The hidden world of consumer ADR: redress and behaviour

Should ADR deliver behaviour control (improvements in performance through scrutiny and regulation) as well as dispute resolution?

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There is a spectrum of options available to those designing the functions of an ADR scheme:

- Dispute resolution
  - Dispute resolution + ‘nudged’ behaviour control
  - Dispute resolution + link to regulation
Dispute resolution

Under this option, the functions of an ADR scheme are to:

- resolve disputes between the parties

…and the decisions of the ADR scheme have little significance beyond the individual circumstances of the dispute.

“What price justice?”
Dispute resolution + ‘nudged’ behaviour control

Under this option, the functions of an ADR scheme are to:

- resolve disputes between the parties
- report the behaviour it sees
- publish comparative performance data
- publish individual decisions

...so that the transparency of the scheme’s decisions create a ‘civil incentive’ for businesses to behave in ways considered fair by the scheme.

“Making decisions work harder”
Under this option, the functions of an ADR scheme are to:

- resolve disputes between the parties
- ‘nudge’ better behaviour by transparency
- link to complaint-handling regime set by regulator
- report business performance to regulator
- feed into regulator’s collective redress functions (and be bound by its collective redress decisions)

…so that the ADR scheme sits within a regulatory system that enables the regulator to act in a risk-based way.

“Deliver the wider public interest”
Questions

How far across this spectrum an ADR scheme’s functions are set will depend on how its designers address a number of questions, for example:

- What are the necessary conditions for the scheme’s credibility to its users?
- What functions compromise (or could be perceived as compromising) the independence of the scheme?
- To what extent is an ADR scheme necessarily about *private* dispute resolution? Are there implications if the scheme is transparent about the decisions it makes?
- Do links to a regulator compromise an ADR scheme’s independence?
- Are there ever circumstances when it is appropriate for the decisions of an ADR scheme to be bound by the decisions of others (such as a regulator)?