

Scottish Government Funeral director licensing scheme for Scotland

Response from the Competition and
Markets Authority

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1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is an independent non-ministerial UK government department. It is the UK's principal competition and consumer protection authority. We have offices in each of the nations of the UK and have an increasingly significant presence in Edinburgh.
- 1.2 We help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. Our Annual Plan,¹ which is laid before the Scottish Parliament, sets out our purpose, ambition, medium-term priorities, and areas of focus for the year ahead. The three main pillars of the CMA's work are to promote an environment where:
- People can be confident they are getting great choices and fair deals;
 - Competitive, fair-dealing businesses can innovate and thrive; and
 - The whole UK economy can grow productively and sustainably.
- 1.3 We welcome the opportunity to respond to the Scottish Government as it seeks views on the implementation of regulations for funeral director licensing.² Our response draws on our work in the sector.

2. Summary

- 2.1 The CMA conducted an investigation into the supply of services by funeral directors at the point of need and the supply of crematoria services, publishing its Final Report in December 2020.³ The CMA proposed a package of 'sunlight remedies' to address the issues it identified in its Final Report. These are set out in more detail in paragraph 3.7 below.
- 2.2 As a first step in the establishment of a broader regulatory regime for funeral services, we recommended the UK government and the devolved administrations in Northern Ireland and Wales establish an inspection and registration regime to monitor the quality of funeral director services. We did not make any similar recommendation to Scotland, as the Scottish Government had recently established its own regulatory scheme.
- 2.3 Our response first covers background on the CMA's funerals market investigation, and then outlines some specific points in response to the consultation. In short:

¹ [CMA Annual Plan 2023-24](#)

² <https://www.gov.scot/publications/funeral-director-licensing-scheme-scotland/>

³ [Final report \(publishing.service.gov.uk\)](#)

- (a) We support the Scottish Government’s intention to put the licensing regime on a statutory footing;
- (b) We continue to see benefits of any regulatory regime being sufficiently independent of government. However, the optimal regulatory framework should take into the account the characteristics of the sector and should not introduce complexity and cost that is not proportionate to the outcomes sought; and,
- (c) The code of practice, as currently drafted, aligns with our findings and remedies set out in the Final Report and the Funerals Market Investigation Order 2021, aimed at addressing the issues we identified in the market. We encourage the Scottish Government to maintain these elements in the final code of practice.

3. The CMA’s Funerals Market Investigation

- 3.1 On 28 March 2019, the CMA, in exercise of its power under section 131 of the Enterprise Act 2002 (EA02), made a reference for a market investigation into the supply of services by funeral directors at the point of need, and the supply of crematoria services (the Market Investigation).
- 3.2 The market investigation regime allows the CMA to assess whether competition in a market is working effectively, where it is desirable to focus on the functioning of a market as a whole, rather than a single aspect of it or the conduct of particular firms within it. As part of the regime, an Independent Group (Inquiry Group) is appointed to conduct the investigation.⁴ The CMA Board provided the Inquiry Group with an advisory steer.⁵
- 3.3 Prior to the Market Investigation, the CMA had undertaken a market study that found that the market for funeral director and crematoria services were not functioning as well as they should be.⁶ In summary, this included:
 - (a) Too high funeral prices, a particular issue for those on low incomes;
 - (b) Long-term above-inflation price increases (across funeral director fees, cremation fees and burial fees);
 - (c) Significant price differentials across areas (burial and cremation fees in particular) and across funeral directors in the same areas;
 - (d) Lack of transparency of pricing information;

⁴ [Funerals market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

⁵ [CMA Board Advisory Steer \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁶ [Funerals market study \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- (e) Difficulties in comparing funeral packages because the items included or excluded differ widely; and
 - (f) Consumer protection concerns in relation to pre-paid funeral plans. These included concerns that product limitations were rarely made clear, in particular that the cost of a funeral may exceed the cover offered; allegations of high-pressure selling and concerns about high cancellation fees.
- 3.4 The Market Investigation started before the COVID-19 pandemic but continued throughout. Before the effects of the pandemic hit, the Inquiry Group undertaking the Market Investigation engaged not only with funeral directors and crematorium operators, but also with government (including in the devolved nations) and local authorities. All these stakeholders were obviously considerably affected by the COVID-19 pandemic. The pandemic had a major impact on the running of the Market Investigation, the conclusions that were reached and the timing of the CMA's subsequent actions. Nevertheless, the Market Investigation identified serious concerns about the sector.
- 3.5 The CMA's Final Report,⁷ published in December 2020, identified a number of issues in the funerals sector
- 3.6 The Inquiry Group proposed a package of 'sunlight remedies' to address the issues it identified. These included:
- (a) 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;⁸ and
 - (b) a legally binding Order to increase transparency in the sector.⁹
- 3.7 The Order came into force in September 2021. It places a number of price and information transparency obligations on funeral directors and crematorium operators, including:
- (a) a requirement on all funeral directors and crematorium operators to disclose certain price information to customers;

⁷ [Final report \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁸ Para 2.119 in our Final Report notes that a regulatory regime is being introduced in Scotland. The Burial and Cremation (Scotland) Act 2016 (the 2016 Act) was passed by the Scottish Parliament in March 2016 and provides the statutory framework to appoint Inspectors of Funeral Directors.

⁹ The Funerals Market Investigation Order 2021 was made under the market investigation provisions of the Enterprise Act 2022.

