

Memoria Limited

Response to CMA's Funeral Markets Investigation Order 2021 including Consultation Questions

Memoria Limited (**Memoria**) welcomes the opportunity to comment on the CMA's Funeral Market Investigation Draft Order and Explanatory Note 2021, and has set out its two main concerns below.

(i) The Order should be amended to clarify that any future MIR is a matter for the CMA Board.

The background section of the Order should be amended to mirror the explanatory paragraph in 9.157 of the CMA's final report, which states *"We note that the decision to consult on a MIR in the future is a matter for the CMA Board and that for any such reference to be made, the statutory test in s131 Enterprise Act 2002 would need to be satisfied. In the event that a future MIR is made, it would be for the group appointed for the purposes of that reference to answer the statutory questions pursuant to s134 Enterprise Act 2002 in respect of that MIR."*

Memoria notes that the CMA has included a footnote to this effect in the Explanatory Notes. However, no such footnote appears in the Order. This is highly problematic as the Explanatory Note is not part of the Order and, as is clearly set out in paragraph 11 of the Explanatory Notes, *"Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail."* It is therefore imperative that the CMA amends the Order to include the same footnote as is included in the Explanatory Notes, to clarify that any future MIR is a matter for the CMA Board.

Failure by the CMA to make such an amendment would result in the Order being materially misleading.

(ii) The Order and Explanatory Notes should be amended to allow for confidentiality redactions to be made

Paragraph 85 of the Explanatory Note and paragraph 14(4) of the Order should be amended to clarify that companies are entitled to make redactions for confidential information and business secrets.

Both of these amendments have been reflected in the marked-in versions of the draft Order and Explanatory notes submitted with this response.

Memoria's responses to the CMA's specific consultation questions

1. *Is the Standardised Price List (see Part A to Schedule 1 of the draft Order) appropriately presented?*

Memoria is comfortable with the approach that the CMA has taken with regards to the presentation of the Standardised Price List contained within Part A to Schedule 1 of the draft Order.

2. *Does the Standardised Price List appropriately describe the items that are included under the Attended Funeral?*

Memoria believes the Standardised Price List appropriately describes the items included under the Attended Funeral.

3. *Do you agree with the items that are included under the Attended Funeral and Unattended Funeral (see Part B and Part C to Schedule 1 of the draft Order)?*

Memoria agrees with the items included under the Attended Funeral and Unattended Funeral, contained within Part B and Part C to Schedule 1.

4. *Funeral Directors must maintain a register of any material charitable donations, contributions or payment of gratuities. Material has been defined as any individual or cumulative donation, a contribution or payment within any 12-month period of £250 or more (see Article 7 of the draft Order and paragraph 71 of the draft Explanatory Note). Is £250 an appropriate de minimis figure?*

Memoria believes the figure of £250 to be an appropriate reportable figure for charitable donations, contributions or payments of gratuities.

5. *Crematorium Operators must provide price information to local funeral directors and customers on a Crematorium Standard Fee Attended Service; a Crematorium Unattended Service if offered by the Crematorium Operator; and a Crematorium Reduced Fee Attended service if offered by the Crematorium Operator (see Article 8(5) of the draft Order. Do these names appropriately identify the three services?*

Memoria can confirm that the names proposed by the CMA are appropriate for the services described in the Interpretation section of the Order.

6. *Articles 9 and 10 of the Order require Funeral Directors with five or more branches and ten or more branches to provide certain information to the CMA. Schedule B and Schedule C to the Explanatory Note list funeral directors with five or more branches and ten or more branches respectively. Please inform us if you consider your own or another Funeral Director business is erroneously included or excluded from the lists in these schedules.*

N/A

7. *If a party is aware that it is not compliant with any part of the Order, it must report this non-compliance to the CMA within 14 days of becoming aware that it is not compliant (see Article 11(6) of the draft Order). Is 14 days sufficient time for parties to report non-compliance to the CMA? If not, please give reasons.*

Memoria believes that 14 days is insufficient time for parties to report non-compliance, and the period should be extended to 21 days. This is to allow sufficient time for an internal review of any non-compliant behaviour to be carried out by the business so that the full details can be provided to the CMA as part of the reporting process.

8. *The substantive requirements of the Order will come into force three months after the Order is made. Does this allow sufficient time for parties to make necessary changes to their systems and processes so that they are in a position to comply with the requirements of the Order? If not, please give reasons.*

While Memoria is unable to comment on any internal process for other parties, Memoria can confirm that it will be able to make the required changes to its own systems and processes to ensure compliance with the Order within three months.

DRAFT: April 2021 FUNERALS

MARKET INVESTIGATION

The Funerals Market Investigation Order 2021

Background

1. On 28 March 2019, the Competition and Markets Authority (CMA), in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), made a market investigation reference (MIR) in relation to the supply of funerals and related goods and services in the United Kingdom (the Market Investigation).
2. On the same date, the CMA appointed from its panel a group of four independent members (the Inquiry Group) to conduct the Market Investigation and publish a final report (the Final Report). The Inquiry Group was required to decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition and thereby has an adverse effect on competition (AEC) and, if so, what action should be taken.
3. On 16 March 2020, the Inquiry Group gave Notice that the reference period for the Market Investigation was extended by six months under section 137(2A) of the Act. In taking this decision, the Inquiry Group had regard to the scope and complexity of the Market Investigation, the extent of the possible remedies package that was being contemplated, and the ongoing COVID-19 pandemic. The Inquiry Group considered an extension was necessary to facilitate input from parties and to allow sufficient time to take full and proper account of such input.
4. On 13 August 2020, the Inquiry Group published its Provisional Decision Report and invited interested parties to submit reasons in writing as to why these provisional findings and the proposed remedies package should not become final (or, as the case may be, should be varied).
5. On 18 December 2020, the Inquiry Group published its Final Report on the Market Investigation, in which it decided that there were AECs, within the meaning of section 134(2) of the Act, in the reference markets, in particular arising from:
 - (a) low levels of customer engagement caused by the intrinsically challenging circumstances surrounding the purchase of a funeral;

- (b) the lack of easily accessible and clearly comparable information on the products and services provided by funeral directors, including their prices and levels of quality;
 - (c) the lack of visibility to customers of the level of quality of care given to the deceased by funeral directors;
 - (d) high barriers to entry in the supply of crematoria services; and
 - (e) high levels of local concentration in the supply of crematoria services.
6. The Inquiry Group decided to address the AECs and resulting customer detriment through an integrated package of remedies, as follows:
- (a) A requirement on all funeral directors and crematorium operators to disclose price information to customers.
 - (b) A requirement on all funeral directors to disclose particular business, financial and commercial information to customers.
 - (c) A prohibition on all funeral directors from:
 - (i) entering into or conducting certain arrangements with a hospital, hospice, care home, or other similar institution which could reasonably be understood to encourage, incentivise or require the institution to refer customers to the funeral director or give that funeral director preference over other funeral directors; and
 - (ii) soliciting for business through coroner and police contracts.
 - (d) 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 in the establishment of a broader regulatory regime for funeral services in these nations.
 - (e) A recommendation to the CMA Board to:
 - (i) actively monitor market outcomes in the funerals sector, in order to identify and, where possible, address any harmful behaviour;
 - (ii) publish an annual review of market outcomes in the funerals sector; and
 - (iii) 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 MIR.¹

(f) To assist the CMA in monitoring the funerals sector, a requirement on 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.

7. The remedies outlined in paragraphs 6(a), 6(b), 6(c) and 6(f) will be implemented by this Funerals Market Investigation Order 2021. The remedies outlined in paragraphs 6(d) and 6(e) will be implemented by recommendations to the UK government and the devolved administrations in Northern Ireland and Wales and the CMA Board respectively. The Explanatory Note accompanying the Order explains how the Order is expected to operate.
8. On 15 April 2021 in accordance with section 165 of, and paragraph 2(1)(a) to, Schedule 10 to the Act, the CMA published a Notice of its intention to make an Order as part of a package of remedies to remedy, mitigate or prevent the AEC and any resulting customer detriment, which it identified in the Final Report.

Commented [A1]: The Order should be amended to include an additional footnote that mirrors the explanatory paragraph in 9.157 of the Final Report, and the explanatory footnote that the CMA has included in the Explanatory Notes to the Order. Failure to insert this explanatory note in the Order means the background section to the Order, and therefore the Order itself, is materially misleading.

