

FUNERAL DIRECTORS AND CREMATORIA SERVICES

MARKET INVESTIGATION

Statement of issues

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Structure of this document

1. This document is structured as follows:
 - We describe the legal framework of this investigation and the purpose of this issues statement; summarise the issues and invite interested parties to submit evidence and views at paragraphs 2 to 20.

- We set out the background to this investigation and explain some of the guiding principles that will inform our approach at paragraphs 21 to 51.
- We set out our understanding of the key characteristics of the supply of services by funeral directors at the point of need and crematoria services in the UK and how we intend to analyse market outcomes at paragraphs 52 to 66.
- We identify high-level hypotheses concerning features that might be adversely affecting competition and leading to possible adverse outcomes at paragraphs 67 to 96.
- We set out our approach and the criteria for considering potential remedies at paragraphs 99 to 103.
- We identify some initial potential remedy options to address any AECs that we may find, within each of the three hypotheses and set out some key questions on potential remedies for parties to consider at paragraphs 104 to 143.

Context of this investigation, summary of issues and invitation to comment

Legal context of this investigation

2. 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 reference for a market investigation into the supply of (a) services by funeral directors at the point of need; and (b) the supply of crematoria services.
3. The CMA, acting through a group of independent members constituted from its panel,¹ is required to decide whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.² If the CMA decides that there is such a prevention, restriction or distortion of competition, it will have found an ‘adverse effect on competition’ (AEC).³
4. If the CMA finds that there is an AEC, it has a duty to decide whether it should take action, and/or whether it should recommend others take action, to

¹ Martin Coleman (Chair), Richard Feasey, Sheila McClelland, and Karthik Subramanya.

² See [section 134\(1\)](#) of the Act.

³ As defined in [section 134\(2\)](#) of the Act.

remedy, mitigate or prevent the AEC concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the AEC.⁴ If the CMA decides that action should be taken, it must also decide what action should be taken and what is to be remedied, mitigated or prevented.⁵

The purpose of this statement

5. This statement is based on the evidence we have reviewed to date⁶ and sets out:
 - (a) our initial hypotheses concerning which features of the supply of services by funeral directors at the point of need and crematoria services are adversely affecting competition; and
 - (b) which potential remedies may be suitable to address any AECs that we may find.⁷
6. This issues statement will provide a framework for our investigation. In putting it together we have been mindful of the complexity and size of the markets involved and the time we have available under the 18-month statutory timetable in which to carry out our investigation.
7. This statement does not represent the CMA's provisional views, findings or conclusions on either the competition issues or potential remedies, should these be needed. The CMA has yet to determine whether any competition concerns arise in the supply of services by funeral directors at the point of need and/or crematoria services. The hypotheses identified in this document are simply areas that, at this stage, we consider merit further investigation and analysis. These hypotheses may change as our investigation progresses. Similarly, the CMA will only put in place remedies if it identifies that there are competition concerns (ie AECs) in the markets referred. There is no presumption that any AECs will be found. The consideration of both competition issues and potential remedies is therefore hypothetical at this stage.

⁴ Section 134(4) of the Act.

⁵ Section 134(4) of the Act.

⁶ The principal evidence we have drawn upon is the evidence referred to in the CMA's Funeral Market Study report.

⁷ As noted in paragraph 4 above, if the CMA finds that there is an AEC, it has a duty to decide whether (and if so what) remedial action should be taken as regards the AEC concerned or any resulting detrimental effect on customers. In paragraph 5 and in the remainder of this document, we refer to potential remedies to address any AECs that we may find as short-hand to mean potential remedies to the AECs concerned or any resulting detrimental effect on customers.

Summary of issues

8. Following careful consideration of the Market Study report and comments made in response to the consultation on the Interim Report, we have identified a number of key issues on which we propose to focus our initial evidence gathering efforts:
- (a) What customers consider to be the essential components of a funeral, what they understand to be a good quality funeral or crematorium and how they assess quality when dealing with funeral directors and crematoria.
 - (b) How any quality differentials between funeral directors and between crematoria are taken into account by customers in their choice of funeral directors and/or crematoria and the extent to which investments in quality explain price differentials between suppliers.
 - (c) The extent to which the vulnerability of customers at the point of need impedes their ability to engage with the process and make informed choices at all stages in the funeral arrangement process, and what practical aspects of this process have the most significant impact on customers' ability to make informed choices.
 - (d) How different circumstances, including social, economic, faith-related and cultural, may have an impact on the options available to customers and on their ability to make informed choices.
 - (e) The nature and extent of competition between funeral directors, including how prices and behaviours differ between small and large providers.
 - (f) The funeral sales process, including how and when in the process prices are provided to customers and any other aspects of the sales process that may affect customers' ability to make the best choices.
 - (g) The profitability of both large and small funeral directors, and the extent to which cost increases and/or investments in quality improvements explain the increases in funeral prices that have been reported.
 - (h) The nature and extent of competition between both private and local authority crematoria, including how they set prices, the range of services they offer and the level of quality of their facilities.
 - (i) The potential factors impeding the development of crematoria, including the planning process and project viability.
 - (j) The profitability of local authority and private crematoria.

Summary of potential remedies

9. We have identified some potential remedies that may help to address any of these issues if one or more AECs are identified through our investigation.
10. We should emphasise that we have not found any competition concerns at this early stage of the investigation and that these potential remedies are hypothetical. Nevertheless, we are keen to receive comments and evidence on these potential remedies from an early stage in the inquiry to enable us to progress with our thinking.
11. In particular, there appears to be broad consensus among funeral directors that lack of transparency is impeding consumer choice and steps have been taken by various stakeholders to address these issues.⁸ Against this background, and having reviewed the evidence gathered in the Market Study, we are keen to start testing the effectiveness, practicality and proportionality of possible remedies to address transparency issues as soon as possible and would welcome views on how best to take this forward. At this stage, we envisage that such remedies could seek to achieve two complementary aims:
 - (a) To improve the preparedness of customers ahead of the point at which the funeral needs to be organised by encouraging people to consider funeral arrangements at times when the situation lends itself to such considerations before the point of need, and
 - (b) To make it easier for customers to make the best choices, for example by ensuring that the information provided by suppliers enables like-for-like comparisons of prices and services offered.
12. We would also like to receive initial views on the merits of a number of other remedies:
 - (a) Pricing/charging remedies. Such remedies would seek to limit the ability for funeral directors and/or crematoria operators to set prices significantly above the costs of providing their services. At this stage, recognising the challenges of implementing such remedies in a fragmented market, we consider that a number of options are open to us.
 - (b) Remedies to regulate the levels of service quality provided by funeral directors and crematoria operators, for example in relation to aspects of

⁸ This is based on the submissions made in response to the Market Study Interim Report. A working group involving the two trade associations representing funeral directors, some large and independent funeral directors, charities/bereavement groups and consumer facing organisations has been set up to seek an industry-wide consensus around how to improve consumer outcomes in the funeral directing sector, with a particular focus on improving industry standards and consumer engagement.

quality that customers are likely to find particularly difficult to engage with (e.g. standards of care of the deceased). Such remedies would also address any incentives to diminish product and service quality levels that could arise if prices were to be regulated.

- (c) Market opening remedies. These types of remedies are used to lower barriers to entry and could include:
 - (i) Requiring that funeral directors and/or crematoria operators unbundle elements of their packages of services to give customers the flexibility to source such elements from elsewhere if they wish to, e.g. the flexibility to buy the coffin from a third party supplier, and
 - (ii) Proposing reforms to the planning regime and to the way in which approval for new crematoria is given.

