

PROFESSIONAL DISTANCE AND CORRUPTION

Dr Anna Corbo Crehan
Charles Sturt University
New South Wales Police College campus

Introduction

The purpose of this paper is to consider when, and under what conditions, breaches of professional distance can properly be defined as instances of corruption. This is prompted by the fact that such breaches are often seen to be relatively minor forms of misconduct, a perception which is clearly misplaced if at least some such breaches are actually forms of corrupt behaviour.

What is Professional Distance?

Questions of professional distance occur when two or more people involved in a professional relationship also have an additional relationship (eg. one based on love, sexual attraction, friendship, family). Since professional relationships usually involve imbalances of power, the professional relationship can inappropriately affect the additional relationship and/or the additional relationship can inappropriately affect the professional relationship. The 'inappropriate effects' I have in mind are those consequences that result from partial or exploitative treatment in one of the relevant relationships.

Conversely, professional distance is not an issue in terms of professional situations where there are rules stipulating who can do what to whom. For example, professional distance is not used to describe appropriate touching during medical examinations or PE classes at school.

So, then, professional distance is the space a professional must keep between their professional relationship with another and any other relationship they have with that person. By keeping this space, a professional can fulfil their professional and personal obligations, and be seen to do so, in a way that is impartial and/or non-exploitative in regard to the other in the relationship. Another way to put the same point is that professional distance refers to the metaphorical space that you must keep out of or that you must not invade if you are to fulfil your professional and personal obligations, and be seen to do so, in a way that is impartial and/or non-exploitative in regard to the other in the relationship.

In terms of examples, then, professional distance refers to the metaphorical space that ought not to be invaded between a lecturer's professional relationship with her nephew *qua* student and her familial relationship with him *qua* her sister's son. If this space is not invaded, her professional and personal relationships with her nephew will be, and will be seen to be, impartial and non-exploitative.

What is a Breach of Professional Distance?

Breaches of professional distance involve a professional invading that metaphorical space between their professional relationship with another and any other relationship they have with that person – thereby creating a situation where their actions in either relationship fail to be, or fail to appear to be, impartial and non-exploitative. To use more colloquial terms, the professional invades what they should consider to be a 'no go zone' and this affects the quality, or perceived quality, of either their professional actions or their personal actions or both. For example: your nephew is in your class. If he has been actively resisting attending a family function and you use your position as his teacher to make him attend, you have breached professional distance. Similarly, if your sister puts pressure on you to give him extra tuition to ensure he will pass your subject, tuition that is not available to others in the class, you will be breaching professional distance if you give in to your sister's demands. (Of course, it would also be wrong to disadvantage him by not giving him the extra tuition available to others – but wrong for reasons other than that it constitutes a breach of professional distance.)

Moreover, it is also true that breaches of professional distance occur if they appear to occur or if the potential for their occurrence is not negated. Just as a conflict of interest need only be potential or perceived to be properly labelled a conflict of interest, so too with breaches of professional distance. The possibility that it might be breached and the perception that it has been breached are extensionally equivalent to an actual breach – all are wrong in themselves and have just the same consequences as an actual breach of professional distance. Actual, potential and apparent breaches of professional distance all call into question whether professionals are discharging those specific obligations that ought to be discharged if the title ‘professional’ is to be warranted. They undermine the perception that a professional’s judgements are independent, objective, and have due regard for the well-being of specific clients. In short, they compromise a professional’s ability to act as a professional. It is for this reason that actual, potential and apparent breaches of professional distance are all wrong in themselves.

