



Assistant Coroner for Kent North-East  
Coroner Service Team,  
Cantium House,  
Sandling Road,  
Maidstone, ME14 1XD

By email ONLY to: [REDACTED]

Cc: [REDACTED]

**URGENT JUDICIAL REVIEW PRE-ACTION LETTER:  
RESPONSE REQUESTED BY 4pm on 12<sup>th</sup> May 2021**

Dear Madam

**Proposed application for judicial review on behalf of George Julian**

1. We act for Dr George Julian in relation to the decision of the Assistant Coroner for Kent North-East (“the Coroner”) to refuse her permission to attend two pre-inquest review hearings in the inquest touching upon the death of Samuel Alban-Stanley (“the inquest”) remotely. These decisions were taken on 22<sup>nd</sup> March 2021 and 4<sup>th</sup> May 2021. Both of the decisions were based on a policy applied by the Court, entitled “*Notice for Press*”, which is also challenged in these proposed proceedings. The reasons given in those decisions (and in the policy) suggest that Dr Julian will not be granted permission to attend the upcoming inquest proceedings remotely.
2. The decisions, and the policy itself, were unlawful and in breach of Article 10 of Schedule 1 to the Human Rights Act 1998. So as to address the illegality, the Coroner is respectfully invited to review the decisions and to permit Dr Julian to attend the inquest hearing, itself, remotely.
3. We would be grateful if you could please treat this letter as a pre-action letter sent in compliance with the Pre-action Protocol for Judicial Review. As the inquest is due to commence on 24 May 2021, this matter is urgent. We therefore respectfully invite the Coroner to provide a response to this letter on an expedited basis.

SENIOR CONSULTANTS  
Sir Geoffrey Bindman QC\*  
Stephen Grosz QC\*  
Saimo Chahal QC\*  
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Agency

**Fraud Panel**

This will enable Dr Julian to bring a judicial review challenge prior to the inquest commencing.

4. Should we not hear from you by **4pm on 12<sup>th</sup> May 2021**, we may commence proceedings for judicial review without further notice.

#### **Proposed Claimant**

5. The proposed Claimant is Dr George Julian, who can be contacted at this office.
6. Please note that Shirin Marker is the solicitor with conduct of this matter.

#### **Proposed Defendant**

7. Should proceedings become necessary, the Defendant in this matter will be the Coroner.

#### **The Decisions under Challenge**

8. By this claim, Dr Julian seeks to challenge:
  - a. the decisions to refuse her permission to attend the pre-inquest review hearings remotely, and
  - b. the policy applied by the Kent coroners as regards press access to inquests during the COVID-19 pandemic.

#### **Factual Background**

9. Dr Julian is a freelance knowledge transfer consultant, who also works as a crowdfunded journalist. As a journalist, her primary focus is on live-tweeting coronial inquests into the deaths of learning disabled and autistic people. She has also worked as a family representative and advocate, supporting bereaved families with NHS death investigation processes. She is a former special advisor to the Care Quality Commission. In 2017, Dr Julian was a Winston Churchill Memorial Trust Fellow, and travelled to Australia, New Zealand and Canada to learn how families were involved in investigating the deaths of learning disabled people. She was a 2018 "*Nesta Observer New Radical*" for her work from coroners' courts, for which she was also awarded a Paul Hamlyn Foundation Ideas and Pioneers grant.
10. Samuel Alban-Stanley ("Sammy") was 13 years old when he died in April 2020. Sammy was the oldest child in his family and was deeply loved by his parents and sisters. He was diagnosed with Prader-Willi syndrome when he was about 5 weeks old and, later in life,

it became clear he was also autistic. From 26 March 2020, Sammy was asked to stay at home, rather than attending school, because he was deemed physically vulnerable. His family lacked support for him. In late April 2020, he fell from a height and suffered a traumatic brain injury and died four days later.

