

Health and Sport Committee
Scottish Parliament

From: Sheila Scobie
CMA Head of the Devolved Nations and
Representative in Scotland
Direct line: 0131 243 6721
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Burial and Cremation (Scotland) Bill

The Competition and Markets Authority (CMA) welcomes the opportunity to respond to the Health and Sport Committee's consultation on the Burial and Cremation (Scotland) Bill. Our submission is focussed on two areas: the provision of information to allow consumers' to exercise informed choice and the potential impact of regulation of the industry on competition.

The CMA is a non-ministerial government department working to promote competition for the benefit of consumers and businesses across the UK. Our aim is to make markets work well for consumers, businesses and the economy. We have a range of powers for investigating and enforcing against anti-competitive behaviour and investigating the effective functioning of markets. We also have powers to enforce consumer protection legislation to tackle practices that make it difficult for consumers to exercise choice.

Provision of information to enable consumers to exercise informed choice

The accompanying *Policy Memorandum* to the Bill notes (at paragraph 108) "that it can be difficult to know in advance how much a funeral may cost". At the time of a funeral purchase, consumers may be more vulnerable than they would be with other transactions. Consumers will often have little or no experience of making such a purchase and are unlikely to spend much time thinking about the purchase given time pressures. This makes the provision of information prior to, and at the point of sale, especially important. The CMA's predecessor agency, the Office of Fair Trading (OFT), produced a report¹ in 2001 following an inquiry into the sector. Whilst somewhat dated, the report identifies several risk factors in the industry which may be of interest. The report's recommendations were focussed on ensuring that consumers are able to exercise informed choice and can make good purchasing decisions. It recommended ways in which funeral businesses should be more open about their prices, options available to consumers and about disclosing who they are owned by. It also acknowledged that the provision of a 'basic funeral' was vital to secure easier price comparison. The report noted that knowledgeable people are in a better position to purchase what they need at the best price, which leads to a more competitive and efficient market.

In 2012-13 the OFT published advice on its website to help businesses in the funerals sector achieve compliance with consumer protection law. Amongst other issues, this highlighted that failing to give

¹ OFT (2001) *Funerals: A report of the OFT inquiry into the funerals industry*. Available from: <http://goo.gl/IIPtOU>

consumers the information they need to make an informed choice - for example by hiding pricing information or providing it in an unclear, ambiguous or untimely manner - may breach the Consumer Protection from Unfair Trading Regulations 2008.^{2 3}

Regulation of the funeral industry

The Bill contains a power to make regulations to introduce a licensing scheme for funeral directors in future, once an inspection regime is established. It is intended that inspectors of funeral directors will make recommendations to the Scottish Ministers about the value of further regulation (paragraphs 101-102, *Policy Memorandum*). The approach outlined is intended to enable Scottish Ministers to introduce regulations when and if it is considered necessary, and will allow any regulation to be proportionate. It is anticipated that it may take 2-3 years after the Bill comes into force to introduce a licensing scheme, if that is considered appropriate (paragraph 103, *Policy Memorandum*).

Regulation can play an important role in helping markets work well, but it can also have unintended consequences and distort competition. We observe that there is currently limited information on the potential scope of any licensing scheme and the grounds on which a license would be granted or rejected. It is however anticipated that a funeral director who does not hold a licence may not carry out such activities; and, that a licence would be required for each premises a funeral director operates.

Whilst we welcome that future recommendations would be based on evidence, we recommend that careful consideration is given to the pros and cons of introducing any future licensing scheme (balancing potential competition distortions against the policy objectives) given the potential for licensing schemes to restrict choice, create barriers to entry and raise industry costs which may ultimately be passed on to the consumer in the form of higher prices. The CMA has recently published guidance for policy-makers in assessing competition impact and it may be of interest to the Committee that this guidance has now been included in the guidance for Scottish Government civil servants in developing their Business and Regulatory Impact Assessments⁴.

We would welcome the opportunity to comment further should consultation on regulation or the issuing of codes of practice by Scottish Ministers take place.

Finally, on the role of inspectors, we are keen to ensure that these are clearly specified with cognition of other agencies such as Trading Standards and the CMA. With regard to consumer

² <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/business-advice/treating-customers-fairly/funerals-industry/> Notes i) The Consumer Contract Regulations have since come into force, replacing the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008 ("Doorstep Selling Regulations") ii) Responsibility for consumer credit regulation has since transferred to the Financial Conduct Authority.

³ The Consumer Protection and from Unfair Trading Regulations 2008 are enforceable by local authority Trading Standards Services and the Competition and Markets Authority (the latter with reference to Guidance on the CMA's approach to use of its consumer powers: <https://www.gov.uk/government/publications/consumer-protection-guidance-on-the-cmas-approach-to-use-of-its-consumer-powers> and the CMA's Prioritisation Principles).

⁴ CMA (2015) *Competition impact assessment: guidelines for policymakers*. Available from: <https://goo.gl/PlhKUn>

protection, insufficient specification of inspector's roles could lead to confusion and insufficient protection of consumers, which should be avoided.

Yours sincerely

Sheila Scobie

Head of Devolved Nations and CMA Representative in Scotland

sheila.scobie@cma.gsi.gov.uk