The bad consequences that all three types of breach have include:

- undermining a person’s credibility with colleagues, clients and others, which in turn may have a direct bearing on the extent to which they can fulfil their professional duties (eg. a lawyer whose credibility in relation to client confidentiality was undermined would have trouble attracting clients and, thus, being able to practise at all);
- the profession itself may suffer as a result of an individual professional’s diminished credibility (this is particularly the case in professions such as policing where the public are more likely to see police as representative members of the Service itself rather than as autonomous individuals);
- the other party to the relationship may have their own credibility and integrity questioned if professional distance is not maintained (eg. a person may be presumed to be passing a subject, or to have earned a job, *only* because of the patronage of the professional with whom they are in an additional relationship rather than on their own merits – which, in turn, could ill affect their future study and employment opportunities);
- the professional may more easily resort to wrongdoing of some sort due to the pressures caused by not maintaining the relevant professional distance (eg. marking your nephew’s work against a higher standard than others in the class to avoid any perception that he may have been marked ‘softly’ - clearly unfair to your nephew and a form of wrongdoing).

There is an additional point to be made in light of the fact that potential and apparent breaches of professional distance are extensionally equivalent to actual breaches of such distance. In general terms, relationships which are relevant to issues of professional distance fall into two broad categories: those that we can choose to be party to (eg. friendships, marriages), and those which we have no choice about being in (eg. family relationships, including who our in-laws are). This additional point about breaches of professional distance applies only to the former – to those relationships that a professional can choose to form or to leave. These relationships clearly involve the potential for professional distance to be breached. However, I think they involve more than this. When a professional chooses to be part of a relationship that has the potential to breach professional distance, it can appear to others that they are not sufficiently mindful of their professional responsibilities. Put the other way around: it seems true that someone who *was* sufficiently mindful of their professional responsibilities would not put themselves in a situation where there is potential for a breach of professional distance. Therefore, the decision not to avoid the relevant sorts of relationships creates the perception in others that the professional is prepared to risk the actualisation of that potential – they are prepared to risk the sorts of harms which breaches of professional distance can cause.

More generally, then, while it is true that these potential breaches of professional distance are extensionally equivalent to actual breaches, they are more than that - they call into question the very professionalism of the person involved. This gives police who want to avoid such breaches an

additional reason to avoid forming the sorts of relationships which could potentially breach professional distance and which they need not be in.

When does a Breach of Professional Distance Count as an Instance of Corruption?

We need to begin by looking at the definitions of corruption. While ‘corruption’ can be defined in a number of ways, there are – I think – two which are particularly apposite and to which I will limit the current discussion. The first of these is the definition which Justice Wood used in Volume 1 of his Final Report of the Royal Commission into the New South Wales Police Service in 1997:

deliberate unlawful conduct (whether by act or omission) on the part of a member of the Police Service, utilising his or her position, whether on or off duty, and the exercise of police powers in bad faith (Chapter 2, Part A).

The latter part of Wood’s definition – ‘the exercise of police powers in bad faith’ - is given a more precise rendering in the second definition of corruption that I want to consider, namely that provided by Miller, Blackler and Alexandra in their text *Police Ethics* (1997). Here, corruption is defined as occurring when a police officer uses their authority in the wrong way or for the wrong reasons, where this takes the form of some sort of self-interested or self-serving reasons (p. 102).

So, according to these definitions, a breach of professional distance constitutes an instance of corruption when:

- the breach occurs by way of deliberate unlawful conduct utilising one’s position either on or off duty;
- the breach is caused by the officer using their authority in the wrong way or for the wrong reasons (ie. in bad faith).

The claim that breaches of professional distance will count as instances of corruption when the breach occurs by way of deliberate unlawful conduct utilising an officer’s position (on or off duty) seems straightforward enough. However, anecdotal evidence suggests that it is the one police officers find most difficult – simply because there does not seem to be a specific illegal act which a person can perform which is a breach of professional distance. Eg. assault is illegal, rape is illegal, fraud is illegal, breach of professional distance ... is not illegal. But this is to misunderstand the point. The point is not whether breaching professional distance *itself* is illegal, but whether illegal behaviour can *cause* or *facilitate* the breaching of such distance. Put otherwise, whether – by way of an illegal act – a person breaches the ‘no go zone’ between a professional and private relationship. Examples include things like forging documents so as to be recommended for a selection panel which is hearing your husband’s promotion application; or a police officer perjuring themselves to ensure that their son is not convicted of an offence. In these examples, the officers have engaged in illegal behaviour in such a way as to facilitate a breach of professional distance.

