CMA publishes Final Report

No major shift from provisional recommendations – but key positives for NAFD members and greater understanding of the sector

Key positives in the CMA's Final Report:

- A significant shift in tone – and apparent understanding of the sector, particularly around the impact of COVID on funerals.
- The door remains open on the NAFD's proposal for an independent regulation (IFSO) – the CMA has pushed consideration of who is the statutory regulator on to Government and there is ample room for us to prove that IFSO will deliver against their requirements.
- They've backed off on packages, moving more towards providing information in a model similar to the FSCSR Key Information Form – although we have some work to do to challenge some of the information they would like to see included (e.g. disbursements).

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- They've acknowledged that issues around consumer detriment are more indicative of a structural issue with the market, than any intention by funeral firms to exploit bereaved people.

As this edition of *Funeral Director Monthly* went to press, the Competition and Markets Authority published its final report, following the market investigation into the funeral sector.

With almost 1,000 pages to review, the NAFD team was still working its way through the detail when the magazine was signed off, however our initial review suggested that while the recommendations had changed little from the provisional report, there were many small but important shifts in the CMA's thinking - reflecting the evidence presented by the NAFD on the sector's proactive approach to tackling the challenges faced.

For NAFD members, publication of the report provides also provided clarity on a process that has left funeral firms facing huge uncertainty about their future, during an extremely challenging year in which you have been key workers on the frontline of the response to COVID-19.

In the NAFD response to the media we also noted:

Consumer feedback, in surveys undertaken by the CMA and others, confirms that the majority of bereaved people are satisfied with the service and costs of funerals they have arranged and this is therefore not a market where onerous statutory intervention is required. Importantly, the CMA shares our view that for funeral consumers, quality of service is as important as the cost of a funeral – and that both do (and should) influence the choice of funeral director,

In addition, the funerals market has been fundamentally changed by COVID. Consumers are buying simpler funerals (and it is not yet clear when the Government restrictions will be lifted) and the number of excess deaths in 2020 will lead to several years of a lower number of deaths in the coming years. Having presented evidence to the CMA, it is encouraging to see that this has been understood.

The NAFD shares the CMA's view that the funeral sector could be more transparent in the way it communicates cost and services information – and changes also need to be made to the monitoring of how deceased people are cared for.

We support the principles of the CMA's proposed 'sunlight remedies' to require funeral firms to provide more information in standard formats and will support our members in complying with the new requirements. Indeed the sector has already been taking steps to address this - and the NAFD has been leading this work.

We have already:

- toughened up the NAFD's code of practice;
- introduced new professional qualifications;
- brought independent expertise in to review our inspections; and
- invested in an online platform to ensure funeral homes can communicate consistent, comparable pricing and service information.

In 2021, we will launch the Independent Funeral Standards Organisation (IFSO) – an independent regulatory body which we are confident will provide a robust mechanism to monitor quality standards among funeral firms that will satisfy the CMA's recommendations.

The NAFD welcomes the introduction of a registration process for all funeral directors. However, the impact of the requirements of registration for a small independent funeral director will be vastly different to that of the largest businesses in the sector and therefore the requirements must be proportionate. We are also pleased see the importance of professional development pegged to the future registration regime. This will ensure that funeral firms are incentivised to invest in the skills and capabilities of their staff.

However, the NAFD is concerned that the CMA's proposed ongoing monitoring of the financial performance of funeral firms with more than five branches will have a quantifiable impact, with the greatest potential impact on smaller firms. We do not believe that the CMA has properly assessed the implementation costs on the sector, particularly on smaller businesses, to evaluate both the proportionality and what benefits this continued and ongoing monitoring would bring. We will be asking the Ministry of Justice to examine these implications in more detail.

Equally, despite presenting independent evidence to the CMA that the 'average' £400 consumer detriment figure, first outlined in the Provisional Decision Report, was arrived at incorrectly by making unjustified assumptions, such as using data from the few big players in the market and applying this to the smaller companies in the market, the CMA has not reassessed this figure. It is, however, extremely pleasing to see that the CMA does not attribute blame to funeral directors and indicates that there are structural concerns about the market, rather than evidence of any exploitative behaviour by funeral firms.

We are also disappointed that the CMA continues to hold the view, after investigating the market for three years already, that a further market investigation would be a sensible way forward as, together with the proposed financial monitoring, this raises the prospect of the funeral sector, which is dominated by small, independent and family owned businesses, being under the CMA's constant scrutiny for many years, potentially exceeding the CMA's powers.

There is much important detail still to be worked out in the CMA's report. The NAFD has welcomed the engagement with the CMA that it has had throughout the market investigation and is pleased that the CMA notes the important role we have to play going forward. We look forward to the next steps as this report is scrutinised by the Government.

What **happens** next?

The Government has 90 days from publication of report to respond (18 March 2021), which will focus on the CMA's recommendations to Government (i.e. future registration and inspection of funeral firms).

In terms of the steps that the CMA is able to take, irrespective of the Government's response:

Price transparency requirements

This will take the form of an Order, following a period of consultation. The CMA has exactly six months from the date of its final report was published to make this Order but expects to make this Order well before this deadline (see para. 9.85).

Funeral directors will be required to comply with the new requirements within three months of the Order being made.