- (b) a requirement on crematorium operators to disclose certain price information to customers and funeral directors in the local area, and other funeral directors upon request;
- (c) a requirement on all funeral directors to disclose particular business, financial and commercial information to customers;
- (d) a prohibition on all funeral directors from entering into arrangements which could encourage, incentivise or require certain institutions to refer customers to the funeral director, and from soliciting for business through coroner and police contracts; and
- (e) 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 (to assist the CMA in monitoring the funerals sector).

3.8 The Order applies across the whole of the UK. Where a funeral director, or crematorium operator does not comply with these requirements, we will consider enforcement action.

3.9 The Panel noted in its Final Report that the Scottish Government had already appointed an independent Inspector of Funeral Directors.¹⁰ The Inspector had undertaken a review of the funeral profession in Scotland with a view to making recommendations to Scottish Ministers on how the profession should be regulated, including whether to introduce a licensing scheme.¹¹

3.10 The CMA welcomes the Scottish Government's intention to establish a statutory licensing regime for funeral directors in Scotland. We would encourage the UK government and the devolved administrations to establish such schemes in England, Northern Ireland and Wales.

4. Consultation response

Proposed licensing scheme

4.1 The introduction of a licensing scheme is an important part of the overall regulatory framework for funeral directors. Given the in-depth insights into the market that the CMA Final Report outlines, the CMA encourages the Scottish

¹⁰ Para 2.119 in our Final Report notes that a regulatory regime is being introduced in Scotland. The Burial and Cremation (Scotland) Act 2016 (the 2016 Act) was passed by the Scottish Parliament in March 2016 and provides the statutory framework to appoint Inspectors of Funeral Directors

¹¹ Section 94 of Burial and Cremation (Scotland) Act 2016 gives Scottish Ministers the power to create a licensing scheme covering the operation of funeral directors' businesses. Section 95 of the Act will allow Scottish Ministers to make regulations in respect of how a licensing scheme will operate. Neither of these sections were in force at the date of our report

Government to design its regulatory regime informed by and consistent with our Final Report and Order, designed to improve the outcomes in the market.

- 4.2 In the CMA's experience, general features of effective regulatory frameworks include (though are not limited to): clear objectives and scope of regulation; targeted, flexible, proportionate and enforceable regulations; and sufficient independence from government and regulated businesses. While the proposal to designate Scottish Ministers as the "licensing authority" provides very limited independence from government, we recognise that the optimal regulatory framework in a given market must take into the account the characteristics of the particular sector and the nature of the planned regulation and should not introduce complexity and cost that is not proportionate to the outcomes sought.
- 4.3 The CMA agrees with the Scottish Government's position that the licensing authority function should be centralised rather than sited in a local authority.
- 4.4 The CMA agrees with the Scottish Government's proposal to publish and maintain a public directory of the licensed funeral directors in Scotland.
- 4.5 The CMA has no firm view on whether licences should be time limited. However, we would encourage the Scottish Government to ensure that the regime is open and transparent and does not add an unnecessary burden on businesses, particularly small businesses.

Funeral directors: draft code of practice

- 4.6 The code of practice for funeral directors will underpin the statutory inspection of funeral directors in Scotland.¹²
- 4.7 The code, as currently drafted, aligns with the findings and remedies set out in the Final Report and Order with regards to the following outcomes:
 - (a) Increased transparency of choice of goods and services to help customers make informed decisions, including a requirement on all funeral directors to disclose certain price information to customers.¹³
 - (b) Ensure minimum standards of care of the deceased.¹⁴

¹² [Funeral directors: draft code of practice - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹³ It should also include a requirement to disclose any interests that may impact on the choice of goods and services, for example, charitable donation or payment of a gratuity to a third party or any other form of payment to a third party that does not relate to a cost incurred or service provided by the third party on behalf of or to the funeral director.

¹⁴ This should include information on whether the body of the deceased will be kept only at the funeral director's branch premises or in the funeral director's non-branch premises.

(c) Establish and promote a common understanding of good practice in relation to the care of the deceased.

4.8 The CMA recommends that the Scottish Government includes text within the code of practice which explicitly prohibits a funeral director 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.¹⁵

4.9 The CMA stands ready to engage with the Scottish Government as it finalises its regime and draft code of practice.

5. Closing

5.1 The Scottish Government's proposed funeral director licensing scheme for Scotland is an important next step in the delivery of an effective regulatory framework for funeral directors, which will help improve outcomes for people in this important market. We encourage the Scottish Government to look at the CMA's work in this sector and reflect on the benefits of any scheme the Scottish Government decides upon building on the findings and remedies proposed in our Final Report and 2021 Order.

5.2 We note that the Scottish Government has yet to complete its Business and Regulatory Impact Assessment (BRIA) in respect of its proposed licensing scheme. We have recently updated our Competition Assessment Guidelines,¹⁶ which provide policymakers with assistance in identifying how new policies or spending proposals might affect competition in markets. They also explain how competition impacts can be assessed. We would be very happy to work with the Scottish Government as it completes its BRIA in this area, to help ensure any licensing scheme promotes competition in this sector, bringing benefits to the people of Scotland, now and into the future.

¹⁵ Part 3, [The Funerals Market Investigation Order 2021 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

¹⁶ [Competition assessment: guidelines for policymakers - GOV.UK \(www.gov.uk\)](https://www.gov.uk)