

**Policing the Press: The  
Institutionalisation of Independent Press  
Regulation in a Liberal/North Atlantic  
Media System**

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## **DECLARATION**

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy is entirely my own work, that I have exercised reasonable care to ensure that the work is original, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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## **DEDICATION**

*For Sarah, Dixie and the one yet to say hello.*

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## ABSTRACT

In each of the media systems identified by Hallin and Mancini (2004), autonomy, professional norms and a public service ethic are central indicators of journalism professionalisation, with codes of ethics and accountability solutions, such as press councils, germane. In the Liberal North Atlantic system, where Ireland is placed by Hallin and Mancini, autonomy and professional norms are well established pillars in academia's understanding of journalism. Indeed, the theoretical work on press and media systems (Siebert, Peterson and Schramm 1956; Merrill 1974; Altschull 1984; Habermas 1989; McQuail 2010) recognises these characteristics. The idea of a public service orientation via a system of media accountability opens up a potentially valuable avenue for examining the journalistic professionalisation process. In Liberal North Atlantic countries, non-institutionalised or informal self-regulation of the press is common, Hallin and Mancini argued. The literature, however, suggests this regulation (press councils) has failed to provide the public with robust media accountability outcomes. Research in Canada (Pritchard 2000), the United States (Ugland 2000 & 2008), and in Britain (O'Malley and Soley 2000; Frost 2000 2004, 2015) support the conclusion that industry power over self-regulatory instruments has infected structures, procedures and decision-making. Thus, this study examines a new regulatory model which has received little attention to date – the independent and legislatively recognised Press Council of Ireland. Here, the formal process of institutionalisation has seen the codification of an accepted set of professional norms via a code of ethics thereby apparently strengthening the autonomy of journalists by clearly defining the journalistic role for industry and the public while also strengthening the concept of journalistic accountability. This thesis investigates whether the institutionalisation of independent press regulation in the Irish case has established a robust accountability framework for the press.

## **Chapter 1: Introduction**

### **1.1: Introduction**

In early July 2011, the *Guardian* newspaper carried a news story claiming that journalists at the *News of the World* had hacked the phone of school girl Milly Dowler during the investigation into her disappearance in 2002 (Davies and Hill 2011). The story - the culmination of years of disclosures about practices in News International, publisher of the *News of the World*, and the wider British press - prompted then Prime Minister David Cameron to establish a public inquiry. On July 8, Mr. Cameron appointed Mr. Justice Brian Leveson to examine the culture, practice and ethics of the British press. Beginning in August 2011, the inquiry ran until July 2012. It investigated the relationship between the press and the police, the links between the press and politicians, phone hacking and press regulation. In November 2012, Justice Leveson (2012) published his report. In almost every respect, the inquiry was scathing of the British print media.

Notwithstanding the exposure of questionable practices by journalists at the public hearings and in the inquiry's final report, much of the post-publication debate focused on press regulation. Justice Leveson found that the Press Complaints Commission (PCC), a self-regulatory complaints handling mechanism for the UK print media, was unfit for purpose. He argued the PCC had "serious structural deficiencies" (2012: 1576), was given "barely enough money" to perform its regulatory functions (2012: 1577), associated itself too closely with the press, failed to initiate its own investigations "other than in circumstances where an investigation was needed to head off criticism of the press or self-regulation" (2012: 1577), and did not have sufficient powers of investigation or sanction. Leveson concluded that these failures "fatally undermined the PCC and caused

policy makers and the public to lose trust in the self-regulatory system” provided by the PCC (2012: 1579).

Prior to the publication of Justice Leveson’s final report, in March 2012, the PCC took the decision to close even though criticism of its work was nothing new at that point. The complaints handling service had been the subject of regular negative comment that started almost as soon as the first adjudications were handed down and had been ongoing since it began dealing with complaints in 1991 (O’Malley and Soley 2000; Frost 2000, 2004, 2015). Bingham (2007) highlighted how early criticism of the PCC included the supposed watering down of its code of practice and a failure to publish rationales for decisions. Indeed, within two years, David Calcutt, a barrister, delivered a “devastating indictment” of the PCC in a review of press regulation (Bingham 2007: 86). Calcutt concluded the PCC was not independent from industry and did not command public confidence. He argued it was a body “set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry” which, he concluded, was “over-favourable to the industry” (cited in Bingham 2007: 86). Calcutt had also criticised the PCC’s predecessor, the Press Council, in an earlier inquiry (O’Malley and Soley 2000). In fact, criticism of that regulatory system dated back as far as 1961 (Frost 2015).

The closure of the PCC was reported as an attempt by the newspaper industry to move forward with a “clean slate” and come up with a new system after Justice Leveson had outlined his proposals for press regulation (O’Carroll 2012). In his final report, Justice Leveson called for a new independent and incentivised system of regulation that was supported by legislation but designed by industry. The proposals presented a third way between self-regulation and state regulation – and despite some small differences, mirrored the establishment of a similar system in Ireland via the Press Council of Ireland

(PCI) which was established in 2008. Indeed, in the aftermath of the report's publication, some noted that Irish editions of UK titles had signed up to such a system in Ireland. Nick Clegg, the then Deputy Prime Minister, said these newspapers had yet to "complain of a deeply illiberal press environment" under the system (House of Commons 2012).

However, the majority of the UK press, and Mr. Cameron, rejected the proposals. The Prime Minister said he had "serious concerns and misgivings" about statutory recognition for a system of press regulation. He argued Leveson's proposals could impinge press freedom, be open to political interference and would not, in any case, require the backing of legislation to provide newspapers with incentives to join (House of Commons 2012). The majority of newspapers including *The Times*, *The Daily Telegraph* and *The Sun* came down against the proposals for statutory recognition while *The Guardian* and *The Financial Times* favoured a stronger regulator (Moura and de Guzman 2012).

Eventually, the UK press established another form of self-regulation known as the Independent Press Standards Organisation (IPSO). It has been set-up outside of any legislative recognition process and does not have the full co-operation of the industry as *The Guardian* and *The Financial Times* remain outside its scope.

Despite the inclusion of the word 'independent' in its title, IPSO exhibits many of the same characteristics of self-regulation. It is funded by the newspaper industry and Frost (2015) argued its failure to meet the standard set down by Leveson mean it is likely to meet the same fate and be subject to the same criticism as the PCC. Some have already suggested IPSO is a "total failure" (Toynbee 2015) while Alan Moses, its chairman, has praised the new regulator and highlighted its independence from industry (Greenslade 2016). Moses has highlighted changes to the initial IPSO structures that he believes have empowered the regulator and argued it has strong power to direct where, when and how member publications print adjudications (Greenslade 2016).

It will be some time before a substantive examination of IPSO's work can be undertaken. However, despite the widespread debate about press regulatory approaches that has intensified in recent years, an initial examination of the literature on press regulation showed there has been limited substantive research on how press self-regulation, or indeed independent regulation, ensure and enforce media accountability. In the research that has been conducted, in Canada (Pritchard 2000), the United States (Ugland 2000 & 2008), and in Britain (O'Malley and Soley 2000; Frost 2000 2004, 2015), the findings, which will be analysed in more detail in later chapters, support the conclusion that industry power over self-regulatory instruments has infected structures, procedures and decision-making, resulting in credibility problems and failures. However, while these examples of research contribute to the academic literature on this subject, they do not substantively deal with one of the key criticisms of self-regulation, namely, that self-regulation lacks strong sanction powers for newspapers which breach ethical guidelines and fail to enforce the powers they do have. Donovan et al (2012) found that there is a significant lack of academic research on the effectiveness of enforcement powers for regulatory bodies, not just in the field of journalism. They quote a number of conceptual and theoretical studies of self-regulation (Heritier and Eckert 2007; Hemphill 2003; Porter and Ronit 2006; Ashby et al. 2004) but point out that there are "few empirical analyses of effectiveness".

This study intends to fill that gap and will examine – for the first time – how a supposedly stronger method of press regulation, known as institutionalised independent regulation, operates within a media accountability framework and whether it offers any benefits when compared to self-regulation. This study will examine a new regulatory model which has received little attention to date – the independent, legislatively recognised and incentivised PCI. As Chapter 3 will detail, there was little non-legal

regulation of the press in Ireland until the PCI was established in 2008 as an attempt to head off statutory measures that were under consideration by the Irish Government in the last decade. All of the major newspapers in operation in Ireland signed up to the PCI and it has been the subject of praise for its work, not least by Leveson. The Irish case operates in a similar fashion to the PCC in that it is primarily a body for the handling and adjudication of complaints. Indeed, one can argue that the formal process of institutionalisation and legal recognition has seen the codification of an accepted set of professional norms (code of ethics) thereby apparently strengthening the autonomy of journalists by clearly defining the journalistic role for industry and the public while also apparently strengthening the concept of journalistic accountability. Thus, this thesis will investigate what impact, if any, the institutionalisation of independent press regulation has had on the concept of media accountability.

Chapter 2 begins by examining the theoretical literature in an attempt to make sense of concepts of journalistic and media accountability functions in a democratic society. The chapter then turns to the broad philosophical notions of libertarianism and social responsibility as two defining concepts of journalism. This discussion provides a foundation for examining what responsibilities journalism has to society and what society expects of the press and the wider media. Only once these responsibilities are codified and accepted can society then hold the media accountable when it fails to comply. The concept of accountability is examined in the context of press regulation with forms of media accountability systems also assessed. To conclude, this chapter discusses the concept of the press council and reviews the literature on self-regulatory press councils in order to establish their strengths and weaknesses before the study turns, to examine in detail, Irish press regulation in later chapters.

## Chapter 2: Literature Review

### 2.1: A theoretical framework for press regulation

Assessing press regulation requires a broader understanding of the media's role in society. To date, ethical regulation of the press has been based on the press accepting or being assigned responsibilities for which individual journalists or media organizations are held accountable. Media systems theory attempts to identify specific characteristics of the journalistic media to categorize media systems at the level of the nation state. As a theoretical genre it establishes what responsibilities are assigned or expected of the press and how such responsibilities might be enforced. Thus, a review of the relevant media systems theory should provide a sound basis for examining press regulatory issues.

The 1956 work by Siebert, Peterson and Schramm, *Four Theories of the Press*, was an early serious effort at theoretically categorizing a system for understanding the modern press and its relationship with society. The authors identified four main theories which they labeled as authoritarian, soviet communism, libertarian and social responsibility. In the Western context, the concepts of responsibility and accountability are among the key contrasts found across the libertarian and social responsibility strands. As Nerone correctly pointed out (1995: 18), '*Four Theories*' argued that the structure, policy and behavior of a communications system reflects the society in which it operates. Indeed, among the strongest supporting arguments for adopting media systems theory is its ability to identify societal influences and treat them in a flexible manner.

However, despite its success as a manual, '*Four Theories*' has been criticised for a variety of structural and methodological failures (Nerone 1995; Hallin and Mancini 2004; Nordenstreng 2009; Christians 2009). Nevertheless, as Altschull correctly pointed out, the work is discernible in later media systems theory, primarily as thematic elements

within broader treatments of media systems, while “all press systems endure the doctrine of social responsibility” (1984: 288).

Later work by Merrill (1974) condensed *Four Theories* into two theories: authoritarian and libertarian, while Altschull (1995) argued that there were three models: market, Marxist and advancing. Similarly, Nerone (1995: 17-82) argued that the 1956 work incorrectly identified four distinct theories. For Nerone, it explained one theory – classic libertarianism – and used four examples to support it. Thus, *Four Theories* gave the incorrect impression that a press system could be defined by one coherent theory, according to Nerone. He pointed out that such a belief is a “useful assumption for abstract discussion of press operation” but not for examining “specific historical situations in which theories always overlap and in which the various actors are often motivated by quite different notions” (1995: 19-20).

Nerone, however, identified a more fundamental flaw with *Four Theories*. He argued that the 1956 work was over-simplified in its failure to recognize the influence that concentrations of private power and markets have over media. Nerone argued that Siebert, Peterson and Schramm placed too much emphasis on freedom of the press in a political context as a freedom from the state, as opposed to other forces. For Nerone, this ignored other sources of control, such as the market. Siebert, Peterson and Schramm (1956) emphasised the evolution of libertarianism to a more self-aware socially responsible press, a transition which saw a greater industry acceptance of forms of regulation. However, the change was an industry idea, Nerone argued: Thus the myth of a free press in the service of society exists because it is in the interest of media owners to perpetuate it (1995: 29).

More recent theoretical work has attempted to solve these particular deficiencies. For example, McQuail (2003, 2010) emphasised the influential role that non-state actors

have. In the first of his four categories of media systems, the liberal-pluralist or market model, the free market is the solution to regulatory and quality issues. McQuail's second category, the social responsibility or public interest model, confirms that mechanisms of accountability exist with obligations that go beyond media self-interest. Other media markets have developed around the concept of professionalism – McQuail's third category<sup>1</sup>. Here,

the choice of roles for society and the guardianship of standards belong in the model to the 'press' itself and to the journalistic profession. They are...still the best guarantors of the interests of the public since their primary concern is serving the public's need for information... The institutional and professional autonomy of journalism is also the best guarantee of an adequate watch being kept on those in power (McQuail 2010: 184)

The foundation for the idea that the market and the media institution play key roles in defining their own parameters came from Habermas (1989). He argued that a bourgeois public sphere emerged in Western Europe at the end of 18th century as a social space which allowed private individuals to discuss public issues with equality and reason. This social transformation, which resulted in the development of a middle class established from the ranks of the working classes, produced an opening between civil society and the state. This space became a public sphere where citizens debated on government and the state: a space for journalism. Newspapers, originally intended for the mercantile classes, became political organs. As time progressed, Habermas argued, this sphere eventually became deeply politicised and in turn began to collapse by the mid to late 19th century with the rise in power of capital. Schudson (2011: 58-62) noted Habermas's belief that

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<sup>1</sup> McQuail's fourth category, the alternative media model, relates to mainly non-mainstream media where the rights of subcultures are recognised.

capitalism refudalised public life with power falling into the hands of the few who owned news organisations. Newspapers became a medium for culture as an object of consumption. Thus, Habermas argued that the notion of the public sphere - noted by McQuail (2003: 61-62) as the media's role in promoting an effective public space for the free and open exchange of ideas "in which diverse voices can be heard, ideas exchanged and debated, issues of moment debated in a rational way, and public opinion formed" - was squandered.

The work of Habermas is central in highlighting the role of non-state actors when evaluating media systems theory and underlines the arguments of Nerone and others. In modern theory, this strand of thinking forms the basis of the political economy approach for understanding media systems, the interplay between media and publics and, ultimately, how responsibilities and accountability combine to form regulatory approaches to journalism.

### **2.1.1: The political economy tradition**

The political economy approach takes heed of two core components (McChesney 1998: 3-12). First, it addresses the nature of the relationship between media and society. Second, it looks at how ownership support mechanisms (e.g. advertising) and government policies influence media behaviour and content. For McChesney, political economy analysis is key in capitalist societies where dominant commercial media systems exist. Thus, such an approach may appear at odds with media systems analysis, although, as a reading of McChesney would suggest, recognising a political economy analysis overcomes weaknesses exhibited in *'Four Theories'* and other systems theory.

For McChesney, the political economy approach tends to focus on the link between advertising and news output, and on the influence that the increasing concentration of

ownership has over the news media. However, the political economy tradition also recognises the democratic responsibilities of media communications. Thus, political economy analyses are driven by “the notion that democracy is predicated upon an informed participating citizenry, and that a political culture typified by an active and informed citizenry can only be generated in a final analysis by a healthy and vibrant media system” and that “the political economy of communication, at its best, should develop models of democratic communication that emerge organically from its critique of the commercial media system” (1998: 8).

However, McChesney correctly pointed out that capitalism’s consequences - including strong class inequality and possessive individualism - display an anti-democratic edge. As a result “the political economy of communication has focused on how capitalist control and commercial support of media have tended to serve elite interests in a manner that is anathema not only to an informed citizenry but to core democratic values as well” (1998: 8). Therefore, the approach exhibits a strongly normative critique of the ways in which state policies and the methods of ownership, management (regulation and accountability) and subsidisation affect the capacity of the media to serve their democratic functions and responsibilities.

The political economy approach has evolved considerably. Herman and Chomsky (2010) proposed a propaganda model which argued that the media serve and propagandise on behalf of powerful societal interests which control and finance the media. Under the model, ‘flak’ is the ability to complain about the media’s treatment of news - a form or function of media accountability - but this area is influenced and controlled by the same underlying power sources and also plays a key role in fixing basic journalistic principles and dominant ideologies suitable to capital. Such structural factors do not produce homogenous results, Herman and Chomsky pointed out, and indeed

dissenting or alternative viewpoints can and do emerge. But such alternative views are relegated and marginalised according to their propagandistic, political economy paradigm.

For Herman and Chomsky, the propaganda model explains media behaviour and performance according to a corporate character and an integration into the political economy of the dominant economic system. Indeed, they believe that ‘flak’ has strengthened as a mechanism of elite influence over the media, which suggests they believe that regulatory and accountability mechanisms of the press serve the media’s corporate ends rather than the public and broader society. Herman and Chomsky’s position is that the neoliberal agenda has resulted in a vast swathe of those who believe in the benevolence of the market and who believe all non-market mechanisms are suspect. Journalism has internalised this ideology, Herman and Chomsky concluded, and ultimately this has weakened the public sphere.

The political economy analysis cannot be ignored. However, extreme forms of the theory, such as Herman and Chomsky’s, exhibit their own weaknesses making them somewhat unsuitable for assessing normative concepts around regulation, responsibilities and accountability. Schudson (1989, 2011) supported such a conclusion and is dismissive of the hypodermic model of the media as a form of propaganda that injects ideas into a passive and defenceless public at the behest of wealthy, corporate owners (2011: 16-17). Herman and Chomsky’s propaganda model is a “misleading and mischievous stance” for four reasons (2011: 31-34). First, Schudson disagreed with the propaganda model’s comparison between *Pravda* and the *New York Times*, arguing that the latter’s approach to professional and ethical journalism clearly differs from that of Communist Russia. Second, he pointed out there is a “vital arena of legitimate controversy” (2011: 32) in journalism, outside of a determinant focus on capitalism. Third, there are multiple voices

in the US news media while historical and recent examples have shown it keen to pursue scandals which do not tally with the desire of a corporate system. And fourth, the media are obligated to maintain credibility with readers.

Nevertheless, the sheer influence that political economy theory has had on media studies means it is important to recognise its potential in identifying possible weaknesses in media system theory such as those in *'Four Theories'*. While Schudson argued (1989: 266-270) against political economy as a theory often caricatured as conspiracy, which, in its simplest form is easily dismissed, he pointed out that more sophisticated versions “not only add to but are essential to an understanding of the generation of news” and to how media systems operate (1989: 267). The political economy approach looks at the big picture, he pointed out, rather than the minutiae of journalism convention. And it is at this level that the approach is strongest and where journalism operates in conjunction with and alongside official, elite points of view, both political and corporate.

Such a measured political economy approach ultimately contributes to an analysis of concepts of journalistic responsibility, accountability and regulation. Much criticism of media accountability has focused on structural and operational flaws which favour corporate media owners, and as a result these media regulatory efforts framed within a context of accountability do little more than maintain the status quo, despite promising reform of journalistic standards and quality as a means to improving the public sphere. Nevertheless, establishing a suitable media systems framework is essential for the analysis of press regulation which follows this chapter. Thus, the question arises: if the political economy analysis of *'Four Theories'* concluded that it is ultimately flawed, what other media system theory is suitable as a framework mechanism for the study of systems of press regulation?

### **2.1.2: Schudson and Bourdieu**

Schudson (1989, 1997, 2011) incorporates political economy approaches, but stops short of singling out particular media systems, instead offering an overall analysis of the potential for the presence of particular characteristics. Schudson's first category is the macro-institutional approach, which, along with political economy approaches, minimises the role of human agency; favouring the argument that structural conditions account for most features of the news and its relationship with society. Thus, the focus in this regard has been on the economic with the categorisation founded on the basis that ownership and profit damage the media and ultimately democracy, rather than on the political element of news which reinforced the definition of the political situation offered by the political elite.

Schudson's second category is the micro-institutional and mainstream sociology approach. It promotes the power of routines, journalistic conventions and the social pressures on journalists as a means for understanding journalistic output. It favours the view of the building of a "socially constructed" world by journalists rather than an objective truth and is marked by the professionalisation and normalisation of journalists into becoming accepted journalists working to the same concept of social construction. The micro-institutional approach accepts a framing of news which operates to fit predetermined, successful and accepted narratives; the reduction of complex narratives to binary choices or simplicity. At the centre of news generation (1989: 270-275) is the link between reporter and official, the interaction of the representatives of the news bureaucracies and the government bureaucracies. This makes the relationship an important tool for the state as it tends to dominate the agenda due to the importance attached to sources – the majority of which are official – which is part of journalism's conventions.

Schudson's final category is the cultural, or "culturological" (1989: 275-279) approach. It emphasises the role of human agency which is constrained by cultural archetypes where journalists feel compelled to conform to existing myths and narratives. It is concerned with symbolic determinants of news in the relation between facts and symbols rather than between people. This concept is related to the idea of hegemony as the ruling class's domination through ideology, typically through the shaping of popular consent. For Schudson, it is about reinforcing the conventional moral order of society, a moral order that has been established by cultural development. The concept is related to the idea of the "news sense" as an undefinable element which news people possess so that they recognise news when it happens.

Schudson's work is particularly useful for the recognition within the macro-institutional setting of the structural influences which dominate the media's relationship with society. In addition, the micro-institutional reference to the professionalisation of journalists is germane. However, Schudson's work is focused on the structure of news and the journalistic process, rather than the relationship between the news and other stakeholders. Thus, while particularly useful, it is not entirely suitable as a theoretical framework for this study.