¹ We note that the decision to consult on a MIR in the future is a matter for the CMA Board and that for any such reference to be made, the statutory test in section 131 of the Act would need to be satisfied. In the event that a future MIR is made, it would be for the group appointed for the purposes of that reference to answer the statutory questions pursuant to section 134 of the Act in respect of that MIR.

ORDER

Reference and power

The CMA makes this Order in accordance with the duty imposed by section 138 and exercise of the powers conferred by section 161(1), 161(3) 161(4) of and paragraphs 1, 2, 7, 10, 17, 18, 19, 21 and 22 of Schedule 8 to the Act, for the purpose of remedying, mitigating or preventing the AEC and any resulting customer detriment which the CMA identified in the Final Report.

PART 1

Preliminary

1 Title, commencement and extent

- (1) This Order may be cited as the 'Funerals Market Investigation Order 2021'.
- (2) Part 1, Part 3, Part 5 and Part 6 shall come into force on the day after the Order is made.
- (3) Part 2 and Part 4 shall come into force three months after the Order is made.
- (4) This Order extends to England and Wales, Scotland and Northern Ireland.

2 Interpretation

- (1) In this Order:

'Act' means the Enterprise Act 2002.

'AEC' means an adverse effect on competition.

'Additional Funeral Director Products and Services' means the additional products and services typically offered by Funeral Directors which are included in the Standardised Price List

'Additional Options Price List' means an itemised price list of all the products and services that a Funeral Director offers to Customers that are not included in the Standardised Price List in the section labelled 'Additional Funeral Director Products and Services'.

'At the point of need' means at the time of bereavement.

‘Attended Funeral’ means a funeral which includes a service and where mourners may attend.

‘Branch’ means the physical premises, sometimes referred to as the ‘funeral home’, from which a Funeral Director sells its products and services, and which is open to Customers.

‘CMA Attended Funeral’ means an Attended Funeral where the products and services provided by the Funeral Director are generally considered to be sufficient to deliver an Attended Funeral; comprise the elements set out in Part B of Schedule 1 to this Order; and comply with the minimum standards set out in Schedule A to the Explanatory Note to this Order. The minimum standards set out in Schedule A to the Explanatory Note to this Order may be changed from time to time, in accordance with Article 3(13).

‘CMA Attended Funeral Price’ means the total price of the CMA Attended Funeral.

‘CMA Unattended Funeral’ means an Unattended Funeral where the products and services provided by the Funeral Director are generally considered to be sufficient to deliver an Unattended Funeral; comprise the elements set out in Part C of Schedule 1 to this Order; and comply with the minimum standards set out in Schedule A to the Explanatory Note to this Order. The minimum standards set out in Schedule A to the Explanatory Note to this Order may be changed from time to time, in accordance with Article 3(13).

‘CMA Unattended Funeral Price’ means the total price of the CMA Unattended Funeral.

‘Customer’ means a person purchasing a funeral at the point of need.

‘Crematorium Operator’ means a private or local authority provider of Crematoria Services.

‘Crematoria Services’ means the services provided by a Crematorium Operator in connection with the cremation of the deceased, including the provision of a chapel or specific place for attended cremations, the committal and the associated sales of additional products and services, such as memorials, audio-visual support and hospitality.

‘Crematorium Reduced Fee Attended Service’ means a cremation which includes a service with mourners present at the crematorium held in off-peak hours (typically considered to be before 10am or after 4pm) and for which a reduced fee is charged.

‘Crematorium Standard Fee Attended Service’ means a cremation which includes a service with mourners present at the crematorium held in peak hours (typically considered to be weekdays from 10am-4pm).

‘Crematorium Unattended Service’ means a cremation which does not include a service and where mourners are not present, sometimes referred to as a direct cremation.

‘Direct Burial’ means a burial of the deceased in a cemetery or other burial site without any funeral service or ceremony and where mourners are not present.

‘Disbursements’ means costs, such as cremation and burial fees, Medical Referee (doctor’s) fee, and minister’s or celebrant’s fees, which are set by a third party to the funeral director and are passed on by the funeral director to the Customer (directly or with a mark-up added).

‘Funeral Director’ means a person or a business involved in making the arrangements for funerals on behalf of Customer(s).

‘Funeral Director Services’ means the services provided by a Funeral Director to a Customer in respect of the arrangements for a funeral. Such services can include, but are not limited to: collection, storage and care of the deceased; organisation of the funeral and supply of goods and services such as coffins, hearses and limousines; guidance and support to the bereaved; and intermediary services between the customer and third parties, such as the crematorium or cemetery or other burial site, the Medical Referee and the minister/celebrant.

‘Modification Notice’ means a notice conforming to the requirements of Article 3(13) whereby the minimum standards set out in Schedule A to the Explanatory Note to this Order may be modified.

‘Standardised Price List’ means the itemised price list shown in Part A of Schedule 1 to this Order which uses the terms and structure as set out in that Schedule and includes the CMA Attended Funeral Price and the CMA Unattended Funeral Price.

‘Unattended Funeral’ means a funeral which does not include a service and where mourners may not attend.

‘Working Day’ means any day other than: (a) a Saturday; (b) a Sunday; (c) Christmas Day; (d) Good Friday; (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the United

Kingdom; (f) a day appointed for public thanksgiving or mourning; or (g) only in respect of Northern Ireland, 12 July.

- (2) The Interpretation Act 1978 applies to this Order as it does to an Act of Parliament except where the relevant words and expressions are expressly defined by the Order.

PART 2

Funeral Directors price, commercial information and transparency

3 Price information for Customers

- (1) A Funeral Director must display the following price information in a clear and prominent manner within each of its Branches if it has any Branches, and on its website(s) if it has any website(s):
 - (a) The Standardised Price List.
 - (b) The Additional Options Price List.
 - (c) The price information provided to it by Crematorium Operators in accordance with Article 8.
- (2) A Funeral Director must display the Standardised Price List using the exact terms and structure set out in Part A of Schedule 1 to this Order.
- (3) A Funeral Director must also display, where practicable, the Standardised Price List in the window of each Branch if it has any Branches.
- (4) If a Funeral Director does not have a website but markets itself using other online channels or platforms, it must display the Standardised Price List and the price information of Crematorium Operators specified in subparagraph (1)(c) in a clear and prominent manner on those other online channels or platforms.
- (5) When a Funeral Director displays any of the information in paragraph (1)(a) on its website(s), it must do so in a PDF titled 'Standardised Price List', which must be displayed on a page no more than one click away from the homepage, with any link to that page prominently labelled on the homepage so the nature of the information to which it leads is clear.
- (6) A Funeral Director must supply to a Customer upon request a physical or electronic copy of the Standardised Price List required by subparagraph

(1)(a) and the price information of Crematorium Operators specified in subparagraph (1)(c).

- (7) A Funeral Director must offer to supply to a Customer a physical copy of the Standardised Price List and the price information of Crematorium Operators specified in subparagraph (1)(c) to any Customer who is unable to visit the Branch or does not have access to the website or online channel or platform.
- (8) A Funeral Director must offer the CMA Attended Funeral. If a Customer wishes to purchase an Attended Funeral as described on the Standardised Price List, the Funeral Director must supply it to the Customer.
- (9) A Funeral Director who offers Unattended Funerals must offer the CMA Unattended Funeral. If a Customer wishes to purchase an Unattended Funeral as described on the Standardised Price List, the Funeral Director must supply it to the Customer.
- (10) A Funeral Director may also offer products and services to Customers which are alternative or additional to those on the Standardised Price List, provided those products and services are disclosed on the Additional Options Price List.
- (11) If a Customer requests a Funeral Director to supply any bespoke products or services which are not on the Standardised Price List or on the Additional Options Price List, the Funeral Director may only provide those bespoke products or services after they have disclosed prices for them to the Customer.
- (12) For the avoidance of doubt a Funeral Director who only offers Crematorium Unattended Services and/or Direct Burials is not required to display the sections of the Standardised Price List labelled Attended Funeral or those elements in 'Additional Funeral Director Products and Services' which would only be relevant for an Attended Funeral.
- (13) The CMA may modify the minimum standards relating to the CMA Attended Funeral and the CMA Unattended Funeral set out in Schedule A to the Explanatory Note to this Order if:
 - (a) The CMA has published a Modification Notice, setting out:
 - (i) the proposed modification and what it entails;
 - (ii) the reason for the proposed modification;

- (iii) the date from which the proposed modification is intended to apply (which may not be less than six months from the publication date of the proposed Modification Notice); and
 - (iv) a period of not less than 30 days within which representations may be made in relation to the proposed Modification Notice.
- (b) The CMA has considered any representation made in response to the proposed Modification Notice; and
 - (c) No fewer than 12 months have elapsed since any previous modification has entered into force.

