

Enforcement Guide

Chapter 13

Insolvency

13.13 Rights on petitions by third parties and involvement in creditors meetings: the FCA 's policy

- 13.13.1** The *FCA* will exercise its rights under sections 362, 371 and 374 of the *Act* to be heard on a third party's petition or in subsequent hearings only where it believes it has information that it considers relevant to the court's consideration of the petition or application. These circumstances may include:
- (1) where the *FCA* has relevant information which it believes may not otherwise be drawn to the court's attention; especially where the *FCA* has been asked to attend for a particular purpose (for example to explain the operation of its *rules*);
 - (2) where the *FCA* believes that the *insolvency order* being sought by a third party is inappropriate to meet the needs of *consumers* and the public interest; and
 - (3) where the *FCA* believes that the making of an *insolvency order* will affect the *FCA*'s exercise of its other powers under the *Act*, and wishes to make the court aware of this.
- 13.13.2** The making of an *insolvency order* operates to stay any proceedings already in place against the company, partnership or individual, and prevents proceedings being commenced while the *insolvency order* is in place. Proceedings can continue or be commenced against those *persons* only with the court's permission. This may impact on the effectiveness of the *FCA*'s use of its powers to seek *injunctions* and restitution orders from the court. The *FCA* will draw the court's attention to this potential effect where the *FCA* believes it is a relevant consideration, but it is a matter for the court to determine its relevance in a particular case.
- 13.13.3** The *FCA* is given power to receive the same information as creditors are entitled to receive in the winding up, administration, receivership or voluntary arrangement of an *authorised person*, of *appointed representatives* and of *persons* who have carried out a *regulated activity* while *unauthorised*. The *FCA* is also entitled to attend and make representation at any creditors' meeting or (where relevant) creditors' committee meeting taking place in those regimes. When it decides whether to exercise its power to attend and make representations at meetings the factors which the *FCA* will take into account include:

- (1) the extent of claims by *consumers* upon the body or individual;
- (2) the extent to which *consumer* assets are held by the body or individual;
- (3) the extent to which the *FCA* is aware of concerns of *consumers* (or other creditors or contributories) about the way in which the insolvency regime is proceeding;
- (4) whether the circumstances which gave rise to the insolvency regime might have general implications for others carrying on regulated business;
- (5) whether the creditors include *shareholders*, directors, or other *persons* who have a connection with the management or ownership of the body or are associated with the individual;
- (6) the complexity or specialisation of the business of the body or individual; and
- (7) where there is a significant cross border or international element to the business which the *company*, *partnership* or individual is carrying out.