Neutral citation number: [2026] EWCC 69
Claim No: N02BR793

IN THE COUNTY COURT AT BROMLEY

Court House
College Road
Bromley
BR1 3PX

Handed down on 16 November 2026

Before:

DISTRICT JUDGE CRIDGE

- -

Between:

PHOENIX COMMUNITY HOUSING ASSOCIATION
(BELLINGHAM & DOWNHAM) LIMITED

Claimant

-and-

TERESA WINCH

Defendant

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JOSCELYN LEE appeared for the Claimant

The Defendant did not appear

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JUDGMENT SUMMARY
AND JUDGMENT

DISTRICT JUDGE CRIDGE:

Judgment summary

1. Because Teresa Winch is not legally represented, I've summarised my judgment for her. Paragraphs 1 – 10 of this document aren't part of the judgment itself. They're my explanation to help Ms Winch understand my decision.

2. Ms Winch's landlord is Phoenix Community Housing Association. In May 2026 she told Phoenix there was damp and mould throughout her flat. Phoenix tried many times to arrange to come in to inspect and repair it. But Ms Winch didn't let their workers in.

3. So Phoenix asked the court for an injunction. This is an order telling Ms Winch to let Phoenix's workers into her flat. I made that order at the hearing on 21 October 2026.

4. Phoenix also asked me for permission to break into Ms Winch's flat, using a locksmith, if she still didn't let them in. I had to decide whether a judge has the power to make that kind of order.

5. Last year, in a case called *Southern Housing v Emmanuel*, I decided that judges don't have that power. Since then, other judges in the County Court have decided that they do have that power. They have said the court's rules let them do this.

6. I've looked carefully at what those judges said. But I still think that no judge can give a landlord permission to force entry into their tenant's home. The law has protected people's homes from forced entry for hundreds of years. The court's own rules can't give judges a power the law doesn't give them.

7. Ms Winch's tenancy agreement says Phoenix may have to force entry in an emergency. Phoenix relied on this to support their application. I doubt a tenancy agreement can give a landlord the right to break into a tenant's home. Either way, it doesn't change my decision. A tenancy agreement can't give the court a power the law doesn't give it.

8. So I've refused to give Phoenix permission to break into Ms Winch's home.

9. But I make it clear to Ms Winch that this doesn't mean she can refuse to let Phoenix and their workers in. In fact, she **must** let them in. That's because the court has already ordered her to do this.

10. Phoenix must give Ms Winch 24 hours' written notice. If she still doesn't let them in, Ms Winch might face proceedings to fine her or send her to prison for contempt of court. Phoenix could also start proceedings to ask the court to evict her from her home.

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Judgment

Relevant background

11. This is my reserved judgment following the hearing on 21 October 2026 of the claimant's application for an injunction to gain access to the defendant's home. The claimant was represented by Ms Lee, counsel. The defendant did not attend the hearing but had been given notice of it.

12. The claimant is a registered provider of social housing and the defendant's landlord of a first floor flat in London SE9, let under an assured tenancy that started on 7 July 2008.

13. The injunction application was supported by the witness statement of housing officer Natalie Robinson. Her statement explained that access was needed following the defendant's report on 8 May 2026 of damp and mould throughout the flat. The claimant made numerous attempts to arrange access during May and June, contacting the defendant by letter and telephone.

14. Despite the defendant agreeing some appointments, the claimant's evidence, which I accept, was that the defendant then failed to give access when contractors arrived. After further written warnings, the claimant issued these proceedings on 25 September 2026.

15. The claimant relied on the following clauses in the tenancy agreement in its application:

> "5(8) You must allow our staff, agents and contractors to enter your home to inspect or carry out repairs at reasonable hours of the day. We will normally give you at least 24 hours' notice that we will be calling, unless it is an emergency repair."
>
> "5(9) In an emergency where we cannot gain access we may have to force an entry. This might be, for example, where water is overflowing or somebody's life or physical safety is at risk. In this case we will secure the property and repair any damage as a result of the forced entry. If we have to force entry because of your neglect or misuse of the property or your failure to report repairs, we will charge you the reasonable costs and this will be payable by you as extra rent."

The claimant also relied on section 11(6) Landlord and Tenant Act 1985.

16. The relevant terms of the order the claimant sought were as follows:

> "1. Upon receiving 24 hours' written notice from the Claimant, the Defendant must give access to the Property to the Claimant, its officers, agents or contractors to carry out any necessary inspections, works of repair or maintenance to the Property, including but not limited to works in relation to damp and mould, and any other works that fall within the Claimant's contractual and statutory obligations.
>
> 2. If the Defendant fails to comply with Paragraph 1 of this Order, the Claimant is permitted to use reasonable force to access the Property by way of a locksmith after serving a further 24 hours' written notice of doing so. The Claimant may force access for the sole purpose of carrying out inspections,

> works of repair or maintenance or replacement of faulty installations at the Property. The Claimant will secure the Property and provide the Defendant with instructions on obtaining a new set of keys to the Property in the event that forced access is used."

17. I granted an injunction in the form of paragraph 1 and reserved judgment on whether to make the order sought under paragraph 2. I invited further written submissions from both parties, which I received from the claimant but not from the defendant.

The claimant's position

18. Ms Lee said the claimant viewed the current factual circumstances of the case as constituting an "emergency". That was because of the risk to physical safety posed by the presence of mould in the flat. She argued the claimant was therefore entitled under clause 5(9) to force entry. This was particularly so where the defendant had repeatedly failed to permit access following the claimant's requests.

19. I asked Ms Lee why the claimant had issued proceedings at all, if its view was that it had a contractual right to force entry and the circumstances amounted to an "emergency" under clause 5(9). Ms Lee explained the claimant was asking the court to enforce the claimant's contractual rights under both clauses 5(8) and 5(9).

20. The claimant was also, Ms Lee said, taking a "belt and braces" approach, seeking judicial oversight of the process for securing access. This was to ensure that its proposed actions were lawful and to avoid any liability arising, for example, in trespass. I asked Ms Lee whether the order was also sought to avoid possible criminal liability under section 6 of the Criminal Law Act 1977. She very fairly accepted this was likely to be a further reason.

21. In the alternative, Ms Lee argued that section 11(6) Landlord and Tenant Act 1985, whilst not expressly permitting forced entry, does not expressly disallow it. Section 11(6) says:

> "In a lease in which the lessor's repairing covenant is implied there is also implied a covenant by the lessee that the lessor, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours' notice in writing to the occupier, ***enter*** the premises comprised in the lease for the purpose of viewing their condition and state of repair." (Counsel's emphasis.)

22. Ms Lee pointed out that the term implied by the statute is not 'the tenant must let the landlord in' but 'the landlord may enter' on having given 24 hours' written notice.

