

FREE & FRANK – Why it Matters

As a term, ‘free and frank’ is the equivalent of a household name across the public sector – and like many other household names, despite being frequently mentioned, it is not necessarily well understood. Here, CARL BILLINGTON takes a closer look at the convention of free and frank advice, why it matters to both ministers and public servants, and what it means for the future.



Understanding the terms

In December last year, the State Services Commission published its Guidance on Free and Frank Advice and a new Code of Conduct for Ministerial Staff¹ that reconfirmed and clarified the expectation for public servants to provide, and ministers to receive, advice that is free and frank.

Add to this SSC’s appointment of a Deputy Commissioner, Integrity, Ethics and Standards and New Zealand’s participation in the Open Government Partnership [see sidebar story] and the expectations of openness, transparency and integrity have never been more explicit.



Andrew Kibblewhite

While the expectations are clear, what does free and frank mean in practice?

Andrew Kibblewhite, Department of the Prime Minister and Cabinet (DPMC) Chief Executive, explains.

“Free means providing the best advice and not withholding any evidence or information – telling ministers what they need to hear, not what we think they would want to hear. It’s free, unfiltered advice.

“Frank means being completely candid about the pros and cons involved, not pulling our punches in that analysis. It’s about an impartial critique of the opportunities and risks.

“It still needs to be delivered respectfully - with professionalism and courtesy, but it should openly represent the best of our advice and analysis,” Kibblewhite says.

Although free and frank advice is sometimes portrayed as a point of tension for public officials, it’s actually one of the cornerstones of the relationship between state servants and ministers.

Protected space and public debate

In their recent *Policy Quarterly* article², Chief Ombudsman Peter Boshier joins Andrew Kibblewhite in a shared discussion that highlights the critical

role of protecting free and frank advice in early-stage discussions with ministers.

As Kibblewhite explains, “It’s the kind of conversation where officials need to be able to say to their ministers, ‘You know this policy or initiative you have – or you’re looking at? We think there are some fundamental problems with it and we want to tell you why.

“That conversation is so important. You don’t want there to be any blockers or disincentives for ministers to seek that out or for officials to feel confident providing it.”

“Ministers are here to do things; public servants are here to help ministers do the best things. The provision of free and frank advice is a fundamental part of that.”

In the *Policy Quarterly* article, Kibblewhite and Boshier observe that this discussion is essentially about holding two key principles in balance: the need to provide a protected space in which ministers can benefit from free and frank advice from their officials, and the need to provide the public with timely access to official

¹ <http://www.ssc.govt.nz/node/10621>

² Kibblewhite, A. & Boshier, P. ‘Free and Frank Advice and the Official Information Act: Balancing competing principles of good government.’ *Policy Quarterly*, Volume 14, Issue 2, p3. (May 2018)

information, so they can participate in decision-making processes and hold the elected government accountable.

“Politicians are motivated by a range of things, including winning the next election, but every politician I know is motivated by the opportunity to solve problems and make a difference on behalf of New Zealanders,” says Kibblewhite.

“Ministers are here to do things; public servants are here to help ministers do the best things. The provision of free and frank advice is a fundamental part of that.

“Most officials believe in free and frank advice. But when the advice dominates the story more than what ministers decided – when that story is published without the context, and by someone with another agenda, it can naturally make people a little reticent.

“For this to work, we need to make sure people understand the value and the obligation of transparency, while at the same time reducing some of the uncertainty about what will and won’t make it into the public domain. We need to ensure there is an appropriate amount of private space between ministers and officials for a free and frank exchange of views.

“The Chief Ombudsman has, quite rightly, been very diligent in ensuring that private space is relatively limited. However, within those limits, it needs to be protected.

“What Peter Boshier has helpfully clarified in the last few months is that the convention of free and frank advice, and the protections that go with it, should predictably apply to those early conversations where the advice may need to question aspects of the pervading wisdom, or pose a range of potential options that haven’t been explored or researched yet.

“If ministers and officials know they can have that conversation in private, it is much more likely to happen. And that is a very good thing – it’s important for stewardship,” Kibblewhite explains.