At another spectrum of the theoretical conceptualization of the press is Pierre Bourdieu, the French philosopher. Bourdieu described journalism as a field which is a "structured social space" where actors, in this case journalists, struggle for the transformation and the preservation of the field (Benson and Neveu 2005: 30). Each field is centred around the struggle between economic and cultural forces, perhaps even more so in journalism (Benson and Neveu 2005: 4). Bourdieu argued that a field has three elements – doxa, habitus and capital. Each are suggestive of the internal dynamics within journalism on the micro level of journalism practice despite the arguments of others who

describe Bourdieu's work as being on a meso-level (Neveu 2007: 344). For Bourdieu, fields are dynamic and influenced by internal conflicts which tend to reproduce and reaffirm them (Benson and Neveu 2005: 6).

However, Bourdieu accepted that external shocks can bring about changes also, and distort the field. Thus, a political economist may argue that in the modern western capitalistic society, journalism has moved so close to the economic field it exerts a pulling influence on other fields toward the economic model. Indeed, Benson and Neveu (*ibid*) argued this point in highlighting the influential role in the social and political spheres occupied by journalism. Nevertheless, on the micro journalism practice level, Bourdieu is positive about the possibilities of autonomy despite the inherent problems with the concept concerning the economic influence and the likelihood that journalism is often, as he argues, a "weakly autonomous field" (2005: 33).

Field theory positions itself precisely between those approaches (political economy or cultural) that commit the 'short-circuit' fallacy and news production directly to the interests of broad social classes or the national society, and those (organisational) that focus too narrowly on particular news producers. Field research thus calls for the examination of "institutional logics": the simultaneous analysis of social structures and cultural forms, as well as the complex interplay between the two (*ibid*: 12)

Bourdieu's work, while regarded by many of those cited as seminal, is not exempt from academic criticism (e.g. Neveu 2007). Indeed, for the purposes of this study, it is likely to contribute little to any overarching theoretical framework for a number of reasons. First, Bourdieu's work is heavily influenced and focused on the internal dynamics of journalism rather than the impact that any external organisation may have on such activities. Second, despite Bourdieu's optimism for autonomy, his argument that journalism is a "weakly autonomous field" is undermined by the idea of an independent

ethical organisation which, via the codification of journalism practice and norms, has the potential at least to strengthen the autonomy of the journalistic group. Indeed, it may even provide a bulwark to concepts of cultural and economic influence. According to Benson and Neveu (2005: 44), within a field there is competition for legitimate appropriation of what is at stake in the struggle for the field. In journalism it is about competition for readers. One of the paradoxes of this, however, is that competition, said to be a prerequisite of freedom, has the effect in fields of cultural production under commercial control (journalism) to produce uniformity, censorship and conservatism. “Journalists are caught up in structural processes which exert constraints on them such that their choices are totally prestrained,” Bourdieu argued (ibid). Based on this line of thinking, one would expect the institutionalisation of independent press regulation – an attempt to disrupt the power relations within the ethical sphere of the field – to actually empower journalists against the commercial logic thus improving their autonomy.

### **2.1.3: Hallin and Mancini**

Hallin and Mancini (2004) take the 1956 work of Siebert, Peterson and Schramm as the starting point for their system theory. Von Krogh (2008: 19) has argued this shows that “both the ability and the means to hold the media accountable have developed differently in different parts of the western world” albeit revolving around conditions in the US. Thus, the echoing of Schudson’s sentiment on structural impacts is clear. For Hallin and Mancini (2004: 8) “one cannot understand the news media without understanding the nature of the state, the system of political parties, the patterns of relations between economic and political interests, and the development of civil society”. Nevertheless, Hallin and Mancini’s work marks a move away from the more normative concepts of ‘*Four Theories*’ (McQuail 2010: 177).

Hallin and Mancini (2004) examined political and economic variables (development and structure of media markets, political parallelism, professionalization and instrumentalisation) as the basis for proposing three journalistic cultures and media systems. Their first model, the liberal model, which includes Britain, the US and Ireland, is marked by deregulated media markets, a developed professional journalistic culture and minimal state interference on media. Hallin and Mancini's second model, the democratic corporatist model, which encompasses Scandinavian countries, Germany and Austria, is also characterised by a significant culture of journalistic professionalism but has state involvement in the media through public broadcasting. The polarised pluralist model, Hallin and Mancini's final media system which contains countries like Italy, Spain and France, features strong political influence on media with weak professional cultures among journalists.

While they note that there is a modern tendency for media systems to increasingly move closer to the liberal model (2004: 76-85), in each of the media systems identified by Hallin and Mancini the level of journalistic professionalization plays a key role as a major variable within their method of media system classification. Hallin and Mancini argue that within each media system (polarised pluralist, democratic corporatist or liberal) indicators of journalistic professionalization vary. For the authors, autonomy, professional norms and the development of a public service ethic are central to professionalisation, with codes of ethics and systems of regulation or accountability, such as press councils, identified as being key to examining the concept of professionalization.

In countries categorised as having liberal model press systems – Britain, Ireland, Canada and the United States – professionalization of journalism is strong while non-institutionalised self-regulation of the press is common. Indeed, the majority of the theoretical work on press and media systems (Siebert, Peterson and Schramm 1956;

Williams 1962; Merrill 1974; Altschull 1984; Picard 1985; Habermas 1989; McQuail 2013) reflects, to varying degrees, a recognition of characteristics of journalistic professionalism, more commonly labelled the social responsibility theme (Altschull 1984: 288). Lauk and Denton (2011: 218) identified the importance of the concept of journalistic professionalism to Hallin and Mancini's (2004) categorisation process for media systems. While others such as Nerone (1995) and McChesney (1998) doubt the motives of journalistic professionalism it needs to be examined further particularly in light of its core role in the idea of an accountable press as part of the social responsibility theory, its role in McQuail's media system theory and now its central role in Hallin and Mancini's work.

As stated, according to Hallin and Mancini's (2004) North Atlantic Liberal model, the press system in respect of performance issues is characterised by two elements: a strong professionalization process among journalists and a system of non-institutionalised self-regulation characterised by a peer led culture of accountability.

The professionalisation of journalism began in the latter half of the 19<sup>th</sup> century and gathered pace in the early 20<sup>th</sup> century as public and political discourse criticised a sensationalist press (Hallin and Mancini 2004: 218). It centred and developed around two ideas: objectivity and a hands off approach by owners (2004: 219). However, as McChesney and Nerone pointed out, Hallin and Mancini also argue that media owners had political and economic incentives to promote and accept journalistic professionalization due, in part, to the very process acting as a bulwark to state interference, continued public criticism and a loss of public credibility which would affect profits.

It constrained owners and often has served to increase journalistic autonomy and limit instrumentalisation of the media. But it also constrains journalists, who are expected to renounce any ambition of

using their position as a platform for expressing their own political views, and to submit to the discipline of professional routines and editorial hierarchies (2004: 225)

There are three dimensions of professionalisation identified by Hallin and Mancini. The first dimension is autonomy, which the authors argue, has always been central to the idea of professionalising an industry as a means to justifying attempts to gain greater control over work practices. Indeed, journalists have never achieved the degree of autonomy associated with other professions due to the mass production of their work, elite ownership of the means of production and control of media organisations being exerted by those other than journalists. The second dimension of professionalisation is the formation of distinct professional norms, characterised by the development of a set or horizontal journalistic norms (evident in codes of ethics) as well as routine work practices. The third dimension is public service orientation. Such an idea should not be dismissed as “mere ideology”, Hallin and Mancini argued. One of the clearest manifestations of the development of an ethic of public service is the existence of mechanisms of journalistic self-regulation and accountability mechanisms, which in some systems are formally organised in the form of, for example, press councils.

Hallin and Mancini accepts its limitations in terms of the variations within the systems proposed, thus displaying a particular level of flexibility attractive in favouring its approach (2004: 11). The systems are not homogenous either. As the authors state, they are often characterised by a complex coexistence of media operations; nor are they static, as journalism cultures change and develop over time.

However, some have argued that this three-tiered approach to understanding media accountability through the frame of Hallin and Mancini’s categorisation of media systems is problematic and unsuitable as a method for categorising and understanding media accountability systems in a broader cultural and geo-political context. Fengler et al.

(2014: 69) argued that “no study in the field of media accountability has systematically drawn on the model to identify and explain ‘cultures of accountability’”. Fengler et al. concluded that Hallin and Mancini’s systematic categorisation exhibits inconsistencies in respect of media accountability as certain countries - which reside within the geographical units proposed by Hallin and Mancini - actually exhibit strong characteristics of accountability mechanisms which would reside in other models. By way of example, Fengler et al. highlighted Austrian press regulation, which, they argued, exhibits many similar characteristics to media regulation in Italy, a geo-political entity categorised as part of the polarised, pluralist model of Hallin and Mancini.

Indeed such arguments can be made about many of the tiered geo-political or economic approaches to understanding media systems, whether it is Williams’ (1962) authoritarian, paternal, commercial or democratic frames, or Blum’s (2005 cited by Dobek-Ostrowska 2010) six models: Atlantic-Pacific liberal model, southern European clientelism model, northern European public service model, eastern European shock model, Arab-Asian patriot model or the Asian-Caribbean command model. Nevertheless, as a framework for assessing and analysing systems of press regulation, Hallin and Mancini’s provides the most relevant, viable and sustainable media systems theory appropriate to this study of the Irish case. Taking the North Atlantic Liberal model in isolation, the aim of this research is to examine how the institutionalisation of press regulation in Ireland has impacted on the third dimension of professionalisation identified by Hallin and Mancini, the development of a public service ethic or ethos. Indeed Hallin and Mancini’s model allows – despite the belief of Fengler et al. (2014: 69) – for a full assessment and test of the robustness of press accountability mechanisms due in part to its flexibility and also its recognition of the measured political economy approach which views professionalism as part of the corporate control motif.

Theoretical considerations aside, in order to establish a sound base for examining concepts of press regulation and ethically accountable frameworks, particularly in a western setting, the remainder of this chapter must examine the development of the themes proposed as theories by Sibert, Peterson and Schramm. As noted, criticism of *'Four Theories'* is particularly focused on claims the work is outdated, but its value lies in the recognition given to two of the more relevant and important themes closely linked to the western, professional press, namely libertarianism and social responsibility.

## **2.2: Libertarianism**

Between the 15<sup>th</sup> and 19<sup>th</sup> centuries, early manifestations of journalism and the press in western society, particularly in Britain, were marked by control and severe limitation, primarily originating from the state in the form of taxes, pre-publication censorship, restrictive libel laws and licencing systems (Murray 1972; Altschull 1990; O'Malley and Soley 2000). As a consequence, the freedom vital to the concept of assuming journalistic responsibility was absent. It was this restrictive context that established the conditions which sparked debates about the role of a free press in society and the development of what is now identified as classic liberalism.

In a wider social context, Kelley and Donway (1990: 68) suggested that a new liberal philosophy emerged in response to religious wars of the 16<sup>th</sup> century which convinced societies that tolerating difference was preferable to constant confrontation; scientific advancements that led to a questioning of orthodoxy; and in response to the growing oppressive role of political elites in British life. Keane (1991: 10-20) suggested a variety of influences which emerged including the theological approach which criticised state censorship on the basis of individualistic God-given faculty of reason and supported a free press to let the love of god and the "free and knowing spirit" flourish; the

individualistic or natural rights approach which extended the idea of a free press to the political sphere where a free press was a guarantee of freedom from political “coxcombs, parliamentary hoodwinking and government slavery” (Tindall 1704 quoted in Keane 1991: 15); the utilitarian approach of Bentham which held that a free press was necessary in order to ensure free elections as a check on poor governance and despotic rulers; and the attaining truth approach of Mill which held that public debate was the best way to discover truth. Altschull (1990) correctly pointed out that such social changes brought the concept of public opinion into the political process. Western society began to seriously question power and democracy, and their own relationship with it.

The awakening of such ideas is often credited to John Locke (1632-1704), the English philosopher and father of classic liberalism. He argued for a greater awareness of individualism as the key to achieving collective happiness (Sibert 1956: 43). The arguments of John Milton (1608-1647), Locke’s contemporary, complimented these individualistic notions. Milton called for free, unregulated and robust debate – at that time impossible due to severe state restrictions – to help an individual reach his/her potential through the establishment of truth (Altschull 1990: 40-42; Sanders 2003: 67). Almost two hundred years after Locke and Milton, John Mill (1806-1873) argued for “the liberty to know, to utter, and to argue freely according to conscience, above all liberties” (quoted in Sanders 2003: 66).

While western society was slow to incorporate these ideas, in the 1720s, *Cato*, a political column written by journalists John Trenchard and Thomas Gordon, stressed the political need for free communication. If the people were to be sovereign as having power over public officials, they needed to be aware of how well or poorly the officials were carrying out their jobs, *Cato* regularly argued in the column. For Trenchard and Gordon it was more important to keep the people informed than it was to keep people thinking

highly of governors, to the extent that other principles could be violated to achieve such a goal (Knowlton and Reader 2009: 21-22).

The arguments of Locke, Milton, the Cato columns and Mill are regarded as the underpinnings of classic liberalism (Sibert 1956: 40-71). The rhetoric led to the social and political conditions which allowed for the development of a free and independent press as a vehicle for informing and educating citizens. These ideas eventually gained acceptance among the powerful and political elites in western societies. Restrictions on the press in Britain were largely removed by the mid-19th century (O'Malley and Soley 2000). In the US, the first amendment of the constitution, adopted in the late 1700s and continually reinforced since (Bollinger 1994), protected the press from any law interfering with its freedoms.

Thus, classic liberalism granted almost complete independence to the press (Kelley and Donway 1990). Dominating political discourse, libertarianists argued that government or the nation state ought to preserve the rights of the individual. Kelley and Donway pointed out that the main rationale for preserving a free press was in order to protect wider individualistic freedoms. Classic liberals believed the press should perform the watchdog function on government to ensure it did not impinge on other freedoms. In effect, free speech and a free press ensured two things: it enabled people to pursue their private ends and served as a check on government (Kelley and Donway 1990).

Despite its flaws, the *'Four Theories'* treatment of the libertarianist position remains salient. According to Sibert (1956: 40-71), the underlying rationale for libertarians was derived from the self-righting process of truth versus falsity first proposed by Mill. Libertarianism was an attempt:

to let the public at large be subjected to a barrage of information and opinion, some of it possibly true, some of it possibly false, and some of it containing elements of both. Ultimately the public could be trusted to

digest the whole, to discard that not in the public interest and to accept that which served the needs of the individual and of society of which he is a part (1956: 51).

Libertarians believed there were enough opinions to let the public debate and decide, while everyone - theoretically at least - had the same opportunity and ability of access to the channels of communication to share their opinions. Anyone could set up a media outlet, and the only deciding factor on its success or failure would be profit, and by extension the public which it sought to serve, not any overbearing state influence, control or interference.

There were underlying weaknesses with this approach. While libertarians accepted limitations including defamation, prohibition against indecent and obscene material and the protection of the state, there was no recognition of extra-judicial responsibilities. Libertarians believe in a completely free press - free from any role or responsibility assigned to it by any individual. Sibert (1956: 40-71) pointed out that liberals preferred this to the alternative of state control. While Sibert acknowledged there are criticisms, he pointed out that the theory's greatest asset was its flexibility, its adaptability to change, and "above all its confidence in its ability to advance the interests and welfare of human beings by continuing to place its trust in individual self-direction" (1956: 71).

Merrill (1986), a strong supporter of the tradition, developed this element of libertarianism, strongly arguing that no one can assign responsibilities to the media. If responsibility lies anywhere it is with those determined by the individual journalist. Merrill argued that government, and the development of press responsibilities defined via processes of self-regulation, posed significant problems for press freedom. He argued that those who circumscribe the ideals of liberalism, such as Mill, are "manifesting not only a certain arrogance but also something of the spirit of authoritarianism, however well-meaning they may be" (1986: 49).

In a free and truly liberal society, Merrill argued that responsibility remained in the eye of the beholder. Thus, a logical outcome for a free press system is a divergence of views on responsible and irresponsible procedure. Merrill argued the press is responsible, but responsible to someone's individual concept of responsibility. In this way, responsibility is a personally defined issue which not everyone agreed on. Therefore, any attempt to define responsibility, whether by government or anyone else, contradicted constitutional and societal protections extended to the press. As a result, Merrill argued there is no way to settle questions of press responsibility in a free society because even if the press behaves or conforms in a manner agreed by various stakeholders, anyone is free to disagree.

The liberal position assisted the development of the powerful mass media we know today (Bagdikian 1997; Herman and McChesney 1997) by creating a market (Glasser 1986: 82-86) to act as a mechanism of quality control. Through the ideological protection granted to the press, newspapers and journalists created a unique position in western society. Under libertarianism, journalists were free from any external responsibility, other than their own conscience. No credible universal standards or ethical obligations developed. Any attempt to improve content or behaviour through external, or indeed internal, regulatory accountability mechanisms was considered a breach of moral, ideological, and legal rights established and awarded to the free western press. Instead, the self-righting process of truth would find its own level in the free market-place of ideas and would act as the only necessary non-legal check on the press. Perhaps William Peter Hamilton, a former publisher of the *Wall Street Journal*, summed up the concept of press responsibility best in respect of classic liberalism when he wrote that "a newspaper is a private enterprise owing nothing whatever to the public, which grants it no franchise. It is therefore affected with no public interest. It is emphatically the property of the owner,

who is selling a manufactured product at his own risk” (quoted in Dornan 1991: 159-160).

### **2.2.1: Liberal weaknesses**

A fervent belief in favour of ignoring responsibilities is identified by Schultz (1998) as central to a gradual shift away from libertarianism. O’Neill (1990) identified libertarians as holding a rights-based approach where rights are free from any concurrent responsibilities or obligations. O’Neill (1990) argued that without obligations, rights are merely “shams”. “We do not have to be enemies of free speech to find a lot alarming that is not usually thought to violate rights (1990: 164).” Indeed, Frunza and Frunza (2011: 36) pointed out that responsibility is maintained outside the juridical sphere and “implies a type of ethical commitment” (2011: 36).

Klaidman and Beauchamp (1987) also identified problems with the liberal interpretation of moral rights and responsibilities, and the assumed liberal demand for privilege without exception. They pointed out that Mill is often cited as the source of claims that a free press would serve the public interest better than any other form of morally established press control. However, Klaidman and Beauchamp noted that Mill was not a free speech absolutist<sup>2</sup> and accepted that moral claims could, on occasion, outweigh press freedoms. They argued that the libertarian concept of a press operating

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<sup>2</sup> Neither could Mill’s main influence, Milton, be considered a free speech absolutist due to his belief that neither Roman Catholics nor journalists of the day be granted unhinged freedom of speech with no concurrent responsibilities because he deemed each grouping not to have reached the standards of honesty required to participate in public debate (Sibert 1956: 44). Sanders (2003: 56) points out that Milton favoured restrictions on free expression when Popery or superstition was concerned, as well as that “which is impious or evil absolutely against faith or manner not law can possible permit”. Peters (2004) rightly points out that, while Milton’s positions on pluralism, his contempt for compulsion and his equation of censorship with murder make him a friend to libertarianism, his position outlined by Nordenstreng and Sanders, make Milton a “puritan radical and magnificent, dangerous poet” (Peters 2004: 69), a consideration often forgotten by those who would quote Milton as a “theorist of the marketplace”

solely within a legal framework free from non-legal and moral obligation is not actually what Mill envisaged. Therefore, “freedom from legal constraints is a special privilege that demands increased awareness of moral obligations” (1987: 10).

Libertarianism never recognised these sentiments and drew the famous statement from the American writer and poet Archibald MacLeish (1944, cited in McIntyre 1987: 141) that a “free society could not permit its press to use freedom to destroy freedom”. Without a recognition of responsibility, ensuring any modicum of accountability is unachievable; in democracies all social institutions are either owned or given privileges by the public and therefore must be held accountable (Lichtenberg 1990). As Klaidman and Beauchamp (1987), Schultz (1998) and O’Neill (1990) pointed out, examining concepts of responsibility and accountability under the libertarian ideal amounted to an investigation of “contradiction, incongruity and irresolution” (Dornan 1991: 150).

The failure to incorporate journalistic responsibilities is among a variety of flaws identified by critics of the classic liberal concept. Indeed, perhaps there are more significant and fundamental problems with the classic liberal interpretation. Nordenstreng (2010: 214) argued that Mill and Milton, despite being credited as fathers of the self-righting market influence on truth, would be “aghast” at the prospect of ideas being bought and sold in a market. For Nordenstreng, the “marketplace of ideas” has been usurped by modern mass media companies which declared themselves the “virtual marketplace of ideas” as a “politically appropriate response to the development of media structures in late capitalism” (2010: 216). Peters, whose research found no mention of the “market place of ideas” concept until the 1940s despite it being associated with 17th century philosophers, argued that such “concepts that glow with unmitigated righteousness can create mischief”. Therefore, “the ‘marketplace of ideas’ often shined a

noble light on the press and obscured its profit-making interests with a flatter self-description (2004: 74)".

This strict dedication to the market undermined the liberal position. Despite the libertarian belief in a 'free' market, Fiss (1990) argued the market is its own system of constraint: the market favours a select economic elite (owners, advertisers and readers) and subjugates the democratic needs of the electorate for profitability. Bertrand (2000) argued that the libertarian theory was corrupted by the commercialisation and profit dogma that accompanied the free market development of the press. As a result, the market alone could not guarantee ethical or good social communications. "At best, it makes it possible for a majority to express itself. At worst, the media become servants to a wealthy minority, on the one hand, and on the other, they broadcast to an undifferentiated mass what seems to displease it least (2000: 20)." For McQuail (2003), the market is not an effective way to regulate the media in respect of content or standards because the market looks after only those who have a stake in the market, such as owners, elites and so on.

