

Neutral citation number: [2025] EWCC 58
Claim No: M01BR080

IN THE COUNTY COURT AT BROMLEY

Court House
College Road
Bromley
BR1 3PX

Handed down on 27 October 2025

Before:

DISTRICT JUDGE CRIDGE

Between:

SOUTHERN HOUSING

Claimant

-and-

MR JAMES EMMANUEL

Defendant

MR POTTERTON appeared for the Claimant

The Defendant did not appear

JUDGMENT SUMMARY
AND JUDGMENT

DISTRICT JUDGE CRIDGE:

Judgment summary

1. Mr Emmanuel isn't legally represented. So, I've summarised my judgment for him. Paragraphs 1 – 7 of this document aren't part of the judgment itself. They're my explanation to help Mr Emmanuel understand my decision. It's about whether a judge can allow a landlord to force entry into their tenant's home to do things like carry out safety checks or repairs.
2. Judges regularly deal with applications by landlords for 'access injunctions'. These require a tenant to give their landlord access to the tenant's home for things like inspections, repairs and safety checks. Sometimes landlords ask judges for permission to use force to enter their tenant's home.
3. Southern Housing already has an access injunction requiring Mr Emmanuel to let them in to do a gas safety check. Southern Housing have now asked me to let them use force to enter Mr Emmanuel's home because he has not let them in.
4. This is an important decision for Southern Housing and Mr Emmanuel. But it should also be an important decision for all residential tenants and landlords. That's because some judges let landlords use force to enter their tenant's home. And some judges decide they don't have the power to do this. This is confusing for landlords and tenants.
5. My decision is that no judge can give a landlord permission to force entry into their tenant's home for things like inspections, repairs and safety checks. I think Parliament would need to change the law before a judge could make that kind of order.
6. But I make it clear to Mr Emmanuel that this doesn't mean he can refuse to let his landlord into his home. In fact, he **must** let them in. That's because the court has already made an order telling him to do this.
7. If Mr Emmanuel doesn't let his landlord in to carry out the checks, he might face proceedings to imprison him for contempt of court, or to evict him from his home.

Judgment

Relevant background

8. This is my reserved judgment following the hearing on 9 October 2025 of the claimant's application to set aside an order I had made without a hearing on 22 July 2025. At the hearing the claimant was represented by Mr Potterton, counsel. The defendant did not attend the hearing or make any written submissions.

9. The claimant is a registered provider of social housing. They are the defendant's landlord. On 9 January 2009 the claimant granted the defendant an assured weekly periodic tenancy of a flat in East Dulwich, London. The commencement date of the tenancy was stated as being 12 January 2009. The defendant's flat is part of a large block, which itself is on an estate of about 150 flats.

10. Clause 4.13 of the tenancy agreement requires the defendant:

“To allow access where it is required for the purposes of inspection and servicing gas appliances to protect health and safety of occupants and neighbours.

To allow our staff, agents and contractors access to the property at all reasonable hours of the day to inspect the property or empty meters or to do any repairs, servicing gas and other installations, improvements, treatments and pest eradication or other work to the property or any neighbouring property or to investigate a serious breach of this agreement.

We will normally give you at least 48 hours' notice in writing that access is required but we reserve the right to obtain immediate access in an emergency. [...]"

11. On 28 April 2025 the claimant issued these Part 8 proceedings seeking an injunction requiring the defendant to give access to the flat. The claimant relied on clause 4.13 of the tenancy agreement and on section 11(6) Landlord and Tenant Act 1985.

12. The claimant alleged it had contacted the defendant many times seeking access, but the defendant had failed to provide it. The claimant needed access to carry out a gas safety inspection to meet its obligations as landlord under paragraph 36 of the Gas Safety (Installation and Use) Regulations 1998.

13. The proceedings came before Deputy District Judge Claire Palmer on 2 June 2025 and the judge granted the injunction ("the Injunction"). Paragraph 1 of the Injunction ordered that:

"1. The Defendant permit the Claimant (including any person acting on behalf of the Claimant), after service of this Order and pursuant to clause 4.13 of the Tenancy agreement dated 12 January 2009 to [the defendant's flat] ("the Property") to enter the Property:

(a) On a specified weekday between the hours of 9am and 5pm for the purposes of:

(i) Inspection of gas installations at the Property; and

(ii) Any work of repair, maintenance or otherwise consequent upon that or any further inspection (for whatever purpose).

(b) On any subsequent dates and times as the Claimant may, upon reasonable written notice of at least 48 hours, request for the purposes as set out in paragraph 1(a)(i) and (ii) above.”

14. The order was served on the defendant by substituted service as permitted by Judge Palmer’s order.

15. Despite further requests for access made in accordance with the Injunction, the defendant still failed to give access. (I was told at the hearing on 9 October 2025 that the defendant had only shortly before this hearing emailed the claimant to say he is currently away from the country. This might explain the lack of access. The defendant’s absence is not otherwise relevant to this decision.)

