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National Association of Funeral Directors' response to CMA consultation on scope of proposed market investigation

The National Association of Funeral Directors (NAFD) is the largest and most inclusive trade association for the UK funeral profession. We represent the interests of the entire spectrum of funeral directing businesses, including independent and family-owned firms, co-operatives and major funeral groups. We have more than 4,000 UK funeral homes in membership. Between them, NAFD member firms conduct the vast majority of UK funerals each year.

Please find, below, the NAFD's responses to the Competition and Markets Authority (CMA) consultation on the scope of the proposed market investigation.

Nothing contained in this response should be considered confidential and it may be published as submitted, if appropriate.

Introductory comments

The NAFD is pleased that the CMA is considering extending the scope of its market investigation to include funeral plans. With funeral plans now accounting for such a significant proportion of the funeral services market, it will not be possible for the CMA to fully understand the funeral market without taking the marketing, sale and redemption of funeral plans into account.

Where we agree with the CMA's preliminary view

We agree that the scope of the CMA's investigation should include the delivery of funeral services by funeral directors in the UK arising from the redemption of pre-paid funeral plans.

It is not always the case that a person's expectations for their own funeral are consistent with those of the people they will leave behind. Quite often, families will want to purchase additional items and services that are not covered by their loved one's funeral plan. It seems clear that these additional purchases will be subject to the same consumer risks as the purchase of any other 'at need' funeral service.

We also agree with the CMA's preliminary view that the financial and prudential aspects of pre-paid funeral plans should not be included in the scope of the CMA's investigation.

The risks associated with the financial and prudential aspects of the funeral plan market are quite different to the direct consumer protection issues that we would expect to fall within the scope of a CMA investigation. Unlike the sale and marketing of funeral services, the risks surrounding the

financial stability of funeral plan providers bear significant resemblance to the risks encountered across financial services markets. Given the growing size of the market (in 2017 it was reported by the Funeral Planning Authority to total 1.3 million plans with a value of £4billion), the NAFD would support the HM Treasury proposal to bring these under the regulatory remit of the Financial Conduct Authority.

If the CMA investigation's terms of reference included these aspects of the funeral plan market, this would represent a significant increase in scope, which would almost certainly detract from the investigation team's ability to get to grips with the many complex questions identified during the recent market study. This would also lead to significant overlap of work being carried out by HM Treasury and the CMA, which could lead to unnecessary and very undesirable delays. The NAFD is concerned about the financial stability of some funeral plan providers and the risk this may pose to consumers. We feel strongly that this aspect of HM Treasury's work should not be postponed pending the outcome of a CMA investigation.

The NAFD would, however, like the CMA to take into consideration the fact that there is a connection between the realised value of funeral plans and the upward pressure on funeral pricing. This is where undervalued funeral plans, through age or through deduction of commissions, etc., represent a cost on the business providing the services, leading to an increase the company's cost base, and a necessitated rise in at-need funeral service prices to maintain the level of margin for the business.

Where we disagree with the CMA's preliminary view

We do not agree with the CMA's preliminary view that the marketing and sale of funeral plans should fall outside of the scope of any potential CMA investigation. We are concerned that, in arriving at this preliminary view, the CMA may not have fully understood the key differences between the sale of a funeral plan and the sale of a financial product.

A funeral plan is not an investment or an insurance product. When a customer buys a pre-paid funeral plan, there should be no element of uncertainty over the value of the return or the likelihood of the plan being redeemed.

In many ways, the very term 'funeral plan' can cause confusion because it sounds like a separate product, distinct from the benefit it should guarantee. In fact, the most helpful way to understand the transaction between a customer and a funeral plan vendor is to think of it as the sale of a funeral ahead of time. In the experience of our members, this is certainly how consumers view the transaction with most describing the arrangement as having "already paid for their funeral" rather than having bought a plan.

The Government's VAT ruling in respect of "Supplies by Plan Providers"¹ reinforces this point, stating that funeral plans are exempt from VAT as a funeral plan exists solely to pay for a funeral. This is one of the reasons why we have consistently said that funeral directors are the best placed individuals to sell funeral plans to consumers.

Of course, there are some notable differences between the sale of a funeral ahead of time and one purchased at the point of need. For example, some decisions, such as the time of the service and choice of music, will typically be taken by the plan redeemer rather than the purchaser. Similarly, as discussed above, it is not unusual for some service aspects to be upgraded by a third party at the

¹ <https://www.gov.uk/guidance/burial-cremation-and-commemoration-of-the-dead-notice-70132>

point of redemption. Some NAFD members have reported to us that some funeral plans contractually preclude the funeral director from sharing details of the redemption value with the family. Where additional services or disbursements not covered by the plan are purchased, this places the funeral director in a very difficult position, balancing the need to charge transparently with their contractual obligation to withhold information about the redemption value.

Although some decisions are invariably taken at the point of redemption, the significance of the decisions taken by the plan-purchaser should not be underplayed. In particular, funeral plans are usually sold with a particular funeral provider and defined service in mind.

