

Training and Competence

TC TP 1

Designated Investment Business: Assessments of competence before commencement

1.1	R	(1)	This <i>rule</i> applies in respect of an <i>employee</i> of a <i>firm</i> employed at <i>commencement</i> who had, before <i>commencement</i> , been assessed as competent by a <i>firm</i> in accordance with the applicable <i>rules</i> of its <i>previous regulator</i> .
		(2)	An <i>employee</i> described in (1) is exempt from the requirements in this sourcebook to attain an appropriate qualification if the activity (or role of a supervisor) carried on by that <i>employee</i> after <i>commencement</i> is the same or substantially the same as that for which the <i>employee</i> had been assessed as competent before <i>commencement</i> .
1.1A	G	Notwithstanding TC TP1 1.1R:	
		(1)	a <i>firm</i> is subject to SYSC 5.1.5ABR in respect of such an <i>employee</i> and should have regard to the guidelines ESMA has issued specifying the criteria for the assessment of knowledge and competence. The ESMA guidelines can be found at: https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence ; and
		(2)	a <i>firm</i> , in relation to its <i>insurance distribution activities</i> , is subject to SYSC 28 (Insurance distribution: specific knowledge requirements) in respect of such an <i>employee</i> .
1.2	R	If an <i>employee</i> of a <i>firm</i> is exempted from a qualification requirement under TC TP 1.1R and any other <i>firm</i> subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:	
		(1)	the activity which the <i>employee</i> carries on (or the role of the supervisor) continues to be the same, or substantially the same, as that in respect of which the <i>employee</i> had previously enjoyed the benefit of the exemption; and
		(2)	the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under TC TP 1.

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TC TP 2

Designated Investment Business: Assessments of competence in 12 month period after commencement

2.1	R	(1)	This <i>rule</i> applies in respect of an <i>employee</i> who had, on 31 October 2007, the benefit of an exemption under transitional rule 2 in TC TP 1.1R in the form it was in on 31 October 2007.
		(2)	An <i>employee</i> described in (1) is exempt from the requirements in this sourcebook to attain an appropriate qualification but only in respect of the activities in respect of which the <i>employee</i> had the benefit of that exemption as at 31 October 2007.
2.2	R		If an <i>employee</i> of a <i>firm</i> is exempted from a qualification requirement under TC TP 2.1R and any other firm subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that: <ol style="list-style-type: none"> (1) the activity which the <i>employee</i> carries on continues to be the same, or substantially the same, as that in respect of which the <i>employee</i> had previously enjoyed the benefit of the exemption; and (2) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under TC TP 2.
2.3	G		At 31 October 2007 transitional rule 2 in TC TP 1.1R applied to a <i>firm</i> whose <i>employees</i> at <i>commencement</i> had not been subject to any specific training and competence requirements of a <i>previous regulator</i> . This rule allowed the <i>firm</i> to assess such individuals as competent in the first twelve months after <i>commencement</i> without their having to pass an exam. The exemption applied only in respect of the activities which the individual was able to carry on before <i>commencement</i> where they were the same or substantially the same.

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TC TP 3

Regulated Mortgage Contracts: Assessments of competence under the Mortgage Code Compliance Board Rules

3.1	R	(1)	This rule applies: <ul style="list-style-type: none">(a) in relation to <i>regulated mortgage contracts</i>; and(b) in respect of an individual employed by a <i>firm</i> at 31 October 2004.
		(2)	If the individual described in (1) was assessed as competent by the <i>firm</i> before 31 October 2004 in accordance with the rules of the Mortgage Code Compliance Board applying immediately before 31 October 2004, the individual is exempt from the requirements in this sourcebook to attain an appropriate qualification provided that: <ul style="list-style-type: none">(a) the activity which the individual carries on continues to be the same, or substantially the same, as that immediately before 31 October 2004; and(b) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this <i>rule</i>.
3.2	R		If an <i>employee</i> of a <i>firm</i> is exempted from a qualification requirement under TC TP 3.1R and any other <i>firm</i> subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that: <ul style="list-style-type: none">(1) the conditions in TC TP 3.1R(2)(a) and (b) are met; and(2) the firm assesses the individual to be competent in accordance with TC 2.1.1 R.