16. On 17 July 2025 the claimant applied for a further order. Part 3 of the claimant’s notice of application said this:

“The Defendant has not complied with the Order dated 2 June 2025. The Defendant continues to fail to allow access to the property [...]

The Claimant now seeks to vary the Injunction Order [...] to include a clause permitting forced access so that it can inspect and service the gas installations, comply with its regulatory requirements and ensure the safety of the Defendants [sic] and residents. This is deemed the most appropriate next step, because enforcement of the breach by way of contempt proceedings does not ensure regulatory compliance and the Defendant’s safety (and that of others).”

17. The claimant’s application contained a draft order, the relevant part of which is as follows:

“The Order from 2 June 2025 shall be varied so that an additional clause 5 is included as follows:

5. If the Defendant does not comply with paragraphs 1(a)(i) and/or (ii) and (b) of this Injunction Order, the Claimant is permitted to force entry into the Property for the purposes as set out in those paragraphs. Further:

(a) If the Claimant forces entry into the Property in accordance with Paragraph [5] of this Injunction Order, the Claimant is to make good any damage caused by the forced entry. [...]

18. That application came before me in boxwork on 22 July 2025 and I dismissed it. In the order I gave my reason as this:

“A judge of the County Court has no power to make the order sought.”

19. On 24 July 2025 the claimant applied seeking:

“An order setting aside the order of DJ Cridge dated 22 July 2025 on the basis that the Claimant considers that the Court does have jurisdiction under CPR 70.2A to make the order sought for forced entry.”

20. I listed the matter with a direction for the claimant to file a skeleton argument. Having reviewed the skeleton argument a day or so before the hearing, I emailed claimant’s counsel asking him to consider the following decisions and legislation:

- *Southam v Smout* [1964] 1 QB 308
- *re Grosvenor Hotel, London (No. 2)* [1965] Ch 1210
- *Morris v Beardmore* [1981] AC 446
- s6 Criminal Law Act 1977
- Rights of Entry (Gas and Electricity Boards) Act 1954
- s108 Environment Act 1995
- ss8, 17 Police and Criminal Evidence Act 1984

21. During the hearing on 9 October 2025, I also discussed these additional authorities with claimant’s counsel:

- *Dunhill v Burgin* [2014] UKSC 18
- *R (Environment Agency) v Tapeccrown* [2018] EWCA Crim 1345

The claimant’s position

22. The claimant argues that any judge of the County Court has power to make an order permitting the claimant to force entry into the defendant’s flat. The claimant says this can be done by “enforcing” the Injunction under rule 70.2A, the claimant relying on the unreported decision of HHJ Berkley of 10 July 2024 in *Sovereign Housing Association Limited v Ms Jane Hall*. Alternatively, the claimant says I can make the forced entry order under rule 25.1(1)(c)(ii) and (d) or rule 3.1(2)(p).

23. The claimant argues rule 70.2A enables the court to ensure the Injunction is effective in enforcing the claimant’s right to access the defendant’s home. 70.2A says this:

“(1) In this rule ‘disobedient party’ means a party who has not complied with a mandatory order, an injunction or a judgment or order for the specific performance of a contract.

(2) Subject to paragraph (4), if a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, the court may direct that the act required to be done may, so far as practicable, be done by another person, being—

- (a) the party by whom the order or judgment was obtained; or
- (b) some other person appointed by the court.

[...]

(4) Paragraph (2) is without prejudice to—

- (a) the court’s powers under section 39 of the Senior Courts Act 1981; and

(b) the court's powers to punish the disobedient party for contempt.”

24. The defendant here is the “disobedient party” and the claimant “some other person appointed by the court”. The Injunction made clear access had to be given. The claimant says that by varying the Injunction to permit the claimant to gain access by forcing entry, the court ensures the Injunction has effect and the court's orders are followed.
25. Alternatively, rule 25.1(1)(c)(ii) enables the court to order the inspection of the defendant's home. Under 25.1(1)(d) the court can:

“[authorise] a person to enter any land or building in the possession of a party to the proceedings for the purpose of carrying out an order under sub-paragraph (c)”.

Taken together, the claimant says this enables the court to make the order permitting the claimant to force entry.

26. Concerning rule 3.1(2)(p): rule 3.1 lists the court's general powers of case management. Rule 3.1(2)(p) says the court may:

“take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case.”

27. Claimant's counsel submitted the court could adopt a purposive interpretation of the rule: to ensure the court's orders were complied with (see rule 1.1(2)(g)), the court could take 'any other step' necessary to achieve that purpose. This would include permitting the claimant to enter by force to give effect to the Injunction's intended outcome.
28. The claimant also pointed to the risks to the defendant, his neighbours and the wider public that are inherent in gas appliances going unchecked, although they did not suggest there was an immediate danger. Permitting forced entry was also a more proportionate method of enforcing the Injunction, compared to committing the defendant to prison, or seeking possession of his home for breach of the tenancy agreement.