- 13. Given the nature of the issues we are proposing to investigate, and based on the evidence we have seen to date, we consider it likely that to be effective, more than one type of remedy would be required if we found an AEC. Our assessment of the effectiveness and proportionality of any remedies will be considered both individually and as part of a package.
- 14. We do not propose to further explore whether there may be issues associated with local market concentration in the provision of funeral director services. However, if we were to find that there are local areas where common ownership of local crematoria operations is a driver of any AECs and associated customer detriment, structural remedies could be considered.
- 15. It may also be necessary, depending on the package of remedies that is required to address any AECs that we find, to introduce reforms to the regulation of the sector. If we require the introduction of pricing/charging remedies and/or remedies to regulate the levels of service quality, it is likely that the effectiveness of these remedies will be enhanced by the introduction of new, or amendment to existing, regulatory regimes, potentially supplemented with a licensing scheme.

Invitation to submit views

- 16. We are publishing this statement now to assist those submitting evidence to focus on the potential issues we envisage being relevant to this investigation and any potential remedies to address any AECs that we may find. We invite interested parties to give us their views, with reasons, on:
 - (a) Whether the issues we have identified should be within the scope of our investigation and whether they are correctly characterised;

- (b) Whether there are any particular topics or methods of evidence gathering or analysis that it is important that we should include in our approach. We are particularly keen to hear suggestions in relation to how we should assess:
- (i) How any quality differentials between both funeral directors and crematoria are taken into account by customers in their choice of funeral directors and/or crematoria and the extent to which investments in quality explain price differentials between suppliers.
 - (ii) The extent to which the vulnerability of customers impedes their ability to engage with the process and make informed choices at all stages in the funeral arrangement process, and what practical aspects of the process have the most significant impact on customers' ability to make informed choices.
 - (iii) How different circumstances, including social, economic, faith-related and cultural factors, may have an impact on the choices available to customers and on their ability to make informed choices.
- (c) Whether there are further issues we have either not identified, or which we have indicated we are not minded to focus on, but which parties consider we should examine;
- (d) Whether the potential remedies we have identified would address the competition issues comprehensively and if so how, and whether they would be effective and proportionate; and
- (e) Whether there are other potential remedies which we have not identified that would address either the issues we have identified or other issues we should consider (detailing what those remedies might be and how they would address the potential AECs in these markets).
17. We also welcome comments and suggestions on the approaches or methodologies that the CMA could use to gather evidence and carry out analysis in relation to the issues it has identified in this document.
18. We ask interested parties to support their views on the questions above with relevant reasoning and evidence (including documentation and analysis). The provision of underlying evidence is critical, as it allows us to test and assess the views put forward by different parties.
19. We plan to hold hearings/roundtables with interested parties to discuss potential issues and potential remedies in due course. We shall also gather further information, evidence and data to inform our understanding. As we

undertake analysis, and our thinking develops, we expect to issue or share further documents inviting comments from parties. We shall then publish a provisional decision report containing our provisional findings on the issues. If we were to provisionally find one or more AECs, the provisional decision report would also contain our provisional decision on remedies. We shall hold hearings with interested parties covering our provisional findings on any AECs and remedies, before publishing our final report. Our administrative timetable has been published on the [inquiry web page](#).⁹

20. To submit views together with supporting evidence, please email funerals@cma.gov.uk or write to:

Project Manager
Funerals Market Investigation
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

By Thursday 9 May 2019.

Background and approach to the investigation

Background

21. On 1 June 2018, the CMA launched a review of the funerals industry (the Market Study).¹⁰ Following an initial phase of work, the CMA published its Market Study interim report on 29 November 2018 (the Interim Report) and proposed to make a Market Investigation Reference (MIR).
22. On 28 February 2019, the CMA published a consultation on the scope of the proposed MIR, in light of representations made in response to the Interim Report, that the proposed MIR should be expanded to include the provision of services by funeral directors in connection with the redemption of a pre-paid funeral plan. Following periods of consultation on the proposal to make a MIR and on the scope of this proposal, the CMA published its Funerals Market Study report on 28 March 2019.¹¹

⁹ [Market studies and market investigations: Supplemental guidance on the CMA's approach](#), (revised July 2017) (CMA3) contains further guidance on the procedures for market investigations which were revised in July 2017.

¹⁰ <https://www.gov.uk/government/news/cma-investigates-funerals-sector>

¹¹ [Final report and decision on a market investigation reference](#)

Scope of the reference

23. The investigation will cover the supply of (a) services by funeral directors at the point of need; and (b) crematoria services, whether by private providers or local authorities.¹²
24. The scope includes all services provided by funeral directors at the time of bereavement (regardless of whether such services are paid for at that time or have been paid for in advance, including as part of a pre-paid funeral plan).
25. The provision of pre-paid funeral plans, including financial services activities associated with the provision of pre-paid funeral plans (i.e. investment of funds from pre-paid plan sales and subsequent gains and losses, following actuarial valuations) and suppliers of pre-paid funeral plans are excluded from the terms of reference.
26. For the purpose of this investigation:

- 'services by funeral directors at the point of need' means

services provided by a funeral director in connection with the arrangements for a funeral, and including, but without limitation:

- guidance and support to the family and/or persons arranging the funeral;
- collection, storage and care of the deceased;
- organisation and services carried out on the day of the funeral;
- the supply of goods and services to facilitate the arrangements, including, for example, the coffin, hearse and limousine(s);
- intermediary services between the customer and third parties, such as the crematorium or burial site, a doctor or medical practitioner, a minister or celebrant;
- discretionary services that are provided by the funeral director directly or as an intermediary between the customer and third parties, such as memorials, death notices, venue hire and catering, flowers, Order of Service etc;
- the provision of services by funeral directors in connection with the redemption of a pre-paid funeral plan

but excluding

- the provision of pre-paid funeral plans.

- 'crematoria services' means

¹² See [Terms of reference](#) for the market investigation.

the services provided by a crematorium 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.

27. Also, for the purposes of this investigation, the terms below have the following meanings:

- 'at need' means at the time of bereavement (alternatively referred to as 'at the point of need').
- 'independent funeral director' means any funeral director that is not Dignity Plc (Dignity), the Co-operative Group Limited (Co-op), a regional co-operative or Funeral Partners Limited (Funeral Partners). Also referred to as 'independents.'
- 'large funeral director' means firms that have a large number of funeral homes and broad geographic coverage. The term is used to include one of more of Dignity, Co-op, and Funeral Partners.
- 'standard funeral' refers to the most common type of funeral packages sold by funeral directors, typically including the elements set out in paragraph 26 above.
- 'simple funeral' means a more limited, lower cost funeral that may: exclude provision of limousines; have no/limited choice of slot for the funeral director service; have no viewing options and/or include a basic coffin with no/limited opportunity to upgrade.
- 'pre-paid funeral plan' means a contractual arrangement with a provider that allows a person to pay in advance of the point of need for their own or another person's funeral.

Our approach to the investigation

28. In the rest of this section, we explain some of the guiding principles that will inform our approach to this investigation.

29. We shall seek to: (a) define the relevant markets within which funeral directors and crematoria compete; (b) assess the nature of competition in those markets, and (c) reach a view on whether any features of the relevant markets prevent, restrict or distort competition.

30. If we determine that any features prevent, restrict or distort competition, we shall have found an AEC. We shall then have to decide whether the CMA should take action to remedy the AEC or any resulting detrimental effect on customers, or whether we should recommend that others do so. Our approach to considering remedies is explained in further detail in paragraphs 99 to 103.

