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UNIVERSITY OF THE WITWATERSRAND

MA JOURNALISM AND MEDIA STUDIES RESEARCH REPORT

Transformation of press regulation: A critical analysis of the 2013 changes at the Press Council of South Africa

A thesis submitted to the Faculty of Humanities at the University of the Witwatersrand in partial fulfillment for the award of a degree of Master of Arts in Journalism and Media Studies

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Submitted: March 13, 2018

This thesis is dedicated to the Sharra's family. You have always believed and supported me.

Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts by Coursework and Research Report in the Department of Journalism, at the University of the Witwatersrand, Johannesburg.

It has not been submitted before for any other degree or examination at any other university.



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_____ of _____

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Abstract

This study used qualitative research design comprising of document analysis and in-depth interviews with system users to understand the changes that converted Press Council of South Africa (PCSA) from a self-regulatory body of media practice and ethics to Independent Co-regulation in 2013, following a recommendation by the Press Freedom Commission (PFC). Further, it analyses whether and in what ways the changes have met the key aims of Independent Co-regulation as set out by the PFC. Since standards of how the press should operate grow out of ideas and expectations of the media in a society; this study used the normative theories of the press to give a theoretical perspective that the effectiveness of a regulatory mechanism, determines its credibility and future. Findings indicate that the 2013 changes at the Council have transformed the regulatory system for the better by giving it sharper teeth to deal with publications that breach the code, promoting media professionalism to meet the normative expectations of the society, improving the system's accessibility and giving the non-industry a bigger voice in the system. However, despite the general improvement, there are still some few weaknesses that need to be addressed to avoid possible criticism towards the system.

Key words: Independent Co-regulation |press regulation| PCSA | PFC | ANC

1.0. Introduction

South Africa is one of the African countries with the longest history in press regulation spanning over 50 years. Since its inception, the system of press regulation has been self-regulation in which the "press takes full responsibility for the standards and the sanctions against those who do not live up to the standards" (Press Council of South Africa 2011, p.17). However, the journey has never been smooth. The system continues to been criticised for being ineffective and toothless, specifically, by the public and the ruling African National Congress (ANC). The ruling party has been advocating for the replacement of press regulation system with statutory regulation (Press Freedom Commission 2012).

The first major threat to self-regulation was appreciated few years after South Africa attained democracy in 1994. Both the public and government were the key players in these threats. Their arguments grew out of normative expectations—ideas and expectations of how the press is expected to operate in a democracy. Olivia Kumwenda (2010, p.3) observes that democracy influenced the development of the Constitution that brought into the fore issues of human rights and the need to respect several rights, including the need for a responsible and accountable press.

The major factor that stimulated public demands from the press was the transformation in the press as looked from the "vantage points of race, democracy and development" which led to changes in media ownership and staffing among others, from the whites to blacks (Berger 2000, p.1). Berger further says these changes ignited staid debate around inequality and the demand by the minority citizens to be portrayed in a positive way in the press. Eventually, there were changes to single racial and gender dominance in different associations, including staffing in media houses. This also meant changes in target audience, quality and issues of coverage by the press (Berger 2000, p.29).

Tragedies such as HIV and Aids and the growing demand for equality in issues such as race, gender and employment among others, exposed the press to further scrutiny and this also affected work in the newsroom (Kumwenda 2010, p.51). The public started to demand a new press that serves their interests in a new democratic society.

Democracy and the subsequent transformation in the society also affected the way press is regulated in South Africa (Kruger 2009). The then Press Board of Reference (PBR) which was responsible for press regulation, was exposed to serious criticism for being ineffective. Since then, the debate around press regulation has never ceased (Berger 2010, p.1).

Although the press was quick to respond to these criticisms by establishing the South African Press Council in 1997 and make some changes to the system to improve its performance, it did not succeed in addressing the issue of the system's credibility. The political front remained the major force in discrediting the system. The first decade of the Council was characterised by debates and serious criticism, particularly, from the ruling ANC which kept its foot on the accelerator to introduce statutory regulation.

Within the first decade of the system, the ANC held two national conferences in 2002 and 2007 respectively, and at both events, openly criticised self-regulation and expressed the need for its replacement (ANC national conferences 2002, 2007). Three years later, the ANC was back with another approach, now proposing an investigation into the establishment of a statutory Media Appeals Tribunal (MAT) which would act as an appeals body for the press ombudsman (Press Council of South Africa 2011, p.11). Thus, the PCSA would be expected to be obedient to MAT.

Critics have described the MAT proposal as a threat to press freedom. To circumvent this, the PCSA has been responding by reviewing aspects of its system of press regulation. So far, almost all aspects of the regulatory system have been changed not only once. Berger (2010, p.304) notes that the MAT idea influenced the PCSA to reinforce the Press Council and also make some rulings against the press in favour of the complainants from government. Nevertheless, this did not put to bed the threats, debate and criticism towards PCSA.

In 2011, with the increasing criticism, the PCSA took another initiative to address the raised concerns by reviewing the aspects of the self-regulation system to strengthen the council and also improve the effectiveness of the system. The proposed changes included the review of the Press Code, Constitution and the complaints handling mechanism (Press Council of South Africa 2011, p.13). The then PCSA chairperson, Raymond Louw, concedes in the foreword of the PCSA

Review of 2011 that the changes were necessitated by the criticism leveled against PCSA and self-regulation.

More threats and criticism led to the creation of the PFC, an independent body which was tasked with the responsibility of identifying a viable system of press regulation to replace the criticised self-regulation (Press Freedom Commission 2012, p.14). The Commission was viewed as credible because it did not involve the press to look into itself. The Commission settled for Independent Co-regulation as a viable system of press regulation for South Africa. It proposed several changes to the former system to upgrade it to Independent Co-regulation. The new system was implemented in 2013.

At the time of this study, the new system had clocked five years. However, there is no guaranteed evidence to an end of criticism and debate against the PCSA and its system of press regulation. In 2016, Communications Minister Faith Muthambi reiterated[1] government's position in an interview with SABC Television that PCSA system is biased and government wants "an independent regulator that won't be biased" (F. Muthambi, SABC News, Morning Live interview, August 26, 2016). She further punched holes in the system by expressing dissatisfaction with how the chairperson of the PCSA is appointed; arguing that government would have loved a setup that is "transparent, composed of civil society, government and Parliament just like how it happens with any other public protector".

As the threats against the PCSA continue, the hope rests in the effectiveness of the new system to address both old and emerging criticism against press regulation. Berger (2010, p.4) observes that this criticism can only be addressed by having an effective regulatory system that ensures the press meets its normative expectations in a democracy. This informs this study to explore the changes that came with Independent Co-regulation and analyse whether (and in what ways) they have met the aims as proposed by the PFC and are addressing the long lived criticism against the press.

[1] Emphasis added

1.2. Background

According to the PFC report published in 2012, Independent Co-regulation system was proposed by an independent Commission of nine individuals led by Justice Pius Langa. The Commission was founded following a proposition made by South African National Editors' Forum (SANEF) and Print Media South Africa (PMSA) to have an independent body to help in investigating a suitable system of press regulation to replace the criticised self-regulation. An independent body was preferred as earlier reviews by the PCSA were viewed as an internal initiative that can only favour the Council (Wits Journalism 2014, p.5).

To arrive at the decision, the PFC conducted a review on the four common systems of press regulation used globally. These are independent regulation, co-regulation, self-regulation and statutory regulation (Press Freedom Commission 2012). The Commission asked individuals to make submissions and during the survey, a total of 235 submissions were submitted to suggest a suitable system of press regulation (Reid and Isaacs 2015, p. 37).

According to Reid and Isaacs (2015), a total of 25.53 % submissions did not settle for any system of press regulation. Submissions that indicated a preferred system of press regulation show that 26 % chose independent regulation, 7% settled for co-regulation, statutory regulation had 2%, self-regulation got the highest submissions of 51%, self-regulatory or independent regulation got 8% submissions, independent regulation or co-regulation had 2% submissions and no regulation got 4% submissions (p.38). Thus, the most preferred system of press regulation was self-regulation according to percentage ranks.

The results and the chosen system of press regulation which was implemented later means that PFC did not settle for the most widely preferred system of press regulation as dictated by the submissions. The Commission also did not settle for any of the systems that were surveyed but instead settled for what it described as "Independent Co-regulation". It seems the new system is similar to self-regulation but there are somewhat differences, especially, on that the new system incorporates public members who are in majority.

1.3. Independent Co-regulation

PFC defines Independent Co-regulation as a system of press regulation that "involves public and press participation with a predominant public membership but without state or government participation" (Press Freedom Commission 2012, p.7). Generally, regulation is described as an "arbitrary process under the rule of the state, usually centered in a more or less independent regulatory body which makes all decisions on conflicting interests" (Kleinsteuber 2004, p.62). In South Africa, the PCSA is the responsible body for all decisions on conflicting interests in the press (Press Council of South Africa 2011). This task is guided by a structured system of press regulation.

In 2013, the PCSA replaced self-regulation with Independent Co-regulation system to regulate the press. However, there is some confusion with the system, particularly its name which seems to be against what the PFC says it entails. Most dictionaries hardly define Independent Co-regulation as a single term and there is no other definition of the system apart from the one used by the PFC.

In cases where the two words are defined separately, the word 'independent' is generally described as "free from outside control or not subject to another's authority" (Oxford dictionary). While dictionaries barely define co-regulation, the term is used in various fields to mean combination of forces towards a specific goal. Hans Kleinsteuber describes co-regulation as the "coming together of the state and private regulators to enforce regulation" ((2004, p.1).

Thus, co-regulation is "neither state command-and-control regulation in its bureaucratic central nor pure self-regulation" (Marsden 2005, p.80). The clear setup of co-regulation involves a "combination of state, stakeholders and consumers to form a regulatory body" (Marsden 2005, p.80). Trying to combine the two definitions of 'independent' and 'co-regulation' as discussed above, hardly comes closer to what the PFC describes as Independent Co-regulation.

Literature shows that this is the first time this term is used to mean a single system of press regulation in the world. This peculiarity confirms that Independent Co-regulation is a system that is unique to South Africa. This is also evident with the process that coined the system. Despite

having four common systems of press regulation to choose from, the PFC settled for a new system that was not on the survey list.

With this in mind, it is, therefore, hard to relate the new system to any other system of press regulation outside South Africa. Thus, the new system can be better studied as a separate system or in comparison with other systems of press regulation. For this reason, this research report will use the term Independent Co-regulation as described by the PFC with its definition. It will not dwell much on the confusion being created by the term. The main interest of this study is the changes that the new system brought with it to press regulation in 2013 and the focus is to analyse whether (and in what ways) the changes have met the aims as set out by the Commission during its first five years.

1.3.1. Aims of Independent Co-regulation

Although the PFC report does not clearly set out the specific aims of the Independent Co-regulation, it is clear that the Commission wanted to address the concerns raised against the former system (Press Freedom Commission 2012, p.7). The major concerns were that the system was toothless, ineffective, biased and inaccessible (p.18-19). These concerns were coming from both the public and the ruling ANC. To the Commission, a preferred system is, therefore, the one that ensures the system's independence from "subjective inclinations and sentiments of the press profession and business" (p.7).

Thus, the major objective of Independent Co-regulation is to have a system that is effective and independent (p.18). The Commission, therefore, highlights independence and administrative fairness as the two essentials for an effective and independent system of press regulation (p.18-19). Although administrative fairness sounds too broad and overlaps with several factors that give a regulatory system independence, it is evident that the Commission was mainly interested in coming up with a system which if judged from the set up and practices, would build a sense of administrative fairness.

The Commission says to achieve administrative fairness in press regulation; the regulatory system should have an effective complaints handling mechanism that is "reasonable and

procedural fair" according to Constitutional provisions, and that its decisions should match with what any other independent decision maker could come up with in a fair procedure (p.18). This means that such a mechanism should have a fair document (Press Code) that guides the profession, propose relevant punishments (sanctions) that correspond with the gravity of the damage caused, demonstrate independence by involving all the affected parties and encourage optimal accessibility (p.19).

The Commission says independence is "when the press sets up its own regulatory mechanism that functions as an independent adjudicating entity which complies with the requirements of a fair and independent rule maker even though funded by the press" (p.18). It says that what gives such a mechanism a valid sense of independence and standing is the "distance from the founding body, the manner in which officials and adjudicators are appointed, the style in which decisions are taken and motivated, and the chairing of the appeals body by a retired judge" (p18). The motivation was that a system that is independent of the state "enhances the role, accountability and responsibility of the press in the promotion of the values of a free and democratic South Africa, and in upholding the rights, dignity and legitimate interests of the people," (p.7).

To achieve independence, the Commission says the regulatory system should allow its members to set up a mechanism that involves more public members and apply the "Press Code objectively and fearlessly as a judicial officer would" to uphold its members accountable (p.19). This is to promote professionalism and the key document that supports this is the Press Code that is well updated and accessible to the press members.

Mainly, the Commission's emphasis on independence was about increasing public participation to deal with concerns of bias in complaints handling mechanism. The proposed design was the one with more public members at Appeals Panels—three public, one press and the Chair of Appeals (p.19). Such an arrangement, the Commission believes would achieve both independence and administrative fairness.

While accessibility may include a number of services that ease access to the system, the PFC focus was largely on removing barriers that may frustrate complainants from raising their matters. The major barrier is the waiver which demands the complainants to consent that they

would not take the same matter to the courts. The other focus was to have a feasible starting point (Public Advocate) in accessing the Council's services that is very accessible and friendly to the users. Furthermore, to ensure that all breaches of the code are reported and that anyone (third-parties) can raise a complaint on behalf of someone as an interested party.

Based on this discussion, it is clear that the major aim of Independent Co-regulation is to have a regulatory system that is effective and independent. Such a system should promote administrative fairness, independence, optimal public participation and accessibility (p.18-19). In this case, an updated and accessible Press Code becomes a key document to guide the profession and deal with irresponsible journalism through sanctions developed against the provisions in the code.

This study, therefore, concentrates on the following as the key aims of the new system:

i. Improve administrative fairness

ii. Increase public participation

iii. Improve accessibility of the system

iv. Have an updated and accessible Press Code

v. Enforce an effective complaints handling mechanism

vi. Deal with the perception of soft approach

A detailed list of recommendations was made by the PFC in order to meet the above aims. These recommendations proposed changes in the four core aspects of the regulatory system. These are Governance and Composition, Complaints handling mechanism, Press Code and Sanctions. Section 5.1 below discusses these recommendations and what was implemented by the PCSA. This is followed by a discussion of whether (and in what ways) the implemented changes meet the aims as set out by the Commission.

2.0. Research Aims

Independent Co-regulation was adopted primarily to address the concerns that discredited self-regulation. Generally, the former system was criticised for failing to meet the normative expectations of the press in a democracy as contextualised by the normative theories of the press. Normative theories of the press are influenced by communal expectations. These expectations determine how the press should operate. If the press chose to operate in contrast or fail to meet the basic requirements, it provokes criticism. Press in South Africa is a good example. It is always criticised for failing to meet these societal expectations.

Independent Co-regulation was implemented amidst political threats of statutory regulation and expressed public's dissatisfaction with the former system and the public's rejection of government's involvement in press regulation (Press Freedom Commission 2012, p.7). However, this was not the first time public outcry and political threats influenced changes in the regulatory system. Self-regulation was also introduced amidst statutory threats and public outcry on the effectiveness of the regulatory system and to stop government intrusion in press regulation (Berger 2009b). Nonetheless, this did not stop threats for statutory regulation.