The law

Sovereign Housing v Hall

29. An injunction had been granted requiring Sovereign's tenant to give access on written notice, much like the Injunction in this case. When the tenant failed to give access, Sovereign applied under rule 25.1 to enforce that injunction seeking an order permitting it to force entry. District Judge Ashford refused the application, deciding she had no jurisdiction or power to authorise forced entry. The claimant appealed, relying not only on rule 25.1 but rules 3.1(2)(m) (which has since become rule 3.1(2)(p)) and 70.2A.
30. The matter came (undefended) before HHJ Berkley. At paragraph 12 onwards in his judgment, the learned judge said as follows:

“12. I accept [Sovereign Housing’s] submission in relation to CPR 70.2A. It seems to me that the court must be in a position to be able to enforce orders that it makes of this nature and I find that Rule 70.2A covers this precise circumstance. The defendant is clearly a “disobedient party”, being a person who has failed to comply with a mandatory order and/or a person who is the subject of an order for specific performance of a contract - the tenancy agreement. The court is therefore empowered to order that the claimant carry out the act required to be done, namely the granting of access to the property in question for the purposes of inspection. The fact that access is gained by unconventional means is nothing to the point in my judgment. [...] I doubt that damaging the defendant’s property would be a bar to the making of an order under the paragraph, but it weighs in the balance in considering whether to exercise the court’s discretion.

13. I note, too, that part 70.2A(4) to which paragraph 2 is expressly made subject (somewhat curiously because it is not a restricting provision), makes it clear that the powers conferred by paragraph 2 are without prejudice to the court’s powers under s39 of the Senior Courts Act 1981 (the power to execute instruments) and the court’s powers to punish the disobedient party for contempt. This overcomes any perceived difficulties that proceedings for contempt are the only, or even the preferred, way of dealing with a disobedient party in the instant circumstances which, I am told, District Judges often say is the case.

14. CPR 70.2A, if interpreted as I find it should be, is consistent with the Overriding Objective because it gives the court power to efficiently assist the beneficiary of one of its orders, and that beneficiary is likely to be more interested in having the order complied with from a practical perspective than see the disobedient party punished for contempt, although that power is, as I have already alluded to, specifically preserved, even if paragraph 70.2A(2) is invoked. [...] I allow the appeal.”

31. The learned judge here adopted a purposive construction of the rule, interpreting it as allowing the practical enforcement of the Injunction. I know that other judges adopt a similarly purposive approach to the interpretation of the rules. See, for example, the decision of District Judge Cohen in *Metropolitan Housing Trust v Cifci* [2024] EWCC 13, concerning the interpretation of rule 25.1(1)(d) to grant an access injunction with a power to the landlord to force entry in default of access being given.

“An Englishman’s house”, the right to privacy and Parliament

32. In *Southam v Smout* [1964] 1 QB 308 the Court of Appeal considered whether bailiffs executing a County Court warrant could lawfully enter a home through its closed but unlocked front door. The bailiffs gained entry simply by lifting the door latch and walking in. A bailiff was then assaulted by the home’s owner (Smout) and the bailiff sued.
33. Smout said the bailiffs had entered without permission as trespassers, arguing he used no more force than was necessary to eject a trespasser from his home. The Court of Appeal found the bailiffs had entered lawfully: lifting the latch or turning an unlocked door handle was not forced (and thus unlawful) entry.

34. Lord Denning MR reviewed the law on the rights to enter a home and a bailiff's right to enter to enforce civil process, at 320:

"We go back to the leading case, *Semayne's case*, in 1604. There the proposition was laid down that "the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose." This is the basis of the classic passage of the Earl of Chatham: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement." So be it - unless he has justification by law. The question in this case is: what justification by law had the bailiffs to enter into this house? The most typical case of process, of course, is entry at the suit of the King, criminal process. In *Semayne's case* it was held that: "In all cases where the King is party, the sheriff may break the house, either to arrest or do other execution of the King's process, if he cannot otherwise enter. But he ought first to signify the cause of his coming, and make the request to open the doors." This request was made in the customary demand: "Open in the name of the King." So at the King's suit the outer doors may be broken.

But it is otherwise in civil process at the suit of an individual.

It was always lawful for the sheriff to enter on civil process when the door was open. The fourth resolution in *Semayne's case* said: "Where the door is open the Sheriff may enter, and do execution at the suit of a subject, and so also in such case may the lord, and distrain for his rent or service." That is, when the door is open. Then a further resolution goes on to say: "It is not lawful for the Sheriff, on request made and denial, at the suit of a common person, to break the defendant's house, *scil.* to execute any process at the suit of a subject." So in civil process the distinction is clear that if the door is open, the sheriff may enter to execute civil process: but he may not break in."

