

Mastering the art of free and frank advice

Address to Government Legal Network

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A politician in the UK recently suggested people are tired of listening to experts. Some commentators looking at events in recent months in the UK and the US have suggested that we are entering a period of ‘post-fact’ politics.

As someone whose professional identity is grounded in the importance of facts, evidence and expertise, I find these trends worrying. Looking at this audience - full of experts - I’m sure I’m not the only one.

Today I want to talk to you about why deep, evidence-based, apolitical advice matters more than ever for elected decision-makers in an increasingly messy, complex world. I’m going to explore what free and frank advice means – as well as some other F words that describe good advice. And I’m going to start by talking about the role that such advice plays in the relationship between ministers and officials.

I’m not suggesting that officials are the only experts who advise ministers, or that we are the only voices they should listen to – far from it. But our advice is important for a few reasons. First, we are trained in how to offer analytically robust, practical, apolitical advice to ministers on achieving their goals. Our responsibility is to seek the best outcomes, not the political advantage of a party, faction or particular sector of society.

Added to that, the best advisors build relationships with stakeholders inside and outside of decision-making circles so we are well informed about how different choices will play out in the real world. And we are a professional, permanent cadre of advisors. We’ve seen many policies implemented before, sometimes successfully, sometimes less so. We’ve learned lessons when policies implemented against our advice have succeeded and policies we’ve backed have failed.

And finally, we have the unique advantage of providing advice from the privileged position of being on the inside. We see the shifting sands that governments are navigating, how much room they have to manoeuvre, how stakeholders are reacting, what impact the media narrative is having on their choices, and we have the chance to position our advice so it can be most effective.

For those reasons, a neutral public service is one of the strengths of our system of parliamentary democracy: it combines deep expert advice with democratic responsiveness. Ministers, accountable to the public, are responsible for setting policy and direction, advised by a loyal and continuing public service that provides robust advice on how to achieve the government’s goals.

But we can always do our job better, and that's one of the reasons I'm proud to be sponsoring the Policy Project in my role as Head of the Policy Profession for the public service. The Policy Project is a collaborative effort with policy leaders and practitioners across departments to lift our game as policy professionals. Its first tools, three frameworks looking at organisational capability, policy skills and policy quality, will be launched next week by the Prime Minister.

If you want a sneak preview of the frameworks, check out the Policy Project website. I hope you'll find them a useful how-to guide to some of the areas I'm going to talk about today.

Relationship between ministers and officials

The architecture of the relationship between ministers and officials is set out in various pieces of legislation and documents like the Cabinet Manual. The introduction to the Cabinet Manual describes the role of an independently appointed, apolitical public service working for an Executive accountable to Parliament, which in turn is accountable to the public, through the ballot box.

This relationship can seem paradoxical. How is it possible for public servants to be loyal and responsive to the current government, while being politically neutral and retaining the capability to serve future governments, as required by the State Sector Act? This balancing act depends on a clear division of labour and authority between ministers and officials.

Ministers are responsible for deciding the policy direction and priorities for their departments. Our responsibility, as officials, is to give our best, evidence based advice about how our minister can achieve his or her goals.

Good advisors understand their ministers' priorities and are aware of the political context within which the minister is working. But as I will explain in more detail, being responsive to the minister's priorities shouldn't slide into second guessing what the minister wants to hear.

At the heart of the constitutional conventions and the Cabinet Manual guidance about the relationship are some core values: trust, confidence, and respect. In my experience, ministers of all political persuasions value and trust public service advisors who display a few essential qualities.

It starts with listening carefully to ministers, being responsive to their priorities, giving them honest, unspun, evidence based advice, understanding the political context in which they are working, while being apolitical, and finally, protecting the confidentiality of the relationship.

Building trust with ministers means being careful about disagreeing with the government's direction in public statements. It's our job to give our free and frank advice to ministers in private not in public.