11. The upcoming inquest raises a number of points of wider public interest. It will explore the health, education, and social care support provided to Sammy's family from 2018 to his death. There is likely to be a particular focus on the "*Child in Need*" meeting that occurred in mid-April 2020. A number of people have been designated as "*interested persons*" for the purposes of s.47 Coroners and Justice Act 2009, including Sammy's family, the Kent County Council, and the North East London NHS Foundation Trust.
12. Dr Julian seeks to ensure that the wider public is able to follow these important inquest proceedings. She has written two blog articles about the inquest proceedings<sup>1</sup> and travelled to the Coroner's Court to attend the third pre-inquest review hearing on 5 May 2021. Her blog articles have stimulated further debate about these proceedings from the wider public and other practitioners, including on social media.<sup>2</sup>
13. On 18 March 2021, Dr Julian wrote to the Court to request permission to attend the second pre-inquest review hearing by way of audio link remote access. She explained that she lives in Devon and that it would not be safe or proportionate for her to travel to attend in Court. To do so would expose her to approximately 11 hours of travelling on public transport and an overnight stay.
14. On 18 March 2021, Sophie Anderson, a representative of the Court responded. She explained that the Court is "*open and running and risk assessments have been undertaken so press and members of the public can have unfettered access to the inquest proceedings.*" She added: "*[i]n regards to your concerns surrounding travel, please note that the time taken to get to court is for your convenience alone and is not a sufficient reason for the Coroner to disapply section 9 of the Contempt of Court Act.*"
15. Dr Julian responded to explain that her concerns did not relate to her "*convenience*", but rather to the ongoing public health crisis.

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<sup>1</sup> "*Happy Birthday Sammy*", published on 8<sup>th</sup> December 2020 (<https://www.georgejulian.co.uk/2020/12/08/happy-birthday-sammy/>) and "*The Chilling Effect of Disclosure' at Kent County Council*", published on 5<sup>th</sup> May 2021 (<https://www.georgejulian.co.uk/2021/05/05/the-chilling-effect-of-disclosure-at-kent-county-council/>).

<sup>2</sup> See, for example, the comments underneath <https://twitter.com/GeorgeJulian/status/1390194468201062406>

She explained that she wanted to keep herself and those who she cares for as safe as possible. She asked the Court to reconsider.

16. On 22 March 2021, Ms Anderson responded to explain that *“[u]nfortunately, the Coroners understanding of the Covid restrictions is that travel is allowed for work purposes and as you can travel, if you choose, to attend the hearing there is no reason for the Coroner to consider the requirements to share any recording.”*
17. As a result, Dr Julian did not attend the second pre-inquest review hearing on 24 March 2021.
18. On 4 May 2021, Dr Julian wrote to the Court to request permission to attend the upcoming third pre-inquest review hearing remotely.
19. Ms Anderson responded on 4 May 2021: *“Members of the press are free to attend court at any time in person. Please note that the Coroner did not refuse permission for your attendance at the last PIR or at this PIR, you are more than welcome to attend court.”*
20. Dr Julian responded to explain that she had not suggested that she had been refused permission to attend the third pre-inquest review hearing, but rather refused permission to attend it remotely.
21. Dr Julian attended the third pre-inquest review hearing on 5 May 2021 in person. This required her to travel from Devon (approximately 5½ hours both ways) and to stay overnight in Maidstone the night after the hearing. No one took Dr Julian’s details as she came into and left the Court building.
22. During the hearing, there was discussion about how the upcoming inquest hearing would take place. The Coroner suggested that, pursuant to the Chief Coroner’s Guidance No. 38, the upcoming hearing should be carried out partially remotely by way of MS Teams. The Coroner had no objection to witnesses and legal representatives attending remotely. However, she suggested that the public and members of the press should attend in person. This was because s.9 Contempt of Court Act 1981 could only be disapplied if there were *“exceptional reasons”* to do so.
23. The inquest into Sammy’s death is due to commence on 24<sup>th</sup> May 2021. Dr Julian wants to attend the inquest, but cannot do so in person by reason of her concerns regarding the ongoing COVID-19 public health emergency and due to her caring responsibilities.