Assuming the CMA consultation on the detail of the Order will take at least one month, the earliest that an Order could realistically be made is February 2021. This means the earliest time that funeral directors will need to comply with the new transparency requirements is May 2021. The latest possible date is September 2021.

The good news is that the CMA's starting point is to require funeral directors to display their information in broadly the same format as is already facilitated by the NAFD's online platform – *Funeral-directory.co.uk*. This means that, provided members have recently updated their information on the website, they will already be in a good position to comply.

Monitoring requirement (only for firms with five or more branches)

This will take the form of an Order. The CMA has exactly six months from the date it was published to make this Order but expects to make this Order well before this deadline It also states that it does not believe extensive consultation on this requirement will be necessary.

Funeral directors will be required to comply with the new requirements within three months of the Order being made. If the CMA opts for very limited or no consultation on the draft Order, the earliest that funeral directors could have to start complying with the new reporting requirements is April 2021. The latest possible date is September 2021.

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Recommendation to Government to establish registration and inspection regime

This is a recommendation to Government, to which the relevant Government department (the Ministry of Justice) must respond within 90 days.

Once the Government has given its initial response, there are no set timescales for implementing this remedy. Indeed, the Government may reject the recommendation if it wishes to.

Recommendation to the CMA Board to consider another market investigation

There are no set timescales for this as only the CMA Board can consult on and make a MIR. The timescale for implementing this remedy will be a matter for the Board.

The CMA has said that it thinks the Board consider that the CMA Board should consider whether to consult on a future MIR at its earliest convenience, but not before the sector is sufficiently stable following the coronavirus pandemic.

Next steps for the **NAFD** and its **members**

The NAFD is examining the full report and appendices in detail to understand the full implications and would like to create a small working group from the National Executive Committee to look, in particular, at the issues arising from Appendix X, which sets out how funeral directors could be required to display pricing and business information in the near future.

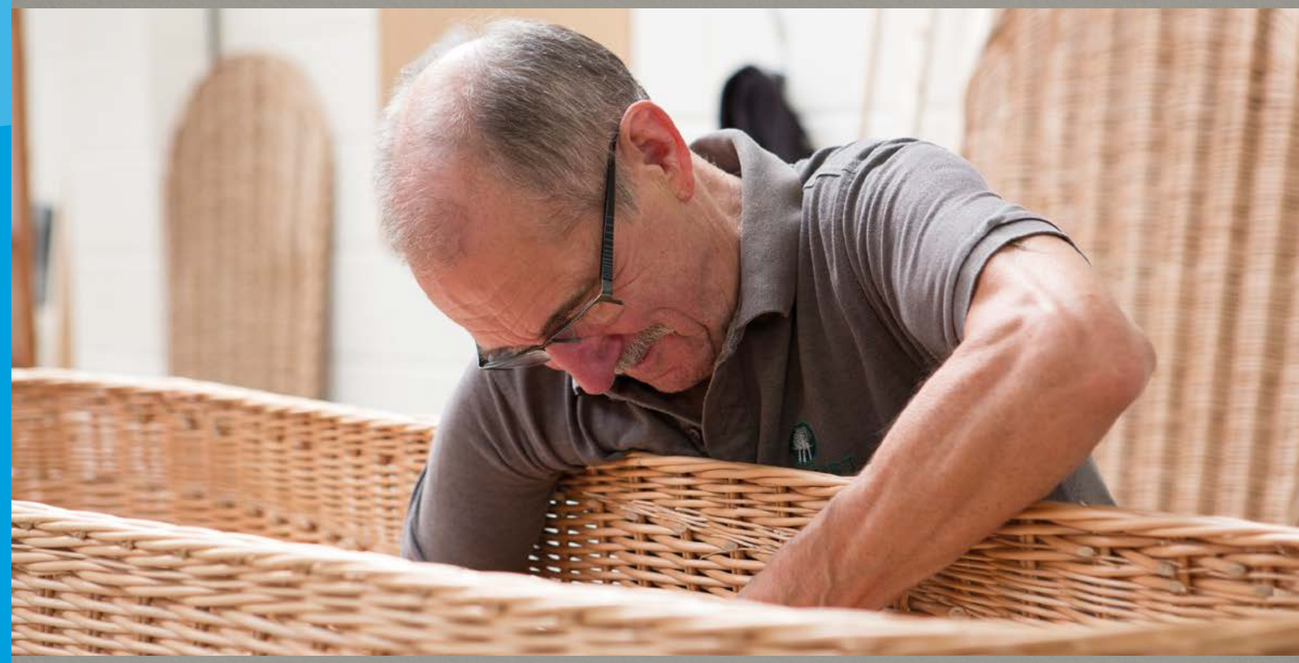
We will engage with the consultation on the draft orders, in the New Year, when invited to do so and will also seek to engage with key government stakeholders (in Westminster and in the devolved administrations to inform the Government response. The Ministry of Justice will be the department responding for Westminster, which is helpful as it has built a good understanding of the sector both pre and during COVID.

We will also create some guidance, for funeral firms and for the public on what this means for bereaved people.

We recommend that, for those not already doing so, member firms update their information on funeral-directory.co.uk to ensure they have taken the first steps towards compliance with the CMA's likely future requirements – as well as compliance with he NAFD's Funeral Director Code (which must be achieved by 15 April 2021).

The NAFD will also be releasing guidance in January to help members explain the CMA's recommendations to bereaved people.

SOMERSET WILLOW
COFFINS



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