

Paper 69

Free and frank advice

“Free and frank advice is about agencies providing advice to Ministers without fear or favour, using our best professional judgement” (from the PSC website).

This masterclass discusses how standard policy advice techniques and processes can help us continue to provide free and frank advice.

It is part of the foundations of quality policy advice

It's a key element in the Policy Quality Framework (PQF). However, the requirement was around long before the framework developed. It's one of the core tenets of our public service.¹

It also contributes to strengthening the integrity and performance of the public service.²

Providing free and frank advice helps to ensure that decision-makers consider all the relevant information when making a decision. Whether it supports the proposal, raises risks and issues, or suggests better ways of achieving the same goals.

However, it's not always well received by Ministers. Especially those focused on implementing 'their' policy – as announced in party manifestos, for example, or as agreed in coalition agreements. A clear case of recognising the different paradigms that Ministers and public servants work within.³

These reactions make it a challenge for policy advisors to provide free and frank advice when it's considered unhelpful by their main customers.

It requires a degree of courage and boldness.

We saw lots of great examples of free and frank advice done well in the 2024 reviews of papers

The best examples:

- Were evidence-based
- Looked at alternative options, as well as Minister's preferred approach
- Had robust risk analysis
- Were tightly written, easy to understand (despite being complex and nuanced) – and succinct
- Avoided emotional language and embellishment.

And some that were not done so well

There were two major types of failures.

Firstly, those papers which didn't look at other options or do a proper risk analysis. Many of the papers where this was most clear were, in fact, Cabinet papers. We know they can be difficult for officials to influence. But, without these things, they don't meet the criteria for ensuring decision-makers are fully informed.

Secondly, some papers didn't deal with all the options on an even playing field. They had the appearance of bias. Sometimes, this came through in the language used.

¹ <https://www.dpmc.govt.nz/our-programmes/policy-project/policy-advice-themes/free-and-frank-advice>

² <https://www.publicservice.govt.nz/role-and-purpose/integrity-and-conduct/principles-guidance/free-and-frank-advice>

³ See Masterclass no. 1 Communicating with aliens https://www.nzier.org.nz/hubfs/Masterclasses/Central%20Government/brief_no_1_communication_with_aliens.pdf

It's essential to remain professional. Be thorough, unemotive and don't embellish.

It could also come through in the weighting given to critiquing the Ministers' proposals, as opposed to dealing with all options systematically. We saw fewer of this second type last year – but have seen them in the past. Advice becomes more like advocacy⁴ than policy advice.

But it's hard work...

However, even for the agencies that have produced a significant amount of robust, free and frank advice on various topics, it will be a challenge to keep doing so in the face of negative responses from some Ministers.

Receiving negative feedback from Ministers regularly, can be wearing. And, it can be a challenge not to revert to telling the Minister what they want to hear.

But it is important to keep doing it.

We note that the former Minister for the Public Service,⁵ Hon. Nicola Willis, has been encouraging policy advisors to be “bold”. So, at a high level, it's still recognised as important and of value.

Fall back on standard techniques

A good way of thinking about providing free and frank advice is to fall back on standard policy techniques.

These enable free and frank advice to be provided in a structured and professional manner.

These standard elements are all part of the PQF. Key elements are included in the diagram below.

Figure 1 Free and frank advice



Source: NZIER

⁴ Masterclass no. 51 Advocacy or advice
<https://www.nzier.org.nz/hubfs/Masterclasses/Central%20Government/Brief%2051%20Advocacy%20or%20advice.pdf>

⁵ <https://www.beehive.govt.nz/speech/speech-institute-public-administration-new-zealand-3>

Use data and evidence – facts matter – robust use of data and evidence helps to ensure that there is a clear problem definition. It also strengthens options analysis.

Undertake a systematic options assessment – analysing a range of options against clear criteria gives a systematic comparison of the options. It allows trade-offs to be surfaced. It makes clear why some options are not preferred and makes the optimal solution evident.

Analyse risks – and set them out in the paper. Ministers need to know what could go wrong. This is part of any ‘no surprises’ advice.

Reflect diverse reviews and perspectives – good relationships with stakeholders or engagement on particular issues allow policy advisors to explain different perspectives. Things Ministers, being politicians, always want to know.

