

IPANZ Free and Frank Policy Advice Seminar – 12 August 2015

‘FREE, FRANK AND OTHER F-WORDS: LEARNING THE POLICY ROAD CODE’

Speech notes. Andrew Kibblewhite, Head of the Policy Profession

Thank you IPANZ for the opportunity to be here – and to talk about free and frank advice.

Late last year I was asked by Iain Rennie to take on the role of Head of the Policy Profession. Supporting me in that role is a small team in DPMC – The Policy Project – focused on the challenge of lifting the policy game across government. That challenge includes enhancing the provision of free and frank advice.

It’s a collective effort by the whole policy community. I’m pleased to say that the Policy Leaders Network – the group of Deputy Secretaries with policy responsibilities from across the Public Service - have embraced the challenge. They are working together to shape our future policy system and I want to acknowledge that effort.

My role as Head of the Policy Profession is one of a number of new, system wide roles that have been established as part of the Better Public Services reforms. It is very complementary to the core role of DPMC, which is to advise the Prime Minister and to support the effective functioning of executive government.

So – on to the topic of this session.

You will have all heard commentators – some may be in this room - argue that there has been a reduction in free and frank advice.

I don’t particularly agree with this position. My own observations from the last 20 years or so since I first became a policy manager - and that spans a range of governments of all political colours - is that there has always been mixed performance when it comes to officials delivering free and frank advice to ministers.

Today I don’t want to dwell on whether there has been a reduction or not. Rather, I will argue that we can and should do better. I’ll propose how we might go about that.

Firstly I want to put free and frank in the context of good policy advice generally. I'm going to use some other F-words to describe what I think great policy advice looks like.

Secondly I want to look at the infrastructure for ensuring free, frank - and other F-words - advice to ministers. We have a range of rules and processes in place: legislation, codes of conduct etc. But the difference between knowing the rules and being skilled in the art of providing free and frank policy advice is akin to the difference between learning the road code and being able to drive a car.

We'll take a look under the bonnet of free and frank and talk about how we become good drivers - defensive drivers even - and how we know who to go to and what to do when there's a problem in the engine or the road rules aren't clear.

And to finish up, I'll share a few scenarios that I hope we can discuss in Question and Answer time – situations where the traffic lights are out or the direction of travel isn't quite clear.

Free, Frank and other F-words

So what does great policy advice look like? Let's take a look at free, frank and some other F-words and unpick what they mean.

Free – I heard someone recently note that some public servants mistakenly confused free and frank advice with free speech. As a public servant you are entitled to an opinion but it is not your job to share that with anyone, anywhere. The free part of free and frank means that you offer your best advice freely to decision makers, without withholding any key evidence or information.

Frank – it goes without saying that you should be open and honest with ministers. It is not your job to pull the punches or second guess what they might or might not have an appetite for. But I stress, frank doesn't mean foolish. Like any relationship, there are smarter ways of saying things – giving the hard truth in the most constructive and palatable way possible.

Full - Great advice brings all the available evidence and multiple perspectives together to provide comprehensive insight into real-world problems. Great policy is much more than the collection of facts or data – it is advice that helps Ministers navigate the messy, complex world we live in. That means giving ministers the full range of options on how they might best achieve the outcomes they are seeking.

Focused – Great advice is focused on what matters, on the outcomes a government is trying to achieve, and the people it is trying to achieve them for: vulnerable families needing support, businesses needing simpler and more effective regulatory frameworks that don't impose unnecessary compliance costs. Policy options should be built around the needs of citizens.

Without favour – it is essential that advice should be politically neutral and not beholden to interest groups or particular sectors of society or the economy. This is of course one area where the context for the provision of policy advice is more complex. We need to understand how stakeholders are likely to react to any policy change – and factor that into our advice.

We need a better understanding of citizens' lives and how they experience public services. That requires new methods of engagement and involving users in the design and delivery of policy.

We have some useful examples, such as how the Auckland City Mission used ethnography in their Family 100 Research Project, and how MBIE co-designed a skills maintenance scheme with Licensed Building Practitioners. The latter example produced a scheme that should improve compliance – a more effective regulatory outcome - while reducing the pain points for the sector being regulated.

