CMA REVEALS PLANS FOR STANDARDS, TRANSPARENCY AND PRICE REGULATION

On 20 February 2020, the CMA published a second set of working papers, including options for regulating the price of funeral directors' services at the point of need, indicating that its current thinking is that all UK funeral directors will be subject to price regulation.

In the papers, the CMA outlines options they are considering, including:

- a recommendation to government for the establishment of a new regulator;
- specifying a benchmark funeral package and setting a maximum price for this package;
- capping the average revenue of all funerals offered by a provider; and
- an obligation for funeral firms to pass third party costs onto customers without a mark-up added.

The CMA is also considering passing an Order so that these remedies come into effect under the direct control of the CMA and could be in place for between 5-7 years.

We are currently reviewing the second set of papers in detail with Europe Economics and will brief members in March. However, we are concerned that, given the fragmented nature of the market, the CMA's own findings that there are significant 'information shortfalls and behavioural biases' in the market, and the relative lack of evidence of detriment discovered, the CMA is at risk of moving too quickly to regulate using price.

We would like to see the CMA set out clearly what they think the Adverse Effects on Competition are within the funeral sector and, given that the CMA's guidelines state that price remedies should not generally be used unless "other, more effective, remedies are not feasible or appropriate," we would also like them to introduce quality and transparency remedies as a first step, together with supporting measures to encourage greater consumer awareness and understanding.

Assessment of the effectiveness of this strategy would inform whether price regulation, which the CMA acknowledges introduces risks of adverse unintended consequences, ultimately proves necessary.

RESHAPING THE NAFD'S REGULATORY REGIME

The NAFD View

By Jon Levett, Chief Executive Officer

The NAFD agrees with the Competition and Market Authority's conclusion that it's time for a step change in how funeral businesses operate and are regulated.

The NAFD firmly supports steps to improve the rigour of current inspection processes, the transparency of information to consumers especially on pricing, and measures to improve standards of education and training. However we believe the package of proposals put forward by the CMA in its 12 working papers represent a disproportionate and overly burdensome response to the market failures identified and to a sector dominated by small businesses where, as the CMA acknowledges, client satisfaction is high, quality is good and there are no significant barriers to entry.

We are therefore urging the CMA to engage constructively with the funeral sector on its proposals for more proportionate and less costly regulatory structures, to help the sector work even better for bereaved people. The NAFD stands ready to help in this process which would lead to more timely and effective remedies - and this briefing note sets out the steps the NAFD is taking that will support the CMA is achieving this outcome.

VOLUNTARY REGULATION IS NOT A LONG-TERM SOLUTION

Currently, NAFD inspections are limited by the fact that the NAFD gathers its strength solely from the will of its members to abide by our requirements. Even where an NAFD member is found not to be complying with our Code of Practice, the Association has only limited powers of sanction in response. Although the NAFD has in the past expelled members guilty of poor practice, we cannot stop them continuing to operate as funeral directors.

Equally, not all funeral firms offer access to an independent complaints and resolution scheme, meaning that far too many bereaved consumers have absolutely nowhere to turn if things go wrong.

The CMA has expressed concerns that these limitations, together with the conflict of interest between representing members and regulating them and has cited this as a reason why a new statutory body should be created.

'INFORMATION SHORTFALLS AND BEHAVIOURAL BIASES'

One of the greatest challenges – which is unique to the funeral market – is the reluctance of consumers to engage with the subject of funerals in advance. Greater public engagement is something the NAFD and others such as Dying Matters have campaigned consistently for, over many years and the CMA has highlighted this challenge throughout the market investigation. In the working papers it has proposed the intervention of government to support industry efforts to engage the public in thinking about and planning for the end of life.

WHAT KIND OF REGULATION DO WE NEED?

The NAFD believes that we need 'right-touch' regulation: mandatory, backed by the government and with real 'teeth' - but also proportionate, risk-based and encouraging of best practice. In a fragmented and localised market, dominated by independent and family-owned businesses, some of the CMA's proposals are likely to significantly increase costs for smaller companies - which is likely to ultimately lead to a diminution in competition.

We would like to see a risk-based and proportionate approach which ensures that funeral firms of all shapes and sizes are able to work within its structure, avoiding this risk of a reduction in competition in the market - or of significant price prices rising due to companies passing on the costs of regulation to customers.