Despite the obvious concerns about the effect that the untrammelled free market may have, it had already resulted in the privatisation of press freedom according to Glasser (1986) who argued a market-based business model produced a consolidation and concentration of ownership where newspapers and the wider press and media became profit-making enterprises for increasingly small numbers of owners. The 1974 Justice Potter Stewart position which espoused the free press clause to extend to the "protection to an institution" (Glasser 1986: 89) has extended explicit constitutional protection to an organised private business in the US, the libertarian's beacon, a point also referenced by Dawes (2014: 21-22). Indeed, Christians (1986) cited this US court-backed protection as one of the reasons for the increasing commercialisation of the press driven by the emergence and power of large media conglomerates which owned more and more of the

print, electronic and broadcast media due to society's acceptance of a naive libertarianism. More critically, one can see how this liberal approach, which led to an unresponsive, powerful press, may have contributed to the earlier infamous remarks of Stanley Baldwin, a former British Prime Minister, who, in attacking the press barons of the 1930s, criticised the "power without responsibility" being sought by the media elites which was "the prerogative of the harlot throughout the ages" (1931, cited in Bertrand 2003: 26).

A consensus has emerged in academia and the media that liberalism was unsustainable because of these inherent weaknesses and failures which had become major fault lines due to a number of developments. New technologies brought the birth of radio (and later television) which resulted in direct and fierce competition for audience share. In response, journalists in newspaper companies - now more concerned with profit margins than ever as a result of shareholder-led ownership models - dived increasingly down market in pursuit of readers, often falling foul of public tastes (Conboy 2012). Altschull (1990) tracked the development of a popular press in the US, sometimes known as the Yellow Press, which rose to prominence due to the great technological and educational changes in the late and early 19th and 20th centuries. He (1990: 265-282) identified numerous criticisms of the press which reflected some of the underlying weaknesses of the classic liberal perspective discussed above. Indeed, even in the 19th century, similar fears about the unaccountable freedoms and the malaise that had inflicted the press were expressed by Warren and Brandeis in their 1890 authoritative and influential plea on privacy (Quoted in Bollinger 1991: 36-37). In the later part of the 20<sup>th</sup> century, newspaper ownership became increasingly monopolised in few hands (Bagdikian 1997, Herman and McChesney 1997).

### **2.3: Social responsibility**

The new concept of social responsibility which emerged in the first half of the 20th century - in response to the failures of the “moralistic hyperbole” of the fourth estate role of the press (Schultz 1998: 68) - developed as a modification of the classic liberal concept, as opposed to a complete change in perspective and thinking. In the opening to *Four Theories*, Sibert and Peterson (1956) argued that social responsibility and libertarianism contained many similarities, with the former merely a continuum of the latter. However, Sibert and Peterson, acknowledged that there were important distinctions. Classic liberal theory and the new social responsibility perspective clearly identified an important social and democratic role for the press, and granted it significant freedoms in order to carry out this work based on the rhetoric of Locke, Milton, Mill and others. And, while there are clear-cut differences between both theories, this research is specifically concerned with concepts of responsibility, obligation and accountability – areas where the divergence is most pronounced.

*Four Theories* and Peterson (1956: 74-103) provide the most cited explication of the new theory. Nonetheless, it is important to note – as Peterson does – that the concept of a socially responsible press gets in-depth treatment in the 1940s with the Commission on Freedom of the Press (Hutchins) in the United States. The Hutchins Commission, according to McIntyre (1987), was a policy-based, practical approach at articulating a new social responsibility theory, as opposed to the philosophical approach taken by many until that time. According to McIntyre, one of the commission’s central tasks was to attempt a definition of journalistic responsibilities, a concept alien until that point, and to outline concurrent accountability mechanisms.

Bollinger (1994: 28-33) argued that the Hutchins Commission was established due to fears of a decrease in public access to the press; a perception that the press was not serving the needs of society; and disquiet over poor journalistic practices. “The news is twisted

by the emphasis on firstness, on the novel and sensational; by the personal interests of owners; and by pressure groups,” the commission recorded (Bollinger 1994: 31).

Too much of the regular output of the press consists of a miscellaneous succession of stories and images which have no relation to the typical lives of real people anywhere. Too often the result is meaninglessness, flatness, distortion, and the perpetuation of misunderstanding among widely scattered groups whose only contact is through these media (Quoted in Bollinger 1994: 33)

Due to the media’s refusal to accept responsibilities and its deference to economic concerns, the press was governed by “a kind of unwritten law” which ignored “the errors and misrepresentations, the lies and scandals, of which its members are guilty” (1994: 33). Responsibilities defined under a system of self-regulation, the Commission felt, would help the press understand its role of public service rather than profit; points also outlined by Christians (2003).

The Commission also grew out of the developing free press interpretations expressed in the US courts which began to view the freedom of the press as a right of the people to get information and not just a publisher’s right (Dornan 1991). Dornan (1991) said a perception emerged that the first amendment freedoms had allowed for the development of a shield which placed undue emphasis on proprietary rights. Indeed, the commission’s conception of freedoms “conceived of the ideal society as one that acknowledged the individual basis of freedom but also reflected doubt that traditional self-righting processes could still work in complex urban democracies” (McIntyre 1987: 143). In effect, the onus was now being placed on the right of the public to be informed which placed a burden of responsibility on the press to guarantee this right. The commission stated the press must be:

accountable to society for meeting the public need and for maintaining the rights of citizens and the almost forgotten rights of speakers who have no press. It must know that its faults and errors have ceased to be private vagaries and have become public dangers. The voice of the press, so far as by a drift toward monopoly it tends to become exclusive in its wisdom and observation, deprives other voices of a hearing and the public of their contribution. Freedom of the press for the coming period can only continue as an accountable freedom. Its moral right will be conditioned on its acceptance of this accountability. Its legal right will stand unaltered as its moral duty is performed (quoted in Jaehnig 1998: 100-101)

Going further, Altschull (1990: 283-298) pointed out that the Hutchins Commission declared that journalists had the moral obligation to go beyond objective facts and read between the lines of information from sources. As argued by Altschull, this was a restatement of Milton, in that journalists should not accept what they are told as fact, rather they should chase the truth, Altschull (1990) argued. The journalist was, therefore, required to present the facts, the truth behind the facts and to be accountable to society if he/she failed to do so. Altschull (1990) contended that while social responsibility is a modern expression, the idea of a press which has an obligation and responsibility to society is an ancient doctrine alluded to by Plato, Aristotle as well as being “reaffirmed in every generation since Milton” (1990: 285) – contrary in large part to the classic liberal perspective.

In a marked contrast to liberal theory, in this line of thinking social responsibility held that the government and state must not merely allow freedom but actively promote it. “The government should help society to obtain the services it requires from the mass media if a self-regulated press and the self-righting features of community life are insufficient to provide them” (Peterson 1956: 95). Under social responsibility, free expression is grounded in duty and is an unrelinquishable moral right. Moreover, it has

value for society and for the individual: “It is the individual’s means of perpetuating himself through his ideas. It is society’s sole source of intelligence, the seeds from which progress springs,” according to Peterson (1956: 96). However, it is not absolute. It must be balanced against the private rights of others and against vital social interests. Under social responsibility, Peterson (1956) argued, man has a moral right only if he assumes the concomitant moral duty of acting on his thought. This moral right incorporates honest error. If newspapers do not recognise or accept their duty then they sacrifice their moral right to free expression.

Peterson argued that the concept of social responsibility emerged in response to a number of significant developments and hinged on concerns that the press believed it had no responsibility to society and ultimately remained unaccountable. Critiques focused on many themes and criticised the press for wielding power for its own ends, being subservient to advertisers and business interests, resisting social change, focusing on the sensational and superficial, and invasions of privacy – and above all neglecting any responsibility or accountability to readers, government, the wider public or anyone else despite the immense political, social and financial power the institution began to wield as a result of the transformative developments of the early 20<sup>th</sup> century (Bagdikian 1997; Herman and McChesney 1997; McChesney 1998; Herman and Chomsky 2010). Peterson (1956) argued that allied to such issues was the post-enlightenment changes in intellectual thought. This revolution in modern thought, he pointed out, fatally undermined libertarianism and diverged from enlightenment beliefs to Darwinian and Einsteinian thoughts: closer to a collective society than the individualistic nature of liberalism. This had important consequences for the press.

Peterson also highlighted the beginnings of a professional mind-set within the journalism industry – marked by the greater efforts at education for journalists in the mid-

19<sup>th</sup> century – as the foundation for the growth in awareness over standards, obligations and responsibilities. Such developments were underscored by the writing of ethics codes and the implementation of journalism courses in schools and universities. In 1904, Joseph Pulitzer wrote: “Nothing less than the highest ideals, the most scrupulous anxiety to do right, the most accurate knowledge of the problems it has to meet, and a sincere sense of moral responsibility will save journalism from a subservience to business interest, seeking selfish ends, antagonistic to public welfare” (Quoted in Peterson 1956: 83). Beam, Weaver and Bonnie (2009) identified Pulitzer’s call for education and training of journalists at the beginning of the 20th century as the birth of professionalism, which also incorporated autonomy as a key trait. Deuze (2005) explored the concept, which he calls “occupational ideology” (2005: 443), and argued its 20th century development was characterised by attempts at cross-industry agreement of who a ‘real’ journalist is and what ‘real’ journalism should look like. Indeed, this debate is continuing in the new age of social media (Christians 1998; Herrscher 2002; Tehranian 2002; Ward 2005; Dodson 2012; Hansen 2014; Wyatt and Clasen 2014).

The basic premise of social responsibility, outlined by Peterson and the Hutchins Commission, was that the freedom granted to the press carried concomitant obligations and responsibilities. The libertarian system would suffice where the press recognised these responsibilities and made them “the basis of operational policies” but where there is a failure to assume these responsibilities, “some other agency must see that the essential functions of mass communications are carried out” (Peterson 1956: 74) in order to provide some form of accountability mechanism. Indeed, the function or responsibilities of the press remained the same according to both theories and will be discussed in section 1.5 (Peterson 1956: 74; Bertrand 2000). However, the social responsibility theory recognised and reflected dissatisfaction with how these functions had been carried out:

Faith diminished in the optimistic notion that a virtually absolute freedom and the nature of man carried built-in correctives for the press... A rather considerable fraction of articulate Americans began to demand certain standards of performance from the press (Peterson 1956: 77)

Central to the Hutchins Commission's work on social responsibility in the US in the 1940s was the concept, espoused by Edward Hocking, its principle philosopher, of positive press freedoms (Christians 2003: 50-53). The negative freedom associated with the libertarian's view of liberty - which equated freedom with the absence of arbitrary restraint - was bankrupt for Hocking. Instead, Hocking argued that the State bears a responsibility for fostering social justice. Such a pro-active State would develop the moral character of its citizens by creating a social environment, where those who want to live justly, can act on their principles. Part of this service was enabling public discourse which libertarians left to the private sphere:

In every point, men must be free; and in every point they must be subject to a sobering objective judgement which checks that freedom... Liberty is a positive thing and demands tools to work with and food to grow on, a mental capital of working beliefs to begin life with. Minds cannot grow in a vacuum (Hocking quoted in Christians 2003: 52)

Contrary to libertarian ideals, Hocking, as the Hutchins Commission's principle philosopher, believed that free expressions should no longer be considered an inalienable natural right but an earned moral right. Positive freedom was conditional, however, and Hocking was committed to the idea of responsibility for one's actions. His work was about establishing an accountable freedom with a framework that identified our humanity, rather than our roles, as the principal guide to being responsible. Perhaps Glasser (1986) best identified the potential of such an affirmative take on freedoms.

An affirmative theory of freedom of the press seeks to strengthen individual autonomy by acknowledging that the tyranny of private transactions poses as much of a threat to individual liberty as the tyranny of government regulation; it thus moves journalists to bring about a truly independent press, an agency of communication as free from the whims of the marketplace as it is free from the authority of the state. And an affirmative reading of the free press clause underscores the importance of public expression by recognising its higher purposes; it thus embodies an appreciation for the role of the press, an expectation that the press will serve not just itself but the larger community whose members look to it for a clearer sense of who they are, where they are going, and where they have been (93)

In Britain, the Royal Commission on the Press, also known as the Ross Commission, was established in 1947 and reported two years later (O'Malley 1998). O'Malley and Soley (2000: 29-37) pointed out that the British Commission was set up due to similar societal and political concerns which led to the establishment of the Hutchins Commission in the US, namely, public and political concern about the press intensified as a result of technological changes which prompted the beginnings of the modern mass trans-national media. In addition, there were issues about ownership and a related link to journalists chasing sensationalist, privacy-breaching content. Journalists were criticised because their behaviour was driven by a desire for exclusivity as newspapers operated within a competitive capitalist free market dependent on audiences to survive. Murray (1972: 28) identified the Commission as a turning point for the British press in respect of its acceptance of accountability as a means of becoming socially responsible. Indeed, Peterson (1956: 75) and Schultz (1998: 111-114) cited the Ross Commission as the British explication of the social responsibility theory.

Dornan (1991: 166-172) pointed out that the Ross Commission held that competition renders the press accountable. However, its investigations revealed an increase in

concentration of ownership and therefore a reduction in competition which had consequences for its conception of press accountability. The Commission, according to Frost, found that “the press has taken fewer steps to safeguard its standards of performance than perhaps any other institution of comparable importance” (2000: 176) and, as a result, failed to encourage “the growth of the sense of public responsibility and public service” (2000: 225) among all those engaged in the profession of journalism. Murray (1972) pointed out that the commission discovered a ‘Fourth Estate’:

rent and riven, not only by the customary divisions between employers and employed, but by the hostility felt by one section of journalists for another. The investigation uncovered a host of rumours and beliefs which were unfounded. It disclosed gossip which was untrue, it ploughed through suggestions for ‘improving’ the profession and industry, many of which were either impossible or downright cranky...the press was compelled to take a good, hard look at itself, and could not be complacent about what it saw (1972: 28)

The Commission proposed the formation of a general council of the press, or what is known in modern media accountability as a press council. Robertson (1983: 9-11) pointed out that the Commission wanted the press council to obtain agreement on sound professional practice, eradicate discreditable behaviour, discourage privacy intrusions, correct factual errors and encourage plurality of opinion in newspapers – all of which it found were absent in the British press in the 1940s. The commission, according to Robertson, rejected calls for a licencing system and favoured a voluntary press council with public involvement, echoing the sentiments of the Hutchins Commission in the US (Tulloch 1998).

## 2.4: Press responsibilities

The concept of social responsibility flourished in the 20<sup>th</sup> century. Professionalism, ethical self-reflection and journalistic standards became important topics as a result of the gradual shift away from classic liberalism. Nevertheless, many continued to pose the question: *what are the responsibilities of the press?* In response, McQuail (2003) identified three “external stimuli” (2003: 46-47) as the origin of media obligation. First, it is the media’s responsibility to satisfy the public’s collective demand for the supply of knowledge. Second, the media is required as a communicative tool for the commercial, political and cultural display and dissemination of information. And third, governmental and other authorities expect cooperation in communicating issues of public welfare. Internal stimuli include financial self-interest, public perception issues, influence and professional public interest issues. Perhaps this is best summed up by McQuail when he writes:

Free media have responsibilities in the form of obligation which can be either assigned, or contracted, or self-chosen for which they are held accountable to individuals, organisations or society either in the sense of liability or answerability for harm cause or for quality of performance (1997: 518)

Despite adopting a critical approach to some conceptions of functional duties as those dictated by a “liberal political class” as the “somewhat high-minded ideals of the bourgeois intelligentsia”, McQuail et al (2009: 121-122) accept that media functions are accepted by journalists today, albeit with varying levels of adherence.

For Hodges (1986), responsibility for a journalist is only meaningful as part of the social or collective existence. The root of responsibility, for Hodges, lies in social nature and awareness of others. For Hodges, there are three levels of journalistic responsibility. The first is the function of the media in society. These functions are guided by principles,

the second level. Principles are enforced by ethical norms which govern actions, the third level. Actions deals with the minutiae of practical journalistic work, which is expected to conform to the ethical principles which guides newsgathering and presentation.

#### **2.4.1: Press functions**

Many scholars have attempted to codify overarching functional media responsibilities (Christians 1986; Elliott 1986; Klaidman and Beauchamp 1987; Gurevitch and Blumler 1990; Voakes 1997; Bertrand 2000; Street 2011: 306; Plaisance et al 2012). However, as the foundation document for social responsibility, the Hutchins Commission is an obvious starting point for examining the press's function in society. The freedom of the press, for the Commission, was based on the awareness of a moral obligation to contribute positively to the collective well-being of a surrounding community (McIntyre 1987). As a measure of this performance, the Commission listed five elements (or functions) that it believed society required from the press (Peterson 1956: 89-93).

First, citizens required that the press provide a truthful, comprehensive and intelligent account of events in context<sup>3</sup>. Second, the press ought to serve as a forum for the public exchange of comment and criticism, citing a previous failure to do so with the increasing concentration of ownership and the burdensome cost of printing and newsgathering blamed. The third element of press performance was that the institutions must project a representative image of society, and of the groups which make up a modern society. Fourth, the press must be responsible for “the presentation and clarification of the goals

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<sup>3</sup> The press's liberal and professional commitment to objectivity which demanded that journalists strive to report all sides to every story no matter how outlandish (evidenced by the press's unquestioning reportage of the anti-communist tirades of US Senator Joseph McCarthy in the 1950s cited in Smith 2003: 68) was indirectly criticised by the commission in this regard. Davis (1954 quoted in Peterson 1956: 89) perhaps summed this position up best when he wrote about a “false objectivity that takes everything at face value and lets the public be imposed upon by the charlatan with the most brazen front”.

and values of society” and fifth, the press must provide “full access to the day’s intelligence” (Peterson 1956: 91).

Modern work on the media’s function in society has reaffirmed some of these concepts. For Schudson (2008: 12-27), journalism has around seven functions as part of its democratic role. First, he identifies the media’s informational role which empowers the public to study the role of authority and make sound political choices. Second, the media has taken on the classic watchdog role, based on the concept that the media sets out to “make powerful people tremble” (2008: 14). Third, journalism plays the role of an arbiter, transmitting complex ideas in an easy-to-digest format. Fourth, is a journalism aware of social empathy and compassion, while Schudson’s fifth function in a democracy is its position as a public forum, providing for an open and accessible centre for public debate where the media serve as a common carrier of differing perspectives on society. Sixth, journalism can be a mobilizing influence, advocating on particular issues, while its final identifiable role for Schudson is its influence in publicising representative democracy:

Journalism does not produce democracy where democracy does not exists, but it can do more to help democracies thrive if it recognises the multiple services it affords self-government, encourages the virtues that underwrite those services, and clarifies for journalists and the public the many gifts news contributes to democratic aspirations (2008: 26)

McQuail (2009: 121-122) condensed the work of others, highlighting three acceptable functions. For McQuail, journalism’s first task is observing and informing as a service to the public. Second, journalism is about independently participating in public life via critical comment, advice, advocacy and opinion. And lastly, for McQuail, journalists ought to provide a channel, forum or platform for “extra media” voices to reach the public.

**2.4..2: Press principles**

For Ward (2005) the principles of journalism originated in the “overarching contract” (2005: 7) the industry has with the publics it serves. Principles become legitimate when they are recognized by all parties. As the project of journalism is ever changing, defining ethical principles is a never ending task, Ward argued, a process which requires constant reinterpretation. Ward (2005: 8) defined this “special role as the requirement that journalists act as impartial and independent communicators for the public at large – not for the state, not for the governing party, and not for the partisan interests”.

Many scholars have attempted to define the main principles which are thought to guide journalism practice (Altschull 1994; Sanders 2003; Smith 2003; Frost 2015). Much of this work is reflected by Kovach and Rosenstiel (2007: 5-6) who argued that despite changes in delivery and substance over time, journalistic principles have remained consistent. While dismissing principles around the separation between profit and journalism, independence, neutrality and objectivity as myths, the authors suggested ten principles which appear in one form or another in much of the scholarly material (Table 1).

*Table 1: Kovach and Rosenstiel's principles of journalism*

<ul style="list-style-type: none"> <li>• Journalism’s first obligation is to the truth</li> <li>• Its first loyalty is to citizens</li> <li>• Its essence is a discipline of verification</li> <li>• Its practitioners must maintain an independence from those they cover</li> <li>• It must serve as an independent monitor of power</li> <li>• It must provide a forum for public criticism and compromise</li> </ul>	<ul style="list-style-type: none"> <li>• It must strive to make the significant interesting and relevant</li> <li>• It must keep the news comprehensive and in proportion</li> <li>• Its practitioners have an obligation to exercise their personal conscience</li> <li>• Citizens, too, have rights and responsibilities when it comes to the news</li> </ul>
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Source: (2007: 5-6)

According to his review of the literature in the area, Deuze (2005: 447-450) believed that the elements which are part of journalism's ideology can be categorised into five principles. First, journalists hold the concept of public service dear through the watchdog concept of 'doing it for the public' but also by giving the public what they want. Second, media literature identifies concepts of objectivity, fairness, professional distance, detachment and impartiality as principles to which the industry aspires. Third, Deuze identified autonomy as a principle which sees journalists rail against censorship of any kind, internal or external, and assert or attempt to assert their independence from the state and any other pressures. Fourth, immediacy is noted by Deuze including elements of speed, hastiness and fast decision making in accelerated real time which have become routinised and respected in the industry. Fifth, Deuze believed ethics is part of the rhetoric of journalistic principles as a means of legitimising media actions and work.

McQuail's (2003: 68-79) work on "publication values" reflected Deuze's findings. The first of the values cited by McQuail is truth. For the author, truth is reliable, verifiable data as well as expert analysis and interpretation. Indeed, claims to freedom of publication in democracy are stronger when they are based on truth. McQuail's truth criteria is broken into subgroups of content quality – which deals with accuracy and reliability, verisimilitude, balance, demonstrability and relevance such as the characteristics of integrity, authenticity, personal truth, courage, openness (2009: 75-79). McQuail's second publication value is freedom (2009: 70). For McQuail, this is the foundation condition on which all other benefits of communication exist. Such a principle is visible across all media theory and is recognised for its indispensability in opposing state or other power, its contribution to truth or discovery and the link to social and cultural progress. McQuail argued that order and cohesion is a third media principle. This value opposes

isolationism and social fragmentation and posits media support for the ideas of a shared culture based on common experience, language, belief, and outlook. Fourth is the value of solidarity and equality. Under this principle, the media ought to favour public communications arrangements and contents linked to groups and communities based on criteria like place, religion, class, ethnicity, gender for the support and empowerment of minorities and to exhibit sympathy for the disadvantaged, victimised and unfortunate. Finally, McQuail argued for the principle of right purpose and responsibility (2009: 72) and the wider acceptance of the notion “that public communication should not knowingly cause harm to its recipients, third parties, or society and should accept appropriate responsibility for any potential harm caused”. Under this principle is the defence of publication on good intention grounds, honesty in acquiring information, respect for privacy and dignity, the avoidance of harmful effects for third parties, the weighing up of public benefit and an adherence to codes of ethics.