35. The judge in the lower court had thought section 165 County Courts Act 1959 was an answer to Smout's trespass allegation. Lord Denning disagreed, at 325:

"[Section 165] says that an officer is not to be deemed to be a trespasser by reason of any irregularity or informality in the mode of executing the warrant. I suppose the judge must have thought that if anything went wrong in the procedure in this case, it was an irregularity in the mode of executing the warrant. [The bailiff's counsel] very properly accepted the view that those words must not be given such a wide interpretation as to affect the common law rights which protect an Englishman's house as his castle. It seems to me that "irregularity or informality in the mode of execution" is something to do with reading out the warrant or some informality of that kind which does not affect the substance of the law at all. If Smout had been justified in ordering these men out because they were trespassers, they would not be protected by section 165."

36. In *Morris v Beardmore* [1981] AC 446, the House of Lords was considering an appeal against conviction for failure to provide a breathalyser breath specimen under section 8(3) Road Traffic Act 1972. Section 8(2) of that Act says:

“If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a constable in uniform may require any person who he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of breath for a breath test [...]”

37. The defendant had been involved in an accident but left the scene and returned home, followed by police. The defendant’s son let the police into the defendant’s home, but the defendant passed the police a message saying they were trespassing and should leave. The police went into his room and asked him to undertake the breath test which he refused. They then arrested him.

38. The magistrates dismissed the case, deciding that as the police were trespassing their request for the breath specimen was not lawfully made so that all evidence of matters after the arrest was inadmissible. The Divisional Court of the Queen’s Bench Division reversed the magistrates’ decision and Beardmore appealed.

39. In his speech, Lord Diplock said, at 455:

“My Lords, as is rightly pointed out by the Divisional Court, section 8(2) contains no express provision prohibiting a constable from requiring a person to undergo a breath test when the constable is only able to communicate the requirement to that person as a result of his violation of that person's common law right to prevent other persons from entering or remaining on his property without his permission. But, with respect, the boot is on the other leg; if Parliament intends to authorise the doing of an act which would constitute a tort actionable at the suit of the person to whom the act is done, this requires express provision in the statute, as is exemplified by section 2 (6) of the Criminal Law Act 1967, which provides

"For the purpose of arresting a person under any power conferred by this section, a constable may enter (if need be, by force) and search any place where that person is or where the constable, with reasonable cause, suspects him to be."

The presumption is that in the absence of express provision to the contrary Parliament did not intend to authorise tortious conduct [...]

40. In his speech, Lord Scarman said of the Divisional Court’s decision, at 463:

“In reaching their view that the requirement was lawful, [the Divisional Court] appear to have placed some reliance upon their belief that any oppressive use by the police of the power conferred by section 8(1) and (2) of the Act could be corrected by a court in the exercise of the discretion, which it undoubtedly possesses, to exclude otherwise admissible evidence where to admit it would be to deprive the accused of a fair trial. [...]

A constable, who in purported execution of his duty has infringed rights which Parliament has not expressly curtailed, will not, therefore, be able to show that he has acted in execution of his duty, unless (and this will be rare) it can be shown by necessary implication that Parliament must have intended to authorise such infringement. I find no indication of any such intention in these two subsections.

Had Parliament intended to empower a policeman to enter, or remain upon the private premises of a suspect against his will and there to require him to provide evidence, which in all probability would, if it should verify the policeman's suspicion, lead to his arrest, prosecution, and conviction, Parliament could, and in my opinion would, have included in the relevant legislation an express power or right of entry. But in section 8(1) and (2) of the Road Traffic Act 1972 Parliament has not done so: and it is not the task of judges, exercising their ingenuity in the field of implication, to go further in the invasion of fundamental private rights and liberties than Parliament has expressly authorised."

41. Much like Lord Denning did in *Southam*, Lord Scarman referred to long-standing precedent on the issue, at 464:

"In formulating my reasons for allowing the appeal and restoring the decision of the magistrates, who acted with excellent judgment in dismissing the charges, I have deliberately used an adjective which has an unfamiliar ring in the ears of common lawyers. I have described the right of privacy as "fundamental." I do so for two reasons. First, it is apt to describe the importance attached by the common law to the privacy of the home. It is still true, as was said by Lord Camden C.J. in *Entick v. Carrington* (1765) 19 State Tr. 1029, 1066, that:

"No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing, ... If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him."

Secondly, the right enjoys the protection of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953), which the United Kingdom has ratified and under which the United Kingdom permits to those within its jurisdiction the individual right of petition: see articles 8 and 25.

[...]

