

IN THE COUNTY COURT AT READING
ON APPEAL FROM ORDER OF DDJ HUNTER
DATED 19 JUNE 2024

St Aldate's
Oxford
OX1 2TL

Date: 9 October 2025

Before:

HER HONOUR JUDGE MELISSA CLARKE

B e t w e e n :

**(1) NICOLA CASSELL
(2) LEE CASSELL**

Appellants

-and-

**(1) GURJOT SIDHU
(2) RAMANDIP SIDHU**

Respondents

MR CORMAC DEVLIN (instructed by Turpin & Miller) for the **Appellants**
MR DAVID PEACHEY (instructed by Blandy & Blandy) for the **Respondents**

Hearing date: 10 October 2024

JUDGMENT

Her Honour Judge Melissa Clarke:

A. Introduction

1. This is the appeal of a possession order made on 19 June 2024 at the County Court at Reading granting the Respondent landlords, Ms Gurjot Sidhu and Ms Ramandip Sidhu, possession of 76 Wolseley Street, Reading, RG1 6AY (**“the Property”**) which the Appellant tenants, Nicola Cassell and Lee Cassell, occupied pursuant to an assured shorthold tenancy agreement for a fixed term of 12 months beginning on 7 May 2021, entered into on the same date (**“the tenancy agreement”**). The tenancy agreement provided an address for both landlords as 76 Highfield Lane, Maidenhead, SL6 3AY. The tenancy became a statutory periodic tenancy after the fixed term expired, from 7 May 2022.
2. The Respondents are siblings who jointly own the Property. They arranged for a gas safety inspection to be carried out on 14 January 2021 and a gas safety record was produced with that date on its face (**“1st GSR”**). The standard gas safety record form contains, *inter alia*, a box for *“Details of site”* with space to fill in a name, address, postcode and contact number. It also contains a box for *“Details of Customer/Landlord”* which also has space to fill in a name, address, postcode and contact number. In the box for *“Details of Site”* on the 1st GSR, the name filled in is *“Remmi Sidhu”* which is said to be a nickname for the Second Respondent. The site address is filled in as *“76 Wolesley Street, RG1 6AY”* (i.e. the address of the Property), with a mobile phone number as contact number. The box for *“Details of Customer/Landlord”* is, however, blank.
3. The Appellants provided the 1st GSR to the Appellants on signing the tenancy agreement on 7 May 2021, which states at clause 11 that *“By signing this agreement you also confirm you have received a copy of the Gas Safety Certificate...”*.
4. Further gas safety inspections were carried out on 21 February 2022 and 27 February 2023. The gas safety record of 21 February 2022 (**“2nd GSR”**) was provided to the Appellants on the same day and the gas safety record of 27 February 2023 (**“3rd GSR”**) was provided to the Appellants on 10 June 2023. No issue is taken with the validity of the 2nd GSR or 3rd GSR.

5. The Respondents served the Appellants with a s.21 notice pursuant to s.21 Housing Act 1988 (“**HA 1988**”) by way of first class post on 16 June 2024 (“**s.21 Notice**”). By the deemed service provision at clause 18 of the tenancy agreement, the deemed date of service was 18 June 2024. The s.21 Notice required the Appellants to give up possession of the Property by 23 August 2024.
6. In their Defence, and at the possession hearing before the Deputy District Judge, the Appellants did not dispute that they had received a copy of the 1st GSR which predated the commencement of the tenancy pre-occupation. However, they asserted that the Respondents could not rely on the s.21 Notice because, *inter alia*, the 1st GSR did not contain the landlords’ address as required by regulation 36(6)(b) of the Gas Safety Installation and Use Regulations 1998 (“**GS Regs**”), read in conjunction with regulation 36(3)(c)(iii) GS Regs. The Appellants therefore asserted that the Respondents were in breach of a prescribed requirement at the date of service of the s.21 Notice and were precluded from obtaining possession pursuant to s.21A HA 1988.
7. There was a possession hearing before DDJ Hunter on 19 June 2024, at which both parties were represented. He had the benefit of skeleton arguments, oral submissions and authorities from both counsel. He found as a fact that there was a breach of the GS Regs as regards the 1st GSR because the name and address of the landlord were not given (para 32 of the transcript of judgment) and there was no evidence that remedial action was taken (para 33 of the transcript).
8. He further noted that the 2nd GSR and 3rd GSR both identify Ms Ramandip Sidhu as landlord, albeit by use of a nickname for her first name, but do not provide the name or address of Ms Gurjot Sidhu as a joint landlord. However, at paragraph 34 of the transcript he held that to be a triviality and not something which amounts to breach of the GS Regs, as:
 - i. regulation 36(3)(c)(iii) provides that the name and address of the landlord...(or, where appropriate, his agent), could be provided; and
 - ii. one landlord in a joint tenancy may act on behalf of both; and

- iii. Gurjot Sidhu had authority to so act, so could properly be regarded as the landlord for the purposes of the regulations.
9. The DDJ made the possession order sought, holding that:
- i. the Respondents were not in breach of the prescribed requirements relating to gas safety under regulation 2 of the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 (“**AST Regs**”); and
 - ii. the Respondents’ failure to provide a pre-tenancy gas safety record under regulation 36(6)(b) GS Regs which gave the information required under regulation 36(3)(c) GS Regs (as he had found the 1st GSR did not) could be cured by the provision of later gas safety records given to the tenant pursuant to the prescribed requirement under regulation 36(6)(a) GS Regs which *did* give the information required under regulation 36(3)(c) GS Regs. In other words, although the 1st GSR did not comply with regulation 36(3)(c) GS Regs, this failure was cured by the provision of the 2nd GSR and 3rd GSR.
10. The questions before me in this appeal are whether he was wrong to make those determinations as set out in paragraph 9 above, and, as a result, whether he was wrong to make the possession order. The Appellants’ challenge to those determinations are grounds 1 and 2 of the appeal respectively, in respect of which I granted permission to appeal. The parties are in agreement that Ground 2 is parasitic on Ground 1.
11. The Respondents resist the appeal. They filed a Respondent’s Notice on 24 September 2024 in which they ask the Court to uphold the decision on the alternative grounds that:
- i. The judge below was in no position to find that the landlord’s address was not on the 1st GSR;

- ii. The judge below should have found that there was substantial compliance by the 1st GSR with regulation 36(3)(c)(iii); or alternatively if the appeal succeeds
 - iii. the Court should remit the matter to trial to determine the factual issue of whether the 1st GSR contained the landlord's address by considering the evidence provided in the new witness statement from the 2nd Appellant.
12. While this judgment was reserved, the Appellants moved out of the Property, and the parties agree that the appeal is now moot save in relation to costs. I have decided to produce this judgment as the result will inform the position on costs.