### **2.4.3: Press actions**

Western and Anglo-American understandings of journalism’s role in society dominate the global conception of the industry’s function and principles. While there are diverging points of view many have argued that despite cultural and political intricacies, much about journalism’s expected role in society confirms to the liberalised, western-developed journalistic role (Preston 2008; McQuail 2009; Hanitzsch 2011). Whether it is the overarching principles, or the minutiae of specific accountability mechanisms - such as a code of ethics (Himmelboim and Limor 2008) - dominant western liberal beliefs and their modern incarnation within the social responsibility paradigm influence worldwide understandings of the role and underpinnings of journalism in democratic society.

Nonetheless, defining one set of responsibilities and principles to govern journalistic action is impossible. While scholars such as those cited list several functions and roles, there is no agreed, overarching or binding list of items which outline the exact responsibility of a journalist and how a journalist should act. Indeed, in today's technologically advanced journalistic sphere, it has become even more difficult to reach solid conclusions in this regard given the new definitions and contested terrain of what is journalism and who is a journalist. While some are ambivalent about the impact of 21<sup>st</sup> century technology on journalism ethics and the role conception of journalists (Singer 1993; Sanders 2003), many argue (Cooper 1998; Deuze and Yeshua 2001; Phillips 2010; Dodson 2012; Hansen 2014; Wyatt and Clasen 2014) that the internet and technology have, as Christians (1998) argued, "introduced such novel scales and consequences that the framework of traditional ethics no longer addresses them" (68).

For McQuail (2009: 115) internal contradictions and divergent purposes and practices make it impossible to define the central characteristics of journalistic activity or the norms that should apply. Instead, trends such as an increasing commitment to professionalism in journalism, coupled with globalisation, have "converged on a dominant type of journalism in which several loosely related features coexist" (2009: 115). Street (2011) argued that democratic theorists have paid little attention to what principles and practices should guide the operation of media in democracy. Notwithstanding the attempts of media and journalism scholars, Street argued that the media may have failed to meet its standards on so many occasions because society finds it difficult to define the industry's role. Hodges (1986: 21) picked up this point much earlier, arguing for a constantly evolving notion of journalistic purpose where journalists' responsibilities to society are contracted or self-imposed. Deuze (2005: 444-447) pointed out that this occurred in the 20<sup>th</sup> century with the consolidation of a consensual occupation ideology among

journalists which defined who a real journalists was/is and what real journalism should look like. He referred to Schudson (2001) who describes the occupational ideology of journalism as “cultural knowledge that constitutes ‘news judgement’, rooted deeply in the communicators’ consciousness” while Zelizer (2004) talked about the “collective knowledge” that journalists employ. Yet, as Deuze (2005: 445-446) noted, there is no universal definition of practical occupational standards: “It is...possible to speak of a dominant occupation ideology of journalism on which most news workers base their professional perceptions but this “is interpreted, used and applied differently among journalists across media”. The dominant ideology is “a collection of values, strategies and formal codes characterising professional journalism and shared most widely by its members”. Deuze identified a consensus among scholars that a shared occupational ideology functions to “self-legitimise” the position of news workers in society thus suggesting that whatever role society may favour for journalists, the industry has filled a vacuum by creating its own standards.

There is an acceptance, however, that the print media in particular is not living up to some of its responsibilities as outlined. Notwithstanding difficulty in interpreting its responsibilities, various critiques of press performance negatively view the operation of modern journalism and others criticise elements within the industry which affect external perceptions (Gurevitch and Blumler 1990; Keane 1991; Schultz 1998; McChesney 2000; Bertrand 2003; Sanders 2003). Nordenstreng (2000: 78) maintained correctly that journalists accept that they have responsibilities to the public. However, instead of focusing on these responsibilities, he argues that we must examine how to hold journalists accountable for such responsibilities.

## **2.5: Accountability**

Schedler (1999: 14) argued that accountability as a general concept is novel and underexplored; has an evasive meaning, fuzzy boundaries and a confusing internal structure. Nevertheless, Schedler identified two core elements reflected in the literature. First, accountability contains the concept of answerability. For Schedler, this relates to the obligation of public officials (or those who are granted responsibility) to inform about and explain actions. Being accountable implies an obligation to respond and inform others about decisions taken, and, to explain such decisions. Answerability is complimented by the second element, enforcement. Schedler argued that enforcement is the capacity of accounting agencies to impose sanctions on power holders who have violated their duties. Schedler's understanding of accountability is supported by McQuail (1997: 517 & 2014) whose own examination of the concept comes to a similar two-part conclusion. He argued that answerability is about a readiness to achieve reconciliation and resolution while enforcement – which McQuail labelled 'liability' - is characterised by an adversarial relationship.

For both McQuail and Schedler the process of accountability works best where both answerability and enforcement are present. Nevertheless, Schedler, who pointed out that without enforcement or consequences accountability mechanisms appear toothless, accepted that where one of the two key elements is missing, processes of accountability can still occur (1999: 18).

On the one side, exercising accountability therefore involves elements of monitoring and oversight. Its mission includes finding facts and generating evidence. On the other side, the norm of accountability continues the Enlightenment's project of subjecting power not only to the rule of law but also to the rule of reason. Power should be bound by legal constraints but also by the logic of public reasoning. Accountability is antithetical to monologic power. It establishes a

dialogic relationship between accountable and accounting actors. It makes both parties speak and engages them both in public debate. It is therefore opposed not only to mute power but also to unilateral speechless control of power (1999: 15)

For Schedler (1999: 20), accountability mechanisms aspire to achieve an “opacity of power” and greater transparency. Thus, democratic accountability has to be public (1999: 21) otherwise it lacks credibility. Accounting organisations “can live only as long as they act in the daylight of the public sphere and they crumble and die as soon as they enter the shadows of privacy and secrecy” (Schedler 1999: 21). Importantly, Schedler pointed out the need to establish criteria for setting out what we expect to hold actors accountable for, as well as establishing who we aim to hold accountable.

For the media, Hodges (1986) argued that accountability is about compelling proper conduct and asking who can demand, threaten or persuade political actors like the media to live up to duties and responsibilities. Hodges’ argument reflects the interplay between personally defined conduct with externalised enforcement. While responsibility is something personal and internal for Hodges – as established in the previous section journalistic responsibility is difficult to define with virtually no industry-wide agreement - accountability is externalised and impersonal. Hodges did, however, raise one important note of caution which is inevitable with a concept like accountability. He argued that once the basis of accountability is established and accepted total freedom is inevitably undermined – not always negatively so – due to the inherent authority connected to accountability. Such a trade-off is central to the acceptance of the theory of social responsibility.

More practical definitions of accountability have been prepared by Dalen and Deuze (2006) who argued that being accountable means (publicly) explaining and defending one’s practices and motivations while Von Krogh’s (2012: 9) definition of media

accountability is the interactive process by which media organizations may be expected or obliged to render an account of (and sometimes a correction and/or excuse for) their activities to their stakeholders. The values and relative strength of the stakeholders vary over time and are affected by media systems and media technologies, he argues. Indeed, many other definitions of media accountability rely on the practical ideas of rendering an account (Franklin 2005)

For Klaidman and Beauchamp (1987), however, defining accountability is difficult and must go beyond definitions of ‘answering’ or ‘being asked to account’. “Any valid account generally entails a relevant and justifiable explanation of one’s actions given to someone to whom it is legitimately owed” (1987: 211), and in journalism, in particular, giving an account should include justifying the reasons for the production and publication of a story. An adequate justification must meet broad moral standards and can not alone reflect personal or institutional belief. Nevertheless, Seymour Ure (1996) added his definition of accountability, which despite the difficulty in confirming the concept’s principles, added to the debate:

Accountability refers not to the internal power relations of media but to the arguments and arrangements through which they justified themselves externally to the public. The issue is legitimacy. The question is, therefore, not whether, say, newspapers were in the pockets of their advertisers but how, if they were, they could account for what they published (1996: 242)

For McQuail (2003: 5-19) media accountability “refers to all ways in which public communication is ‘accounted for’, by its originators, its recipients, and those affected by it.” Underlying this, are interrelated concepts which McQuail introduces. First, he argued putative relationships are at the centre of media accountability. The pre-social media media by its very nature – the distance between sender and receiver, the lack of a close

relationship, the lack of personal interaction, the isolation of receivers who are not part of a group – results in an ineffective accountability process. “In this conceptualisation, the term ‘accountability’ in its widest meaning encompasses all aspects of co-orientation in communicative relationships,” he argued (2003: 14), “including the claims and perceptions of others, and alternative meanings”. As a result, accountability, for McQuail, is “the entire process of making claims based on expectation and appeals to norms, the response of the other party, and any ensuing procedures for reconciling the two”. Indeed, “without accountability, communication is simply one-way transmission, limited in purpose, lacking response, guidance, or even known effect.” In other words, media accountability is an effort to develop inter-actor media relationships and reconcile differences in order to improve the communications process.

Subsequently (2005: 207) McQuail defined media accountability as voluntary or involuntary processes by which the media answer directly or indirectly to their society for the quality and/or consequences of publication. Plaisance (2000) and Pritchard (2000) underscore McQuail’s argument in this regard. The former argued that accountability must be understood as a “fluid dynamic of interaction” or by “the degree of responsiveness to the values of media users” and the latter argued that media accountability is a “process by which media organisations may be expected or obliged to render an account of their activities to their constituents” (2000: 258). Indeed, Pritchard also referred to Plaisance’s “fluid dynamic” of accountability as not just an ethical principle or complaints mechanism, but an ongoing, continual mechanism which exists in informal and formal situations.

For the purpose of this study, accountability centres around ideas of answerability and enforcement. Such a process must be public and transparent, and work within specified criteria. This criteria ought comprise both collective (e.g. industry norms, cultural values

etc.) and individual (e.g. truth, virtue) elements. If too much weight is placed in collectivist issues, the accountability mechanism can flirt with heavy state involvement which in turn raises the issue of legislative provisions. Ethics exists only outside law and are based on moral philosophy. Indeed, such an argument largely reflects the development of media accountability given the reluctance of journalists to accept legislative or state involvement, instead working within cultural and individual frameworks of accountability.

## **2.6: Media accountability**

McQuail (2003) argued that the main types of accountability can be categorised according to whether they relate to verbal, financial, performance rating, complaint and adjudication, public debate and liability for consequences issues. These types of accountability frameworks vary according to whether they are internal and private or external and public; voluntarily accepted or required; or, informal or binding. Thus, accountability mechanisms are either unilaterally imposed, or bilaterally or trilaterally agreed, largely based on the parties involved in the process and who takes the responsibility.

According to Bertrand (2000; 2003), there are at least 60 different mechanisms used in the process of media accountability, which he refers to as MAS, or media accountability systems. For Bertrand, a MAS is “any means of improving media services to the public that function(s) independently from the government” (2003: 17). A “the regulatory agency, set up in law - again provided it is truly independent - especially if it takes complaints from media users” is also considered under the MAS term (2003: 21).

Fengler, Eberwein and Leppik-Bork (2011) have revised Bertrand’s MAS concept, arguing that MAIs, or media accountability instruments, widen the number of possible

inclusions in the format. MAIs are made up of established instruments of media accountability such as press councils, media criticism, and innovative instruments of media accountability such as websites monitoring media coverage, editorial weblogs, criticism on Facebook and Twitter. The authors accept that some MAIs, such as online ombudsmen, reflect already established mechanisms, but also point out that there are some web-native developments.

Bertrand argued that the aim of media accountability is to:

Improve the services of the media to the public; restore the prestige of media in the eyes of the population; diversely protect freedom of speech and press; obtain, for the profession, the autonomy that it needs to play its part in the expansion of democracy and the betterment of the fate of mankind (2000: 151)

Fengler, Eberwein and Leppik-Bork, however, argued for a preventative and corrective function of MAIs. In their definition of MAIs (2011: 20), the authors argued they are “any informal institution, both offline and online, performed by both media professionals and media users, which intends to monitor, comment on and criticize journalism and seeks to expose and debate problems of journalism”.

MAIs operate at four levels according to Fengler et al. (2014: 3): the individual level (e. g. journalist blogs and training), the level of media routines (e. g. professional standards derived from press councils and trade journals), the organizational level (e. g. organisational ethics codes, newsroom ombudsmen), and the extra-media level (e. g. social networks, NGOs). A further ideological level is also proposed, which incorporates transnational elements. As time has progressed, Fengler (2015: 3-4) points out that MAIs have developed at different levels, first at the professional level with ethics codes and press councils, second at the organisational level with the interest in ombudsmen post-1970 in the US in particular, and third at the extra-media level as the exponential growth

of online communications has opened up a new frontier for direct communication between journalists and audiences. Bertrand (2003: 22-25) also reflects this diversity, classifying various forms of MAS which include internal or external, those defined according to method used to ensure accountability (e.g. criticism, monitoring, feedback), the level established (e.g. local, regional, national, international), the effect caused, timeframe (e.g. immediate, medium term, long term), costs and presence on the media scene. While acknowledging criticism and some flaws of MAS (2003: 30-32), Bertrand argued that MASs are the best non-state way to get the press to live up to its social responsibility role.

McQuail (1997: 521-527) has also contributed to the topic by establishing three frames (four frames in his later work 2003: 219-227) of accountability in order to operationalize and categorise frameworks of accountability. Such frames provide a “reference within which expectations concerning conduct and responsibility arise and claims are expressed” and “governs the ways in which such claims should be handled” and indeed assessed (2003: 219).

First, the legal-regulatory frame is where rights and legislation is balanced between free expression and other personal rights like privacy. The legal-regulatory frame deals with issues such as intellectual property rights, free expression, harms to individuals, ownership and monopoly questions etc. The relevant discourse is legal-rational and administrative in character with procedures clearly set out. It is marked by a high degree of constraint and settlements of disputes are usually involuntary. Its strengths are its apparent ability to implement the public will in a clear and binding way. In a free society it should be used rarely and it serves to limit as well as secure freedom. In principle the frame is above sectional interests and is fair and transparent in its operation. The frame’s drawbacks are the obvious drawbacks on freedoms with beneficial outcomes for the

powerful in terms of economic power to use the legal mechanism. It is coercive and depends on concepts of harm and liability which are difficult to prove in a communicative setting. Legal outcomes can also be ineffective and unpredictable in their outcomes, nor are they easy to change.

McQuail's second frame is the financial/market one which deals with the normal disciplines of the market. Supply and demand secures the appropriate balance within this frame. The main issues handled in this framework are issues of property rights, freedom (diversity), quality and technological development. The underlying logic emphasises freedom, efficiency, choice, profitability and majority preference. The market model is flexible, adaptable and effective. It is also self-adjusting, sensitive to differing interests, provides consistent and predictable basis for judgements on disputed issues and in some respects is egalitarian and non-coercive while not being insensitive to ethics, often a component of good journalism and ultimately business. However, the market can lead to certain failures such as the development of monopolies while its structures seem "intrinsically flawed". Poor quality communication content is blamed on the market while profitable content is not necessarily good nor does it serve the needs of citizens. Markets can also lead to concentrations of media power, reduced professional autonomy, an imbalance between suppliers and consumers in a relationship which becomes distant, calculative and manipulative.

The third frame is public responsibility or trust. Its relevant goals reflect primary concern with society, the public good and ideal communication as information, opinion and culture. It is based on freedoms with concurrent responsibilities to the public interest. Many issues fall within this frame, including information and cultural quality measured in non-market ways, benefit or harm to the community, support for national culture and democracy. Often organised through self-regulatory methods of debate and assessment,

this model is most suitable for expressing and implementing the public interest and holding a free media to account in a free society. It meets criteria such as voluntariness, normative richness, as well as participative values. However, the frame is fragmentary, variable and weak in terms of implementation and depends on the tradition of the particular media system and on there being an existing active participatory democracy.

Finally, McQuail identified the frame of professional responsibility which he accepts is similar to social responsibility. Here, accountability not only focused on a service to others but on protecting freedom and raising the status of the profession and its members. The means of regulating are similar to the public responsibility frame but the motives are different.

Bardoel (2003) also established four similar mechanisms for categorising media accountability under the social responsibility model: market, political, professional and public. Under each Bardoel identified a number of outcomes, such as the principle role of the accountability mechanism (e.g. for profession, ethics is a key principle); the decision (where the authority lies); participation (the aims of the accountability mechanism); instrument (the criteria used for assessment) and effects (the perceived outcome of the action). McQuail correctly argued that his four frames are limited in their scope of application and effectiveness and all compete, in much the same way Bardoel's. For example, the market will reward what regulation and social responsibility try to inhibit. While accountability operates not just to restrict but to stop tighter external controls, the frames are all weak on promoting better performance. In order to assess these frames, McQuail proposed four main criteria of assessment: practicality and effectiveness; issues and values; interest; Freedom of publication.

## **2.7: Press Councils**

As discussed previously, the concepts of autonomy and the development of journalistic norms are variables within Hallin and Mancini's (2004) understanding of journalistic professionalization. On a normative level, ample research has attempted to examine the individual journalist's perception of autonomy (Russo 1998; Weaver et al. 2009; Hanitzsch et al. 2010, 2011; Mellado et al. 2012). The assumption in much of the research is that a high level of independence and freedom from internal and external constraints is positive for journalists. However, studies have returned varying levels of reported autonomy in news organisations (Hanitzsch et al. 2010, 2011). Journalistic norms are characterised by the development of horizontal journalistic standards and routine work practices, according to Hallin and Mancini (2004). The clearest text for understanding journalistic norms is the code of ethics (Cooper 1989: 30; White 1995: 455-456). There are, however, variations in the degree to which distinctively journalistic norms have evolved, the degree of consensus and their influence on news-making practices (Merill 1975; Klaidman and Beauchamp 1987; O'Neill 1990; Christians et al. 1993; Hamelink 1995; Laitila 1995; Page 1998; Hafez 2002; Harris 2002; Grevisse 2003; Sanders 2003; Himelboim and Limor 2008; Keeble 2008; Allen and Hindman 2014; Hansen 2014; Frost 2015). Contemporary debate about codes of ethics focuses on the potential for interplay between ethics and legal issues (Christians 1986; Bertrand 2000; Drechsel 2014; Frost 2015), the concept of a global code of communication ethics (Herrscher 2002; Tehranian 2002; Ward 2005; Hansen 2014) and the impact that technological advancements and their use in the journalistic practice have had on codifying principles (Cooper 1998; Deuze and Yeshua 2001; Phillips 2010; Dodson 2012; Hansen 2014; Wyatt and Clasen 2014).

The third variable within Hallin and Mancini's (2004) understanding of professionalization is the concept of a public service orientation. While the authors agree

that such an ethos is difficult to accept at face value given the critiques - some political economy based - which exist, they argued it should not be dismissed as “mere ideology” (2014: 36). Indeed, for Hallin and Mancini (2004: 36) the public service ethic may be particularly important for journalism “because journalism lacks esoteric knowledge” with “journalists’ claims to autonomy and authority...dependent...on their claim to serve the public interest”. Among the clearest manifestation of such an orientation is the development and existence of mechanisms of journalistic regulation, the authors pointed out. Depending on the media system, such regulatory environments can be formally organised in the form of press councils, or informally designed and overseen by a “peer culture of journalism” (2014: 223). While the strength of such regulation varies across media systems, Hallin and Mancini (2014: 223-224) pointed out that in the Liberal/North Atlantic system professional self-regulation is common via informal channels established with news organisations and journalistic culture. Indeed, in practice there are internal variations within the Liberal/North Atlantic model when it comes to the success or otherwise of journalism regulation.

Of the over 100 media accountability systems identified by Bertrand (2000), the press council is the most common. There are around 90 press councils currently in operation globally (Barker and Evans, 2007: 16). Press councils have been established at various levels since the acceptance of the social responsibility theme (Tulloch 1998). These include local community news councils in the US (Blankenburg 1969; Starck 1970; Atwood and Starck 1972; Bertrand 2003; Richstad 2003), regional or state councils such as those in Quebec, Canada (Pritchard 2000) and Minnesota in the US (Schafer 1979; Ugland and Breslin 2000) and national councils (Robertson 1983; O’Malley 1987; Morgan 1989; O’Malley and Soley 2000; Starck and Pottker 2003; Frost 2004; Cohen-Almagor 2005; Barker and Evans 2007; Gore and Horgan 2010).

Beyond the cultural and institutional acceptance of social responsibility, O'Malley argued (1987: 105) that the institutionalisation of press regulation has normalised the “dynamic interrelations” of the press which can partly explain the popularity of the press council concept. However, Bertrand made the case (2003: 117) that there are other practical concerns behind the establishment of press councils. His research showed that press councils normally develop in urbanised, industrialised, pluralistic democracies with developed media and a professional journalistic ethos. Echoing the sentiments of Hallin and Mancini (2004), Bertrand correctly argues that where councils are common, the media system generally has links to the North Atlantic/Liberal tradition. Bertrand maintained that councils commonly emerge when stakeholder groups express particular anger or unhappiness with media performance in response to which the original impulse to establish a council mechanism usually originates from the media or media representative groups. When a democratic state is involved in its creation, Bertrand concluded, it commonly acts under pressure from journalists and is rarely set up without direct or indirect pressure from government or parliament. Further research supports the broad conclusions of Bertrand (Starck and Pottker 2003; Farrar 1986) and has shown that in the vast majority of countries, press councils have been set up as a “determined, pragmatic alternative response from the industry” (Fielden 2012: 8) to threats of state control. The experiences of various countries where press councils are operating – Australia (O'Malley 1987), Britain (Morgan 1989), Germany (Sarck and Pottker 2003) and Ireland (Gore and Horgan 2010) – also support this conclusion.