What about breaches of professional distance caused by an officer using their authority in the wrong way or for the wrong reasons. Corrupt breaches of professional distance which take this form are much more common and easier to visualise (in terms of examples). Relevant examples here include using one's authority to secure a transfer for a person the officer is having a relationship with, and using one's authority to access the police computer system to find the details of a crime victim they would like to go out with.

However, Miller et al. also identify another form which corrupt behaviour can take:

we can blame people for failing to act to equip themselves with necessary skills or knowledge when they have been provided with the opportunity. For example, police

officers who out of laziness or indifference fail to acquaint themselves sufficiently with certain aspects of the law, and then through ignorance of the law proceed to make unlawful arrests, are engaging in a form of corrupt activity. Their actions are wrongful, and the reasons that they are performing those actions is self-interest, or at least self-indulgence' (1997, p. 102).

So, if police – for self-interested or self-serving reasons - fail to equip themselves with the sort of knowledge that is essential for doing their job, those police will count as corrupt. This raises another possibility: that police who do not, again for self-interested or self-serving reasons, equip themselves with knowledge of 'professional distance issues' can properly be counted as corrupt. Is this claim justified?

Let's begin by looking at other things that we think police should know, and think about *why* they should know these things. Clearly, police should know the laws they are meant to uphold and enforce, they should know the limits of their powers, they should know first aid, they should know how to ensure safe custody, they should know how to use and maintain their arms and appointments..... And why should they know these things? Because that knowledge is critical to police being able to do their job. If police don't know the law, if they don't know the extent of their powers, if they don't know first aid, etc. they are not 'occupationally fit' - they simply cannot do many of the things that they ought to be able to do to justify their being in that occupational role. In fact, this knowledge is so important that we would regard as negligent any officer who failed to acquire it; that is, in failing to acquire that knowledge they have acted in a way which they should reasonably expect to cause harm.

What about breaches of professional distance, then? Can police do what they ought to do - as police - if they do not understand what a breach of professional distance is, or cannot identify such a breach? I do not think so. As we've said above, breaches of professional distance can have profoundly harmful effects, both to the police officer involved, to the other party involved and to any related organisations (such as the relevant police service). Breaches of professional distance compromise impartiality, and make the people implicated seem (or actually be) less than objective and independent in the judgements they make. Such breaches also interfere with a person's credibility, which can have serious consequences for how well they can do their job. This is especially true in policing, where the trust of the community plays a large part in how well police can actually police at all. Moreover, in policing a lack of credibility on the part of one officer can have a similar effect on other police, as the public often fail to distinguish police officers as individuals and see them simply as representatives of the Service itself.

For all these reasons, I think it is clearly true that yes, understanding what a breach of professional distance is, and being able to identify such a breach is indeed critical knowledge for a police officer to have. It is critical for their proper performance of their professional role. Therefore, if, for self-serving reasons, police fail to take opportunities to acquaint themselves with knowledge of what constitutes a breach of professional distance and with the ways in which breaching professional distance can lead to poor or bad policing, those officers are corrupt. The 'if' here is important, however. If police *genuinely do not have* opportunities to acquire the requisite knowledge, then their not having that knowledge is not their fault and so, therefore, they will not properly count as corrupt.

However, I do not think we should understand this idea of 'opportunity provision' too narrowly. I am not suggesting that police should wait around until formal training days or workshops are provided for them to gain the sorts of knowledge we are talking about. Rather, it seems to me that things like finding out that other police are being disciplined for breaches of professional distance should be enough – for the thinking professional – to realise (if they did not already know) that such

breaches are to be avoided and that they ought to take all steps to guarantee such avoidance (including, if necessary, seeking education on what sorts of things constitute breaches of professional distance). More generally, then, as professionals police should not need to rely on formal information provision to acquire the sorts of knowledge they need to do their jobs well. They should be 'tuned in' to informal ways of acquiring such knowledge also. Moreover, if, for self-interested or self-serving reasons, they fail to follow up information that they know they need, they are behaving corruptly.