“It’s about giving our public servants confidence and clarity about what conversations can happen in a protected space, as well as certainty about when they need to open the door for the public to join the discussion and debate as part of the decision-making process.”

Enthusiastic integrity

Suzanne Snively, Chair of Transparency International New Zealand, reflects on the issue of free and frank advice, and SSC’s recent activities to strengthen these provisions, with great optimism.

“We’ve made the statement that free and frank advice is core to the public service, but now it’s being backed up at the highest levels across the board.

“Internationally, I don’t know of any other governments that have set expectations and guidelines for public officials as explicitly as we have. It’s genuine leadership – the steps we’re taking wouldn’t even occur to public officials in many other jurisdictions.”

Talking with Snively, you pick up a genuine excitement about what is happening in this area – an excitement that seems to be shared by many others across the public sector.



Suzanne Snively

“Everywhere I go I’m seeing public sector officials happy in their jobs. It’s early days and we’re potentially still in something of a honeymoon period, but people are enthusiastic about being empowered to provide free and frank advice.

“It’s not just a promise to the public but also a sign of respect to public servants who are devoting their careers to serving the interests of their country,” Snively explains.

“The return to the concept of public officials as servants of New Zealanders has been growing for a while. We’ve got some fabulous public servants out there who set the tone at the top. We’re so lucky with this aspect of public sector leadership - it isn’t like that everywhere, and it hasn’t always been like that for us.”

In their *Policy Quarterly* article, Kibblewhite and Boshier observe that the way our government was originally designed, following the Westminster style, was that official information should remain secret unless there was a good reason for releasing it.

This stance was embodied in New Zealand’s 1951 Official Secrets Act, and further reinforced by the Crimes Act, making it an offence to release information without approval. When the 1982 Official Information Act came along, it turned the previous way of thinking upside down with the principle that official information should be made available unless there is good reason to withhold it.

It would be hard to underestimate how significant these changes were.

Snively recalls, “Back when I worked in government agencies, we would often have a meeting with our minister on Monday, and officials would go away and write the briefing the minister wanted by Thursday. As a result, it may have been well received but the advice wasn’t evidence based. During the short time available to write a paper, the case to support what the minister wanted often wasn’t as robust or well researched as it should be.

“We’re having conversations right across the State sector in a meaningful way, and that’s creating a positive spiral as new ideas for transparency are tested and the benefits are being shown to outweigh the costs.”

“Today, I see a lot of ministers who demonstrate respect for the heads of agencies who report to them. I am also observing ministers who are excited about their portfolios and see public

servants as part of their team. That flows down throughout government agencies and has a huge impact on productivity through the relationship of trust that's built.

"In the absence of transparent and open conversation, we see fear develop, and that leads back to the dark ages - where lack of knowledge leads to poor decisions. But given the increasingly open relationship between officials and Parliament currently, we've got every chance to leverage the knowledge that informs public policy and practice, and achieve better outcomes.

"Government agencies are looking at ways of being proactive about providing the public with official information, including access to legislation, Cabinet papers, publishing our audit reports and investigation findings. Everything is so open and accessible. We're having conversations right across the State sector in a meaningful way, and that's creating a positive spiral as new ideas for transparency are tested and the benefits are being shown to outweigh the costs.

"Equally, as much as we need to strive for transparency and openness, politicians and public servants need to recognise it isn't about inundating the public either - it's about making information accessible through the right channels so the public can contribute to the decision-making conversation. If that fails, it can lead to a more disturbing response if people feel democracy isn't working for them," Snively adds.

For Snively, the free and frank convention is intrinsically linked to maintaining both the integrity of, and public confidence in, our public service.

In releasing SSC's Guidance on Free and Frank Advice, State Services Commissioner Peter Hughes described the convention as "one of the four pillars that underpin the Public Service ... and help ensure the legitimacy of our system of government." The other three were identified as political neutrality, openness and transparency, and merit appointments³.

³ <http://www.ssc.govt.nz/node/10621>

Together these pillars form a broad framework that enables public trust and participation. As public servants, these pillars point to a strong stewardship lens.

