

Chapter 11

Restitution and redress

11.3 The FCA's choice of powers

11.3.1

In cases where it is appropriate to exercise its powers to obtain restitution from *firms*, the FCA will first consider using its own administrative powers under section 384 of the Act before considering taking court action.

11.3.2

However, there may be circumstances in which the FCA will choose to use the powers under section 382 or section 383 of the Act to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the FCA wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement¹¹; the FCA's powers to apply for *injunctions* restraining *firms* from breaching one of those relevant requirements are discussed in ■ chapter 10 of this guide;
- (2) the FCA wishes to bring related court proceedings against an *unauthorised person* where the factual basis of those proceedings is likely to be the same as the claim for restitution against the *firm*;
- (3) there is a danger that the assets of the *firm* may be dissipated; in those cases, the FCA may wish to combine an application to the court for an order for restitution with an application for an asset-freezing *injunction* to prevent assets from being dissipated; or
- (4) the FCA suspects that the *firm* may not comply with an administrative requirement to give restitution; in those cases the FCA may consider that the sanction for breach of a court order may be needed to ensure compliance; a *person* who fails to comply with a court order may be in contempt of court and is liable to imprisonment, to a fine and/or to have his assets seized.

¹¹ Under section 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the Act or by a qualifying EU provision specified, or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the Act; or which is imposed by the AIFMD UK regulation. The definition of "appropriate regulator" is set out in section 380(8) to (12) of the Act.