



# **COLLECTIVE REDRESS in ENGLAND & WALES**

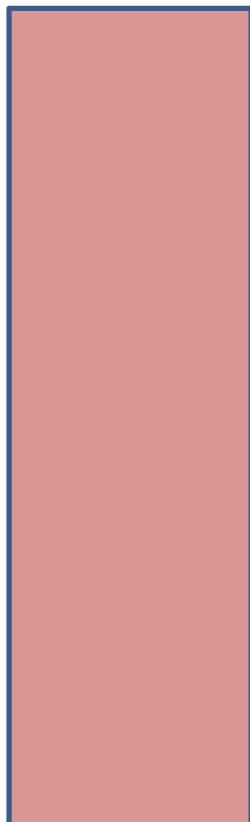
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## Three Pillar Model of Enforcement



Public  
Regulation



ADR



Private  
Litigation

## CR Procedures

1. Representative Action CPR 19.II - rare
2. Group Litigation Order CPR 19.III
3. Courts' inherent case management powers
4. Competition damages: Competition Act 1998, s47A & B

## Pattern of Incidence of MPAs

- Occasional: transport accidents, mass murder, holiday health or service
- 1980-90s: medicinal products, tobacco
- 1995-2004: abuse in child care homes, following prosecutions
- 2008-: financial services

# The Importance of Funding for Claimants

- 1957-1995: Legal Aid + one-way cost shift
- 1995-1999: CFA
- 1999-2012: CFA + ATE insurance: success fee and premium recoverable  
[Costs Wars: Claims Management scandals → regulation]
- 2005-: TPF
- 2013: DBAs; QOCS in PI

# CDR

- Public sector: Parliamentary and Health Service: Local Government
- Ombudsman model: Financial Services, Telecoms, Energy, Legal Services, Green Deal ...
- Business codes of conduct: travel (ABTA), motor vehicles, dentists ....
- Standard ADR matrix: OFT, OFCOM
- Close link between ADR body and public regulatory authority
- Move towards transparency of complaints: improve standards

# Regulatory Restorative Justice

- RM Macrory, *Regulatory Justice: Making Sanctions Effective* (HM Treasury, 2006)→ Enforcement and Sanctions Act 2008:
  - civil sanctions for regulators
  - Inclusion of restorative justice in objectives of regulators
  - Almost all regulators included – except OFT re competition
- **Six Penalties Principles:**
- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from non-compliance.
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
- Be proportionate to the nature of the offence and the harm caused.
- *Aim to restore the harm caused by regulatory non-compliance, where appropriate.*
- Aim to deter future non-compliance.

# Regulatory Restorative Justice

- Financial services: FSMA s404
- ‘Macrory’ regulators now do restoration automatically
- Competition damages BIS proposals 2012: all 3 pillars
- Consumer redress: BIS proposals 2012: reject litigation, propose regulatory power to encourage voluntary redress, redress, schemes, etc.