23. Ms Lee also relied on the recent County Court decisions in *Stonewater Limited v Harris* [2026] EWCC 42 and *Bromford Housing Association Limited v Robinson* [2026] EWCC 61, to say that rule 70.2A of the Civil Procedure Rules enabled the court to make an order enforcing the terms of an order requiring the defendant to permit access.

24. Ms Lee adopted the reasoning in *Bromford* to argue that I could make a 'rolled up' order. That is, an injunction containing both an order requiring the defendant to permit

access and one permitting the landlord to force access if the defendant failed to permit access.

25. Ms Lee argued this would avoid the need for further hearings, saving both parties time and reducing the defendant's possible exposure to further costs orders. The forced access provision would not immediately trigger and would be contingent on the defendant having a further opportunity, following service of the injunction, to permit access.

The issues

26. In my view, the issues I need to decide are as follows:

    a) Does a court have 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?

    b) If a landlord has reserved to itself a contractual right to force entry, does this make a difference to issue a)?

27. It is important to note that my decision (indeed all of the judicial decisions on this issue) will apply equally to the private rented and social rented sectors. If a court has power to make an order permitting a social landlord to force entry, a private landlord is entitled to apply for the same remedy.

28. Judges of the County Court have reached different conclusions on the question of forced entry into the home. It needs to be decided by a higher court. For that purpose, in September 2026 I transferred to the High Court a number of claims in which social landlords sought an access injunction and an order permitting them to force entry. In the meantime, the County Court must continue to decide these applications as they arise.

The law

Southern Housing v Emmanuel [2025] EWCC 58

29. This was my decision in a case that concerned a social landlord who had at an earlier hearing obtained an injunction requiring the defendant tenant to permit access for a gas safety inspection. The claimant asked the court to make an order permitting it to force entry into the defendant's home to undertake the safety inspection.

30. In arguing the court had power to make an order permitting forced entry, the claimant relied on rule 70.2A of the Civil Procedure Rules, as well as rule 25.1(1)(c)(ii) in tandem with 25.1(1)(d) and rule 3.1(2)(p). The claimant did not rely on (and was not able to point to) an Act of Parliament or common law rule to say the court had power to make an order permitting forced entry for inspection purposes.

31. Paragraphs 84 and 85 of my judgment set out the *ratio* of my decision:

> "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."

32. In reaching my decision I considered, among other authorities, *Southam v Smout* [1964] 1 QB 308, *Morris v Beardmore* [1981] AC 446, *In re Grosvenor Hotel, London (No 2)* [1965] Ch 1210 and *Dunhill v Burgin* [2014] UKSC 18. *Southam* decided that a bailiff executing the court's civil process may enter a home through an open door but may not break in. *Morris* decided that a statutory power does not authorise what would otherwise be a trespass to a person's home unless Parliament has expressly said so. Both cases looked back at the line of authorities concerning the sanctity of the home. *Re Grosvenor* and *Dunhill* confirmed that rules of court cannot alter substantive law unless expressly permitted to do so by statute.

33. In *Emmanuel* I explained that the defendant's tenancy gave them exclusive possession of their home. Entry without their permission would be a trespass and, if they were present and opposed to the entry, the use of force might also be an offence under section 6 of the Criminal Law Act 1977. Exclusive possession, including of the door and its locks, is a substantive right which a procedural rule cannot override.

34. On rule 70.2A, I separately held that the act required by the injunction was that the defendant permit entry. Forced entry was not that act done by another person but a different act, and rule 70.2A contained no ability to vary the original order. Nor did the other rules allow orders for forced entry. Even a search order under section 7 of the Civil Procedure Act 1997 authorises entry only with the permission of the occupier (enacting the position established by *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55). However, my decisions concerning these rules were secondary to my more fundamental holding that no court has power to make an order permitting a landlord to force entry into their tenant's home to enforce an express or implied contractual right of access.

35. I declined to follow the decision of HHJ Berkley in *Sovereign Housing Association Ltd v Hall* [2024] EWCC 32, in which the judge had not been referred to the authorities I have mentioned.

Stonewater Limited v Harris [2026] EWCC 42

36. This is a decision of Designated Civil Judge HHJ Glen, handed down at Southampton on 13 July 2026. The claimant had previously been granted an access injunction requiring the defendant to provide access on 48 hours' notice. After unsuccessful attempts to obtain access, the claimant applied to vary the injunction to add a forced entry provision, together with provision for a key to be left in a key safe attached to the property.

37. The learned judge identified the question before him at paragraph 1 of his judgment as this:

> "Does the Court have power in the exercise of the jurisdiction conferred by CPR70.2A(2) to order that a landlord may force entry to premises occupied by a tenant for the purposes of inspecting the gas or electrical installations in those premises?"

38. HHJ Glen explained that CPR 70.2A originates from RSC Order 45 rule 8 and forms part of CPR Part 70, which concerns "…general rules about enforcement of judgments and orders" (paragraph 9). He described its purpose as "self-evident", citing Browne-Wilkinson LJ in *Parker v Camden London Borough Council* [1986] Ch 162 at 178:

> "Shortly stated, those provisions enable the court, when an order is not being complied with, to appoint either a party or some other person to perform the order on behalf of the person who has failed to do so."

39. HHJ Glen said at paragraph 11 that "The Rule and its predecessors have received scant attention by the higher courts and certainly none in the present context". He referred to *Ford Sellar Morris Developments Ltd v Grant Seward Ltd* [1989] 2 EGLR 40. There, a landlord sought an order permitting it to enter and carry out works in default of the tenant doing so, relying on an access clause and on RSC Order 45 rule 8. Hoffmann J (as he then was) rejected both bases. As to the second, that judge said at 42:

> "In my view, however, the jurisdiction under Ord 45, r 8, depends at least upon the court being willing to grant a mandatory order against the defendant to do the act in question. It may be that in a suitable case the court would take the view that the defendant was so unlikely to do the act that in a case of urgency it would be proper to authorise the plaintiff to do it himself at once."

40. HHJ Glen reviewed the recent County Court decisions concerning applications for forced entry, considering my decision in *Southern Housing v Emmanuel*, District Judge Le Bas in *Taylor Clark Limited v Mohamed* (2026, unreported) and District Judge James in *Plymouth Community Homes Ltd v Hammond* [2026] EWCC 27.

41. Concerning *Emmanuel* HHJ Glen said:

> "23. There can be no doubting the erudition of District Judge Cridge's analysis of the jurisprudence behind the proposition that 'an Englishman's home is his castle'. Indeed, it is hardly needed having regard to the operation of Article 8 of the European Convention on Human Rights. With respect to him, this does not however provide an answer to applications of this type.
>
> 24. His broad conclusion that a court has no power to authorise entry to someone's home absent statutory authority cannot in my judgment be supported. One obvious illustration of such a power is what is now known as a search and imaging order, stemming from Anton Piller KG v Manufacturing Processes Ltd [1976] Ch 55. Such orders can authorise entry to a person's dwelling, albeit that in Lock International plc v. Beswick [1989] 1 WLR 1268 this was described as the "…absolute extremity of the court's powers…". Furthermore, a specific power is provided for by CPR25.1(d) in aid of interim remedies."