Proposed focus

31. In determining the focus of our initial lines of enquiry, we have taken into account the evidence gathered and analysis carried out in the course of the Market Study and comments received in response to the consultation on the Interim Report. In addition, we have had regard to an advisory steer that we have received from the CMA Board.¹³
32. We intend to build upon the evidence gathered during the Market Study and, at this stage, propose to focus our investigative efforts on expanding the analysis and evidence base relevant to the issues identified in the Market Study, as well as areas of concern identified through the CMA's consultation process.
33. The framework we propose to follow to gather evidence is set out in paragraphs 67 to 96 below. Within this framework, there are some key overarching issues, which we shall be particularly keen to explore throughout the inquiry:
- (a) What customers consider to be the essential components of a funeral, what they understand to be a good quality funeral or crematorium and how they assess quality when dealing with funeral directors and crematoria.
 - (b) How any quality differentials between both funeral directors and crematoria are taken into account by customers in their choice of funeral directors and/or crematoria and the extent to which investments in quality explain price differentials between suppliers.
 - (c) The extent to which the vulnerability of customers at the point of need impedes their ability to engage with the process and make informed choices at all stages in the funeral arrangement process, and what practical aspects of this process have the most significant impact on customers' ability to make informed choices.

¹³ [CMA Board advisory steer](#).

(d) How different circumstances, including social, economic, faith-related and cultural, may have an impact on the options available to customers and on their ability to make informed choices.

34. We aim to assess whether competition in this market, viewed as a whole, is working well or can be improved; to understand how well competition is serving customers; and how, if issues are identified, the market could work better.

Consultation of interested parties

35. We welcome views from consumers throughout the inquiry and will seek additional insight into the consumer experience from well informed third parties, such as bereavement groups, consumer groups, faith communities and the Scottish Inspector of Funeral Directors.
36. We recognise the importance of understanding how various industry participants operate, including the smaller independent funeral directors. In the course of our investigation, we shall seek to engage actively with a broad range of suppliers through requests for information, formal hearings and other more informal interactions.
37. Examples of issues which we are particularly keen to explore with funeral directors are:
- (a) What considerations drive the commercial decisions of small (single branch) funeral directors and the extent to which these differ from those of funeral directors that have a presence in several local areas;
 - (b) Quality differentials between funeral directors; the extent to which they monitor the quality of their competitors and respond to any changes;
 - (c) Views on quality standards, including in relation to aspects of the service provision that are not visible to customers: how funeral directors decide on the level of quality they adopt, how standards should be judged, and what facilities are necessary to meet such standards;
 - (d) Inflationary pressures in the supply of funeral director services; and
 - (e) Views and supporting data on the take-up of low-cost funerals and the extent to which they constrain the prices of more expensive types of funerals.

Transparency issues

38. Respondents to the Interim Report broadly accepted that lack of transparency in the supply of funeral director services was an issue, which needed to be addressed (see paragraphs 73 to 79 of Appendix F of the final Market Study report). We note that following publication of the Interim Report an independently chaired working group (the Working Group) was established, involving the two trade associations representing funeral directors, some large and independent funeral directors, charities/bereavement groups and consumer facing organisations. Its' stated aim is to seek an industry-wide consensus around how to improve consumer outcomes in the funeral directing sector, with a particular focus on improving industry standards and consumer engagement. To the extent possible, and if appropriate, we shall take account of the work carried out by the Working Group.
39. In the light of these developments, and having considered the evidence underpinning the Market Study Report's conclusions on transparency (as set out in section 4 of the report), we propose to start developing effective remedies to address transparency issues from an early stage in the inquiry, at the same time as assessing the competition concerns. Alongside this, we would also welcome additional views and evidence on information transparency issues and the extent to which they have an impact on competition in the supply of funeral director services.

Pre-paid funeral plans

40. The terms of reference include all services provided by funeral directors at the time of bereavement (whether they are paid for at that time or in advance, including as part of a pre-paid funeral plan). Taking into account the risk of duplication arising from HM's Treasury's current consideration of the regulatory framework for pre-paid funeral plans,¹⁴ we do not currently envisage investigating the terms on which pre-paid funeral plans are offered,¹⁵ but we reserve the right to do so if necessary for our investigation of the supply of funeral services by funeral directors.
41. At this stage in our investigation, our consideration of pre-paid funeral plans is likely to focus on understanding the impact of the uptake of pre-paid funeral plans on the economics of the supply of funeral director services at the point of need. At a later stage, we may need to consider whether any required remedies relating to funeral director services sold as part of a pre-paid funeral

¹⁴ [Pre-paid funeral plans: call for evidence \(HM Treasury\)](#)

¹⁵ Including the prices of the funeral director services offered as part of the plan or competitive process associated with these prices.

plan, and any remedies that are need in relation to services sold at the point of need, should differ.

Local market concentration

42. The funeral director sector has been characterised by many mergers and acquisitions over the years, a substantial number of which involved small local businesses. Having explored this issue (at paragraphs 4.51 to 4.54 of the report), the Market Study concluded that, in this case, local concentration was unlikely to be a material driver of price inflation or other adverse outcomes: evidence collected by the CMA indicated that, in many local areas, people have a choice of several funeral directors and that neither regulation nor the cost of necessary assets were major barriers to entry. The internal documents of the larger players also indicate that local markets are not generally characterised by low numbers of providers and that there have been many instances of new entry in the last years. Given this evidence, we do not propose to explore local market concentration in the provision of funeral director services in the course of this inquiry.
43. By contrast, for crematoria services, local concentration is an issue that was identified in the Market Study report and that we intend to investigate in the course of the inquiry.
44. We would welcome views on our proposed focus and other scoping suggestions.

Ongoing work and future developments

45. While the activities of funeral directors are not regulated in England, Wales and Northern Ireland, a regulatory regime is being introduced in Scotland. The Burial and Cremation (Scotland) Act 2016 was passed by the Scottish Parliament in March 2016 and provides the statutory framework to appoint inspectors of funeral directors. The Act makes provision for Scottish Ministers to introduce a licensing scheme for funeral directors, should this be deemed appropriate. The Act also provides for the repeal of all existing legislation relating to cremation in Scotland. It allows Scottish Ministers to make regulations which make provision about matters including the management and operation of crematoria. The Cremation (Scotland) Regulations 2019 came into force on 4 April 2019.
46. Since competition law and consumer protection are reserved matters, the Scottish Government has stated that it is limited in what it can do to influence

costs.¹⁶ The CMA's overarching focus on competition therefore differs from the Scottish Government's policy objectives.

47. Nevertheless, the regulatory framework in Scotland covers a number of issues that are clearly relevant to our market investigation and we shall take developments in Scotland into account. We want to ensure that our investigation benefits from insight and evidence from policy-makers and industry as the new regime is established in Scotland. To achieve this, we shall liaise closely with policy officials in Scottish Government, the Inspector of Funeral Directors, customer representative groups and industry.
48. We shall also take carefully into account developments and recommendations from the recently established Working Group focussing on industry standards and consumer engagement, as described in paragraph 38 above.
49. As noted in paragraph 40, the UK Government has been reviewing the regulatory framework for pre-paid funeral plans. The Government's review can be differentiated from the CMA's investigation: the Government's objectives are to ensure that all pre-paid funeral plan providers are subject to robust and enforceable conduct standards; there is enhanced oversight of providers' prudential soundness; and consumers have access to appropriate dispute resolution services if things go wrong. We shall liaise closely with HM Treasury, which is leading the review.
50. In assessing potential competition issues and considering potential remedies, we shall be forward-thinking, recognising that there are a number of changes currently taking place, or which will be taking place within the next few years. Such changes include the following:
 - (a) Increasing take-up of pre-paid funeral plans in the past few years, and whether this may continue,
 - (b) Demographic changes, with the 'baby boomer' generation arranging more funerals,
 - (c) Increasing take-up of low-cost funerals, including direct cremations, and the extent to which this may continue,
 - (d) Evolution of the business models adopted by funeral directors, and

¹⁶ [Burial and Cremation \(Scotland\) Bill Policy Memorandum](#).