I'm hoping that the Policy Project can help build and share knowledge of the tools and methods through which policy professionals can engage directly with citizens. A lot of that already goes on – we need to share what works, in what context and at what stage of the policy cycle. We also need to invest in building relationships that can be drawn on to help shape, reshape and even co-design policies.

We need empathy with citizens and groups of users - but we also need to be mindful of potential capture. It is a facilitation, brokerage and synthesising role. Sometimes there will be conflicts when the views of stakeholders clash – but it is our job to present those conflicts in a way that enables and supports ministers to make the final decisions.

Fearless – Policy advice needs to be fearless, frightening even. It needs to be bold in striving for new and different ways of doing things, and not to hold back from presenting 'scary' options to ministers. Anything that is new, by definition, doesn't come with a whole lot of evidence of past experience. And that carries risks. But we need to be confident to take those risks or we will not be innovative.

Sometimes innovation means taking an approach or policy from one sector and applying it to another. The investment approach came out of actuarial experience in the insurance industry, while alliance contracting – which is being used in parts of the health sector – came from the construction industry. Innovation is as much, if not more, about ‘adopt and adapt’ than it is about pure invention.

Fallible – perhaps an unexpected F word in this context. I should stress I am not saying I want policies to fail. But I do want the advice and the underpinning evidence and assumptions to be clear and testable so we can face up to failure if that is our predicament. Our intervention logic should be explicit and we should be constantly testing whether we are making progress or not.

If we don’t state up front what we think will happen - and how we will know if it has or hasn’t – it makes it much harder for us to judge success. And worse, if we don’t evaluate, we can’t learn from success or failure. We won’t build our knowledge of what works.

Future – policy advice should also keep an eye on the future. I have participated recently in a few sessions with the Deputy Secretaries’ Policy Leaders Network, trying to grapple with the big policy challenges coming our way and whether we are well placed as a policy community to respond.

Our advice needs to be resilient in the face of shifting contexts or trends – it should be adaptable. We shouldn’t focus on the urgent at the expense of the important, or close off future options that might negatively affect the generations that come after us.

All of these F-words need to be part of the equation in developing policy advice. But the key to how great policy advice lands, is the relationship between policy advisors and Ministers.

In the inner sanctum of the policy profession, trust is key. Ministers’ trust in their public service policy advisors is built on a mutual understanding of roles, on the professionalism, integrity and impartiality of the advisors and finally but essentially on the quality of the advice given.

Trust

Trust creates the space for free and frank advice. Where the relationship between Ministers and advisors is high trust and respectful, there is and always has been room for

candid and challenging views to be aired. Where relationships are weaker, a much less constructive exchange occurs.

Officials can build that trust by listening hard, playing with a straight bat and exercising appropriate judgement in how they record their interactions with Ministers. Ministers can help build that trust by being open about their thinking – and the constraints and opportunities as they see them.

In giving free and frank advice, we must never lose sight of our role as public servants. Ours is to advise; Ministers to decide. And Ministers deciding not to agree with officials' advice at times is a natural and appropriate thing. As a young Treasury analyst one of the enduring truths I had drummed into me about my job was my role was to advise fearlessly and implement enthusiastically, regardless of whether my advice was accepted or not.

I get frustrated when I hear people say policy advisors should not proactively help Ministers shape the agenda. The best policy advisors do exactly that. They tend to earn that opportunity over time by demonstrating an understanding of what the Minister is trying to achieve and presenting good ideas.

Earning the trust and confidence of ministers is definitely something that builds over time. It comes with experience. The good thing is that by the time you get close to that political administrative interface, you should have developed a good nose for what is right and wrong and where the boundaries lie. I say 'should have' - but I recognise that isn't always the case and that we need rules and guidance to signal what to do and when.