B. Legal Framework

Appeal threshold

13. The test on appeal is set out at CPR 52.21(3). The appeal court will allow an appeal where the decision of the lower court was: (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Prescribed requirements

14. The statutory regime relevant to this appeal is found in:
- i. S.21, s.21A and s.21B HA 1988
 - ii. Regulation 2 AST Regs
 - iii. Regulation 36 GS Regs
15. S.21 HA 1988 sets out the requirements for a landlord to recover possession of a dwelling-house on the expiry or termination of an assured shorthold tenancy which include, at s.21(1), that a court shall make an order for possession of a dwelling house if it is satisfied: (a) that the assured shorthold tenancy has come to an end, and no further assured tenancy is in existence other than an assured shorthold periodic tenancy; and (b) that the landlord (or at least one of joint

landlords) has given to the tenants not less than 2 months' notice in writing that he requires possession of the dwelling-house.

16. S.21A HA 1988 provides that a landlord is unable to give a notice under s.21 HA 1988 in relation to an assured shorthold tenancy at a time when the landlord is in breach of a "prescribed requirement":

21A Compliance with prescribed legal requirements

(1) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a prescribed requirement.

(2) The requirements that may be prescribed are requirements imposed on landlords by any enactment and which relate to –

- (a) the condition of dwelling houses or their common parts,
- (b) the health and safety of occupiers of dwelling houses, or,
- (c) the energy performance of dwelling houses.

17. S.21B HA 1988 identifies what is a "prescribed requirement", and at s. 21B(3) HA 1988 repeats the prohibition in s.21A(1) HA 1988:

21B Requirement for landlord to provide prescribed information

(1) The Secretary of State may by regulations require information about the rights and responsibilities of a landlord and a tenant under an assured shorthold tenancy of a dwelling-house in England (or any related matters) to be given by a landlord under such a tenancy, or a person acting on behalf of such a landlord, to the tenant under such a tenancy.

(2) Regulations under subsection (1) may –

- (a) require the information to be given in the form of a document produced by the Secretary of State or another person,
- (b) provide that the document to be given is the version that has effect at the time the requirement applies, and
- (c) specify cases where the requirement does not apply.

(3) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a requirement imposed by regulations under subsection (1).

18. The Secretary of State has made regulations pursuant to s.21B(1). Regulation 2 AST Regs provides so far as is relevant to this appeal:

(1) Subject to paragraph 2, the requirements prescribed for the purposes of section 21 of the [HA 1988] are the requirements contained in –

...

(b) paragraph (6) or (as the case may be) paragraph (7) of regulation 36 of the [GS Regs] (requirement to provide tenant with a gas safety certificate).

(2) For the purposes of section 21A of the Act, the requirement prescribed by paragraph 1(b) is limited to the requirement on a landlord to give a copy of the relevant record to the tenant and the 28 day period for compliance with that requirement does not apply.

19. In this way, regulation 2 AST Regs makes each of regulation 36(6) GS Regs (and 36(7) GS Regs) a prescribed requirement for the purposes of s.21, s.21A and s.21B HA 1988, but *not* the 28 period for compliance contained within regulation 36(6)(a) GS Regs.

20. In order to understand regulation 36(6) GS Regs, we must first consider regulation 36(3)(c) GS Regs, to which regulation 36(6) refers. Regulation 36(3) GS Regs provides so far as is relevant:

(3) Without prejudice to the generality of paragraph (2) above [judge's note - which provides that every landlord must ensure that relevant gas fittings and flues are maintained in a safe condition to prevent the risk of injury to any person in lawful occupation of relevant premises], a landlord shall –

(a) ensure that each appliance and flue to which that duty extends is checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety (whether such check was made pursuant to these Regulations or not...);

(b) in the case of a lease commencing after the coming into force of these Regulations, ensure that each appliance and flue to which the duty extends has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or flue has been installed, whichever is later...; and

(c) ensure that a record in respect of any appliance or flue so checked is made and retained until there have been two further checks of the appliance or flue under this paragraph, or, in respect of an appliance or flue that is removed from the premises, for a period of 2 years from the date of the last check of that appliance or flue, which record shall include the following information –

- (i) the date on which the appliance or flue was last checked;
- (ii) the address of the premises at which the appliance or flue is installed;
- (iii) the name and address of the landlord of the premises (or, where appropriate, his agent) at which the appliance or flue is installed;

...

- 21. It is the record of inspection referred to in regulation 36(3)(c) GS Regs which is commonly known as a gas safety record.
- 22. Regulation 36(5) GS Regs provides that this gas safety record, or a copy of it, will be made available for inspection by any person in lawful occupation of relevant premises who may be affected by the use or operation of any appliance to which the record relates on request on reasonable notice.
- 23. Regulation 36(6) GS Regs provides:
 - (6) Notwithstanding paragraph (5) above, every landlord shall ensure that –
 - (a) a copy of the record made pursuant to the requirements of paragraph 3(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and
 - (b) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises.
- 24. The Court of Appeal in *Trecarrell House Ltd v Rouncefield* [2020] EWCA Civ 760 summarised the legislative purpose of 36(6) (and 36(7) GS Regs, which relates to display of gas safety records at relevant premises, and is not relevant to the facts of this case), and their interplay with s.21 and s.21A HA 1988 and the AST Regs, in the following terms at [6] and [7]:

6. Paragraphs (6) and (7) of regulation 36 are clearly intended to ensure that a prospective tenant either receives or has access to a copy of the last record of inspection before taking up occupation and that each existing tenant is either furnished with or can see and obtain records of subsequent inspections carried out during the subsistence of his or her tenancy. The frequency of these inspections is prescribed by regulation 36(3) and, if adhered to, will mean that the installations are checked for safety every 12 months beginning no more than 12 months from the installation of the

equipment. But regulation 36(3) is not itself a prescribed requirement, although non-compliance is punishable as a criminal offence.

7. The provisions of s.21A and the 2015 Regulations place additional pressure upon and provide encouragement for landlords to comply with the regulation 36 code of inspection by removing from the landlord his ability to terminate the tenancy using a s.21(1) notice and the accelerated procedure devised to accommodate it. The consequence is that so long as s.21A continues to apply the landlord will be restricted to relying on one of the statutory grounds for possession as if the tenancy were an assured tenancy to which s.7 HA 1988 applies.

25. The proper construction of this statutory framework is the substance of this appeal and so I will deal with it below. However the Respondents rely on the Supreme Court's guidance to legislative interpretation contained in *Rittson-Thomas and others v Oxfordshire County Council* [2022] AC 129 at [33] of the joint judgment of Lord Burrows and Lady Arden, with whom the other members of the court agreed. Lord Burrows and Lady Arden referred to "*the now well-settled view that the courts should adopt a purposive approach to statutory interpretation where possible.*" They went on to cite, at the end of [33], Lord Bingham of Cornhill's words at [8] of *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687:

"The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

26. They further commented, at [34] of *Rittson-Thomas*, that "...as the quotation from Lord Bingham makes clear, the courts should avoid interpreting statutory provisions in isolation from other relevant provisions. The context includes the statute taken as a whole. Reading an Act as a whole may reveal that a proposition in one part of the act sheds light on the meaning of provisions elsewhere in the Act. ..."
27. The question of statutory construction for this appeal is whether the Court should consider that Parliament's intention was:
- i. to ensure that if there was not strict compliance with the requirements of regulation 36(3)(c)(iii) GS Regs in relation to a pre-occupation gas safety

record, the tenancy would never be terminable using s21(1) HA 1988 and the accelerated procedure, such that it would take effect as an assured tenancy and the landlord would always have to make out a ground under s7 and schedule 2 HA 1988 (as is the Appellants' case); or

- ii. that any non-compliance under regulation 36(3)(c) GS Regs in relation to a pre-occupation gas safety record could be cured by the provision of post-occupation gas safety records which comply with regulation 36(6)(a) GS Regs, such that the embargo on service of a s21 notice imposed by s.21A and s.21B(3) HA 1988 would be lifted (as the judge at first instance held, and as is the Respondents' case).