However, as Bertrand pointed out (2003: 110), clearly defining the press council concept is problematic. Via his study of councils, he argued such regulatory mechanisms commonly aim to preserve press freedom against direct and indirect threats of governmental control, strive to assist the press to assume its functions in society, and

mobilise public opinion in support of an independent press. For Bertrand (2003: 114), councils usually have a dual purpose. First, to help the press in its struggle against enemies of its freedoms. Second, to deal with complaints. As Hallin and Mancini (2004) pointed out, however, cultural, economic and political influences impact on the formation, structures and procedures of the media and press accountability mechanisms. Such diversity, which Fielden (2012) explored in a study of press councils in Europe, suggests that establishing a clear definition of the press council is problematic, and must take into account a wide variation of structures, procedures and powers. Nevertheless, the literature suggests that there are commonalities worth exploring.

Reaching a somewhat evaluative conclusion, Bertrand (2003: 112-113) identified three types of press council: pseudo-councils, semi-councils and genuine councils. The first two categories, for the author, lack robustness. However, the functions of the genuine council, which can comprise media and non-media members, includes monitoring the evolution of the media, publicising unethical trends, monitoring government communication policy and media ownership, serving as a forum for on-going ethical debate and monitoring journalism training and research. Such functions have been expressed across much of the literature in the area (Polich 1974: 200; Roberston 1983: 2; Balk 1986: 66; Farrar 1986: 509; Zlatev 2008). Adding to the literature, Pritchard (2000: 93), who examined a range of press councils, pointed out that councils are often funded by news organisations or non-profit foundations, comprise of members from the media and the public, have limited legal power, receive complaints about press performance and have limited powers other than publicity. Barker and Evans (2007: 16-20) also identified many of these functions in their study of almost 90 press councils worldwide.

Klaidman and Beauchamp (1989: 225-228) argued that to be successful, a press council must have sufficient, independent and secure funding (Morgan 1989; Bertrand

2003: 120; Cohen-Almagor 2005) , the independence to censure, the power to demand responses from the media and the support of powerful media. They also must be insulated from outside pressures and must have a monopoly on deciding press questions. Klaidman and Beauchamp also believed a press council needs significant column space in newspapers to publish findings which must be of sufficient quality and circulated widely given their role as the primary method of accountability. Summaries of decisions should be printed in full by all members while full decisions should be treated as news. Other scholars have also attempted to identify common or desired press council functions (Sawant 2003; Barker and Evans 2007; Zlatev 2008; Fielden 2012) with some concluding press councils require a consistent code of ethics and respect for precedent (Ugland and Breslin 2000) as well as powers to fine and suspend publications and journalists (Cohen-Almagor 2005).

Barker and Evans (2007: 11) established eight best-practice guidelines, much of which reflects the work of Klaidman and Beauchamp and others.

*Table 2: Barker and Evans' press council best practice (2007: 11)*

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Clearly specified goals, including timeliness of decisions</li> <li>• An organisational structure that: (a) renders funding and process transparent and accountable, and (b) enables the selection and employment of the appropriate decision makers</li> <li>• Adequate funding for its goals</li> <li>• Promotion of transparency and objectivity in its operation</li> <li>• Promotion of its presence and availability</li> <li>• Promotion and explanation of its outputs</li> <li>• Application of its outputs to relevant public policy issues and education</li> <li>• Reviews of its performance</li> </ul> |
|---|

Irrespective of foundation, Bertrand believed press councils are the most successful form of media accountability system because of its ability to be a permanent, independent

institution that gathers and represents the people who own the power to inform, those who possess the talents to inform and those who have the right to be informed.

By participating in a press council, owners acknowledge that their employees have a word to say in production and journalists acknowledge that media users also have a right to make their views heard – a great step for democracy (2003: 129)

Bertrand also favoured press councils because they have an ability to adapt, unlike legislation that required parliamentary approval. Indeed, Pritchard (2000) and Henry (1989) also note that press councils provide the public with non-legal methods of ensuring accountability and media input.

A press council is not an anti-media machine: lay members show no knee-jerk hostility. Actually, a council proves that most complaints are unjustified. And it saves the honest media from being tainted by the misbehaviour of a few. A council does not intimidate media: it is not concerned with their published opinions; and, as far as news is concerned, it distinguishes between documented and slanderous accusations, between a well-researched report and a sensationalised story. It does it better than a court of law. Thus it promotes vigorous journalism (Bertrand 2003: 130)

There are a range of other benefits that press councils can deliver to the media industry, the public and wider democracy, including securing journalistic professionalism while freeing the media from legal restraint (Ritter and Leibowitz 1974), improving media literacy among the public (Blankenburg 1969; Atwood and Starck 1972), opening channels of non-legal mediation (Richstad 2003) and creating a culture of ethical awareness among journalists (Harcup 2007).

A healthy scepticism about the success of press councils also exists in the literature. Barker and Evans (2007: 67-70) listed some of the most common criticisms that research

on press councils has identified. Such criticisms include fears over a demonstrable lack of independence, powerlessness in relation to investigations and sanctions, the failure to adequately publicise decisions, delays in issuing decisions, a lack of a right of appeal as well as vague ethical guidelines, poor management and general accessibility problems. Indeed, many criticisms are often connected to structural weaknesses owing to heavy industry control. Others have also levelled criticism at press councils over an inability to improve media behaviour (Atwood and Starck 1972), failures to meet due prominence demands in publishing corrections and apologies (Dornan 1991) and the hostility as well as passive support for regulation from the media (Balk 1986). For example, Cohen-Almagor (2005) takes the Israeli Press Council to task for these issues and argues it is inconsistent, underfunded, poorly organised and non-formalised.

Despite his obvious support for the concept, Bertrand (2003: 125-128) does accept that no press council has been shown to have actively participated in the progress of media. There are four key reasons for the failure of press councils according to his analysis. First, Bertrand argued that councils require particularly attractive cultural and political environments to survive, without which robust accountability is impossible.

It requires a liberal press regime and media that are not state controlled. Media need not be commercial, but they need to be at least rich enough to finance the many activities that a council should have. Working journalists need to be true professionals, conscious of their duties and endowed with strong self-confidence. The country must not be split between two fiercely hostile ideological blocks. Also it must harbour a minority of enlightened citizens concerned with media. Lastly, among media owners, there must be people aware that the best long-term guarantee of profitability and expansion is quality control (2003: 126)

A strong media resistance to press councils – usually based on claims about fears over press freedoms – is the second reason for their continued failure. Bertrand pointed out

that no negative consequences press councils have been linked with, such as a chilling impact on journalism, have ever materialised. Third, what Bertrand referred to as abnormalities in the make up of councils - such as when one grouping on the council becomes dominant - has had a damaging impact on councils. And finally, Bertrand criticised the lack of imagination and energy exhibited by press councils which, he argued, is the source of their obscurity. Indeed, he argued that the public is rarely hostile to press councils but doubt their effect and are unaware of their work.

Despite the concerns of scholars and the failures of some press councils, the concept remains a popular one internationally. Scholars have, however, recommended various structural and procedural guidelines, which go some way to address the flaws of the concept. Pritchard (2000: 104) concluded - as have others (Ugland and Breslin 2000) - that press councils need to adopt a clear set of ethical principles in order to provide consistent and clear decision-making. In addition, he argued that in order to avoid claims of impartiality, press councils need to remain aware of the tendency to temper negative findings in favour of funders, a conclusion supported by Frost (2004) and Pritchard (2000). Pritchard also argued that press councils need to become proactive accountability agencies rather than reactive complaint handlers. While various studies have found elements of proactivity in the field (Barker and Evans 2007: 93; Fielden 2012), Lord Justice Leveson also concluded in the UK context that a strong council ought to be capable of starting its own investigations (2012: 13-18).

The findings of studies such as the Barker and Evans (2007) survey, which demonstrate how public indifference and dissatisfaction can emerge, are worrying for press councils, considering that, as Ugland and Breland (2000: 134) have argued, councils require moral authority (“the ability to direct or substantially influence the decisions of others by serving as a reference for their moral or ethical choices”) and legitimacy in the

eyes of the public in order to function as effective accountability mechanisms. Indeed, as we have seen, much of the work on media accountability identifies an important role for the public/regulator relationship (Plaisance 2000; Pritchard 2000; McQuail 2003). While the Barker and Evans (2007) study is limited in examining the prevailing attitudes in just one country (New Zealand), the findings nevertheless would lead one to suggest that a press council must improve its relationship with the public as a key constituent stakeholder.

Other challenges for the concept exist. Gore and Horgan (2010: 530-531) identified a range of challenges that press councils face, and identified technological change as the first major threat to the viability of such press regulation. Technological changes give rise to an increasing reliance on the part of the press on entertainment-related content. As such, rumour rather than verifiability is, Gore and Horgan argued, becoming the default across large swathes of the print media, in both its traditional and online formats. This trend will clearly have consequences for press councils. Indeed, Clark (2012) also picked up on this point and questions whether press councils need to institute unique codes of standards for online news emerging from traditional print media outlets. This convergence is a bi-product of the vast technological changes impacting on the media. While press councils are aware of and are adapting to new media realities, a point Fielden made in her study (2012), what outcomes these changes have is open for debate and is likely to form a key part of evaluating regulatory mechanisms in the future.

The second challenge identified by Gore and Horgan (2010) is economic change. The continual preoccupation with profit exhibited by media companies has had many effects on the output and quality of the print media, including the loss of an experienced corporate memory in older staff who have been replaced by cheap younger labour, according to Gore and Horgan. Such an atmosphere may result in obvious accountability

and ethical knowledge gaps, and may also mean that the cost of regulation is seen as an optional extra for media managers.

The third item is accountability. The authors point out that there is a growing public and political trend towards accountability which will see the spotlight focused on press accountability mechanisms, with greater significance potentially placed on market and statutory forms of press regulation. Indeed, this debate is already underway in Britain both prior to, and in the wake of the Leveson proposals, and many have already proposed forms of statutory regulation of the print press as a means to empowering self-regulatory regimes (O'Malley and Soley 2000; Brock 2011; Freedman 2012; Jones 2012; Cohen-Almagor 2014).

Finally, Gore and Horgan identify effectiveness as a continuing challenge for non-statutory press councils. The authors call for the continuous study of “effectiveness, responsiveness and power to maintain standards and enforce desired change” (2010: 531) of press regulatory efforts as a means to develop a model of best practice and to identify potential weaknesses of established regulatory mechanisms.

Across the Liberal/North Atlantic media systems, a variety of press regulatory councils exist. Each country – the US, Ireland, Britain and Canada - and indeed regional areas within some of the countries have experience of the press council. While structures and procedures vary from country to country, the existing research suggests a unifying theme across the Liberal/North Atlantic media system: that industry power over self-regulatory instruments has infected regulatory structures, procedures and decision-making, resulting in credibility problems and regulatory failures. In the following section the existing literature on a number of press councils operating in North Atlantic Liberal countries will be examined.

### **2.7.1: The United States**

Ugland and Breslin (2000) examined the Minnesota News Council's (MNC), a US-based press council. The authors focused on its consistency in relation to ethical principles and its use of precedent as a methodological basis for assessing if it had achieved the moral authority and legitimacy press councils require to be successful. The authors concluded (2000: 245-246) that the MNC failed to identify or articulate clear principles for decisions and lacked consistency due to an indifference to past cases. As a result the council's legitimacy was fatally undermined. While the research found some deference was given to certain journalistic principles, every written determination should have been built on one or more statement of principle. Furthermore, some MNC statements lacked crucial specificity, which Ugland and Breslin identified as a reliance on meta-rules, or "broad, categorical synthesis of more discrete ethical principles" which "are always applicable but rarely helpful" (2000: 240). Ugland and Breslin concluded that the MNC did exhibit consistent decision-making but noted some notable exceptions where it appeared to contradict its own jurisprudence.

The Council has made almost no effort to evaluate current cases by analyzing, citing, and distinguishing earlier ones. It rarely cites its own decisions, legal principles, other news council rulings, ethics codes or guidelines, or any other source of authority. The impression left is that the Council is situationalist, which provides little comfort for potential participants in the news council process, and it suggests to the public and news media that the Council's rulings have little lasting relevance (2000: 246)

The MNC ceased operations in 2011, with its President Tony Carideo citing a decline in complaints and falling levels of corporate funding as the reasons behind its closure.

The National News Council (NNC), which ceased taking complaints in 1984, has also been the subject of research which reflects poorly on its accountability processes. It was

a national press council that accepted complaints over newspaper coverage from publications across the United States. Newspapers were not obliged to cooperate with the organisation, but rather were asked to adhere to the NNC voluntarily.

In response to calls for it to be reinstated, Ugland (2008) reassessed the council and identified similar failures found in the MNC. He found little evidence to suggest that the NNC was an extra legal mechanism for policing the press. Instead, Ugland's research showed that the NNC routinely violated its own procedures and structures by allowing media members of the council to outnumber public members. Ugland concluded that the NNC established a prohibitively high burden for complainants to meet, highlighted First Amendment rights in a way not germane to ethics-based inquiries and applied a conventional set of ethical standards in decision making without articulating justifying rationales or engaging in an examination of alternatives. The NNC, according to Ugland, also suffered from a lack of publicity and funding.

Hodges (2004: 174) argued the NNC, and other methods of press accountability failed, because they did not adequately define the concept of press responsibility without which using accountability mechanisms as a means to coerce responsible journalism are undermined. For Klaidman and Beauchamp (1989: 225-228) the NNC was virtually unrecognised by external public stakeholders, lacked support from its other key constituent group – journalists and editors – and failed to gain acceptance from some of the largest national newspaper in the US, such as the *New York Times*, which others (Jaehnig 1998) have argued was ultimately behind its eventual closure. While Klaidman and Beauchamp are supportive of the press council concept, arguing that vigorous self-monitoring can provide a barrier against the threat of state encroachment, the news council's staff were too timid. Henry (1989) also cited staffing issues as a key problem behind the failure of the NNC. For Henry, press councils require large staffs familiar with

and capable of dealing with complex journalistic issues. The NNC did not meet this requirement, relying instead, he argued, on inexperienced staff.

### **2.7.2: Canada**

Pritchard (2000) identified “structural flaws” in the decision-making the Quebec Press Council (QPC) in Canada. The QPC is a voluntary organisation that adjudicates on complaints concerning all media outlets in the region. Pritchard’s research (2000: 95-103) suggested it has been hindered by a “chronic inability to decide cases quickly” due, in part, to a failure to develop and cultivate jurisprudential precedent with decision-makers dealing with each complaint on an ad hoc basis without reference to guidelines. Pritchard believed the QPC’s reliance on industry funding undermined its independence and found that in over 85 per cent of cases examined, the QPC found in favour of the organisations which funded it. Echoing the sentiments of Uglan and Breslin, Uglan and Cohen-Almagor, Pritchard also found the QPC decided upon complaints in an inconsistent fashion. However, for Pritchard, the inconsistency was not random. “Rather, it clearly suggested that the QPC had undue sympathy for parties to which it had financial ties” (2000: 102). Pritchard also criticised the QPC for being reactive rather than proactive in investigating breaches of good practice in the press.

### **2.7.3: The United Kingdom**

The Press Complaints Commission was a voluntary complaints handling mechanism that dealt with national and regional newspaper in the UK. Membership of the PCC was voluntary. The PCC was set up in 1990 as a successor to the Press Council, a largely similar complaint handling mechanism. It ceased operations in 2014.

In 2012, Lord Justice Leveson said the PCC was unfit for purpose. He argued the PCC had “serious structural deficiencies” (2012: 1576), was given “barely enough money” to perform its regulatory functions (2012: 1577), associated itself too closely with the press, failed to initiate its own investigations “other than in circumstances where an investigation was needed to head off criticism of the press or self-regulation” (2012: 1577) nor investigations where press actions may result in civil or criminal claims, and didn’t have sufficient powers of investigation nor sanction. Leveson argued these failures “fatally undermined the PCC and caused policy makers and the public to lose trust in the self-regulatory system” provided by the PCC (2012: 1579). Leveson also correctly identified that criticism of the PCC was nothing new (2012: 1579). Indeed, Bingham (2007: 86) pointed out that within two years of its opening, the PCC had received a “devastating indictment” in a state report conducted by David Calcutt.

Frost (2004) examined ten years of the PCC’s work. During that time, it received 23,000 complaints. Of these, Frost found that just 321 adjudications were upheld against newspapers, just over one per cent. Just 71 cases per year were adjudicated, around half as many as its predecessor, The Press Council, which was also continually and widely criticised for similar failures (O’Malley and Soley 2000: 51-87). Frost’s research suggested that the vast majority of complaints were never examined for various reasons including claims they were resolved informally, due to unreasonable delay, because the PCC ruled the complaints were outside its remit and because no breach of its code could be identified on first examination of the complaint. Frost pointed out that the number of PCC complaint adjudications actually fell over its first five years while complaints it received were increasing. This research also reflected the sentiments of Pritchard (2000) on independence, finding that despite being the most complained about, *The Sun* and *The*

*News of the World* newspapers, owned by News International, had the lowest level of upheld complaints when compared to other national titles.

Frost argued (2004: 113-114) that the PCC's two main claims - that self-regulation was working quickly and effectively and that it had encouraged a change of culture in the British press - were unsupported by evidence. Each tabloid, despite facing a barrage of complaints, only faced one or two upheld cases a year and even then the sanction of printing the negative decision had little impact due to a failure to get the decisions printed with due prominence. Despite arguing that the rise and fall of complaints were separately positive signs of increasing public awareness and decreasing unethical behaviour, such claims could not have been supported according to Frost. Instead, he argued that the PCC was designed as a mechanism to reject the vast majority of complaints.

O'Malley and Soley (2000: 135) also found that both the Press Council and the PCC "became efficient mechanisms for rejecting complaints" and conclude that both systems of self-regulation issued adjudications according to an inconsistent framework which was at times unsystematic. Both regulatory councils produced compilations of rulings but few declarations of principle. While both managed increasing levels of complaints, which indicated greater public awareness, evidence suggests that self-regulation was not a positive institution designed to deal effectively with complaints and protect press freedom. Instead, it defended proprietors from encroachments of politicians, journalists and the public. Others (Keeble 2001: 15 and Harcup 2007: 106-115) have also cited similar criticisms.

## **2.8: Conclusion**

This chapter began by discussing media and media system theory. It settled on the Liberal/North Atlantic model system proposed by Hallin and Mancini (2004) as the most

viable framework for an examination of press regulation. The Chapter traced the development of journalistic responsibility from the initial conception of a completely free media to one which has accepted that, with such freedoms come concomitant responsibilities. What these responsibilities are was then discussed, as well as the internal dynamic of how such obligations are ensured via the concept of accountability. The Chapter then examined media accountability mechanisms for ensuring the press lives up to these standards. As discussed, the press council is perhaps the most popular of these, in particular in media systems in and influenced by the Liberal/North Atlantic tradition. Despite this, the success of non-institutionalised and informal press councils has been extremely limited in the UK, Canada and the US.

In response to these failures, academics, policy makers and the press have sought appropriate alternative regulatory mechanisms. The collapse of the PCC and criticisms during the Leveson Inquiry in the UK focused attention on self-regulation and its problems. In Ireland, a variation of self-regulation has been operating since 2008. The PCI is an “independent” system of press regulation recognised in law. This gives a third way status of neither self-regulation nor state regulation. Thus, this unique format, which exhibits strong differences with Hallin and Mancini’s conception of regulation in the Liberal/North Atlantic system, requires further study. The political, social and media debate around press regulation in Ireland which pre-dated the PCI’s establishment is discussed in Chapter 3.

## **Chapter 3: Irish Press Regulation**

### **3.1: Introduction**

Chapter 2 examined the theoretical debates around press regulation and how Hallin and Mancini's (2004) North Atlantic Liberal system related to such regulatory functions. It also discussed failures in Canada, Britain and the US where self-regulation has been the norm. This chapter begins by examining the early debate in Ireland around the idea of a regulatory organisation for the press. This will be done by examining public debates – much of it material from newspapers – between the 1960s and early 1990s. This chapter will then examine how various governments dealt with the topic during the 1990s and 2000s. A number of official reports and studies will also be examined in detail. Finally, the chapter will explore the treatment of the initial concept for the PCI and how it emerged via political and media debate to become an independent and institutionalised form of press regulation, the first of its kind in the North Atlantic Liberal system.

### **3.2: 1968-1991 - Initial debate**

Much of the early coverage in the Irish media on the concept of a press council or ombudsman dealt with how similar systems worked in Britain. In the years which followed the publication of the First Royal Commission of the Press in 1949 and the setting up of the British Press Council, Irish newspapers occasionally covered the high-profile cases and public comments regarding the council's operations and findings. But ethical self-reflection in the Irish media was rare. One possible reason for this is that Irish newspapers were relatively tame publications. Marron (1996), in her study of journalistic professionalism in Ireland, found that Irish journalists cited a variety of reasons for a reticent journalistic environment, including an underdeveloped journalism culture, a lack of resources and strict libel laws (1996: 37).

Nevertheless, there were some occasions when the Irish media debated the concept of a press council. In 1968 and 1970 the Dublin Branch of the National Union of Journalists put the topic on its agenda. At a meeting in late 1968, the Branch agreed that it “should consider a resolution exploring the possibility of taking steps to have a press council established in Ireland” (*Irish Independent* 1968). At a meeting in 1970, Branch chairman, Maurice Hickey, came down against the idea. Hickey said press council proposals were unacceptable if intended solely as “a handy stick to beat the newspapers and journalists” with (*Irish Press* 1970). “Groups who feel that they get unfavourable publicity in the newspapers have an easy remedy - the employment of a good PRO,” Hickey said. One NUJ meeting heard from member and then *Irish Times*’ Industrial Correspondent Pat Nolan who said there was support for a press council among the union’s membership on the proviso that it was protective of journalism rather than restrictive (Ibid).

