the entire business is wholly impractical since, for several providers, the list will be far too long to display all payments in a single A2 display.

Instead, we believe the Register should be available to consumers in an online format. If it were the case that the register had to list all payments relevant to the overall funeral director business, then this is much more achievable in an online format. We also believe a template should be provided so that all providers are consistent in their declarations relating to register entries.

In relation to the presence of the Register, the A2 within branch display could nevertheless highlight that a Register exists online – and that a physical copy of the Register can be provided upon request.

Finally, we maintain that the register should cover the scope of companies which operate Funeral Director Branches only (as opposed to “companies within same group of companies to which that Funeral Director belongs”). For example, for Funeral Partners, the current definition would include its funeral plan company (“Alternative Planning Company Limited”) within the scope of the register. We maintain our assumption that funeral plan providers remain out of scope for the purpose of the Order.

Terms of business

In relation to the Terms of business as articulated in 4 (1) we would note the following:

Interest charged

As far as the requirement to explain to the client, the options “including interest charged” which a Funeral Director offers to a Customer in respect of payment of any deposit made and final balance, we are assuming that this does not extend to those circumstances where the Funeral Director is acting as a credit broker and not a credit lender (such is the case for Funeral Partners). As a credit broker, Funeral Partners is not in a lawful position under FCA regulation to determine the APR charged to a consumer. Instead, we intend to comply with the requirement of 4 (c) through simply referencing that we have an arrangement in place with a third party credit lender, should the consumer desire credit facilities to pay for the deposit and/or final balance.

Late payment of sums due

In relation to the requirement to include details of late payment of sums due, we assume this does not include the specific deductions which would be made on a case-by-case basis if any debt turned bad and went to a third party debt collector. Instead, we assume the requirement to declare late payments fees relates to the typical charges incurred if late payment takes place (e.g. Funeral Partners may charge a certain percentage amount above the Bank of England base rate prior to any debt being handed over to a third party in order to settle). It is this percentage charge which Funeral Partners would declare to its consumers in order to fulfil this requirement of the Order.

The A2 Within Branch Display

We are still of the view that the requirements of the A2 poster are hard to interpret – we need much more clarity from the CMA and ideally a visual from the CMA which could actually contain the prescribed elements of the A2 display, as required by the Order. This will assist all providers with the compliance requirements and should mean that there is less room for different interpretations of the requirements across providers.

Areas where Funeral Partners believe the CMA must rethink the nature of the within display are as below:

- **Crematoria pricing information:** We remain unclear on the extent to which crematoria pricing should be on the A2 branch display and whether a separate A2 in branch display is also required for crematoria pricing.
- **Register:** As referenced above, it will be wholly impractical for the A2 to contain the Register of all payments made by the entire Funeral Director throughout its entire Operations. There will simply not be enough room.
- **Additional Options Price List:** It is wholly unrealistic for the A2 display to contain all the additional options which a Funeral Director may display. As a representative example of what this may mean in practice for Funeral Partners, this would necessitate the A2 listing the following prices for every single product offered within the following product ranges:
 - o Coffins
 - o Caskets
 - o Urns
 - o Keepsakes
 - o Funeral Stationery
 - o Flowers
- The A2 display will simply not be able to accommodate all the individual product elements contained within these product ranges, along with all the other requirements which must also be placed within the display. As an alternative, we believe that the Order could request that any standardised product ranges offered by the Funeral Director must be placed online. In addition, the A2 within branch display could state clearly that price lists for commoditised product ranges offered by the funeral provider are available for review.

Crematorium Operations Price Information

We have two major concerns associated with the requirements of crematoria pricing information as detailed below:

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Requirement for a template

In addition to the lack of clarity concerning what information should be placed into the A2 within branch display, we strongly believe that it is wholly inappropriate to leave the crematoria pricing information display requirements to be determined by crematoria themselves.

Instead, we believe that a template similar to that of the SPL *must* be provided to crematoria providers by the CMA for use in their own premises, and also so that the template can be provided to Funeral Directors in order to satisfy the requirements of the Order in their Funeral Director premises/online.

In addition, it will also be the case that, in certain areas, there may be several crematoria within a 30 minute cortege drive time and this underlines the need for a template to be used for crematoria pricing so that all Funeral Directors are publicising crematoria pricing information using the same template.

Timescales for Funeral Directors

We believe that a minimum 7 day response time to react to changes made by crematoria price changes is wholly impractical and therefore unrealistic for Funeral Directors to achieve. The current draft of the Order requires crematoria pricing information to be updated in four separate places within the Funeral Director environment: 1) Online 2) A2 branch displays 3) A4 SPLs in branch windows 4) In branch folders containing pricing information. Allowing a minimum period of 7 days for such changes to take effect is wholly unrealistic given the potential requirements to implement online technical changes as well as physical display changes. We suggest that, as an absolute minimum, a period of 28 days is given to Funeral Directors to update their records with any associated crematoria pricing information changes.