## The Policy

24. Dr Julian has been provided with a policy applied by the Kent Coroners, which is entitled, “*Notice for Press*” (“the Policy”). It explains that, “*Coroners Courts remain operational during the pandemic and are open to both the public and the press.*” It continues as follows:

*“Inquests and pre-inquest reviews are being conducted through partially remote hearings with some participants attending in person, some remotely through Microsoft Teams and some (where neither personal attendance or MS Teams is appropriate or available) through an audio link.*

*In order to facilitate Interested persons to participate in an inquest and witnesses to give evidence through a live video link (MS Teams) the Coroner uses both statutory provision and their inherent common law powers. The law prohibits any other person to attend an inquest in this way.<sup>3</sup>*

*There is an additional prohibition in respect of audio devices or links being utilised to listen to inquest proceedings.<sup>4</sup>*

*If a Coroner determines it to be appropriate in a particular case for an individual to utilise an audio link, the Coroner is required to specifically vary the effect of the Act by disapplying it for that particular hearing.*

*It is for that reason that such an order will be made only in exceptional circumstances.*

*Members of the press wishing to report on openings or inquests are expected therefore to attend in person.*

*If press cannot attend in person and there is an exceptional reason for them not being able to do so, the Coroner will consider an application by the press for an audio link BUT any application will only be considered if made on notice, no less than 24 hours before the hearing and if the inquest is to be heard on a Monday, by 12pm the Friday before.*

*What constitutes an exceptional reason is not defined and will be determined by the Coroner on a case by case basis*

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<sup>3</sup> The policy refers, in a footnote, to s.41 Criminal Justice Act 1925.

<sup>4</sup> The policy refers, in a footnote, to s.9 Contempt of Court Act 1981.

*but press convenience or staffing limitations will not constitute an exceptional reason.”*

### Legal framework

25. Open justice is a constitutional principle that stretches back to the fall of the Stuart dynasty.<sup>5</sup> *“Its significance has if anything increased in an age which attaches growing importance to the public accountability of public officers and institutions and to the availability of information about the performance of their functions.”*<sup>6</sup> It applies with particular force to inquests, as the Chief Coroner’s guidance accepts.<sup>7</sup> The authorities make it clear that open justice has a *“fundamental importance”* in inquests.<sup>8</sup>
26. There is good reason for the repeated affirmation of the importance of open justice and for ensuring transparency in inquest proceedings. Open justice protects public confidence in the proceedings.<sup>9</sup> It deters inappropriate behaviour on the part of the Court and makes uninformed and inaccurate comment about the proceedings less likely.<sup>10</sup> An insistence on openness can counter or neutralise any suggestion of *“cover up”* in sensitive investigations into deaths.<sup>11</sup>
27. The common law principle of open justice reflects the rights of journalists under Article 10 of Schedule 1 of the Human Rights Act 1998.<sup>12</sup>
28. Any Court exercising the judicial power of the state has the inherent jurisdiction to regulate open justice.<sup>13</sup>
29. Section 41(1) of the Criminal Justice Act 1925, as amended, provides that no person shall: *“(a) take or attempt to take in any*

<sup>5</sup> *A v BBC* [2015] AC 588, per Lord Reed, at 600C-G.

<sup>6</sup> *Khuja v Times Newspapers Ltd* [2019] AC 161, per Lord Sumption, at §13.

<sup>7</sup> Chief Coroner’s Guidance No. 25, *“Coroners and the Media”*, at §3.

<sup>8</sup> *R (T) v West Yorkshire (Western Area) Senior Coroner* [2021] QB 205, §§56-9; *Chief Constable of West Yorkshire Police v Dyer* [2021] 1 WLR 1233, §89.

<sup>9</sup> *Scott v Scott* [1913] AC 417, at 463.

<sup>10</sup> *R v Legal Aid Board, Ex p Kaim Todner* [1999] QB 966, at 977

<sup>11</sup> See, by analogy, *R (E) v Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 563 (Admin), per Laws LJ, at §26; In his final report in the *Thames Safety Inquiry*, Clarke LJ (as he then was) stressed, at §5.1, that: *“... it is of great importance that members of the public should feel confident that a searching investigation has been held, that nothing has been swept under the carpet and that no punches have been pulled”* (citing the final report in the *Herald of Free Enterprise* investigation, per Sheen J, at §60).