PROJECT 1 The NAFD is creating an arms-length regulatory structure

The creation, management and funding of new statutory regulation is always a significant, lengthy and expensive step for any government and so it is important to be realistic. If the same outcome could be achieved by strengthening independent regulation already in existence, the CMA could achieve its desired outcome much faster – even if its long-term ambition remained the setting up of a new statutory body.

We are currently in the process of setting up an arms-length industry regulatory structure, with independent governance and staffing which, in the future, all NAFD inspections will be folded into.

We proposed this to the CMA in January and have also shared our plans with key stakeholders across the sector. This will provide the CMA with a natural and workable option, one which addresses the majority of its concerns about the limitations of our ability to be a future regulatory solution.

PROJECT 2 Review of current inspection criteria and process

Current NAFD inspections are limited by the fact that the NAFD gathers its strength solely from the will of its members to abide by our requirements. As a result, they have focused mostly on front-of-house criteria, with back-of-house criteria covered by environmental health/health & safety laws and inspected by SQMs on an advisory basis only.

In view of the FSCSR review, the changes coming into force in Scotland and the CMA's desire to see back-of-house standards inspected more fully, we are planning to commission an independent review of NAFD's current inspection criteria and process.

PROJECT 3 An industry-wide comparison platform

The CMA set out, at length, in the first set of working papers, proposals for an industry-wide, mandatory online comparison site - funded by the sector, but operated independently of it.

The NAFD can see the potential benefits of this platform, enabling consumers to compare the services, quality and pricing of all funeral firms. In practice, though, this will be very complicated and expensive to deliver and maintain. We therefore are proposing to the CMA that ownership of our membership directory website - Funeral-directory.co.uk - is given over to our new arms-length regulator, redesigned to meet the broader remit envisioned by the CMA and used as the basis for the new industry-wide platform.

Funeral-directory.co.uk is not revenue generating for the NAFD, nor does it compete in the commercial service comparison marketplace. It is purely and simply an information site and the capability of its Content Management System is more than adequate for the needs set out by the CMA. Why completely reinvent the wheel?

PROJECT 4 Accreditation for NAFD Resolve

To further strengthen the independence and robustness of the NAFD's current conciliation and complaints scheme, NAFD Resolve, which is operated in conjunction with the Centre for Effective Dispute Resolution, we are also beginning the process of securing accreditation for NAFD Resolve as an Alternative Dispute Resolution (ADR) by the Chartered Trading Standards Institute.

This is with the intention of not only offering consumers further reassurance of its independence and robustness, but also so that we can offer it to non-member firms, for a fee, to provide all funeral consumers with the protection it affords and enable it to act as a true Funeral Ombudsman service. Ultimately, we would seek to transfer ownership of NAFD Resolve into the arm-length regulatory body, as part of its suite of services to consumers.

PROJECT 5 Education and training

The NAFD offers two diplomas, in funeral directing and funeral arranging, as well as an introductory course, which is completed online. We believe that anyone working in the funeral profession, regardless of their position, should have access to training and qualifications, and we are developing our own strategic plans to make our training and education programme more inclusive to all funeral sector employees.

The NAFD believes that by offering a holistic approach to education and training in the profession, through formal education in the form of accredited qualifications and on-going training and CPD modules, we will be able to reach out to all individuals.

REMINDER - PRICING TRANSPARENCY AND THE NEW NAFD CODE OF PRACTICE

Transparency and clarity of pricing and service information lies right at the heart of the CMA's market investigation. Since 2016, the NAFD has taken significant steps to encourage members to improve how they communicate pricing information, on their own websites and through funeral-directory. From May, we go one step further by making it a compulsory part of our new Code of Practice.

While it was encouraging that the CMA's mystery shopping exercise revealed that more than half of funeral directors now have pricing information on their websites, it was less encouraging to discover that the majority of it was headline or package price information.

We believe the time has come for all funeral directors to unbundle, clearly price and transparently promote their services. This is not simply to meet the needs of the CMA, Scottish Government and others, it is because funeral directors perform a valuable and important role after someone dies, a role that is highly valued by bereaved families (even the CMA's own research revealed a high level of satisfaction) - but it is one that can appear opaque.

In this information age, this value can only be fully understood if it is clearly communicated. Funeral directors must have confidence in the value and importance of their services and set them out for everyone to see and to choose.

More than a year ago, the NAFD communicated that it would make having pricing information online (on company websites or funeral-directory) mandatory in the next Code of Practice. The new Code is published in May, and our members should be preparing for this. Although there will be a transition period, failure to meet this requirement may result in firms being removed from membership.

The NAFD of the future?