The present appeal is concerned exclusively with the suspect's right to the privacy of his home. The House is concerned not with trespass to land generally, nor with any of the many other difficulties that have arisen in the interpretation and application of this strange and stringent legislation. The appeal turns on the respect which Parliament must be understood, even in its desire to stamp out drunken driving, to pay to the fundamental right of privacy in one's own home, which has for centuries been recognised by the common law."

County Courts Act 1984 and Senior Courts Act 1981

42. Section 38 County Courts Act 1984 sets out the remedies available in the County Court. It confirms that (subject to some stated exceptions) the County Court can make any order the High Court can. However, nothing in that Act grants a power to make an order permitting forced entry.
43. Section 37 of the Senior Courts Act 1981 includes the High Court's powers to grant injunctions "in all cases in which it appears to the court to be just and convenient to do

so.” Section 37(2) states that an injunction “may be made unconditionally or on such terms and conditions as the court thinks just.”

44. There is nothing in that section (or the Act) permitting the High Court to make an order that permits forced entry into someone’s home. In my view and as shown by the above decisions, the High Court would not make orders permitting forced entry into the home; at least not in the absence of legislation expressly permitting it.

The Civil Procedure Rules and substantive law

45. The notes to rule 70.2A in the current edition of the White Book refer to the decision in *Regina v Tapeccrown Ltd; Regina (Tapeccrown Ltd) v Crown Court at Oxford* [2018] EXCA Crim 1345. The defendant company had pleaded guilty in the Crown Court to environmental offences. Under relevant regulations the Crown Court made a remediation order for the defendant to remove waste from its site.
46. The company was later found in contempt for failing to remediate. The court made an order under CPR 70.2A appointing a third-party waste management company to remediate the site and ordering the defendant to pay that company’s costs of carrying out the work. The defendant’s challenge of the reasonableness of those costs was dismissed and the defendant appealed.
47. There was a jurisdictional argument before the Court of Appeal about whether the order under 70.2A was the Crown Court punishing the defendant for the contempt of failing to comply with the remediation order. The Court of Appeal held it was not, with Treacy LJ noting:

“23 It seems to us that the order under CPR r 70.2A did not constitute an order of the court in the exercise of its jurisdiction to punish for contempt of court. The court had already exercised that jurisdiction and was making an order consequent on the failure of Tapeccrown to comply with the remediation order made in September 2015.

24 This analysis is supported by the terms of CPR r 70.2A itself [...] what the court is doing is securing compliance with the previously made remediation order and that this is a process independent of the court’s power to punish for contempt of court. **The foundation for the CPR r 70.2A order is not the contempt proceedings but the remediation order**, made long before there was any question of contempt of court.” [My emphasis].

48. In *re Grosvenor Hotel, London (No. 2)* [1965] Ch 1210 the Court of Appeal was in part concerned with the effect of the court’s rules of disclosure on the principle of Crown privilege (now known as public interest immunity).
49. In that case the Treasury Solicitor had asserted Crown privilege. RSC Order 24 rule 15 said a court would not order disclosure against the Crown if the Crown had made a statement confirming disclosure would be against the public interest. It was argued on appeal that the claim to Crown privilege was not justified and disclosure against the Crown should be ordered.

50. Lord Denning considered whether RSC Ord24 r15 went further than the principle of Crown privilege permitted in preventing disclosure and queried the status of the rules themselves, at 1243:

“What then are the powers of the Rule Committee? They can make rules for regulating and prescribing the procedure and practice of the court, but they cannot alter the rules of evidence, or the ordinary law of the land. The law as to Crown privilege is not mere procedure or practice. It may perhaps be said to be a rule of evidence, but I would rank it higher. It is a principle of our constitutional law which is to be observed in the administration of justice, not only when a witness is called to give oral evidence, but also when a party is called upon to give discovery. [...] Suppose the Rule Committee purported to abolish Crown privilege altogether. I should have thought it was quite beyond their powers. So also if the Rule Committee extends it beyond a scope hitherto known. If this rule only states the existing law, there is no harm in it. But if it gives the government departments a veto on the production or inspection of documents - to a greater extent than that which is warranted by law - the rule is, in my opinion, bad.”

51. Lady Hale in *Dunhill v Burgin* [2014] UKSC 18 restated the point in relation to the Civil Procedure Rules, at paragraph 27:

“27. Neither the Rules of the Supreme Court nor the Civil Procedure Rules can change the substantive law unless expressly permitted so to do by statute: see *In re Grosvenor Hotel Ltd (No 2)* [1965] Ch 1210. Thus, it is argued, section 1 of the Civil Procedure Act 1997 gave the Civil Procedure Rule Committee power to make rules governing “the practice and procedure” to be followed in the civil courts and as further provided in Schedule 1 to the Act. Paragraph 4 of that Schedule provides that the Rules may modify the rules of evidence, thus showing that where it is intended that the Rules could modify the substantive law, express provision is made for this.”

