

Note of meeting between Lord Burns and Professor Hazell, Constitution Unit, UCL

102 Petty France: Wednesday 21st October: 2pm to 3pm

1. Lord Burns opened by explaining that the Commission had launched a call for evidence paper on the 9th October which covered the terms of reference of the Commission. Lord Burns explained that he was keen to understand Professor Hazell's (PH) views.
2. PH made the following points:
 - a. The Constitution Unit had carried out three major research projects on FOI, studying its impact on Whitehall, on local government, and on Parliament. It had also done a lot of training and consultancy to help government departments and public authorities for the implementation of FOI.
 - b. In 2009 the Constitution Unit had done consultancy for the Information Commissioner to help ICO staff develop a better understanding of how Government developed policy. This might be why Government decisions on section 35 were being upheld more frequently now. Other reasons might be government departments having a better understanding of case law and ICO decision making, leading to more information being released before it was requested; and requestors being more familiar with the type of information that they would be allowed to access.
 - c. The chilling effect encompassed three separate things: a decline in the thoroughness of official advice; a decline in the frankness of ministerial discussion; a decline in the quality of the official record. The Constitution Unit had pursued the question of a chilling effect in its interviews, of 100 people for the Whitehall project, and 20 for the ICO consultancy on policy making and FOI. There was a strong perception of a chilling effect from Ministers. Officials tended to have a more balanced view, and recognised that the likelihood of any piece of advice being requested under FOI was low. PH had not been able to identify strong evidence of FOI directly creating a chilling effect. Other factors were in play: poorer record keeping had a variety of causes, such as fewer resources or the onset of electronic records.
 - d. PH did point to the Information Commissioner ordering the release of the Cabinet Minutes on Iraq as being significant, and a development which was at the forefront of the minds of some of the officials he had interviewed around the time.
 - e. PH recognised the case for a veto and indicated that when the legislation was originally passed it was not clear how much confidence there would be in the ICO's decision making. Australia and New Zealand also had a veto. In New Zealand in the early years it had been exercised a lot more frequently. PH provided the details of a constitutional law blog which would be providing a critique of the Evans decision. He suggested the veto could be reinstated in legislation.
 - f. Fees: PH recognised that the UK had a generous system in terms of fees in comparison with other countries. Introducing fees would have the effect of reducing the volume of requests. In Ireland the number of requests had fallen significantly with the introduction of fees. If the government introduced an

upfront fee, it would need to be low and any decision to introduce fees needed to take into account the costs of processing the payment.

- g. PH did not consider commercial requests (such as asking about forthcoming tenders) to be an abuse of FOI. It enabled free and open markets to operate and allowed new entrants to be on a level playing field with the big players.
- h. PH said that other jurisdictions that had absolute exemptions for Cabinet papers had shown they were liable to abuse. Sometimes information was annexed to Cabinet papers to make it exempt.

Secretariat

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