(e) Changes in the mix of funerals (cremations, burials, natural burials) carried out.

51. We welcome views on our proposed approach to this investigation as set out in this section, including: how this investigation should build on the previous reviews of the sector, and take into account current and future developments in the sector; and whether there are other fundamental changes or trends of which we should be aware.

Sector characteristics, market outcomes and hypotheses for investigation

52. In this section, we set out the framework and investigative methods we are planning to use. The main issues that we expect to address within this framework are:

(a) The nature and extent of competition between funeral directors, including:

(i) Whether and how consumers' choice of funeral director is affected by differences in price, range and quality (eg whether this occurs through the mechanism of recommendations, and whether there is evidence of funeral directors losing or gaining volumes in response to price changes or changes in quality).

(ii) Pricing and competitive behaviours of funeral directors (eg to understand how prices and behaviours differ between small and large providers, and the extent to which firms monitor and respond to one another).

(iii) Trends in pricing and customer demand over time, including the interaction between demand for simple and standard funerals.

(b) The funeral sales process and funeral directors' behaviours, including:

(i) How and when prices are provided, any barriers to shopping around or negotiating on prices, and any other aspects of the sales process that may affect customers' choices.

(ii) How different circumstances, including social, economic, faith-related and cultural, may have an impact on a given customer's available choices and ability to get good value for money.

(iii) Quality standards across funeral branches and whether there is any evidence of widespread poor standards.

- (c) The profitability of both large and independent funeral directors, including an analysis of whether price increases in recent years can be explained by cost increases or investments in quality.
 - (d) The nature and extent of competition between crematoria, including:
 - (i) How local authority and private crematoria set their prices, range and quality, including the extent to which local authority crematoria set prices above the level necessary to recover costs.
 - (ii) Whether there is evidence of greater competitive interaction and constraints on crematoria in areas where there are more competitors present, where they are closer to each other, or where there has been entry.
 - (iii) Evidence on the proportion of customers that crematoria tend to attract from locations for which they are not the closest provider, and investigation of whether in these circumstances customers are making active choices based on quality and price.
 - (b) The factors affecting whether entry of new crematoria occurs in particular areas, including the planning process and providers' assessments of project viability.
 - (c) The profitability of local authority and private crematoria, including an analysis of whether price increases can be explained by cost increases or investments in quality.
53. In the remainder of this section we set out some details of:
- (a) The characteristics of the sector which we expect to take into account when gathering and interpreting evidence;
 - (b) Our proposed approach to measuring and interpreting market outcomes such as firm profitability and quality of service; and
 - (c) The hypotheses that we shall be investigating, along with some indication of the research methods we intend to use.
54. We welcome comments on whether these are the right aspects on which to be focusing, and suggestions for how we can most successfully investigate them or take them into account.

Sector characteristics

55. In 2017, the supply of services by funeral directors at the point of need and the supply of crematoria services respectively generated £1.3bn¹⁷ and £340m in revenue in the UK.¹⁸
56. At this stage in the inquiry, we have identified the following key characteristics of these two sectors which we consider are likely to be important in assessing the nature of competition, formulating hypotheses, identifying potential AECs and considering potential remedies to any AECs:
- (a) Many customers are vulnerable at the point of purchase, and often constrained in their decision-making by social, emotional, cultural and/or financial pressures. The purchase of products and services relating to a funeral can neither be avoided nor delayed. Further, these are purchases that happen infrequently and customers are often inexperienced, having had no, or very limited, interaction with the sector previously.
 - (b) Funerals are provided as bundles of products and services, and where a funeral director's services are used, the funeral director operates as the gatekeeper to other products and services, e.g. coffin, crematorium, cemetery, minister/celebrant.
 - (c) Funerals are differentiated: funerals are likely to involve a combination of elements chosen by the customer (e.g. type of coffin, number of limousines, choice of music). Many funeral directors also provide the option of pre-determined packages, which might somewhat constrain the level of choice of customers.
 - (d) Funerals are typically purchased in a private meeting with the funeral director at their premises, in which the funeral director will establish the specific needs of customers.
 - (e) Nationally, there are large numbers of providers of both funeral director and crematoria services. In individual local areas there generally tend to be a choice of several funeral directors but very few crematoria in close proximity.

¹⁷ This figure does not include funeral director services provided in connection of the redemption of pre-paid funeral plans.

¹⁸ The methodologies used to calculate these numbers can be found at paragraphs 8.47 and 8.58 of the Market Study report.

- (f) While recent investment in new crematoria has primarily come from the private sector, the vast majority of crematoria are owned and operated by local authorities.
- (g) Both funeral director businesses and crematoria have material fixed costs. In the case of funeral directors, these tend to be the facilities, vehicles and staff (although certain businesses may adopt business models involving hired vehicles or temporary workers). In the case of crematoria operators, the facilities represent the main fixed cost.
- (h) The supply of funeral director services is largely unregulated: in particular entry is not subject to any registration or licensing obligations.¹⁹

57. We invite parties to give us their views on the characteristics set out in paragraph 56 above.

Market outcomes

58. Our investigation will consider market outcomes, including the potential detrimental effects on customers resulting from any AEC(s) we identify. This assessment will be made relative to a 'well-functioning market', that is a market without the feature(s) causing the AEC(s). We shall consider both short- and long-term impacts.
59. The detrimental effects could take the form of:
- (a) higher profits;
 - (b) higher prices;
 - (c) reduced service quality;
 - (d) reduced choices of products;
 - (e) less innovation; or
 - (f) any combination of the above.
60. The Market Study report identified high price inflation over a considerable number of years resulting from the competition concerns that had been identified in the provision of services by funeral directors and in the provision of crematoria services. The report noted that there were large price differentials between suppliers, including within local areas, and that the

¹⁹ Although a regulatory regime is being introduced in Scotland (see paragraph 45).

EBITDA²⁰ margins of Dignity, Co-op and Funeral Partners were high by international standards (see paragraph 6.111 of the report).²¹

61. We propose to further develop our analysis of profitability in the provision of funeral director services and crematoria services. Our objective will be to establish whether profits have exceeded a competitive level over a sustained period,²² for a 'substantial part of the relevant market'. To do so, we propose to obtain revenue and cost information from the large suppliers²³ and from a sample of smaller suppliers. We shall seek to carry out the following analysis:
- (a) For each large supplier, we shall seek to establish the economic profits that have been made over time. This will involve estimating the return on invested capital and comparing it to an estimate of the weighted average cost of capital (WACC). This analysis of return on invested capital versus WACC may be corroborated by analysis of margins, should asset valuation require material assumptions/judgments to be made.
 - (b) We shall seek to carry out profitability analysis for a sample of smaller suppliers (private companies and local authorities). This will be achieved through the use of publicly available accounting information and/or sending requests for information to a sample of suppliers. In the first instance, we shall explore both of these sources of information on profitability. Whether, and to what extent, we rely on publicly available information or information requests to a sample of suppliers will depend on the quality of information and market coverage that we obtain from our initial exploration of the two methods.
62. We shall also seek to analyse whether there may be inefficiencies in the supply of services by funeral directors that may need to be factored into any estimate of the detriment arising from any AEC(s) identified.
63. The Market Study carried out some preliminary analysis of the drivers of price inflation and differentials (see section 6 of the Market Study report). In our investigation we shall, in particular, explore further:
- (a) Arguments made by funeral directors and crematoria about industry-specific cost drivers, such as the increased personalisation of funerals, regulations relating to mercury abatement, the time elapsed between

²⁰ Earnings before interest, tax, depreciation and amortization

²¹ The Market Study did not reach any conclusions on the impact of the competition concerns it had identified on either quality or innovation in the industry.