The tenure of self-regulation was characterised by persistent threats from government to introduce statutory regulation. Scholars attribute this to the failure by the PCSA to run an effective system of press regulation. Berger (2009b) argues that only if a regulatory system "functions effectively", a Press Council can successfully avert threats for statutory regulation.

Berger further argues that an effective Council promotes high standards of journalism which addresses issues of criticism against the press. In other words, as discussed by the normative theories of the press, an effective Council enforcing a relevant code of ethics and conduct that guides operation of the press effectively, has the potential to achieve better journalism standards that meet the normative expectations of the society and circumvent statutory threats.

Independent Co-regulation clocked its first five years in 2017. As Berger points out, the success of regulatory system to avoid threats for statutory regulation, achieve high standards of journalism and ultimately improve the overall quality of press regulation in South Africa, rests in

its effectiveness and ability to address the concerns that led to the phasing out of the former system. Otherwise, it will be subjected to further criticism and pave way for statutory regulation that will open doors to government intrusion (Berger 2009b).

The press in South Africa has been trying hard to avoid statutory regulation and one of the ways has been reviewing aspects of the regulatory system. These reviews are what gave birth to Independent Co-regulation (Press Freedom Commission 2012, p.7). The reviews also inform this research topic. The study wants to explore whether the new system and the subsequent reviews are addressing the concerns that characterised the former system. This is done by analysing the changes adopted in 2013 with the introduction of Independent Co-regulation to understand whether (and in what ways) the changes have met the aims of the new system as set out by the Commission.

This will help to show whether the 2013 changes have improved press regulation system. The findings will also predict chances for further threats to press regulation. Furthermore, being a new system implemented amidst squabbles, it is imperative to follow up and assess its performance to appreciate whether it is translating as expected.

Unfortunately, there is still no enough literature that explains how the changes adopted at the PCSA together with the new system have been performing. So far, it is only Julie &Reid (2015) report that gives a through and detailed review of PCSA. However, it only covers the first three years of the system, which excludes a second major review of the system by PCSA in 2016. This is the main concern that informs this study with regards to that its completion coincided with the ANC's national conference held in December 2017 and also the end of the first five years of the system. The ANC which has been the main threat to press regulation in South Africa uses its national conferences to make its position on press regulation. The position has always been that the system is ineffective and should be replaced with statutory regulation (53rd National conference resolutions 2012, p.62).

According to the PFC report, the strength of the new system is in its ability to improve the independence and effectiveness of press regulation (Press Freedom Commission 2012, p.18-19). These are some of the major weaknesses that have been igniting criticism against press

regulation in South Africa. However, it is important to note that although this is a new system, it did not bring in new aspects to the regulatory system but only restructured the existing ones to ensure the press is able to meet the normative expectations.

This study is concerned with this restructuring, particularly the changes that were made to the existing aspects of press regulation, to appreciate how they have performed in line with the aims of the new system from 2013 to 2017. Since attacks against press regulation in South Africa always come from different quarters of the society, this study is very interested in the perception around the system. Perception around the system from different system users reflects the legitimacy of the system. These system users include press members and members of the public who consists of ordinary citizens, business community, politicians and government. These groups of people are directly affected by press regulation and they form an important part of the investigation.

From the discussion above, the below research aims provide a framework for this study.

i. To understand what has really changed in press regulation with the new system
ii. To analyse whether (and in what ways) the changes have met the key aims of the new system
iii. To investigate the users' perception around the system

2.1. Research questions

With regards to the above research aims, the following research questions resulted from the main research problem will guide the study to understand how the changes that came with Independent Co-regulation have been performing.

1. What changes were made to press regulation with the adoption of the new system?
2. How have the changes been performing and addressing the aims of the new system?
3. What do the system users (journalists and the public) and Council say about the performance of the new system?

2.2. Rationale

With regards to the debates that continue to surround press regulation in South Africa, doing research around press regulation has become imperative. There is one key issue that makes this study matter the most; Independent Co-regulation is a new system of press regulation still at its infancy stage. By the time of this study, it had been around for only five years.

As of 2017, there was no enough literature that explained in detail how the system has been performing and transforming press regulation in South Africa. The available literature mainly explains the transition from self regulation to Independent Co-regulation. Other studies that analyse performance of press regulation in South Africa, only touch on one or two years of the system and most of them combine tenures of different systems of press regulation. The periods and focus of the studies can hardly be trusted to give a comprehensive picture of the new system.

This study is among the few that analyses the performance of the 2013 changes after the first five years of the new system. The period is longer enough to give a complete picture of whether (and in what ways) the system has met the aims set out by the Commission. The study also covers the whole period served by the first team that implemented the changes at the Council. This is likely to gives a true and trusted reflection of the performance of system.

Furthermore, this is a system that was adopted amidst serious debates and criticism of the former system. Its adoption was necessitated by the quest to improve the effectiveness and independence of press regulation and to stop government interference in press control (Press Freedom Commission 2012). The system replaced self- regulation system which, despite being phased-out, is said to have played a crucial role in the advancement of press freedom in South Africa (Edwards 2013). Thus, this new system is expected to be better than self-regulation, a binder which the PFC used to justify the relevance of Independent Co-regulation to South Africa (Press Freedom Commission 2012, p.7).

As Berger (2009b) argues, for a press regulation system to operate as "per paradigm and promote high standards", it has to be effective and act independently. Thus, this new system is expected to demonstrate an improvement in journalism ethics, code of practice and standards to meet the

normative expectations. This informs the overall rationale of this study which is to explore how the changes adopted by PCSA to improve the effectiveness and overall quality of press regulation have been performing. As the system goes into its sixth year, it is imperative to have studies like this one to know how far the system has gone in meeting the aims as set out by the Commission.

The findings of this research report will also be important both to South Africa and the PCSA as they will help to show whether the system has addressed the concerns raised against the former system and if it is relevant to South African media. This will also predict chances for possible threats from both the public and ruling ANC, particularly its ambition to establish the MAT idea.

3.0. Theoretical framework and literature review

This research report adopted the normative theories of the press, particularly the Media Accountability Systems (MAS) concept by Claude-Jean Bertrand (2000) and the Structural Context of Media Ethics by Kaarle Nordenstreng (2000). Both concepts are concerned with the quality and standards of journalism in a democracy. The theories also extend to look at how the press can meet the societal expectations.

MAS promote press freedom and self-regulation while the Structural context of media ethics mainly concentrates on press responsibility and accountability. The two concepts relate in that they help to give a clear understanding of how press is expected to operate in a democratic society with regards to the principles of press accountability and responsibility to which the concept of self-regulation is grounded.

In this section, I begin with a discussion of press in a democracy to give a snap shot of how the press is expected to operate in a democratic society like South Africa. I will then move on to the normative theories beginning with the MAS—which outline the relationship between democracy and press freedom and also how the press can self-regulate. This will take me to structural context of media ethics concept which outlines the relationship between press responsibility and accountability and the spaces for Press Councils.

3.1. Press in a democracy

The discussion around press in a democracy is well articulated by the Habermasian public sphere concept. Jurgen Habermas (1981) describes a public sphere as a space for interactions, where matters of public interest are deliberated in a rational and critical manner. This provides the principle that defines media in a democratic society (McChesney 1998). In a democratic society, freedom of expression is indispensable for it allows the press to operate without state interference. This allows the press to inform the public and offer opinions to advocate change and also give the minority the opportunity to be heard (Kumwenda 2010, p. 7).

The advantage of a democratic society is that it allows a diversity of views in public discourse that gives the public an opportunity to choose the information they want to follow (Hachten 2005). Curran (2003, p.346) lists informing the public, scrutinising government, expressing public opinion and encouraging public debate as the four major functions of the press in a democratic society.

The public sphere has components and these include social movements, places, public discussion and the press. However, the press is singled out as the most powerful mechanism for "enlightening the mind of a man, improving him as a rational, moral and social being" (Rafferty 1975 cited in Hachten 2005, p. 30). It is, therefore, essential to allow the media to operate without any statutory interference to give it an opportunity to serve the public interests productively. A "free market place of ideas and information is critical in a democracy for it allows a fair hearing to all sides of the issue at hand and building on to establishing the truth of the matter" (Siebert et al 1956, p.3).

Although this principle of how the media ought to operate in a democratic society is widely accepted, the debate around the role and how the press should operate in a democratic society refuses to cease. In most countries, government is the main source of this contestation, trying to create politically motivated vices to control the press. In some countries, governments have succeeded in establishing systems and structures that control the operations of the media. However, in other countries, the press has fought back by reviewing aspects of press regulation to stop this state interference. South Africa is one good case where the PCSA has always opted to rework on the aspects of its regulatory systems instead of succumbing to government pressure to introduce statutory control.

The argument has been that an independent and free press is vital in a democracy and this guarantees the importance of allowing the media to regulate themselves. Self-regulation differs from statutory regulation in that it is a voluntary system. Scholars such as O'Neill (2004) describe self-regulation as freedom of expression while freedom of the press as "other regarding". What they mean is that speech is not obliged to regard ethics but journalists claim that their work is guided by the ideals of independence, truth telling and public interests among others.

Thus, the rationale of a free press guided by self-regulation is indispensable in a democracy if the press is accountable for living up to its own standards (Berger 2009b). In most democratic societies, this role is performed by the press councils which are a body made up of press members to enforce standards of journalism. Generally, the aim of the councils is to ensure the press observes the ethics, code of conducts etc as agreed by themselves to meet the normative expectations of the society.

3.2. Normative theories of the press

The demand for a free press in a democratic society is rooted in normative theories of the press which mainly debate ideas of how the press is expected to operate in a democracy. However, the way the press is expected to operate in a democracy is always debatable as it is dependent on several factors including the normative expectations of a particular society. According to Nordenstreng (2000), a clear representation of the media in a democracy is a triangle of relationships between the press, people and government. In such arrangement, the press is aligned with the people and to the political power and only acts like a channel for both dissemination and debate (p.70).

In the introduction of his book, Claude-Jean Bertrand (2003, p. vii) begins by questioning "Can humanity survive without quality media? Can humanity survive without democracy?" While these sounds puzzling questions, Bertrand (2002) argues that there is no democracy without free press (p.4). He further lists freedom of expression and press freedom as the two fundamental rights at the core of democracy. In this setup, the press is expected to be free but serve the public interest in a professional manner.

However, he argues that press freedom without regulation is not enough. The MAS concept by Bertrand (2002) highlights that both "regulation and press freedom are indispensable" if the press is to meet the needed service in a democracy (p.5). The MAS concept is primarily designed to achieve three goals: to "help journalists serve the public better, form a recognized profession and feel solidarity and recover public trust" (Bertrand 2000, p.5). This is important because the goals share a basic feature—to improve the quality of journalism and allow press members to listen to the society they serve.

While this enables the press to be strong and independent, Bertrand argues that a united and strong press without regulation can only be a problem in a democracy (2002, p.4). The argument is that press freedom should be complemented by an effective press regulation system that enforces press responsibility and accountability.

By definition, MAS are mainly non-governmental means for advocating the adherence to the rules set by the profession and reminding media personnel about their existences and the need to abide by them (Bertrand 2000, p.5). Bertrand developed over 110 of these MAS. All the MAS are primarily designed to ensure accountability in the press.

An example is a press code which outlines rules set and agreed upon by the press members themselves to guide their profession and ensure they are accountable for their work. The MAS concept highlights that there is need for journalists to be reminded of the contents of professional press documents such as ethics and code of conduct without government involvement (Bertrand 2000). According to the MAS concept, this is the responsibility of the press themselves guided by their Press Councils which are responsible for monitoring the adherence of the same or respective media houses.

There are different ways that the MAS use to improve the adherence to these rules and ensure that the press is accountable. These include evaluation, monitoring, training, feedback and communication (Bertrand 2002, p.111-112). Three systems are vital to these procedures and these are Documents, Individuals and Processes (Bertrand 2000). Documents mean any written material designed to promote press responsibility and accountability (Bertrand 2000, p.9). An example is a written code of ethics developed by media practitioners themselves to guide their profession.

Bertrand (2000) describes Processes as "short and long-term investment plans for professionalism or standards at a workplace targeting quality of staff and their work". This is done by developing internal policies or adopting external policies that, for instance, demand that all new recruits should possess at least a first degree in journalism with an ethics component. Other processes may include staff grooming, orientation and refresher courses etc (Bertrand 2000, p.9).

Bertrand (2000) says Individual system involves in-house structures such as gate keeping and ethics committees designed to check and assess the ethical breaches in their products. The findings are not for the public but to help improve the quality of work at newsroom level and may inform the need for professional training or review of editorial policy etc (Bertrand 2000, p.9).

Bertrand (1998) favours a self-regulation system which he defines as MAS. He further lists over 110 different ways that can be used to uphold the quality of the press in a democracy without state interference. The MAS concept places a huge liability of press responsibility and accountability on the journalists themselves to develop tools that guide their work and regulate themselves. The advantage with the MAS is that they have an "intrinsic worth that is harmless, flexible, diverse, complements each other, democratic and efficient" (Bertrand 2000, p.6-8).

In South Africa, the press code which falls under the documents systems of MAS is one of the major tools that guide journalism. Globally, the most preferred systems of press regulation are the ones run by "independent media councils and complemented by professional codes of ethics" (Nordenstreng 2000, p.80-81). The regulation system follows the MAS concept which empowers the press to self-regulate to serve the society better and this role is championed by press councils.

The main objective of Press Councils is to ensure press responsibility and accountability and the press code provides the standard guides of how journalist should work in a particular society. This is why the PCSA always reacts to criticism towards press regulation by reviewing the press code (see Berger 2010, Reid and Isaacs 2015b). It is not surprising then that the shift from self-regulation to Independent Co-regulation in South Africa came with a proposition of 21 changes to the press code (Press Freedom Commission 2012, p. 67).

While MAS promote press freedom and self-regulation, the structural context of media ethics concept concentrates on the idea that the "media is contracted by the society to perform some roles and are supposed to be accountable for the same" (Nordenstreng 2000, p.77). Certainly, as McQuail (1997 cited in Nordenstreng 2000, p.76-80) argues, even the freest media "have responsibilities in the form of obligations which are either assigned, contracted, self-imposed or

denied for which they are held accountable, either in the sense of liability or answerability for the harms caused for quality performance".

The key terms that hold the structural context of media ethics concept are press responsibility and accountability. The concept concentrates on assessing the way the press actually does its work in practice (McQuail 1987). It borrows its philosophy from the normative theories of the press which chiefly deal with ideas of how the press is expected to operate in a democracy.

With the core role of the press being to serve the public interest, the press has several other responsibilities in a society. These include truth telling, comprehensive and intelligent account of the day's events in a context which gives them meaning, serving as a forum for exchange of comments and criticism, projecting a representative picture of the constituent groups in a society, being responsible for the presentation and clarification of the goods and values of the society and providing full access to the day's intelligence (McQuail 1987).

However, while the media performs these roles as a responsibility, they are expected to be accountable to the society they serve. In press, accountability means being answerable to ways the press executes the responsibilities given to them. Thus, "responsibility deals with defining proper conduct of the press while accountability deals with liability to proper conduct" (Newton, Keith 2004, p.172).

The structural context of media ethics says that the press members themselves realise their responsibility and the need to be professional and accountable to the society they serve (Nordenstreng 2000). This is true both to the press and the journalists as they perceive themselves as watchdogs, utilising freedom of speech on behalf of the citizens (Nordenstreng 2000). Nonetheless, despite championing utilisation of the right to freedom of speech, Nordenstreng (2000) observes that journalists are sensitive to their independence particularly from the state and this makes them "reluctant to accept laws to concretise the abstract responsibility" (p.78).