In summary, then, we have three ways in which police can count as corrupt in relation to breaches of professional distance:

- when a breach occurs by way of deliberate unlawful conduct utilising one's position either on or off duty;
- when a breach is caused by the officer using their authority in the wrong way or for the wrong reasons (ie. in bad faith);
- when, for self-interested reasons, police fail to take opportunities to acquaint themselves with knowledge of what constitutes a breach of professional distance and with the ways in which breaching professional distance can lead to poor or bad policing.

This, of course, leads to an obvious question: are all breaches of professional distance instances of corruption; can professional distance be breached in a non-corrupt way?

Can a Person Breach Professional Distance and not be Corrupt?

Clearly, accidental breaches of professional distance won't count as instances of corruption. On the other hand, though, it's not entirely clear how a person could accidentally breach professional distance. Could a person, for example, accidentally be on a selection panel which their husband is fronting about a promotion application? It does initially seem conceivable in the sense that the person might have been co-opted onto the panel at late notice and may not realise that it's the one her husband has to face. On the other hand, once she does realise this, she could opt off the panel so that no breach occurs – and it is this which counters the possibility that she could accidentally breach professional distance in such a circumstance. On the other hand, what if a police instructor began a relationship with a person, not realising that she was one of the students whose working he was marking (let's say her work is still being submitted in her maiden name, which is not the surname the instructor knows her by). This does indeed seem to be an accidental breach, a situation where an unintended result has come about. So, contrary to my initial intuition, it does indeed seem possible that professional distance can be breached accidentally – which gives us one set of circumstances in which a breach of professional distance does *not* count as an instance of corruption.

Based on the definitions of corruption, it also seems *prima facie* to be the case that breaches of professional distance wherein the officer does not rely on their authority or position to facilitate the breach would also not count as corrupt. However, examples which meet this criteria do not seem to be logically possible since it appears that whatever a police officer does *qua* such officer – ie. in terms of their professional relationship with someone - will involve an exercise of their authority or position. More generally, then, what seems to be a theoretical possibility is not borne out in practice. I do not think it is possible for a police officer to breach professional distance in a way which does not - at some point - involve them relying on their authority or position.

In sum, then, not all breaches of professional distance will count as corrupt. Specifically, accidental breaches of professional distance are indeed empirically possible and will not count as instances of corrupt behaviour.

Conclusion

This paper has demonstrated that a number of breaches of professional distance will count as instances of corrupt behaviour. Specifically, there are three ways in which police can count as corrupt in relation to breaches of professional distance:

- when a breach occurs by way of deliberate unlawful conduct utilising one's position either on or off duty;
- when a breach is caused by the officer using their authority in the wrong way or for the wrong reasons (ie. in bad faith);
- when, for self-interested reasons, police fail to take opportunities to acquaint themselves with knowledge of what constitutes a breach of professional distance and with the ways in which breaching professional distance can lead to poor or bad policing.

Conversely, it is possible for police to accidentally breach professional distance, in which case their actions do not count as corrupt.

These conclusions suggest that any perception that breaches of professional distance are 'usually' relatively minor forms of misconduct is badly misplaced. Such breaches may often take the form of corrupt conduct, which means they are quite serious forms of misconduct. Admittedly, they may not be as serious as other forms of corruption, for instance, murdering a suspect to prevent him making a complaint. The mere fact, however, that there are degrees of corruption does not in any way detract from the conclusion that many breaches of professional distance will properly fit into the category of corrupt behaviour and should be addressed as such.

References

Miller, S., Blackler, J. & Alexandra, A. (1997) **Police Ethics**, Allen and Unwin, Sydney

Royal Commission into the New South Wales Police Service (1997) *Final Report, Vol. 1: Corruption* (Commissioner: The Hon Justice JRT Wood); accessed at <http://www.premiers.nsw.gov.au/pubs.htm#policerc>, 2000