That doesn't mean that we don't have a role in informing public debate on complex issues. Departments contribute to public debate by providing objective information, statistics, research and reports highlighting issues, such as the Treasury's Statement on the Long Term Fiscal Position, or the

Ministry of Health’s annual publication on the state of public health. Indeed, I think we can go further in publishing robust research and analysis of key issues facing the nation.

But advisors have to be careful to ensure that their candid advice is kept confidential. The commentators who clamour for officials to provide their free and frank advice in public misunderstand the constitutional position of the public service.

When taking part in public discussions of policy issues, I think we should follow the advice of a wise former Treasury Secretary in Australia, Ken Henry, who said officials must bear in mind that “the objective is to make it easier for the government of the day to do what needs to be done. The objective is not to make the minister’s life more difficult.”¹

Free and Frank, and other features of great advice

Let’s turn now to the art of free and frank advice. As I’ve noted in previous speeches on this topic, the ‘free’ in free and frank isn’t the same thing as free speech. As a public servant you are entitled to your opinions, but it’s not part of your day 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.

Free also means we shouldn’t second-guess what ministers will want to do – as Minister English puts it, “tell Ministers what they need to hear, not what you think they want to hear.”

Frank means we don’t pull our punches with ministers. We are honest about where we think the pitfalls and risks are. But I also noted that frank doesn’t mean foolish – as in any relationship there are smarter ways of saying things – giving the hard truths in the most constructive and palatable way possible.

And we shouldn’t be in the business of wasting taxpayers’ money with advice that is free, frank, and fruitless. Sometimes ministers rule out options in a way which makes it clear that it would be a waste of time raising them again.

Sometimes the art of being a great policy advisor is all in the timing – knowing when the environment a minister is facing has changed substantially, and the previously unthinkable has now become the possible. Great advisors are savvy about the political context. Deciding when and how to give ministers challenging advice is one of the most difficult things officials have to do. That’s why it tends to be a role for more senior and experienced officials who have earned the minister’s trust and confidence. Building trust takes time.

This brings me to something else I have touched on in previous speeches – whether there has been a reduction in free and frank advice. I don’t think so, at least when it comes to oral advice. I’ve been in

¹ Henry, K. (September, 2007) Challenges confronting economic policy advisers, Address to the Curtin Public Policy Forum, Perth

plenty of meetings with senior officials and ministers where the conversation and the advice from officials has been free, frank and robust. And skilfully offered.

I also don't think there was ever a golden age of free and frank advice – certainly not over the nearly 30 years of my career. The picture has always been mixed and there have always been opportunities to improve.

I would say though that one thing I have noticed in my time in the public service, is that less is written down than it used to be. This has been true over several administrations – Nicola White noted it in her 2007 book on the Official Information Act.² And this trend is not unique to New Zealand either. Peter Shergold, the former head of DPM&C in Australia notes the same issue over there.³

To fulfil our role as ministers' trusted advisors, I don't think oral advice is enough. Where ministers are taking significant decisions, our free and frank conversations need to be complemented with written advice. This is not because we are writing for posterity rather than the minister, but because the written record is by its nature richer and more able to expose the complexities of the trade-offs ministers face.

It is more accurate, more considered, less likely to be misunderstood and ultimately serves ministers better in making their decisions. Receiving advice in writing gives ministers the chance to reflect before they make decisions. It also upholds good decision-making processes and reduces the risk of losing a judicial review.

The consequences of poor decision making can be severe. In the Australian case which Shergold examines, policy and design failures in a government home insulation programme led to the deaths of four young men. Incomplete records meant it was impossible to tell if ministers had been adequately advised about the risks.

Don't misunderstand me – I am not saying that every conversation in a minister's office should be written down or supported by fully documented detailed advice. Exploratory discussions with ministers often work best when supported by conversation starters which sketch out ideas and describe the landscape. But when it comes to taking significant decisions, it is my strong view that advice should be provided in writing.

