Note of meeting between Lord Burns and Doctor Ben Worthy

Royal Courts of Justice: Tuesday 27th October: 3:30pm to 4:30pm

1. Lord Burns opened the meeting by thanking Dr Worthy for taking the time to meet with him.
2. Lord Burns and Dr Worthy begun by discussing the history of the Act, including the significant changes which the legislation underwent during its parliamentary passage and that the veto was introduced as part of a package alongside binding powers by the Information Commissioner and an appeals system. They focused on the commitments made in Parliament in relation to the availability of the veto, and Dr Worthy could not recall any statements in the House of Commons about judicial review, but confirmed that such a commitment had been made in the House of Lords.
3. Lord Burns and Dr Worthy discussed the Evans case and the impact that this had on the veto; Dr Worthy was not sure that the case had entirely undermined the veto and felt that there may be grey areas to be looked at further, although he had not considered it in whole from a legal perspective and was not a legal expert.
4. Dr Worthy felt that the veto had been used as envisaged by Parliament to date, and sparingly compared to parallel systems (specifically Australia). Dr Worthy explained that the use of the veto brought with it political exposure and that could be considered as a deterrent to its use. As the JSC had found, it was an appropriate backstop. They discussed potential reform.
5. They discussed the chilling effect. Dr Worthy was unable to find any conclusive evidence of the chilling effect and explained that a number of factors had contributed to changes in decision making and written records, including: the fear of leaks, digital technology and the use of emails and the role of SpAds, etc. Dr Worthy explained that his research did not conclusively show a chilling effect and that doing things 'off the paper' was not, as far as they could tell, systematic. His research did show that the Act had achieved its primary objectives of greater openness and increased transparency.
6. They discussed the 'safe space' for policy making and deliberation, and the sharing of earlier drafts of documents and that the release of these documents was useful where something had gone wrong.
7. They discussed the definition of the public interest test; Dr Worthy suggested that the Commission might look at two cases[1] currently at FTT level in which different interpretations of the public interest has been adopted. Dr Worthy felt that the PI test brought with it positive democratic benefits, and that its inclusion in sections 35 and 36 was considered internationally as a good example of open government.
8. There was general discussion about the difficulties posed by making changes to FOI regime, given the complexity of the system; a change in one part of it could have an impact on several others.
9. They discussed fees; Dr Worthy felt that a change to the fees system for FOI would symbolically and politically be extremely difficult. Dr Worthy explained that in areas in

[1] 2015 UKUT 159 AAC; [2015] UKUT 535 (AAC) (20 July 2015)

which he had studied the introduction of fees, they had rarely been collected as intended. He also explained the situation in Ireland, where fees regulations rapidly became political and were reversed after a decade.

10. There was some discussion about a move towards the proactive release of, although Dr Worthy pointed out that in most cases at local authority level, his data showed, that requests were niche and not what the council would have considered publishing anyway.

11. On the whole Dr Worthy's view was that: the veto could be left as is if the UKSC judgement allowed space for it to be used still; that the PIT test in sections 35 and 36 should be retained in full; and that a fees charging system would be difficult.

Secretariat
October 2015