The changes proposed by the CMA and the NAFD developments outlined above will both take a number of years to realise - and there will be significant transition periods.

However, looking into the future - once the transition had completed and with many of our regulatory functions devolved into a separate regulator - the NAFD would be able to focus on its roles in education, advocacy and advisory - helping and preparing funeral firms to meet these more stringent regulatory requirements, acting as their voice and supporting them in providing exemplary levels of care for deceased people and bereaved families.

> "THE NAFD URGES MEMBERS TO CONTINUE PAYING VERY CLOSE ATTENTION TO THE REMEDIES THAT THE CMA IS CONSIDERING, AS THEY LOOK SET TO HAVE A MAJOR IMPACT ON HOW ALL FUNERAL BUSINESSES ARE OPERATED."

TRANSPARENCY AND STANDARDS

What you need to know about the CMA's thinking

In the first set of working papers, published on 30 January 2020, the CMA set out its thinking on quality standards and transparency of information provision by funeral firms. Below is a summary of the proposals.

Quality Standards Regulation

The working papers confirmed that the CMA is seriously considering recommending to Government that a statutory body should be appointed to oversee quality and standards in the funerals sector.

Some of the points made by the CMA:-

- back-of-house/care of the deceased is largely unobserved by consumers and that is likely to weaken the incentive to keep quality in these areas high;
- no strong evidence that funeral directors improve back-of-house standards in response to consumer preferences;
- no strong evidence that good quality provision requires high costs and prices.

To ensure effective and proportionate quality standards, it is considering:-

- statutory minimum standards;
- statutory licensing and an inspection regime;
- an appropriate enforcement body/ regulator, and
- transparency of information about quality standards.

Funeral directors will likely be required to show:-

- suitable premises, facilities and equipment (including access to refrigeration);
- appropriate education and training for staff, including technical training and a 'fit and proper person test;
- appropriate governance processes to monitor standards, and
- complaint handling and redress procedure, preferably with access to an Alternative Dispute Resolution scheme (such as NAFD Resolve).

The CMA thinks that service quality information should be disseminated by trade associations and other groups. It also believes that publication of back-of-house standards information may encourage funeral directors to improve their standards.

The CMA has said that it could recommend that the Government set up a new regulator or extend the powers of an existing body. It does not think the NAFD, SAIF or Good Funeral Guide are best placed to monitor and enforce compliance with quality standards because all three organisations are voluntary, have limited coverage and there is a conflict of interests between their other roles and regulatory functions.

However, the CMA says that NAFD and SAIF could assist members by helping them meet regulatory requirements.

TRANSPARENCY

The CMA's paper on transparency - how funeral firms communicate information about services and pricing - hints strongly towards a recommendation for transparency measures. The CMA appears to have done some detailed thinking about a potential information platform for funeral directors to display their prices (as a mandatory requirement).

The CMA made it clear in the working papers that information and transparency remedies may be necessary to address "the challenges customers may face in making an informed decision on their choice of funeral director and funeral services, due to the lack of readily available pricing and services information".

Some of the ideas under consideration include:-

- creating an industry-funded independent website to facilitate price and service comparison, which all funeral directors would be required to use;
- introducing a reflection period to enable customers to consider options before agreeing a contract with a funeral director;
- prohibiting certain forms of payment, such as partnership agreements, with hospices or care homes and commissions paid to employees;
- requiring funeral firms to disclose business structure and any link with crematoria - and any changes of ownership, and
- setting a cap on the level of charges that a funeral director can levy for the collection, transportation and storage of the deceased to make switching funeral directors easier.

The CMA may also require funeral directors to:-

- make their pricing information available online, over the phone and in branch;
- pass pricing information to consumers immediately at first point of contact (rather than waiting for them to ask);
- adopt the same price reporting template regardless of how the funeral is sold (eg online, in branch or over the phone);
- provide disaggregated prices such as specific component prices and disbursement costs (eg celebrant fees, even when these are nil), and
- offer the same prices across all sales channels.

The CMA has also said that it may consider arguments for and against a requirement for a network of funeral directors to have the same prices nationally and may recommend that central Government invests in media campaigns to encourage funeral planning and recommend that local authorities raise awareness through their online presence.

NEXT MONTH: a full analysis of the working papers on price regulation. In addition, a briefing note will be emailed to all members.

READ, REVIEW, RESPOND

What should you be doing about the CMA investigation?