42. In *Taylor Clark Limited v Mohamed*, according to the approved note of that decision, District Judge Le Bas had decided that when granting an access injunction the court:

> "… was merely giving effect to the tenant's contractually binding consent, as evidenced by the covenants of the tenancy, that the landlord is to have access in certain situations […] the Court is not ordering the tenant to give permission for access to be granted – something which the Court could not, in principle, do – but rather to facilitate access in accordance with the covenant and consent previously given by the tenant (i.e. by opening the door). That is a vital distinction.
>
> The relevant "act", in cases of this kind, is the facilitation of access – i.e. unlocking/opening the door. If the tenant will not open the door voluntarily, then the Court may grant permission for the door to be opened, so far as practicable, by another person (i.e. by forcing the lock)."

43. Of this decision, HHJ Glen said he was:

> "25. …of the view that the 'deemed consent' approach relied upon by District Judge Le Bas … cannot be correct. In covenanting to allow access, the tenant is binding themselves contractually to give access when asked to do so. They are not agreeing that the landlord can without more enter the premises as and when notice to do so has been given.
>
> 26. The distinction is neatly captured by the access clause in this agreement. The first sentence contains the covenant on the part of the tenant to provide access if asked to do so. However, the second sentence is plainly intended to say something different. Whilst the wording is obscure, it might be better read as:
>
> > *"Notwithstanding this, if, in the opinion of the Association, there is an emergency from which personal injury or damage to the premises or neighbouring property might result, the tenant agrees that the officers or agents of the Association may enter the premises using such means as necessary without first giving notice."*"

44. On *Hammond*, HHJ Glen noted that District Judge James "recognised that any entry by a landlord upon the demised premises will be a trespass if without permission or other authority. However, the tenant's right to exclusive possession is subject to the terms of the tenancy agreement and no trespass is committed if the landlord acts within his rights as conferred by it or by law."

45. Concerning rule 70.2A, District Judge James had considered what the "act required" was, deciding that it was:

> "the giving or granting, or the obtaining or gaining, of access depending on the perspective of the party. The method of achieving the act required or purpose of the injunction is unlikely to be identical in the hands of a third party as compared with the person against whom the injunction was obtained. Unless rule 70.2A is to be rendered nugatory the focus must surely be on whether the act required or purpose of the injunction remains fundamentally or essentially the same, although the method may be different." (*Hammond,* paragraph 25.)

46. At paragraph 27 of his judgment HHJ Glen thought that District Judge James' approach was the correct one:

> "[…] The core 'act' in this context is enabling the landlord to obtain access. If it cannot be enabled by the tenant's consent, then in my judgment CPR70.2A(2) permits the Court to empower the landlord to enable access in another way.
>
> 28. To the extent that this involves a purposive interpretation of CPR70.2A(2), then in my judgment it is justified. The alternatives to granting the relief sought are both unattractive and disproportionate. Committal for contempt of court is often a complex, lengthy and expensive procedure and ultimately may not by itself necessarily produce the outcome sought. The issue of possession proceedings is truly an example of taking a sledgehammer to crack a nut. It is obviously important that proper regard is paid to a tenant's property and Article 8 rights. It is however also important that regard is had to the safety of those who live around them if defects in gas or electrical installations go undetected.
>
> 29. In my judgment, District Judges and Deputy District Judges do in principle have the power to make an order permitting landlords to force access to rented property in order to carry out gas and electrical safety inspections. […]"

47. HHJ Glen then went on to set out a number of conditions to the granting of such an order, including the provision of a replacement key and noting that a landlord "Plainly… should not proceed where the tenant is present and actively opposes entry."

48. In a postscript to his judgment at paragraph 30, HHJ Glen said this:

> "The analysis at paragraph 26 of this judgment demonstrates that it is perfectly possible for tenancy agreements to be written in a way that provides that the tenant gives their express consent to entry in their absence, subject to certain conditions being fulfilled. Entry in such circumstances would not be a trespass, nor would a landlord obviously require the sanction of the Court to do something it was contractually entitled to do. A great deal of money (and, just as importantly) a great deal of court time could be saved as a result."

Bromford Housing Association Limited v Robinson [2026] EWCC 61

49. This is a decision of Mr Recorder Adrian Jack, sitting in the County Court at Birmingham, handed down on 14 October 2026. The claimant landlord sought an injunction requiring its tenant to give access for a five-yearly electrical inspection and, if she failed to do so, an order permitting it to enter the property by force. The defendant did not attend the hearing. Concerning the defendant, the claimant's evidence recorded historic mental health concerns.

50. The tenancy agreement required the defendant to allow access on 48 hours' notice. Access could be used to inspect the condition of the home, carry out works, and carry out the claimant's obligations under the tenancy or imposed on it by law.

51. On forced entry, the Recorder gave his reasons for departing from *Emmanuel* at paragraphs 21 and 22 and distinguished the decisions in *Southam* and *Morris*:

> "21. The difficulty with this reasoning in my judgment is that by making a mandatory order that a defendant grant access to a landlord, the Court is saying that the landlord's entering the property is not a tortious act. If an interlocutory injunction requiring access to be given were later set aside after the landlord had been given access, the tenant's claim against the landlord would not be for damages for trespass, it would be under the cross-undertaking in damages (albeit that the measure of damages might be the same as for trespass). An order under CPR 70.2A is effectively a Court-authorised form of self-help. The landlord is obtaining the access which the tenant was required to give. If a landlord forced entry pursuant to an order under CPR 70.2A, a tenant would not in my judgment have tortious remedy in the event of the order being set aside; the tenant's only claim would be under any cross-undertaking given.
>
> 22. In *Southam v Smout* and *Morris v Beardmore* there was never any question of the householder being required to give permission for the sheriff's officer or the constable to enter. By contrast, in a case such as the present, the injunction in support of the substantive cause of action requires the tenant to give permission for the landlord to enter. The CPR 70.2A order is merely a substitute order in the event of the tenant's wrongful non-compliance with the substantive order."

The Recorder said that this was "largely the conclusion expressed" in *Stonewater*, and agreed with HHJ Glen's identification of the "act" for the purposes of CPR 70.2A(2).

52. The Recorder made an order granting an injunction requiring the defendant to give access, and included provision for forced entry in default of access.

Discussion and analysis

Issue a) – the court's power

The law's approach to forced entry into the home

Parliament

53. In *Emmanuel* at paragraphs 32 to 44 and 53 to 63, I explained my understanding of the law on forced entry into the home and I rely on those paragraphs for this judgment. I made, though, only passing reference to section 6 Criminal Law Act 1977, the relevant parts of which say this:

> *"Violence for securing entry*
> (1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—
>
> (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b)the person using or threatening the violence knows that that is the case.

