

## **FORCED ENTRY POWERS PROCEDURE**

### **(1.0) Forced Entry Powers**

(1.1) This procedure covers the rare instances where the court's contractor considers using force to gain entry to a defaulter's property to execute a warrant and must be followed by both courts and their contractors. Within this procedure forced entry means the physical forcing of an external door, window or barrier to gain access without the defaulter's consent to enforce a magistrates' court warrant.

(1.2) Forced Entry powers are covered in paragraph 6.12 of the Service Specification. Within this procedure document forced entry refers to a circumstance where the defaulter is present in the property but refuses access to the contractors' bailiff. Monitoring actions to be covered in monthly and quarterly contractor monitoring meetings are recorded at Appendix A.

### **(2.0) Where does this power originate from?**

(2.1) The Domestic Violence and Crime and Victims Act, 2004 (DVCV Act, 2004) authorises the use of force to gain access to a defaulter's property in certain circumstances.

### **(3.0) When can this power be used?**

(3.1) Contractor's bailiffs have powers to make an arrest if they are executing an arrest warrant. If they are executing a distress warrant they cannot arrest the defendant. Forced entry powers contained in the DVCV Act, 2004 may be used:

- a) to the extent that is reasonably required for that purpose
- b) if the enforcement officer has reasonable grounds for believing that the offender is on the premises

(3.2) More detail is provided on the reasonableness tests below. Advice on this matter can also be found in the Authorised Enforcement Agents Information Sheets (Crib Sheets) available at each court.

### **(4.0) The Reasonableness Test**

(4.1) The power to force entry may be used only to the extent that it is reasonably required for that purpose. In practice this means that the contractor's bailiff must hold a suspicion, based on fact, information and/or intelligence, and, not on the basis of a hunch or curiosity, that by forcing entry they will be able to execute a magistrates' court warrant.

(4.2) Contractor's bailiffs have the power to force entry to execute an arrest warrant if they have reasonable grounds for believing the offender is on the premises. They can gain entry through the use of a locksmith.

(4.3) Contractor's bailiffs also have power to use forced entry to levy distress. As with arrest this should only be undertaken to the extent that it is reasonable to do so. This will usually be when all other means to execute a warrant have failed. Access can be gained through the use of a locksmith but only as a last resort.

**(5.0) What does the contractor have to do before using forced entry powers?**

(5.1) Legally the contractor does not require court approval prior to utilising the above statutory powers.

(5.2) However, no forced entry to arrest or levy against the defaulter should be attempted without first attempting to seek the prior approval of the court Nominated Officer, although responsibility for the actual forced entry will remain with the contractor.

(5.3) Before approval can be given the contractor's bailiff/Manager must contact the Nominated Officer explaining their reasons to use forced entry and the method to be used i.e. use of a locksmith. This should be short and to the point. Once considered and if approved a written record must be maintained. This can be recorded at the earliest opportunity following the forced entry incident.

(5.4) Where approval is withheld further dialogue should be undertaken to agree a suitable way forward.

(5.5) If the Court Nominated officer or any deputy is not available to give approval at the relevant time, then the contractor may proceed to use the powers of entry at their own discretion.

(5.6) A record that contact was attempted with the Nominated Officer, including date & time, must be endorsed in the contractor's database.

**(6.0) What does the contractor have to do after forced entry powers have been used?**

(6.1) In addition to the approval requirement a written record covering what happened during the forced entry incident must be entered onto the contractors database and be available for examination by the contractor court Nominated Officer. The record must include:

- Name of defaulter(s)
- Issuing court and warrant number
- Name and number of contractor's bailiff(s) and other staff in attendance
- Address where forced entry was gained/attempted

- Detail of others in attendance i.e. police officer including name and number, lock-smith including the name of the firm and locksmith, court officials and others
- Date court Nominated Officer approval obtained with copy attached
- A concise narrative of the event as it unfolded, including if forced entry proved necessary and if any force was necessarily used to restrain the defaulter. There should also be a record made of any damage to the defaulter's or third party property. Where no damage has arisen then a nil return should be recorded
- The outcome including if an arrest was made or a levy successfully executed
- What, if any, further action has been agreed with the court Nominated Officer or the defaulter

(6.2) Following a forced entry it is the contractors responsibility to secure the premises.

8 December 2009  
HMCS Enforcement