The rules

Like the road code, I'm fairly confident we have the right infrastructure in place around the operating rules for free and frank advice. Indeed we have just strengthened them. The State Sector Act makes it clear that free and frank advice is required regardless of whether it is requested. The 2013 amendment to the Act, supported by both sides of the House, elevated free and frank from a convention, to a legislative obligation.

Section 32 of the Act charges chief executives with ensuring "the capability and capacity to offer free and frank advice to successive governments". The expectation is that we need to be responsive to current ministers and their objectives, as well as transparently investing in capability to be able to advise future ministers and governments that might have a different policy agenda.

As public servants we have an obligation to think about the long term as well as the present, potentially undertaking research and analysis on issues that are not priorities today, but could bite us in the future if we don't start thinking about them now. That is our stewardship responsibility.

For example we owe the foundations of our public management model to the foresight of people in the Treasury who produced 'Government Management' in the 1980s. Work that wasn't requested but helped an incoming government implement arguably the most comprehensive public sector reform in New Zealand's recent history, reforms that made chief executives responsible and accountable for running their departments.

Clearly there is room for tension here. No department could get away with neglecting the needs of the Minister today on the basis that the 5 year work programme is more important. We need to undertake this stewardship role in full view of the Minister of the day and be prepared to discuss the trade-offs we are making.

The State Services Commission's Standards of Integrity and Conduct and related guidance – check out the State Services Commission website – together with the Cabinet Manual provides comprehensive guidance on how public servants should act vis-à-vis ministers, colleagues and the other stakeholders they come into contact with in their work.

The Cabinet Manual puts the relationship between ministers and officials in its constitutional setting, and includes specific guidance in areas like the 'no surprises' principle, appropriate communication between ministers and officials and free and frank advice.

Open and transparent government shapes the environment in which free and frank advice is offered and received. While the default option is transparency and even proactive release of official information (and I note we are acknowledged internationally for this) – the Official Information Act has specific provisions to protect and enable free and frank advice. Section 9(2)(g)(i) of the Official Information Act allows for non-release of information when release could threaten the provision of free and frank expression of opinions between ministers and officials.

The Ombudsman's website has useful guidance as to when, why, and under what circumstances official information can be withheld. I know that Dame Beverly Wakem

and her team are concerned that some departments and Ministerial staff might not be as skilled as they should be in that domain

Transparency International – which rates New Zealand highly overall – has also expressed concerns about compliance with the Official Information Act. In response to the Law Commission’s review of OIA practice Cabinet directed the Ministry of Justice to lead a cross-public sector Official Information Forum to encourage consistent approaches to the OIA. That Forum has developed a range of public sector guidance materials which you should all access. The material complements guidance provided by the Office of the Ombudsman.

Taken together, this guidance material can help us operate in the spirit of openness but also leaves space for robust (and sometimes private) debate between ministers and senior officials. Uncertainty about what can and can’t be withheld has not helped the discourse between Ministers and officials. So I encourage you all to get to know this guidance well.

In short, I think we have an appropriate ‘road code’ in place, or at least a workable one – the issue is learning to use it. The most recent SSC Integrity and Conduct survey (2013) found that over 80% of public servants were familiar with their agency’s code of conduct, but less than a quarter were familiar with the Ombudsman’s OIA guidelines, and even less with SSC’s political neutrality guidelines and the Cabinet Manual.

How do we become familiar enough with the rules and guidance so they shape how we work in our capacity as government officials and policy advisors? That gets us to training and culture. Like learning to drive a car we learn as we go and we get more proficient with experience. Every new entry to the Public Service should be given adequate training in how to behave. Policy managers need to take their ‘driving instructor’ roles seriously.

Departments should facilitate opportunities for analysts, advisors and others to debate how you should act in a given scenario. This could take the form of ‘brown bag’ sessions, messages from senior management recounting times where things were done well and where there was room for improvement – we learn from these examples. The more relevant and real the story, the greater the learning.

Learning to be a policy advisor is something of an apprenticeship. So chief executives and other senior leaders need to set expectations and explicitly model what great practice looks like. One of the most powerful places for this learning to occur is in ministerial

briefing sessions - where less experienced officials get to see senior leaders interacting skilfully with ministers.