The union’s contribution sparked an internal debate within the Irish media. Dick Walsh, a columnist with the *Irish Times*, argued in favour of a press council (Walsh 1970a). “It would be encouraging to believe that a council might be set up in Ireland before it becomes a necessity. But one does not have to be a pessimist to expect that the decision will be put off until action is the alternative to atrophy (1970: 7).” Dermot Walsh, an *Irish Independent* columnist, argued that “even a cursory appraisal of the correspondence columns of the press testifies to the necessity to establish a Press Council” (Walsh 1970b). Not only would a council investigate complaints, he concluded, but it would also protect press freedoms. In the same year, however, the *Irish Press* carried a leader entitled: “No case for council.” It pointed out that press council proposals had been put forward by various sectors in Irish society at that stage, “without attracting any appreciable volume of enthusiasm or support” (*Irish Press* 1970b). Indeed, the leader

argued that Irish newspapers did not indulge in the same ethically questionable behavior that the Fleet Street tabloid press was accused of:

It may be argued that the newspapers themselves are, perhaps, too close to the issue to be the most objective of judges...Indeed, it is probably true to say that there are hardly any newspapers here which would fear the existence of such a body but as yet there is hardly any worthwhile evidence to support the institution of a council (1970b: 10)

In 1972, in what *The Irish Times* reported was the “first public seminar on the issue”, various senior media figures expressed differing views after hearing a presentation from Lennart Groll, the then Swedish Press Ombudsman (Musgrave 1972: 13). Douglas Gageby, the editor of *The Irish Times*, Tadgh Cramer, the editor of the *Cork Examiner*, Desmond Fisher, the deputy head of news at RTÉ, the state broadcaster, and Pat Lynch of the NUJ are all reported to have made contributions to the seminar in support of the press council concept. The report on the event concluded that no agreement was reached about what an Irish press council might look like, and noted that Sean Cantwell, a chief leader writer with the *Irish Independent*, and Tim Pat Coogan, the editor of the *Irish Press*, were indifferent to the idea, with Coogan describing a press council as “a glorious irrelevance” (Ibid). Despite the lack of a solid recommendation, one unnamed editor was quoted as saying the seminar “may have started something which will have far-reaching effects” (Ibid). Reflecting on the event, an editorial in *The Irish Times* argued that a press council free from state influence should be examined.

If there is, in fact, a demand among the Irish public for a press council, the newspaper industry as a whole would be wise to take it seriously. So far it has not been clearly or firmly expressed. Even if there is not, there are good enough reasons as to why journalists should now be looking at the situation (*Irish Times* 1972c)

Later in the decade, Oliver Maloney, the Director General of RTÉ, criticised “hypocritical” press journalism which held other institutions to account, including RTÉ, but failed to adequately report on internal struggles within its own industry (*Irish Times* 1976). Maloney said he and many of his media colleagues recognised a decline in standards in the press. To address this, Maloney proposed that the government abolish VAT on newspaper sales and that a Council of Media Freedom and Responsibility be established. The council, which would include broadcasters, would protect press freedoms, encourage higher standards, develop media education, review journalistic training, examine technology-related implications for the media and monitor concentration of ownership. Maloney did not identify any public complaints function for the council but said it would include “distinguished laymen” as members.

I have, for many years, tended to resist the notion of a press council, mainly because I feared that it might be repressive in its general approach. However, there is a groundswell of opinion – among journalists as well as laymen – that a reappraisal of inherited traditions of news values now needs to be carried out. Press freedom must be protected in this process, but it cannot be protected by glossing over the problems. I believe that a forum must be provided for responsible public discussion of threats to the freedom of the media and for discussion of journalistic departures from accepted standards of accuracy and fairness (*Irish Times* 1976: 8)

At the turn of the decade, Coogan, the Irish Press editor, changed his mind on the press council concept, while Conor Brady, the assistant editor of *The Irish Times*, expressed a different opinion to his then editor (*Irish Press* 1980). Both Coogan and Brady spoke at a press freedom event in Dublin, with Coogan arguing for a freedom of information law to be introduced alongside an industry operated press council which would have an independent chairman. The Irish council would be funded by newspapers

and would have powers to impose publication of its work on member newspapers, Coogan proposed. While Brady said newspapers did not need another layer of regulation, doubting the credentials of an organisation made up of members of the press, the debate remained largely in the self-regulatory arena. At no stage was the idea of state involvement raised.

Political debate about press standards developed in parallel with similar discussions occurring within the media. Horgan (2001), in his historical account of the development of the Irish media, highlights how a traditionally deferential Irish media began to change in the 1960s. In particular, Horgan (2001: 86) pointed to the 1969 RTÉ broadcast of current affairs programme *7 Days* as a catalyst for a debate about modern journalistic standards. The programme dealt with claims that illegal moneylending was widespread, using hidden cameras and microphones as well as actors. In response to the programme, the then Fianna Fáil government established a tribunal of inquiry to investigate how the broadcast was made, “the authenticity of the programme” and the material held by RTÉ in relation to its work on the episode (Dáil Eireann 1969).

The tribunal’s findings about the broadcast were largely negative (Horgan 2001: 86). Using the *7 Days* affair as a springboard (*Irish Times* 1969), Neville Keery of Fianna Fáil, a former journalist and university lecturer, became the first politician to speak seriously about press regulation. In January 1970 Keery sent his proposals to a number of media stakeholders, including newspapers, seeking the establishment of a self-regulatory press council – despite remarking during a Seanad debate in 1969 that if the press did not formulate a council, then government should (*Irish Times* 1969). In the letter Keery laid out seven investigative functions for a press council:

- Maintenance of the freedom of the press in Ireland;
- Questions relating to the professional standards of journalists and the training of journalists;

- Complaints by journalists about the influence of advertisers and advertising agents;
- Complaints by editors or other journalists that they have been improperly advised by their employers or superiors to suppress opinion, distort the truth or otherwise engage in unprofessional conduct;
- Complaints by members of the public about invasions of privacy and the suppression or distortion of factual information or a point of view by editors or journalists;
- Questions concerning the relationship between government and press;
- Changes in the ownership, control and growth of press undertakings; (Keery 1970)

Keery recognised the potential impact that internal influences could have on journalists, and spoke from a position of experience given his journalism background. He believed a council could protect journalists from such advertising and management pressure.

The senator's plan did not meet with government approval. The first official government response came in the Dáil a month later, on 4 February (Dáil Eireann 1970). In response to a Dáil question, Jack Lynch, the then Fianna Fáil Taoiseach, said:

I have seen no demand from the public or from the industry itself for the setting up of a press council in this country. In the circumstances, although, in principle, I see merit in the idea, I am not prepared to take steps to set up a press council (Dáil Eireann 1970)

Nevertheless, senior political figures continued to debate the topic. In 1972, at a press event, Gerry Collins, the then Minister for Posts and Telegraphs, said the concept would “fit neatly into our view of Irish democracy” (*Irish Press* 1972). Collins, while praising the press for its professionalism, stressed the formation of a council was a matter for the press and not for government.

The following year, 1973, the arrest of a former IRA chief of staff on board a ship returning from Libya sparked a media frenzy. The ship, the *Claudia*, was carrying weaponry and explosives provided by Colonel Muammar Gaddafi. During the National

Press Awards that year, Liam Cosgrave, the then Fine Gael Taoiseach, said a particular report about the Claudia affair had been “a lapse in the proper standards of serious journalism” (*Irish Independent* 1973). Cosgrave claimed the article in question was based on rumour and had damaged national security. He called on the press to examine the institution of a press council to eliminate such journalism (Ibid), remarks echoed the following year by the Chairman of the Northern Ireland Labour Party, Brian Garrett (*Irish Times* 1974).

While senior members of government were reluctant to get directly involved with the press – if keen to see a commitment to stricter ethical standards – broadcasting policy suggested a very different approach. Section 31 of the Broadcasting Act 1962 allowed for the Minister for Posts and Telegraphs to ban the broadcast of particular content from RTÉ, a measure which attracted no protest from journalists or their representative groups until it was invoked in October 1971 (Horgan 2010). The directive was issued as armed conflict in Northern Ireland between the IRA and British forces intensified. Its intention was to bar “any organisation which engages in, promotes, encourages or advocates the attaining of any particular objective by violent means” from the airwaves (Horgan 2010: 380). While not made implicit until 1975, in practice Section 31 resulted in a virtual blanket broadcast ban on IRA spokesmen and members of its political wing Sinn Féin. The ban resulted in divisive internal rows in RTÉ between those who supported it and those against it which continued until it was revoked in January 1994 by Michael D. Higgins, a Labour communications minister (Ibid).

Thus, the debate surrounding press regulation must be framed by the influence that Section 31 undoubtedly had on the media and political landscape at that time. Despite the continued existence of the broadcasting ban throughout the 1970s, government declined to support a role for the state in press regulation. In 1977, Liam Cosgrave, who had earlier

made comments about a press council after the *Claudia* affair, said he believed there was “no sustained demand” for a council (Dáil Eireann 1977). Indeed, he told the Dáil it was not “accepted that the initiative for it lies with the government” (Ibid). In a trend apparent throughout the time, one government minister followed up the Taoiseach by highlighting the need for some sort of self-regulatory organization. Two days after Cosgrave’s Dáil remarks, Patrick Cooney, the then Minister for Justice, said he favoured a self-regulatory press council.

It is very noticeable in recent times how frequently newspapers and journals have had to print apologies and corrections following the publication of erroneous material always about individuals or situations which the most elementary piece of research could have avoided. In some instances the checks necessary were so easy and obvious that one wonders was the error deliberate. Standards leading to such practices cry out for supervision by the profession itself (*Irish Independent* 1977: 3)

In an editorial, the *Irish Press* criticised Cooney’s remarks, accusing the then government of attempting to bring “in the most anti-democratic and potentially crippling restriction on press freedom to be found this side of the Iron Curtain” (*Irish Press* 1977), while Douglas Gageby said he was suspicious of government motives for press regulation (*Irish Times* 1977).

Between 1979 and 1983, during a period of significant political instability, three different Taoisigh insisted that government would not regulate press standards. Jack Lynch and Charles Haughey, both Fianna Fáil, holders of the office in 1979 and 1980 respectively, said it was a matter for the press (Dáil Eireann 1979; Dáil Eireann 1980). “It is something which I do not think could be imposed on them,” said Lynch, while Haughey suggested that “responsible journalists would support the idea of a press council”. In 1983, Dr. Garrett Fitzgerald, the then Fine Gael Taoiseach, told the Dáil that

the government had no plans to establish a press council and had not received proposals from the media (Dáil Eireann 1983). Various TDs from all parties continued to issue calls for the newspaper industry to respond to a perceived decline in standards by establishing a press council over the following years (Power 1986; Dáil Eireann 1988).

During the period, several stakeholder groups in Irish society also had their say on the potential formation of a press council. In June 1970, the Irish Transport and General Workers' Union (ITGWU) passed a motion calling for a council (*Irish Press* 1970a). Michael Mullen, the ITGWU general secretary, said a council would ensure fair comment and reporting in the news media. Mullen proposed that the Irish Congress of Trade Unions set up the council with funding from constituent bodies and the Department of Finance. Two years later, the Irish Congress of Trade Unions (ICTU) upheld the call at its annual conference, notably with the support of the NUJ (Cummins 1972) with ITGWU repeating the call – this time for an “independent” council - the following year (*Irish Times* 1973).

The issue resurfaced for unions in the 1980s. In 1982, the Dublin Council of Trade Unions called for the “urgent” establishment of a press council in response to “inaccurate and ill-inspired” media coverage of public service running costs (*Irish Press* 1982b). Later that year, Christy Kirwan, ITGWU’s vice-president, called for the creation of a statutory press council “to ensure that information is disseminated by the media is fair and accurate and that comment and speculation are not expressed as established fact” (*Irish Press* 1982c).

I know that there are some people who may baulk at the mention of statutory powers for the council because it would mean that Dáil Eireann would have a role in establishing it. They would fear with some justification that the temptation for ministerial meddling in so sensitive an area would be irresistible (sic) to politicians, but the absence of a

statutory base for such a press council would almost inevitably condemn it to being a carbon-copy of the toothless (sic) watchdog which masquerades as a press council in Britain. The danger of political interference is a risk we would have to take in order to ensure that our watchdog would not only bark but bite as well (1982c)

The Association of Secondary Teachers in Ireland said it wanted a press council in May 1984 (*Irish Press* 1984), while in April 1987 another large teacher union, the Irish National Teachers Organisation, called for a statutory press council in a unanimously adopted resolution at its annual conference (Nolan 1987).

The religious were also keen for input in the debate, but rarely overtly expressed opinions about press regulation in public during this time. In December 1968, the *Irish Spotlight*, a publication of the Dominican Order, called on newspapers to “take...action with a certain amount of haste” to set up a press council. The editorial argued for a self-regulated council which would “warn off anyone who may wish to tamper with [press] freedom” (*Irish Press* 1968). In November 1985, Brendan Comiskey, the Bishop of Ferns, said a Press Council or Press Ombudsman was required to restore public confidence in the press (*Irish Press* 1985).

In January 1982, the first record of the judiciary publicly entering the press council debate was recorded when Mr. Justice Rory O’Hanlon said if it was constitutionally possible, a council should be set up with “the power to impose severe penalties on the media” due to the unsuitability of libel being the only avenue for redress (*Irish Press* 1982a).

Periodic debate about the establishment of an Irish press council did take place in various areas of Irish life. In the media and the press, there was support, but often this support was cautious and based on the proviso that government have no role. There were also those in the media who suggested that VAT and libel reform ought to be a quid pro

quo for press self-regulation. In the political sphere, TDs and Senators often debated a perceived decline in press standards, with many calls for regulation in one form or another. At the highest levels of government, there were mixed messages. On the one hand, a number of Taoisigh said government had no plans for the establishment of a press council, placing the impetus for the initiative with the press, while other senior cabinet ministers categorically expressed interest for the idea. Perhaps the most strident calls for press regulation, which would be statutory in nature, came from the trade unions, however, despite the continuing debate, no side brought forward detailed proposals on the subject. Thus, the concept remained one for debate rather than tangible development. In the 1990s, however, the debate would intensify.

### **3.3: 1991-1997 - Momentum grows**

In 1988, the National Newspapers of Ireland (NNI), an industry representative organisation, published a report on press freedom and libel (McGonagle and Boyle 1988). The report recommended that individual newspapers appoint a staff member to deal with readers' complaints in an ombudsman-style manner. A self-regulatory solution, it was the first time that Irish newspapers had displayed a unified response to the issue of non-legal complaints handling, although the scheme stopped short of establishing any external autonomous organisation. According to Louis O'Neill of the *Irish Times*, who was the NNI chairman:

The idea behind the system is a simple one – to provide the public with a clearly identifiable individual within each newspaper whose task is to act on their behalf, seeking corrections and clarifications or explaining why none is warranted, as is appropriate (1995: 4)

By the time of a follow-up report seven years later, also commissioned by the NNI and carried out by the same authors (McGonagle & Boyle 1995), “readers’ representatives” were in place in every NNI member publication. In their second report, McGonagle and Boyle made a number of findings in relation to the operation of this limited system of accountability - mainly positive - coming down strongly in favour of self-regulation<sup>4</sup>. The authors concluded that there was no justification for the establishment of a press council, partly because informal mechanisms already provided non-financial compensation (1995: 34) However, they noted that the regulatory regime may need reevaluation should Irish newspapers “respond to the agenda set by the British tabloids” (1995: 35), by then a permanent fixture in the Irish media market (see Horgan 2001). They also suggested that consideration be given to an external system of complaint appeal outside the press (1995: 35). Under the NNI’s umbrella, this was the first time that national newspapers in Ireland addressed the issue in any unified way, albeit an industry group dominated by newspaper executives rather than journalists or editors. The idea of a press council, whether self-regulatory or otherwise, did not appear to excite newspaper executives.

Despite the fig leaf of readers’ representatives, politicians continued to highlight the merits of further regulatory mechanisms (*Irish Independent* 1991a; *Irish Independent*

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<sup>4</sup> First, the readers’ representative complaint system was commended as a “valuable services to both reader and newspaper” (1995: 1) which had significant respect and buy in from journalists (1995: 31). Second, the study found that corrections were printed promptly – indicating “a very high standard in the promptness of the service” (1995: 1) with 85 per cent of agreed corrections printed in the next available edition of the publication and only 4 per cent of complaints left unresolved. However, the report also found that on both of the newspapers studied, less than a third of complaints were settled with corrections while many cases were “settled by other means”, categorized as no action required or requested and no outcome known (1995: 25-26). The report found that the main reason for complaint was inaccuracy with few complaints of privacy invasions or taste which “underlines the high standards of Irish journalism” (1995: 1). Fourth, McGonagle and Boyle recommended that the readers’ representative system or an alternative be expanded and taken up by all publications and finally the study called for defamation, contempt and official secrecy reforms.

1991b; Carey 1992). Again, government was against the idea. The then Fianna Fáil/Progressive Democrat coalition, in October 1992, maintained that it was opposed to any statutory intervention. Maire Geoghegan-Quinn, the Communications Minister, said: “I don’t believe that a statutory body with heavy-handed powers is what is required today - indeed, if anything is required (McKenna 1992).” In a Seanad speech she pointed out that the effectiveness of the British Press Council was being questioned but said a statutory body would have little usefulness if it could not impose sanctions on editors.

Such an arrangement could have the highly undesirable effect of stifling good investigative journalism on which our democracy depends in part and it would be difficult, if not impossible, to apply those standards to imported newspapers (McKenna 1992: 16)

As previous governments had indicated, Geoghegan-Quinn also said there was merit in the idea of a voluntary self-regulatory press council. Dáil records show various TDs continued to insist on regulatory provisions for the press (Dáil Eireann 1995, Dáil Eireann 1996a).

Later that year, in June, Cardinal Cahal Daly, the Catholic Primate of All Ireland, reiterated church calls for a complaints mechanism: “We depend upon the moral integrity of media communicators themselves to protect the media from abuse of power, but some form of self-criticism within the journalistic profession is also needed (Kennedy 1992: 76).”

In the wake of the collapse of the Press group of newspapers in 1995 and the increasing circulation of British titles, the then Rainbow Coalition government of Fine Gael, Labour and Democratic Left initiated an inquiry into the newspaper industry in 1995. The Commission on the Newspaper Industry was chaired by Chief Justice Thomas Finlay and was primarily set up to deal with issues around media ownership. However, under its terms of reference, Richard Bruton, the then Minister for Enterprise and

Employment, asked the commission to consider “the correct balance between privacy and press freedom including consideration of the desirability of a mechanism for complaint and adjudication and of changes in the libel laws” (Department of Trade, Industry and Employment 1996: 7). The establishment of the commission was the most significant development in the evolving debate about press standards and reader redress.

The Commission’s terms of reference were split into three separate issues. First, it looked at the correct balance between privacy and press freedom. It found that the right to privacy and the right to free expression and a free press, all exist in Irish law under the constitution and are therefore not absolute, existing in an endless balancing act.<sup>5</sup>

Second, the Commission examined a mechanism of complaint and adjudication. It conducted a survey (and relied on submissions from members of the press and others) to assess the newspaper industry’s attitude to privacy in order to provide context for its deliberations on the issue. The commission found that the respect for privacy across the Irish newspaper industry was “generally good and seen to be good” (1996: 57). It believed that the adherence to standards and ethics was “not...seriously flawed” but took note of concerns over treatment of minority groups, such as Travellers (1996: 58). The Commission also noted concerns about sensationalism with its survey finding that respondents felt British titles had a lesser regard for privacy and ethics, and that Irish publications could follow such examples to attract readers (1996: 58). The Commission argued that Irish newspapers had a good system of accountability with Irish editors

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<sup>5</sup> It said breaches of privacy may be justified where “the person holds public office, deals with public affairs, follows a public career, or has sought or obtained publicity for their activities” (1996: 56). “In any circumstances such as these, where the information revealed could affect the validity of a person’s conduct, or the credibility of their statements, or the value of their views, publication of relevant details of their private life and circumstances becomes justifiable and necessary (1996: 56).” However, the commission also concluded that the public interest must be “distinguished from mere curiosity or an appetite for sensationalism” (1996: 57). It concluded that the privacy of a child must be respected - except where an invasion could contribute to the welfare of the child or other children (1996: 57).

emphasising their relationship with readers and also expressing support for further self-regulation, if doubting its necessity (1996: 58). Nevertheless, newspaper editors expressed “unanimous support” for a press council or ombudsman being the second step in a complaints process with their publications maintaining the primary point of contact for complaints (1996: 58). This conclusion contrasted with the earlier work of the NNI. The Commission also found that self-regulation would be pointless if British publications on sale in the Irish market could not be persuaded to take part (1996: 58).

Third, the commission concluded by recommending the appointment of an independent press ombudsman rather than a full press council (Table 2.1). To do this, a committee, set up by the press, should establish a set of standards to be applied by the Press Ombudsman and appoint an independent person to the role (1996: 58). Funding for the role would come from the press in a manner agreed by it with “the provision and maintenance of adequate funding...vital to the project” (1996: 59).

*Table 3: Ombudsman’s role*

Ombudsman’s role	<ul style="list-style-type: none"> <li>• Investigate complaints of possible breaches of press standards once they had first been made to the publication involved</li> <li>• Take complaints from those directly involved or affected by the publication or by organisations representing them</li> <li>• Direct steps to repair the damage via a correction or clarification, “and in any case where it is appropriate, to direct further steps which might be necessary to avoid a repetition”</li> <li>• Direct publication of his/her ruling in the offending publication</li> <li>• Release any information about a complaint the office saw fit</li> <li>• Consult with newspapers in order to get their in-house mechanisms of accountability published</li> <li>• Make the office accessible widely</li> <li>• Publish an annual report</li> </ul>
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Source: Commission on the Newspaper Industry (1996: 58-59)

The Commission also pointed out that the Press Ombudsman would need privilege from defamation complaints and cited updated libel laws as an opportunity “to give

immunity by way of privilege” (1996: 60). It concluded its work in the area by examining libel reforms<sup>6</sup>, suggesting that freedom to access information was of “cardinal importance” for journalists and required legislation, which might have the knock on effect of reducing inaccuracies.