Authorities relied upon

- 28. The Appellants rely on the Court of Appeal decision in *Trecarrell*; a county court decision of Her Honour Judge Bloom in *Byrne v Harwood Delgado* (the County Court at Luton, 21 June 2022); and the decision of a deputy district judge sitting at the County Court in Manchester in *Blagg v Gharbi* (DDJ Williams, 11 May 2023).

Trecarrell

- 29. The facts of *Trecarrell* were that a flat was let under an assured shorthold tenancy agreement to Ms Rouncefield on 20 February 2017. The landlord had carried out a gas safety check on 31 January 2017. When she entered into occupation, she had not been provided with a copy of the relevant gas safety record relating to that pre-tenancy inspection, nor was it displayed in the premises. She was not provided with a copy until 9 November 2017. The landlord then provided Ms Rouncefield in mid-April 2018 with a new gas safety record which stated on its face that it was a record of a gas safety check carried out on 3 April 2018, and thus it appeared that there had been a period of over 14 months between gas safety checks, rather than the 12 months specified by regulation 36(3)(a) GS Regs.
- 30. In fact, the landlord said, that gas safety record was issued in error, and the gas safety check had been carried out not on 3 April 2018 but on 2 February 2018.

Even if so, that was still more than 12 months between inspections, and there was a dispute about whether that had been provided to Ms Rouncefield before the landlord served a s.21 notice on 1 May 2018. The landlord commenced possession proceedings under the accelerated procedure.

31. Ms Rouncefield defended the claim on the basis of complaints about the first, pre-occupancy gas safety record, and not the later gas safety record. She argued that the landlord had failed to comply with regulations 36(6)(b) or 36(7) GS Regs at the time when it granted the tenancy and before she began to occupy the flat.
32. At first instance, the district judge gave possession, finding, *inter alia*, that late provision of the gas safety record relating to the pre-occupancy check was not a bar to compliance. Ms Rouncefield appealed, and the circuit judge held that late compliance in relation to regulation 36(6)(b) and 36(7) GS Regs prevented the claimant from relying on a s.21 notice, finding that notwithstanding the wording of regulation 2(2) AST Regs, the requirement in regulation 36(6)(b) GS Regs for the gas safety record to be provided to the tenant prior to be taking up occupation should be strictly applied, and that later provision (or display) of the pre-occupancy gas safety record is insufficient to free the landlord from the embargo on the service of a s.21 notice imposed by s.21A HA 1988.
33. The landlord appealed to the Court of Appeal. Ms Rouncefield served a Respondent's Notice seeking to uphold the circuit judge's decision on additional grounds, namely that the landlord took more than the 12 months permitted by regulation 36(3)(a) GS Regs between inspections, and so was in breach of this regulation at the time of the service of the s.21 notice. She was also permitted to argue that the February 2018 gas safety record was not provided to her before service of the s.21 notice so that a breach of regulation 36(6)(a) GS Regs continued unremedied until after that date.
34. The Court of Appeal held (Patten LJ and King LJ, with Moylan LJ dissenting) that the late service of a pre-occupancy gas safety record did not prevent service of a s.21 notice. The following principles can be extracted from *Trecarrell*, in which King LJ concurred with Patten LJ's analysis entirely at [39]:

- i. The effect of regulation 2(1)(b) AST Regs is to make the whole of regulations 36(6) and 36(7) GS Regs prescribed requirements for the purposes of s.21A HA 1988 (Patten LJ at [18]);
- ii. Regulation 2(2) AST Regs does not exclude regulation 36(6)(b) GS Regs in its entirety as a prescribed requirement for the purposes of s.21A (Patten LJ at [18] and [19] endorsing the view of HHJ Luba KC in *Caridon Property Limited v Shooltz* (2 February 2018, 2018 WL 05822845), Moylan LJ agreeing at [56]) because:
 - a) Such a construction “*makes no obvious sense*” in terms of the policy behind regulation 2(2), as it is difficult to see any reason why Parliament should have chosen to require compliance with regulation 36(6)(a) GS Regs for existing tenants, but to have deliberately excluded the equivalent protection for new tenants provided for by regulation 36(6)(b) GS Regs; and
 - b) It is “*an unlikely way of drafting the regulation if the intention was to include only [regulation 36](6)(a) in a modified form*”. Parliament could have “*identified only [regulation 36](6)(a) and (7) rather than to have included the whole of both paragraphs and left the somewhat cryptic provisions of regulation 2(2) [AST Regs] to be read as excluding [regulation 36](6)(b) in its entirety.*”
- iii. Regulation 2(2) AST Regs qualifies regulation 2(1)(b) AST Regs, as it clearly excludes the 28-day period for compliance mandated by regulation 36(6)(a) GS Regs from the prescribed requirement (Patten LJ at [18], Moylan LJ agreeing in his dissenting judgment at [56]).
- iv. Regulation 2(2) AST Regs arguably also excludes the (temporal) requirement in regulation 36(6)(b) GS Regs that a new tenant should be supplied with a copy of the current gas safety record prior to taking up occupation (Patten LJ at [19]);

- v. When Regulation 2(2) AST Regs says that the prescribed requirement is “*limited to the requirement on a landlord to give a copy of the relevant record to the tenant*” it is referring to that obligation as it appears both in regulation 36(6)(a) and regulation 36(6)(b) GS Regs, but to that obligation alone (Patten LJ at [19]). That interpretation is supported by the fact that:
- a) s.21A HA 1988 is not the primary sanction for non-compliance, as breach of the GS Regs attracts criminal sanctions under s.33 Health and Safety at Work etc. Act 1974, (Patten LJ at [24], see also King LJ at [43(ii)]); and
 - b) the imposition by s.21A HA 1988 of a bar to the service of a s.21 notice is “*only collateral to these sanctions and, at best a spur to compliance*” and “*has... to be read and interpreted in that context*”. The clear exclusion of the 28-day requirement from regulation 36(6)(a) GS Regs confirms that Parliament did not intend regulations 36(6) and 36(7) GS Regs as prescribed requirements to be applied with the same vigour as the regulations themselves (Patten LJ at [24]);
- vi. It follows as a result of regulation 2(2) AST Regs, that the time when the landlord “*is in breach*” of regulation 36(6)(b) GS Regs ends, for the purposes of s.21A, once the gas safety record is provided. Accordingly:
- a) late compliance with the landlord’s obligation to provide or display a gas safety record after each gas safety check is not, therefore, a bar in itself to a subsequent s.21 notice (Patten LJ at [18]); and
 - b) a failure to carry out the next safety check within 12 months of the last one does not mean that the landlord cannot comply with regulation 36(6)(a) GS Regs as a prescribed requirement if he serves the tenant with a copy of the record once the check has been carried out (Patten LJ at [35]);