As Bertrand argues above, the press prefers to regulate itself in a way that the press freedom and ethical conduct are achieved without any external interference. However, the context of press

regulation in which the press is responsible for its own regulation is also contested. Nordenstreng (2000) describes self-regulation as a weak form of regulation compared to other forms of press regulation. He sees self-regulation as a "window-dressing" of the media industry, well summarised as a "repertoire of good intentions with little or no impact on the practical media operation and performance" (Nordenstreng 2000, p. 79).

In many democratic societies, press self-regulation is facilitated by Press Councils that are independent of the state and follows the MAS concept. There are two primary functions of press councils in press regulation. First, the administration of an agreed Codes of Practice established by the Press Council together with the newsroom members. Thereafter, the role extends to investigating and adjudicating complaints from the general public about the content in the media.

In most countries including South Africa, press councils are self-regulatory bodies founded by the media themselves and survive on voluntary services. Their responsibility is to administer Codes of Practice which gives an outline of how the journalists should operate and also the complaints handling mechanism which allows people featured in the news media to complain if they feel offended by a particular media organisation. The Codes of Practice is updated time and again to suit the changing media environment. So too, the structure of the regulatory system, especially the Governance and Composition structure according to the prevailing needs.

Although the concept of press council is popular now and found in countries such as Germany, New Zealand, Sweden, Australia and United Kingdom, the concept is not popular in some countries, including some developed nations. An example is the United States of America where press councils exist only in few states (Kruger 2009). In some countries such as France, press councils do not exist while in countries such as Canada, a national press council does exist. Of the nine provinces of Canada, five have their own press councils while other four provinces operate under a regional council.

Over the past three decades, Africa has seen the establishment of many press councils and most of them are self-regulatory. The press councils are found in Tanzania, Malawi, Zambia, Botswana and South Africa and most of them are self-regulatory. Kruger (2009) observes that the oldest press councils in Africa are those in Tanzania and South Africa. The media council of

Tanzania is branded as one that has been functioning successfully since 1995 and uses self-regulatory system which includes the members of the press and public but no government involvement (Press Freedom Commission 2012, p.17).

However, self-regulation is criticised for its failure to enforce professional practice in most countries. South Africa is one example. The missing link has been the ability to strengthen the effects of self-regulation on professional practice and weak systems for monitoring the state of self-regulation (Nordenstreng 2000). The ruling ANC argues that press regulation system in South Africa is toothless and ineffective.

The phased-out self-regulation system of press regulation has always been contested for its failure to monitor and regulate the press effectively. At its 53rd national conference, the ANC which has been the major critic of press regulation system reminisced that its proposition for the MAT is a "direct response to the ineffectiveness and varied weaknesses of the self-regulatory regime within the print media" (53rd conference resolution 2012, p. 62).

The government insists that statutory regulatory is a necessity for South Africa. On the other hand, the press insists that self- regulation is the necessary system of press regulation in a democracy and the debate continues. Nordenstreng (2000) observes that media professionals enjoy advocating for press responsibility but are tepid about accountability; hence the preference for self-regulation mechanism.

The main argument by the press is that self-regulation promotes press independence. Burger (2010) confirms that the success of any press regulation system is dependent on the independence of a press council and the professional code of ethics that promote press freedom and protect the press against media criticism. Nordenstreng (1999a) describes media criticism as a "scientifically and professional based analysis which facilitates the debate between the media producers and consumers and the influence the hungry political economic interest groups on various aspects of media coverage" (cited in Nordenstreng 2000, p.79). With regards to the never ending criticism against self-regulation in South Africa, I would argue that part of the criticism is bred by the inefficiency of the system.

The basis for adopting Independent Co-regulation in South Africa resonates with the pressure that founded the structural context of media ethics concept. The pressure that coined the concept was that the "power and near monopoly position of the media, impose on them an obligation to be socially responsible, to see that all sides are fairly presented and that the public has enough information to decide, and that if the media do not take on themselves such responsibility, it may be necessary for some other agency of the public to enforce it" (Siebert et al 1956, p. 5). I would, therefore, argue that the weaknesses of self-regulation system coupled by political interests from the ruling ANC are some of the reasons energizing government to take over press control in South Africa.

Bertrand (1998) notes that accountability generates public trust. Hong-Won (2004, p.1) observes that the "notion of accountability in the press covers moral and legal responsibility of the press whereas the responsibility part deals with the ethical element of the press". While statutory regulation involves political authority and self-regulation involves the media themselves, accountability involves the press, profession and public (Edwards 2012).

One of the key aims that favoured the adoption of the new system of press regulation in South Africa was the system's ability to enforce press responsibility and accountability through enforcements of professional standards of journalism and stiff penalties targeting those who violate the set standards (Press Freedom Commission 2012). Applying the normative theories of the press, particularly the MAS and the structural context of media ethics concepts to this study, has helped to show whether and in what ways the Independent Co-regulation has promoted the independence of the PCSA, strengthen the adherence to press code and improved the overall quality of journalism which are the pillars to addressing media criticism.

4.0. Methodology

The study used qualitative research method to analyse documents and gather views and opinions from system users (press representatives and public members) and the PCSA officials on the new system of press regulation in South Africa. Earl Babbie (1992) describes qualitative research as a non-numerical examinations and interpretation of observations for the purpose of discovering underlying meanings and patterns of relationships (p.17). Usually, qualitative research method explains rather than quantify. Strauss &Corbin (1990) observe that the method produces high quality data (p.97).

4.1. Data Collection

Qualitative research uses several techniques of data collection. These include document and text analysis, in-depth interviews and unstructured observations (Silverman 2006, p.271-314). This study adopted two main methods of data collection. These are in-depth interviews (semi-structured interviews) and document analysis.

4.2. In-depth interviews

Berger (1991) describes in-depth interview as an extended conversation that is highly focused. Generally, semi-structured interviews are a kind of a probe with a window for diversions during the conversation. Under this method, the researcher develops a set of questions which guide the interview and allows for further questions tied to the topic of discussion (Bernard 1988).

The advantage with this method is that it allows the interviewer to plan open ended the questions to guide the interview. The method allows for follow-up questions provoked by the responses. These follow-up questions helps to enrich the data collected (Bernard 1988).

Nonetheless, semi-structured interviews rely on the interviewee's memory to provide accurate and in-depth responses (Bertrand & Hughes, 2005, p.14). Common knowledge shows that the way human memory works, varies from person to person. However, the advantage with the

method is that it helps the researcher to gather raw and unedited data which gives the true picture of the issue under study.

Three modes of communication were adopted under this method to gather views and opinions from the participants. These are face to face, telephone, digital conversation (skype and emails). Semi-structured interview method was mainly used to gather views from the Council's leadership and system users. The PCSA officials, particularly those heading the major aspects of the system commented on how the changes adopted in 2013 have been performing in their respective aspects of the system since 2013. This revealed both achievements and challenges.

System users in this study are press representatives and members of the public. Under members of the public are politicians, government, organisations or business operators and ordinary citizens. This group of system users forms the major component of this study because the effectiveness of the system is judged by how it treats this group. Questions for this group were focused on probing their perception around the system. Targeted were only those who once raised a complaint against a particular publication at the Council.

The group includes those who won or had their complaints dismissed at any level of complaints handling mechanism. The participants were identified through rulings uploaded on the PCSA websites and with the help of the PCSA. The selection was based on the complexity of the complaints, the period they were lodged and a balance between winners and losers to get a clear picture of the perception around the system. Press members who represent their publications when summoned at the Council, were also targeted to share their experiences with the system.

These two groups were trusted to have a genuine experience of the system as implemented and that their views are independent of the Council. The views and opinions were analysed qualitatively. Press regulation exists for these two groups and, therefore, their perception of the system gives the system legitimacy. They form the major part of the study.

A total of 18 public members were interviewed. Nine of these had their complaints dismissed while the remainder achieved a retraction or an apology from the publication that offended them.

In some of these complaints, the rulings were not on the whole complaint but part because some parts of complaints were dismissed.

Questions for this group were designed mainly to gather their views and opinions growing out of their experiences with the new system as implemented by the PCSA in 2013. The interviews were done through telephone, Skype and emails. The responses successfully exposed their perception towards Independent Co-regulation. They were also allowed to suggest views on the operations of the system.

Four press representatives, Susan Smuts (*Sunday Times*), Beauregard Tromp (*Mail & Guardian*), Johan Vos (*Sunday Sun*) and Dumisani Lubisi (*City Press*) gave their views and opinions on the system. Questions for this group wanted to appreciate the perception around the new system among the press members and whether they think the shift from self-regulation to Independent Co-regulation has addressed the concerns that saw-off self-regulation. The sampled press members are those who regularly represent their publications at the Council. The publications are also among the biggest ones in South Africa. Views of the representatives gave a raw experience with the system.

At the Council level, the study spoke to the director and ombudsman. The director, Joe Thloloe was reached with questions that focused on the general performance of the whole system since 2013 while the ombudsman, Johan Retief commented on the performance of the complaints handling mechanism.

4.3. Document Analysis

In this research, document analysis which is the systematic exploration of written documents, primarily involved reading reports by the PCSA and PFC, including other published literature around press regulation in South Africa since 2013. Areas of focus were Governance and Composition, adjudicating system and procedure, press code and sanctions. These aspects form the major structure of press regulation system in South Africa.

The implementation of the Independent Co-regulation in South Africa was based on the recommendations made by the PFC in 2012. The recommendations are outlined in the PFC report. Therefore, to get a complete understanding of how the system was designed, implemented and performs, this study analysed what was proposed in the PFC report and how the PCSA implemented the recommendations versus the shape of the new system at the time of this research.

Certainly, recommendations made by the PFC only complement or add few new features to the former aspects of press regulation system rather than replacing. Therefore, document analysis was used to help analyse what has really changed in the system. This is shown in the new documents published between 2013 and 2017 by the PCSA, the period of this research.

Two documents, the South African Press Code, Procedures & Constitution of 2013 and the Code of Ethics and Conduct for South African print and online media of 2016, both published by PCSA, were vital to this study as they give a complete set up of the new system as implemented in 2013 with some reviews over the years. By comparing these documents to the PFC report and the PCSA review of 2011, the study was able to identify changes in the system.

However, the focus of this study was on the system as implemented by the PCSA and not specifically as recommended by the Commission. The reason is that system users have experience of what was implemented. In Addition, the study observed some minor differences between what was proposed by PFC and later implemented by the PCSA. Nevertheless, the minor differences are not central in this research report.

Furthermore, despite these minor differences, the changed system in all material respects followed the PFC recommendations. Thus, analysing the system as implemented gave accurate picture of what has really changed in press regulation with the adoption of Independent Co-regulation.

There is an advantage in using documents produced or published by an institution under study because they document all the events. In addition, the texts are accurate and this allows the researcher to follow and appreciate the changes chronologically (Bertrand & Hughes 2005,

p.133). Another advantage is that documents produced by such institutions are permanent and accessible, and therefore allow users to consult on them any time. These documents are well archived at the PCSA and some are on the Council's website.

The Press Council is a national institution forms one of the areas of research for scholars. There are a number of papers published around its operations. Document analysis method allows the researcher to select relevant publications from outside the institution under study. The external sources complement the study in a way that they allow debate on the topic than those produced by the host institution (Bertrand & Hughes 2005).

4.4. Limitation of the study

The major limitation of this study was that potential interviewees with vast experience of the system turned down proposals to be engaged in the study. Of the 17 who refused to participate, 11 have had more than one complaint at the Council. All except four that participated in this study are first time system users. This means their responses were limited to a single experience.

In addition, despite being a qualitative study, the sample size for this report was limited. Only 18 public members and four press members were engaged. The Council receives hundreds of complaints per year. For instance, between 2013 and 2014, Public Advocate Latiefa Mobara says the Council received over 650 complaints (Wits Journalism Workshop 2015, p.7). In 2015 and 2016, the Council received 591 and 536 complaints respectively and as of August 2017, a total of 359 complaints had been received (J. Thloloe, personal interview, November 28, 2017). Thus, the study cannot claim this sample size can produce a comprehensive picture of the users' views but a reflection of the picture on the ground.

Furthermore, the shape of the regulatory system has been changing over the years due to a number of reviews done to the system. These reviews have created some changes to the system. For instance, since its inception, the PCSA has been regulating only print media. Following the adoption of the new system, the Council added online media to the ambit.

Although these two forms of media are different, the Council uses same documents to regulate them. The documents hardly draw a line between the two. This study was unable to concentrate

on both but print. Thus, the findings are a reflection of only print media. Other studies focusing on online regulation may be important to complement this study.

5.0. Findings

The analysis of the recommendations by the PFC and the shape of the regulatory system indicate that PCSA implemented almost all the recommendations made by the Commission. However, the study found that in addition to implementing all the recommendations, the Council made additions and minor changes to the recommendations. For instance, the PFC proposed that no legal representation should be permitted before the panels (Press Freedom Commission 2012, p. 67). The Council amended the recommendation to allow legal representation although on condition (Code of Ethics and Conduct for South African print and online media 2016, p.26).

For this reason, this study did not concentrate on only the PFC recommendations but what was implemented by PCSA. The reason is that the changes were guided by the PFC recommendations. Furthermore, what was implemented produced the services which the system users draw their experience on. So, to be precise in the findings, this study analysed what was implemented and what the system users say to understand the changes made and how they have been meeting the aims of the new system.

The discussion combines data gathered from document analysis and interviews with the system users, including press representatives and the PCSA officials. The section begins with a discussion of what has really changed in the system. This is followed by a discussion of whether (and in what ways) these changes have met the aims of the new system as set out by the Commission. The discussion interweaves data gathered from both the documents and interviews. The approach makes it easier to understand how the changes have performed and where performance of the system meets the users' perception.

5.1. The 2013 changes

The shift from self-regulation to Independent Co-regulation mainly affected four major aspects of press regulation in South Africa. These are Governance and Composition, Complaints Procedure, Sanctions and Press Code. The major changes in these aspects of press regulation were mainly on composition and procedures.

While the 2013 changes can be described as the most significant review of press regulation in South Africa, there have been several other reviews. However, the 2012 review by the PFC, is credited as the most independent because it did not involve the press looking into itself as was with the previous reviews (J. Thloloe, personal interview, November 28, 2017). This study concentrates on the changes proposed in the 2012 the PFC report, particularly what was implemented from those recommendations. Focus is on the major changes made to the four core aspects of the regulatory system as listed above.

5.1.1. Governance and Composition

The PCSA describes Governance and Composition set up in Independent Co-regulation as the "Press Council, Ombudsman, Public Advocate and the Appeals Panel" (SA Press Code, Procedure and Constitution 2013, p.5). According to the PCSA director Joe Thloloe, the design of Independent Co-regulation is to ensure that the system is "independent, effective and that the public has a bigger voice than in the Council" (Wits Journalism 2014, p.5).

The major recommendation by the PFC on Governance and Composition aspect was that there should be a stronger public presentation in the system and that no legal representation before the panels should be permitted (Press Freedom Commission 2012, p.67). Key interests were put on the composition of both the PCSA and the adjudication panels and reducing the press powers in electing the chair of the Council and the deputy. The proposed setup creates a high public representation (seven public members and five press members) in the Council and empowers the press to elect only the chair and public members the deputy (p.67). Further, the Commission proposed that to ensure there is increased public participation at Appeals level, three public members from the Panel of Adjudicators and one from press should sit with the Chair of Appeals.