In an editorial published the day after the commission’s report, the *Irish Times* said the study was “an invaluable blueprint for the future” (*Irish Times* 1996). It said that the commission’s proposals would have the full support of Irish newspapers “as distinct from the British imports” but that such support should only be on the basis that the commission’s recommendations - which included libel reform and VAT changes - be implemented in full. Indeed, it appears as if the press, at least according to the *Irish Times*’ editorial, was already bargaining for a quid pro quo attitude toward regulation - accepting it on the proviso of other important financial incentives.

The Ombudsman proposal, for example, would be unacceptable in isolation for it would simply add one more layer of accountability for journalists and editors who already operate under some of the most restrictive arrangements in the western world. If the commission's recommendation on the Ombudsman is to be implemented, so too should its recommendations on libel (1996: 17)

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<sup>6</sup> Despite being lobbied to do so, the commission declined to recommend that a change be made to take the onus away from juries in assessing damages in libel actions. It did, however, support the introduction of judicial direction to juries in respect of a range of possible damages during hearings (1996: 61). The commission also recommended that there be changes in the laws to take account of inadvertent libel. It concluded that where a plaintiff fails to show “pecuniary loss”, he/she should not be entitled to damages; that the seeking of a retraction or correction be a required prerequisite to the institution of defamation proceedings; that defendants inform the plaintiff of the decision to rely on the inadvertent libel defence; and that plans be put in place so that minor defamation cases where declaration of falsity are sought - and not damages - be dealt with by judges at a District Court or Circuit Court level (1996: 62). The commission also concluded that newspapers ought to be able to lodge money with the court to meet potential liabilities without an admission of guilt; that newspaper should be able to apologise without admitting guilt; that the statute of limitations for institution an action be substantially reduced from six years; and that the printers of defamatory material be exempted from being a party to defamation actions (1996: 64).

The *Irish Independent* also “heartily” welcomed the commission’s “admirable” and “excellent” report “which echoes the urgings that for years have come from within the industry” (*Irish Independent* 1996: 12). Primarily focused on VAT and libel changes, the editorial did not mention the Press Ombudsman proposal but claimed “Irish newspapers have a proud record of accuracy and responsibility”. The NUJ and NNI also supported the commission and called on the government to implement the changes Justice Finlay had suggested, again focusing more on the financial and legal changes (O’Keeffe 1996a, 1996b).

Other interested parties were not so keen. John Waters, a journalist and columnist, argued that the commission had aligned itself too closely with the interests of the press. He argued that the Press Ombudsman proposal was “woefully inadequate”, particularly if the office holder was appointed by the press, as proposed (Waters 1996).

### **3.4: 1997-2002 - Changing attitudes**

Senior political figures repeatedly expressed support for Justice Finlay’s proposals (O’Keeffe 1996c; Dáil Eireann 1996c; Dáil Eireann 1997a) in the years following publication of the report. However, the recommendations were not acted on by government or the press. Nevertheless, as the *Irish Independent* editorial noted in the wake of publication of the report (*Irish Independent* 1996), the indigenous press regularly underlined the point that British tabloid culture had apparently not infected Irish newspapers. Opinions on this aspect of the press would begin to change after a string of media controversies.

Fianna Fáil’s Marie Geoghegan-Quinn had said that a statutory press council was not required earlier in the 1990s. However, it is likely that her attitudes – and those of other senior politicians - may have changed in early 1997. Several newspapers published

articles about Geoghegan-Quinn's then 17-year-old son. She unexpectedly resigned from domestic politics some weeks later, citing this apparent breach of privacy as part of her rationale. "Politics demands - and rightly demands - energy, commitment, idealism and resilience. When politics demands - and wrongly demands - that a TD's family members serve as expendable extensions of the elected member, I will not serve," she said on her resignation (Kennedy 1997). The year was marked by many politicians calling for varying forms of increased press regulation (Walsh 1997a; Walsh 1997b; Foley 1998; Walsh 1998) while in early 1998, Dick Spring, a former Labour Tanaiste, said a press council was needed. Spring was unhappy over coverage of his family after his son fell ill: "Families shouldn't be fair game...some of the tabloids went way over the top in what was a health scare for us as a family. I think that's irresponsible but they're out there to sell newspapers and they want scare headlines and big colour photographs" (O'Sullivan 1998).

Privacy became a key subject in the press regulatory debate thereafter. In June 1998, the Law Reform Commission published a report, *Privacy, Surveillance and the Interception of Communications*, which rejected the concept of a self-regulatory press council. The report argued that an absence of strong enforcement powers and the influence of "sectional interests" (1998: 65) were critical weaknesses in a self-regulatory approach. The commission also dismissed "enforced self-regulation" (1998: 66) – delegating regulatory functions to an organisation established under statute - as a regulatory mechanism. While the report did not recommend a general privacy law, it did call for the introduction of laws to govern "privacy-invasive surveillance" which had implications for the media. It singled out "low-priced tabloids from the United Kingdom" and their "growing threat" to standards (1998: 41).

The *Irish Independent* praised the “excellent” report for its focus on “unscrupulous operators” who use technology to monitor people and urged the government to act on the legislative proposals contained in the report (1998: 16). However, sounding a note of caution, the newspaper’s editorial also said the Irish media was still awaiting libel reform. “This time, the government should not ‘cherrypick’ the report. It should legislate to protect privacy, but it should not diminish the valid role of the media in a democratic society (1998: 16).” Striking a somewhat different note, the NUJ said it had “grave concerns” over the Commission’s proposals to legislate for privacy, which, it said, would have a significant impact on media freedoms (Brennock 1998). Surprisingly, there is no record of an *Irish Times* editorial on the report and indeed media debate on the issue was limited according to an analysis of the coverage from the time.

The potential for privacy legislation did, however, occupy the minds of other senior media figures as well as politicians. In February 1999, Damien Kiberd, the then editor of the *Sunday Business Post*, said he favoured the setting up of a press council “with teeth” as he was unhappy with emerging unethical media practices (McGarry 1999), in a signal that attitudes in the press were rallying around the idea of instituting a regulator to stave off the potentially restrictive legislation. Perhaps sensing the opportunity, later that year, in November 1999, the government revealed that libel reform – a matter the press had long campaigned on – was on its agenda. Mary Harney, the then Progressive Democrat Tánaiste, said updated defamation laws would be ready within 12 months. However, addressing the press establishment directly, Harney said that she hoped the newspaper industry would not wait until then to set up a council or ombudsman in a signal that the government’s willingness to produce the long-awaited defamation reforms would only pay off once the press set up a regulator (Dáil Eireann 1998). The following year, John O’Donoghue, the then Fianna Fáil Minister for Justice, introduced a draft defamation bill.

The draft was given a guarded welcome by the *Irish Times*' (*Irish Times* 2001) and the NNI (*Irish Independent* 2001). However, as noted by the *Irish Times*, a general election was looming and it was unlikely that the bill would pass into law before polling day thus leaving the reforms at the discretion of the next justice minister (*Irish Times* 2001). However, Fianna Fáil and Fine Gael, had committed to libel reform as a quid pro quo from the press for the establishment of a system of complaints via a council or ombudsman (Ibid).

### **3.5: Legal Advisory Group 2002**

The Fianna Fáil/Progressive Democrat coalition was re-elected in June 2002. With it, the debate about press regulation changed. Under the coalition's Programme for Government, it committed to establishing a statutory press council to adjudicate on complaints about media behaviour and conduct (2002). It was the first time that an Irish government had made a firm commitment on the issue, bypassing previous high-level remarks favouring press-led reforms. The government also pledged to reform defamation and libel laws and introduce "improved privacy laws" (2002: 29).

Later that year, Michael McDowell, the Progressive Democrat Minister for Justice, established a Legal Advisory Group on Defamation (Brennock 2002). McDowell, a barrister, had long been an advocate of changes to how the media was regulated. In the mid-90s he had introduced an ultimately unsuccessful defamation bill in the Dáil and indicated that a press council and/or ombudsman was needed (Foley 1996). The advisory group's terms of reference were influenced by the Programme for Government. It was tasked with reviewing the defamation legislation and case defences; reassessing the role

of judges and juries in libel hearings; reexamining the concept of the presumption of falsity; and considering a statutory press council.<sup>7</sup>

Much of the press reacted negatively to the idea of a statutory regulator. Interestingly, however, in an editorial after the advisory group had been established, the *Irish Times* declined to express similar hostility (2002). Instead, it welcomed the formation of the group and planned libel reforms, expressing minor reservations that no member of the newspaper industry was part of it. A statutory press council, the newspaper observed, “deserves careful consideration and is not something which the media should reject instinctively” (2002: 17). Striking a somewhat different tone, the NUJ again highlighted its opposition to any form of statutory oversight (Coulter 2002). Responding to the establishment of the advisory group, Seamus Dooley, the NUJ’s Irish Secretary, said:

We are fundamentally opposed to State regulation of newspapers. We do not need a Press Council based on the failed UK model and we firmly believe that the government must engage in a debate with all concerned on models of self-regulation, such as those in existence in European countries (2002: 9)

The advisory group’s report was published on 20 June 2003, and its recommendations ratcheted up fears that government would follow through with plans to establish a new statutory regulator. The group recommended a number of legislative reforms and backed the government’s proposal for a statutory press council. It concluded that it was “somewhat skeptical” (2003: 14) that statutory intervention would run counter to press freedoms:

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<sup>7</sup> The report followed a range of prior contributions, including those from the Law Reform Commission which examined the defamation laws in 1991. It made a series of well-received recommendations about defamation changes but did not examine the concepts of press councils or ombudsmen

and inclined towards the view that, subject to appropriate safeguards, it should be possible to construct a statutory model which would respect fully the autonomy of the press while, at the same time, providing an important element of independence and transparency which would secure public confidence in any process which might be established (2003: 14).

Thus, the group concluded that its proposals were “comparatively light” (2003: 16) and the case for a statutory press regulator “appears...compelling” (2003: 14).<sup>8</sup>

Table 4: Legal Advisory Group on Defamation (2003: 14-16)

<p>A statutory press council</p>	<p><b>Function:</b></p> <ul style="list-style-type: none"> <li>• Investigate breaches of code of conduct</li> <li>• Code of conduct must recognise “wide discretion” inherent in journalism but must also specify standards, rules and practices</li> <li>• Publications would be forced to comply with the new regulator by law</li> <li>• Part funded by industry annual fee</li> <li>• Power to direct publication of decisions, corrections or retractions, but no fines</li> <li>• Power to apply to the Circuit Court to compel compliance</li> </ul> <p><b>Incentives:</b></p> <ul style="list-style-type: none"> <li>• Right of reply to investigations</li> <li>• New reasonable publication court defence for members</li> <li>• Barring of further plaintiff civil proceedings</li> </ul>
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<sup>8</sup> In deliberations over whether statutory or self-regulatory proposals worked best, the group found that allowing a self-regulatory assignee member to rely on the defence of reasonable publication “did not seem to be practicable given that the defence encompasses not just the press but other kinds of communications media” (17). However, it accepted that “this would not preclude the development of a statutory provision which would ensure that a court could take into account whether or not the publication in question had signed up to a self-regulatory mechanism”. The advisory group concluded by suggesting that a “formal consultation process” involving the various stakeholders be established to examine the issues it raised (17). It also stated that “compliance with...statutory references might, in turn, link in with the granting of a statutory privilege which would render such a body immune from any claim in defamation with respect to the carrying out of its stated functions” (18).

The proposed Defamation Bill contained in the report's appendix sheds more light on the group's proposals on a press council. It proposed that the council "shall, subject to the provisions of this Act, be independent in the performance of its functions" (2003: 99). It is not clear how such independence would have been achieved, given that the bill offered government strong powers over the regulator. Indeed the draft bill suggested that all 9 members, including the chair, be appointed by government (2003: 102) and failed to clarify a suggested criteria for council membership other than the "government shall have regard to" the various groupings and public interest in appointing members. Indeed, the suggested bill gave full power of appointment and employment to the government. It also gave the government full powers to remove any member of the council if both Houses of the Oireachtas voted for it. The bill did, however, bar any serving public representative at national and European - not local - level from being on the council. It also gave full powers to the line minister in relation to financing on an annual basis (2003: 108) and set out what should be in the council's code of conduct (2003: 109). The acceptance of third-party complaints was also proposed.

On publication of the report, Michael McDowell said he had "an open mind on the issue" of a statutory press council (O'Connor 2003), indicating he was to establish a public consultation to get the views of interested parties. Opposition to statutory recommendations quickly emerged. Marie McGonagle, a media law academic who favoured self-regulatory approaches in her work for the NNI, welcomed defamation reforms as "even-handed and practical" but criticised the plans for a statutory press council as "draconian" (McGonagle 2003: 12).

It is remarkable that the Government here would pursue the idea of a statutory council and the advisory group endorse it so wholeheartedly when the stated intention...is to bring the law into line with other countries. Indeed, the group notes that 'self-regulation tends to be the

norm’ but goes on to recommend a draconian regime which could only be described as a policing measure in all the worst senses of the term, complete with dubious incentives and sanctions (2003: 12)

In an editorial in July 2003, the *Irish Times* argued that statutory proposals “would interfere with editorial integrity and the right to freedom of expression” (2003: 15). The *Irish Independent* initially indicated that it would await defamation reforms before assessing the press council proposals (*Irish Independent* 2003a) – but this was later replaced by opposition to the plans in an editorial in early October (*Irish Independent* 2003b). Its sister newspaper, the *Sunday Independent*, quickly outlined its opposition with Alan Ruddock, a regular columnist, writing that a statutory press council would be “a travesty” (2003: 93).

No matter who runs it, no matter who writes the code of ethics, there should be no way that Irish newspapers accept state regulation as the price for libel reform. It is a dangerous nonsense, yet their supine reaction suggests that they will bargain away a cornerstone of democracy to save their bottom line (2003: 93)

Indeed, the *Sunday Independent* left readers in no doubt about its opposition to the plans. On 5 October 2003, it printed four opinion articles all negative about statutory regulation (Ruddock 2003b; Reilly 2003; *Sunday Independent* 2003a; *Sunday Independent* 2003b). The salvo was in response to comments made earlier that week by Bertie Ahern, the then Taoiseach, when he said that “a statutory press council, legislatively based, should be looked at in this country. Any other one is of no meaning” (Brennock 2003). In one piece, the *Sunday Independent* quoted several Irish journalists in favour of its editorial line. Editors of *The Star*, and *The Sunday World* criticised plans for a statutory council as did Seamus Dooley of the NUJ (*Sunday Independent* 2003b). The *Sunday Independent* continued its opposition throughout late 2003 and early 2004

with a series of articles from a variety of contributors criticising the plans and others in the media for a perceived lack of strong opposition to state regulation.

Representative organisations were also against the proposals. The Alliance of Independent Press Councils of Europe said state involvement on the council would buck a European trend and undermine press freedoms (Kelly 2003) while the NNI said state regulation was “unacceptable”. “It runs counter not only to press freedom, but to the basic constitutional right to free speech” (Oliver 2003).

### **3.6: 2003-2005 - Industry responds**

The Irish newspaper industry began to seriously discuss plans for independent press regulation after the Fianna Fáil/Progressive Democrat government and Legal Advisory Group concluded a statutory press council was required (Mitchell 2015: 117). Indeed, the *Irish Times* declared in an editorial that the Irish press had reached a “pivotal moment” over press regulation (*Irish Times* 2003). On this occasion, it appeared that the press was ready to act. In October 2003 the *Irish Independent* carried a report about the NNI’s plans for an independent press ombudsman and press council which would be recognised in law and based on a Swedish model (Anderson 2003). The NUJ backed the plan (Anderson 2003).

Later that month, in a boost to the campaign, Fine Gael, Labour and the Green Party confirmed opposition to statutory regulatory proposals (Beesley 2003a and 2003b), while the World Association of Newspapers and the World Editors Forum requested that the government abandon its proposals (Kelly 2003). Shortly after, McDowell reiterated that he was “genuinely open-minded” about the form of a press council:

It seems to me that the particular model examined by the legal advisory group is by no means the only, or, for that matter, the most obvious model for a statutory press council. I could envisage a body chaired by

a judge, and composed of nominees of a variety of groups to reflect the different interests involved (Hickey 2003: 11)

Indeed, the *Irish Times* noted what appeared to be a softening of stance in McDowell's remarks and reported that support for a state-backed press council was "evaporating" (*Irish Times* 2003). In an editorial, the newspaper pointed out that it was now up to the press to come up with its own proposals for a tough independent regulator in order to achieve the long-held ambition of securing libel reform.

Early the following year, a Press Industry Steering Committee (PISC), chaired by Tom Mitchell, the former Provost of Trinity College, set about working on proposals (Mitchell 2015: 118). Mitchell said the PISC's "ambitious" goal was to create a "truly independent" regulator that would be acceptable to the "many disparate elements of the press industry" and to the government, and which would exhibit "sufficient credibility" to garner public trust (ibid). Its membership comprised representatives of the NNI, the Regional Newspapers Association of Ireland, the Periodical Publishers Association of Ireland, the NUJ and the Irish editions of UK titles.

It would not be long before its work began to influence government policy, with McDowell pointing out his "preliminary reaction" to statutory regulation was that he was "broadly supportive" of a council with no political oversight at around the same time as the PISC began deliberations (McNally 2004). Indeed, the development of the press regulatory system that was being proposed "involved several highly constructive meetings" between the PISC and McDowell (Mitchell 2015: 119). McDowell's contributions were of "great importance, and resulted in a mode of press regulation that was not only acceptable to the industry, but to the government" (Ibid).

The PISC soon agreed on the establishment of an "independent" system of press regulation operated by a Press Ombudsman and a Press Council, both funded by the press

and informed by a Code of Practice (CoP). The committee presented McDowell with its plans in April 2004 (Reid 2004). By June 2004, the justice minister publicly backed the plans. He confirmed that an independent press council, protected by law, would be proposed in new defamation legislation – the first time that McDowell had definitively stated that statutory proposals would advance no further. He said his preference had been for “an independent press council, not Government appointed, but broadly representative of civic society, not a media ‘old boys’ club, but a body that could gain the confidence of the general public as being independent, fair minded and effective” (Coulter 2004). Later that year McDowell said a statutory press council would be “unacceptable” (Hickey 2004). “We’re working on a different model...based on recognition of an independent press council which would have statutory powers and statutory privileges” (Hickey 2004). Shortly afterwards, McDowell signaled his intent to restrict new defamation defences to publications signed up to the independent press council (Coulter 2004b).

It appeared that the newspaper industry’s swift response to threats of government interference would stave off statutory regulation as McDowell, speaking in the Dáil in February and June 2005, confirmed plans for a “middle way” council which was neither voluntary self-regulation nor statutory regulation (Dáil Eireann 2005).

The Legal Advisory Group on Defamation Report in 2003 suggested a particular model involving a State appointed press council. That model did not attract me. The approach I favour is statutory recognition by way of a resolution to be moved in both Houses of the Oireachtas, of an independent organisation which would request to be recognised as the PCI for the purposes of the legislation. Recognition would bring certain privileges such as immunity from action in respect of its decisions, judgments and directions. I also envisage that such a press council would have, as its central focus, a code of standards supported by and subscribed to by print media organisations with operations in the State. Such a code of standards would provide an additional

protection for citizens' privacy from media intrusion and harassment. It is also envisaged that the Press Ombudsman would be established by the press council to deal with complaints from those affected by breaches of the code of standards (Dáil Eireann 2005)

In October 2005, plans for independent press regulation gathered pace. McDowell said he would introduce a new bill with press council provisions attached before Christmas in that year. McDowell added that recent newspaper reports about the death of Liam Lawlor, a controversial Fianna Fáil politician, showed the urgent need for a press council (Cullen and Reid 2005). Several newspapers had wrongly reported that Lawlor was with a prostitute when he died in a car crash in Moscow. "To those who say a press council is not needed, I say that the defamation law is no use to the family of somebody who dies in these circumstances. I think the press council is the appropriate forum for such a complaint to be heard (Cullen and Reid 2005)."

### **3.7: 2006-2008 - Legislative proposals**

In July 2006 McDowell published a new Defamation Bill. However, there was a sting in the tail for the press: also attached to the new legislation was an unexpected inclusion, a Privacy Bill. The PISC welcomed formal approval for its plans under the proposed laws but argued that privacy would be best dealt with by its model of independent regulation (Collins 2006). The *Irish Times* (2006: 15) said the privacy laws were "draconian" and "will benefit only the wealthy, protect persons in public life on matters of public policy and change the modus operandi of Irish journalism in ways that are possibly unintended by its political proponents". It said that the positive changes, including the press council, were now under threat by the privacy proposals which were introduced "without any consultation".

The threat of privacy laws renewed the newspaper industry's efforts – whether that was the intent or not. In December the PISC publicly published its proposals for independent press regulation. Under the proposal, a 13-person press council would be made up of a majority (7) independent members chosen via an independent appointment process. The Office of the Press Ombudsman would establish a first option of complaint to the public with the council acting as an appeals mechanism. Also published was the CoP which outlined ten broad principles under which members of the public could complain if they felt that it had been breached by a journalist or publication. The code was written by the Press Industry Code Committee, itself made up of journalists (Reid 2006). According to the PISC the code was “intended as a work in progress and it is expected that it will continue to evolve”. The code contained elements of the similar codes developed by press councils in Britain, Australia and Germany with a variety of other codes, including the NUJ's, and the work of Prof. Kevin Boyle and Professor Marie McGonagle, also informing its creation. McDowell praised the proposals, saying they “underline the very nature of what is proposed in this legislation”. To the undoubted relief of the press, McDowell also said he was not proceeding with privacy laws (Reid 2006).