4 Terms of business

- (1) A Funeral Director must display its terms of business in a clear and prominent manner at each of its Branches if it has any Branches, and on its website(s) if it has any websites(s), and include details of the following:
 - (a) the size of any deposit which is required;
 - (b) the times by when any deposit and final balance must be paid;
 - (c) the options, including interest charged, which a Funeral Director offers to a Customer in respect of payment of any deposit made and final balance; and
 - (d) any charges which the Funeral Director will make for late payment of sums due.
- (2) If a Funeral Director does not have a website but markets itself using other online channels or platforms, it must display the information in paragraph (1) in a clear and prominent manner on those other online channels or platforms.
- (3) A Funeral Director must also supply to a Customer upon request, and in any event in good time prior to the Customer entering a contract with the Funeral Director, a physical or electronic copy of the information in paragraph (1).
- (4) A Funeral Director must also offer to supply to any Customer who is unable to visit the Branch, or does not have access to the website or online channel or platform, a physical copy of the information in paragraph (1).

5 Disclosure of interests

- (1) A Funeral Director must display in a clear and prominent manner at each of its Branches if it has any Branches, and on its website(s) if it has any website(s), the following information:
 - (a) The Ultimate Owner;
 - (b) Any business or material financial interest the Funeral Director has in a price comparison website which compares Funeral Director Services and/or Crematoria Services and their respective prices; and
 - (c) A register providing details of any material:
 - i. charitable donation to a third party,
 - ii. charitable contribution or payment of a gratuity to a third party, or
 - iii. other form of payment to a third party that does not relate to a cost incurred or a service provided by the third party on behalf of or to the Funeral Director,

which has been made by or on behalf of the Funeral Director.
- (2) If a Funeral Director does not have a website but has an online presence and markets itself using other online channels or platforms, it must display in a clear and prominent manner the information in paragraph (1) on those other online channels or platforms.
- (3) For the purposes of subparagraph (1)(a) 'Ultimate Owner' means the company name at the registered company address and the ultimate owner of the business if either of these are different from the trading name of the Branch.
- (4) Where there is a change in the Ultimate Owner, a Funeral Director must update the information in the Branch and on its website(s) within 14 days of the change taking place.
- (5) For the purposes of subparagraph (1)(b) 'any business or material financial interest in a price comparison website' means any ability materially to influence the management, strategic direction or commercial objectives of the price comparison website which compares Funeral Director Services and Crematoria Services and their respective prices.

- (6) Where a Funeral Director acquires or disposes of a business or material financial interest in such a price comparison website, a Funeral Director must update the information in Branch and on its website(s) within 14 days of the change taking place.
- (7) For the purposes of subparagraph (1)(c):
- (a) 'Material' means any individual or cumulative payment of a kind referred to in subparagraph (1)(c) to the same third party of £250 or more within any 12-month period;
 - (b) a 'gratuity' includes a payment or tip given to third parties; and
 - (c) 'third party' means a party connected to the funerals sector such as a hospital, hospice, care home, provider of bereavement services in a hospital setting or provider of palliative care, or other similar institution.
- (8) The register in subparagraph (1)(c) must include details of any payment referred to in that subparagraph made in the previous 12 months which, individually or cumulatively, is material and must include the name of the third party involved, the amount concerned and when it was made.
- (9) Funeral Directors are required to disclose on the register in subparagraph (1)(c) charitable donations made by another branch or by another company within the same group of companies to which that Funeral Director belongs when made on behalf of or in consultation with that Funeral Director.
- (10) The register in subparagraph (1)(c) must be updated twice a year, commencing on the first working day of [three months after the Order is made] 2021 and thereafter the equivalent working day every six months.

PART 3

Prohibited practices

6 Inducements and referrals

- (1) A Funeral Director is prohibited from entering into any arrangement with another party which could reasonably be understood to encourage, incentivise or require that party to refer Customers or potential Customers to the Funeral Director or give that Funeral Director preference over other Funeral Directors.
- (2) For the purposes of Article 6(1):

- (a) 'arrangement' means any contractual or non-contractual agreement, relationship or practice, including any exchange of services with, or benefits or gifts to, another party;
 - (b) 'another party' means a person in a position of trust providing goods or services to a Customer or potential Customer including but not limited to hospitals, hospices, care homes and providers of bereavement services in a hospital setting or provider of palliative care.
- (3) A Funeral Director is prohibited from soliciting potential Customers in the course of providing any services to a coroner or the police.

7 Termination of practices

- (1) A Funeral Director must terminate forthwith any arrangement, exchange of services or payments prohibited by Article 6.
- (2) A Funeral Director must also ensure that any arrangement, exchange of services or payments prohibited by Article 6, that cannot cease immediately on termination, cease within three months of this Order being made.

PART 4

Crematorium Operators price information and transparency

8 Price information

- (1) A Crematorium Operator shall supply Customers and local Funeral Directors with price information as specified in this Article and keep such price information updated by notifying those local Funeral Directors of any change in the price information no later than seven days before such change has effect.
- (2) A Crematorium Operator shall upon request supply to any other Customer or Funeral Director the pricing information specified in this Article.
- (3) In this Article, 'local Funeral Director' means a Funeral Director whose business premises are within a 30-minute, cortège-speed driving distance from a crematorium. Where there is not a Funeral Director within a 30-minute, cortège-speed driving distance from the crematorium, the Crematorium Operator must provide its price information to the nearest Funeral Director.

- (4) A Crematorium Operator must take reasonable steps to ensure that the price information that it provides to Funeral Directors is received.
- (5) In this Article 'price information' means the charge made by a Crematorium Operator for:
 - (a) a Crematorium Standard Fee Attended Service;
 - (b) a Crematorium Unattended Service if offered by the Crematorium Operator; and
 - (c) a Crematorium Reduced Fee Attended Service if offered by the Crematorium Operator.
- (6) A Crematorium Operator shall include in the price information:
 - (a) a description of what is included in and is excluded from the Crematoria Services provided;
 - (b) the length of time permitted for a cremation service, and whether this includes the time allowed for mourners to gather and leave the crematorium;
 - (c) any additional charges for a cremation service taking place on particular days or at a particular time (eg for services taking place on a weekend);
 - (d) any charge made for exceeding the permitted time or late arrival and/or departure of the cortege; and
 - (e) a breakdown of the headline price into the total price for all core services (eg cremation forms and environmental levies and any other elements that are necessary for the cremation service) and the individual prices for any optional services, including, but not limited to, the purchase of additional cremation service time; use of music facilities; webcasting; organists; visual tributes; memorials; a container for ashes; scattering of ashes, storage of ashes; collection of ashes (by a Funeral Director or the bereaved from the crematorium); and delivery of ashes (by the crematorium to a Funeral Director or the bereaved).
- (7) A Crematorium Operator must display in a clear and prominent manner at each crematorium, and on each crematorium website if it has one, the price information specified in this Article.

- (8) If a Crematorium Operator does not have a website, but markets itself using other online channels or platforms, it must make the information in this Article available in a clear and prominent manner on those other online channels or platforms.
- (9) When a Crematorium Operator displays any of the information in this Article on its website, it must do so in a PDF titled 'Standardised Price List', which must be displayed on a page no more than one click away from the homepage, with any link to that page prominently labelled on the homepage so the nature of the information to which it leads is clear.

