MEDIA SUMMARY

The Queen (on the application of Baroness Jones and others) v The Commissioner of Police for the Metropolis (CO/4032/2019)

NOTE: This summary is designed to assist in reporting the Court's judgment. It makes reference to the judgment, a copy of which is available at www.judicary.uk, but it is not a substitute for the judgment which provides a full record of the Court's reasons.

1 The Divisional Court (Lord Justice Dingemans and Mr Justice Chamberlain) has today (Wednesday 6 November 2019) given judgment in the claim for judicial review made by Baroness Jenny Jones and others against the Metropolitan Police Commissioner.

2 The claim raised a point of statutory interpretation about the meaning of the words "public assembly" under section 14(1) of the 1986 Act: see paragraph 1 of the judgment.

3 The Claimants sought to challenge the decision by Superintendent Duncan McMillan to impose a condition on the "Extinction Rebellion Autumn Uprising" ("XRAU") on Wednesday 14 October 2019 using powers under section 14(1) of the Public Order Act 1986. The condition was that 'Any assembly linked to the Extinction Rebellion "Autumn Uprising" (publicised as being from 7th October to 19th October at 1800 hours) must now cease their protest(s) within London (MPS & City of London Police Areas) by 2100 hours 14th October 2019': see paragraph 3 of the judgment.

4 The evidence about XRAU and its aims are summarised in paragraphs 8 to 34 of the judgment. As appears from paragraph 34, it was common ground that "on the basis of all the information before him on 14 October 2019, Superintendent McMillan could reasonably conclude that XRAU "may result in serious disruption to the life of the community" for the purposes of section 14 of the 1986 Act. It was also common ground that the evidence before the Court showed that XRAU co-ordinated separate gatherings or events at different times and places around the Metropolitan and City of London police areas and would continue to do so from 14 to 19 October 2019.

5 The legal issues were set out in paragraph 35 of the judgment. They were: (1) whether the First, Second, Fifth and Sixth Claimants had standing to bring this claim (it being common ground that the Third, Fourth and Seventh Claimants had standing); (2) whether permission to apply for judicial review should be granted to those Claimants who had standing; (3) whether there was power to impose the condition on 14 October 2019 because XRAU was one public assembly for the purposes of section 14; (4) if so, whether the condition was so uncertain in terms of its effect that it was unlawful; and (5) what relief, if any, ought to be granted.

6 The case was not concerned with the lawfulness of the arrests of any individuals or the merits of the prosecution or proposed prosecutions of any individuals: see paragraph 36 of the judgment.

7 On the first issue the Court found that the Third, Fourth and Seventh Claimants had standing to bring the claim because they had either been arrested for breach of the condition or had been immediately affected by the condition. The Court determined that the First, Second, Fifth and Sixth Claimants did not have sufficient standing because there was no evidence that they had been affected by the condition and the Third, Fourth and Seventh Claimants were better placed to bring the claim: see paragraphs 60 to 62 of the judgment.

8 On the second issue the Court found that although the condition imposed by Superintendent McMillan had been removed on 18 October 2019 and was due to expire in any event on 19 October 2019, both parties accepted that the claim raised a relevant issue of statutory interpretation. Permission to apply for judicial review was granted to the Third, Fourth and Seventh Claimants, and permission to apply for judicial review was refused to the First, Second, Fifth and Sixth Claimants because of the Court's findings on standing: see paragraphs 63 to 64 of the judgment.

9 On the third issue the Court considered the wording of the 1986 Act, the earlier 1936 Public Order Act and the White paper leading up to the enactment of the 1986 Act, and relevant authorities on the 1936 and 1986 Act. In the light of the wording of section 14 requiring the senior police officer imposing the condition to be present at the "scene", and the definitions of "public assembly" and "public space" in section 16 as appears from paragraph 66 of the judgment. The Court decided that the words "public assembly" must be in a location to which the public or any section of the public has access, which is wholly or partly open to

the air, and which can be fairly described as a "scene". Separate gatherings, separated both in time and by many miles, even if co-ordinated under the umbrella of one body, are not a public assembly within the meaning of section 14(1) of the 1986 Act. The XRAU intended to be held from 14 to 19 October 2019 was not therefore a public assembly at the scene of which Superintendent McMillan was present on 14 October 2019. Therefore the decision to impose the condition was unlawful because there was no power to impose it under section 14(1) of the 1986 Act: see paragraphs 65 to 72 of the judgment.

10 It was therefore not necessary to address the fourth issue about the certainty of the terms in the condition, see paragraphs 73 and 74 of the judgment.

11 On the fifth issue, it was noted that, although the condition had been removed on 18 October 2019 and would, in any event, have expired under its own terms on 19 October 2019, the decision to impose the condition was unlawful and the usual relief in such situations is to grant a quashing order. A quashing order was therefore granted: see paragraph 75 of the judgment.

12 It was noted in the judgment that it was common ground that there are powers contained in the 1986 Act which might be lawfully used to control future protests which are deliberately designed to "take police resources to breaking point", to use the words set out in the October Rebellion Action Design (set out in the final sentence of paragraph 16 of the judgment). The extent and conditions for use of those powers were not issues before the Court: see paragraph 76 of the judgment.