

## Chapter 11

# Restitution and redress

## 11.1 Restitution orders under sections 382, 383 and 384 of the Act: the FCA's general approach

- 11.1.1** Decisions about whether to apply to the civil courts for restitution 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.
- 11.1.2** 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 11.1.1; and
  - (2) it is necessary to protect the interests of consumers or potential consumers.
- 11.1.3** The *FCA* has power to apply to the court for a restitution order under section 382 of the *Act* and (in the case of *market abuse*) under section 383 of the *Act*. It also has an administrative power to require restitution under section 384 of the *Act*. When deciding whether to exercise these powers, the *FCA* will consider whether this would be the best use of the *FCA*'s limited resources taking into account, for example, the likely amount of any recovery and the costs of achieving and distributing any sums. It will also consider, before exercising its powers: other ways that *persons* might obtain redress, and whether it would be more efficient or cost-effective for them to use these means instead; and any proposals by the *person* concerned to offer redress to any *consumers* or other *persons* who have suffered loss, and the adequacy of those proposals. The *FCA* expects, therefore, to exercise its formal restitution powers on rare occasions only.
- 11.1.4** Instances in which the *FCA* might consider using its powers to obtain restitution for *eligible counterparties* are likely to be very limited.