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TC TP 4

Home Reversion Plans: Assessments of competence before 6 April 2007 in relation to lifetime mortgages

4.1	R	(1)	<p>This <i>rule</i> applies in respect of an individual employed by a <i>firm</i> at 6 April 2007, if that individual had before that date been assessed as competent by the <i>firm</i> in relation to:</p> <ul style="list-style-type: none"> (a) advising on <i>lifetime mortgages</i>; (b) designing scripted questions for use in non-advised sales to <i>customers of lifetime mortgages</i>; or (c) overseeing non-advised sales of <i>lifetime mortgages</i>.
		(2)	<p>An individual in (1) is exempt from the qualification requirements in this sourcebook in relation to activities carried on concerning <i>home reversion plans</i> that correspond to those in (1) provided that:</p> <ul style="list-style-type: none"> (a) the individual has been assessed as competent to apply the knowledge and skills necessary to carry on the relevant home reversion activity before 6 April 2007; (b) the home reversion activity which the individual carries on continues to be the same, or substantially the same as that which the individual carried on immediately before 6 April 2007; and (c) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this <i>rule</i>.
4.2	R		<p>If an <i>employee</i> of a <i>firm</i> is exempted from a qualification requirement under TC TP 4.1R and any other <i>firm</i> subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:</p> <ul style="list-style-type: none"> (1) the conditions in TC TP 4.1R(2)(b) and (c) are met; and (2) the firm assesses the individual to be competent in accordance with TC 2.1.1 R.
4.3	R		<p>TC TP 4 does not apply to an individual in TC TP 4.1R(1) after 6 April 2009 unless the individual passes an appropriate home reversions top-up examination before that date.</p>

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TC TP 5

Home Reversion Plans: Assessments of competence before 6 April 2007 in relation to Home Reversion Plans only

5.1	R	<p>(1) This <i>rule</i> applies in respect of an individual employed by a <i>firm</i> at 6 April 2007 (other than an individual described in TC TP 4.1R).</p> <p>(2) The individual in (1) is exempt from the examination requirements in this sourcebook in relation to the following:</p> <p style="margin-left: 20px;">(a) advising on <i>home reversion plans</i>;</p> <p style="margin-left: 20px;">(b) designing scripted questions for use in non-advised sales to customers of <i>home reversion plans</i>; or</p> <p style="margin-left: 20px;">(c) overseeing non-advised sales of <i>home reversion plans</i>.</p> <p>(3) The exemption in (2) only applies if:</p> <p style="margin-left: 20px;">(a) the individual has been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the relevant home reversion activity before 6 April 2007;</p> <p style="margin-left: 20px;">(b) the home reversion activity which the individual carries on continues to be the same, or substantially the same as that immediately before 6 April 2007; and</p> <p style="margin-left: 20px;">(c) the individual had not experienced any significant break in employment since the last employment in respect of which the individual had the benefit of an exemption under this <i>rule</i>.</p>
5.2	R	<p>If the individual has not passed an appropriate examination before 6 April 2009, the individual in TC TP 5.1R(1) will cease to be exempt from the appropriate examination requirement.</p>
5.3	R	<p>If an employee of a <i>firm</i> is exempted from an examination requirement under TC TP 5.1R and any other <i>firm</i> subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:</p> <p style="margin-left: 20px;">(1) the conditions in TC TP 5.1R3(b) and (c) are met; and</p> <p style="margin-left: 20px;">(2) the <i>firm</i> assesses the individual to be competent in accordance with TC 2.1.1 R.</p>

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TC TP 6

Transitional provisions relating to assessments of competence generally

6.1	G	If appropriate, a <i>firm</i> may treat a competence assessment carried out under TC in the form it was in before 1 November 2007 as being sufficient to satisfy TC 2.1.1 R.
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TC TP 7

Transitional provisions relating to waivers from existing examination requirements

7.1	R	(1)	This provision applies to a <i>firm</i> which benefited from a waiver from an examination requirement in <i>TC</i> prior to 1 November 2007 in respect of an <i>employee</i> . If such a <i>firm</i> would otherwise find itself in breach of an examination requirement in <i>TC</i> from that date as a result of the re-categorisation of <i>clients</i> in <i>COBS</i> , the <i>firm</i> may allow that <i>employee</i> to continue carrying on the activities in respect of which the waiver was granted until 31 October 2008 though he has yet to satisfy the relevant examination requirement in <i>TC</i> .
		(2)	If an <i>employee</i> of a <i>firm</i> is exempted from an examination requirement under <i>TC</i> TP 7.1(1) and any other <i>firm</i> subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that: <ul style="list-style-type: none">(a) the activity which the <i>employee</i> carries on continues to be the same, or substantially the same, as that in respect of which the <i>employee</i> had previously enjoyed the benefit of the exemption; and(b) the <i>employee</i> had not experienced any significant break in employment since the last employment in respect of which the relevant exemption was granted.