[…]

(2) […] the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

[…]

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose."

54. Section 6 followed the recommendations in Part II of the Law Commission's 'Report on Conspiracy and Criminal Law Reform' (Law Com No 76, 1976). The report explained both the history of the offence and why the Commission recommended that it be retained in modern form.

55. The criminal law has for centuries provided against forced entry. The Forcible Entry Act 1381 said:

> "And also the King defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner."

The Commission noted that the Act "also penalises forcible entry even by a person who is entitled to possession or who has a legal right of entry" (paragraph 2.9).

56. In recommending a modern offence, the Commission considered that people who are out of occupation should go to court, not use force to get in. It said "Today the High Court and the county courts are readily accessible and their writs and orders are comparatively easy to obtain and enforce" (paragraph 2.25). There was:

> "very much less justification for allowing such resort to force in the case where an owner or a person entitled to occupation is out of occupation but seeking to gain it, than in the case of an occupier repulsing intruders. *Once self-help of this nature is allowed it is difficult to know where the line is to be drawn*". (Paragraph 2.55, my emphasis).

57. The Commission explained that the words "without lawful authority" were needed to cover "the bailiffs and those acting under their authority to execute a court order, and the police". It added: "The lawful authority which will take an entry by violence outside

the ambit of the proposed offence must be an authority not merely to enter, but to enter by violence" (paragraph 2.66).

58. This may explain why landlords seek an order permitting forced entry. Section 6 contains no exception for a person with a right of entry, other than one recovering their own home (section 6(1A)). A landlord's legal interest in the premises is not "lawful authority" (section 6(2)), and the reason for wanting entry is irrelevant (section 6(4)(b)). In any event, a right to be given access, or an order requiring the tenant to give it, is an authority to enter with the tenant's permission (a permission compelled by the order, if necessary). It is not authority for forced entry – irrespective of whether that entry might also be an offence.

59. On the same day that the Criminal Law Act received the Royal Assent so did the Protection from Eviction Act 1977 ("PFEA"). It was a consolidating Act whose long title was "An Act to consolidate section 16 of the Rent Act 1957 and Part III of the Rent Act 1965, and related enactments". The principle that a residential occupier should not be evicted without a court order was extended to most residential tenancies, on a temporary basis, by the Protection from Eviction Act 1964, and was made permanent by Part III of the Rent Act 1965.

60. The Rent Act 1965 was passed against a background of concern about the eviction and intimidation of tenants by landlords. That concern was described in Parliament as "Rachmanism", named after Peter Rachman, a landlord who became notorious in the 1960s for the exploitation and intimidation of his tenants. Moving the Second Reading of the Rent Bill, the Minister of Housing and Local Government, Richard Crossman, said:

> "We consider that it is the minimum duty of a civilised society to protect everyone against harassment in his home and arbitrary eviction. The Bill makes it a crime not only to evict without a court order, but also to harass the tenant or anybody in occupation of the house in an attempt to get rid of him…" (HC Deb 5 April 1965, vol 710, col 38)

61. Section 2 PFEA prevents recovery of possession by re-entry or forfeiture of premises let as a dwelling, other than by court proceedings. The Solicitor-General explained that a landlord could at that time bring a lease to an end by re-entering the premises, which he called "what is sometimes described as self-help". The new provision was:

> "consistent with the principle underlying the Bill, namely, that a landlord should not have the right to evict a tenant without first obtaining an order of the court… We want to make it quite clear that there can be no re-entry and there can be no forfeiture without an order of the court." (HC Deb 1 November 1965, cols 789-790)

62. Section 1 PFEA makes it an offence unlawfully to evict or to harass a residential occupier. Since the Housing Act 1988, section 1(3A) has made it an offence for a landlord to do acts likely to interfere with the peace or comfort of a residential occupier where the landlord knows, or has reasonable cause to believe, that this is likely to cause the occupier to give up occupation or to refrain from exercising any right or pursuing any remedy. Parliament has continued to legislate in this area. With effect from 1 May 2026, the Renters' Rights Act 2025 introduced section 1A, which empowers a local

housing authority to impose financial penalties as an alternative to prosecution under section 1.

63. In my view PFEA is relevant to the questions before me in three ways.

64. Firstly, it reflects a principle established by Parliament for more than sixty years: a landlord must not resort to self-help against a person living in premises it has let, and must come to court instead.

65. Secondly, section 2 prevents a landlord from re-entering, even peaceably, to enforce an existing right of re-entry while anyone is lawfully living there. It seems to me that a right to be given access is a lesser right than a right of re-entry. It would be surprising if Parliament, having barred even peaceable self-help to enforce the greater right, intended the lesser right to be enforceable by force.

66. Thirdly, the offence in section 1(3A) may again help to explain why landlords who say they have a right to force entry nevertheless ask the court to sanction it. It is consistent with Ms Lee's "belt and braces" wish to avoid "any liability arising". Breaking into a tenant's home is capable of interfering with the tenant's "peace or comfort", and an order of the court may be seen as evidence of the "reasonable grounds" which afford a defence under section 1(3B).

67. Read together, the terms of the two Acts, and the mischief at which they were aimed, show a consistent approach to entry into a person's home. Their combined effect points to the need for a landlord to obtain access to an occupied home with the occupier's consent, or through court proceedings in which the court makes orders directed at the occupier.

68. Parliament has also legislated to initially restrict and then later abolish a landlord's right to peaceably enter a tenant's home to levy distress for unpaid rent. For many years, a court's permission was needed to levy distress for certain residential tenancies. Those protections were extended to tenancies under the Rent and Housing Acts. Ultimately Parliament abolished the common law of distress by section 71 of the Tribunals, Courts and Enforcement Act 2007.

69. Further, where Parliament has intended that a person should be able to enter a home by force, it has said so expressly. I gave examples of legislation where Parliament expressly authorises forced entry into the home in *Emmanuel*, paragraph 55.

70. From the above, it seems to me that Parliament's overall legislative trend has been towards increased protection for residential occupiers, not decreased protection.

The courts

71. As well as the cases I referred to in *Emmanuel*, other authorities have made clear the extent to which the courts were prepared to 'cross the threshold' of the home.

72. Lord Denning MR in *Anton* Piller emphasised that the search order required the occupier of the property to consent to the entry of the party undertaking the search. He said, at 60 to 61:

> "*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.
> […]
>
> If the defendants refuse permission to enter or to inspect, the plaintiffs must not force their way in. They must accept the refusal, and bring it to the notice of the court afterwards, if need be on an application to commit." (My emphasis).