²² CC3 revised, paragraphs 118 and 119.

²³ Co-op, Dignity, Funeral Partner Services, Westerleigh, Memoria.

death and funeral and the cost of dealing with the increased rate of obesity in the UK.

- (b) Whether price differentials, and any resulting variation in profitability, are of a scale and duration that are consistent with a well-functioning market. For example, we would expect that, in such a market, some providers may make higher profits than others as a reward for innovation (eg in relation to quality) or efficiency, but that the scale and duration of this differential should be constrained by entry, or the threat of entry, by other providers with a similar offer.
64. We do not expect that it will be possible to establish a clear relationship between quality differentials and price differentials, as there are many dimensions of quality, some of which appear to be difficult to measure reliably (e.g. helpfulness of staff, empathy etc), and others which are unobservable to customers, but would welcome additional evidence from suppliers that would assist us in carrying out such an assessment. We shall seek to address this issue primarily through our analysis of profitability.
65. In relation to innovation in the sector, we shall seek to understand whether the development, or uptake, of new types of funerals (e.g. direct cremation, natural burials), crematoria services or business models has been impeded by AECs in the supply of funeral director services or crematoria services.
66. We would welcome views on whether the potential detrimental effects identified in paragraph 59 above are the right ones to be focusing on, and/or whether there are any other types of potential detrimental effect we should take into account in our analysis.

Hypotheses for investigation (theories of harm)

67. To provide structure to our assessment of whether there are any features leading to AECs, we set out below high-level hypotheses for investigation (also known as ‘theories of harm’). These do not imply any prejudgement of an AEC; they are potential hypotheses to be tested. Our investigation is at a very early stage, and the purpose of identifying these hypotheses is to present some early thinking on these issues for comment and to help frame our investigation. These hypotheses are not necessarily mutually exclusive, indeed some are closely related and connected to each other. Equally they may not be comprehensive – there may be other issues that we choose to consider further in the course of the investigation as our understanding of the market develops. Similarly, we may find, as our investigation progresses, that some, or all, of these hypotheses do not hold.

68. At this stage, we are focusing on the issues identified as part of the CMA's work for its Market Study but, as the investigation progresses, further issues may be identified and explored. The issues we propose to explore can be grouped into:
- (a) The difficulties many people have in engaging with the funerals purchasing process.
 - (b) Firm behaviours in the supply of funeral director services.
 - (c) Market structure and barriers to entry in the supply of crematoria services.
69. There may be connections between the three sets of issues. For example, the extent to which customers shop around and constrain suppliers may be the result of a combination of customers' difficulties in engaging with the funerals purchasing process and the sales practices of funeral directors. We would welcome comments on whether the hypotheses identified, and the proposed analysis within each of these, are appropriate and/or whether other areas or hypotheses should be considered.

Difficulties people have engaging with the process

70. Under this theory of harm, because of the difficulties that people have in engaging with the funerals purchasing process firms gain relatively few customers in response to improvements in price or quality, meaning that they have weak incentives to cut prices, raise quality, or innovate (e.g. introducing new products to their range), and as a result provide worse prices, quality or range than they would in a well-functioning market.
71. As part of the Market Study, the CMA carried out a consumer survey and consumer research involving 100 interviews with people who had organised a funeral in the previous two years.
72. The conclusions of the research are set out at paragraphs 3.48 to 3.55 of the Market Study report. It seems to us, based on this evidence, our review of the internal documents of large funeral directors and the responses to the Interim Report, that it is generally accepted that the circumstances in which customers make decisions relating to funerals puts them in a situation in which they find it difficult to engage with the purchasing process. This is notwithstanding views that purchasers of funeral services are vulnerable to varying degrees.
73. Taking account of the comments received in response to the Market Study interim report (set out at paragraphs 34 to 72 of appendix F), we shall seek to

understand better how customers behave and propose to investigate the following issues:

How customers make purchasing decisions and the extent to which they take account of quality differentials

74. The Market Study report noted that a high proportion of customers choose both the funeral director and the crematorium on the basis of recommendations or past experience. In response to the Interim Report, it was argued that such customers factored quality in their decision-making by following a recommendation or past experience when choosing a supplier.
75. We shall carry out additional consumer research, for example, to find out how customers might assess the quality of a funeral director, what factors people take into account when they make, or follow, a recommendation, and the role of intermediaries (such as care homes, hospices and hospitals) in influencing consumers' choices.
76. In relation to crematoria specifically, we shall seek to understand whether, and the extent to which, people are prepared to/do travel further to a crematorium because of a perceived quality differential compared to a more local crematorium.

Whether customers consider low-cost options to be good alternatives to more expensive ones

77. The Market Study report concluded that the majority of customers do not consider low cost funerals to be good alternatives to other, more expensive, types. These conclusions were largely based on information obtained from Dignity and Co-op.
78. We propose to seek direct evidence of the impact of changes in the pricing of 'simple' funerals on the volumes of more expensive funerals sold. In particular, we shall seek to obtain volume and revenue data from funeral directors in areas where there has been a significant change in the pricing of 'simple' funerals by Dignity and/or Co-op in the recent past.
79. We shall also seek further evidence on this issue through customer research.

Whether customers are increasingly shopping around

80. The Market Study consumer survey found that only 14% of customers compared the services of two or more funeral directors when deciding which one to use. In their response to the Interim Report, some funeral directors

commented that the CMA had underestimated the incidence of shopping around.

81. We shall be asking more funeral directors for their views on this, and will be requesting supporting evidence to help us understand the extent to which, and the pace at which, customer behaviour is changing (and whether this varies between different customer groups).

Firm behaviours in the supply of funeral director services

82. The Market Study report found a number of competition concerns linked to the behaviour of funeral directors. These included:

- (a) A muted response to competition;
- (b) Firms' reluctance to publish/disclose clear prices;
- (c) The ability of suppliers to largely control the decision-making process leading to the sale and its outcome;
- (d) Ineffective self-regulation in relation to online prices.

83. These behaviours are associated with two broad theories of harm:

- (a) Consumers' difficulties in engaging with the funeral purchasing process (as discussed above) potentially result in firms' muted response to competition, including in relation to the price and quality of the service they provide to consumers (which in turn may lead to worse prices, quality and range for consumers).
- (b) Behaviours by firms in relation to the provision of price information and the sales process (including the role played by the trade associations) may further reduce customer engagement, further reducing firms' incentives to provide low prices, high quality and broad ranges of products and services.

Responses to competition and entry

84. We propose to expand the analysis undertaken during the Market Study, in particular by seeking evidence from a wider set of suppliers. We shall seek to understand how companies respond to new entry, changes in prices, and the growth in the supply of low-cost funerals and will gather the following evidence:

- (a) Additional volume and pricing data (in particular, the average revenue per funeral) from a variety of sources, including directly from a representative sample of companies.
 - (b) Case studies of local competition, focusing on areas where an event substantially changed conditions of competition, e.g. a large price rise triggered by change of ownership or entry by a new supplier.
85. Some submissions received in response to the Interim Report argued that the standards of quality adopted by some funeral directors were unacceptably low, including in relation to their care of the deceased. These concerns, if correct, may be the result of the weak incentives of firms to improve quality, because of customers' limited engagement and experience, or, in the case of hidden aspects of quality (such as the conditions of the facilities in which the deceased are kept), their inability to observe and respond to quality differences. We shall be gathering evidence from a range of stakeholders (including the Scottish Inspector of Funeral Directors) to help us assess the prevalence of such issues.