Analysis

52. The court may grant a mandatory injunction requiring a tenant to permit access. Breach of such an order is punishable by committal and persistent refusal may justify possession proceedings. Either of these approaches might lead to the tenant’s eventual compliance. However, what the claimant seeks here is different: not the defendant’s compliance, but authority for the claimant itself to force entry.

Forced entry into another’s home

53. The defendant is the tenant of his flat and so has exclusive possession of it. This entitles him to exclude all comers, including his landlord. They may not enter without the defendant’s permission and to enter without that permission is unlawful; it would be a trespass. Indeed, if the defendant were at home, did not want the claimant to enter but the claimant used force to break in, that might also be an offence (see section 6 Criminal Law Act 1977).
54. The decisions of Lord Denning in *Southam v Smout* and of their lordships in *Morris v Beardmore* in my view make clear no judge has power to authorise someone to use force to enter another’s home, unless there is express law that bestows that power.

55. Statutory powers of entry are numerous, but they are conferred expressly by Parliament and often accompanied by safeguards. For example:
- a. Section 2(1) Rights of Entry (Gas and Electricity Boards) Act 1954 entitles a utility operator to obtain a warrant from the magistrates and then to enter any premises, “if need be by force.”
 - b. The Police and Criminal Evidence Act 1984 empowers entry with and, in some limited circumstances without, a warrant from the magistrates; see sections 8 and 17.
 - c. Paragraph 2(3) Schedule 3 Environmental Protection Act 1990 empowers magistrates to issue a warrant authorising a local authority (in relation to their duties under that Act) to enter any premises “if need be by force.”
 - d. Section 108(4) Environment Act 1995 enables enforcing authorities to authorise their officers to enter premises in respect of their pollution and flood control functions “at any reasonable time (or, in an emergency, at any time and, if need be, by force)”.
56. Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 requires landlords to take 'all reasonable steps' to ensure annual safety checks are carried out and to keep records of those checks. The Regulations do not confer a power of entry. Had Parliament intended that they should, it would have legislated to that effect.
57. Indeed, it appears Parliament recognised tenants might not provide access for safety checks:
- “36(10) Nothing done or agreed to be done by a tenant of relevant premises or by any other person in lawful occupation of them in relation to the maintenance or checking of a relevant gas fitting or flue in the premises (other than one in part of premises occupied for non-residential purposes) shall be taken into account in determining whether a landlord has discharged his obligations under this regulation **(except in so far as it relates to access to that gas fitting or flue for the purposes of such maintenance or checking)**” [my emphasis].
58. Similarly, section 11(6) Landlord and Tenant Act 1985 implies a term into certain residential lettings allowing a landlord (on giving 24 hours' written notice) to enter the tenant's premises to “view their condition and state of repair.” That is the implication of a contractual right to have access, not a right to force entry. Such a right to be given access can be enforced by court injunction, as the claimant has done here.

Enforcement of possession orders

59. By way of analogy, a possession order is perhaps the type of court order that is closest to the order the claimant seeks in its application. The common law does recognise the lawful use of (reasonable) force by a landowner with an immediate right to possession to recover it by re-entry onto the land (see, eg, *Hemmings v Stoke Poges Golf Club* [1920] 1 KB 720.) However, sections 1 – 3 Protection from Eviction Act 1977 make

clear this cannot be done in relation to residential premises and that possession proceedings must be used.

60. When a County Court bailiff effects an eviction, they are not relying on rule 70.2A to do so. How then do they enforce the court's possession orders; can they force entry into a home to execute a warrant of possession? No, they cannot. Neither the possession order nor the warrant of possession gives the bailiff that power. Recognising this, form EX96 "*Notice of appointment (with Bailiff)*" (which is a form sent to the claimant ahead of an eviction) states:

"A possession warrant by itself does not give a county court bailiff authority to use force to evict. However, the landlord or the landlord's agent can authorise a bailiff (and the Police, if necessary) to use REASONABLE force, if that becomes necessary."

61. The guidance notes on the rear of the EX96 also further clarify the point:

"The entitlement to use force comes from the authority given by the person entitled to possession, and not by virtue of the issue of the Warrant of Possession. [...]"

If the occupier(s) fail to vacate the premises, the claimant may apply to the court for the occupier's committal for disobedience of the possession order. (See *Bell v Tuohy* CA NLJ 19 April p587 [2002]).

In the cases of a Warrant of Possession, the claimant should attend the premises and be able to access the property and to secure the premises against re-entry, by using a set of keys, a locksmith, or another contractor."