73. In the same case, Ormrod LJ also emphasised that the order required the defendant to permit access, at 62:

> "The form of the order makes it plain that the court is not ordering or granting anything equivalent to a search warrant. The order is an order on the defendant in personam to permit inspection. It is therefore open to him to refuse to comply with such an order, but at his peril […] of further proceedings for contempt of court…"

And the Lord Justice had earlier made clear, at 61, that the search order was:

> "… at the extremity of this court's powers. Such orders, therefore, will rarely be made, and only when there is no alternative way of ensuring that justice is done to the applicant."

74. In *Lock International plc v Beswick and others* [1989] 1 WLR 1268, Hoffmann J was deciding an application to discharge an *Anton Piller* search order made without notice to the defendants who were former employees of Lock. Lock alleged the defendants had misused its trade secrets and confidential information. It had used the order to undertake searches of the defendants' homes.

75. From page 1279 of his judgment, Hoffmann J reviewed the *Anton Piller* jurisdiction and considered the impact of the execution of a without notice search order on the defendants (referring later in the judgment to the "trauma of the execution of the *Anton Piller* order"):

> "The growth in the Anton Piller jurisdiction, from the original invention of such orders in 1974 as the ultimate weapon against fraudulent copyright pirates, to their widespread use today has been described by Scott J. in Columbia Picture Industries Inc. v. Robinson [1987] Ch. 38. *As Scott J. pointed out, they potentially involve serious inroads on principles which bulk large in rhetoric of English liberty, such as the presumption of innocence, the right not to be condemned unheard, protection against arbitrary searches and seizures, the sanctity of the home*.
>
> […]
>
> The more intrusive orders allowing searches of premises or vehicles require a careful balancing of, on the one hand, the plaintiff's right to recover his property or to preserve important evidence against, on the other hand, violation of the privacy of a defendant who has had no opportunity to put his side of the case. It is not merely that the defendant may be innocent. The making of an intrusive order ex parte even against a guilty defendant is contrary to normal principles of justice and can only be done when there is a paramount need to prevent a denial of justice to the plaintiff. *The absolute extremity of the court's powers is to permit a search of a defendant's dwelling house, with the humiliation and family distress which that frequently involves*."(My emphasis.)

76. Here, Hoffmann J not only added to the words of Ormrod LJ but emphasised the traumatic nature of a search order - an order carried out with the defendant's (enforced) permission. Compare this to the impact of an order permitting forced entry on a tenant who might have significant vulnerabilities.

Drawing the threads together

77. For more than four centuries, the courts and Parliament have taken a consistent approach to entry into the home. Since *Semayne's Case* in 1604, the common law has held that in civil matters the sheriff, executing the court's own process, "may enter to execute civil process: but he may not break in" (per Lord Denning MR in *Southam*, at 321). In *Entick v Carrington*, Lord Camden held that a person who enters another's property without licence "is bound to show by way of justification, that some positive law has empowered or excused him" (quoted by Lord Scarman in *Morris*, at 464). In *Morris*, the House of Lords held that if Parliament intends to authorise an act that would otherwise be a tort, "this requires express provision in the statute" (per Lord Diplock at 455).

78. When the senior courts have made their most intrusive orders, they have deliberately stopped short of authorising entry by force. In 1821, the House of Lords held that an order requiring inspection of a warehouse was "an order operating on the person requiring the defendants to permit inspection, not giving authority of force, or to break open the doors of their warehouse" (*East India Co v Kynaston* (1821) 3 Bligh, 153, quoted in *Anton Piller* at 60). The Court of Appeal applied the same principle in *Anton Piller*. A search order requires the occupier to give permission. If permission is refused, the applicant "must not force their way in", and the remedy is committal. Such an order is "at the extremity of this court's powers". The search of a home under such an order, with the occupier's enforced permission, is "the *absolute* extremity of the court's powers" (per Hoffmann J in *Lock International*, my emphasis).

79. Likewise, where Parliament has intended that a person may enter a home by force, Parliament has explicitly said so. It has also usually required a warrant from the magistrates or provided other safeguards (eg with the attendance of a police officer when a building owner effects forced entry under section 8(2) Party Wall etc Act 1996).

80. Otherwise, Parliament has legislated to protect the occupier against self-help. It has made it an offence to use violence to enter premises against the occupier's will, unless there is lawful authority. It has removed a landlord's right to re-enter premises let as a dwelling, other than by court proceedings. It has made it an offence for a landlord to evict or harass a residential occupier; and as recently as 2025, it has strengthened the means of enforcing those protections. It has made clear that even a local housing authority needs the tenant's consent to enter when enforcing a landlord's electrical safety obligations, including where the work is urgent (see regulations 6 and 10 of the Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020).

81. An order permitting a landlord to break into their tenant's home would go further than anything those authorities recognise. It would go beyond a search order (an order that is already at "the absolute extremity of the court's powers"), which requires the occupier's permission to enter. It would give a landlord the very authority to enter by force that Parliament has withheld, in circumstances where Parliament has required landlords to come to court rather than help themselves.

<u>*Stonewater, Hammond and Taylor Clark*</u>

Forced entry

82. In *Stonewater* HHJ Glen was considering whether CPR 70.2A(2) gave the court power "to order that a landlord may force entry to premises occupied by a tenant for the purposes of inspecting the gas or electrical installations…".

83. The judge started with a careful review of the rule's origins in RSC O.45 r.8, including the decision by Hoffmann J in *Ford Sellar Morris Developments Ltd v Grant Seward Ltd* [1989] 2 EGLR 40. Noting that was a case where a landlord sought an order permitting it to enter and carry out certain allegedly agreed works to the demised premises in default of the tenant having done so, HHJ Glen at paragraph 12 said this:

> "Hoffmann J seems to have had no principled objection to the fact that the order sought would necessarily involve non-consensual entry to the demised premises."

84. It is not clear if HHJ Glen was relying on this as support for his ultimate finding that the court does have power to permit forced entry into the home. However, in my view the *Ford Sellar* decision would anyway not assist on that issue. That case concerned a dispute about an agreement for lease of non-residential premises, not a home.

85. At paragraph 23 HHJ Glen referred to *Emmanuel* and my "analysis of the jurisprudence behind the proposition that 'an Englishman's home is his castle'". HHJ Glen stated this analysis was "hardly needed having regard to the operation of Article 8 of the European Convention on Human Rights." I respectfully disagree.

86. In my view, the result of that long-standing jurisprudence is that courts do not have power to make orders permitting forced entry absent express statutory authority or a recognised common law power. Article 8 is engaged, but the question of proportionality does not arise where the court has no power to make the order in the first place. HHJ Glen's judgment did not consider the effect of that jurisprudence on the extent of the court's power.

87. At paragraph 24, HHJ Glen said that *Emmanuel's* "broad conclusion that a court has no power to authorise entry to someone's home absent statutory authority" could not be supported. He gave *Anton Piller* as an example of the courts exercising such a power.

88. However, that part of the *ratio* in *Emmanuel* was narrower than HHJ Glen described. It was that:

> "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."

