



COLLECTIVE REDRESS in ENGLAND & WALES

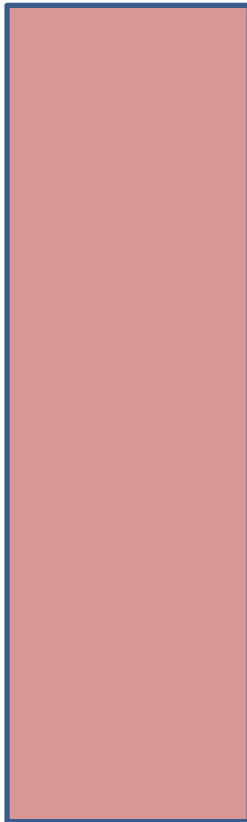
Professor Dr Christopher Hodges

Head of the CMS/Swiss Re Research Programme on Civil Justice Systems, Centre
for Socio-Legal Studies, University of Oxford
Life Member, Wolfson College, Oxford

Erasmus Professor of the Fundamentals of Private Law, Erasmus University,
Rotterdam

Solicitor

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.