62. The decision referred to in that notice is the decision by Neuberger J (as he then was) in *Tuohy and others v Bell* [2002] EWCA Civ 423. There, it was held (re-confirming earlier authority) the court could commit a defendant to prison for failing to give up possession. Whilst the purpose of the committal would be to enable the possession order to be enforced, committal was to be considered an order of last resort.
63. Here, though, the claimant is not immediately entitled to possession. The claimant does not rely on an act of Parliament or long-standing precedent to say I have power to make an order permitting forced entry. Indeed, I understood claimant's counsel to accept during his submissions that had this claim originally been issued seeking an order permitting forced entry, then I would have had no power to grant it. In my view that concession was correctly made, given the law I have referred to above.

Rule 70.2A

64. The claimant says that it is the effect of rule 70.2A (as applied in the *Sovereign Housing* decision of HHJ Berkley) that enables me now to make an order permitting forced entry. I have, earlier in my judgment, briefly set out counsel's submissions on this issue.
65. In my view, respectfully, those submissions are incorrect. Rule 70.2A's purpose is to assist in the enforcement of judgments and orders. It does not contain a power for the court to vary the original order, as the claimant seeks here. Instead, it enables the court

to make a new order, appointing “another person” to perform the original “act required to be done”.

66. As Treacy LJ identified in *Tapecrowne*, it is the original order that enables the court to make the rule 70.2A order. In the present case, the original order was the Injunction requiring the defendant to “permit the Claimant to enter the Property.”
67. Under the Injunction the defendant’s act was this: allowing the claimant in. It is not capable of being “done by another person”, or at least not by ‘another person’ who is outside the defendant’s home without a key to the locked door.
68. What the claimant seeks here is not the same act performed by another, but a different act altogether: forced entry without the defendant’s consent. In my view that cannot be described as “the act required to be done”. That this is so is shown by the fact the claimant applies to vary the Injunction, rather than have me appoint someone else to let them into the defendant’s home. In my view there is no power under 70.2A to vary the original order.
69. Of course, though, the question really is whether the court could make an enforcement order under 70.2A to include the power to force entry that the claimant seeks. I consider that further below.

Rule 25.1(1) and rule 3.1(2)(p)

70. Rule 25.1 is a non-exhaustive list of interim remedies that a court may grant. By rule 25.1.(1)(c)(ii) and (d), the court may make:

“(c) an order for – (ii) the inspection of relevant property; (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purpose of carrying out an order under sub-paragraph (c)”.
71. Nothing in those words permits forced entry into a home. A little further down in the list at (h) is the court’s power to make a “search order” under section 7 Civil Procedure Act 1997. That section replaced what had previously been known as ‘Anton Piller’ orders, after the decision in *Anton Piller KG v Manufacturing Process Ltd and others* [1976] Ch 55.
72. Under section 7 the court may make an order for the purpose of securing the preservation of evidence or property which is the subject matter of the proceedings. Under section 7(4) the court’s order:

“may direct any person to permit any person described in the order, or secure that any person so described is permitted –

(a) To enter premises in England and Wales...”
73. Section 7 does not include with it a right to force entry. As Lord Denning made clear in the *Anton Piller* decision itself:

“Let me say at once that no court in this land has any power to issue a search warrant to enter a man’s house so as to see if there are papers or documents there which are of an incriminating nature, whether libels or infringements of copyright

or anything else of the kind. No constable or bailiff can knock at the door and demand entry so as to inspect papers or documents. The householder can shut the door in his face and say "Get out." That was established in the leading case of *Entick v. Carrington* (1765) 2 Wils.K.B. 275. None of us would wish to whittle down that principle in the slightest. But the order sought in this case is not a search warrant. It does not authorise the plaintiffs' solicitors or anyone else to enter the defendants' premises against their will. It does not authorise the breaking down of any doors, nor the slipping in by a back door, nor getting in by an open door or window. It only authorises entry and inspection by the permission of the defendants. The plaintiffs must get the defendants' permission. But it does do this: It brings pressure on the defendants to give permission. It does more. It actually orders them to give permission - with, I suppose, the result that if they do not give permission, they are guilty of contempt of court."

74. If an order as significant as a search order does not grant with it a power to force entry, I do not see that it can be said that an order under 25.1(d) can do anything more than require that a person be permitted to enter the premises. Force cannot be used.
75. In relation to rule 3.1(2)(p), this was one of the three rules relied on by the claimant in the *Sovereign Housing* decision. HHJ Berkley expressly did not decide whether the rule assisted the claimant there. However, his preliminary view was that the rule "was not wide enough to give jurisdiction to order forced entry into private property." I agree with the learned judge and find that the rule does not allow a court to make an order permitting forced entry.