<sup>12</sup> *A v BBC*, §47.

<sup>13</sup> *R (DSD) v Parole Board* [2019] QB 285, §§175-7; *Cape Intermediate Holdings Ltd v Dring* [2020] AC 629

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court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or (b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof.” A “photograph” includes a video recording.<sup>14</sup>

30. Separately, s.9(1) Contempt of Court Act 1981 makes it a contempt of court to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court or to publish such a recording.
31. The Divisional Court considered these statutory provisions in *R (Spurrier) v Secretary of State for Transport* [2019] EMLR 16. A group of litigants applied for judicial review proceedings to be live-streamed. The Divisional Court refused the application, holding that the prohibition of the publication of “any photograph” in s.41 “includes the transmission or broadcasting of any photograph via the internet, no matter how transient that might be” (§21) and that the prohibition of the publication of any “recording” of proceedings in s.9 was “clearly not restricted to circumstances in which a permanent recording is made and then broadcast” (§24). The statutory provisions therefore expressed the “will of Parliament that, generally, court proceedings should not be broadcast, save for the exceptions made either by statute ... or Order under section 31 which have been approved by Parliament” (§26).
32. Thus, live-streaming to the public is not permitted. However, it is well established that Courts do have the power to permit people to attend their proceedings remotely. This is a reflection of the Court’s inherent power to regulate open justice.
33. Hence, in *Spurrier*, at §30, Hickinbottom LJ held: “*That deals with live-streaming: unless it comes within one of the exceptions to which I have referred, it is prohibited by statute. However, I do not accept that the statutory provisions restrict the transmission of pictures and sounds from one court to another court: in those circumstances, the second court is simply an extension to, and thus part of, the court, subject to the usual rules and restrictions that a court can and does impose. There have been examples of where such arrangements have been put in place.*”
34. In *Gubarev v Orbis Business Intelligence Limited* [2020] 4 WLR 122, at §20, the President of the Queen’s Bench Division cited with

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<sup>14</sup> *R v Loveridge, Lee and Loveridge* [2001] 2 Cr App R 29, §25.

approval the trial Judge's ruling that: "*the general position with regard to video and audio hearings in court is that: (1) it is permissible to make video and audio recordings and transmit them to a second courtroom, or other location in England and Wales which is designated as an extension of the court. (2) exceptions have been made for live streaming from the Supreme Court, Court of Appeal, and certain sentencing remarks: but (3) otherwise, live streaming of video and audio is prohibited.*" The trial judge was Warby LJ, then the judge in charge of the Media and Communications List.

35. The former Chief Coroner recognised the existence of this inherent jurisdiction to permit remote participation in his *Guidance no.38*, at §7. However, he then wrongly limited the exercise of this inherent jurisdiction to streaming from one courtroom to another. As *Gubarev* makes clear, the power also includes designating another place as an extension of the Court. This power has therefore been used by Courts all around the country throughout the COVID-19 pandemic, including in the high-profile extradition proceedings involving Julian Assange in the Westminster Magistrates' Court.

#### **Grounds of challenge**

36. The decisions to refuse Dr Julian permission to attend the pre-inquest review hearings remotely were based on the Policy set out at paragraph 24 above. They were unlawful for the following three reasons.
37. **First**, the Policy wrongly suggests that the law prohibits any person other than a witness or legal representative to attend an inquest through a live video link such as MS Teams. This assertion is wrong in law. It is not supported by the footnote in the Policy (which refers to s.41) and it cannot be read consistently with the judgment in *Gubarev*. Put simply, the Court does have the power to permit any person to attend a hearing by way of MS Teams.
38. **Second**, the Policy suggests that an order disapplying s.9 Contempt of Court Act 1981 will only be made in "*exceptional circumstances*". The wording of the policy suggests that this is intended as a very high standard, in that "*press convenience or staffing limitations will not constitute an exceptional reason.*" There is no support in any authority for this "*exceptional circumstances*" test. The power to disapply s.9(1) is a broad statutory discretion. The Court has fettered this discretion by applying such a high threshold.