Sales practices

86. Our initial review of the evidence received in the context of the Market Study indicates that there may be three main categories of practices adopted by funeral directors which could have an adverse effect on competition:
- (a) Sales practices that impede customers' ability to compare suppliers effectively, e.g.: not providing pricing information at an appropriate time; not providing price information online in a form that can be compared with other suppliers; providing only limited pricing information on the phone, or concealing the ultimate ownership of the local business.
 - (b) Sales practices that limit the ability of customers to switch between suppliers, such as local agreements with healthcare institutions resulting in the body of the deceased being moved to a funeral director's premises and large charges for collection/storage if the body is subsequently moved to an alternative funeral director.
 - (c) Sales practices that, along with the funeral director's strong position in the face-to-face meeting in which the funeral is sold, make it more likely that customers pay high prices or purchase more expensive funerals. These practices may relate to: the timing and extent of information provided about the cost of the funeral; the extent and presentation of information provided about the options available; and other issues to do with the

presentation of price – eg capitalising on the perception that funerals are expensive or lack of clarity on how the price of the funeral is calculated.

87. We shall explore these issues through a mixture of investigative methods, including consumer research and the review of internal documents.

Role of trade associations

88. The Market Study report estimated that just over 75% of funeral director branches were represented by one or both of two trade associations: the National Association of Funeral Directors (NAFD) and National Society of Allied and Independent Funeral Directors (SAIF).
89. We shall consider whether the practices adopted by the trade associations have impeded change in the funeral director sector, including in relation to the development of price comparison services.
90. We shall also seek to understand the approach taken by trade associations in handling customer complaints, monitoring and enforcing standards and disclosing information on breaches of the codes of practice.

Market structure and barriers to entry in the supply of crematoria services

91. Under this theory of harm, the limited number of competitors in each local area (in part driven by barriers to entry) means that each crematorium faces weak competition from rivals, and as a result has weak incentives to cut prices, or improve quality and range.
92. The Market Study report concluded that competition concerns arose from the low number of crematoria providers in local areas and high barriers to entry arising from the planning regime and high fixed costs.

Competition in local areas

93. In general there are few crematoria that are in close proximity to one another.
94. We shall seek to understand how the number of, and distance between, crematoria in local areas affects the level of competition between them and the extent to which private crematoria operators rely on customers from further afield to make any profit and the extent to which they compete on quality.

Investments in new crematoria

95. In response to the interim report, a number of private crematoria argued that the CMA had insufficiently considered private crematoria investments.
96. We shall seek evidence on the scope for new entry by private providers, the circumstances under which entry can occur, and the relationship between investments and fees.

Remedies

97. Alongside considering initial hypotheses relating to possible competition issues, we shall also explore what potential remedies may be suitable to address any AECs that we may find. As our understanding of the market, and the potential issues within it, develops, we expect our consideration of potential remedies to develop also.
98. To help inform our initial thinking, we welcome views from parties on potential remedies at this very early stage. Were we to provisionally find that there are one or more AECs, then our provisional decision on any remedies would be contained in our provisional decision report, at which point parties would have a further opportunity to comment. Our final decision on any remedies would be contained in our final report.

The CMA's approach to remedies

99. When deciding whether (and if so what) remedial action should be taken to address an AEC, the CMA is required 'in particular to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable'.²⁴ In doing so, the CMA considers – individually or as a package²⁵ – how comprehensively the potential remedy options address the AEC and/or the resulting detrimental effects on customers; and whether they are effective and proportionate.²⁶
100. The CMA assesses the extent to which different remedy options are likely to be effective in achieving their aims, including whether they are practicable and, among other considerations, the timescale over which they are likely to have effect.²⁷ The CMA generally looks to implement remedies that prevent an AEC by addressing its underlying causes, or by introducing measures that

²⁴ Sections 134(6) and 138 of the Act.

²⁵ [CC3 revised](#), paragraph 328.

²⁶ [CC3 revised](#), paragraph 329.

²⁷ [CC3 revised](#), paragraphs 334 and 337.

can be put in place for the duration of the AEC. The CMA tends to favour remedies that can be expected to show results within a relatively short period of time. In line with the revised guidelines,²⁸ the CMA considers whether or not to limit the duration of individual remedies by including sunset provisions in their design. This approach might be appropriate if, for example, the relevant competitive dynamics of a market are likely to change materially over the next few years, or the measure in question is intended to have a transitional impact, while other longer-term measures take effect.²⁹

101. The CMA is guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about which (if any) remedies to impose (should an AEC be found). The CMA therefore assesses the extent to which different remedy options are proportionate, and in particular is guided by whether a remedy option:

(a) is effective in achieving its legitimate aim;

(b) is no more onerous than needed to achieve its aim;

(c) is the least onerous if there is a choice between several effective measures; and

(d) does not produce disadvantages which are disproportionate to the aim.³⁰

102. The CMA may also have regard to the effect of any remedial action on any relevant customer benefits (RCBs) of a feature or features of the market(s) (for example, benefits in the form of lower prices, higher quality or greater choice or innovation).³¹

103. Where the CMA finds that there is an AEC, the circumstances in which it will decide not to take any remedial action at all are likely to be rare but might include situations in which no practicable remedy is available, where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC, or where RCBs accruing from the market features are large in relation to the AEC and would be lost as a consequence of any practicable remedy.³²

²⁸ CMA3, paragraphs 4.18–4.21 and 4.25.

²⁹ CMA3, paragraph 4.20.

³⁰ CC3 revised, paragraph 344.

³¹ Section 134(7) and (8) of the Act.

³² CC3 revised, paragraph 354.

Potential remedies on which views are sought

104. In this section, we describe the initial remedy options to address any AECs that we may find. We describe each of these remedy options in turn, setting out how they might work in practice. We invite views on specific issues that we raise in this section as well as any other issues that interested parties would like to put to us. The list of remedies discussed below is by no means exhaustive and we invite suggestions from parties in relation to any remedies not identified that they believe we should consider.
105. As noted above, our consideration of these remedy options will develop in light of our emerging thinking on any potential AECs as our investigation progresses. We are keen to start considering and evaluating the potential remedies we describe at paragraphs 115 to 143 below, at the same time as assessing the competition concerns.
106. We shall also consider other potential remedies if parties are able to provide relevant evidence and reasoning as to why these would be comprehensive, effective and proportionate.

Remedy categories

107. The various remedy options available to the CMA, can be categorised in different ways. One means of delineating remedy types is whether a remedy is structural or behavioural in nature:
- (a) Structural remedies include measures which change the structure of an industry or sector, such as requiring the divestiture of assets.
 - (b) Behavioural remedies include measures which influence the behaviours of firms and/or customers such as through the provision of information, introducing rules on conduct, enabling customers to use their data held by firms to their own advantage and placing limits on the levels of prices that can be charged.
108. Remedy options can also be thought of in terms of:
- (a) Whether they seek to enable greater competition, for example, structural measures that increase the number of firms would be looking to intensify rivalry and enable greater competition. Similarly, providing customers with the means to make better informed decisions would be looking to directly increase competition; or
 - (b) Whether they seek to more directly address any detriment, for example limiting the levels of prices that can be charged by a firm.

