

Funerals market study Consultation on scope of proposed market investigation

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Contents

	<i>Page</i>
1. Consultation on scope of proposed market investigation.....	2

1. Consultation on scope of proposed market investigation

Introduction

- 1.1 In June 2018, the CMA launched a Market Study¹ in response to concerns that prices for funeral services had been increasing substantially and that funerals had become unaffordable for many.
- 1.2 The terms of the Market Study Notice, published in June 2018, state that the CMA is carrying out its functions in relation to the supply of funerals in the United Kingdom, and that for these purposes, the term ‘funerals’ means the supply of funerals and related goods and services.
- 1.3 However, the CMA was aware that, in parallel, in June 2018, the Government was consulting on how to design the financial and prudential regulation of pre-paid funeral plans (Pre-paid funeral plans: call for evidence).² For this reason, the CMA said in its published Statement of Scope³ that ‘We therefore do not propose, at this stage, to investigate the supply of pre-paid funeral plans’.
- 1.4 In November 2018, the CMA consulted on its proposal to make a market investigation reference⁴ in relation to the supply of services by funeral directors at the point of need and the supply of crematoria services (in both cases within the UK). The draft terms of reference excluded from the meaning of ‘services by funeral directors at the point of need’ both the provision of pre-paid funeral plans and the provision of services provided pursuant to prepaid funeral plans.
- 1.5 The CMA has received representations, in response to this consultation, that the scope of the proposed market investigation reference should be extended to include the funeral services supplied by funeral directors in the United Kingdom arising from the redemption of pre-paid funeral plans.
- 1.6 The CMA is, therefore, inviting interested parties to provide views on whether, if the CMA decides to make a market investigation reference, the scope of the market investigation should include the delivery of such services.

¹ Under section 130A(1) of the Enterprise Act 2002.

² <https://www.gov.uk/government/consultations/pre-paid-funeral-plans/pre-paid-funeral-plans-call-for-evidence>

³ [Statement of scope](#)

⁴ Under section 131 of the Enterprise Act 2002.

The Government's review of pre-paid funeral plans

- 1.7 In the light of reports from Fairer Finance and Citizens Advice Scotland and from informal consultation, the Government's preliminary view in June 2018 was that there is consumer detriment in the funeral plan market, and that pre-paid funeral plans exhibit many of the characteristics of other financial services products, such as insurance products. The Government therefore consulted in June 2018 on reviewing and strengthening regulation in the sector by bringing all pre-paid funeral plans into the remit of the Financial Conduct Authority (FCA).
- 1.8 The Government's review is seeking to ensure that: (i) all pre-paid funeral plan providers are subject to robust and enforceable conduct standards; (ii) there is enhanced oversight of providers' prudential soundness; and (iii) consumers have access to appropriate dispute resolution mechanisms if things go wrong.
- 1.9 The Government's review is focussing on three matters: (i) how the pre-paid funeral plan market currently operates; (ii) the potential risk of consumer detriment under the current regulatory framework; and (iii) the initial policy proposal to amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) to allow for additional regulation of the sector by the FCA.
- 1.10 The Government's consultation included the conduct of both the sale, and provision, of pre-paid funeral contracts by both distributors and providers. The Government did not seek evidence in relation to the broader funeral sector or the quality, or value for money, of the funeral that is provided upon conclusion of the contract.

Representations received by the CMA

- 1.11 When in June 2018, the CMA announced that it was launching a Market Study into the Funerals Market, it received representations that the CMA should include pre-paid funeral plans within the scope of its Market Study.
- 1.12 Thereafter, in November 2018, responding to the CMA's consultation on its proposal to make a market investigation reference, the National Society of Allied and Independent Funeral Directors (SAIF) said:
- 'It is our position that you reconsider your scope and include pre-need plans at the point of redemption'.
- 1.13 Funeral Partners Limited said:

'Whilst the sales process of pre-need services may be different to at-need, the delivery of pre-need services happens in the same overall environment as at-need services. Important matters (such as overall care of the deceased, overall legislative compliance and overall front of house quality) are applicable to both at-need and pre-need services at the point a plan is redeemed'.

1.14 The Co-operative Group Limited made more detailed comments, saying:

'We believe it would be appropriate for the scope of the CMA's Terms of Reference for a market investigation to extend to the delivery of pre-need funerals at the point of redemption.

[...] we note that HM Treasury's separate investigation is not focussed on the delivery of pre-need funerals at redemption, except in respect of the prudential risk of there being insufficient funds to service the plan. However, whether a funeral purchase is made at the point of need or pre-need, in both cases a funeral will need to be delivered and consumers have certain expectations about the quality of service and standard of care that will be provided by a funeral director when delivering that funeral.

Given that many funeral directors deliver both at-need funerals and redemptions of pre-need plans (in some cases on behalf of a third party that sold the plan) it is important that any CMA remedies targeted at improving funeral directors' quality of service for consumers and standard of care for the deceased apply to both at-need funerals and pre-need redemptions in order to ensure consistency and to avoid perverse or unintended outcomes that might arise from regulating the delivery of some funerals but not others. For that reason, we believe it would be appropriate for the scope of the Terms of Reference to extend to the delivery of pre-need funerals at the point of redemption, as well as at-need funerals, to ensure that any potential remedies targeted at improving quality of service and standard of care in delivering a funeral can apply across the industry'.