Consider implementation and delivery issues – this can often be the place where policy ideas could fall apart. Explains what’s needed to have things go well and what the problems might be.

Set out a monitoring and evaluation framework – this means that the impact of the policy can be assessed, reported on and adapted accordingly.

All these things are included in Regulatory Impact Assessments. So, it should be common practice. But, from our experience, they aren’t read by all decision-makers (partly because they are large, attached at the end and perhaps not as accessible as they could be). In addition, these aren’t required for all policy advice.

Build consideration of free and frank into the policy process

Considering how to offer free and frank advice should be an integral part of the commissioning process and project planning.

It may be that for more contentious issues, there needs to be more depth in the analysis, e.g. an international survey of the literature, more data analysis, and/or a greater level of senior engagement in the process. Consider what’s needed when planning the work.

Policy papers on the topic might need to be broken into different stages, for example. So, iterative discussions with the Minister can take place.

Or there might need to be re-planning mid-project.

Peer review will become more important. And there might need to be different types of peer review⁶ in play.

The Official Information Act (OIA) shouldn’t stop you

There is much debate about whether the OIA inhibits free and frank advice.⁷ It shouldn’t.

But of course, the release of some free and frank advice, especially if disagreeing with Ministers’ preferences/decisions might well attract attention. But this is part of professional policy advising, and politicians making decisions, and therefore it should be expected at times.

Of course, there are the withholding provisions of the OIA⁸ to fall back on...

⁶ Masterclass no. 8 Peer review
https://www.nzier.org.nz/hubfs/Masterclasses/Central%20Government/brief_8_surviving_and_thriving_peer_review.pdf

⁷ This article provides a useful summary of the tensions
<https://www.wgtn.ac.nz/business/about/news/archive/free-and-frank-advice-and-the-official-information-act-balancing-competing-principles-of-good-government>

⁸ <https://www.ombudsman.parliament.nz/resources/free-and-frank-opinions-guide-section-92gi-oia-and-section-72fi-lgoima>

There is a lot written about free and frank advice

Both from a practical and theoretical perspective.

Here are some useful references:

DPMC Policy project website – there are lots of links to other information here. But we draw your attention to Andrew Kibblewhite's helpful speech on the practical considerations of free and frank advice. This suggests a balance is important.

<https://www.dPMC.govt.nz/our-programmes/policy-project/policy-advice-themes/free-and-frank-advice>

A 2018 piece from the **Office of the Auditor-General**, which, amongst other things, helpfully summarises Chris Eichbaum's categorisation of free and frank advice – a good way to identify matters where free and frank advice is important.

<https://oag.parliament.nz/blog/2018/free-and-frank-advice>

Some more recent advice from **Deb Tekawa** on the dynamics of free and frank advice.

<https://debtekawa.com/free-and-frank-advice-some-thoughts/>

A review of the issue from **IPANZ** – https://ipanz.org.nz/Attachment?Action=Download&Attachment_id=150217

Comments from previous Ministers:

- Hon. Chris Hipkins
<https://newsroom.co.nz/2018/06/06/hipkins-hard-hitting-advice-needed-from-officials/>
- Hon. Chris Finlayson reflecting on the impact of ministerial behaviour on free and frank advice

<https://businessdesk.co.nz/article/public-sector-project/yes-minister-chris-finlayson-on-robust-advice>

Keep at it

It's an important touchstone.

The adage of 'telling it like it is' has come into disrepute these days – from keyboard warriors, conspiracy theorists and the like. But it's worth thinking about it in its purest form – being truthful, fair, considered and straightforward – and above all, professional.

In conclusion

The Hon. Judith Collins, the new Minister for the Public Service, put it well.⁹

"... I cannot state clearly enough how important it is that you provide free and frank advice.

Public servants who speak truth to power by telling Ministers their pet policy ideas are crazy and unworkable don't get far. But neither do public servants who nod along and promise to deliver the undeliverable. That is a betrayal of the responsibilities of a public servant and it results in policy disaster.

Ministers do want free and frank advice. Tell us how we can implement our priorities and policies. Tell us how we can improve our policies. Tell us how we can improve outcomes for individuals, families and communities. Tell us when intervention is necessary. And tell us when to stop or change a policy."

⁹ <https://www.beehive.govt.nz/speech/address-public-service-leaders>

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