**Orders following settlement**

This element explains how a settlement between parties can be recorded in a court order (including in relation to an interim application) and why this is important.

**Civil procedure rules**

The main CPR which support the content of this element are CPR 40 and PD 40B.

**Consent orders**

Once a matter has been settled between the parties, it is usual for that settlement to be recorded in a consent order. This has the effect of a ‘normal’ court order but indicates that the parties agree the terms it sets out, so that there is no need for the court to hear arguments from both sides (CPR 40.6 / 40B PD 3). There are two types:

A consent order based on a contract: The consent order is evidence of the contract between the parties and, as such, will only rarely be interfered with by the court. Please see ‘Tomlin Orders’ below.

A consent order NOT based on contract: This consent order is not a contract but simply the parties agreeing terms of settlement in the claim. Such an order may be altered or varied by the court.

Once a consent order has been entered into, a defence of estoppel may be available if fresh proceedings are brought regarding matters in the agreement, but this will depend on the exact wording of the agreement.

**Tomlin Orders**

A **Tomlin Order** is a type of consent order. When settling a cause of action, your client might, depending upon the circumstances of its particular case, agree either a ‘standard’ consent order with the other party or a Tomlin Order.

A Tomlin Order is made up of 2 parts; the first part is the public part and the second, the confidential part that contains the detail of the agreement reached between the parties.

A Tomlin Order is generally used when either:

- the parties wish for the key settlement terms to be **confidential**; and/or

- when the **agreed settlement terms go beyond those that the court could generally order** as part of the proceedings. This is why a Tomlin Order contains its schedule; such a schedule is not generally present in a ‘standard’ consent order.

**Part 1 – ‘Order’**

- Looks like any other consent order

- Public

- Contains actions to be taken by the court (and enforceable by the court) eg

Stay of proceedings

Permission to apply

Detailed assessment of costs?

**Part 2 – ‘Schedule’**

- Generally confidential

- Contains terms of agreement – enforceable with a further court order

- Enables parties to include provisions beyond limits of the dispute

Any direction for payment of money out of court or the payment and/or assessment of costs **must** be contained in Part 1, the main body of the order (40B PD 3.5). These directions require action by the court and must therefore be included in the ‘public part’ of the order (as opposed to the ‘private’ schedule).

**Putting a consent or Tomlin Order in place**

Although consent orders and Tomlin Orders reflect the agreement of the parties, they still need the court's approval. Once the parties have agreed the content of the order, they will need to apply to the court to have the order made.

If the court does indeed make the order, then the order takes effect like any other court order.

Sometimes settlement is reached during a period when the claim has been stayed: if that is the case, then the application for the consent / Tomlin Order is treated as an application also to have the stay lifted.

**Recording a settlement before proceedings are issued**

It is preferable, and common, for parties to resolve their dispute without the need to issue proceedings at all.
If this happens there is no need for either a consent order or a Tomlin order – there are no proceedings to dispose of. Instead, the parties will record their agreement in a settlement agreement – effectively a form of contract.

A settlement agreement still needs to be very carefully drafted to ensure that it reflects the parties' agreement. In particular, if one party is giving up the right to bring proceedings in relation to an alleged wrongdoing on the part of the other party, a great deal of care needs to be given to define the scope of the dispute which is being settled (as there are no statements of case to define the scope of the dispute).

**Consent orders and interim applications**

So far in this element, we have been considering settlement of a dispute as a whole. It is also possible to reach an agreement in relation to an interim application.

For example, the claimant may need an extension of time for the exchange of witness statements. If the defendant is willing, the parties can usually agree an extension of up to 28 days without the need to apply to court (CPR 3.8(4)). However, if the claimant needs a longer extension, then an application to court will usually be required, even if the defendant is willing to agree to the extension. In that scenario, the claimant would make an application to court in the usual manner but at the same time:

- A consent order would be drawn up recording the agreement (an extension of 35 days) and both parties would indicate their agreement to this consent order;

- The consent order would be filed at court – ideally when the application notice is filed, but later if necessary;

- The applicant would usually invite the court to consider the application on paper and without a hearing.

The court is not obliged to approve such a consent order – this is a case management decision, but the fact that the parties are agreed makes approval much more likely.

**Summary**

- Judgments and orders can be made after settlement by consent and at an interim stage before trial.

- Consent orders are signed by all parties and sealed by the court. They can be in the form of a 2-part Tomlin Order or a ‘regular’ order.

- A Tomlin Order has the advantage of allowing some terms of settlement to be kept confidential by inclusion in a confidential schedule to the main order.

- A Tomlin Order also allows for greater flexibility in terms of settlement terms than a Consent Order.

- If a party wants to enforce the terms in a schedule to a Tomlin Order, a further order is required.

- Consent orders can also be used to indicate agreement in relation to an interim application to court.