109. There are various mechanisms available to the CMA to implement any remedies:
- (a) Undertakings from parties. Such undertakings would be an offering from a party to put in place various measures, enforceable by the CMA, to address any AEC that is found.
 - (b) An Order requiring parties subject to the Order to undertake various actions. An Order is usually adopted when there are more than a small number of parties subject to the remedies and/or when parties are unwilling to offer undertakings to the CMA. Again, these are enforceable by the CMA.
 - (c) Recommendations to government and other bodies to take forward actions that would address any AEC. This can include a recommendation to introduce regulatory reform.
110. Given the nature of the theories of harm we are proposing to investigate, and based on the evidence we have seen to date, we consider it likely that to be effective, more than one type of remedy would be required if we found an AEC.³³ These could be behavioural and/or structural remedies, as well as remedies that seek to enable greater competition and/or directly address any detriment associated with any AECs we find. It may also be that the most effective and proportionate package of remedies will be a combination of undertakings, orders and/or recommendations to government(s) or other bodies. Our assessment of the effectiveness and proportionality of any remedies will be considered both individually and as part of a package.
111. We have broadly grouped the potential remedies into four categories:
- (a) Information/transparency remedies;
 - (b) Price/charging remedies;
 - (c) Remedies to regulate quality of service; and
 - (d) Market opening remedies.
112. We have presented the potential remedies in this way for ease of exposition: the order does not represent any initial prioritisation or ranking of the potential remedies.

³³ Our view on this may change as the investigation progresses.

Questions on potential remedies

113. We welcome any general observations and views on each of the separate remedies discussed below and on the following specific issues:
- (a) The potential for the remedies to effectively address any AECs;
 - (b) The magnitude of associated costs and who would incur them;
 - (c) The potential for unintended consequences and/or distortions to competition to arise from these remedies and how these could be mitigated;
 - (d) Other potential measures, including evidence on why they would be effective; and
 - (e) Whether any such measures should apply to all funeral directors and/or crematoria, or only a subset, and if so on what basis.
114. Where there are additional questions specific to individual remedies, we have set these out at the end of each section below.

Improving transparency and helping people make good choices

115. The aim of this type of remedy is twofold:
- (a) To improve the preparedness of customers ahead of the point at which the funeral needs to be organised (to address the issues identified in paragraph 70 to 73).
 - (b) To make it easier for customers to make the best choices for themselves (to address the issues discussed in paragraph 74 to 76).
116. In relation to the first, we propose to explore, from an early stage in the investigation, ways to encourage people to consider funeral arrangements at times when the situation lends itself to such considerations before the point of need (eg when making a will or in interactions with critical illness charities). Such an approach would mean that people would have an opportunity to begin to think about, and put in place, arrangements for their own, or a loved-one's, funeral at a time when they are less vulnerable, and so more able to consider the various options available and make well-informed decisions.
117. Part of our work in this area will include consideration of the role of intermediaries in providing information to customers. Such intermediaries could include medical practitioners and other medical service providers, care homes and their employees, critical illness charities and solicitors.

118. In relation to the second, we propose to explore, from an early stage in the investigation, ways to encourage people to shop around more for funeral directors and crematoria services and to help them make the right choice of funeral – for example by ensuring that the information provided by suppliers enables like-for-like comparison of prices and services offered. There may also be a role for intermediaries in these circumstances, for example in health care and care home environments and during the process of registering a death.
119. For both of these approaches, we shall also explore the potential role of intermediaries to act on behalf of customers in their purchasing decisions, be that in advance, or at the point of need.
120. The overall effectiveness of such measures will be enhanced by researching the forms and types of information that customers find useful. There are various options available to us to test the effectiveness of information provision to customers. We shall be cognisant of the sensitive nature of the issues to be addressed and the impact this might have on any testing or research that we may undertake.
121. We are also aware of the potential of comparison tools as a means to provide customers with an increased ability to compare providers across the market, both in advance of need and at the time of need. The availability of comparison tools for funerals is currently relatively limited. Our work in this area will seek to understand why this is the case and explore whether there are actions we could take to change this situation and what such actions might be. This could involve establishing what information, and in what format, would need to be made available to support the further development of comparison tools. We envisage that if this type of intervention is necessary it would cover at a minimum the provision of information on the price and range of the services provided. We would also consider what information could be provided about service quality. We shall engage with providers of comparison services in the funerals and other sectors.

Questions specific to remedies to improve transparency and help people make good choices

122. We welcome any general observations and views on the following specific issues:
 - (a) Are there any ‘best practice’ models or examples of literature/information that already exist, for example in other countries, that would be helpful to the CMA;

- (b) Why recommendations from previous Office of Fair Trading reviews (see paragraphs 2.53 to 2.54 and Appendix A of the Market Study report) appear not to have been implemented and/or effective in addressing transparency issues in the supply of funeral director services.

Price/charging remedies

123. Such a remedy would seek, in combination with other remedies, to address the potential outcome from any AECs that we may find, rather than the AECs themselves. As noted in paragraph 2.15 of the Market Study report, there has been significant price inflation, both in the supply of funeral director services and in the supply of crematoria services, for a considerable period of time: analysis of pricing information published by SunLife Limited shows that the average cost of a 'basic' funeral³⁴ has increased by 6% annually (from £1,920 to £4,271) in the 14 years to 2018.
124. Should we find through our further work (for example in our profitability analysis – see paragraph 61) that current prices are well in excess of costs, one possible remedy would be to seek to re-align prices with costs plus a reasonable return.
125. Such pricing remedies are common in regulated markets, most often being applied to monopoly providers of homogenous goods or providers with substantial market power. However, these types of remedies have also been used in markets where the supplier base is fragmented, but where the degree of competition has been judged insufficient to constrain prices adequately, for example the retail energy market and pay-day lending.³⁵
126. We recognise that applying price controls to the markets we are considering presents some challenges as there is fragmentation and, for crematoria, the public sector, through local authorities, supplies a significant proportion of the market. We do not consider that these challenges are insurmountable, as a matter of principle,³⁶ and will collect further evidence to inform the feasibility and design of pricing remedies.
127. We consider that a number of price control options could be available in this case. The high-level options we have identified include:

³⁴ Defined by SunLife as the fees for: the funeral director (including provision of the coffin, hearse, collection and care of the deceased, and professional guidance); the cremation or burial itself; the doctor; and the minister or celebrant. In 2017, average burial fees were around £1,000 higher than cremation fees. [SunLife cost of dying report 2018](#).

³⁵ Safeguard price caps were used in both instances i.e. where a price ceiling is established.

³⁶ See for example the analysis of community pharmacy services in Northern Ireland, which requires analysis of the costs plus a reasonable return in a fragmented market. <https://www.health-ni.gov.uk/publications/cosi>.

- (a) Cost orientation condition: require firms to set prices which reflect the costs incurred in providing the service, through imposition of a cost orientation obligation. Firms would be required to maintain adequate records to demonstrate that their prices reflect costs, should they be called upon to demonstrate compliance by a regulatory body.
- (b) Profit margin/rate of return allowance: establish a fair profit margin and/or rate of return on invested capital. Firms would self-assess their allowed revenue, based upon their own cost forecasts plus the pre-determined fair return. Firms would set prices such that they fall within their self-assessed allowed revenue. Compliance monitoring would be undertaken on a sampling basis, which might be focussed on those firms exhibiting unusual pricing trends.
- (c) Safeguard cap on essential services: enforcement of a ceiling on the allowable price for the essential elements of a funeral i.e. on those services which all customers require when they purchase a funeral or cremation. All customers purchasing a funeral or cremation would pay a price at, or below, the safeguard cap level for these essential services. Any additional services would have to be itemised on the customer bill as add-ons to the essential services. The price ceiling would be established by reference to the costs incurred in providing the essential services and/or existing competitive prices, should these exist.³⁷ The safeguard cap might build in an element of headroom to allow for differences in costs across providers and for the potential for competition below the cap level. This form of price regulation would apply only to a sub-set – the essential services – of the relevant funeral package.
- (d) Safeguard cap on a specific package: a price ceiling for a particular, discrete package would be established e.g. a 'simple' funeral package. All suppliers would have to give customers purchasing a funeral or cremation the option of choosing this package and paying at, or below, the safeguard cap level. The price ceiling would be established by reference to the costs incurred in providing the particular package and/or existing competitive prices, should these exist.³⁸ The safeguard cap might build in an element of headroom to allow for differences in costs across providers and for the potential for competition below the cap level. In comparison to option (c) this form of price regulation would be applicable only to a sub-set of funeral packages offered by a funeral director eg a 'simple' funeral package. While other funeral packages would not be

³⁷ For example, if a certain customer journey leads to a competitive price level.

