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## **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

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?”*

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

- ❑ resolve disputes between the parties
- and
- ❑ 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
- and
- ❑ 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”*

*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)?