The Civil Procedure Rules generally

76. More fundamentally, in my view the claimant's application cannot succeed because it is wrong to say the Civil Procedures Rules can be used in the way the claimant suggests. The Civil Procedure Rules are subordinate legislation confined to matters of court procedure. They cannot affect substantive rights or create new substantive powers overriding such rights unless Parliament has expressly authorised them to do so (see *Re Grosvenor Hotel* and *Dunhill* above).
77. To use the rules in the way the claimant proposes would be to avoid the centuries-old common law position that forced entry into someone's home is unlawful without the express authority of either an established rule of law or Parliament. In my view that is so whether rule 70.2A, 25.1(1)(c)/(d), 3.1(2)(p) or indeed any other rule in the Civil Procedure Rules is relied on.
78. Claimant's counsel sought to distinguish the granting/restriction of powers of entry by Parliament to individuals with what he argued was the court's overriding power to ensure compliance with its own orders. It was understandable, the claimant argued, that Parliament and the common law felt the need to impose safeguards and limits on individuals purportedly exercising powers of entry, such as a police constable. *Southam* was an example of this, counsel suggested, as it was about regulating the bailiff's power to enforce the warrant. It was not a decision limiting the court's own power to ensure compliance with and enforcement of its orders. Further, the effect of rule 70.2A was itself a safeguard, coming as it did at a 'second stage' where the court was enforcing an order it had already made.

79. I think that approach is incorrect: the bailiff in *Southam* was after all enforcing the County Court's judgment, not exercising a personal right or power. Further, exclusive possession of a dwelling, including its fixtures such as doors and locks, is a substantive right of the tenant under the tenancy. During the tenancy, the tenant is in legal possession of the home (including the front door) even if the landlord owns it. To force entry is to trespass upon that possession.
80. Trespass into a home (including trespass to the lock if it is broken), is a tortious wrong and a possible criminal offence. Only Parliament or an established rule of law can authorise such an act. A procedural rule cannot. Simply because it is a court making the order does not somehow alter that position. After all, if the "King of England... and all his force dares not cross the threshold" into a citizen's home, it is difficult to see how a judge can permit it in the absence of a law to that effect.
81. I have considered the judgment of HHJ Berkley in *Sovereign Housing* carefully. Whilst not binding on me, the decision is persuasive not least because of that judge's seniority and experience.
82. It is important to note the learned judge was not referred to any of the authorities or matters I have discussed above. As a result and with respect, I am unable to follow his decision. The act required by the injunction in the *Sovereign Housing* case, as here, was that the defendant permit access. Authorising the landlord to break in is not enforcement of the same act but creation of a different one. In my view, District Judge Ashford was correct: the court has no jurisdiction to make such an order.
83. To construe CPR 70.2A or any other rule so broadly is to allow a procedural rule to confer a power to override a tenant's exclusive possession and the rights to privacy that have for so long been recognised at common law. That is something only Parliament can do. As Lord Scarman said in *Morris*:

“... it is not the task of judges, exercising their ingenuity in the field of implication, to go further in the invasion of fundamental private rights and liberties than Parliament has expressly authorised.”

Conclusion

84. The sanctity of the home is deeply embedded in our law. Forced entry may be authorised where Parliament has conferred the power, or where the common law recognises forced entry may be justified. Neither applies here. The Civil Procedure Rules cannot be used to circumvent that principle.
85. No judge has power to make an order permitting a landlord to force entry into their tenant's home by way of enforcing an express or implied contractual right of access. The claimant's current remedies remain those already available: contempt or possession proceedings.
86. I therefore dismiss the claimant's application.
87. However, I recognise the available remedies are slow and expensive. I acknowledge the claimant feels justified in saying that varying the Injunction to permit forced entry is

arguably less impactful on the defendant than his eventual imprisonment for contempt or his eviction.

88. So, it is perhaps understandable that landlords seek this forced entry shortcut, particularly given the number of access injunction applications landlords (especially social landlords) find themselves having to make. However, in my view that shortcut is not available to them. Whilst this outcome might appear harsh or impractical, it seems to me that reform of the law on this question is a matter for Parliament, not the courts.
89. Anecdotally, my colleagues and I at Bromley deal with an average of 15-20 ‘access injunction’ applications each month. Nationally the monthly figures must run into the high hundreds. I am also aware (indeed, as shown above by the other County Court decisions) that some judges do make orders permitting forced entry, sometimes as a default provision within the original injunction requiring a tenant to give access. I have explained why, respectfully, I take a different view from them.
90. The well-regarded ‘*Nearly Legal: Housing Law News and Comment*’ website produced an article on the *Sovereign Housing* decision. I am also aware that some of the larger solicitors’ firms representing social landlords have posted articles on their websites referencing the decision. Many landlords now routinely include ‘forced entry’ provisions in their access injunction applications.
91. Given the large number of these cases before the County Court and the difference in judicial approach, it may be desirable for a more senior court to provide authoritative guidance, one way or the other.
92. Finally, I would like to express my gratitude to Mr Potterton not only for his skeleton argument but also his concise and helpful submissions during the hearing, particularly on the additional matters I had asked him to consider.