I thought I would finish with a few scenarios that we could debate and share how we would act – and I encourage the experts here from the Ombudsman’s office, SSC and others to chip in with their expert advice – be free, frank and fearless! I hope you don’t find me wanting....

Scenario 1. “Don’t tell me” - A minister indicates that he or she is not interested in further advice on a particular issue and requests that you refrain from offering it. But – you know that the issue is an important one and is key to achieving some other results that you consider will help meet an outcome the government is seeking to achieve. **What do you do?**

Scenario 2. “The pre-baked solution” - A minister requests advice to support their pet project and they “know exactly how it should be done”. The minister asks you to write a Cabinet paper based solely on that option. But you know that you are duty bound to analyse the evidence, to test whether there are better ways of achieving that outcome. **What do you do?**

Scenario 3. “The cone of silence” - You are in a meeting with your minister and the minister requests that the advice and the conversation isn’t recorded. **What do you do?**

Here’s what I would do.

Scenario 1. “Don’t tell me” - I would respectfully tell the minister that I believe the issue is important for the following reasons (which I will have rehearsed well) and that it should be dealt with. If my argument does not fly, I would acknowledge that I have heard the request to not provide further advice, make an appropriate record of that reality and move on.

I might continue to keep a watching brief on the area and potentially raise it again, if the context or minister changed. But as a general rule of thumb it’s ‘3 strikes and you’re out’ – there is no point flogging a dead horse.

Scenario 2. “The pre-baked solution” - I would respectfully try to draw out what outcome the Minister is trying to achieve and why he or she has settled on the pre-baked solution on offer. And I would be absolutely open to the possibility that the Minister

might be right. Almost by definition ministers are more in touch than public servants with the aspirations and challenges of citizens.

Having said that I would take my responsibility to provide advice seriously and test the proposal against alternatives. I would expect the Minister to consider that advice and be confident enough to make and own a call. Once the call is made I would write the Cabinet paper as per the Minister's decision and direction – a Cabinet paper is the Minister's paper. I would include other options and their relative costs, benefits and likelihood to succeed, in any Regulatory Impact Statement (which is the department's part of the paper).

Scenario 3. “The cone of silence” – This is a tricky one – judgement and nuance are essential. We need to be able to have robust and early conversations with ministers on policy issues – in fact I think we should have more – and we need to be mindful of the trust placed in us when ministers are sharing perspectives, particularly in the formative stage.

Ministers would be rightly concerned at having to justify down the track an official's record of what might have been an open-ended and speculative conversation.

On the other hand there are obligations under the Public Records Act to maintain full and accurate records in accordance with normal business practices. So what is my obligation here? I think it is to document the key outcomes and decisions from the conversation that I judge to be crucial for institutional knowledge, probably via a short file note or email. I typically would not identify who said what to whom or create a verbatim record.

To step beyond these bounds could have a chilling effect on the conversation, breach trust and likely mean I was not included in future conversations.

Conclusion

As I said at the outset, I don't see an obvious erosion of free and frank advice or buy into the view that there was once a golden age – not in my time as a public servant anyway. But I do see good and bad practice and I do think we collectively need to do better.

My view is that we have the fundamental infrastructure in place – the State Sector Act, the Official Information Act, the Cabinet Office manual and SSC's Standards of Integrity and Conduct. But what counts is being able to put that guidance into practice.

Senior leaders have to set and reiterate clear expectations and act as exemplars. Events like this one today provide an opportunity for you in the audience to go back and see if there are adequate policies and processes in your departments for people to learn, develop and gain experience in the art of providing free and frank advice. Often it is about judgment, and that comes with time. It flourishes in a culture where these things are talked about and shown to be important. And where there is someone to go to for guidance and counsel.

The provision of free and frank advice is the hallmark of a well-functioning impartial public service. Going back to the driving analogy - I want us all to know the road code from back to front, know what to do when the street light are out, when there is a bump in the road or when someone's coming the other way on the wrong side. We shouldn't have to think about F-words in that situation – they should come naturally to us.

Thank you.