Stewarding our future

That concept of stewardship is something Anthony Richards (Vice President, IPANZ) and Ros Coote (doctoral student at Victoria University's School of Government) are exploring in an IPANZ-led project looking at what stewardship might mean for the future public service.

"We have a focus of 10 to 15 years," Richards explains. "It's long enough that it washes out the immediate, but it's not so far ahead that predicting what the world looks like in 25 years becomes an almost meaningless conversation.



Anthony Richards

"That's not to say we're ignoring the longer-term trends, it's just that we recognise the way people will think about those big issues and concepts will evolve - as it has for us.

"In terms of stewardship itself, at its core it's about the immediate not swamping the long term. For those of us in public service, it means taking a view of what's good as a whole for New Zealand and also includes an idea of making things better, not just leaving it as it was. The classic question of what kind of world we want our grandchildren to grow up in is still a good touchstone for understanding stewardship.

"We're thinking about stewardship in terms of the public service, rather than the big issues for society as a whole. Within that, the key questions are what stewardship looks like over the next 10 to 15 years and how our view of public service is evolving," Richards adds.



Ros Coote

Coote picks up the conversation, adding: "Stewardship is one of the conventions of public service. So is free and frank. What's interesting about that is that conventions are usually based on unwritten expectations and behaviours. What seems to be happening at the moment is those public service conventions are being codified, not just in New Zealand but in other countries with Westminster parliamentary traditions.

"When conventions get codified, they're always modified by the times they're in. That's why conventions last so long. As our conventions are being reaffirmed, they become recontextualised as they're brought into the language and context of our time."

"The classic question of what kind of world we want our grandchildren to grow up in is still a good touchstone for understanding stewardship."

What Coote and Richards are interested in is exploring stewardship as a way to address the key issues facing New Zealand's public service over the next 10 to 15 years. They're also considering what a contemporary model of stewardship looks like - how it connects with the Māori concept of kaitiakitanga, whole-of-system perspectives, and what fresh meaning our shifting demographic trends will bring to the conversation.

"There are so many different aspects to an issue and they're not only interconnected, they interact with each other. A change in one area has a dynamic effect on other areas. When giving advice, you have to understand the likely interactions in

Open Government Partnership – integrity and transparency on the world stage

The Open Government Partnership (OGP) aims to ‘secure concrete commitments’ from governments around the globe who sign the Open Government Declaration and commit themselves to an action plan to ‘promote transparency, empower citizens, fight corruption and strengthen governance’.

New Zealand joined the Open Government Partnership in 2013. While the OGP principles of openness and transparency were already well embodied by New Zealanders, the focus on implementing a specific national action plan provides a strong framework for government agencies to work much more directly with civil society, private organisations, and our international peers.

New Zealand’s first action plan (2014-16) focused on existing initiatives that support the goals of openness and transparency, including the Better Public Services programme, the Government ICT Strategy, the Kia Tūtahi Relationship Accord, and responding to the 2013 Transparency International Assessment report. The 2016-18 Action Plan has focused on proactive initiatives that increase citizen access to information

and decision-making, such as the commitment to Open Budget, and improved official information and open data practices.

New Zealand is currently developing its third National Action Plan, inviting New Zealanders to join the conversation and get involved in topics and initiatives that cover everything from digital technology, to children and young people, open data, official information, decision-making, and even the budget New Zealand is allocating to its OGP commitments.

All of the initiatives, opportunities for getting involved, lessons learned, and external reports and evaluations are being published online at www.ogp.org.nz.

It’s another way public service agencies are working together nationally and regionally to ‘make government more open, transparent, responsive and accountable to citizens’⁴.



⁴All quotes taken from www.ogp.org.nz.

both the immediate and mid-term and anticipate how you may need to respond,” Coote says.

“That is where free and frank advice intersects with a stewardship perspective and concepts of kaitiakitanga. This is what we want to explore – we see it as the conversation-to-come in this space and it’s a very hopeful one.”

Foundations for the future

“Whenever we see the speed up of information, particularly the democratising of information, you see great change,” Richards comments.