89. Indeed, in my view this limit on the court's power is precisely what Lord Denning was making plain in *Anton Piller* when he said (at 60):

> "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…. [The search order] 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."

HHJ Glen himself noted in paragraph 24 the words of Hoffmann J in *Lock International* where that judge made clear that a search order of the home was at "the absolute extremity of the court's powers."

90. If an already 'trauma-inducing' search order of the home is "the absolute extremity of the court's powers", how then is it permissible for a court to go yet further and make an order permitting the use of force to enter the home? In my view, it is not.

91. HHJ Glen also said (at paragraph 24) that "a specific power is provided for by CPR25.1(d) in aid of interim remedies". Rule 25.1(1)(d) allows the court to make "an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c)", which includes an order for the inspection of relevant property. I explained in *Emmanuel* (paragraphs 70 to 74) why that rule does not permit forced entry.

92. In short, the rule authorises entry. It says nothing about force, and authority to enter is not authority to enter by force. The search order appears in the same list, at rule 25.1(1)(h), where the rule itself describes it as an "order requiring a party to admit another party to premises". It would be surprising if the more modest power in rule 25.1(1)(d) went further than the search order. In any event, a rule of court cannot supply a power the law does not otherwise give.

93. I respectfully agree with HHJ Glen's analysis of the decision in *Taylor Clark*, for the reasons the judge gave at paragraphs 25 and 26.

94. As I noted earlier, HHJ Glen also referred to the decision of District Judge James in *Hammond*. In *Hammond* District Judge James, at paragraph 7 of his thoughtful and detailed judgment, distinguished the decisions in *Southam* and *Morris*. He said:

> "I do not consider that they provide the answer in the case of access injunctions where the landlord is exercising its contractual rights set out in the tenancy agreement, as distinct from considering whether an official is acting within its statutory powers or not."

95. However, and with respect to the learned judge, the principle in those cases concerns the occupier's right to exclude others from the home, not the status of the person seeking entry. If anything, a court bailiff (as in *Southam*) or a police officer (*Morris*) acting for the court or the Crown is better placed than a landlord seeking to enforce an express or implied right of access.

96. In *Hammond* (paragraphs 12 and 13), District Judge James approached the lawfulness of forcing the lock by applying *Goldmile v Lechouritis* [2003] 2 P & CR 1. He asked whether the landlord, in exercising its right of access, had taken all reasonable steps to minimise the interference with the tenant's right to quiet enjoyment. However, that approach seems to answer a different question. *Goldmile* concerned the reconciliation of competing covenants in a lease, and whether a landlord exercising a right it undoubtedly has is in breach of its covenant for quiet enjoyment. It does not decide whether the landlord has a right to force entry, which is the question here.

97. A trespass is committed by entering another's land without consent or lawful authority, whether or not the entry is reasonable. District Judge James began (paragraph 3) from *Barker v Barker* (1828) 3 Car & P 558, as authority that a landlord who enters to carry out repairs "without permission or an entitlement to do so commits a trespass no matter how absurd the objection of the tenant". The reasonableness of the landlord's conduct, and the unreasonableness of the tenant's refusal, are therefore beside the point. What matters is whether the landlord has permission or an entitlement to enter by force.

98. In my view it has neither. The terms relied on in *Hammond* required the tenant "To allow… access". They give the landlord a right to be given access, not a right to take access by force when the tenant refuses. As HHJ Glen noted in *Stonewater* (paragraph 25), a covenant to allow access binds the tenant to give access when asked; it is not an agreement that the landlord may enter without more. When the tenant refuses, there is no permission. The landlord's remedy is to enforce the tenant's obligation through the court. District Judge James' own proviso, that a landlord is not a trespasser "provided it acts within the confines of those rights" (paragraph 10), is not met. Forcing the lock is not an exercise of a right to be given access. It is the taking of something the tenant has refused to give. Whether a contractual term worded differently could give a landlord a right to force entry is a separate question, which I consider below.

CPR 70.2A

99. HHJ Glen's judgment reviewed the earlier County Court decisions concerning CPR 70.2A(2). At paragraph 27 he explained that it is the "identification of the 'act' for the purposes of [that rule]" that is the real issue. That rule states:

> "(2)…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."

100. HHJ Glen agreed with District Judge James' analysis in *Hammond* of what "the act" is, which HHJ Glen said is: "enabling the landlord to obtain access. If it cannot be enabled by the tenant's consent, then in my judgment [the rule] permits the Court to empower the landlord to enable access in another way." I respectfully disagree with both of my colleagues.

101. Firstly: Neither judge identified any source of power, other than rule 70.2A, for the court to authorise forced entry. District Judge James held there was no power to make such an order as an injunction (*Hammond*, paragraphs 14 and 15). His conclusion that forcing the lock would be lawful at common law depended on the reasoning I have not followed, above. None of the County Court decisions has identified any statute or rule of the common law that gives the court power to authorise forced entry into the home. Rule 70.2A is an enforcement provision and as such does not expand the court's powers. A rule of court cannot override established law (see my discussion of *Re Grosvenor Hotel* and *Dunhill v Burgin* in *Emmanuel* paragraphs 48 to 51).

102. Secondly: The original injunction orders in *Hammond* and *Stonewater* were granted because of the tenant's express and/or implied contractual obligations to permit access. The landlord's ability to obtain those orders was based wholly on their ability to come to court to enforce those contractual terms. By deciding that the "act" required by the injunction was enabling the landlord to obtain access, the judges were in effect re-writing the contractual terms: the contractual promise by the tenant to permit access became instead the right of the landlord to itself obtain access.

103. Thirdly: In paragraphs 64 to 69 of *Emmanuel* I explained why "the act required to be done" is limited to the express terms of the original order that is being enforced under rule 70.2A(2). I rely on that reasoning here.

104. Fourthly: Both judges suggested the rule can be construed 'purposively' to achieve what they said was the ultimate aim of the original access injunction order: to enable the landlord to obtain access. District Judge James noted (*Hammond* paragraph 25) that this is necessary to avoid the rule being "rendered nugatory." HHJ Glen considered the alternatives "unattractive and disproportionate" (*Stonewater*, paragraph 28). But the inconvenience of the remedies the law provides does not create a power the law does not give. In my view, the rule itself acknowledges its own limits. It states that the court can appoint another person to undertake the required act "so far as practicable".

105. Those words recognise that not every act the court orders can be done by someone else. Many can. Works may be carried out by another contractor, which was the act in issue in *Ford Sellar*. In Browne-Wilkinson LJ's words in *Parker v Camden*, the rule allows another person "to perform the order on behalf of the person who has failed to do so". In cases of that kind the rule does real work.