Before Independent Co-regulation, the office structure at the Council was made up of only the Ombudsman and Deputy Ombudsman (Press Council of South Africa 2011, p.39). The Ombudsman was responsible for both mediation and arbitration of complaints. If the Ombudsman fails to mediate, he/she would proceed arbitrating on the same.

At appeals level, the Chairperson of South African Press Appeals Panel (SAPAP) drawn from the panel of arbitrators would appoint one press member and one public member from the persons appointed in terms of clause 10 of the Constitution to hear the appeal with him/her (Press Council of South Africa 2011). No time frame was provided in the system to deal with a complaint, except the terminology "within the shortest possible time upon being reported" (PCSA 2013, p.13).

The 2013 restructuring process at the Council saw new offices being created and various roles of office bearers reviewed. Three major changes were made. Two new offices were introduced and the Ombudsman office was sustained but with some restructuring on the roles. The new offices are that of the director occupied by Joe Thloloe, formerly the Ombudsman and the Public Advocate office occupied by Latiefa Mobara. The offices were functional during the study period.

The Ombudsman office is occupied by Johan Retief. Both the Public Advocate and Ombudsman offices have deputies. Paula Fray and Dinesh Balliah are the deputy Ombudsman and deputy Public Advocate respectively (Code of Ethics and Conduct for South African Print and Online media 2016, p.11).

To promote the independence of the Council while empowering the public to ensure that the non-industry has a bigger voice, the new system, as Thloloe puts it, ensures that no press member chairs the Council, Panel of Adjudicators and Appointments Panel but only retired judges (J.Thloloe, personal interview, November 28, 2017). This is one of the major changes.

The Council is now chaired by Judge Phillip Levisohn who sits above six press members and six public members. Judge President Bernard Ngoepe also leads a Panel of Adjudicators which has eight public representatives and six press representatives. The Chair of Appeals appoints up to three public members and a press member to hear an appeal with him. This, I would argue, has given the non-press members more voice in the system than the press as demanded by the recommendations made by the Commission.

The new office composition also meant reallocation of the roles performed by different individuals. Most affected by the new system were the new posts of the director and Public Advocate. The director was tasked to champion public engagement around issues of standards and media freedom while Public Advocate was to receive, mediate complaints and endeavour with the complainant to achieve a speedy settlement of the complaint with the publication (SA Press Code, Procedure & Constitution 2013, p.29-30). Only if the complaint cannot be mediated at Public Advocate level is when it is taken to the Ombudsman for arbitration and later on to Appeals Panels.

5.1.2. Complaints handling mechanism

Recommendations under the Complaints handling mechanism were tied to ensuring that the system is more accessible, effective and that complaints are resolved quickly. Therefore, the recommendations focused largely on dealing with the limitations in the former system and improving the effectiveness of the new system. The Commission proposed the removal of the waiver clause, created the Public Advocate office to mediate on complaints and recognition of Third-parties to initiate complaints on behalf of someone (Press Freedom Commission 2012, p. 68). All these were to improve accessibility of the system, particularly the Complaints handling mechanism.

In the new system, the Public Advocate is expected to try to mediate and find resolution on a complaint within 15 days upon receipt (Press Code, Procedure & Constitution 2013, p.19). If that fails, the complaint should be moved to the Ombudsman. The Ombudsman no longer mediates as was in the former system, a role now being played by the Public Advocate. The new system also requires that the "Ombudsman, Adjudication Panel, the Chair of Appeals and the Appeals Panel hand down the findings of any complaint within 21 days of the hearing" (Press Code, Procedure & Constitution 2013, p.22). This is to ensure that complaints are resolved quickly.

The Ombudsman has the powers to decide on a submission not to hear the parties and instead decides the matter on the papers. He does so alone and if he feels a hearing is necessary, he then sits with a press representative and public representative. If one or both parties are not satisfied with the ruling, the complaint may be taken to the Chair of Appeals who hears the complaint

together with a press representative and three public representatives (SA Press Code, Procedure & Constitution 2013, p.19-20). In both these sittings, the public membership is in majority. Thloloe says this has empowered the non-industry voice (J. Thloloe, personal interview, November 28, 2017). I would argue that this arrangement responds to the Commission's recommendation that proposed increased public participation in press regulation.

Unlike in the past where only the affected person was allowed to initiate a complaint, the new system redefined and widened the provision by allowing third-parties. Third parties clause provides that any person can initiate a complaint on behalf of someone (SA Press Code, Procedure & Constitution 2013, p.18). Now anyone, including the Public Advocate has the power to initiate a complaint on behalf of someone if convinced that there is a breach of the code by a particular publication (Press Code, Procedure & Constitution 2015, p.18).

However, according to the SA Press Code, Procedure & Constitution (2013) such action should be done within the first 20 working days upon the infringing article is published (p.18). Code of Ethics and Conduct for South African Print and Online media (2016) extends the period to 30 days and allows the Public Advocate to file a complaint after the period, if she/he feels that "a prima facie contravention of the Press Code has been committed and is in public interest" (p.24).

Furthermore, the new system allows members of the public to lodge a complaint through letters, fax, sms or e-mail with the Public Advocate office (SA Press Code, Procedure & Constitution 2013, p.18). This, I would argue simplifies the process of lodging a complaint and gives everybody an opportunity to reach the Council if he/she feels offended. The new setup also makes the Public Advocate part of the complaint and may help the complainant in formulating a complaint and during hearings (SA Press Code, Procedure & Constitution 2013, p.21).

As proposed by the PFC, the Council removed the waiver—a requirement that complainants proclaim they would not take the matter to court. The waiver was introduced to deal with complainants who were using the system to test the strength of their complaint before taking it to the formal courts (Press Freedom Commission 2012). However, the Council hints on plans to re-introduce the waiver arguing that some clients proceed to the courts despite accepting the initial ruling at the Council (J.Thloloe, personal interview, November 28, 2017). The current set up

allows the Council to assess a complaint being reported and if it emerges before or during proceedings that a court proceeding is pending, the Council shall forthwith stop the proceeding (Code of Ethics and Conduct for South African print and online media 2016, p.24).

Another major review was discouraging legal representation both at mediation and arbitration levels. Nonetheless, two reviews by the PCSA published in 2013 and 2016 provide a window for legal representations but with consent from either the Ombudsman or the Chair of Appeals and all other parties affected (Code of Ethics and Conduct for South African print and online media (2016, p.26-27). The study has established that between 2013 and 2017, there has been the use of legal representatives by both complainants and publications.

5.1.3. Sanctions

The major criticism suffered by the old system was that it was toothless and the punishments meted on the press were not prominent enough to deter irresponsible journalism (Press Freedom Commission 2012, p.69-70). However, it has always been debatable even to the press Ombudsman himself, as Reid[2] observes on "how prominent an apology should be" or what a tough punishment entails (Wits Journalism Workshop 2014, p.11).

Unlike in the former system where sanctions were amorphous, the new system gives the Council power to develop a hierarchy of sanctions according to a "scale of seriousness of infractions and also to apply space fines that correspond with the seriousness of the infractions" (SA Press Code, Procedures & Constitution 2013, p.23). This was the major recommendation by the PFC under this aspect. The current sanctions include both space fines and monetary fines. Space fines are now termed "space sanctions" while monetary fines as "cost recovery" (J.Thloloe, personal interview, November 28, 2017).

As recommended by the PFC, no monetary fines are entertained as a penalty for the content in the press. The Commission raised a number of arguments justifying the decision. Among them include that:

[2] There was concern about regulation being toothless because apologies were not as prominent as the original stories. Before 2013, the Ombudsman occasionally commented on how prominent the apology should be.

> "Monetary fines are difficult to determine and fix, newspapers are not financially equal, sanctions threatens the general existential survival of publications and press infractions are primarily speech offenses, and in a democracy, speech offences should allow the offended parties to freely express themselves in self-defence or for the offending publication to correct its errors to the satisfaction of the aggrieved." (Press Freedom Commission 2012, p.50-51).

The Commission, however, considered some exceptions that can attract monetary fines. Under clause 5.1.3, the Commission lists the following as exceptions that can attract monetary fines:

> "If and when a publication fails, without reasonable or acceptable excuse, to appear before the Ombudsman following two notices of summons for hearings on complaints brought against it; and/or if a publication is found guilty of repeated offences over a defined number of times in defiance of the Ombudsman's rulings against it" (Press Freedom Commission 2012, p.52).

Thloloe says the current setup allows the Council to suspend or expel a particular media house for "failure to appear for hearings and further repeated non-compliance with the rulings of the adjudicatory system" and may also apply "cost recovery" fine if deemed necessary against a particular publication (Wits Journalism Workshop 2014, p.11).

Furthermore, in complaints where a publication has been reinstated after complying with the conditions is found to have defaulted again within 12 months, it is immediately expelled from the system (Code of Ethics and Conduct for South African print and online media 2016, p.29).

The hierarchy of sanctions is determined by the seriousness of the breach of the code. The breaches are grouped into three—minor breaches, serious breaches and serious misconduct. According to the Council's Code of Ethics and Conduct for South African print and online media (2016), minor breach attracts an "apology accompanied by a stamp of the Council's logo" and is located space in the publication as directed by the Ombudsman or the Chair of Appeals (p.28). Serious breaches attract "reprimands, caution, correction, retractions or apologies" and the Ombudsman or the Chair of the Appeals decides on where the sanction accompanied by the

Council's logo should be placed (p.28). Similarly, under serious misconduct, in addition to the sanctions for serious breaches, the penalty attracts "space fines ranging from a few centimeters to a full page for the complainant or the PCSA to use as determined by the Ombudsman or the Chair of Appeals" (p.29).

In every complaint, the Ombudsman is expected to come up with findings and give reasons for the findings. The Ombudsman is expected to share the findings with both parties and that the respondent complies with the orders or directives by the adjudicating system (SA Press Code, Procedures & Constitution 2013, p.23). These records remain public documents.

The reviews indicate that the Council has met the Commission's recommendation but this is unlikely to cease the debates around the relevancy of the punishments particularly to public members. The argument being raised is that the punishments are not enough to deter a journalist from irresponsible journalism and that the punishments do not meet the gravity of the damage caused to the offended.

5.1.4. Press Code

The Press Code is the guiding tool for professional journalism. The societal expectation is that a regulatory system guided by a good Press Code promotes professionalism. In the PFC report, the Commission made 11 recommendations all tied to improving professionalism and accountability of the press. Six of these recommendations promote accessibility of the code to both old and new journalists and encourage frequent reviews of the document to accommodate emerging ethical issues in the press (Press Freedom Commission 2012, p.33-34).

The Commission, however, says the recommendations "do not only strengthen the code but also provide additional detail to guide journalists in how to do their work ethically and without error" (p.33). This, I would argue, promotes professionalism. Nonetheless, the Commission hardly mentions the code as the recipe for the criticism that saw-off self regulation. Instead, it treats the recommendations as just complements of the old code.

This puts to bed the arguments that criticisms against the press are a product of the ineffectiveness of the Press Code. Scholars such as Julie Reid have been arguing that the criticism against press regulation cannot be attributed to a single aspect of the system. Reid observes that even the increase in number of complaints at the Council cannot be directly linked to the code and can hardly be due to one factor (Wits Journalism Workshop 2014, p.11). Thus, while the Press Code is key in terms of promoting media accountability system, other factors need to be considered when reviewing a regulatory system. This might be the reason the 2013 changes went beyond the Press Code.

According to the SA Press Code, Procedures & Constitution (2013), the new press code complements the Council's commitment to uphold the "highest standards of excellence, to maintain credibility and keep the trust of the readers" by ensuring that the press "strives for truth, avoid unnecessary harm, reflects a multiplicity of voices in the coverage of events, showing a special concern for the children and other vulnerable groups and acting independently" (p.13).

The major transformation that happened to the Press Code was the inclusion of new sections and tightening further the protection of children. The former code had eight sections while the current one has 12. Of these sections, two (Independence and Conflict of Interests and Privacy, Dignity and Reputation) are new while the other two (Protection of Personal Information and Children) have been disintegrated from former clauses to be independent and their injunctions given greater weight.

Independence and Conflict of Interest deal with external influence that may slant reporting. The influences include commercial, political or other non-professional considerations, bribes and freebies (Code of Ethics and Conduct for South African print and online media 2016, p.15). The revised code demands the press to disclose any interference it faced and explain how it handled the situation. The emphasis is on ensuring professionalism in handling complaints where conflicts of interest are at stake. The code also urges the press to avoid[3] such complaints and "any other arrangements or practices that could lead audiences to doubt the media's independence and professionalism" (p.15).

[3] The media shall indicate clearly when an outside organisation has contributed to the cost of newsgathering Editorial material shall be kept clearly distinct from advertising and sponsored content

Dignity and Reputation is now combined with privacy to form Privacy, Dignity and Reputation clause. In the former code, privacy was buried under News Reporting clause. The new clause guides the press in dealing with matters involving private lives, dignity and reputation among others. It also demands the press to afford special weight to "South African cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away as well as concerning children, the aged and the physically and mentally disabled" (p.15).

Although the old Press Code contains children issues, the emphasis is negligible. Children are mentioned only once under pornography. The new Press Code goes on to regulate the media from identifying children who are victims of abuse or convicted of crime. Such children should not be interviewed, photographed or identified without the consent of a legal guardian and where these are done; there should be viable evidence of public interest. The Press Code demands "exceptional care and consideration when reporting on children" (Code of Ethics and Conduct for South African print and online media 2016, p.17-18).

One major recommendation made by the Commission was that the Council should make sure the code is revised regularly and that the users are kept updated of the changes. Through the director's office, the Council has updated the Press Code twice since 2013. The changes have been shared with the press members including public members.

The new code has the following sections:

i. Gathering and Reporting of News

ii. Independence and Conflict of Interest

iii. Privacy Dignity and Reputation

iv. Protection of Personal Information

v. Discrimination and Hate Speech

vi. Advocacy

vii. Protected Comment

viii. Children

ix. Violence, Graphic Content

x. Headlines, Posters, Pictures and Captions

xi. Confidential and Anonymous Sources

xii. Payment for Information

As discussed above, since 2013, the PCSA has carried two major reviews of the regulatory system and more vivid are efforts to improve the journalism standards and ensuring that the press meets the normative expectations of the society. Most of the reviews were dictated by the changing media environment and the emerging ethical issues (Interview with Joe Thloloe 2017). See Appendix 3, the 2016 Code of Ethics and Conduct for South African Print and Online media for an updated Press Code and the new setup of the regulatory system.

5.2. Discussion of the findings

This section discusses how Independent Co-regulation system has performed in line with the aims set out by the Commission. The discussion is complemented by views and opinions from systems users, press representatives and the PCSA officials and also analysis from various related documents. The approach was opted for to get a clear understanding of whether (and in what ways) the system has met the aims of Independent Co-regulation as read from experiences with the system.

As argued above under the Aims of Independent Co-regulation, the following are the major aims of the new system:

i. Improve administrative fairness

ii. Increase public participation
iii. Improve accessibility of the system
iv. Have an updated and accessible press code
v. Have an efficient complaints handling mechanism
vi. Deal with the perception of a soft approach

5.2.1. Is there administrative fairness?

Administrative fairness is an over-arching aspiration of the new system. It is, therefore, hard to separate it from other aims as set out by the Commission. The reason is that although the individual aims are trying to address specific issues, the results are in general tied to achieving administrative fairness that serves the interests of both the press and the public.