³⁸ For example, if a certain customer journey leads to a competitive price level and/or if certain local areas are subject to sufficiently effective competition.

subject to direct price regulation, the regulation of the 'simple' funeral package might act as a constraint on the prices charged for other funeral packages offered by the funeral director.

128. The above options are not mutually exclusive (for example a safeguard cap applied to a 'simple' funeral could be combined with a cost orientation condition, which applies to all services provided) and each option could potentially be tailored to meet the specific characteristics of the case.
129. Each of the price control options would require a regulatory body to design, implement and monitor compliance with the remedy. The CMA could, for an appropriate interim period, introduce an initial price control.³⁹ In the longer-term, a sector regulator would likely need to be established, alongside the introduction of a licensing regime, for those firms that are subject to the price control. This would require Government action and could follow a recommendation from the CMA. Further, the form of price control that might be considered most appropriate for an interim period (initially designed, implemented and monitored by the CMA), may differ from the most appropriate price control for the longer-term, where a sector regulator would be responsible for design, implementation and monitoring.

Quality regulation

130. We intend to investigate whether there are quality differentials between suppliers (see paragraphs 37 and 52 above). Quality regulation would seek to address variations in aspects of quality that customers are likely to find particularly difficult to engage with (e.g. standards of care of the deceased). We do not currently envisage that our investigation of competition will seek to establish what may be appropriate minimum quality standards. However, we recognise that any assessment of a price control remedy would need to take account of its impact on the incentives of suppliers to lower quality.
131. Therefore, there may be a place for quality regulation within an effective package of remedies. Issues that may need to be considered include:
 - (a) The scope of services that would need to be regulated.
 - (b) Ensuring that such remedy does not unnecessarily raise barriers to entry or to innovation, e.g. by considering the various ways in which suppliers may be able to achieve required standards.

³⁹ Using its powers under Schedule 8 of the Act

- (c) How the information would be collected and published.
- (d) The means by which such regulation would be implemented, e.g. through a licensing regime and regulator/inspectorate.

The scope of services included

132. There are various options as to what elements of service quality would be regulated. For example, this could be split between observed and unobserved services:
- (a) Observed services include condition of the premises, facilities available for viewing the deceased, treatment of customers by staff, availability of pricing information, opening hours and duration of slots for a cremation service.
 - (b) Unobserved services include how the deceased is cared for eg whether on-site or off-site, whether the funeral director has access to and uses refrigeration facilities, the adequacy of processes in place to track bodies, compliance with health and safety requirements.
133. Any service quality regulation could be limited to a sub-set of the services offered by funeral directors and/or crematoria. For example, it may be appropriate to limit such regulation to the essential elements of a funeral package. Whether such regulation should be expanded to other areas, such as the availability and condition of cars for mourners, facilities to order flowers and memorials and other non-essential elements would need to be carefully considered.
134. Consideration may be needed as to whether the scope of any services to include should be linked to any price control remedies, to ensure that any incentives to reduce service quality in response to those remedies are adequately addressed.

Potential impacts on barriers to entry and innovation

135. We are aware of the potential for service quality regulation to have detrimental impacts on the ability of potential entrants to enter the market, and existing suppliers to expand, and for such requirements to stifle innovation. In developing any proposals, we shall need to understand the potential for such negative outcomes. For example, some improvements in the quality of service provision could require substantial capital investment which would act as a barrier to entry and expansion.

Collection and publication of information

136. There are options available for how the information is collected and published, with different types of information being more suitable to some approaches than others. For example:
- (a) one approach could be to require funeral directors and crematoria to collect information on various key performance indicators, potentially with target levels of performance, and for these to be published. This would provide the ability for customers to compare various elements of service, but not set a minimum threshold.
 - (b) As an alternative, or supplement, we could require the collection and publication of customer satisfaction information, comparable between providers, on various elements of their experience. This could be limited to a score indicating overall satisfaction or willingness to recommend or it might be developed to cover a range of separate areas of service. Any such approach would have to consider issues such as sample design and the vulnerable state of customers, who may still be grieving.

Implementation

137. The CMA would be well-placed to introduce any service quality remedies as part of this market investigation. However, as with potential price control remedies, the introduction of service quality regulation would likely require the establishment of a regulator/inspectorate to undertake the longer-term monitoring and enforcement functions and to ensure that any requirements remain up to date and appropriate for changing market conditions. This would require government action, which could follow a recommendation from the CMA.
138. If price control remedies are introduced, any regulator established to take on that role should be able to take responsibility for regulating service quality. This would ensure that pricing and quality requirements were set and applied consistently. If no price control remedies are introduced, a body with more of an inspectorate function could be established. This would need to have sufficient powers to monitor compliance and ensure that any regulation remains appropriate as the markets develop.

Questions specific to service quality regulation remedies

139. We welcome any general observations and views on the issues set out above and on the following specific issues:

- (a) What types of information should be collected and published; and
- (b) How any service quality remedies should be designed to minimise barriers to entry and innovation, for example to minimise the need to undertake substantial investments.

Market opening remedies

140. The purpose of this category of remedies is to lower barriers to entry and to promote competition in the provision of certain elements of the service. There are various remedies that could help address any AECs we may find, separately for funeral director services and for crematoria.

Funeral directors

141. Funerals are sold as a package of different products, with some elements of the package being essential, and others being an add-on discretionary product. Many customers will purchase the whole of the funeral through a single funeral director and will not be aware of the option available to purchase (potentially at lower cost) certain elements of the package (such as coffins) from different providers. To address such issues, we could require funeral directors to allow customers to unbundle the funeral package, and to inform customers of the option to unbundle.
142. Another potential issue is the arrangements for the care of the deceased immediately after death. Depending on where this occurs, eg at a care home, there may be arrangements in place between the care home and a funeral director for the deceased to be transported to that funeral director's premises within a relatively short time period. While relatives and friends of the deceased are not restricted in using an alternative funeral director, such a change can cause emotional distress, incur additional costs and there may be practical restrictions, such as an inability of a new funeral director to access the premises of the original funeral director. If we find that any such arrangements restrict customers' choice of providers, these issues could potentially be addressed through requiring changes in the contractual, or other, arrangements between a funeral director and third parties and through the introduction of additional obligations on funeral directors.

Crematoria

143. For crematoria, we have identified two areas where measures could be introduced to facilitate the opening of markets to increased competition:

- (a) To the extent that planning regulations may be restricting the ability of crematoria operators to enter a local area, modifications to the planning regime may be needed.
- (b) The introduction of a franchising model for new crematoria and/or providing for the tendering of contracts to manage local authority crematoria:
 - (i) Invitations to tender would require pricing and quality proposals.
 - (ii) Where an AEC is derived from common ownership of local operations, this remedy could enable competition for the market and, more generally, could facilitate new entry.

Monday 8 April 2019