106. But some acts are personal to the person ordered to do them. Giving permission to enter one's home is such an act. Only the tenant can give it. A landlord who forces entry is not doing the tenant's act on the tenant's behalf. They are doing a different act: entering without the tenant's permission. To treat that as "the act required to be done" is not to read the rule purposively. It is to extend the rule to a case its own words exclude. A purposive reading cannot take a rule beyond what is practicable on its own terms, still less give the court a power it does not otherwise have.

107. Fifthly: HHJ Glen's own conditions point the same way. He said that "Plainly, the Claimant should not proceed where the tenant is present and actively opposes entry" (paragraph 29(iii)). Whatever the reason for that condition, its effect is that the order cannot be used against the tenant whose breach is most obvious: the tenant who is at home and refuses. Against that tenant, the landlord's remedy then remains an application to commit or to seek possession. The order can be used only when the tenant is absent, and the reason access has not been given may then be unknown. In *Stonewater* itself, HHJ Glen inferred that the defendant "was not present rather than actively opposing access" (paragraph 8). That suggests that the remedy for a failure to give access lies against the tenant, not in forcing entry.

The postscript

108. As set out earlier, HHJ Glen suggested at paragraph 30 that tenancy agreements could be drafted to provide a tenant's express consent to a landlord's entry in their absence, and that a landlord might then not require the court's sanction at all. Such a term would also remove two of the safeguards that HHJ Glen himself thought necessary at paragraph 29: that forced entry should not normally be ordered at the same time as the original access order, and that the court should first have information about the tenant's household and any vulnerabilities. Without a judge, neither would apply.

109. I recognise the practical attraction of the postscript's suggestion. However, I doubt whether such a term would be effective, for the reasons I give under issue b), below. I am also concerned that it risks shifting the debate away from whether a judge has power to authorise forced entry into the home, towards the proposition that the issue may be resolved entirely by contractual drafting.

110. The implications of that reach far beyond the (mostly) social housing cases that have so far come before the courts. If an express contractual term were enough to authorise forced entry, the principle would apply equally to the private rented sector. It would not be confined to local authorities and housing associations carrying out gas safety checks or inspections. Any residential landlord could seek to reserve to itself similar powers by contract.

111. In my view, that sits uneasily with the consistent approach adopted by Parliament over many decades. The legislative trend has been to restrict, not expand, residential landlord self-help. Parliament has abolished distress at common law, restricted re-entry,

criminalised harassment, prohibited eviction without a court order and created criminal liability for the use of violence to secure entry unless there is lawful authority to do so.

Bromford

112. Recorder Jack explained at paragraphs 21 and 22 of his judgment why the decisions in *Southam* and *Morris* do not apply. He reasoned that as the court has made a mandatory order requiring the tenant to permit access, the court is making clear the landlord's access under that order will not be tortious. Rule 70.2A is, the Recorder held, "effectively a Court-authorised form of self-help". A landlord forcing entry pursuant to an order made under that rule would not be liable to the tenant in tort if that order were later set aside.

113. The learned Recorder distinguished *Southam* and *Morris* on the basis that "there was never any question [in those decisions] of the householder being required to give permission for the sheriff's officer or the constable to enter."

114. The difficulty I see in this approach is that it relies on the tenant's obligation to consent to escape *Southam* and *Morris*, but then authorises entry in the very circumstances in which there is no consent. The court's jurisdiction to grant the injunction rests on the tenant's contractual obligation to give access. The injunction compels the tenant to perform that obligation. If the tenant complies, the landlord enters with the tenant's permission, given under compulsion. The entry is then lawful because the tenant permitted the entry. If the tenant does not comply, there is no permission.

115. An order requiring a person to consent is not itself consent, and it cannot be treated as consent at the point when the person refuses. The Recorder's reasoning makes the tenant's actual consent unnecessary, while depending on the obligation to consent to explain why no further authority is required.

116. The distinction the Recorder drew between the case before him and *Southam* and *Morris* is, in any event, answered by *Anton Piller*. A search order is a case in which the householder is required by the court to give permission for others to enter. Yet the Court of Appeal held that the order did not permit the use of force to enter if the defendant then refused permission. As Ormrod LJ explained, such an order "is an order on the defendant in personam to permit inspection". The remedy was committal, not a subsequent order permitting forced entry.

117. Nor does describing an order under rule 70.2A as "a Court-authorised form of self-help" answer the question. Whether the court has power to authorise self-help by a landlord against a residential occupier is the question in dispute. The common law has long held that the court's authority is not, by itself, enough. In *Southam*, the bailiffs were executing the court's own process, yet even they could enter only if the door was open. They could not break in. A landlord acting under an order of the court can be in no better position than the court's own officers. Self-help of that kind is what Parliament has restricted. A rule of court cannot supply a power that neither Parliament nor the common law has given (see *Emmanuel*, paragraphs 48 to 51).

'Rolled up' orders

118. At paragraph 27 of his judgment, Recorder Jack disagreed with HHJ Glen in *Stonewater* that a 'rolled up' order should be exceptional. In the Recorder's view, where the history suggests the tenant will ignore an order to give access, no one's interest is served by requiring the landlord to return to court. For the reasons I have given, I do not consider that the court has power to make an order permitting forced entry at all, whether rolled up with the original injunction or made later. If I am wrong about that, I would respectfully agree with HHJ Glen that such an order should not normally be made at the first hearing.

119. A rolled up order leaves it to the landlord to decide whether the tenant has failed to comply with the court's order, and then to act on that decision by forcing entry, without the court having considered any evidence of the breach.

120. The position is comparable to the enforcement of a suspended possession order. Where the condition of suspension is that the tenant complies, eg, with a term of the tenancy, the landlord must obtain the court's permission before a warrant of possession is issued (CPR 83.2(3)(e)). The court can then be satisfied, on evidence, that the condition has been breached before permitting enforcement. Whether a tenant has failed to give access may depend on whether proper notice was given, whether the tenant was present, and why access was not given. It should be decided by the court, on evidence, before any question of further enforcement arises.

121. The need for the court to decide whether there has been a breach is all the greater where the tenant may be vulnerable (as the evidence in *Bromford* about the defendant's mental health difficulties illustrates). A tenant's vulnerability may itself be the reason access has not been given. In my view, these are all matters the court should consider on evidence before any further enforcement step is taken.

Section 11(6) Landlord and Tenant Act 1985

122. Ms Lee's alternative argument was that section 11(6), "whilst not expressly permitting forced entry, does not expressly disallow it". She argued that the term it implies is not that 'the tenant must let the landlord in' but that 'the landlord may enter'.

123. I do not accept that argument.

124. Firstly, what section 11(6) implies is "a covenant by the lessee". It is a promise by the tenant that the landlord may enter. The court gives effect to that promise by ordering the tenant to perform it.

125. Secondly, the absence of an express prohibition on force does not amount to authority to use it. The question is not whether the law prohibits forced entry, but whether any law authorises it. A person who enters another's property without licence "is bound to show by way of justification, that some positive law has empowered or excused him" (*Entick v Carrington*, quoted by Lord Scarman in *Morris* at 464).