However, the critical part with this aim which also necessitated it to be highlighted separately is that it addresses, though broadly, the key issue of independence of the regulatory system as previously argued against self-regulation. One of the major criticisms against self-regulation was lack of independence. Major concerns were raised against Governance and Composition of the system.

The argument has been you cannot expect administrative fairness from an institution that is looking into itself. The missing point according to the critics was """"there has to be a balance in all areas, the media cannot sit on their own and say we know how to regulate ourselves""""" as Lindiwe Zulu, ANC national executive committee member puts it (Sampear 2015 cited in Reid &Isaacs 2015, p.63).

Certainly, with self-regulation, the press entirely looks into itself in terms of deciding how it should operate. Even in cases of breaches that affect the non-industry, the press still holds the power to make decisions. This arrangement has been described as an unfair in a democracy. Even some members of the press have testified to this. For instance, Vukani Mde, Group editor: Opinion & Analysis at the Independent Media says:

> "Self regulation by and large does not work. It is not satisfactory to all stakeholders. So you have to find a middle ground. What for me would be logical way is an independent regulation that is outside the hands of the media and also the state" (Sampear 2015 cited in Reid &Isaacs 2015b, p.63).

The current system as proposed by the PFC tries to address this concern. However, it is not independent regulation as Mde suggests but Independent Co-regulation which according to the PFC involves the "press and public participation with a predominant public membership but without state participation" (Press Freedom Commission 2012, p.7). In this, the press no longer holds ultimate power to look into itself as was with self-regulation.

Thus, power in the new system is shared between the press and the public members but with the non-industry having a bigger share. The Commission believes a combination of press and public members promotes administrative fairness. I would argue, a system that involves the affected parties can indeed achieve administrative fairness since decisions are made in the interests of all the concerned parties. One may add that decisions from such a set up are independent.

Thus, looking at the new set up in-terms of liberalising power between the press and public, the new system is promoting administrative fairness. The argument is that the most affected parties share power in the regulatory system. The expectation is that decisions made are likely to address the interests of the two groups.

It is also important to highlight that on a larger scope, the Commission looked at administrative fairness from two fronts—increased public participation and optimal accessibility of the system to the users (Press Freedom Commission 2012, p.29). This is why this study treated the two as separate aims. Nonetheless, on a broad perspective, the way the Council has performed to achieve these two aims also speak directly to the issue of administrative fairness, more particularly in improving participation and accessibility. The same happens with aims number (iv) to (vi). The discussion below shows how administrative fairness also plays out in other aims.

5.2.2. Is there increased public participation?

The 2013 changes at the Council mainly achieved liberalising power in press regulation and achieved what Thloloe calls "a bigger voice for the non-industry" (Wits Journalism Workshop 2014, p.5). The major transformation was that for the first time, public members have been given a bigger space in press regulation. They are also in majority and have become the powerful voice in the system.

This section analyses whether and in what ways have the 2013 changes achieved increased public participation in press regulation. The analysis uses numbers and power disparity to answer the question. However, as argued above, efforts to meet this aim speak back to achieving administrative fairness in press regulation.

5.2.2.1. The power of numbers

A practical understanding of how the new system meets the aim of increased public participation is probing representation of both press and public members in the new governance system as compared to the former system. This study has found that the new system has indeed increased public participation. The 2013 changes saw the Council operating with six press members and six public members. Above them is a retired judge, Phillip Levisohn who according to the system setup, belongs to the public members group. Composition in the adjudication panels begun with eight public members and six press members.

In January 2016, almost three years since the Commissioning of the new system, the Council published the Code of Ethics and Conduct for South Africa print and online media. The document shows a number of changes made to the system and these changes were effective January 2016. Observable are efforts to promote the public voice in the system. At the time of this study and as illustrated in the review, the Council was being chaired by retired judge Phillip Levingsohn and below him were eight press members with the two additions being for online media. The public members list had not changed.

Panel of Adjudicators was still chaired by Judge President Bernard Ngoepe and below him were 17 public and press members. Although two slots for public members were vacant during the study period, the total number of slots had been increased from eight to 10 while those of press members had been increased by one to seven (Code of Ethics and Conduct 2016, p.8-10). Using numbers, this confirms that since 2013 public participation at the Council has improved. Furthermore, the subsequent reviews show that more efforts are being made to give the public members more space.

While the PFC recommendations only focused on having public members in the Council and its Adjudication panels, Thloloe says his office expounded the recommendation to consider public members outside the system (J.Thloloe, personal interview, November 28, 2017). He further says the office ensures they are engaging public members outside the system to gather additional views and opinions. Thloloe cites meetings he holds with different quarters of the society saying they have been a source of ideas that have been improving the system over the years.

The ideas, says Thloloe, come through feedback and suggestions which reach the Council through Post Office, E-mails, Fax and Short Messages. He pointed out that these platforms have improved and promoted public participation, adding they have been getting views from the minority groups who were not able to contribute to the system in the past (J. Thloloe, personal interview, November 28, 2017).

Thus, combining the majority public membership in the system and the efforts to engage other public members outside the system, confirms there are enough efforts to ensure the public has more voice in the operations of the Council. Reading from the analysis of other aims as discussed below, it is evident changes in who is in the system (more public membership) has improved a number of issues and addressed some criticisms that characterised the former system.

5.2.2.2. Transferring power to the system users

The new system does not only strive to have many public members but also to relinquish some power to the public. This addresses concerns like the one raised by Lindiwe Zulu that the """"media cannot sit on their own and say we know how to regulate ourselves""" (Sampear 2015

cited in Reid &Isaacs 2015b, p.63). I would, therefore, argue that giving the public more power in press regulation promotes administrative fairness and gives the system credibility.

The new system ensures the members of the public form part of the supreme power of the system. Analysis of the composition of the new system against the former indicates the new system does not only have many public members but also gives this group more power in the system. The appointment of retired judges to chair the Council, Panel of Adjudicators and Appointments Panel is said to have reduced the press to "minority" as Thloloe observes (Wits Journalism Workshop 2014, p.5). Thloloe believes the new set up has given the "non-industry a bigger voice than the industry" and this has suffocated the perception that the system is not independent and administratively fair (p.5).

Although there are concerns that the press still controls the appointments of people to serve in senior positions and that this has an implication on the system's independence, this study argues otherwise. The set up instead gives the public members more power to decide on who should be in the Council. The PCSA Constitution empowers the Council to only "ask the Chief Justice of South Africa to recommend a judge who is no longer in active service to chair the Appointments Panel responsible for appointments of public members of the PCSA, public members of the Panel of Adjudicators, the Ombudsman, the executive director, the Public Advocate and any deputies for the offices when necessary" (Code of Conduct for South African Print and Online media 2016, p.34-35).

I would argue, such an arrangement reduces chances for bias, particularly that judges have a reputation of being impartial in their decisions. This I would say, in addition to giving the public members more power, promotes administrative fairness.

> This means public participation goes beyond representation to more power. If appointments are made with the blessings of an independent judge, we believe that there is justice and it is different in cases where the press makes appointments on its own. Also the selection of these public members is designed to recruit those people with an understanding of issues in the society so that they contribute effectively and this has tremendously improved the system. We have been

> receiving positive feedback from the system users themselves on this (J. Thloloe, personal interview, November 28, 2017).

In the PFC report, the Commission argues that it is the way in which "officials and adjudicators are appointed, decisions are taken and motivated and the chairing of the appeals body by the retired judge that gives a regulatory structure independence and standing" (2012, p.18). Looking at the current structure of the new system, it is evident the PCSA has met all these and it has created a reputation of independence and administrative fairness.

This is a view being shared by the system users. The study found that of the 18 individuals sampled for this study, 12 believe the judges heading various aspects of the Council have brought sanity in the system. While not ruling out chances for biases in favour of the press, the individuals say review of the composition at the Council to include more public members is a demonstration of administrative fairness to serve the interests of public members.

The system users say they feel represented at the Council especially in complaints handling processes. Although more than half of the sampled individuals had their complaints resolved at the Public Advocate level, they all agree on that the treatment they got at Council made them feel the press is no longer a dominant power in press regulation. They say the experience made them feel that they count and decisions are no longer skewed towards the press. All these are fruits of increased public participation.

Ndarani Manki who raised a complained against Die Son newspaper for a story headlined *Bandiet ontsnap uit tjoekie* says:

> The complaints handling process is very efficient and effective. The professionalism and courtesy they displayed was very satisfactory and their understanding of our frustration and anger was well demonstrated (N. Manki, personal interview, December 5, 2017).

This is also evident from the press side. Unlike in the past, the new system has reduced the confidence that the press representatives used to have upon being summoned before the Council

for a breach of conduct. What has cost this confidence is the absence of the majority press membership at all levels of the adjudication and also presence of independent judges who according to the set up of the system belongs to the non-industry voice.

> The new setup addresses the concerns about fairness and independence of the system. The complainants, who come into this process, would feel assisted because it doesn't leave them away like in the past. It is no longer press facing its scribes. You look at the Council in general and the Adjudication Panels, you would see more public members than the press representatives and decisions are made in the interest of the public and not the press anymore. Again, the sanctions against the press are clear and non-negotiable (D. Lubisi, personal interview, November 29, 2017).

Legal editor for *Sunday Times* newspaper Susan Smuts concurs:

> You cannot predict the outcome. Facts of the complaint and arguments raised by both sides now decide the fate of the matter. We have lost a number of cases. Generally, the Ombudsman and judges heading respective aspects of the system are fundamentally fair individuals, they've got integrity and that put the complainant and respondent on equal front (S. Smuts, personal Interview, November 27, 2017).

However, many system users are yet to appreciate the presence of more public members in the system and that power is tilted towards the public side. Of the 18 individuals sampled for this study, only six had their complaints taken beyond the Public Advocate office. Thus, the rest have no experience to understand the impact of more public membership in the system. Furthermore, they are first time users.

Four of those whose complaints were transferred to the Ombudsman were dismissed on paper. Two others had their complaints handled by the Ombudsman and Justice Bernard Ngoepe. One woman, who chose to be anonymous, had a direct experience of a hearing. She felt the increased public presence positively.

She could tell from the arguments raised against the press representative that she was not out of place and had public support. She recalls that it was intimidating to see the panel of adjudicators and that she felt like a small fish taking on a shark. The woman says proceedings, especially the arguments raised against the publication's defence is what gave her confidence that she had support.

> I had the perception that I won't succeed with my complaint since I could not afford a lawyer to support me. Even as I walked into the room where the complaint was to be heard, I was not confident enough for a victory, until the judge and another individual whom I can't remember by name, started to raise tough questions against the press representative. Some arguments sounded so considerate of the public's ignorance of some of the press processes. This is what I remember as a pointer that there were public members on my side since it was my first time at the Council (Personal interview, January 10, 2017).

5.2.3. Is the system more accessible to users?

One of the major aims of Independent Co-regulation that was also given more emphasis is the accessibility of the system. The former system was highly criticised for being inaccessible. In the PFC report, the Commission demanded not just accessibility but "optimal accessibility" of the regulatory system (2012, p.19). To give a clear understanding of how the 2013 changes have performed to meet this aim, this study concentrates on the accessibility of the complaints handling mechanism to system users. The reason is that interactions with system users revealed that they usually engage with the Council when they have been offended by a publication. Thus, their aspect of interest is the Complaints handling mechanism.

In general, the study has found that the new system has tremendously improved accessibility of the system. The major thing that has happened to press regulation is the creation of the Public Advocate office. The Public Advocate acts as a first line contact for raising a complaint. Unlike in the former system, where the Ombudsman would mediate and if it fails proceed to arbitrate, the current set up has a fully fledged office of the Public Advocate. The office has two individuals (Public Advocate and the deputy) whose responsibility is to receive and decide on

whether to entertain a complaint and if it is found to be valid proceed with mediation (Code of Ethics and Conduct for South African print and online media (2016, p.25). If the complaint cannot be mediated, the Public Advocate refers it to the Ombudsman.

The major change brought with this office is that it has increased labour force at the Council. This has improved accessibility in the sense that the office has two officers who are always available to assist users. Beyond that, system users are happy with mediation and now believe the Council lives for them because they can easily access the system through the Public Advocate office and their complaints are resolved through mediation. Furthermore, because there is enough labour force, the officers are able to thoroughly assist the users.

The Council has built this reputation by demonstrating a strong interest to pursue and get to the bottom of each complaint raised. All the sampled users said they were well welcomed and the Public Advocate office demonstrated passion to help them. This, to them means the Council is making efforts to protect them from being offended by the press.

One complainant who chose not to be named commends the Public Advocate for the "orientation and guidance in the process", saying this helped him to understand both the "pros and cons of the process. He added that the Public Advocate responded quickly to all emails and demonstrated efforts to have the complaint resolved amicably. This view is also shared by those whose complaints did not go their way.

The consensus being made is that the system users who in the former system were treated as visitors at the Council, no longer feel the same. They have the Public Advocate to assists them with orientation and then mediation as the first stages. If the complainant is not convinced, the Public Advocate supports him or her throughout the process to the Ombudsman. The Public Advocate is also allowed to be on the appellant side during hearings at Appeals panels.

Another participant agrees.

> Ofcourse my case was dismissed at arbitration level for late application but sincerely, the system is accessible, particularly at the Public Advocate level as it

> is the first point of contact. The Public Advocate is very available and was so helpful throughout in entertaining my complaint, helping me understand both the pros and cons of the matter and also to take it to another level where it was dismissed (M. Mabuza, personal interview, November 22, 2017).

Unlike with the former system, the new system took into consideration the fact that there are some people who are challenged in terms of access to articles that offends them. Some users may also not be challenged per say but can miss a published article that offends them. An example is Madubula Mabuza, a sampled complainant in this study who alleges that he missed an article that offended him and learnt about it after the required time frame, of 20 working days after the publication, to raise a complaint with the Council had elapsed (M. Madubula, personal interview, November 22, 2017). His complaint recorded as Madubula Mabuza Vs *City Press* (2017) at the Council was dismissed for late reporting.

The new system has a mechanism that protects such groups of people and ensures that accessibility is not compromised by one's circumstances. The PCSA documents contain a clause on third-parties[4]—individuals raising complaints on behalf of others. Anyone who believes the press has offended someone is allowed to raise a complaint as an interested party at the Council (Code of Ethics and Conducts for South African print and online media 2016, p.23). The system further empowers its own members, particularly the Public Advocate to initiate a complaint on behalf of someone (p.24). This has made the system more accessible to the underprivileged and vulnerable groups such as the voiceless, disabled, sex workers and children.

However, between 2013 and 2017, the Public Advocate office has only raised one complaint on behalf of someone. Thloloe does not think it is a weakness, arguing it means that there have been no serious breaches of the Press Code that were missed by the offended individuals (J. Thloloe, personal interview, November 28, 2017). To him, it means the users are able to raise complaints on their own, and he attributes this to the sensitization campaigns the Council has been carrying since 2013.

[4] A key recommendation by PFC to improve accessibility of the system (2012,p.68)

Another major stride that has promoted optimal accessibility of the new system is the removal of the waiver. The waiver is a declaration that the complainant will not take the complaint to court. During the former system, complainants were asked to declare that they will not take the matter to court. The 2013 changes considered this as a limitation to accessibility of the system, and therefore, took the opposite path to ensure no one fails to access the services of the system because of this limitation.