Other

We assume that it will be up to crematoria to determine which Funeral Directors are in the scope of the 30 minute cortege drive time and communicate with Funeral Directors accordingly. We do not think this responsibility falls to Funeral Directors.

Inducements and referrals

We remain supportive of the intention behind the prohibition of “arrangements” which could be reasonably be understood to encourage, incentivise or require third parties to refer customers or potential customers to certain Funeral Directors. However, we are not clear if this definition prohibits all Funeral Directors from establishing formal or informal links with charities or other organisations connected to the sector, such as those associated with old age, bereavement or victim support, who may, for example, currently provide discounts to their members/supporters if certain Funeral Directors (as outlined/referenced by the charity/organisation) are chosen by the member/supporter to provide funeral services.

Organisations, such as the Natural Death Centre, specifically recommend certain Funeral Directors based on the organisation’s own criteria concerning what a “good” Funeral Director consists of. Some of these third parties build relationships within the sector (and/or promote themselves directly to consumers) in order to provide recommendations regarding funeral providers. As such, these third parties may be in a position of influence over consumers both before need, and at the point of need, and we assume therefore that these third parties also fall within the scope of the definition of “arrangements”. Accordingly, we assume these institutions will not be able to recommend specific Funeral Directors once the Order comes into force. We believe the definition of “another party” in the Order must therefore be made clearer to include these types of relationships explicitly within the scope of “arrangements”.

Furthermore, we would also reiterate to the CMA that it remains Funeral Partners’ assumption that the definition of “arrangements” in relation to prohibited practices does not extend to those arrangements which a plan provider business may have with third parties connected to the funeral sector which concern the promotion of funeral plan products (where we can assume that these pre-need arrangements do not cover any arrangement associated with encouraging, requiring or incentivising third parties for referrals from an at-need perspective).

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If Funeral Directors (who are also “plan providers”) were prohibited from promoting funeral plans to third parties such as hospices, this would create an unfair competitive landscape, and would favour those plan providers who were not also funeral directors. In this situation, the competitive landscape would allow plan providers (who are not funeral directors) to enter arrangements with third parties connected to the sector, yet it would prohibit funeral directors who are plan providers from entering into the same arrangements. As such, this situation would be significantly anti-competitive.

In relation to 79 (b) and 80 (c) in the EN, we assume it remains permissible for the Funeral Director to leave literature with third parties associated with the sector (such as magazines highlighting the work of the Funeral Director, or training materials written by the Funeral Director) so long as these materials are not intended for dissemination to patients/residents and/or families.

Finally, we would note in this section that we assume paid for advertising in publications linked to the funerals sector (such as bereavement guides) remains acceptable and does not form part of the definition of “arrangements” which are to be prohibited.

Ongoing Reporting

In relation to the ongoing reporting requirements associated with Part 5 of the Order, Funeral Partners would comment that, under the current definition, any CMA Attended or CMA Unattended funeral provided to a client which has any product element added to it will be reported under the “Other” funeral headings. Using this protocol, we would note that it is our belief that there will be very few funerals which will be categorised as CMA Funerals, particularly CMA Attended Funerals.

Client Estimates

In order to ensure that all providers confirm the price of all products being purchased prior to purchase, we think that the CMA should ensure that all products which the consumer intends to purchase should be reflected back to the consumer in a formal written estimate or contract which must be signed by the customer prior to the funeral taking place.

The estimate/contract is a key control which ensures that the client has a documented list of all products/services requested along with a price, albeit some prices may be indicative until finalised.

The Order currently makes no mention of a requirement for the Funeral Director to issue a written estimate of Funeral Costs to be signed by the client. For Members of the NAFD and SAIF, the requirement for an estimate/contract to be provided to all consumers is already contained within their joint Codes of Practice, but for the many firms that are not NAFD or SAIF members this may allow for an ongoing significant gap in price transparency across the sector.

Given the lack of imminent government regulation, we suggest that the CMA make it a requirement of the Order for funeral directors to issue a written estimate/contract to all consumers to be signed by all consumers.

Timescales

We believe the timescales for implementation of the Order are far too short. Our reasons for this assertion are as detailed below:

- **Contents of the final Order:** Based on the consultation, the contents of the final Order may change, and these changes may materially affect such areas as the design of the A2 within branch display, and the requirements of technical areas such as the website and internal systems used for reporting. Allowing a period of only three months to ensure all these areas are appropriately scoped and resourced is wholly inadequate.
- **Competing demands:** The funerals industry is still adapting to the evolving requirements of the pandemic and now dealing with the requirements of oversight of the pre-need sector by the Financial Conduct Authority.

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- **Awareness amongst the sector:** Whilst Funeral Partners has played a very active and direct role in the CMA's Investigation, this may not be the case for most operators. We believe that a significant amount of communication and engagement is still required with independent firms and that 3 months from the date of the publication of the Order to meaningfully engage with these Funeral Directors will be insufficient.