- vii. The obligation imposed on the landlord under regulation 36(6)(a) GS Regs is to give the existing tenants a copy of a gas safety record which contains all the information specified in regulation 36(3)(c) GS Regs and a gas safety record which does not do so cannot be relied upon by a landlord as evidence of compliance with regulation 36(6)(a) GS Regs as a prescribed requirement (Patten LJ at [36]).
35. The ultimate question of whether the appeal should be allowed in *Trecarrell*, therefore, depended on whether the February 2018 gas safety record had been given to Ms Rouncefield *before or with* service of the s.21 notice. If so, the appeal would be allowed. If she received it *after* service of the s.21 notice, the appeal would be dismissed for that reason alone. This was a question of fact which the Court of Appeal was not in a position to determine and it so it remitted that question back to the county court to determine when she had received it (Patten LJ at [37]).

Byrne v Harwood Delgado

36. In *Byrne v Harwood Delgado*, which does not bind me but is persuasive, there was a dispute as to whether the landlord had carried out a pre-occupation gas safety check at all, and served the gas safety record to the new tenant before she the property in August 2019. The landlord said he had, the tenant said he had not. However, it was common ground that compliant gas safety records from checks carried out in September 2019 and in October 2020 had been provided to the tenant. At first instance the judge had held that the landlord had met the prescribed requirement under regulation 36(6)(a) GS Regs by providing the most recent, October 2020 gas safety record to the tenant prior to service of the section 21 notice in November 2020, and so could rely on that s.21 notice. The issue identified by HHJ Bloom for the appeal was whether a failure to obtain a pre-occupation gas safety check at all before the tenant took up occupation was fatal to the use of s.21 HA 1988. HHJ Bloom held that if no pre-occupation check had been carried out and no pre-occupation gas safety record served on the tenant, the landlord was in breach of the prescribed requirement under regulation 36(6)(b) GS Regs and cannot serve a s.21 notice. She relied upon the

statement of the Court of Appeal in *Trecarrell* at [44] that “*there will be a valid GSR in existence before the tenancy commences*” to distinguish the potential factual matrix in *Byrne* (i.e. if no pre-tenancy gas safety check had been carried out at all) from that in *Trecarrell* (where a pre-tenancy gas safety check had been carried out within 12 months of the tenancy starting, but the gas safety record relating to that check had been provided only a number of months after the tenancy had begun). She overturned the decision at first instance and remitted the matter for a factual finding to be made on whether a compliant pre-occupation GSR had been provided to the tenant.

Blagg v Gharbi

37. This is a first instance judgment of Deputy District Judge D R Williams sitting in Manchester, in which the landlord let a property to a tenant in December 2016, and served a section 21 notice on 18 May 2022 relying on the most recent gas safety record of November 2021. That record did not include upon it the name and address of the landlord. The landlord’s position was that a pre-occupation gas safety check and annual checks thereafter were made, and gas safety records provided to the tenants, but he was only able to locate copies of those from 2021, 2019 and 2018. He could not locate the pre-occupancy gas safety record from October 2016, nor those relating to checks carried out in 2017 and 2020. The tenant’s evidence was contradictory, but she appeared to accept that checks were done every year of the tenancy, but says she did not receive the pre-occupancy gas safety record nor those of 2017 and 2020.
38. The deputy district judge in a careful judgment held that the section 21 notice was served at a time when the landlord was in breach of a prescribed requirement pursuant to regulation 36(6)(a) as it did not contain the name and address of the landlord as required by regulation 36(3)(c). He also made *obiter* findings in relation to alternative arguments, finding that the landlord had not satisfied him on the balance of probabilities that the missing gas safety records, including the pre-occupation gas safety record, had been served on the tenant. I mean no disrespect to the judge when I say that his *obiter* findings do not assist

me, being both not binding and distinguishable from this case on the very different facts.

Ratio of the Judge at First Instance

39. In relation to the decision the subject of this appeal, the judge at first instance gave an *ex tempore* judgment and sat into lunch in order to do so, so appeared to be under some pressure of time, with further matters listed before him at 2pm. Despite that pressure, the judgment is well structured, careful and comprehensive. The judge first dealt with issues relating to a tenancy deposit, his findings in relation to which have not been appealed. He then moved on to the issues arising with the gas safety records. He set out the key parts of the AST Regs and GST Regs and moved onto considering the authorities put before him, which were *Trecarrell*, *Byrne v Harwood-Delgado* (which he described as not binding on him, and which he distinguished on the facts) and *Blagg* (which he described as not binding on him, but helpful in the way DDJ Williams dealt with the arguments). He noted at paragraph 23 of the transcript that he had arrived at the same conclusion in relation to [6] of *Trecarrell*, as had DDJ Williams in *Blagg*, “...namely that in stating regulation 36(3) was not itself a prescribed requirement, the Court of Appeal was not there determining the issue of whether compliance with a prescribed requirement in fact required compliance with regulation 36(3).”.

40. The following sections of his judgment I set out in full, with references in square brackets amended by me for consistency:

“[26] The claimants raise a number of objections to the conclusion that there must be compliance with [regulation 36](3). They invite me to conclude that there is a difference between [regulation 36](6)(a) and [regulation 36](6)(b) because of the explicit reference to a record made pursuant to the requirements of [regulation 36](3)(c) above in (a) but not in (b).

[27] I reject that argument. In my judgment, it is obvious from the reading of the regulations that reference in (b) to the last record is a reference to a record made pursuant to [regulation 36](3)(c).”

41. After setting out the parties’ competing submissions on the point, he continued:

[30] I conclude that the requirements in [regulation] 36(3)(c) are incorporated into both [regulations 36](6)(a) and (b). I am influenced, in particular, by the fact that Parliament did not exclude the relevant requirements in [regulation 36](3)(c). Assuming, for the purposes of my judgment, that safety is the critical consideration for the purpose of interpretation, I believe this would require compliance with all of the requirements. I believe the regulations are to do with safety in the sense that I can see how an identification of the name and address of the landlord, or if appropriate his agent, could be in the interests of promoting safety. In my judgment it is right that the tenant should know who commissioned the gas safety certificate as part of the paper trail. I see no particular reason to conclude that ought to be treated differently from [regulation 36](1).

[31] In my judgment it is incumbent upon a landlord, whether or not they are dealing with the obligation to provide a gas safety record at the outset before the renewal of the tenancy or within the current tenancy to comply with the obligation to provide the name and address of the landlord of the premises.