39. **Third**, the decisions (and the Policy which they reflect) were irrational and contrary to Article 10 of Schedule 1 of the Human Rights Act 1998 as follows:

- a. It is irrational to have a presumption of remote hearings for witnesses and legal representatives but to require members of the press to attend in person.
- b. It is irrational to have a requirement for in-person attendance for members of the press during a public health emergency. This is exemplified by the facts of Dr Julian’s applications. She lives in Devon. She has caring responsibilities. To attend the pre-inquest review hearing, she had to travel 11 hours, to stay overnight, and to enter a Court building (without any apparent sign-in requirement). This has put her at an increased risk of contracting COVID-19 and of transmitting it to those for whom she cares. This is not a question of “*convenience*”, as the Court’s correspondence suggests, but rather of necessity.
- c. It is no answer to this to suggest that the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020/1374 (now no longer in force) permitted travel for the purposes of work. Government guidance is clear that: “*You should continue to minimise the amount you travel where possible. This means you should avoid making unnecessary trips...*”.<sup>15</sup> It is no doubt for this reason that the Court applies a presumption of remote attendance at inquest proceedings for witnesses and legal representatives.
- d. The decisions failed to place any (let alone any sufficient) weight on the importance of open justice, on Dr Julian’s expertise in reporting inquest proceedings, on her caring responsibilities, and on the health risk posed to her by travelling such a distance for inquest hearings.

**The details of the action that the defendant is expected to take**

40. The Coroner is respectfully invited to take the following steps:

- a. accept illegality;
- b. agree that Dr Julian can attend the inquest hearing remotely by way of MS Teams or by way of audio link; and

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<sup>15</sup> “(COVID-19) Coronavirus restrictions: what you can and cannot do”. See also “Coronavirus (COVID-19): safer travel guidance for passengers,” which provides that: “You should continue to work from home and should minimise the number of journeys you make where possible.”

- c. confirm that the policy will be revised to reflect the legal errors set out above.
41. Should the Coroner fail to take these steps, we put you on notice that Dr Julian will issue a claim for judicial review without further reference to you.
42. For the avoidance of doubt, should the Coroner fail to permit Dr Julian to attend the inquest hearing itself remotely, then Dr Julian will seek to challenge that decision by way of judicial review, in reliance on the grounds set out above.

### **Disclosure**

43. To assist us in properly advising our clients, please provide us with copies of all relevant documentation on which the decision was made. We request in particular:
- a. All documents considered by the Court when rejecting Dr Julian's application to attend the pre-inquest review hearings remotely.
  - b. Any risk assessment, or assessments, conducted on behalf of the Court in connection with Dr Julian's attendance at the pre-inquest review hearings.
  - c. Any other document showing the proportionality assessment undertaken in respect of Dr Julian's applications as required by Article 10.
44. At the very least, this should include full reasons for the decisions set out above, together with any evidence upon which you rely to justify it. We remind you of your duty of candour in this regard.

### **Interested parties**

45. The three interested persons in the inquest proceedings are not "*directly affected*" by this claim but do meet the definition of interested party in CPR, PD 54A, §5.1. Accordingly, this letter has been copied to them to permit them to respond within the same urgent timeframe as set out above.

### **ADR proposals**

46. Dr Julian is committed to resolving these issues without recourse to Court proceedings, if possible. She would welcome any proposals that the Coroner may have for resolving this claim by way of ADR.

**Proposed reply date**

47. We request that you provide a substantive response in writing by **4pm on 12<sup>th</sup> May 2021** failing which we reserve the right to commence judicial review proceedings without further notice.

48. Any queries in respect of this matter should be forward to Shirin Marker of our offices.

Yours faithfully

*Bindmans LLP*

**Bindmans LLP**