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TC TP 8

Transitional provisions relating to time limits for attaining qualifications

8.1	R	An <i>employee</i> who is carrying on an activity specified in TC Appendix 1 on 1 January 2011 will, for the purposes of TC 2.2A.1 R, be regarded as starting to carry on that activity on that date.
8.2	R	An <i>employee</i> who is carrying on the activities specified in TC App 1 of: <ol style="list-style-type: none"> (1) <i>arranging (bringing about) regulated mortgage contracts or home reversion plans</i> or (for a <i>mortgage lender</i> or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A <i>Regulated Activities Order</i> (Arranging contracts to which the arranger is a party) for a non-business purpose; or (2) designing scripted questions for execution-only sales of <i>regulated mortgage contracts</i> for a non-business purpose; as at 26 April 2014 will, for the purposes of TC 2.2A.1 R, be regarded as carrying on such activities only with effect from that date; and, in relation to such an <i>employee</i> , a <i>firm</i> need not (in relation to such activities only) comply with TC 2.1.6 R until 26 October 2016. TP 8.1 does not apply in respect of such an <i>employee</i> .
8.3	R	An <i>employee</i> who is carrying on the activities specified in TC App 1 in relation to a <i>second charge regulated mortgage contract</i> , of: <ol style="list-style-type: none"> (1) <i>advising; arranging (bringing about) regulated mortgage contracts or home reversion plans</i> or (for a <i>mortgage lender</i> or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A <i>Regulated Activities Order</i> (Arranging contracts to which the arranger is a party) for a non-business purpose; or (2) designing scripted questions for execution-only sales of <i>regulated mortgage contracts</i> for a non-business purpose; as at 21 March 2016 will, for the purposes of TC 2.2A.1 R, be regarded as carrying on only such activities with effect from that date and, in relation to such an <i>employee</i> , a <i>firm</i> need not (in relation to such activities only) comply with TC 2.1.6 R until 21 September 2018. TC TP 8.1 does not apply in respect of such an <i>employee</i> .
8.4	R	An <i>employee</i> who is <i>advising on P2P agreements</i> as at 6 April 2016 will, for the purposes of TC 2.2A.1R, be regarded as starting to carry on that activity on that date.

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TC TP 9 Transitional Provisions relating to MCD credit agreement activities

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
9.1	2.1.5B	R	[expired]		
9.2	2.1.5C	R	A <i>firm</i> acting as an <i>MCD creditor</i> or an <i>MCD credit intermediary</i> may, until 21 March 2019, assess the knowledge and competency of the relevant <i>employee</i> solely on the basis of their professional experience. [Note: annex III (3) of the <i>MCD</i>]	From 21 March 2016 to 21 March 2019	21 March 2016

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Schedule 1 Record keeping requirements

Sch - 1.1 G

TC 2.1.24 R provides:

A *firm* must, for the purposes of TC 3.1.1 R (Record keeping), make and retain records of:

- (1) the continuing professional development completed by each *retail investment adviser*; and
- (2) the dates of and reasons for any suspension of the continuing professional development requirements under TC 2.1.17 R.

Sch 1.1 G

TC 3.1.1 R provides:

A *firm* must make appropriate records to demonstrate compliance with the *rules* in this sourcebook and keep them for the following periods after an *employee* stops carrying on the activity:

- (1) at least 5 years for *MiFID business*;
- (2) 3 years for non-*MiFID business*; and
- (3) indefinitely for a *pension transfer specialist*.

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Schedule 2 Notification requirements

Sch 2.1 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
TC 2.1.31 R	Notifications - issues relating to the competency and behaviour of <i>retail investment advisers</i> .	(1) Information about any circumstances relevant to the issue; and (2) information about any steps which a <i>firm</i> has taken or intends to take to rectify the position or prevent any future potential occurrence.	Becoming aware, or having information which reasonably suggests that any of the following has occurred or may occur, and the event is significant: (1) a <i>retail investment adviser</i> , who has been assessed as competent for the purposes of TC 2.1.1 R, is no longer considered competent for the purposes of TC 2.1.1 R; (2) a <i>retail investment adviser</i> has failed to attain an appropriate qualification within the time limit prescribed by TC 2.2A.1 R (1); (3) a <i>retail investment adviser</i> has failed to comply with <i>APER</i> or, as applicable, <i>CO-CON</i> ; and	As soon as reasonably practicable.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
			(4) a <i>retail investment adviser</i> has performed an activity in TCAp- pendix 1 before having demonstrated the necessary competence for the purposes of TC 2.1.1 R and without appropriate supervision.	

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Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *TC*.

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Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

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Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *TC* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

Sch 5.4 G

Table: Actions for damages: Training and Competence sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person	Removed	For other person
<i>Rules in TC</i>			No	Yes TC 1.2.1 R	No

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Schedule 6 Rules that can be waived

Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