42. At paragraphs 32 and 34 of the transcript the judge found that on the 1st GSR:
- i. the nickname of one landlord had been given, which he said “...*could, perhaps be regarded as trivial and the law is not concerned with trivialities... but the landlord’s address is not identified and although I accept the observation by Mr Sharpe that the landlord’s address would have been known to the tenants...*” - I pause to note this is because it was on the tenancy agreement - “... *I consider that there is a breach in the [1st GSR] because the name and address of the landlord was not given.*”; and
 - ii. the naming of one and not both landlords was not something which put the 1st GSR in breach of the regulations, as it was acceptable for an agent’s name to be given, and one landlord in a joint tenancy may act for both.
43. The judge was satisfied there were no other breaches in relation to the 1st GSR, but also that there was also no remedial action taken in relation to it. He continued:

[35] I have reached the point where I have concluded there is a breach of regulations in relation to the first gas safety record but not the latter

records. The issue for me, accordingly, is whether later gas safety records can cure the earlier breach.

44. The judge then turned to the case of *Byrne*, noting that HHJ Bloom's view was that in circumstances where no pre-tenancy gas safety inspection had been carried out prior to the tenancy, later provision of subsequent, post-tenancy gas safety records could not cure that position and so the accelerated possession procedure was not available. He quoted from HHJ Bloom's reasoning at [40] and [44] of her judgment, and then turned to *Trecarrell*, citing at paragraph 38 of the transcript Patten LJ's words at [30] of *Trecarrell*. He continued:

[39] It seems to me that neither *Trecarrell House* nor *Byrne* are directly on point with regard to this claim. That is because in *Byrne* no gas safety record had been provided to the tenant at all. In *Trecarrell House*, there was a gas safety record but it was provided late. Here, the position is, in some ways, to be regarded as in the middle in that there was a gas safety record which I have concluded is not fully compliant with the regulations but in a way which I consider at the minor end of the scale of breaches.

[40] I respectfully differ in my view, if I need, to from the analysis of HHJ Bloom, which is not binding upon me. In my judgment, parliament would not have intended that a failure to provide a gas safety certificate that complied in all respects meant that the landlord was forever unable to take possession of the property under the accelerated possession procedure. I respectfully agree with the observation of the Court of Appeal, which I have just referred to, that the time when the landlord is in breach ends for the purposes of section 21A is when a valid gas safety record is provided. I, of course, am aware that the Court of Appeal in *Trecarrell House* was considering a regulation where there had been a disapplication of the 28-day period, although it seems to me that the reasoning is, nonetheless, persuasive in the situation here.

[41] In my judgment, the material time for provision of a valid gas safety certificate is when the section 21 notice is served. I am satisfied that a valid gas safety certificate was served by time of the section 21 notice. Even though there was a minor breach in relation to the pre-tenancy gas safety record, I am satisfied that the accelerated possession procedure is available to the claimants. Therefore, they are entitled to an order for possession."

E. Submissions

Ground 1 – the judge at first instance erred in holding that the Claimants were not in breach of the prescribed requirements relating to gas safety under regulation 2 of the AST Regs.

Ground 2 – The judge at first instance erred in holding that the Respondent’s failure to provide a pre-tenancy gas safety record under regulation 36(6)(b) which gave the information required under regulation 36(3)(c) could be cured by the provision of later gas safety records given to the tenant pursuant to the prescribed requirements under regulation 36(6)(a) which did give the information required under regulation 36(3)(c), at [35], [39] and [40] of the transcript (as set out above).

Appellants’ submissions

45. The Appellants submit that in circumstances where the judge below:

- i. held that in order to comply with the requirements prescribed under regulation 36(6)(a) and regulation 36(6)(b) of the GS Regs, a gas safety record given to the tenant must contain all the information set out in regulation 36(3)(c) of the GS Regs;
- ii. found that the 1st GSR, which pre-dated the tenancy, was non-compliant with regulation 36(3)(c) GS Regs as it failed to give the landlord’s address; and
- iii. found that there was therefore a breach of the GS Regs in relation to the 1st GSR;

the judge was wrong not to find that the Respondents were in breach of the prescribed requirement under regulation 36(6)(b) GS Regs at the date of service of the s.21 Notice, such that they were precluded under s.21A HA 1988 from relying on the s.21 Notice to obtain possession.

46. Alternatively, they submit that the judge’s conclusion that the Respondents were not in breach of the prescribed requirement under regulation 36(6)(b) GS Regs was irrational in light of his earlier findings as set out in the paragraph above.

47. The Appellants argue that it is clear from Patten LJ's judgment in *Treacarrell* at [36] that a gas safety record relied upon by a landlord to demonstrate compliance with the prescribed requirement under regulation 36(6)(a) GS Regs must contain "*all the information specified in [regulation 36](3)(c)*", and not just some of it. They submit that this reasoning must apply equally to a gas safety record relied upon to demonstrate compliance with regulation 36(6)(b) GS Regs, such as the 1st GSR, as DDJ Hunter accepted at first instance in this case, holding at [26] and [27] of the transcript of judgment that it was "*obvious*" on a plain reading of regulation 36 that the reference to "*last record*" in regulation 36(6)(b) GS Regs was a record made pursuant to the requirements in regulation 36(3)(c) GS Regs. The Appellants submit that given the judge's factual finding that the pre-tenancy 1st GSR did not contain all the information contained in regulation 36(3)(c) as it omitted the landlord's address, and his finding that this had not been remedied, this should have driven him to the conclusion that there was a breach of the prescribed requirements under regulation 36(6)(b) at the date of service of the s.21 Notice, such that the Respondents were precluded from obtaining possession under s.21A. They submit that the judge misdirected himself in law and/or reached a *Wednesbury* irrational decision in finding otherwise.
48. The Appellants note the judge's conclusion that there was a breach of regulations in relation to the 1st GSR, but not the 2nd GSR or 3rd GSR which were compliant, and submit that given those findings, the only conclusion open to him was that there was a breach of the prescribed requirement under regulation 36(6)(b) GS Regs such that, by operation of regulation 2(2) AST Regs, the landlords were precluded under s.21A from obtaining possession.
49. The Appellants submit that the judge's reasoning, when tracked through paragraphs 35, 39 and 40 of the transcript of judgment, is difficult to follow and wrongly blurs the distinction between regulations 36(6)(a) and (b), when in their submission that distinction is clear and was recognised by Patten LJ at [19] of *Treacarrell* when he rejected an argument that Parliament would have chosen to require compliance with regulation 36(6)(a) but to have deliberately excluded as a prescribed requirement "*the equivalent protection for new tenants*" under

regulation 36(6)(b) GS Regs. The Appellants describe that “*blurring*” or “*elision*” of regulations 36(6)(a) and 36(6)(b) GS Regs as amounting to an error of law. They submit that the judge’s approach in this case:

- i. reduces the prescribed requirement under regulation 36(6)(b) GS Regs to a dead letter, as on his approach there is no prescribed requirement in relation to new tenants; and
- ii. is inconsistent with the binding precedent of *Trecarrell*.