PART 5

Information required by the CMA

9 Information required by the CMA from Funeral Directors

- (1) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Funeral Director operating from five or more Branches shall supply the CMA with:
 - (a) the total number of funerals it has arranged for Customers in the preceding six-month period commencing seven months prior to the date in paragraph (1); and
 - (b) the total revenue (excluding disbursements) gained from the provision of Funeral Director Services in the preceding six-month period commencing seven months prior to the date in paragraph (1).
- (2) The information in paragraph (1) must be provided separately for each Branch and in aggregate form for all Branches as set out in Part A of Schedule 2.
- (3) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Funeral Director operating from ten or more Branches must supply the CMA with the information specified in paragraph (1) in aggregated form and also in disaggregated form, showing the totals for:
 - (a) CMA Attended Funerals;
 - (b) any other Attended Funerals supplied by the Funeral Director;
 - (c) CMA Unattended Funerals; and

- (d) any other Unattended Funerals supplied by the Funeral Director.
- (4) The information required under paragraph (3) must cover the same time periods as set out in paragraph (1).
- (5) The information in paragraph (3) must be provided separately for each Branch and in aggregate form for all Branches as set out in Part B of Schedule 2.
- (6) For a Funeral Director subject to paragraph (3), if the total number of funerals and the total revenue provided in accordance with paragraph (1) do not equate to the disaggregated information provided in accordance with paragraph (3), the Funeral Director must also provide an explanation of the variance.
- (7) A Funeral Director operating from fewer than five Branches must supply the information specified in paragraph (1) if requested to do so in a notice from the CMA in accordance with the timeframes specified in that notice.
- (8) A Funeral Director operating from fewer than ten Branches must supply the information specified in paragraphs (1) and (3) if requested to do so in a notice from the CMA in accordance with the timeframes specified in that notice.
- (9) If a Funeral Director opens a Branch or Branches that results in it operating from five or more Branches, it must notify the CMA within four weeks of it opening its fifth Branch. The Funeral Director must provide to the CMA the information required under paragraph (1) for the first six-month period after it begins operating from five or more Branches and every six-month period thereafter, subject to paragraph (11).
- (10) If a Funeral Director opens a Branch or Branches that results in it operating from ten or more Branches, it must notify the CMA within four weeks of it opening its tenth Branch. The Funeral Director must provide to the CMA the information required under paragraph (3) for the first six-month period after it begins operating from ten or more Branches and every six-month period thereafter, subject to paragraph (11).
- (11) If a Funeral Director subject to paragraph (1) or paragraph (3) ceases to have the relevant number of Branches, it may notify the CMA and, subject to receiving notice from the CMA, it will no longer be required to provide the information specified in paragraph (1) or paragraph (3) as appropriate.

10 Information required by the CMA from Crematorium Operators

- (1) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Crematorium Operator must supply the CMA with the total number of cremations it has carried out and the total revenue it has gained from Crematoria Services in each of the two preceding three-month periods (quarters), commencing seven months prior to the reporting month.
- (2) Each Crematorium Operator shall provide the information in paragraph (1) separately for each quarter for each crematorium it operates as set out in Part C of Schedule 2.
- (3) Each Crematorium Operator shall supply the information in paragraph (1) in aggregate form and also in disaggregated form, showing the totals for: (a) Crematorium Standard Fee Attended Services; (b) Crematorium Reduced Fee Attended Services if offered by the relevant Crematorium Operator; (c) Crematorium Unattended Services if offered by the relevant Crematorium Operator; and (d) any other services provided by the Crematorium Operator that are not captured by (a), (b) and (c).
- (4) The revenue information provided in accordance with paragraph (1) must include all revenue generated from Crematoria Services and exclude burial services. Each Crematorium Operator must provide revenue from memorials related to crematoria services separately and explain how they have allocated this revenue to crematoria services. If the disaggregated information does not equate to the aggregate information provided, the Crematorium Operator must provide an explanation of the variance.

PART 6

Enforcement

11 Compliance statements

- (1) A Funeral Director operating from ten or more Branches shall supply the CMA by email (or by post if email is not available) no later than the last working day of January in each year a compliance statement confirming compliance with the information requirements of Articles 3, 4 and 9, the disclosure requirements of Article 5 and the prohibition requirements in Articles 6 and 7 in the preceding calendar year.

- (2) A Funeral Director operating from fewer than ten Branches must also supply a compliance statement in accordance with the requirements set out in paragraph (1) if requested to do so by the CMA.
- (3) A Crematorium Operator shall supply the CMA by email (or post if email is not available) no later than the last working day of January in each year a compliance statement confirming compliance with the pricing requirements of Article 8 and the information requirements of Article 10 in the preceding calendar year.
- (4) In the case of a Funeral Director who operates as a body corporate, the compliance statement must be signed by any two of the following:
 - (a) Chief Executive Officer.
 - (b) Managing Director.
 - (c) Any Non-Executive Director.
 - (d) Any Senior Director.
- (5) In the case of a Funeral Director who operates as a sole trader or in a partnership, the compliance statement must be signed by either the:
 - (a) owner(s) of the business; or
 - (b) any other individual with decision-making authority.
- (6) If a Funeral Director or a Crematorium Operator is aware that it is not compliant with any part of this Order, it must report this non-compliance to the CMA within 14 days of becoming aware that it is not compliant.

12 Investigation powers

- (1) Section 174 of the Act has effect as regards the enforcement functions of the CMA under this Order.

13 Directions

- (1) The CMA may give directions falling within Article 13(2) to:
 - (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporated.
- (2) The directions referred to in Article 13(1) are directions in writing:

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do, or refrain from doing, anything so specified or described which the person is required by this Order to do or refrain from doing.
- (3) The CMA may vary or revoke any directions so given.

14 Supply of information to the CMA

- (1) Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
- (2) Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order, other than information or documents covered by legal professional privilege.
- (3) Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
- (4) Subject always to Part 9 of the Act, the CMA may publish, subject to appropriate confidentiality redactions, any information or documents that it has received in connection with the monitoring or the review of this Order or any provision of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Commented [A2]: Para 14(4) should be amended to clarify within the Order that companies are entitled to make redactions for confidential information and business secrets.

(signed)

Group Chair

(date)

Schedule 1 – Price information

Part A – Standardised Price List

Please see the next page for the Standardised Price List.

STANDARDISED PRICE LIST

All funeral directors are legally required to publish this Price List for a standardised set of products and services, to help you think through your options and make choices, and to let you compare prices between different funeral directors.

ATTENDED FUNERAL (funeral director's charges only)	£xxxx
This is a funeral where family and friends have a ceremony, event or service for the deceased person at the same time as their burial or cremation.	
Taking care of all necessary legal and administrative arrangements	£xxx
Collecting and transporting the deceased person from the place of death (normally within 15 miles of the funeral director's branch premises) into the funeral director's care	£xxx
Care of the deceased person before the funeral in appropriate facilities. The deceased person will be kept at [both] the funeral director's branch premises [and other premises]	£xxx
Providing a coffin suitable for burial or cremation – this will be made from [insert description of the coffin]	£xxx
Viewing of the deceased person for family and friends, by appointment with the funeral director (optional service)	£xxx
At a date and time you agree with the funeral director, taking the deceased person direct to your choice of cemetery or crematorium (which can be up to 20 miles from the funeral director's branch premises) in a hearse or other appropriate vehicle – this will be using [insert description of vehicle style and make]	£xxx

UNATTENDED FUNERAL (if offered)	
This is a funeral where family and friends choose to have a ceremony, event or service for the deceased person at a later date and not at the same time as their burial or cremation.	
Burial (funeral director's charges only)	£xxxx
Cremation (funeral director's charges plus cremation fee)	£xxxx

FEES YOU MUST PAY	
For an Attended or Unattended burial Funeral, the burial fee . ¹	£xxxx
In this local area, the typical cost of the burial fee is:	to
For a new grave, you will also need to buy the plot; for an existing grave with a memorial in place, you will also need to pay a removal/replacement fee. In addition, the cemetery may charge a number of other fees.	£xxxx
For an Attended cremation Funeral, the cremation fee . ²	£xxxx
In this local area, the typical cost of a cremation is:	to
	£xxxx

ADDITIONAL FUNERAL DIRECTOR PRODUCTS AND SERVICES	
This funeral director can supply a range of optional, additional products and services, or they can arrange (on your behalf) for a third party to supply them. These include:	
Out-of-hours collection of the deceased's body	£xx
Additional transfers of the deceased's body (e.g. to their home)	£xx
Additional viewing(s)/out-of-hours viewing(s)	£xx
Specific religious or cultural requirements	Price on request
Funeral officiant (minister, celebrant etc.)	£xx
Pallbearers	£xx
The funeral director can give you a full list of what they can supply. They are likely to charge for these additional products and services, so you may choose to take care of some arrangements without their involvement, or you can use a different supplier.	

¹ This fee (which is sometimes called the interment or interment fee) is the charge made for digging a new grave, or reopening and closing an existing grave.

² In England, Wales and Northern Ireland, you may also need to pay a Medical Referee (doctor's) Fee.