This point reinforces brings me to one of the other F words which characterise robust advice - Full. Great advice brings all the available evidence and multiple perspectives together to provide a comprehensive look into real-world problems. Great policy advice is much more than a collection of facts and data – it is advice that helps ministers navigate the complex world we live in.

² White, N. (2007) Free and Frank: Making the Official Information Act 1982 work better, Institute of Policy Studies, Wellington

³ Shergold, P. (August, 2015) Learning from Failure, Commonwealth of Australia

That means giving ministers the full range of options on how they might best achieve the outcomes they are seeking and an honest appraisal of the relative merits of those options.

It's only if the written advice is free, frank and full that we can be sure that decisions are made with full knowledge of the facts.

There are few more F words worth touching on. Without Favour – it is essential that advice should be politically neutral and not beholden to particular interest groups or particular sectors of society or the economy. That means we need to understand much more deeply and objectively the impact on stakeholders of policy change.

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.

Advice should also be Fallible – perhaps an unexpected F word. When we try innovative new ways of designing policy, we are inevitably sometimes going to fail. But ministers would rather have less-than-perfect advice based on our best evidence and assumptions that acknowledges what we don't know and, crucially, how we judge whether the policy is working. We should state up front what we think will happen and the feedback loops we will set up to evaluate whether it is working.

If we don't evaluate what we are doing, we can't learn from its success or failure, and we won't continue to build on our knowledge of what works.

Future – policy advice should also keep an eye not just on the current landscape but on what's ahead. Keeping an eye on the future is one of the hardest tasks for any government. Decision making moves much faster than it did even a decade ago.

One of the ways officials support ministers is by offsetting the bias towards the now with a focus on the future. Public service officials should be thinking about policy questions that are important as well as urgent, and be providing advice to ministers on how to avoid closing off future options that might negatively affect future generations.

I get frustrated when I hear people say that policy advisors should not proactively help ministers shape the agenda. The best policy advisors do exactly that. They earn that opportunity by showing that they understand ministers' priorities, and by presenting good ideas. Earning ministers' trust and confidence enables us to play our part in helping them shape the future.

Policy Stewardship

We now have a legislated responsibility to provide a 'voice for the future' in today's decisions. Parliament formally recognised the responsibility public service chief executives have to advise on future issues in the 2013 amendments to the State Sector Act which added stewardship to their

responsibilities. The Act defines stewardship as the “active planning and management of medium- and long-term interests, along with associated advice.”

Section 32 of the Act charges each chief executive with ensuring that their department has 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 advise future ministers and governments that may have a different policy agenda.

Stewardship requires us to invest in the research and analysis on issues that are not priorities today, but could bite us in the future. In my view, this involves building the capability to provide deep and robust advice on the issues just over the horizon and the problems that can fall between agency siloes.

However, it doesn’t mean that the public service has a separate agenda from ministers.

What it means in practice for most departments is that there will be a range of issues officials need to be across because they are important strategic challenges. These are the kinds of issues where even if the minister doesn’t see them as a priority right now, he or she, or a future minister is going to need an answer some day.

The degree of investment in each issue will depend in part on the degree of ministerial interest. But there needs to be a base level of investment even on issues which the minister does not consider a priority so that if and when they change their mind, or indeed when the minister changes, we are ready to advise.

And I note that the section of the Act where stewardship has been placed is about the CE’s responsibilities to their current minister. This describes the constitutional reality of the CE–Minister relationship. Clearly we can’t ignore the minister’s current needs and invest all our thinking capability in advising on tomorrow’s problems. 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.

My expectation as head of policy profession, is that CEs will engage constructively with their ministers on the amount of investment that they are putting into thinking about future risks and opportunities. Some departments already devote considerable resource to thinking about different scenarios and how to future proof investments in a changing world. Other departments will need to invest more in strategic capability and policy thinking.