1.15 The National Association of Funeral Directors (NAFD) made a related, but different point, saying:

'We cannot overstate our concerns about the impact of the CMA's decision to exclude the sale of funeral plans from the scope of the Market Study ... with funeral plans now accounting for such a significant proportion of the market and with their popularity growing each year, it simply isn't possible to understand the funeral market

without taking their impact into account [...] it is essential that the impact of the funeral plan market on the price of funerals, and on consumer empowerment, is taken into account’.

- 1.16 We note that the take up of pre-paid funeral plans by customers may be relevant to any analysis undertaken when investigating the supply of at-need funeral services. For example, it may impact the demand for funerals purchased at the time of bereavement, or the costs or commercial incentives of funeral directors relating to funerals purchased at the time of bereavement. The CMA provisionally considers that it is able, when investigating the supply of at-need funeral services, to consider the impact of such factors within the scope of the proposed reference. This consultation concerns the question of whether the CMA should investigate certain aspects of the funeral services provided pursuant to a pre-paid plan.

The CMA’s provisional view

The Government’s regulatory proposals

- 1.17 The CMA’s preliminary view is that the marketing and sale, and the financial and prudential aspects of pre-paid funeral plans can be distinguished from the delivery of funeral services by a funeral director on redemption of a pre-paid funeral plan.
- 1.18 The CMA notes that the Government did not seek evidence on matters such as the quality or value for money of such funerals, and distinguished its Call for Evidence from the CMA’s Market Study. The Government’s Call for Evidence stated:

‘The Government is not seeking evidence in relation to the broader funeral sector or the quality or value for money of the funeral that is provided upon conclusion of the contract. In parallel to this call for evidence the Competition and Markets Authority has launched a market study into the supply of funerals in the United Kingdom’.⁵

- 1.19 The CMA provisional view, therefore, is that the delivery of funeral services by funeral directors in the UK arising from the redemption of a pre-paid funeral plan is not intended to be included in the scope of the Government’s Review.

⁵ <https://www.gov.uk/government/consultations/pre-paid-funeral-plans/pre-paid-funeral-plans-call-for-evidence>

The relevance of such services to a Market Investigation Reference

1.20 The CMA notes the view of the Co-operative Group Limited that:

‘whether a funeral purchase is made at the point of need or pre-need, in both cases a funeral will need to be delivered’.

1.21 The CMA also notes the view of Funeral Partners Limited that:

‘Whilst the sales process of pre-need services may be different to at-need, the delivery of pre-need services happens in the same overall environment as at-need services’.

1.22 In some respects, the position of the purchaser of a funeral plan from a plan provider may be similar to the purchaser of funeral services at need from a funeral director. In both cases, a lack of clear and comprehensive information about price, range and quality, combined with likely inexperience (as purchasing funeral plans or arranging funerals are generally infrequent purchases) mean that the customer is likely to lack the ability to assess properly the value for money of all the options offered.

1.23 The CMA’s provisional view is, therefore, that certain matters which it has identified in its interim report may adversely affect competition in relation to the supply of at-need funeral services - such as lack of information transparency, particularly as to quality and range - may also be matters which may adversely affect competition in relation to the supply of funeral services by funeral directors arising from the redemption of pre-paid funeral plans.

1.24 For these reasons, the CMA’s preliminary view is that there are grounds for it reasonably to suspect that at least the following features identified in the CMA’s interim report in relation to the supply by funeral directors of at-need funeral services, may apply, in full or in part, also to the supply of funeral services by a funeral director on redemption of a pre-paid plan.

1.25 These features are:

- (a) Lack of transparency: reluctance of firms to publish/disclose clear prices (including online), or to provide comprehensive information on quality and range; and
- (b) Ineffective self-regulation in respect of information transparency: no mandatory publication of online prices, absence of publication of inspection reports.

1.26 Accordingly, the CMA is inviting interested parties to provide views on whether, if the CMA decides to make a market investigation, the scope of the

investigation should include the delivery of funeral services by funeral directors arising from the redemption of pre-paid funeral plans.

- 1.27 Such comments should be provided no later than **5pm on 13 March 2019** to:

Funerals market study team
Competition and Markets Authority
Victoria House, 37 Southampton Row
London WC1B 4AD

Email: funerals@cma.gov.uk

- 1.28 We will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests. While the information you provide will primarily be used for the purposes of the market study (and particularly in relation to whether a reference should be made, and if so in what form), where appropriate we may also use information you provide in relation to the CMA's other functions. For example, we may use the information you provide in connection with enforcement action using our consumer or competition enforcement powers, or we may share your information with another enforcement authority (such as local Trading Standards Services) or with another regulator for them to consider whether action is necessary.
- 1.29 Personal data received in the course of this consultation will be processed in accordance with our obligations under the General Data Protection Regulation, the Data Protection Act 2018 and other legislation designed to protect individual privacy.
- 1.30 Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002 and the Freedom of Information Act 2000. Further information on the CMA's obligations under this legislation can be found in the CMA guidance: 'Transparency and disclosure: statement of CMA's policy and approach ([CMA6](#)).