Part B – CMA Attended Funeral

9. Attending to the necessary arrangements, such as:
 - (a) completion of necessary certification;
 - (b) taking instructions from the client; and
 - (c) providing guidance on registration and legally required procedures.
10. Provision of the necessary staff for care of the deceased.
11. Provision of an appropriate coffin suitable for burial or cremation.
12. Transportation of the deceased person from the place of death (normally within fifteen miles but taking into account local circumstances).
13. Appropriate arrangements for the uplift of the deceased and care of the deceased person prior to the funeral in appropriate facilities.
14. Viewing of the deceased person, during normal working hours, by appointment.
15. Provision of a hearse or other appropriate vehicle direct to the nearest crematorium or cemetery at a date and time agreed between the client and funeral director and clearly described to the client.
16. The opportunity to hold a service at the cemetery or crematorium at the time of committal.

Part C – CMA Unattended Funeral

17. Attending to the necessary arrangements, such as:
 - (a) completion of necessary certification;
 - (b) taking instructions from the client; and
 - (c) providing guidance on registration and legally required procedures.
18. Provision of the necessary staff for care of the deceased.
19. Provision of an appropriate coffin suitable for burial or cremation.
20. Transportation of the deceased person from the place of death (normally within fifteen miles but taking into account local circumstances).

21. Appropriate arrangements for the uplift of the deceased and care of the deceased person prior to the funeral in appropriate facilities.
22. Transportation of the deceased to a crematorium or cemetery at a date and time determined by the funeral director and clearly described to the client.

Schedule 2 – Information required by the CMA

Part A – Funeral directors with five or more branches: for each Branch and for all Branches

Category	Previous six months
Total revenue (excluding disbursements)	£x
Total number of funerals arranged	x

Part B – Funeral Directors with ten or more Branches: for each Branch and for all Branches

Category	Previous six months			
	CMA Attended Funerals	Other Attended Funerals	CMA Unattended Funerals	Other Unattended Funerals
Total revenue (excluding disbursements)	£x	£x	£x	£x
Total number of funerals arranged	x	x	x	x

Part C – All Crematoria Operators: for each crematorium

Category	First quarter in the previous six months				
	Standard Fee Attended Services	Reduced Fee Attended Services	Unattended Services	Other services	Total
Total revenue	£x	£x	£x	£x	£x
Total revenue from memorials					£x
Total number of cremations carried out	x	x	x	x	x

Category	Second quarter in the previous six months				
	Standard Fee Attended Services	Reduced Fee Attended Services	Unattended Services	Other services	Total
Total revenue	£x	£x	£x	£x	£x
Total revenue from memorials					£x
Total number of cremations carried out	x	x	x	x	x

DRAFT: April 2021 FUNERALS

MARKET INVESTIGATION

The Funerals Market Investigation Order 2021

Background

1. On 28 March 2019, the Competition and Markets Authority (CMA), in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), made a market investigation reference (MIR) in relation to the supply of funerals and related goods and services in the United Kingdom (the Market Investigation).
2. On the same date, the CMA appointed from its panel a group of four independent members (the Inquiry Group) to conduct the Market Investigation and publish a final report (the Final Report). The Inquiry Group was required to decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition and thereby has an adverse effect on competition (AEC) and, if so, what action should be taken.
3. On 16 March 2020, the Inquiry Group gave Notice that the reference period for the Market Investigation was extended by six months under section 137(2A) of the Act. In taking this decision, the Inquiry Group had regard to the scope and complexity of the Market Investigation, the extent of the possible remedies package that was being contemplated, and the ongoing COVID-19 pandemic. The Inquiry Group considered an extension was necessary to facilitate input from parties and to allow sufficient time to take full and proper account of such input.
4. On 13 August 2020, the Inquiry Group published its Provisional Decision Report and invited interested parties to submit reasons in writing as to why these provisional findings and the proposed remedies package should not become final (or, as the case may be, should be varied).
5. On 18 December 2020, the Inquiry Group published its Final Report on the Market Investigation, in which it decided that there were AECs, within the meaning of section 134(2) of the Act, in the reference markets, in particular arising from:
 - (f) low levels of customer engagement caused by the intrinsically challenging circumstances surrounding the purchase of a funeral;

- (g) the lack of easily accessible and clearly comparable information on the products and services provided by funeral directors, including their prices and levels of quality;
- (h) the lack of visibility to customers of the level of quality of care given to the deceased by funeral directors;
- (i) high barriers to entry in the supply of crematoria services; and
- (j) high levels of local concentration in the supply of crematoria services.

6. The Inquiry Group decided to address the AECs and resulting customer detriment through an integrated package of remedies, as follows:

- (g) A requirement on all funeral directors and crematorium operators to disclose price information to customers.
- (h) A requirement on all funeral directors to disclose particular business, financial and commercial information to customers.
- (i) A prohibition on all funeral directors from:
 - (i) entering into or conducting certain arrangements with a hospital, hospice, care home, or other similar institution which could reasonably be understood to encourage, incentivise or require the institution to refer customers to the funeral director or give that funeral director preference over other funeral directors; and
 - (ii) soliciting for business through coroner and police contracts.
- (j) 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 in the establishment of a broader regulatory regime for funeral services in these nations.
- (k) A recommendation to the CMA Board to:
 - (i) actively monitor market outcomes in the funerals sector, in order to identify and, where possible, address any harmful behaviour;
 - (ii) publish an annual review of market outcomes in the funerals sector; and
 - (iii) 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 MIR.²

(j) To assist the CMA in monitoring the funerals sector, a requirement on 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.

7. The remedies outlined in paragraphs 6(a), 6(b), 6(c) and 6(f) will be implemented by this Funerals Market Investigation Order 2021. The remedies outlined in paragraphs 6(d) and 6(e) will be implemented by recommendations to the UK government and the devolved administrations in Northern Ireland and Wales and the CMA Board respectively. The Explanatory Note accompanying the Order explains how the Order is expected to operate.

8. On 15 April 2021 in accordance with section 165 of, and paragraph 2(1)(a) to, Schedule 10 to the Act, the CMA published a Notice of its intention to make an Order as part of a package of remedies to remedy, mitigate or prevent the AEC and any resulting customer detriment, which it identified in the Final Report.

Commented [A3]: The Order should be amended to include an additional footnote that mirrors the explanatory paragraph in 9.157 of the Final Report, and the explanatory footnote that the CMA has included in the Explanatory Notes to the Order. Failure to insert this explanatory note in the Order means the background section to the Order, and therefore the Order itself, is materially misleading.

² We note that the decision to consult on a MIR in the future is a matter for the CMA Board and that for any such reference to be made, the statutory test in section 131 of the Act would need to be satisfied. In the event that a future MIR is made, it would be for the group appointed for the purposes of that reference to answer the statutory questions pursuant to section 134 of the Act in respect of that MIR.

ORDER

Reference and power

The CMA makes this Order in accordance with the duty imposed by section 138 and exercise of the powers conferred by section 161(1), 161(3) 161(4) of and paragraphs 1, 2, 7, 10, 17, 18, 19, 21 and 22 of Schedule 8 to the Act, for the purpose of remedying, mitigating or preventing the AEC and any resulting customer detriment which the CMA identified in the Final Report.

PART 1

Preliminary

15 Title, commencement and extent

- (1) This Order may be cited as the 'Funerals Market Investigation Order 2021'.
- (2) Part 1, Part 3, Part 5 and Part 6 shall come into force on the day after the Order is made.
- (3) Part 2 and Part 4 shall come into force three months after the Order is made.
- (4) This Order extends to England and Wales, Scotland and Northern Ireland.

16 Interpretation

- (1) In this Order:

'Act' means the Enterprise Act 2002.

'AEC' means an adverse effect on competition.

'Additional Funeral Director Products and Services' means the additional products and services typically offered by Funeral Directors which are included in the Standardised Price List

'Additional Options Price List' means an itemised price list of all the products and services that a Funeral Director offers to Customers that are not included in the Standardised Price List in the section labelled 'Additional Funeral Director Products and Services'.

'At the point of need' means at the time of bereavement.

‘Attended Funeral’ means a funeral which includes a service and where mourners may attend.

‘Branch’ means the physical premises, sometimes referred to as the ‘funeral home’, from which a Funeral Director sells its products and services, and which is open to Customers.

‘CMA Attended Funeral’ means an Attended Funeral where the products and services provided by the Funeral Director are generally considered to be sufficient to deliver an Attended Funeral; comprise the elements set out in Part B of Schedule 1 to this Order; and comply with the minimum standards set out in Schedule A to the Explanatory Note to this Order. The minimum standards set out in Schedule A to the Explanatory Note to this Order may be changed from time to time, in accordance with Article 3(13).

‘CMA Attended Funeral Price’ means the total price of the CMA Attended Funeral.