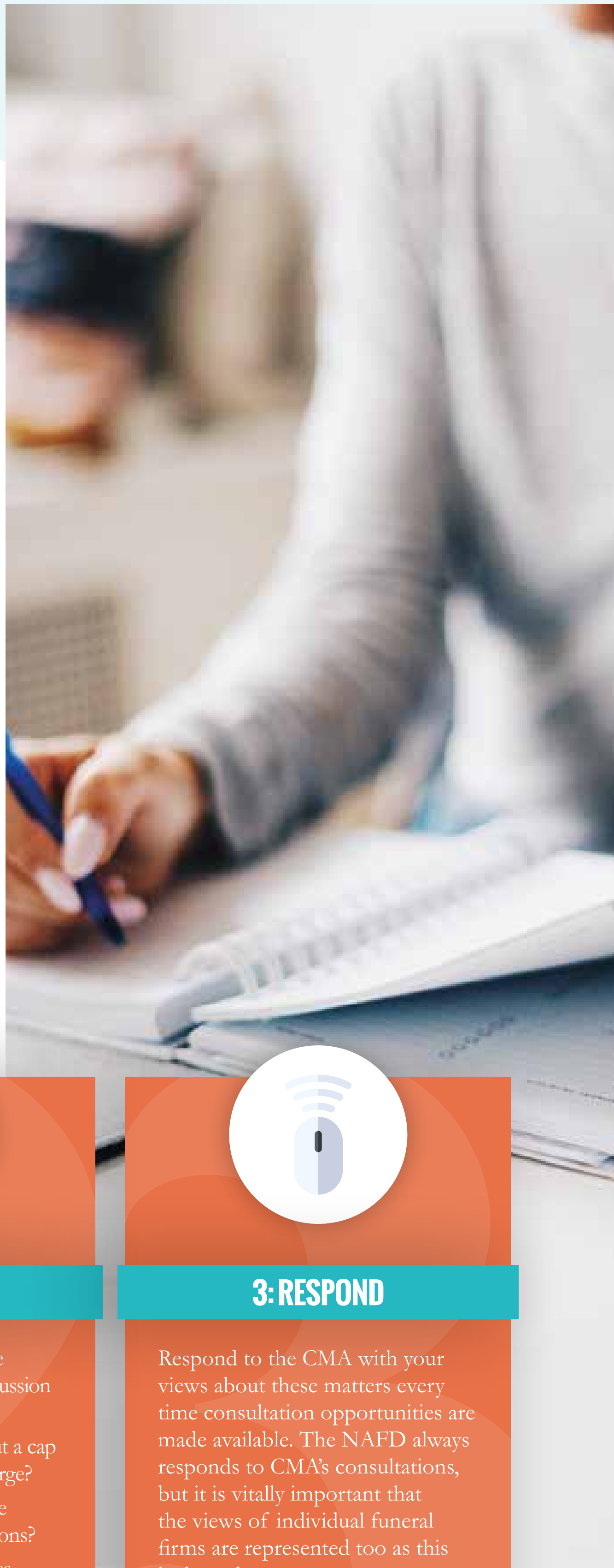
The Competition and Markets Authority Market Investigation is reaching its conclusion with the publication of these working papers, indicating what the CMA is considering not only recommending to Government, but implementing directly. There is no doubt that significant change is coming and funeral firms right across the UK need to be ready.

Get up to speed

In the *Resources* section on the members' website you will find a toolkit, containing all the information you need about the CMA investigation, including:-

- links to all CMA reports and papers;
- copies of all NAFD responses;
- copies of NAFD analysis;
- previous articles in *Funeral Director Monthly.*

This is your go-to site where you can find everything you need in one place.



WHAT YOU NEED TO DO

1. READ:

Read the CMA market investigation working papers on transparency remedies, quality standards remedies and regulation of funeral directors' prices at point of need. Also, read the email briefings and Funeral Director Monthly articles about the CMA market investigation.

Emails are being sent to the head offices of all funeral home members. At present, less than half of members are opening the emails.

2. REVIEW:

Decide what your view is on the proposals (remedies) under discussion in the CMA papers.

- How would you feel about a cap on the fees you could charge?
- Should all funeral firms be subject to regular inspections?
- What refrigeration facilities should you be expected to provide?
- Would a cooling-off period before the signing of a contract help to ensure bereaved people make informed decisions?

3: RESPOND

Respond to the CMA with your views about these matters every time consultation opportunities are made available. The NAFD always responds to CMA's consultations, but it is vitally important that the views of individual funeral firms are represented too as this is the only way to ensure your specific views and needs are communicated. At present only a handful of firms are taking the time to respond.