50. The Appellants submit that the decision of HHJ Bloom at [26] of *Byrne*, that the only logical meaning of the prescribed requirement under regulation 36(6)(b) GS Regs is that the gas safety record must be the last one before the tenant moved into occupation, is persuasive and chimes with the natural construction of the wording of regulation 2(2) of the AST Regs and regulation 36(6).

Respondents’ submissions

51. The Respondents submit that the judge at [40] was, entirely properly and in line with established legal principles, looking to Parliament’s purpose when interpreting the legislation, and in the context of s.21A and the AST Regs. He was not, they submit, approaching the GS Regs with a literalist view, as the Appellants are seeking to do. They submit that to succeed on this ground the Appellants must satisfy the court either that the judge was wrong to adopt a purposive approach to construction of the legislation (and the Respondents rely on *Rittson-Thomas* at page 132 at D-H as authority for this being an unsupportable proposition), or that he wrongly identified Parliament’s intention.
52. The Respondents submit that the factual scenario before the judge was different to that of both *Byrne* and *Trecarrell*, as the judge himself clearly identified at the start of [39] of his transcript of judgment. Accordingly he was faced with what appeared to be a novel situation, where a pre-tenancy gas safety inspection had been carried out, but the gas safety record did not contain all of the information required, and which had been followed by two subsequent, valid and complete gas safety records. However, the judge took counsel from Patten

LJ's decision in *Trecarrell*, stating at [38] of his judgment that had regard "*in particular*" to [30] of *Trecarrell*. This stated:

"Although the point is not straightforward, I am not therefore persuaded that for the purposes of section 21A the obligation to provide the GSR to a new tenant prior to the tenant taking up occupation cannot be complied with by late delivery of the GSR. Late delivery of the document does provide the tenant with the information he needs. If a breach has the consequence for which [the tenant's counsel] contends then that must apply in every case of late delivery even if the delay is only minimal. This seems to me an unlikely result for Parliament to have intended particularly in light of the express rejection of the 28-day deadline under paragraph 6(a). Many ASTs are granted for fixed periods of one year or less so that in practice the landlord's inability to rely upon section 21 will provide a strong incentive for the timely compliance with paragraph (6)(b). As a matter of construction, I therefore prefer the view that as a result of regulation 2(2) the time when the landlord "*is in breach*" of paragraph 6(b) ends for the purposes of section 21A once the GSR is provided." (emphasis in the original)

53. The Respondents submit that he was right to do so, and to find, in that context, as he did at [40] of the transcript of his judgment, that Parliament would not have intended that a failure to provide a gas safety certificate that complied in all respects meant that the landlord was forever unable to take possession of the property under the accelerated possession procedure, and that the minor breach (as he characterised it in [41] of the transcript of his judgment) in the 1st GSR did not prevent the accelerated possession procedure being available to the respondents because there had been later, compliant GSRs provided pursuant to regulation 36(6)(a).
54. The Respondents submit that for the purposes of the AST Regs, per Patten LJ the obligation on the landlord is only to provide the tenant with a (singular) relevant gas safety record, being the gas safety record "*relevant to the tenant at the time the s21 notice is served*". They point to:
- i. regulation 2(1)(b) AST Regs which summarises that the requirement under regulation 36(6) and (7) GS Regs is "*...(requirement to provide tenant with **a gas safety certificate**)*" (my emphasis), being a singular certificate, not plural certificates;

- ii. regulation 2(2) AST which provides that “*For the purposes of s21A of the Act, the requirement prescribed by paragraph (1)(b) is **limited to the requirement on a landlord to give a copy of the relevant record to the tenant** and the 28 day period for compliance with that requirement does not apply*” (my emphasis), again with reference to a singular ‘relevant record’; and
 - iii. regulation 36(7) GS Regs which refers to ensuring that a copy of “**the record** referred to in paragraph (6) above” (my emphasis) is provided to the tenant, not ‘the records’ i.e. not all gas safety records served at any time pursuant to 36(6)(a) and 36(6)(b), or even both the record pursuant to 36(6)(b) and the last record pursuant to 36(6)(a)).
55. Alternatively, they argue that the statutory obligation on the landlord to retain a gas safety record from a particular inspection is only to retain it “*until there have been two further checks*” (regulation 36(3)(6) GS Regs) and the obligation to make a gas safety record available for inspection in regulation 36(3)(5) GS Regs is also limited to two further checks. They ask why would Parliament have made that provision, if the effect of failure to serve a fully compliant gas safety record pursuant to regulation 36(3)(b) has the effect of barring the landlords from obtaining possession through the accelerated procedure for the remainder of the tenancy? The Respondent submits that the Appellants’ construction does not make sense when read across the GS Regs and AST Regs as a whole.
56. The Respondents further submit that the judge’s identification of the failure to provide the landlord’s address on the 1st GSR as a “*minor breach*”, and his finding in [41], accords with Patten LJ’s view at [30] of *Trecarrell* that Parliament was “*unlikely to have intended*” that a landlord would forever lose the right to use the s21 procedure where a delay is “*only minimal*”. After two further inspections and two further gas safety records before the s.21 notice was served, the tenants knew by that time that the Property had been properly inspected for gas safety purposes by their landlord. The Respondents submit that the address of the landlord some six months prior to the tenancy, in 2021, is of little or no use to the tenants in late 2023 when the s.21 notice was served.

57. The Respondents submit that the court must consider why Parliament would have intended that an error by the gas engineer (and not the landlord himself) in noting the address of the landlord on a pre-occupancy gas safety record should have the drastic and draconian consequence that the tenant acquires a secured tenancy, when both: (a) a failure by the landlord to serve an otherwise compliant pre-occupancy gas safety record for many years; or (b) a failure by the landlord (after obtaining a compliant pre-tenancy gas safety record) to carry out any gas inspections at all for many years during the tenancy; would not.

F. Discussion and Determination

58. I agree with the Appellants that, as DDJ Hunter found, it is part of the prescribed requirements under regulation 36(6)(b) GS Regs that a pre-tenancy gas safety record must contain all the information in regulation 36(3)(c), which is a detailed and specific list of information which must be set out in that record, as:
- i. it is required as a matter of statutory construction,
 - ii. it is supported by the fact that there is no express exclusion. If Parliament had intended to exclude compliance with the information required by 36(3)(c) to be in a pre-tenancy GSR, it would also have done so; and
 - iii. it is supported by the authority of *Treacarrell*.
59. My reasoning is as follows. Regulation 36(6)(a) GS Regs is a prescribed requirement, and it provides that a copy of the record “*made pursuant to the requirements of paragraph 3(c)*” must be given to each existing tenant. That must be, as Patten LJ in *Treacarrell* notes at [36], a record which contains all the information specified in regulation 36(3)(c) GS Regs. If Parliament had intended that only breaches of regulation 36(3)(c)(i) and (ii) would operate as a bar to service of a section 21 notice, it could have excluded them in regulation 2(2) AST Regs (as it did the 28 day period for compliance contained in regulation 36(6)(a)), but it did not. Parliament gave all three of those requirements in regulation 36(3)(c) equal importance and required all three to be present to meet the prescribed requirement of regulation 36(6)(a).