‘CMA Unattended Funeral’ means an Unattended Funeral where the products and services provided by the Funeral Director are generally considered to be sufficient to deliver an Unattended Funeral; comprise the elements set out in Part C of Schedule 1 to this Order; and comply with the minimum standards set out in Schedule A to the Explanatory Note to this Order. The minimum standards set out in Schedule A to the Explanatory Note to this Order may be changed from time to time, in accordance with Article 3(13).

‘CMA Unattended Funeral Price’ means the total price of the CMA Unattended Funeral.

‘Customer’ means a person purchasing a funeral at the point of need.

‘Crematorium Operator’ means a private or local authority provider of Crematoria Services.

‘Crematoria Services’ means the services provided by a Crematorium Operator in connection with the cremation of the deceased, including the provision of a chapel or specific place for attended cremations, the committal and the associated sales of additional products and services, such as memorials, audio-visual support and hospitality.

‘Crematorium Reduced Fee Attended Service’ means a cremation which includes a service with mourners present at the crematorium held in off-peak hours (typically considered to be before 10am or after 4pm) and for which a reduced fee is charged.

‘Crematorium Standard Fee Attended Service’ means a cremation which includes a service with mourners present at the crematorium held in peak hours (typically considered to be weekdays from 10am-4pm).

‘Crematorium Unattended Service’ means a cremation which does not include a service and where mourners are not present, sometimes referred to as a direct cremation.

‘Direct Burial’ means a burial of the deceased in a cemetery or other burial site without any funeral service or ceremony and where mourners are not present.

‘Disbursements’ means costs, such as cremation and burial fees, Medical Referee (doctor’s) fee, and minister’s or celebrant’s fees, which are set by a third party to the funeral director and are passed on by the funeral director to the Customer (directly or with a mark-up added).

‘Funeral Director’ means a person or a business involved in making the arrangements for funerals on behalf of Customer(s).

‘Funeral Director Services’ means the services provided by a Funeral Director to a Customer in respect of the arrangements for a funeral. Such services can include, but are not limited to: collection, storage and care of the deceased; organisation of the funeral and supply of goods and services such as coffins, hearses and limousines; guidance and support to the bereaved; and intermediary services between the customer and third parties, such as the crematorium or cemetery or other burial site, the Medical Referee and the minister/celebrant.

‘Modification Notice’ means a notice conforming to the requirements of Article 3(13) whereby the minimum standards set out in Schedule A to the Explanatory Note to this Order may be modified.

‘Standardised Price List’ means the itemised price list shown in Part A of Schedule 1 to this Order which uses the terms and structure as set out in that Schedule and includes the CMA Attended Funeral Price and the CMA Unattended Funeral Price.

‘Unattended Funeral’ means a funeral which does not include a service and where mourners may not attend.

‘Working Day’ means any day other than: (a) a Saturday; (b) a Sunday; (c) Christmas Day; (d) Good Friday; (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the United

Kingdom; (f) a day appointed for public thanksgiving or mourning; or (g) only in respect of Northern Ireland, 12 July.

- (2) The Interpretation Act 1978 applies to this Order as it does to an Act of Parliament except where the relevant words and expressions are expressly defined by the Order.

PART 2

Funeral Directors price, commercial information and transparency

17 Price information for Customers

- (1) A Funeral Director must display the following price information in a clear and prominent manner within each of its Branches if it has any Branches, and on its website(s) if it has any website(s):
 - (a) The Standardised Price List.
 - (b) The Additional Options Price List.
 - (c) The price information provided to it by Crematorium Operators in accordance with Article 8.
- (2) A Funeral Director must display the Standardised Price List using the exact terms and structure set out in Part A of Schedule 1 to this Order.
- (3) A Funeral Director must also display, where practicable, the Standardised Price List in the window of each Branch if it has any Branches.
- (4) If a Funeral Director does not have a website but markets itself using other online channels or platforms, it must display the Standardised Price List and the price information of Crematorium Operators specified in subparagraph (1)(c) in a clear and prominent manner on those other online channels or platforms.
- (5) When a Funeral Director displays any of the information in paragraph (1)(a) on its website(s), it must do so in a PDF titled 'Standardised Price List', which must be displayed on a page no more than one click away from the homepage, with any link to that page prominently labelled on the homepage so the nature of the information to which it leads is clear.
- (6) A Funeral Director must supply to a Customer upon request a physical or electronic copy of the Standardised Price List required by subparagraph

(1)(a) and the price information of Crematorium Operators specified in subparagraph (1)(c).

- (7) A Funeral Director must offer to supply to a Customer a physical copy of the Standardised Price List and the price information of Crematorium Operators specified in subparagraph (1)(c) to any Customer who is unable to visit the Branch or does not have access to the website or online channel or platform.
- (8) A Funeral Director must offer the CMA Attended Funeral. If a Customer wishes to purchase an Attended Funeral as described on the Standardised Price List, the Funeral Director must supply it to the Customer.
- (9) A Funeral Director who offers Unattended Funerals must offer the CMA Unattended Funeral. If a Customer wishes to purchase an Unattended Funeral as described on the Standardised Price List, the Funeral Director must supply it to the Customer.
- (10) A Funeral Director may also offer products and services to Customers which are alternative or additional to those on the Standardised Price List, provided those products and services are disclosed on the Additional Options Price List.
- (11) If a Customer requests a Funeral Director to supply any bespoke products or services which are not on the Standardised Price List or on the Additional Options Price List, the Funeral Director may only provide those bespoke products or services after they have disclosed prices for them to the Customer.
- (12) For the avoidance of doubt a Funeral Director who only offers Crematorium Unattended Services and/or Direct Burials is not required to display the sections of the Standardised Price List labelled Attended Funeral or those elements in 'Additional Funeral Director Products and Services' which would only be relevant for an Attended Funeral.
- (13) The CMA may modify the minimum standards relating to the CMA Attended Funeral and the CMA Unattended Funeral set out in Schedule A to the Explanatory Note to this Order if:
 - (a) The CMA has published a Modification Notice, setting out:
 - (i) the proposed modification and what it entails;
 - (ii) the reason for the proposed modification;

- (iii) the date from which the proposed modification is intended to apply (which may not be less than six months from the publication date of the proposed Modification Notice); and
 - (iv) a period of not less than 30 days within which representations may be made in relation to the proposed Modification Notice.
- (b) The CMA has considered any representation made in response to the proposed Modification Notice; and
- (c) No fewer than 12 months have elapsed since any previous modification has entered into force.

18 Terms of business

- (1) A Funeral Director must display its terms of business in a clear and prominent manner at each of its Branches if it has any Branches, and on its website(s) if it has any websites(s), and include details of the following:
- (a) the size of any deposit which is required;
 - (b) the times by when any deposit and final balance must be paid;
 - (c) the options, including interest charged, which a Funeral Director offers to a Customer in respect of payment of any deposit made and final balance; and
 - (d) any charges which the Funeral Director will make for late payment of sums due.
- (2) If a Funeral Director does not have a website but markets itself using other online channels or platforms, it must display the information in paragraph (1) in a clear and prominent manner on those other online channels or platforms.
- (3) A Funeral Director must also supply to a Customer upon request, and in any event in good time prior to the Customer entering a contract with the Funeral Director, a physical or electronic copy of the information in paragraph (1).
- (4) A Funeral Director must also offer to supply to any Customer who is unable to visit the Branch, or does not have access to the website or online channel or platform, a physical copy of the information in paragraph (1).

19 Disclosure of interests

- (1) A Funeral Director must display in a clear and prominent manner at each of its Branches if it has any Branches, and on its website(s) if it has any website(s), the following information:
 - (a) The Ultimate Owner;
 - (b) Any business or material financial interest the Funeral Director has in a price comparison website which compares Funeral Director Services and/or Crematoria Services and their respective prices; and
 - (c) A register providing details of any material:
 - iv. charitable donation to a third party,
 - v. charitable contribution or payment of a gratuity to a third party, or
 - vi. other form of payment to a third party that does not relate to a cost incurred or a service provided by the third party on behalf of or to the Funeral Director,which has been made by or on behalf of the Funeral Director.
- (2) If a Funeral Director does not have a website but has an online presence and markets itself using other online channels or platforms, it must display in a clear and prominent manner the information in paragraph (1) on those other online channels or platforms.
- (3) For the purposes of subparagraph (1)(a) 'Ultimate Owner' means the company name at the registered company address and the ultimate owner of the business if either of these are different from the trading name of the Branch.
- (4) Where there is a change in the Ultimate Owner, a Funeral Director must update the information in the Branch and on its website(s) within 14 days of the change taking place.
- (5) For the purposes of subparagraph (1)(b) 'any business or material financial interest in a price comparison website' means any ability materially to influence the management, strategic direction or commercial objectives of the price comparison website which compares Funeral Director Services and Crematoria Services and their respective prices.