In some cases, discussions with the plan vendor about the desired funeral service can be very detailed, about the type of transport, service and coffin required. In almost all cases, decisions made at the point of purchase significantly restrict the family's subsequent choice of funeral service provider. While flexibility is sometimes available, there is typically a financial penalty imposed if a family choose to stray from the previously agreed terms of the plan. An NAFD member has reported to us that a client was informed recently that the cancellation fee from their plan would be £200.

In the majority of cases, the family will use the funeral firm that is named on the funeral plan, assuming that the funeral firm concerned is aware they have been nominated and has agreed to accept the terms of the plan. The NAFD has concerns about the way some less scrupulous providers exploit the vulnerability of consumers claiming that they are able to engage the services of a nominated funeral director with whom they don't have a contractual relationship. This is sometimes not disclosed to the funeral director until after a deposit has been taken against the plan – and sometimes not until after the plan holder dies. In some cases funeral directors are completely unaware that their name is attributed to a funeral plan until they are contacted by the person making funeral arrangements. We would question whether plan holders in such situations would always make the same purchase decisions if they had known the product they were buying precluded them from using their chosen funeral director.

A concern raised by the CMA's interim report was that funeral consumers may not have sufficient access to clear information about funeral services and prices to enable them to make meaningful comparisons. There is no reason to think that this applies any differently to those consumers who choose to purchase a funeral ahead of time. The CMA interim report also asserted that funeral customers are more vulnerable than the average consumer. We would argue that the same could be said of funeral plan customers, the majority of whom are above the age of 55 and have often been prompted to take out a plan as a result of a bereavement.²

If the CMA investigation does not consider marketing of funeral services by funeral plan vendors, this growing number of potentially vulnerable funeral consumers is at risk of falling between the scope of the two pieces of work being carried out by HM Treasury and the CMA.

An additional suggestion

When a funeral plan is sold, basic information about the vendor's charges and the plan provider's arrangement with the named funeral director is often not provided to the funeral plan customer.

² In *Funerals Matter 2018*, which was undertaken by YouGov for the NAFD in June 2018, of the representative sample of 2,000 GB adults surveyed, 7% said they had a funeral plan. Of this figure, by far the largest group were in the over 55 age range, a group representing more than double all of the other age groups combined. In the same survey, 52% of all respondents said they would be prompted to think about their funeral as a result of a death of someone close to them. In the over 55 age group the figure was slightly higher, at 54%.

The NAFD has consistently voiced concerns about the large amount of customer money that is currently being spent on third party commission fees and administration charges for the plan provider, often without the customer's knowledge. Our members report that families are often shocked when they learn how little of the money spent on a plan is actually paid to the funeral director for the purposes of arranging the funeral.

We appreciate that the sale and marketing of funeral plans currently falls within the scope of the work being done by HM Treasury but feel it would make better sense for CMA to lead on this. It is important that funeral plan vendors convey clear information about both the funeral services they sell and the terms and additional fees associated with the funeral plan arrangement. It is vitally important that the CMA takes responsibility for the former and it does not make sense for an arbitrary distinction to be drawn between the two.

The NAFD would like to see HM Treasury relinquish this aspect of funeral plan market and concentrate its efforts on the question of how the prudential and financial aspects of the funeral plan market should be regulated. It is our view that the extent to which consumers are currently empowered to make informed choices about their choice of funeral plan can only be fully understood in the wider context of a full CMA investigation into the provision of funeral services generally.

It is worth noting that, whilst the NAFD shares the CMA's desire to see more people talking about and planning for their funeral, public confidence in funeral plans has dropped³ in the wake of recent negative coverage about unscrupulous providers and this has reportedly resulted in a consistent drop in the number of people buying funeral plan products. This is exactly the opposite behaviour to that which you are trying to engender and this is another reason why the NAFD feels strongly that the behaviour of funeral plan providers during the sale and marketing process should be within scope of the market investigation.

In summary

The NAFD believes that all interactions between funeral plan vendors and consumers should fall within the scope of the CMA's market investigation. In recent years, a significant number of people have chosen to buy funeral services in the form of funeral plans, which means that failing to include these transactions in scope would create an investigatory blind spot which would significantly restrict the CMA's ability to gain a full understanding of the funeral services market and consumer risks within it.

In order to avoid unhelpful complication and duplication of work, we believe that the conduct issues around the sale and marketing of funeral plans should be relinquished by HM Treasury so that the CMA can consider these fully, alongside the sale and marketing of funeral services by funeral plan vendors. This will ensure these important issues are given the attention they require, while allowing HM Treasury to move more quickly in relation to tackling the financial and prudential concerns.

However, we think it is important that the core work being carried out by HM Treasury, to identify a suitable regulatory model to ensure the financial stability of the funeral plan market, is not held up by any intervention by the CMA. We therefore agree that the financial and prudential aspects of the funeral plan market should remain outside of scope of any CMA investigation.

**National Association of Funeral Directors
13 March 2019**

³ <https://funeralplanningauthority.co.uk/news/2017-statistics-207700-plans-sold/>