60. Regulation 36(6)(b) GS Regs is also a prescribed requirement. Although it does not repeat the wording of regulation 36(6)(a) exactly, and so does not refer to “*a copy of the record made pursuant to the requirements of paragraph 3(c) above*”, using instead the wording “*a copy of the last record made in respect of each appliance or flue*”, that must be read in context, the context being the explanation of what a record is in regulation 36(6)(a) immediately above it, and also the context of regulation 36(3)(c) which is the obligation to make “*a record in respect of any appliance so checked*”, which in turn refers to regulation 36(3)(b), being the obligation on the landlord to ensure that each appliance and flue to which the duty extends “*has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or lease has been installed, whichever is later*”. Accordingly, as a matter of statutory construction, and as DDJ Hunter also found, I am satisfied that Parliament intended that the reference to “*last record*” in regulation 36(6)(b) GS Regs should be read as a reference to a copy of the last record “*made pursuant to the requirements of paragraph 3(c) above*”, in the same way as is made explicit in regulation 36(6)(a).
61. I also agree with the Appellants that although *Trecarrell* was dealing with a regulation 36(6)(a) gas safety record when it held that because the record in that case gave the wrong date for the safety check it cannot be relied on as evidence of compliance with regulation 36(6)(a) as a prescribed requirement, this can without strain be extrapolated as applying equally to 36(6)(b) pre-tenancy gas safety records which, as DDJ Hunter found and I agree, must also comply with the requirements of regulation 36(3)(c). Accordingly, I am satisfied that if a pre-occupation gas safety record under regulation 36(6)(b) does not contain all the information required by 36(3)(c), it cannot be relied on as evidence of compliance with regulation 36(6)(b) as a prescribed requirement. This is because, as stated at [18] of *Trecarrell*, “*The effect of regulation 2(1)(b) [AST Regs] is to make the **whole** of paras 6 and 7 prescribed requirements for the purposes of section 21A HA 1988.*” (my emphasis).
62. It follows that I agree with DDJ Hunter that the failure of the 1st GSR to specify an address for the Landlord is a breach of regulation 36(3)(c) and so it cannot

be relied on as evidence of compliance with regulation 36(6)(b) as a prescribed requirement.

63. That is not to say that such a breach could not be remedied. As *Trecarrell* makes clear, late service of a pre-occupancy gas safety record does not prevent service of a s.21 notice, and as a result of regulation 2(2) AST Regs, the time when the landlord “*is in breach*” of regulation 36(6)(b) GS Regs ends, for the purposes of s.21A, once a compliant gas safety record is provided. That would enable a late-provided pre-occupancy gas safety record to evidence compliance with regulation 36(6)(b) as a prescribed requirement. In this case, however, the 1st GSR has not been rectified.
64. In a way, the question before me is what is or are the prescribed requirements which the Respondent landlords were required to meet when the s.21 notice was served? Is the Respondents’ failure to rectify the 1st GSR fatal to the service of the s.21 notice because it is a breach of regulation 36(6)(b) as a prescribed requirement, or is the provision by them of the 2nd GSR and 3rd GSR, evidencing compliance with regulation 36(6)(a) as a prescribed requirement, sufficient to end the breach for the purposes of s.21A and lift the bar on service of a s.21 notice?
65. In my judgment, a proper construction of the statutory scheme leads me to conclude that the latter is correct, and so the appeal must be dismissed, for the following reasons:
- i. Pursuant to the statutory scheme, a landlord is obliged only to retain a gas safety record (regulation 36(3)(6)) and make it available for inspection by the tenants (regulation 36(3)(5)) “*until there have been two further checks*”, such that it appears that Parliament did not intend that a landlord be required to evidence a gas safety record at all, once two further checks had been made;
 - ii. Although Parliament had chosen to require landlords to comply with regulation 36(6)(a) GS Regs for existing tenants and regulation 36(6)(b) GS Regs for new tenants, by Regulation 2(1)(b) making the whole of regulations 36(6) and 36(7) GS Regs prescribed requirements for the

purposes of s.21A HA 1988, it also provided by Regulation 2(2) AST Regs that the prescribed requirement (for both regulation 36(6)(a) and 36(6)(b) GS Regs, see *Trecarrell* at [19]) was “*limited to the requirement on a landlord to give a copy of the relevant record to the tenant*” and to that obligation alone;

- iii. It is difficult to see any reason why Parliament would have intended “*the relevant record*” to encompass records which it had provided by statute the landlord was no longer obliged either to retain or make available for inspection once it had carried out two further checks;
- iv. This is particularly so given the Court of Appeal’s findings in *Trecarrell* that:
 - a) the imposition by s.21A HA 1988 of a bar to the service of a s.21 notice is not the primary sanction for non-compliance;
 - b) is “*only collateral to [the criminal] sanctions [under s.33 Health and Safety at Work etc. Act 1974] and, at best a spur to compliance*”; and
 - c) “*has to be read in that context*”.

There appears to be little point in spurring the landlord retrospectively to comply with regulation 36(3)(c) GS Regs by provision of information which, once two later checks have been carried out, can only be merely historic.

- v. In my judgment, a construction which interprets the statutory scheme as continuing to impose a bar to the service of a s.21 notice for a landlord’s failure to provide a compliant regulation 36(6)(b) pre-occupancy gas safety record after two (or five, or 10 in the case of a long-lasting tenancy) later annual gas safety checks have been carried out makes no obvious sense in terms of the policy of the scheme, and appears to be unworkable in light of the explicit provisions made by parliament relating to retention of gas safety records as I have just set out above.

- vi. I also accept the Respondent's submissions that such a construction would lead to absurd results. For example, what of the landlord of a property let on an assured shorthold tenancy who provides a compliant regulation 36(6)(b) pre-occupancy gas safety record when a new tenant occupies, and properly carries out further gas safety checks and provides updated regulation 36(6)(a) gas safety records every 12 months of the tenancy thereafter for the following 4 years before then serving a s.21 notice, albeit he only retains the last two gas safety records as Parliament stated was the limit of his obligation to do so in regulation 36(3)(6)? On the Appellant's interpretation of the scheme, unless the tenant accepted that all gas safety records had properly been given to him or displayed in the property, the tenancy would be treated as a secure tenancy and the landlord forever precluded from serving a s.21 notice simply because he could not evidence any but the last two gas safety records, even though Parliament had explicitly provided that he did not need to retain them or make them available for inspection once a further two checks had been carried out. This is very close to the facts in *Blagg*, and the evidential difficulties in that case were ultimately fatal to the landlord's claim. As *Trecarrell* notes at [28], the explanatory notes relating to what became section 21A HA 1988 state that "*the landlord is prevented from giving a section 21 notice until the landlord has complied with the relevant legal obligations*". Parliament did not state that a landlord who has complied with all legal obligations should be prevented from giving a s.21 notice where it cannot evidence that it has complied because it relied on a separate provision put in place by Parliament which expressly stated that he did not have to retain evidence of such compliance once two further checks had been undertaken. It seems to me that the "*relevant legal obligations*" are provision of the "*relevant records*" which enable it to evidence compliance with the relevant prescribed requirement.
66. The Appellants submit that although a breach of regulation 36(6)(a) can be remedied, a breach of 36(6)(b) cannot. When asked why Parliament would have made such a distinction, counsel replied that perhaps not much thought had been given to it, but that is the effect of the statutory scheme. I do not accept that

submission, and it seems to me that, as the Respondents submit, *Trecarrell* is authority for the fact that a breach of both regulations 36(6)(a) and (b) can be remedied by the late provision of gas safety records which comply with regulation 36(3)(c) GS Regs.