- (6) Where a Funeral Director acquires or disposes of a business or material financial interest in such a price comparison website, a Funeral Director must update the information in Branch and on its website(s) within 14 days of the change taking place.
- (7) For the purposes of subparagraph (1)(c):
 - (a) 'Material' means any individual or cumulative payment of a kind referred to in subparagraph (1)(c) to the same third party of £250 or more within any 12-month period;
 - (b) a 'gratuity' includes a payment or tip given to third parties; and
 - (c) 'third party' means a party connected to the funerals sector such as a hospital, hospice, care home, provider of bereavement services in a hospital setting or provider of palliative care, or other similar institution.
- (8) The register in subparagraph (1)(c) must include details of any payment referred to in that subparagraph made in the previous 12 months which, individually or cumulatively, is material and must include the name of the third party involved, the amount concerned and when it was made.
- (9) Funeral Directors are required to disclose on the register in subparagraph (1)(c) charitable donations made by another branch or by another company within the same group of companies to which that Funeral Director belongs when made on behalf of or in consultation with that Funeral Director.
- (10) The register in subparagraph (1)(c) must be updated twice a year, commencing on the first working day of [three months after the Order is made] 2021 and thereafter the equivalent working day every six months.

PART 3

Prohibited practices

20 Inducements and referrals

- (1) A Funeral Director is prohibited from entering into any arrangement with another party which could reasonably be understood to encourage, incentivise or require that party to refer Customers or potential Customers to the Funeral Director or give that Funeral Director preference over other Funeral Directors.
- (2) For the purposes of Article 6(1):

- (a) 'arrangement' means any contractual or non-contractual agreement, relationship or practice, including any exchange of services with, or benefits or gifts to, another party;
 - (b) 'another party' means a person in a position of trust providing goods or services to a Customer or potential Customer including but not limited to hospitals, hospices, care homes and providers of bereavement services in a hospital setting or provider of palliative care.
- (3) A Funeral Director is prohibited from soliciting potential Customers in the course of providing any services to a coroner or the police.

21 Termination of practices

- (1) A Funeral Director must terminate forthwith any arrangement, exchange of services or payments prohibited by Article 6.
- (2) A Funeral Director must also ensure that any arrangement, exchange of services or payments prohibited by Article 6, that cannot cease immediately on termination, cease within three months of this Order being made.

PART 4

Crematorium Operators price information and transparency

22 Price information

- (1) A Crematorium Operator shall supply Customers and local Funeral Directors with price information as specified in this Article and keep such price information updated by notifying those local Funeral Directors of any change in the price information no later than seven days before such change has effect.
- (2) A Crematorium Operator shall upon request supply to any other Customer or Funeral Director the pricing information specified in this Article.
- (3) In this Article, 'local Funeral Director' means a Funeral Director whose business premises are within a 30-minute, cortège-speed driving distance from a crematorium. Where there is not a Funeral Director within a 30-minute, cortège-speed driving distance from the crematorium, the Crematorium Operator must provide its price information to the nearest Funeral Director.

- (4) A Crematorium Operator must take reasonable steps to ensure that the price information that it provides to Funeral Directors is received.
- (5) In this Article 'price information' means the charge made by a Crematorium Operator for:
 - (a) a Crematorium Standard Fee Attended Service;
 - (b) a Crematorium Unattended Service if offered by the Crematorium Operator; and
 - (c) a Crematorium Reduced Fee Attended Service if offered by the Crematorium Operator.
- (6) A Crematorium Operator shall include in the price information:
 - (a) a description of what is included in and is excluded from the Crematoria Services provided;
 - (b) the length of time permitted for a cremation service, and whether this includes the time allowed for mourners to gather and leave the crematorium;
 - (c) any additional charges for a cremation service taking place on particular days or at a particular time (eg for services taking place on a weekend);
 - (d) any charge made for exceeding the permitted time or late arrival and/or departure of the cortege; and
 - (e) a breakdown of the headline price into the total price for all core services (eg cremation forms and environmental levies and any other elements that are necessary for the cremation service) and the individual prices for any optional services, including, but not limited to, the purchase of additional cremation service time; use of music facilities; webcasting; organists; visual tributes; memorials; a container for ashes; scattering of ashes, storage of ashes; collection of ashes (by a Funeral Director or the bereaved from the crematorium); and delivery of ashes (by the crematorium to a Funeral Director or the bereaved).
- (7) A Crematorium Operator must display in a clear and prominent manner at each crematorium, and on each crematorium website if it has one, the price information specified in this Article.

- (8) If a Crematorium Operator does not have a website, but markets itself using other online channels or platforms, it must make the information in this Article available in a clear and prominent manner on those other online channels or platforms.
- (9) When a Crematorium Operator displays any of the information in this Article on its website, it must do so in a PDF titled 'Standardised Price List', which must be displayed on a page no more than one click away from the homepage, with any link to that page prominently labelled on the homepage so the nature of the information to which it leads is clear.

PART 5

Information required by the CMA

23 Information required by the CMA from Funeral Directors

- (1) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Funeral Director operating from five or more Branches shall supply the CMA with:
 - (a) the total number of funerals it has arranged for Customers in the preceding six-month period commencing seven months prior to the date in paragraph (1); and
 - (b) the total revenue (excluding disbursements) gained from the provision of Funeral Director Services in the preceding six-month period commencing seven months prior to the date in paragraph (1).
- (2) The information in paragraph (1) must be provided separately for each Branch and in aggregate form for all Branches as set out in Part A of Schedule 2.
- (3) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Funeral Director operating from ten or more Branches must supply the CMA with the information specified in paragraph (1) in aggregated form and also in disaggregated form, showing the totals for:
 - (a) CMA Attended Funerals;
 - (b) any other Attended Funerals supplied by the Funeral Director;
 - (c) CMA Unattended Funerals; and

- (d) any other Unattended Funerals supplied by the Funeral Director.
- (4) The information required under paragraph (3) must cover the same time periods as set out in paragraph (1).
- (5) The information in paragraph (3) must be provided separately for each Branch and in aggregate form for all Branches as set out in Part B of Schedule 2.
- (6) For a Funeral Director subject to paragraph (3), if the total number of funerals and the total revenue provided in accordance with paragraph (1) do not equate to the disaggregated information provided in accordance with paragraph (3), the Funeral Director must also provide an explanation of the variance.
- (7) A Funeral Director operating from fewer than five Branches must supply the information specified in paragraph (1) if requested to do so in a notice from the CMA in accordance with the timeframes specified in that notice.
- (8) A Funeral Director operating from fewer than ten Branches must supply the information specified in paragraphs (1) and (3) if requested to do so in a notice from the CMA in accordance with the timeframes specified in that notice.
- (9) If a Funeral Director opens a Branch or Branches that results in it operating from five or more Branches, it must notify the CMA within four weeks of it opening its fifth Branch. The Funeral Director must provide to the CMA the information required under paragraph (1) for the first six-month period after it begins operating from five or more Branches and every six-month period thereafter, subject to paragraph (11).
- (10) If a Funeral Director opens a Branch or Branches that results in it operating from ten or more Branches, it must notify the CMA within four weeks of it opening its tenth Branch. The Funeral Director must provide to the CMA the information required under paragraph (3) for the first six-month period after it begins operating from ten or more Branches and every six-month period thereafter, subject to paragraph (11).
- (11) If a Funeral Director subject to paragraph (1) or paragraph (3) ceases to have the relevant number of Branches, it may notify the CMA and, subject to receiving notice from the CMA, it will no longer be required to provide the information specified in paragraph (1) or paragraph (3) as appropriate.

24 Information required by the CMA from Crematorium Operators

- (1) Commencing the first working day of [month] 2021 and thereafter the equivalent working day every six months, a Crematorium Operator must supply the CMA with the total number of cremations it has carried out and the total revenue it has gained from Crematoria Services in each of the two preceding three-month periods (quarters), commencing seven months prior to the reporting month.
- (2) Each Crematorium Operator shall provide the information in paragraph (1) separately for each quarter for each crematorium it operates as set out in Part C of Schedule 2.
- (3) Each Crematorium Operator shall supply the information in paragraph (1) in aggregate form and also in disaggregated form, showing the totals for: (a) Crematorium Standard Fee Attended Services; (b) Crematorium Reduced Fee Attended Services if offered by the relevant Crematorium Operator; (c) Crematorium Unattended Services if offered by the relevant Crematorium Operator; and (d) any other services provided by the Crematorium Operator that are not captured by (a), (b) and (c).
- (4) The revenue information provided in accordance with paragraph (1) must include all revenue generated from Crematoria Services and exclude burial services. Each Crematorium Operator must provide revenue from memorials related to crematoria services separately and explain how they have allocated this revenue to crematoria services. If the disaggregated information does not equate to the aggregate information provided, the Crematorium Operator must provide an explanation of the variance.