The new arrangement is that complainants are being asked a number of questions before their complaints are considered, and that, if the Council feels the complainant can take the matter to court, the Council reserves the right to delay consideration of the matter (Code of Ethics for South African print and online media 2016, p.24). During the time of this study, two users whose complaints were resolved amicably at the Council had taken them matter beyond PCSA. They had approached the publications that offended them demanding monetary compensation and the publications succumbed to their demands (J. Thloloe, personal interview, November 28, 2017).

At the same time, one of the sampled system users for this study, Madubula Mabuza had reported his complaint which was dismissed at the Council for late reporting, to the courts. Thloloe is not happy with the practice and argues that "you don't expect someone to rush-off to the courts having their complaints satisfactorily dealt with" (Wits Journalism Workshop 2014, p.6). This study did not go on to explore on why some system users proceed to take to task publications that offended them after the Council has satisfactorily dealt with their matters.

Accessibility is also based on knowledge about the existence of the system, what it does and knowing what to do if one feels offended by a publication. Raising awareness complements this aim of having an accessible system of press regulation. There are arguments in the public domain that some people do not raise complaints because they are not aware of the existence of the Council. The study has found that there is an improvement in access to information about the system and this has influenced some people to raise a complaint with the Council.

Some of the awareness activities are public discussions designed to sensitize the public on what the Press Code says and what to do if they feel offended by a particular publication. This role is being championed by the Council's director.

> Since 2013, I have been on radio and television discussing what should be done if one feels offended by a particular publication. I have also been speaking at various public forums. In the same vein, we have also encouraged publications to use all available platforms to inform their audience on what to do if they feel offended by their publications. Furthermore, we have made sure that our contacts are easily accessible and that one should be able to raise a complaint without visiting the Council physically (J. Thloloe, personal interview, November 28, 2017).

The Council's website is always running and has contacts which one can use to lodge a complaint. The same contacts are also shared on the websites of various publications subscribed to the Council. Interviews with system users showed most of them raised their complaints after being tipped by the publication that offended them. Others who already knew the existence of the Council accessed the contacts on the PCSA's website. More than half of the participants say they lodged their complaints online. Other options in addition to visiting the Council's premises are sending Short Messages, letters, fax, e-mails and phone calls.

Collin Macguire who raised a complaint against *Mail & Guardian* out of interest on a cartoon which he felt offends Jesus Christ, accessed the Council's contacts online.

> On the Mail &Guardian website, there is information on what to do if you feel offended by a publication. I saw the cartoon so offending. I used the contacts on their website to raise my complaint with the Council. I was able to reach the Council and I successfully raised the complaint (C. Macguire, personal interview, November 26, 2017).

Nonetheless, some system users complain that the online application system is tedious and frustrating. The complainants say they waited for some days before their application could be acknowledged. One complainant who chose not to be named laments that the online application system is a bit intimidating that she had to follow up with telephone calls for her application to make it.

Another indicator of improved accessibility of the system is the fluctuation in the number of complaints received. In just a year of the new system, the public advocate office received over 650 complaints and majority were raised by individuals seeking the services of the office for the first time (Wits Journalism Workshop, 2014.7). The study also found that there is an improvement in time taken to resolve complaints as Latiefa Mobara puts it "the time taken to resolve the complaints has reduced" (p.7).

As discussed above, five issues are coming out clear—creation of the Public Advocate office, removal of the waiver, use of third parties, accessibility of the Council's contacts and the opportunity to raise complaints without visiting the council—have indeed given the new system optimal accessibility—although some users complain about the efficiency of the online application system.

5.2.4. Press Code, relevance and accessibility

PFC defines a Press Code as "a tool of governing ethical behaviour among journalists" (Press Freedom Commission 2012, p.31). Thus, it is regarded as one of the tools that promote quality journalism. In its report that proposed Independent Co-regulation, the PFC raises several media issues including "inferior journalism, falling journalism standards, in accurate reporting and irresponsible reporting" as increasing in South African press (2012, p.31). The Commission proposed review of the old Press Code, not to replace but just to strengthen the existing one, adding it would "lead to an improvement in the quality of journalism" (p.32).

Quality journalism standards have a bearing on credibility of the press. Bertrand (2000) argues that quality journalism is MAS on its own. He says the MAS "act only by moral pressure" and ensure that the press is responsible to the society it serves (p.107).

However, as Franz Kruger argues, it is currently difficult to make a direct measure of whether journalism standards in South Africa are going up or down (Wits Journalism Workshop 2014). His argument is that the Press Council is "only a factor that impacts on standards and credibility" (p.13). The other factors, Kruger says include "the culture in the media environment" and he

notes that the Council "can have an impact on the culture in the media environment if it can be proactive" (p.13).

The study findings show that the PCSA has been proactive with its reviewed Press Code. The strength as observed is that it is designed to address unfolding critical issues and the changing media environment in South Africa. In additional, the Council has attached serious sanctions against any breach of the Press code.

The major recommendation made by the PFC was to have an updated and accessible press code. The study findings show that the Council has done a lot in both updating and improving the accessibility of the Press Code in additional to sensitizing the system users on its contents. Two major reviews of the Press Code have been done in 2013 and 2016.

Nonetheless, the study did not go an extra mile to understand whether the reviewed Press Code is improving the standards of journalism in South Africa. Actually as argued by many scholars, it may be erroneous to look at the number of complaints reported at the Council and conclude that standards are either improving or declining. The arguments for now are that there are many factors that can influence the increase or fall in the number of complaints lodged at the Council.

But what is coming out is that there is an observable improvement on the part of the press in trying to avoid repeated breaches of the code. Thloloe says the Council has not been receiving similar complaints affecting the same publications and he attributes this to the frequent talks with the press and efforts by respective publications to avoid repeated mistakes and the jaws of the Council (J. Thloloe, personal interview, November 28, 2017). His observation collaborate what Reid and Isaacs (2015) found, that the number of complaints originating from repeated breaches of the Press Code have fallen significantly over the years (p.68).

However, a new challenge has emerged. Despite the several updates of the Press Code, the Council continues to receive complaints that challenge the borders of the Press Code. Thus, the Press Code still falls short of meeting both existing and emerging issues. For instance, in Polokwane Observer Vs Sex Workers case (2014), it was apparent that the Press Code was

challenged for not covering other issues such as taking pictures of vulnerable groups such as sex workers in public places.

While the Press Code allows the press to take pictures in public places, vulnerable groups in such public places are also protected by law. This raises questions on whether the Press Code is indeed providing sufficient support to the vulnerable and marginalized groups, especially those found in public places.

Another complaint, *The Frankel family vs Daily Maverick* (2017) raises issues about credibility of rape survivor vs perpetrators. The puzzle is on how credible are statements made by rape survivors and how should the Press Council view these statements considering that the country's legal system often discredits rape survivors. All these may need to be considered in the next review of the Press Code.

Nonetheless, despite this trend, this research report finds that the Council has been flexible and accommodative enough of complaints that are not clearly covered by the Press Code. It has also succeeded in handling such cases, including the first ever complaint on a street poster raised by Ronnie Kasrils in *Ronnie Kasrils Vs Sunday Times* (2015). The complaint attracted an apology from *Sunday Times*.

Unfortunately, the study did not talk to anyone who had a complaint against a breach that is not well covered by the Press Code to understand whether the ruling was satisfactory with regards to the ambiguity of the Press Code on the particularly issue. However, Thloloe argues that the Press Code is only a guiding tool that can not cover every ethical issue (J. Thloloe, personal interview, November 28, 2017). He further said reviews happening to the Press Code are dictated by the complaints they receive and this means further reviews will help to address emerging issues.

Thloloe also says his communication with the press members also include common complaints that the Council is receiving within a particular time. He further says through this, they are addressing the new issues while adjusting the Press Code to address emerging and existing ethical issues.

Certainly, having an updated Press Code and accessibility of the same are two different issues. According to press representatives sampled for this study, the PCSA has achieved both in the first five years of the new system. They confirmed that their offices have been benefiting from the Council's initiatives designed to ensure the journalists have access to the updated Press Code and that they are aware of its contents.

> The Council has been generous with their time. They have been coming to our newsrooms to speak to us about the Press Code. They have been reminding us what the code basically says and give us a simpler version including tips on the common complaints they are getting. Basically, taking us back to the basics of journalism (D. Lubisi, personal interview, November 29, 2017).

Sunday Times legal editor Susan Smuts says more can be done but commends Thloloe for keeping the press updated of the new changes in the Press Code, adding that it has been easy to note the updates as they are just incremental (S. Smuts, personal interview, November 27, 2017).

However, most public members are ignorant of the contents of the Press Code. They say they got introduced to the Press Code the time they raised their complaints. Few say, they first heard about it but not the contents. For this reason, most complaints were made out of ignorance and the complainants required some orientation on what the Press Code says to make a proper decision on their cases. The study finds that this is one of the reasons many complaints are dismissed. They are raised out of ignorance.

This means, while the Council is doing more to reach its beneficiaries with the Press Code, there is need for an extra gear, particularly in targeting the non-industry community with the content of the code. If the public members are well informed it will not only help them to take to task publications that offend them but also reduce superfluous complaints at the Council.

5.2.5. Is the complaints handling mechanism effective?

The larger question on the effectiveness of the system in a broader sense of improving standards is in every event hard to answer. Thus, in this study, concentration is on the effectiveness of the

complaints handling mechanism in resolving complaints. Focus is on handling complaints efficiently and quickly. These are also the main concerns that were raised against the former system.

The major changes that happened to improve the efficiency of the system, particularly the complaints handling mechanism was the creation of the Public Advocate office and tightening time frames in handling complaints. These address both efficiency and timeliness in handling complaints.

Although the Public Advocate idea was implemented after the PFC report, the first suggestion was made by the PCSA itself in 2011 (Press Council of South Africa 2011, p.45). Both reviews, however, recommended the same thing that there should be a Public Advocate to act as the first point of contact in complaints handling. Thloloe explains that the main role of the Public Advocate is "to receive complaints and try to find a resolution within 15 days" (Wits Journalism Workshop 2014, p.5).

This marked a new era of time frames. The former system hardly used fixed time frames in dealing with complaints except the use of vague terms such as the 'shortest period of time possible'. I would argue that the creation of these time frames has improved the efficiency of the system.

The major stride is that mediation has proved to be smooth and fast at both deciding on which complaint to entertain and deal with. In the same realm, the new office has reduced complaints taken to the Ombudsman. Retief says "the Public Advocate has streamlined our office beyond expectation. This appointment was the best single thing the Council has done during the first five years" (J. Retief, personal interview, November 29, 2017).

If the complaint cannot be mediated within 15 days, it is escalated to the Ombudsman for arbitration. Any party that is not satisfied with the ombudsman's ruling has an opportunity to overturn the ruling by taking it to the Appeals level. Time frames also apply to the parties involved in the complaint. If they are not satisfied with the ruling they are allowed to appeal

"within seven working days of receipt of the decision" (Code of Ethics and Conduct for South African print and online media 2016, p.25)

I would argue that the hierarchy of the complaints handling mechanism is much more organised than before and this has directly improved the efficiency of the system. As Retief says, this study agrees that the mediation process at the Public Advocate has tremendously transformed the complaints handling mechanism, particularly in reducing the number of complaints taken to adjudication. The study found that majority of the complaints are dealt with at Public Advocate level and some complainants have been withdrawing their complaints after being oriented of what the Press Code says.

Latiefa Mobara, the Public Advocate at the time of the study says she has been receiving many complaints that do not relate to the Press Code and these are dealt with at her office level but are not recorded (Wits Journalism Workshop 2014, p.7). For instance, in 2013, the Council registered a "10 percent increase in complaints dealt with through mediation" and the figures continue to rise (Wits Journalism Workshop 2014, p.5). Of the 18 system users sampled for this study, 12 had their complaints dealt with at the Public Advocate level.

Thus, the creation of the Public Advocate office has been helpful to deal with complaints that used to drag in the past and were raised out of ignorance. Taking only valid complaints to the Ombudsman evidently means a speedy process to deal with them unlike labouring the Ombudsman with the duty of studying and validating complaints that are irrelevant to the Press Code.

The implication of this is observable along the hierarchy. In general, the overall time taken to resolve a complaint has been reduced tremendously over the years. Time taken to resolve a complaint was one of the major concerns that were raised against the self-regulation. Critics of the system argued that the former system was taking ages to resolve a complaint.

Reid and Isaacs (2015) found through their study that covers a five year period from 2009 to 2013 that the introduction of the Public Advocate has improved the time taken to resolve a

complaint. The study assesses the performance of the complaints handling mechanism and shows that the new system reduced time taken to resolve a complaint to an average of 59 days by 2013.

This is the lowest compared to 2009, 2010, 2011 and 2012 when complaints took an average of 233days, 81days, 85 days and 104 days respectively to be resolved completely (p, 17). Retief adds that "the average number of days between a complaint being received and the formal finding is going down every year, showing that the PCSA is becoming more efficient" (Wits Journalism Workshop 2014, p.8). He further reveals that in 2014, the average number of days taken to resolve a complaint from the day the complaint was raised to when a ruling was made was at 51 days (p.8) and the figure had fallen further between 2015 and 2017 (J. Retief, personal interview, November 29, 2017).

This is corroborated by the findings of this study. Of the sampled system users, only one complaint took a total of 35 days to be resolved completely. Majority of the cases were dealt with within 21 days (the official time frame to deal with complaints) or earlier and most of them were resolved at Public Advocate level through mediation.

The research report also found that system users are happy with negotiation process than arbitration. Their argument is that mediation involves engagement and negotiation rather than arbitration which takes the format of the court as appreciated in all levels of arbitration at the Council. The complainants also highlight that the mediation process begins with orientation which many say influenced them to either drop their complaints or take another approach that gave them a chance to succeed with their complaints.

The process addresses issues of ignorance amongst the complainants. This means those whose complaints are taken to the Ombudsman, do so with knowledge of both the shortfalls and strength of their complaints. This improves efficiency in the system as the Ombudsman or those in the Appeals Panel concentrate on the facts of the complaints other than orienting the complainants of the issues at hand.

> I was taken through the press code and at the end realised that I had no issue to raise. I was convinced and accepted although on the hand, I felt the cartoon

> published by the Mail &Guardian was still offending but there were no grounds to succeed with the complaint as the cartoon is categorized under Fair Comment in the Press Code. So, I withdrew the complaint (C. Macguire, personal interview, November 26, 2017).

But still, while all the participants praise the complaints handling procedure for the being efficient in terms of handling complaints quickly and through mediation, other concerns are emerging for the system users. The major concern is the bracket that limits others from raising a complaint. The new system entertains complaints raised within the first 20 working days after the publication of the offending article.

> I would be honest to say that I had no problems with the Public Advocate office. My case was warmly welcomed and proper follow-ups were made. However, I started to question the efficiency of the system upon being transferred to the ombudsman. I was not even given a chance to physically present my issues and was dismissed through emails. The main ground for dismissal was that I raised it after the granted period to raise a complaint. However, my complaint involved a series of stories that were published as follow-ups. So, how do you apply timeliness in such cases? I was not happy and I am taking the case to a formal court (M. Mabuza, personal interview, December 2, 2017).

The system users also observe that although there is a chain from mediation to appeals which one can utilise to overturn a ruling made by the lower level, the hierarchy is not independent from each other. Some system users feel arbitrators deny them justice by avoiding going against a ruling made by a fellow arbiter.

