

## Funerals Market Investigation

### Westerleigh Group's response to the CMA's consultation on the draft Funerals Market Investigation Order 2021

#### 1. Introduction

1.1. The Westerleigh Group ("**Westerleigh**") welcomes the opportunity to respond to the CMA's formal consultation on the draft Funerals Market Investigation Order 2021 ("**Draft Order**"). While Westerleigh is broadly supportive of the CMA's remedy proposals, this response highlights one specific issue which we consider requires clarification in the CMA's final order regarding the provision of attended direct cremations, to avoid unintended consequences which could unduly restrict customer choice.

1.2. Westerleigh [REDACTED] is concerned that, as drafted, the Draft Order may cause considerable confusion for customers and, at worst, effectively prevent specialist providers from entering the market with an attended direct cremation offering. In turn, this would risk dampening the growing demand for this lower-cost alternative to a standard funeral package. We would therefore urge the CMA to avoid this by clarifying that the requirements to offer a CMA Attended Funeral and publish the Standardised Price List do not apply to such providers.<sup>1</sup>

#### 2. The Draft Order fails to take account of the provision of attended direct cremations

[REDACTED] In the CMA's Final Report, the CMA acknowledged that while the term 'direct cremation' is typically used to refer to an unattended cremation, a variant is an 'attended direct cremation' where mourners are present but where the bereaved family does not spend face to face time with a funeral director in order to organise the cremation.<sup>2</sup> [REDACTED]

[REDACTED]

2.3. Westerleigh is [REDACTED] concerned that the Draft Order, as currently drafted, does not appear to take account of providers of attended direct cremations. In particular, as currently drafted, [REDACTED] such providers would fall under the current definition of "Funeral Director" (i.e. "*a person or a business involved in*

<sup>1</sup> Westerleigh has previously provided comments on an earlier version of the Draft Order as part of the CMA's informal consultation process, most of which also remain applicable to the version published on 15 April 2021.

<sup>2</sup> See for example, Final Report, paragraph 2.7(c). Data on attended direct cremations were generally included within the data presented for unattended services – see for example footnote 58.

*making the arrangements for funerals on behalf of Customer(s)”) and be subject to the requirements in Articles 3 to 7 of the Draft Order.*

- 2.4. While Westerleigh does not have concerns with most of these requirements it does not believe that the requirements to offer a CMA Attended Funeral (as defined) and publish the Standardised Price List set out at Schedule 1 to the Draft Order are appropriate for a provider offering only unattended and attended direct cremations, since most of the elements listed for a CMA Attended Funeral are not made available as part of an attended direct cremation service.
- 2.5. The CMA appears to have considered this issue for providers of Unattended Funerals, since Article 3(12) clarifies that

*“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”<sup>3</sup>*

- 2.6. However, no such proviso is made as regards providers of attended direct cremations. This means that such providers would, as currently drafted, be required to publish a price list which is simply unsuitable to their business model. It should also be noted that the proviso made at Article 3(12) would technically not apply to many specialist providers of unattended direct cremations, since they also offer attended variants (and therefore do not “only” offer Crematorium Unattended Services).
- 2.7. Westerleigh believes this to be an unintended consequence of the CMA’s proposed remedy package, which was deliberately focused on providing customers with pricing information on the funeral packages most commonly sold by traditional funeral directors, as well as unattended funerals (where offered by the funeral director).<sup>4</sup> Given that an attended direct cremation does not include the traditional services of a funeral director, the CMA’s proposed Standardised Price List makes little sense in this context.
- 2.8. Westerleigh believes that if providers of attended direct cremations were required to publish this price list, it would be liable to cause significant confusion for customers considering an attended direct cremation as an alternative to a standard funeral service. In turn, this may result in many customers who may otherwise have opted for this lower cost option instead reverting to the more expensive standard attended funeral package, and in doing so dampen the growth in demand for attended direct cremations, to the detriment of competition and customers.

---

<sup>3</sup> This point is also addressed at paragraph 46 of the Explanatory Note.

<sup>4</sup> CMA Final Report, paragraphs 9.37 to 9.43.

- 2.9. Of even greater concern is the suggestion that all funeral directors must offer all the elements of CMA Attended Funeral.<sup>5</sup> If this were implemented in its current form it could in principle effectively prevent innovation and the development of new models which could improve the choice available to the consumer as well as prevent specialist providers [REDACTED] from entering the market with an attended direct cremation offering only
- 2.10. Westerleigh considers that this issue could and should be addressed in one of two ways in the CMA's final order:
- 2.10.1. First, the CMA could explicitly carve out providers of attended direct cremations from the definition of "Funeral Director", given that attended direct cremations do not involve the provision of the traditional services of a funeral director.
- 2.10.2. Alternatively, the CMA could include a provision similar to Article 3(12) to explicitly carve out providers of direct attended cremations from the requirement to offer a CMA Attended Funeral and publish the Standardised Price List in the prescribed format.
- 2.11. Westerleigh would be happy to discuss this issue further with the CMA ahead of the CMA making its final order, to ensure that the CMA's final remedies package is workable for all providers of funeral services and does not unintentionally restrict customer choice.

---

<sup>5</sup> Draft Order, Article 3(8); Explanatory Note, paragraph 39.