PART 6

Enforcement

25 Compliance statements

- (1) A Funeral Director operating from ten or more Branches shall supply the CMA by email (or by post if email is not available) no later than the last working day of January in each year a compliance statement confirming compliance with the information requirements of Articles 3, 4 and 9, the disclosure requirements of Article 5 and the prohibition requirements in Articles 6 and 7 in the preceding calendar year.

- (2) A Funeral Director operating from fewer than ten Branches must also supply a compliance statement in accordance with the requirements set out in paragraph (1) if requested to do so by the CMA.
- (3) A Crematorium Operator shall supply the CMA by email (or post if email is not available) no later than the last working day of January in each year a compliance statement confirming compliance with the pricing requirements of Article 8 and the information requirements of Article 10 in the preceding calendar year.
- (4) In the case of a Funeral Director who operates as a body corporate, the compliance statement must be signed by any two of the following:
 - (a) Chief Executive Officer.
 - (b) Managing Director.
 - (c) Any Non-Executive Director.
 - (d) Any Senior Director.
- (5) In the case of a Funeral Director who operates as a sole trader or in a partnership, the compliance statement must be signed by either the:
 - (a) owner(s) of the business; or
 - (b) any other individual with decision-making authority.
- (6) If a Funeral Director or a Crematorium Operator is aware that it is not compliant with any part of this Order, it must report this non-compliance to the CMA within 14 days of becoming aware that it is not compliant.

26 Investigation powers

- (1) Section 174 of the Act has effect as regards the enforcement functions of the CMA under this Order.

27 Directions

- (1) The CMA may give directions falling within Article 13(2) to:
 - (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporated.
- (2) The directions referred to in Article 13(1) are directions in writing:

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do, or refrain from doing, anything so specified or described which the person is required by this Order to do or refrain from doing.
- (3) The CMA may vary or revoke any directions so given.

28 Supply of information to the CMA

- (1) Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
- (2) Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order, other than information or documents covered by legal professional privilege.
- (3) Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
- (4) Subject always to Part 9 of the Act, the CMA may publish, subject to appropriate confidentiality redactions, any information or documents that it has received in connection with the monitoring or the review of this Order or any provision of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Commented [A4]: Para 14(4) should be amended to clarify within the Order that companies are entitled to make redactions for confidential information and business secrets.

(signed)

Group Chair

(date)

Schedule 1 – Price information

Part A – Standardised Price List

Please see the next page for the Standardised Price List.

STANDARDISED PRICE LIST

All funeral directors are legally required to publish this Price List for a standardised set of products and services, to help you think through your options and make choices, and to let you compare prices between different funeral directors.

ATTENDED FUNERAL (funeral director's charges only)	£xxxx
This is a funeral where family and friends have a ceremony, event or service for the deceased person at the same time as their burial or cremation.	
Taking care of all necessary legal and administrative arrangements	£xxx
Collecting and transporting the deceased person from the place of death (normally within 15 miles of the funeral director's branch premises) into the funeral director's care	£xxx
Care of the deceased person before the funeral in appropriate facilities. The deceased person will be kept at [both] the funeral director's branch premises [and other premises]	£xxx
Providing a coffin suitable for burial or cremation – this will be made from [insert description of the coffin]	£xxx
Viewing of the deceased person for family and friends, by appointment with the funeral director (optional service)	£xxx
At a date and time you agree with the funeral director, taking the deceased person direct to your choice of cemetery or crematorium (which can be up to 20 miles from the funeral director's branch premises) in a hearse or other appropriate vehicle – this will be using [insert description of vehicle style and make]	£xxx

UNATTENDED FUNERAL (if offered)	
This is a funeral where family and friends choose to have a ceremony, event or service for the deceased person at a later date and not at the same time as their burial or cremation.	
Burial (funeral director's charges only)	£xxxx
Cremation (funeral director's charges plus cremation fee)	£xxxx

FEES YOU MUST PAY	
For an Attended or Unattended burial Funeral, the burial fee . ¹	£xxxx
In this local area, the typical cost of the burial fee is:	to
For a new grave, you will also need to buy the plot; for an existing grave with a memorial in place, you will also need to pay a removal/replacement fee. In addition, the cemetery may charge a number of other fees.	£xxxx
For an Attended cremation Funeral, the cremation fee . ²	£xxxx
In this local area, the typical cost of a cremation is:	to
	£xxxx

ADDITIONAL FUNERAL DIRECTOR PRODUCTS AND SERVICES	
This funeral director can supply a range of optional, additional products and services, or they can arrange (on your behalf) for a third party to supply them. These include:	
Out-of-hours collection of the deceased's body	£xx
Additional transfers of the deceased's body (e.g. to their home)	£xx
Additional viewing(s)/out-of-hours viewing(s)	£xx
Specific religious or cultural requirements	Price on request
Funeral officiant (minister, celebrant etc.)	£xx
Pallbearers	£xx
The funeral director can give you a full list of what they can supply. They are likely to charge for these additional products and services, so you may choose to take care of some arrangements without their involvement, or you can use a different supplier.	

¹ This fee (which is sometimes called the interment or interment fee) is the charge made for digging a new grave, or reopening and closing an existing grave.

² In England, Wales and Northern Ireland, you may also need to pay a Medical Referee (doctor's) Fee.

Part B – CMA Attended Funeral

9. Attending to the necessary arrangements, such as:
 - (a) completion of necessary certification;
 - (b) taking instructions from the client; and
 - (c) providing guidance on registration and legally required procedures.
10. Provision of the necessary staff for care of the deceased.
11. Provision of an appropriate coffin suitable for burial or cremation.
12. Transportation of the deceased person from the place of death (normally within fifteen miles but taking into account local circumstances).
13. Appropriate arrangements for the uplift of the deceased and care of the deceased person prior to the funeral in appropriate facilities.
14. Viewing of the deceased person, during normal working hours, by appointment.
15. Provision of a hearse or other appropriate vehicle direct to the nearest crematorium or cemetery at a date and time agreed between the client and funeral director and clearly described to the client.
16. The opportunity to hold a service at the cemetery or crematorium at the time of committal.

Part C – CMA Unattended Funeral

17. Attending to the necessary arrangements, such as:
 - (d) completion of necessary certification;
 - (e) taking instructions from the client; and
 - (f) providing guidance on registration and legally required procedures.
18. Provision of the necessary staff for care of the deceased.
19. Provision of an appropriate coffin suitable for burial or cremation.
20. Transportation of the deceased person from the place of death (normally within fifteen miles but taking into account local circumstances).

21. Appropriate arrangements for the uplift of the deceased and care of the deceased person prior to the funeral in appropriate facilities.
22. Transportation of the deceased to a crematorium or cemetery at a date and time determined by the funeral director and clearly described to the client.

Schedule 2 – Information required by the CMA

Part A – Funeral directors with five or more branches: for each Branch and for all Branches

Category	Previous six months
Total revenue (excluding disbursements)	£x
Total number of funerals arranged	x

Part B – Funeral Directors with ten or more Branches: for each Branch and for all Branches

Category	Previous six months			
	CMA Attended Funerals	Other Attended Funerals	CMA Unattended Funerals	Other Unattended Funerals
Total revenue (excluding disbursements)	£x	£x	£x	£x
Total number of funerals arranged	x	x	x	x

Part C – All Crematoria Operators: for each crematorium

Category	First quarter in the previous six months				
	Standard Fee Attended Services	Reduced Fee Attended Services	Unattended Services	Other services	Total
Total revenue	£x	£x	£x	£x	£x
Total revenue from memorials					£x
Total number of cremations carried out	x	x	x	x	x

Category	Second quarter in the previous six months				
	Standard Fee Attended Services	Reduced Fee Attended Services	Unattended Services	Other services	Total
Total revenue	£x	£x	£x	£x	£x
Total revenue from memorials					£x
Total number of cremations carried out	x	x	x	x	x