67. In my judgment, it seems to me that, properly construed, Parliament intended compliance with the prescribed requirements allowing a s.21 notice to be served to be compliance with the prescribed requirements in relation to, at most, the two most recent checks before service of the s.21 notice, as those are the only gas safety records it required to be retained by the landlord and made available for inspection. Whether that involves the prescribed requirements under regulation 36(6)(a) and/or regulation 36(6)(b) depends on the facts at the time of service of the s.21 notice. For example (there are of course other potential iterations, depending on when the various required checks have been carried out):
- i. If the s.21 notice is served in the first year of a new tenancy then there will be a need for the landlord to evidence compliance with the prescribed requirement under regulation 36(6)(b) by producing a pre-occupancy gas safety record which is fully compliant with regulation 36(3)(c) and which has been given to the tenant or displayed in the property, whether or not that gas safety record was provided or displayed on time or late. The prescribed requirement will be under regulation 36(6)(b) only;
 - ii. If the s.21 notice is served in the first year of a new tenancy, if 12 months has passed since the pre-occupancy gas safety check, there may **also** be a need for the landlord to evidence compliance with the prescribed requirement under regulation 36(6)(a) by carrying out a fresh check and producing a new gas safety record which is fully compliant with regulation 36(3)(c) and which has been given to the tenant or displayed in the property, whether or not that was done in time or late. The prescribed requirement will be under regulation 36(6)(b) and also under regulation 36(6)(a);

- iii. If the tenancy has been running for long enough that two or more gas safety checks have been carried out since the tenant has been in occupation, the landlord must evidence compliance with the prescribed requirement under regulation 36(6)(a) **only**, by producing the two most recent gas safety records which are fully compliant with regulation 36(3)(c) and which have been given to the tenant or displayed in the property. The prescribed requirement will be under regulation 36(6)(a) only. It has no obligation to retain or provide a gas safety record after two further checks have been made and so has no obligation to produce such earlier gas safety records in order to evidence compliance with a prescribed requirement under regulation 36(6)(b).
68. In reaching this construction I have rejected the Respondents' submission that for the purposes of s.21A, the relevant record is only the last gas safety record from the last gas safety check, and so a failure to comply with regulation 36(6)(b) in relation to a pre-tenancy gas safety certificate ceases to act as a bar to service of a s.21 notice once a compliant gas safety record is provided after the tenancy has begun. I pause to note that the Respondents accept that they did not argue this in those terms before DDJ Hunter at first instance, and nor did they articulate it in the appeal skeleton. However, to deal with it briefly, I do so because, as they acknowledge in their skeleton argument, the Court of Appeal in *Trecarrell* made clear at [30] that it was a requirement in that case that both the January 2017 pre-occupation gas safety record and the February 2018 subsequent gas safety record be provided prior to service of a section 21 notice. Those were the last two notices before service of the s.21 notice in that case. Secondly, Parliament required landlords to retain and make available for inspection two gas safety records as discussed. It seems to me that without that protection a rogue landlord could fail to carry out gas safety checks at all until he had decided to serve a s.21 notice, at which point he could quickly carry one out and serve his notice. By requiring the most recent two gas safety checks, which in the usual course are carried out at 12 monthly intervals, it seems to me that Parliament has put in place a more effective "*spur to compliance*".

69. I note that HHJ Bloom's view in *Byrne* is that a total failure to carry out a gas safety check and obtain a gas safety record before a tenant enters into occupation is fatal to the use of s.21 HA 1988. To that extent, *Byrne* can be distinguished from this case on the facts, as here there is no dispute that there was a pre-tenancy gas safety check. HHJ Bloom acknowledged those two cases were different in her discussion of remediability at [40] of her judgment in *Byrne*:

“The important factor is that a [gas safety record] has been created prior to the tenancy commencing. Why should there not be a draconian sanction where there is no [gas safety record] at all prior to the tenant moving in? That is not an administrative oversight but a serious failure to comply with substantive requirements that have a criminal sanction but also exist to ensure as a matter of fact that properties are safe. I agree with Ms Sergides that, as was said in Trecarrell House, one can distinguish between the situation where the landlord has made a trivial error and failed to serve a document and the situation where the landlord has failed to obtain any safety checks for the gas installations. It is not whether the tenant knows the property is safe but whether objectively the checks have been done so that it is safe.”

70. I acknowledge that my view that once two or more gas safety checks have been completed after the tenants have entered into occupation regulation 36(6)(b) GS Regs is no longer a prescribed requirement which must be complied with in order to rely on s.21A HA 1988, the prescribed requirement being regulation 36(6)(a) and the relevant records being the last two such checks, is one which conflicts with that of HHJ Bloom. To the extent that is the case, and with the greatest respect to her, I depart from and decline to follow *Byrne* for the reasons I have given.
71. In my judgment, my construction follows the findings in *Trecarrell* that: regulation 2(2) AST Regs does not have the effect of excluding regulation 36(6) in its entirety or obviating any requirement for the landlord to comply with regulation 36(6)(b) as a prescribed requirement (in appropriate circumstances, i.e. when the timing of the s.21 notice means that a pre-tenancy gas safety record is one of the two most recent gas safety records). I reject the Appellant's submission that in construing the statutory scheme in this way I am in any way eliding or blurring the distinctions between regulation 36(6)(a) and regulation 36(6)(b) or rendering regulation 36(6)(b) a dead letter or ineffectual. I hope that

I have explained sufficiently clearly that one or other or both of these regulations are engaged depending on when the s.21 notice is served.

72. It follows that I find that DDJ Hunter was neither wrong nor irrational to hold that although the Respondents were in breach of regulation 36(6)(3) in relation to the 1st GSR, they were not in breach of the prescribed requirement at the date of service of the s.21 Notice as they had provided the 2nd GSR and 3rd GSR, and so were not precluded under s.21A HA 1988 from relying on the s.21 Notice to obtain possession. Grounds 1 and 2 fail and are dismissed.
73. Given that decision, and given that the Appellants have given up possession of the property in the meantime, and without meaning any disrespect to the quality of counsel's submissions, there appears to be no purpose to going on to consider the arguments made in respect of the Respondents' notice.
74. The general rule is that costs follow the event. I see no reason to depart from that in this case. The order which I propose to make, subject to any agreement between the parties otherwise or any further submissions they wish to make, is that the appeal is dismissed and the Appellants shall pay the costs of the Respondents to be subject to detailed assessment if not agreed.