126. Where Parliament has not expressly provided otherwise, "The presumption is that… Parliament did not intend to authorise tortious conduct" (per Lord Diplock in *Morris*, at 455). Section 11(6) says nothing about force. By contrast, where Parliament has intended to permit entry by force it has said so expressly.

Issue b) – a contractual right to force entry

127. Clause 5(9) of the tenancy agreement in the case before me, set out at paragraph 15 above, provides that in an emergency the claimant "may have to force an entry". Like the second sentence of the clause HHJ Glen considered in *Stonewater*, it purports to reserve to the landlord a right to enter without the tenant's permission in specified circumstances.

128. Ms Lee's primary case was that the damp and mould in the flat amounted to an "emergency" within clause 5(9), so that the claimant was already entitled to force entry. I have real doubt as to whether the presence of damp and mould can constitute an emergency. However, in the absence of any evidence from the defendant and without deciding the point, I proceed on the assumption that it does.

129. When I asked why, in that case, the claimant had come to court at all, Ms Lee explained that the claimant sought to enforce its rights under clauses 5(8) and 5(9). She said it was also taking a "belt and braces" approach, to ensure its actions were lawful and to avoid liability in trespass. Ms Lee accepted that avoiding liability under section 6 of the Criminal Law Act 1977 was likely to be a further reason.

130. That exchange identifies the difficulty with the claimant's reliance on clause 5(9). Either the clause entitles the claimant to force entry in the present circumstances, or it does not.

131. I have serious doubts as to whether a landlord can, by a contractual term, reserve to itself a right to force its way into the tenant's home. A tenant with exclusive possession may keep out the landlord. An express reservation to the landlord of "limited rights to enter and view the state of the premises and to repair and maintain the premises" is consistent with that exclusive possession (per Lord Templeman in *Street v Mountford* [1985] AC 809 at 818). A right to break into the home is of a different order. If the law does not permit a court to make an order permitting forced entry, it would be surprising if a landlord could draft their way into a better position than the court itself could put the landlord in. After all, even the court's own officers executing its process may not break into a home.

132. Nor is the answer that the tenant consented in advance. A reservation of limited rights to enter to view and repair also rests on the tenant's agreement. The question is not whether the tenant agreed, but whether a contractual term can give a landlord a right to break into the home at all.

133. Further, where the tenancy agreement is a consumer contract (as will often be the case) an unfair term is not binding on the tenant, and a term permitting forced entry may well be open to challenge on that ground. Fairness was not argued before me, the defendant did not attend, and I do not have the material needed to consider it. In any event nothing turns on it, for the reasons I now explain.

134. If, contrary to the concerns I expressed earlier, clause 5(9) does entitle the claimant to force entry in these circumstances, then the claimant does not need an order of the court. An order permitting it to do what it is already entitled to do would add nothing to its rights. What the claimant seeks is, in substance, an assurance in advance that its conduct will be lawful.

135. The ordinary way of obtaining such an assurance would be to seek a declaration. The claimant did not do so, and in my view a declaration would anyway not have assisted it. A declaration does not create rights or obligations; it declares what the existing ones are (see *London Steam-Ship Owners' Mutual Insurance Association Ltd v Kingdom of Spain* [2021] EWCA Civ 1589, at paragraph 124). It could have declared only whatever right clause 5(9) already gives.

136. Nor could a declaration, or any other order of this court, give that assurance as regards the criminal law: a declaration of a civil court is "no bar to a criminal prosecution" and a criminal court "would not be bound by the decision" (*Imperial Tobacco Ltd v Attorney-General* [1981] AC 718, at 741 and 752).

137. If the clause does not entitle the claimant to force entry, whether because the circumstances are not an emergency within its terms or for any other reason, the court cannot supply that entitlement. That is issue a). A term in a tenancy agreement is neither an Act of Parliament nor a rule of the common law. Parties cannot by terms of a contract give to the court a power it does not otherwise possess.

138. More fundamentally, a contractual right to do something does not give the court power to make an order permitting it to be done. The court gives effect to a contractual obligation by orders directed at the party bound by it: eg, by ordering that party to perform it, or by awarding damages for its breach.

139. If the term does not extend to what the party proposes to do, an order of the court "permitting" it cannot make good the deficiency. An order of that kind is not a remedy for breach of contract at all. As District Judge James observed in *Hammond* (paragraph 15), it does not order the defendant to do or refrain from doing anything; rather, "What is sought is the court sanctioning the taking of action by the Claimant." That is so whatever the terms of the contract, and whether the right claimed is confined to an emergency or is more general.

140. I therefore do not need to decide whether clause 5(9) is engaged on the facts of this case, or whether it would provide the claimant with a defence to any civil or criminal proceedings arising from an entry made in reliance on it. Absent a claim for a declaration, those questions could arise only in proceedings about an entry that had already taken place.

141. That does not leave a landlord without protection in a genuine emergency. The common law gives anyone a defence of necessity to a claim in trespass. But the defence is narrow. The danger must be "immediate and obvious", and a reasonable person must conclude that there is no alternative to the trespass (*Monsanto plc v Tilly* [1999] EWCA Civ 3044, per Stuart-Smith LJ at paragraph 33).

Conclusion

142. The answer to issue a) is no.

143. The court has no power to make an order permitting a landlord to force entry into their tenant's home to enforce an express or implied contractual right of access. I have considered with care the judgments in *Hammond, Stonewater* and *Bromford* and the

approved note of the decision in *Taylor Clark*. With great respect, they do not persuade me that the court does have that power.

144. The common law has long protected the home against forced entry. Parliament has permitted it only by express words. Even when the senior courts have made their most intrusive orders, they have stopped short of authorising the use of force to cross the threshold. An order that the occupier must permit entry is enforced against the occupier, not by breaking in.

145. Nor do the Civil Procedure Rules supply that power. Rule 70.2A allows another person to do the act the court originally ordered. It does not allow a landlord to do something different, which the court had no power to order in the first place. In any event, rules of court govern how the court exercises the powers it has. They cannot create a power to force entry into a person's home.

146. The answer to issue b) is also no.

147. A contractual right to force entry, however it is worded, does not assist the claimant. I doubt that a landlord can, by a term of the tenancy, give themselves a right to force entry into the tenant's home. But even if they can, the court has no power to make an order permitting them to do so. A tenancy agreement cannot confer on the court a power the law has not given it.

148. That does not leave landlords without a remedy. The court can order a tenant to give access, enforce that order by committal and, in an appropriate case, make an order for possession.

149. The claimant's application for an order in the terms of paragraph 2 of the draft order is therefore dismissed.

150. Whether landlords should have a power to force entry into their tenants' homes, and if so with what safeguards, is in my view a question for Parliament, not for the courts. In the words of Lord Scarman at 463 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."

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