Richards’ observation suggests we can’t simply assume the future will be a continuation of the present, based on the history of our experiences so far. As people’s expectations continue to evolve, it changes the context, and we need to proactively adapt with it.

Suzanne Snively provides an echo to these thoughts, adding: “There can be a tendency to rest on the laurels of our reputation as a highly trusted public sector. However, we need to not only ensure we are perceived as corruption free, but also that we actually remain corruption free.”

“We have no hidden budgets, no ‘ghost’ soldiers. Our peacekeeping forces are network-enabled and everything can be tracked. However, as our population changes, we will inevitably take in more people from countries that score lower on the TI-Corruption Perception Index integrity index and have quite different norms and expectations of how government should operate.

“The freedom from corruption and general cohesion we enjoy as a nation are unprecedented among our peers. We couldn’t have done it without the Treaty and we’re growing into having a much more sophisticated understanding of what the Treaty partnership looks like but, for the most part, we’ve achieved this unconsciously.

“If we’re going to maintain New Zealand’s integrity, we need to become much more articulate about what it is that’s made us so corruption free, so that we can consciously reinforce this in our foundations for the future. Otherwise, we might not be able to absorb the growing levels of diversity without undermining the core values of our culture,” Snively reflects.

“Equally, there are other nations who

are keen to learn from us. Our goal should be to demonstrate what’s worked for us so others can replicate it in their context. That requires a greater degree of awareness and articulation of these core unifying values than we have at the moment.”

These issues are something Andrew Kibblewhite is also mindful of. As he explains, it’s something we need to both celebrate and prepare for.

“We need to be talking about the risk of corruption, where it creeps in, where institutions might permit it in small, unconscious ways, and how we can resource efforts to stamp it out.”

“Diversity is an enormous strength. Our growing diversity is part of what makes New Zealand such a rich and wonderful country, full of innovative potential.

“There are issues to manage, though, as people settle here with different experiences of government, different norms, different views of how public servants should behave, and what ethical practice looks like. To manage that, we need to continue to

strengthen and invest in the integrity of our institutions.

“We should pay really careful and deliberate attention to always building the strength of our institutions - not so that they become conservative, unchanging things, but so that they can preserve what matters and take that into the future as a source of strength.

“How do you make that work? You need to maintain and model a high-trust, high-integrity culture. We need to be talking about the risk of corruption, where it creeps in, where institutions might permit it in small, unconscious ways, and how we can resource efforts to stamp it out.

“The feedback on our brand internationally is interesting. Talking with Peter Crisp (NZTE), I’ve learned that the clean, green image is absolutely part of it, but what really helps New Zealand businesses offshore is our reputation as honest, straight-talking, straight-forward people. It turns out our reputation for integrity is of huge economic value,”

Kibblewhite says.

Looking ahead

Asked to provide some closing thoughts, Snively and Kibblewhite both look ahead with a realistic, but positive, lens.

“As I think about those who are likely to join the public service in the coming years, the majority of those will be millennials, who typically come equipped with a very strong moral code. They already embody many of the values we want to preserve. The challenge for them is that they may find not every aspect of the public service embodies the values we are working towards to the same degree yet. They need to know it is changing and that we are serious about this direction of travel,” Snively comments.

“Similarly, we should have great confidence in the strengths of the public service. There’s plenty of work yet to be done and we should be humble about that, but we shouldn’t be humble about our strengths. We need to own those – they provide

some of the signposts for where we’re going.”

Kibblewhite reflects, “I’ve been privileged to work closely with the last four Prime Ministers – from Helen Clark to Jacinda Ardern. Each one of those Prime Ministers had an appetite for hearing officials’ best advice and each one of them was also quite comfortable respectfully disagreeing with the advice at times too.

“When officials put advice up and ministers disagree with it, as long as that’s not the norm, I think this is something to be celebrated. I see it as a sign of a mature system at work – a system where people can provide advice, see that advice considered, and ministers are able to come to a decision in regard to it.

“The point isn’t whether they agreed with the advice or not, it’s that they had access to timely, free and frank advice that enabled them to make a decision – which is what they’re there to do. When I see that healthy level of dialogue and debate leading to a decision, I know the system is working.”



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