CEO VIEWPOINT

@NAFDCEO

We are waiting with bated breath on the Competition and Markets Authority (CMA) decision as to whether it will conduct a market investigation reference (MIR), following the consultation on its funerals market study, published in November 2018. The smart money is on a MIR taking place and, at NAFD National Office, we are gearing ourselves up for this, and preparing our strategy.

There are a mixture of opportunities and threats for funeral directors that could arise from a MIR, and we need a strategy to ensure the opportunities are maximised and the threats put to bed. Here are my first thoughts for our strategy going forward:-

1. Frustrate any attempt to introduce price regulation

When we met with the CMA in December, we left with the distinct impression that the possibility of price regulation was firmly in the CMA's thoughts. However, the CMA could not give us any idea as to how this might work to the benefit of consumers. In most markets, the introduction of price caps tends to push prices up (prices cluster around the cap), competition and innovation is stifled and any squeeze on margins are more easily absorbed by larger corporates (witness the demise of small energy providers since price regulation was introduced).

It is worth remembering that it was not the CMA that pushed for price regulation in the energy market, but the Government. Therefore, it is not just the CMA we need to beware of in relation to price regulation, but the Government too. Price regulation is a headline grabber and vote winner. It is the easy option for any government that wants to look like it is doing something to tackle funeral poverty, while doing no such thing. We need to be on our guard.

I am currently in discussion with economists with expertise in price regulation to ensure we have strong arguments to counter any attempts to introduce price caps, and I hope to commission some articles for *Funeral Director Monthly* on this topic. Watch this space.

2. Encourage recommendations for proportionate statutory regulation of standards and quality

I will not repeat here the points made in February's *Viewpoint* on the regulation of standards and quality. Scotland is likely to provide the template here for the rest of the UK, and we look forward to receiving Natalie McKail's recommendations to Ministers as to what regulation in Scotland might look like.

Importantly, a proportionate statutory regime would put out of business those whose low standards of care and service sully the reputation of funeral directors, whilst not imposing a prohibitive cost burden on those who care about high standards.

3. Encourage recommendations for reform of the Funeral Expenses Payment

One of the glaring omissions from the proposed remedies in the market study was any suggestion that the Social Fund Funeral Expenses Payment needed reform, despite recognition that 'the poorest are disproportionately affected by funeral costs' (p.6).

It is difficult to see how any of the existing proposed remedies can truly tackle the issue of funeral poverty. Recognition from the CMA that the current arrangements for the Funeral Expenses Payment are woefully inadequate may make the Government sit up and listen, and we need to strongly encourage the CMA to take this position.

4. Argue for a properly regulated funeral planning market as part of the solution

The CMA has proposed that the pre-paid funeral plan market should not form part of the scope of the MIR. In our response to the CMA market study, we have argued strongly that this market needs to be brought within scope.

Indeed, if the CMA is interested in the funeral market becoming one where consumers increasingly shop around, then surely the answer is to encourage consumers to make financial preparations for their own funeral, so decisions are made without the emotional and time pressure elements that impede shopping-around in the at-need market.

Whilst the funeral plan market has grown, the reluctance of people to dwell on their own mortality means that making plans for your own funeral is nowhere near on a par with, say, making plans for your retirement and having a pension. It would be good if the CMA commissioned the likes of the Behavioural Insights Team – the so-called 'Nudge Unit' – to see what behavioural 'nudges' are needed to encourage consumers to purchase funeral plans, so that having a funeral plan becomes the norm, not the exception.

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5. Vigorously protect the reputation of funeral directors

The overall characterisation of the conduct of funeral directors in the CMA market study was hard to stomach. This was a picture of unconstrained and widespread exploitation of extremely vulnerable customers.

The CMA characterised above-inflation price increases in the sector as being best explained in terms of the exploitative behaviour of funeral directors, rather than quality improvements and the increased personalisation of services offered.

Of course, economic and legal theory has largely worked with a model of humans as driven by rational self-interest, and this view seems to permeate the CMA's work. According to the theory, without regulatory constraints and/or incentives to encourage better conduct the self-interest of greedy humans will run amok. However, this is now a very dated view of human nature, and all the latest research shows that humans are far more co-operative, capable of empathy and generosity, than many economists or legal theorists give us credit.

Of course, funeral directors, like the rest of humanity, are not perfect, and there will always be a very small number that take advantage of bereaved people. But the idea that there is widespread exploitation taking place is not evidenced by the CMA, and any assertions imply this needs to be seriously challenged.

So these are my first thoughts on what our strategy should be, as we engage with the CMA, should a MIR take place, but I would be pleased to receive as many views as possible from funeral directors as to where you think our focus should be. If you would like me to come along to your Area Federation or Local Association meeting, please do get in touch, and I would be happy to talk about our work and hear your views.

Jon