One complainant who did not want to be named but had her complaint dismissed on paper at the Appeals level in 2016 says:

> I appealed up to Justice Ngoepe who upheld the ombudsman's initial ruling in favour of *Sunday Sun*, causing me to seek for an appeal which proved to be fruitless as he's the final arbiter. His response was to that he "can't reconsider a

matter where he'd already made a decision". This is a definite flaw of the process, the buck stopping with him (personal interview, November 18, 2017).

As discussed above, it is clear that the 2013 changes have improved the efficiency of the complaints procedure but some issues continue to emerge as concerns. All the complainants who were dismissed at the Ombudsman or Appeals level have no kind words to the Council. They say they were dismissed on paper. The finding is in contrast with what the complainants who were dismissed at the Public Advocate level say.

None of them had tough words against the Council. Instead, they spoke highly of the office. Thus, there is need to review the communication system at both Ombudsman and Appeals levels, particularly when dismissing complaints. Better communication that helps the complainants to understand why their complaints cannot be entertained can address this concern.

5.2.6. Does the system have teeth?

Most critics of self-regulation, including the ANC have always argued that the system is ineffective, toothless and biased towards the press. Their argument has been that there cannot be fairness in a system where offenders decide the punishment for themselves and that running an apology or retraction in an own publication is not enough to deter a particular publication from violating the press code. The call has been that there should be tough punishments such as cash fines.

However, in its report, the PFC describes monetary fines as impractical and too harsh to be implemented against speech offenses. The Commission argues that adopting monetary fines can only be a recipe to push others out of business due to financial disparities among publications (2012, p.50-51).

Nevertheless, the Commission favours space fines. This is a penalty that demands a newspaper that is found to have breached the code "to use a prescribed space in its publication to publish material to redress the offence" (2012, p.50). PFC says they see costs in publishing an apology or retraction because they value the space used in publishing the apology or retraction (2012, p.50).

The argument is that the publisher could have used the space for advertising or to publish editorial material that would bring money to the publication.

In 2013, the Council acknowledged the need for proper sanctions for different offences but it did not develop one, except for few guiding rules that have been used since 2013 to sanction publications (SA Press Code, Procedure & Constitution 2013, p. 23). A comprehensive list of sanctions was later developed and implemented but published on January 1, 2016 by the PCSA. The Council categories the offences into three—minor breaches, serious breaches and serious misconduct.

Code of Ethics and Conduct for Print and Online media (2016) documents that minor breaches include "wrongly spelt names and other minor factual errors that do not change the thrust of the story" while serious breaches comprise "views of subjects of critical reportage not sought and inaccurate or unfair reporting" (p.28). Serious misconduct is grouped into two. Firstly, "allowing commercial, political, personal or other non-professional considerations to influence reporting" and secondly, "publishing child pornography" (p.29).

According to the study findings, these also form the major offences committed by the press in South Africa. None of them attracts monetary fines. The most serious punishment a publication may get for Tier 2 (serious breach) is a sanction (reprimands, caution, corrections, retractions, apologies) on any space as dictated by the arbiter. If the breach is deemed Tier 3 (serious misconduct), in addition to the sanction for Tier 2, the Council imposes space sanction (publication's space ranging from few centimeters to full page for the complainant or ombudsman). There are monetary fines as part of the penalties but not for content of the press.

> "8.2.Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombudsman may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system if it is reinstated because it

complied with the conditions and then it defaulted again within twelve months, it would immediately be expelled from the system.

8.3. When the Ombudsman finds that a publication is a repeat offender, he or she should specifically point this out in the ruling. If it occurred again, the Ombudsman man recommend that the Press Council convene a hearing to inquire into the repeated offences and ask the offender for an explanation and a plan to prevent recidivism" (Code of Ethics and Conduct for print and online media 2016, p.29).

There are still mixed views from the system users on whether these penalties are enough. The core argument has been that monetary fines would deter misconduct in the press and so should be used to sanction the press for speech. For instance, one system user Ndarani Manki is not satisfied with the current penalties and proposes that there should be "punitive measures that match the gravity of the damage on the victim" (N. Manki, personal interview, December 5, 2017).

However, this study finds that of the nine complainants whose complaints ended in their favour, seven feel the punishments were relevant and punitive to the publications. What is coming out clear from the participants is an appreciation of the value and prominence of a published apology or retraction among the system users. The key point is that system users feel the press is powerful and to see a publication apologizing to them in public is a special honour to them.

One complainant, who chose not to be named, says "I was happy because we managed to get the publication to publish a retraction and apology" (personal interview, November 29, 2017). Ndarani Manki collaborates but wants sharp teeth at the Council.

In my feedback to the Council due to what I see as reckless reporting, destroying the lives of other people in the public eye with no consequences made me a harsh but silent critique of self-regulation. However, one cannot help to applaud the positive outcomes of the status quo. There is, however, the need to sharpen further

> the teeth and ensure the punishments correspond with the damage caused by the conduct (N. Manki, personal interview, December 5, 2017).

The major strength exposed that has also swayed some complainants to speak highly of the sanctions is an element of 'engagement' in processing an apology or retraction mainly at Public Advocate level. Most system users say they were consulted after the ruling on the sanction (apology or retraction) to be imposed on the publication. They say in most cases they were allowed to comment on both the composition and structure of the retraction or apology. They add that the apologies or retractions were published without any alteration and this made them happy.

In addition, the fact that the Council decides on where the apology or retraction should be published with its stamp and logo therein, makes some feel the Council has grown teeth. This has made the system users to believe that the Council is on their side and it can bite.

The same is being appreciated on the press side. The study finds that press representatives feel that the sanctions imposed on them during the first five years of the new system have been punitive. Unlike in the past, the publication has no power to decide on where an apology or retraction should be placed. They are forced to publish it as advised by the Public Advocate or any other arbiter.

> The sanctions are clearer. There is no ambiguity. The system is clear on what should be done if a publication trespasses on the code, there are no tricks that a publication can adopt, the apology or retraction will have to be published as dictated by the Council. The sanctions also vary from Tier 1 to Tier 3 and if it's serious misconduct, there is also a serious consequence. We are asked to carry apologies and sometimes to retract, and for a newspaper, to bear that your story which had undergone all the process and ticked in all boxes has to be retracted, is the hardest thing to any editor. No editor wants to retract a story or publish an apology. We feel such pain but the system is clear and we have no option as long as the Council finds us guilty (D. Lubisi, personal interview, November 29, 2017).

Lubisi further says the new system has also created a sense of responsibility among the press, and to them, to apologise, has become a responsibility.

> It is not easy to accept that you were wrong. What this system is doing is to make both the public and the press work together. We don't work in isolation. We serve the public and if we make a mistake, to apologise means that we respect our readers (D. Lubisi, personal interview, November 29, 2017).

Sunday Times legal editor Susan Smuts laments that the new hierarchy of sanctions at the Council is too punitive and painful (S. Smuts, personal interview, November 27, 2017). She adds that what is painful is being compelled to publish an apology especially when you fought hard to get a story and thought you got it all right. She adds that retracting or publishing an apology undermines a publication's credibility and it is really painful, in addition to being very expensive in terms of brand reputation and confidence.

The study further found that conditions such as that a publication cannot negotiate a sanction and the Council can expel a publication for a repeated offence, have evidently given the regulatory system teeth. Apart from improving compliance to ruling, the conditions have also reduced repeated breaches of the code. This means the system has teeth and the finding concurs with an argument raised by Reid and Isaacs (2015, p.36) that there is no justifiable evidence for now that the sanctions are not enough to deter the press from repeated offenses. This study argues that the sanctions have been effective.

For instance, during the first five years of the system, there have been no serious repeated offenses warranting the most serious sanction. Reid and Isaacs also found declining levels of repeated offences between 2009 and 2013 (p.68-69). Furthermore, as observed during the study, publications are complying with the rulings.

Further impacts of the new system and the changes in complaints handling mechanism are that unlike in the past, the publishers are no longer relaxed. The press representatives say the new system of sanctioning at the Council has directly affected the newsroom and there are always efforts to ensure a clean copy goes into print. This is to avoid being dragged to the Council and

also to protect their reputation and resources that are wasted through publishing retractions or apologies. This testifies that the 2013 changes have promoted MAS at newsroom level and encouraged press responsibility.

> What we have for instance at *Mail &Guardian* is a conventional process where any copy is seen by more than six pairs of eyes. But in one of the cases raised at the Council, what we found was that it was a human failing on a number of levels. We realised that we had a problem that needed to be fixed. We had serious words with every person that was involved because it was clear that we had failed terribly in certain respects (B. Tromp, personal interview, November 28, 2017)

However, there is an outcry on lack of consistency and repeated mistakes in the rulings, especially at the Ombudsman and Appeals level from the press side. Tromp and Smuts who represent *Mail & Guardian* and *Sunday Times* respectively during complaints hearing say they have appreciated inconsistencies in the rulings involving their publications. They add that arbiters have been raising different arguments on offences with almost equal facts.

Sometimes, they say, the "arbiters repeat mistakes made in previous rulings" (B. Tromp, personal interview, November 28, 2017). It was not possible to explore the argument further as the participants described this as water under the bridge but they are demanding an improvement from the Council on this.

There was also an expectation that the removal of the waiver—a requirement that complainants declare they would not take the matter to court—would influence many complainants to drag the publications to formal courts—the study finds that there have not often been court cases during the first five years of the new system. Thus, the complainants are contended with the rulings. The four press representatives sampled for this study believe that if it was in the past, they would have spent more on court cases during the last five years. However, they say they have "lost huge sums of money" in the same period to spaces used to publish apologies and retractions (D. Lubisi, personal interview, November 29, 2017).

Nonetheless, the Council admits that it has registered some cases in which complainants whose complaints were successfully settled at the Council and an apology or retraction published by the publication with the consent of the complainant, took their complaints beyond the Council. Thloloe says his office does not support such complainants at the formal courts. He, however, acknowledges that the number of such incidences has fallen drastically during the first five years of the new system.

Thloloe says between 2013 and 2017, only two complainants went on to approach the publications for monetary compensation after the Council had resolved the complaint and facilitated publication of an apology or retraction (J. Thloloe, personal interview, November 28, 2017). In both cases, Thloloe says the publications obliged but says he is not happy with the development and they are trying to address this issue.

Nonetheless, this is a very small number considering the number of complaints that have been resolved at the Council between 2013 and 2017. This study did not concentrate on this to understand whether this is an indication that the punishments are not enough.

However, 16 of the 18 sampled system users say they had no reason to take their complaints further considering that the Council demonstrated utmost support to their complaints, and no matter the results, they were convinced with the ruling—either dismal or publication of an apology or retraction. Only Madubula Mabuza, one of the sampled users for this study revealed that he had taken the complaint to the courts because his complaint was dismissed on paper for late reporting when the complaint has a backing of repeated offences on the same topic published as follow-ups.

6.0. Conclusion

This study has successful analysed what has really changed at the Council since 2013 and whether (and in what ways) have the changes performed to meet the aims set out by the Commission. The study adopted a broader theoretical approach built on two major theories—the normative theories of the press and the public sphere. Press is one of the components of a public sphere and the discussion around how press should operate in a democracy, is well articulated by the public sphere theory. As Rafferty (1975) observes, the press is one of the most powerful weapons for ""enlightening the mind of a man and improving his rational and moral being"" (cited in Hachten 2005, p.30). It is, therefore, imperative to allow the press to operate independently.

Both the PFC and PCSA consider the idea to introduce the MAT as a threat to press freedom and independence of the press in South Africa. However, independence of the press in a democracy is nothing if the press cannot meet the normative expectations of the society. The normative theories of the press outline what is expected of the press in a democracy. Failure to meet this obligation is a recipe for criticism. South African press is one good example but there have been expectation that Independent Co-regulation can be a game changer.

This research report has found that the PCSA implemented all the recommendations made by the Commission with some minor changes here and there. It further established that the new system has met all the major aims as set out by the Commission, despite some shortfalls as raised by the system users. These system users agree on that the Council has demonstrated efforts to ensure that there is responsibility and seriousness among the press to meet the normative expectations of the society.

I would argue that the way the Council has performed during the first five years has a potential to asphyxiate further statutory threats. Nonetheless, it has to be noted that although the principle of how the press ought to operate in a democracy is widely accepted, global trends indicate that debates around the role and how the press should operate in a democratic society refuses to cease. Furthermore, criticism towards the press is motivated politics. Thus, some level of

criticism may continue but may be subdued by further efforts to meet the normative expectations of the press in a society as demonstrated by the PCSA between 2013 and 2017.

Thus, there is need for the Council to continue addressing concerns as they are raised. As discussed above, there is still anger out there on how some aspects of the regulatory system are performing. Some of the examples are the way the users are dismissed at the Ombudsman and Appeals levels and also the relevance of the sanctions against the gravity of the damage caused to the offended.

Others have also questioned the independence of decisions by respective levels of the Complaints handling mechanism hierarchy. These issues are breeding public criticism. While some concerns are genuine, others originate from ignorance or are not substantiated. For instance, some complainants raise complaints on protected comment. The press enjoys immune in publishing comments.

Drawing from the concerns lodged such as dismissal of complaints on paper without giving the complainants an opportunity to be heard and failure to overturn rulings from the lower levels of the adjudication hierarchy, confirms that system users favour mediation over adjudication style. It seems, even the change of name from arbitration to adjudication as proposed by the Commission, has not been enough to make both the Ombudsman and Appeals levels conducive to system users. There is an expectation that the higher level should go deep in interrogating the matter at hand and engage the complainants enough to help them understand the limitation with their complaints.

The system users mainly want to see more efforts being done by the higher levels and a demonstration that they exist to serve them and not dismiss them with few words or just on paper. Missing is a favourable communication system. The reason is that there is a perception already that the Council favours the press and absence of such efforts revives the long lived perception. This conclusion is backed by positive comments made by both losers and winners towards the Public Advocate office and the mediation process.

Mainly, they are appreciating the efforts by the office to take them through the Press Code, championing the complaints process, a detailed explanation of the strength and weaknesses of their complaints and efforts to ensure the complainant and a publication resolve the issue amicably. The key factor is good communication. In other words, mediation at Public Advocate level has demonstrated that there is no bias at the Council and there are efforts to ensure that a complainant is satisfied with either result of the complaint.

Concerns about the relevance of the sanctions against the gravity of the offences will not die anytime soon because many system users do not understand the value of the space used to publish an apology or retraction. They feel like publishing in own publication is cheap and pain free. Thus, the council needs to do more in public workshops for people to understand the relationship between speech offences and the hierarchy of sanctions documented at the Council.

While the Council has done a lot in keeping the press updated of the Press Code, there is need for more efforts to ensure the system users have access to the document and are able to understand its contents. This has a direct bearing on the perception that there is irresponsible journalism in South Africa. This will also deal with complaints that are raised out of ignorance of what the Press Code allows the press to do and not. In addition, frequent updates should continue and should be guided by emerging issues to ensure that fair rulings are made from existing provisions.

In general, I would say the new system has a future. With further reviews, it is likely to put to bed any criticism against press regulation in South Africa. However, the challenge is that some of the criticisms are politically motivated, and it may be hard to expect that the system can be free of any criticism. However, as discussed in this study, chances are high that future criticisms will not be so serious to the level that saw-off self-regulation.

As alluded to earlier, this study coincided with the ANC national conference, a meeting which the ruling party has uses to discredit PCSA. On December 20, 2017, the party published a Declaration of the 54th meeting, but the document hardly mentions the press and press regulation. This study did not go further to explore on whether press regulation was discussed during the conference and if there were some positions that were made and were yet to be made public by

the time of submission of this report. Nonetheless, the silence can be a strong message that the PCSA is on track with its independent co-regulation system of press regulation.

