

Enforcement Guide

Chapter 13

Insolvency

13.2 The FCA's general approach to use of its powers and rights in insolvency proceedings

- 13.2.1** In using its powers to seek *insolvency orders* the *FCA* takes full account of: the principle adopted by the courts that recourse to insolvency regimes is a step to be taken for the benefit of creditors as a whole; and the fact that the court will have regard to the public interest when considering whether to wind up a body on the grounds that it is just and equitable to do so.
- 13.2.2** The *FCA* will consider the facts of each particular case when it decides whether to use its powers and exercise its rights. The *FCA* will also consider the other powers available to it under the *Act* and to *consumers* under the *Act* and other legislation, and the extent to which the use of those other powers meets the needs of *consumers* as a whole and the *FCA's statutory objectives*. The *FCA* may use its powers to seek *insolvency orders* in conjunction with its other powers, including its powers to seek *injunctions*.
- 13.2.3** Decisions about whether to apply to the civil courts for insolvency orders under the *Act* will be made by the *RDC* Chairman or, in an urgent case and if the Chairman is not available, by an *RDC* Deputy Chairman. In an exceptionally urgent case the matter will be decided by the director of Enforcement or, in his or her absence, another member of the *FCA's* executive of at least director of division level.
- 13.2.4** An exceptionally urgent case in these circumstances is one where the *FCA* staff believe that a decision to begin proceedings
- (1) should be taken before it is possible to follow the procedure described in ■ paragraph 13.2.3; and
 - (2) it is necessary to protect the interests of consumers or potential consumers.