I mentioned at the beginning of this talk that one of the core qualities ministers expect of advisors is protecting the confidentiality of the relationship. I want to briefly touch on some of the tensions between our role as ministers’ confidential advisors, and the opening up of public information which is one of the goals of the Official Information Act.

I should say up front that New Zealanders can be justifiably proud of how the Act has opened up the workings of government over the years. The Act has three purposes: progressively increasing the availability of official information; providing for the proper access by each person to official information relating to themselves; and protecting official information to the extent consistent with the public interest and the preservation of personal privacy.

Compared with freedom of information rules in similar countries such as the UK, Australia and Canada, our system is very much at the transparent end of the scale. In those countries, entire classes of documents, Cabinet documents for example, are excluded from freedom of information requests.

We have no such blanket ban here and that is a good thing because it has resulted in New Zealand having much greater transparency of government decisions. The trend to proactively publish Cabinet papers that set out the decision making rationale, as with the publication of Budget papers, or the Performance Improvement Framework (PIF) reports, or the Treasury's major projects monitoring reports all support a robust, public policy debate.

More transparency almost always improves the conditions for democracy to flourish. Almost always. I choose these words carefully.

The last purpose of the Act, protecting information to the extent consistent with the public interest, is sometimes overlooked. It should not be. The Act is clear that there is a public interest in protecting information when its release could threaten the provision of free and frank expression of opinions between ministers and officials.

As the Head of the Policy Profession I have a deep interest in protecting the space for officials to provide hard hitting, free, frank, robust and well-documented advice. Often this means that much of the wide ranging advice provided to support Ministers in their deliberations should be kept confidential.

If the free and frank advice officials provide to support Ministerial deliberations were routinely released, it would pre-empt some options. Officials would be less likely to provide innovative blue skies ideas, which, if prematurely released, could be shot down before we have a chance to turn them into something more robust.

Officials don't want to become the story – it doesn't help us to loyally serve future governments if we've become part of the political contest. So the threat of premature release risks pressuring officials to soften our advice, avoid controversy, or not expose risks. This does representative democracy a disservice.

I think it would be a mistake if the progressive opening up of official information were to further erode the private space that officials need for robust debate with ministers. As Peter Shergold, said in his report, it is imperative that governments be allowed a measure of confidentiality in the policy-making process. "Without the free and uninhibited exchange of views between ministers and senior public servants, good public policy is jeopardised."

Uncertainty about what can and can't be withheld has not helped the relationship between ministers and officials. And it doesn't help build trust in the operation of the Act or in government more generally.

I welcome moves by Judge Boshier to publish more guidance on the trickiest provisions of the Act. I think this provides a good starting point for a richer conversation between office of the Ombudsman and senior officials immersed in the day to day challenges of balancing the Act's objectives.

We could revisit Nicola White's 2007 suggestion of a centre of expertise in the central agencies that will work with the Ombudsman to help clear up some of the more ambiguous parts of the Act. I think this could be done without losing the flexibility that is one of the Act's strengths.

Conclusion

As I said at the beginning, I think our responsibilities as advisors are more important than ever in an increasingly complex environment. The characteristics of good advice – and of good advisors – will be valuable now and in the future. My view is that we have great rules and infrastructure in place to make the partnership between ministers and officials work for the betterment of all New Zealanders.

But what counts is being able to put those rules into practice. Senior leaders have to set and reiterate clear expectations about what it means to be a great policy advisor, and to act as exemplars. The Policy Project frameworks are a great foundation.

I'll leave you with a final thought. I've described offering ministers free and frank advice as an important and challenging part of an advisors' role. It's also one of the most satisfying parts. In my experience, strong ministers welcome robust advice that points out the pitfalls as well as the opportunities in any course of action. Moreover, they go back to officials who offer it, even when the conversations have been difficult. To be sought out for your advice is one of the most valuable and satisfying experiences you can have in your public service career.