6.1. Areas of further study

This study concentrated on the 2013 changes at the Press Council and whether (and in what ways) the changes have met the key aims set out by the PFC. Focus was only on print. The Council now regulates both print and online media. Print and online media are quite different platforms of communication.

Currently, the Council is using the code for print with some additional clauses to regulate online media. Further studies can focus on how practical this is or analyse online press regulation. Other studies can look at the kinds of offences, number of rulings and patterns of the findings during the first five years of Independent Co-regulation. Studies that dwell on whether the Press Code responds to the emerging ethical issues are also relevant.

Appendix 1:

Interview Guide for system users

This interview guide targets individuals who have had a complaint against the press and went through the Press Council of South Africa complaints handling mechanism. The questionnaire addresses objective number (iv) and partly objectives (ii) and (iii).

1. How many times have you been involved in a complaint (s) against a particular media house raised through Press Council of South Africa?

2. How were you involved?

3. How did you raise your complaint?

4. How did it go?

5. Were you satisfied with the ruling? (Explain)

6. The new system combines public and press members but with public members in majority. Have you appreciated this and any other impacts?

7. How would you describe your experience with the complaints handling mechanism at Press Council of South Africa? (How were you treated and the complaint handled?)

8. The major aim of the new system is to have an "effective complaints handling mechanism" that deals with "cases in time" and also the "perception that the council favours the press" in its rulings. From your experience at the council, do you think the system is meeting these goals?

9. What are some of the shortfalls did you observe with the system and how best do you think they can be tackled?

Thank you for your participation!!!

Appendix 2:

Interview Guide for press representatives

This interview guide targets press representatives who represent their institutions at the Press Council of South Africa during case hearing. The questionnaire tries to addresses objective number (iv) and partly objectives (ii) and (iii).

1. Since 2013, PCSA has been using a new system called Independent Co-regulation. From your experience, do you feel that there is a new system?

2. In general, how would describe your experience with the new system since 2013?

3. The major aim of the Independent co-regulation is to have an "effective and efficient complaints handling mechanism" that is "fair" and deals with "cases in time" and also "perception of soft touch". Is the system is living up to these?

4. The new system created the Public Advocate office which acts as first line process in cases handling mechanism. From your experience, has the office been of any relevance?

5. The system tasks the council with the responsibility of ensuring that all journalists are up to date with the press code. Are you benefiting from the same as a newsroom?

6. Your office rates amongst the top that are summoned frequently at the Council for breach of the Press Code. Have you done an internal survey to understand the reasons behind this?

7. You have won and lost some cases. In a nutshell, what do you make of the rulings?

8. Independent Co-regulation clocks five years this December 2017. Do you think it has a future?

9. What more do you think should be done by PCSA to further improve the system?

Thank you for your participation!!!!!!

Appendix 3:

Code of ethics and conduct for South African print and online media

(Effective from January 1, 2016)

The Press Council of South Africa and the Interactive Advertising Bureau South Africa adopt the following Code for print and online media (together referred to as "the media").

PREAMBLE

The media exist to serve society. Their freedom provides for independent scrutiny of the forces that shape society, and is essential to realising the promise of democracy. It enables citizens to make informed judgments on the issues of the day, a role whose centrality is recognised in the South African Constitution.

Section 16 of the Bill of Rights provides that:

(1) Everyone has the right to freedom of expression which includes:

(a) Freedom of the press and other media;

(b) Freedom to receive and impart information or ideas;

(c) Freedom of artistic creativity; and

(d) Academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to:

(a) Propaganda for war;

(b) Incitement of imminent violence; or

(c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The media strive to hold these rights in trust for the country's citizens; and they are subject to the same rights and duties as the individual. Everyone has the duty to defend and further these rights, in recognition of the struggles that created them: the media, the public and government who all make up the democratic state.

The media's work is guided at all times by the public interest, understood to describe information of legitimate interest or importance to citizens.

As journalists we commit ourselves to the highest standards, to maintain credibility and keep the trust of the public. This means always striving for truth, avoiding unnecessary harm, reflecting a multiplicity of voices in our coverage of events, showing a special concern for children and other vulnerable groups, exhibiting sensitivity to the cultural customs of their readers and the subjects of their reportage, and acting independently.

Chapter 1: Media-generated content and activities

1. Gathering and reporting of news

1.1. The media shall take care to report news truthfully, accurately and fairly.

1.2. News shall be presented in context and in a balanced manner, without any intentional or negligent departure from the facts whether by distortion, exaggeration or misrepresentation, material omissions, or summarisation.

1.3. Only what may reasonably be true, having regard to the sources of the news, may be presented as fact, and such facts shall be published fairly with reasonable regard to context and

importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

1.4. News should be obtained legally, honestly and fairly, unless public interest dictates otherwise.

1.5. The gathering of personal information for the purpose of journalistic expression must only be used for this purpose.

1.6. Media representatives shall identify themselves as such, unless public interest or their safety dictates otherwise.

1.7. Where there is reason to doubt the accuracy of a report or a source and it is practicable to verify the accuracy thereof, it shall be verified. Where it has not been practicable to verify the accuracy of a report, this shall be stated in such report.

1.8. The media shall seek the views of the subject of critical reportage in advance of publication; provided that this need not be done where the in-situation has reasonable grounds for believing that by doing so it would be prevented from reporting; where evidence might be destroyed or sources intimidated; or because it would be impracticable to do so in the circumstances of the publication. Reasonable time should be afforded the subject for a response. If the media are unable to obtain such comment, this shall be reported.

1.9. Where a news item is published on the basis of limited information, this shall be stated as such and the reports should be supplemented once new information becomes available.

1.10. The media shall make amends for presenting information or comment that is found to be inaccurate by communicating, promptly and with appropriate prominence so as to readily attract attention, a retraction, correction or explanation.

1.11. An online article that has been amended for factual accuracy should indicate as such. In the event of an apology or retraction, the original article may remain but the publisher must indicate

in a prominent manner that it has led to an apology or retraction—and should link to both the apology/retraction and the original article.

1.12. No person shall be entitled to have an article removed which falls short of being defamatory but is alleged by such person to be embarrassing.

1.13. Journalists shall not plagiarise.

2. **Independence and Conflicts of Interest**

2.1. The media shall not allow commercial, political, personal or other non-professional considerations to influence or slant reporting. Conflicts of interest must be avoided, as well as arrangements or practices that could lead audiences to doubt the media's independence and professionalism.

2.2. The media shall not accept a bribe, gift or any other benefit where this is intended or likely to influence coverage.

2.3. The media shall indicate clearly when an outside organisation has contributed to the cost of newsgathering.

2.4. Editorial material shall be kept clearly distinct from advertising and sponsored content.

3. **Privacy, Dignity and Reputation**

3.1. The media shall exercise care and consideration in matters involving the private lives and concerns of individuals. The right to privacy may be overridden by the public interest.

3.2. In the protection of privacy, dignity and reputation, special weight must be afforded to South African cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away, as well as concerning children, the aged and the physically and mentally disabled.

3.3. The media shall exercise care and consideration in matters involving dignity and reputation. The dignity or reputation of an individual should be overridden only if it is in the public interest and in the following circumstances:

3.3.1. The facts reported are true or substantially true; or

3.3.2. The reportage amounts to fair comment based on facts that are adequately referred to and that are true or substantially true; or

3.3.3. The reportage amounts to a fair and accurate report of court proceedings, Parliamentary proceedings or the proceedings of any quasi-judicial tribunal or forum; or

3.3.4. It was reasonable for the information to be communicated because it was prepared in accordance with acceptable principles of journalistic conduct and in the public interest.

3.3.5. The article was, or formed part of, an accurate and impartial account of a dispute to which the complainant was a party.

3.4. Rape survivors and survivors of sexual violence shall not be identified without the consent of the victim or in the case of children, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), and a public interest is evident, and it is in the best interest of the child.

3.5. The HIV/AIDS status of people should not be disclosed without their consent. In the case of children, the HIV/Aids status of the child should not be disclosed without the consent of the child (taking into consideration the evolving capacity of the child) together with the consent of their legal guardian or a similarly responsible adult, provided that such disclosure is in the public interest and it is in the best interests of the child.

4. **Protection of Personal Information**

4.1. For the purpose of this clause "personal information" is as defined in Section 1 of the Protection of Personal Information Act 4 of 2013.

4.2. The media should take reasonable steps to ensure that the personal information under their control is protected from misuse or loss, and to prevent unauthorised access to such information.

4.3. The media should ensure that the personal information they gather is accurate, reasonably complete and up to date.

4.4. Where a person requests a correction to be made to his or her personal information under the control of a member, the media must take steps to verify the accuracy of the information and, if necessary, amend the information.

4.5. Some personal information, such as addresses, may enable others to intrude on the privacy and safety of individuals who are the subject of news coverage. To minimise these risks, the media should only disclose sufficient personal information to identify the persons being reported in the news.

4.6. Where it is reasonably suspected that an unauthorised person may have obtained access to personal information held by a member, the media must inform the affected person(s) and take reasonable steps to mitigate any prejudicial effects.

5. **Discrimination and Hate Speech**

5.1. Except where it is strictly relevant to the matter reported and it is in the public interest to do so, the media shall avoid discriminatory or denigratory references to people's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or other status, nor shall it refer to people's status in a prejudicial or pejorative context.

5.2. The media has the right and indeed the duty to report and comment on all matters of legitimate public interest. This right and duty must, however, be balanced against the obligation

not to publish material that amounts to propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

6. **Advocacy**

6.1. Members are justified in strongly advocating their own views on controversial topics, provided that they treat their constituencies fairly by:

6.1.1. Making fact and opinion clearly distinguishable;

6.1.2. Not misrepresenting or suppressing relevant facts; and

6.1.3. Not distorting the facts.

7. **Protected Comment**

7.1. The media shall be entitled to comment upon or criticise any actions or events of public interest.

7.2. Comment or criticism is protected even if extreme, unjust, unbalanced, exaggerated and prejudiced, as long as it:

7.2.1. Expresses an honestly-held opinion;

7.2.2. Is without malice;

7.2.3. Is on a matter of public interest;

7.2.4. Has taken fair account of all material facts that are substantially true; and

7.2.5. Is presented in such manner that it appears clearly to be comment.

8. **Children**

8.1. The Bill of Rights (Section 28.2) in the South African Constitution states: "A child's best interests are of paramount importance in every matter concerning the child." The media, applying the spirit of this section, shall therefore:

8.1.1. Exercise exceptional care and consideration when reporting about children. If there is any chance that coverage might cause harm of any kind to a child, he or she shall not be interviewed, photographed or identified without the consent of a legal guardian or of a similarly responsible adult and the child (taking into consideration the evolving capacity of the child), and a public interest is evident;

8.1.2. Not publish child pornography;

(Child Pornography is defined in the Film and Publications Act as: Any visual image or any description of a person, real or simulated, however created who is or who is depicted or described as being, under the age of 18 years, explicitly depicting such a person who is or who is being depicted as engaged or participating in sexual conduct; engaged in an explicit display of genitals; participating in or assisting another person to participate in sexual conduct which, judged within context, has as its predominant objective purpose, the stimulation of sexual arousal in its target audience or showing or describing the body or parts of the body of the person in a manner or circumstance which, in context, amounts to sexual exploitation); and

8.1.3. not identify children who have been victims of abuse, exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), a public interest is evident and it is in the best interests of the child.

9. **Violence, Graphic Content**

9.1. Due care and responsibility shall be exercised by the media with regard to the presentation of brutality, gratuitous violence, and suffering: material which, judged within context, should not

sanction, promote or glamorise violence or unlawful conduct, or discrimination based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

9.2. Content which depicts violent crime or other violence or explicit sex should be avoided unless the public interest dictates otherwise, in which case prominent indication and warning must be displayed indicating that such content is graphic and inappropriate for certain audiences such as children.

10. **Headlines, Posters, Pictures and Captions**

10.1. Headlines and captions to pictures shall give a reasonable reflection of the contents of the report or picture in question;

10.2. Posters shall not mislead the public and shall give a reasonable reflection of the contents of the reports in question; and

10.3. Pictures and/or video or audio content shall not misrepresent or mislead nor be manipulated to do so.

11. **Confidential and Anonymous Sources**

The media shall:

11.1. Protect confidential sources of information – the protection of sources is a basic principle in a democratic and free society;

11.2. Avoid the use of anonymous sources unless there is no other way to deal with a story. Care should be taken to corroborate the information; and

11.3. Not publish information that constitutes a breach of confidence, unless the public interest dictates otherwise.

12. **Payment for Information**

The media shall avoid shady journalism in which informants are paid to induce them to give the information, particularly when they are criminals—except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

Chapter 2: User-generated content

13. Guiding principles

13.1. This section applies where a complaint is brought against a member in respect of comments and content posted by users on all platforms it controls and on which it distributes its content.

13.2. The media are not obliged to moderate all user-generated content in advance.

13.3. All members should have a policy in place governing moderation and/or removal of user-generated content or user profiles posted on the platforms ("UGC Policy").

A member's UGC Policy must be consistent with the Constitution of the Republic of South Africa.

13.4. Members may remove any user-generated comment, content or user profile in accordance with their UGC Policy.

13.5. A member's UGC policy should be publicly available and:

13.5.1. Set out the authorisation process, if any which users who wish to post comments must follow as well as clearly setting out any terms and conditions and any indemnity clauses during such registration process;

13.5.2. Set out clearly the content which shall be prohibited

13.5.3. Explain the manner in which the public may inform the member of prohibited content.

13.6. Members should, where practicable, place a notice on the platforms with the aim to discourage the posting of prohibited content.

13.7. The public should be informed that UGC is posted directly by users and does not necessarily reflect the views of the member.

13.8. Users shall be encouraged to report content which they believe violates the provisions of the Member's UGC Policy.

13.9. Online forums directed at children and the young should be monitored particularly carefully.

14. Prohibited Content

14.1. Material constitutes prohibited content if it is expressly prohibited in a member's UGC Policy.

14.2. In addition to, and notwithstanding anything to the contrary contained in a member's UGC Policy, content which contains the following:

14.2.1. Propaganda for war;

14.2.2. Incitement to imminent violence;

14.2.3. Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm constitutes prohibited content for the purpose of this Code.

15. Defence in relation to user-generated content

15.1. It is a defence, in relation to any complaint brought to the Press Council regarding UGC, for the member to show that it did not itself author or edit the content complained of.

15.2. This defence will not apply in the following circumstances:

15.2.1. The complainant sent a written notice to the member in relation to the content concerned, and

15.2.2. The member failed to remove the content in accordance with clause 15.4 below.

15.3. The written notice in clause 15.2.1 must:

15.3.1. Be sent via email or letter to the particular address stipulated by the member;

15.3.2. Identify the content concerned and, in particular, specify where on the website the statement was posted; and

15.3.3. Must explain why the content concerned is prohibited either in terms of a member's UGC Policy or clause 14.2 above.

15.4. Upon receipt of a written notice complaining about UGC the member must:

15.4.1. Remove the relevant UGC from the platform as soon as operationally possible and notify the complainant that it has done so; or

15.4.2. Decide not to remove the UGC and notify the complainant of this decision.

15.5. Where a member has decided not to remove the UGC:

15.5.1. The complainant may complain to the Ombudsman in terms of clause 1.3 of the Complaints Procedures;

15.5.2. It will be treated as if the UGC had been posted by the member itself, and the member will be liable for such content if it is shown to be prohibited in terms of clause 14 above.

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