The proposed legislation received a second hearing on 6 December 2006. On opening the reading, McDowell reiterated his support for an independent council as set out under Schedule 2 of the proposed legislation.

This approach will allow the print media to put into practice its self-proclaimed determination to bring forward an independent, effective and industry-funded press council operating a proper CoP. The code must provide an added protection to citizens' privacy and dignity from media intrusion and violation. Nothing less will be expected by the public. The proposed press ombudsman service must be properly empowered to deal with complaints from those affected by breaches of standards as set out in such a code (Dáil Eireann 2006)

McDowell pointed out the benefit of statutory underpinning was two-fold. First, the press council and the Press Ombudsman would have the benefit of qualified privilege. Second, a new defence of reasonable publication would be made available to any member who signed up voluntarily to the council.

McDowell's bill was praised<sup>9</sup> and criticized in equal measure. Senator David Norris said throughout his career in the Seanad there had been pressure from newspaper proprietors and editors to "make life easier for them" (Dáil Eireann 2006). Norris was unimpressed by the proposals for the council. He said its goals of protecting investigative journalism were "pious" and said British tabloid culture was infecting Irish journalism.

The press council and press ombudsman will be toothless. The proposed press ombudsman does not deserve that title. The Minister knows well that the post will be quite unlike that of any other ombudsman. For example, it will lack all significant powers to compel, produce witnesses or impose financial penalties. In addition, the Press Ombudsman will be appointed by this wonderful new press council, which is not independent. Is that not an irony? (ibid)

Norris also criticised what he saw as a slim majority in favour of the public interest on the council and questioned if all newspapers would sign up.

In January 2007, a group led by the NNI attended a Joint Oireachtas Committee on Justice to discuss the proposals in front of politicians (Dáil Eireann 2007). In opening the debate, Frank Cullen, the NNI's chair, outlined how the system of regulation would work, identifying the approach as a complaints handling mechanism largely based on a similar set-up in Sweden:

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<sup>9</sup> John Dardis (PDs), Kathleen O'Meara (Lab) and Maurice Hayes (Ind) - all of whom had a connection to the press industry - expressed support for the bill and the concept of an independent press council

The basis of the model we propose is that editors in particular, but also publishers and journalists, will commit to a code of standards and an independent process which will adjudicate any complaints received. They will support the decision making process because they will have ownership of it, rather than having it imposed on them. If the model was imposed by statutes, it would be attacked and resented, whereas these proposals represent an initiative by the industry to voluntarily commit to a code of standards and a process

The council had three main objectives. First, it was established to provide an independent forum for resolving complaints quickly through “credible decisions”. Second, the council would maintain high standards in journalism. Third, the council would defend press freedoms and the press’s right to inform the public. In order to meet the requirements of the Defamation Bill 2006, the council would be a company limited by guarantee with a memorandum and articles of association setting out its structure: seven independent members (including a chair) and six members from the press. An independent appointments committee would appoint the independent members of the council and “formally approve industry nominees”. The committee would have veto powers over the latter appointments, council chairs would be appointed by the council itself, while all appointments would be for two and three years (ibid).

The Press Ombudsman would be the public’s main point of contact and the role would be filled via press council appointment. Cullen said that he hoped complaints would be amenable to mediation rather than formal decision processes and said that each party had a right of appeal to the press council before the decision was made public.

The Press Ombudsman hears the complaint, makes a determination and advises the two parties of the determination. Before it is published, either party can appeal it to the press council. Similarly the Press Ombudsman will have the choice, in particularly difficult cases of national importance to refer a case immediately to the press council,

perhaps with a recommendation, so that a case can be fast-tracked. That is the process (ibid)

During his address, Cullen identified two supporting committees. First, the code committee, made up of senior editors and NUJ representatives (and the Press Ombudsman), would be responsible for authoring and reviewing the CoP.

The PCI CoP consists of ten commandments effectively, ten broad principles. Interpretation of those principles and their application to specific complaints is left to the discretion press council (sic). We did not want to be overly prescriptive and sought to give latitude to the press council as, no doubt, the code will develop with the jurisprudence of the press council. We feel this is the strongest way possible and that it is better cases be discussed on an individual basis, rather than have an overly prescriptive telephone directory listing what can and cannot be done (ibid)

Second, the administration committee, made up of a variety of representative groups, would be responsible for dealing with funding and supporting structures. Cullen said the NNI (80 per cent) would be the council's largest funder followed by the Regional Newspapers Association of Ireland (15 per cent) and the Periodical Publishers Association (5 per cent).

In response to a number of questions, Cullen said the proposal's strength was the moral authority the council would establish once editors voluntarily signed up. Brendan Keenan, a senior editor with the *Irish Independent* and member of the code committee, said that publicity for decisions in rival newspapers would form part of the sanction for publications. "The harder the hit on the rival, the more publicity they will give it. That not only gives redress but it gradually lets editors know what will get past the Press Ombudsman and what will not." Geraldine Kennedy, then editor of the *Irish Times*, said if a newspaper declined to publish a negative decision about it, other newspapers would

print the decision, to which Gerry O'Regan, then editor of the *Irish Independent*, replied: "We would feel we would have to do so in the public interest." Cullen again stressed three principles for complaint handling:

There are three principles in dealing with complaints. The first is speed. In this case it can mean within one month or sooner, where possible. If possible, a complaint should be dealt with instantly, as speed is critical. Second, there should be no cost to the complainant. The third principle relates to credibility (ibid)

Geraldine Kennedy, the then editor of the *Irish Times*, addressed politicians' questions on sanctions. She said a powerless press council would not be in the newspaper industry's interests.

It [the council] would have the power to receive complaints, investigate them speedily and for free, to provide answers for complainants and compel media organisations to have apologies, corrections or clarifications made. That would be the sanction. There is no intention to address the complaints financially because newspapers are pursued financially every day under the defamation laws which still remain in place. We are talking about the other side of the package. We believe the powers would be adequate. The main sanction for each media organisation is the same as that politicians face before tribunals, that is, the sanction of exposure (ibid)

### **3.8: Conclusion**

While it is difficult to identify a single reason for the eventual formation of independent press regulation, it is quite clear that the transformation of the Irish newspaper industry over the course of the time period analysed here played its part. Horgan (2002: 134-135) records that by the 1970s, Irish newspaper readers were already purchasing British newspapers in increasing numbers. In 1988, the Independent Group began printing an

Irish edition of tabloid *The Daily Star* (Horgan 2002: 135), albeit with the brashest British tabloid content remoulded to avoid protestations among Irish readers (2002: 136), and by the mid-1990s Irish editions of British newspapers – such as *The Sunday Times*, *The Sun* and *The Mirror* – were being widely read (holding around 35 per cent of the Daily and Sunday markets [Horgan 2002: 162]) prompting the then government’s decision to set up the Commission on the Newspaper Industry in 1996, as discussed previously. The actual impact of the appearance of Irish edition British tabloids is impossible to accurately quantify, although Horgan concluded (2002: 167) that a “renewed focus on exclusive stories” may have driven tabloids deeper and deeper into the private lives of public people while broadsheets upped efforts to find the latest government scandal – not always, it must be said, with negative outcomes. As stated, such influence is impossible to accurately quantify. It is clear, however, given this chapter’s analysis and that of Horgan’s, that increased competition for readers, an aggressive Fleet Street attitude and increasing debate about journalism ethics played a part in changing political and social attitudes to Irish newspapers, thus allowing the prospect of strong press regulation to gain traction.

Fielden (2012) has concluded that press councils have traditionally been formed as a “determined, pragmatic alternative response from...industry” to threats of state intrusion into the field of press regulation. As Chapter 2 identified, the experiences of various countries where press councils are operating – Australia (O’Malley 1987), Britain (Morgan 1989), Germany (Sarck and Pottker 2003) – also support this conclusion. The genesis of the PCI fits this description, as this chapter has shown. It was formed by the press in response to the Fianna Fáil/Progressive Democrat Government’s commitment to the concept of a statutory press regulator. The analysis shows that throughout recent history the Irish press ignored calls for a council while little will existed on the part of

policy makers. However, with the change of government in 2002, the newspaper industry sparked into action due to the statutory ultimatum emerging from the Programme for Government and the later Legal Advisory Group Report.

The model of independent press regulation supported and strengthened by statutory recognition was formulated by the PISC, acting on behalf of the press. Its proposals, as the analysis has shown, were supported by McDowell and thus ended up as a cornerstone of the Defamation Act 2009. In effect, the press drew up the standard against which it would be judged as a means of staving off the imposition of standards it could not influence.

The outcome is that a formal, institutionalised system of press regulation now operates in Ireland. The PCI is governed by a formal corporate structure via its Memorandum and Articles, and exists as a legal entity due to its formation as a company limited by guarantee. It is underpinned and recognised by legislation and must meet certain requirements in order to maintain such recognition. Under these rules, it was the intention that the council be independent of both the press and the state. It has a voluntary and incentivised membership under which its members are obliged to accept the decisions of the Press Ombudsman and the council. As a result, the intention of the newspaper industry and policy makers was that the PCI be a *fully institutionalised and independent press regulator* making it an anomaly across the liberal system. The following chapters will examine what impact, if any, the institutionalisation of independent press regulation has had on the public service commitment to accountability which is the third element of journalism professionalisation in the North Atlantic Liberal system proposed as part of the media systems classification model established by Hallin and Mancini (2004). Specifically, it will ask how institutionalised, independent press regulation ensures accountability for complainants and if it meets standards of accountability established in

the literature (see Chapter 2). This study will also compare self-regulatory media accountability solutions with independent regulation in Ireland.

## **Chapter 4: The Press Council of Ireland**

### **4.1: Introduction**

As discussed in Chapter 3, the Irish newspaper industry committed to creating an independent form of press regulation after ongoing debate about standards and ethics. This chapter will look at the PCI from its inception in late 2007 to the retirement of the first Press Ombudsman in 2014. This will be done via a review of the PCI's founding documents; its Memorandum and Articles of Association. These documents set out the formal structures of the PCI and are thus important in any analysis of the PCI's work. This text will also examine the early work and development of the office as recorded in official statements and annual reports of the PCI and Press Ombudsman as well as media coverage and political commentary. The highlighting of possible strengths and weaknesses of the PCI will inform and contextualise later data. In addition, the Defamation Act 2009 will be analysed as it is the legislation which gives statutory recognition to the PCI, and, evidence at the Leveson Inquiry in Britain – and Mr Justice Leveson's final report – will be examined given the referencing of Irish press regulation at the inquiry. The chapter will conclude with an overview of top-level complaint data collated by the PCI in its annual reports – as precursor to further analysis in Chapter 6 – so as to determine its level of activity and examine the areas which have generated greatest attention.

### **4.2: Founding documents**

The Memorandum and Articles of Association of the PCI were registered with the Companies Registration Office in November 2007 (PCI 2007). The documents set out the structure and administrative dynamics of the PCI, and produce a blueprint for how the PCI should operate.

Table 5: Articles of Association (PCI 2007)

Article	Function	Summary
2-5	Membership	Member publications can be registered (3) once “circulated in the State by way of hard copy or internet distribution”
6 & 8	PCI board	13 member board overseen by chairman. Seven, including chair, “will be drawn from suitably qualified lay persons” all for 3-year terms. Remaining six to come from industry (2 x nationals newspapers, 1 each for regional press, periodicals and UK-based publishers)
7	Ombudsman	Appointed by PCI on 3-year term to adjudicate on (or refer) complaints, raise regulator’s profile and promote ethical standards.
9	Committees	<b>Appointments:</b> Overseen by Chair with members chosen by PCI - charged with hire of all board members <b>Administrative:</b> Chaired by independent board member. 5 industry members. Power to hire its own members – charged with oversight of premises, funding and staffing <b>Code:</b> Six editors, NUJ representative, Ombudsman & chair nominated by PCI. Power to hire its own members – charged with review and update of CoP
10	Funding	National newspapers to fund 80 per cent, regional and locals 15 per cent and periodicals 5 per cent.
11	PCI meetings	Scheduled monthly
13,14, 18	Meeting procedures	Quorum of 5. All meetings overseen by chairman but can be temporarily replaced by another board member if absent. Votes via show of hands with chair holding casting vote, all to be recorded in minutes
24	Complaints procedure	Complaint must be directed to publication first upon which Ombudsman can examine if “unsatisfactory outcome”. Sets 3-month limit for complaints after article publication and confines complaints to CoP. Complainant must show they are personally affected and not have court action pending. No reference to conciliation or mediation.

The first document, the Memorandum of Association, operates as a constitution for the PCI. It contains a number of common corporate and financial clauses irrelevant to the subject matter of this research. However, many of the clauses are important. First, the memorandum refers to the establishment of an “independent, regulatory body” to “consider, investigate, adjudicate, and resolve or settle complaints” from the public for free over “unfair or unjust treatment or unwarranted infringements” by publications

which subscribe to the PCI CoP (CoP). Second, the body is obliged to “publish or procure the publication of any finding of its adjudications” in member publications via the establishment of “such procedures as it may see fit...for the effective discharge of its functions”. Third, the body’s work must also maintain press freedoms, free expression and maintain the independence of the press from the state and “from state control or regulation”. The final clauses set out the areas not relevant to the study<sup>10</sup>.

The Articles of Association is a far more substantial document and over almost 30 pages in 29 articles establishes the structure of the PCI and how it should operate. Many of the articles deal with common legal and corporate principles such as resignations, funding and directorship rules which are irrelevant to this work. A summary of the relevant provisions is contained in Table 5. A number of the articles provide further detail about the workings of the PCI. First, the Press Ombudsman is given “full authority over the administration, operation and staffing of the offices of the Press Ombudsman and the Press Council” (Article 7.4). This article affirms the internal independence dynamic of the Press Ombudsman by ensuring he/she holds executive powers internally. Second, the articles also give members of the Administrative and Code Committees – which are heavily dominated by industry members on both counts (see Table 5) - the power to reappoint members. Significantly, the result of these measures is that industry has effective control over two of the three committees which deal with the office’s funding and also the guide by which the industry is regulated, the CoP.

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<sup>10</sup> Included is clause B which gives the regulator powers to accept “gifts, subscriptions and donations (whether money, property or other assets)” from members to run the organisation; “make all arrangements necessary to enable” it to “accept from any public body, private individual or private association or charitable trust” - “as may be solely authorised under any statute or statutory instrument” - additional financial support.

### **4.3: PCI, 2008**

The Press Ombudsman and PCI began accepting complaints in January 2008. Professor John Horgan, a former journalist, politician and journalism professor, was appointed Press Ombudsman. The Defamation Bill, which was to give legal recognition to the PCI, had not yet been enacted. Its implementation was delayed by the 2007 General Election. Nevertheless, the PCI's establishment and initial operation was intended as an act of good faith by the newspaper industry to assuage political pressure for stricter regulation (Gore and Horgan 2010). In remarks at the office's launch in January 2008, Brian Lenihan, the recently appointed Minister for Justice, issued a challenge:

There has been much comment in the media recently about the perceived ills of self-regulation. Notwithstanding the independence of the Press Council and its Chairman and the eminence of the Press Ombudsman, the model of accountability we are launching here today is, by any regulatory standards, on the light side of the scale. Essentially, the Press Council will be relying on its moral authority and I do not mean in any way to slight that authority. But, be warned: there are many sceptics out there. You would do well to prove them wrong at an early date (Carty 2008)

In its first month, January 2008, the PCI received over 30 complaints (McGreevey 2008). In early publications, the PCI stressed that it offered "quick, fair and free" complaints handling (PCI 2008). Later in that year, the Press Ombudsman signalled that the number of formally adjudicated complaints would be modest citing the UK's Press Complaints Commission which ruled on "a couple of dozen" cases annually (Horgan 2008): "If we believe in the basic reasonableness of human beings, this should not be a surprise." Picking up on the speed motif in February 2008, the Press Ombudsman referred to an initial six-week timeframe during which his office would work to informally resolve

a complaint before it entered formal adjudication.<sup>11</sup> However, he was keen to point out that the PCI was in unknown territory.

That six-week period effectively starts when we get a formal complaint from somebody. Everybody is on a bit of a learning curve. We're testing our procedures. It is terribly important to be absolutely fair to everybody. If that takes a little bit more time than we thought it would, well it is better to do that and get a reputation for fairness (McGreevey 2008)

Minister Lenihan's attitude towards this accountability mechanism was reflected in the ongoing political debate at the time of the PCI's formal establishment. A number of senators continued to criticise perceived weaknesses in the new regulatory authority with many contributors to debates on the legislative framework in 2008 insisting on changes (Dáil Eireann 2008a). Two independent senators, Ronan Mullen and David Norris, along with Fianna Fáil's Lisa McDonald and Labour's Alex White, asked that a meeting quorum of seven directors - with a majority of lay members - be inserted in the legislation to govern meetings of the PCI. Mullen was keen to ensure that independent members always outnumbered industry members when council members were absent. Lenihan said the proposal seemed "reasonable" and pledged to examine the issue (ibid).

Dermot Ahern was appointed Minister for Justice in May 2008. Ahern shepherded the Defamation Bill through a further second stage reading in the Dáil in May, where he indicated that despite the reservations of many politicians, the bill retained the majority of the provisions introduced by his predecessor two years earlier. Despite political scepticism, Ahern praised the PCI's initial work, including a case involving a breach of privacy against a TD (Dáil Eireann 2008b). Charlie Flanagan, Fine Gael's justice

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<sup>11</sup> The founding documents contain no reference to time frames for processing complaints, either informally or formally

spokesman, also praised the PCI. He singled out its willingness to begin work before the law had been enacted (ibid).

In May 2008, John Horgan<sup>12</sup>, not the Press Ombudsman but an independent member of the council and a former member of the Labour Court, resigned his position on the PCI. Horgan cited the PCI's refusal to publish dissenting opinions as a factor which undermined the system. In an article for the *Irish Times*, Horgan (2008) wrote that he believed the council:

would be greatly fortified in developing its jurisprudence if the members were permitted to express alternative judgments while acknowledging that the majority determines the case. Experience also shows that where a minority is entitled to express an opinion, it is, curiously, much less likely to feel the need to avail of the facility. The dynamic of a group discussion in which all members have to stand up and be counted encourages responsible and rational decision-making. There is nowhere for irrational or prejudiced thinking to hide in such an open system. The new Press Council needs to establish its credibility, and it does nothing to achieve that by holding up a facade of unanimity where such may not exist. This was a unique opportunity to demonstrate exemplary openness and transparency. The Press Council above all should be the last one to suppress minority or dissenting opinions for the sake of collegiality (Horgan 2008: 15)

Horgan also raised concerns about “excessive confidentiality”: “It seemed to me that the restrictions that were being placed on the reporting of the business of the Press Council come close to collusion in withholding information from the public. I disagreed with that.” The episode was a set-back to the new regulator. Interestingly, however, the episode received very little media attention with Horgan's article published by the *Irish*

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<sup>12</sup> Holds same name as the then Press Ombudsman, Professor John Horgan, but not the same individual

*Times* alongside a news article confirming the resignation the only recorded coverage that could be located during a search of newspaper archives carried out by the researcher. Indeed, no explanation in any of the official PCI material or in any public commentary which rebuts or deals with Horgan's claims could be found.

When the second stage resumed in the Dáil, Joanna Tuffy, Labour's justice spokeswoman, raised Horgan's resignation and called on the PCI to review its position on the publication of dissent. Despite this, Tuffy committed the party's support to the proposals (Dáil Eireann 2008c). Her party colleague, Pat Rabbitte, supported the council, but also raised his concerns about Horgan's resignation.

Let us take the famous controversy a couple of years ago of the publication of cartoons, deemed to be offensive to the Muslim community. If they were published in this country and if there was a Muslim member of the Press Council, can it reasonably be said there was a unanimous view of the press council to uphold the publication of those cartoons? In all probability the Muslim member might reasonably be expected to object. Is there any reason we should not know of that objection? Is it purely institutional protection that causes the Press Council to want to present the image of unanimity? (Dáil Eireann 2008c)

In spite of the controversy, the regulatory recognition provisions within the Defamation Bill won wide approval in the Dáil. Independent TDs and members of Labour, Fianna Fáil and Fine Gael all expressed support during the Dáil debates. Much of the debate centred on praise for the new complaints mechanism. The Sinn Féin party was the exception, suggesting stronger statutory powers as a potential alternative.

Two main themes emerge from the early material published by the PCI, the first of which is the independence motif. In the 2008 Annual Report, the first report, the PCI's

Chairman (PCI 2009: 4) laid out his opinions on the benefits of the office by stressing its “independence”:

The Irish model has sought to find a third way that would be neither statutory nor self-regulatory. This has been achieved by creating a Press Council which is appointed by a distinguished and totally independent Appointments Committee, and which has a majority of independent members, who are beholden to none and represent a broad spectrum of civil society. In addition, the structure includes a Press Ombudsman, appointed by the Press Council, answerable only to the Press Council, and who has no dependence of any kind on the press industry (ibid)

The second major theme to emerge is an emphasis on the informal conciliation of complaints. The PCI Chairman referred (2009: 5) to the complaint handling procedures of the regulator as one which sought “an agreed solution” between parties. The PCI, he said, sought “to the greatest extent possible to avoid the legalistic and adversarial character of judicial proceedings, and put(s) the emphasis on conciliation and a spirit of co-operation”. Indeed, the Chairman said he hoped that “lawyers and all the trappings and technicalities of legal actions can be left out of the entire process”. He added:

The Press Council welcomes the widespread publication of all decisions, in the spirit of the CoP, as an exercise in transparency, as an aid to the wider public understanding of the reasoning behind the decisions, and to encourage the widest possible public acceptance of the aims and objectives of the system of independent press regulation that has been established (2009: 13)

Launching the 2008 annual report, the Press Ombudsman also referenced conciliation. An increase in the number of complaints dealt with informally was a “significant” and “very positive” trend:

There are benefits to both parties in resolving complaints through conciliation, which involves negotiations under the auspices of the

Case Officer. Complaints that are dealt with satisfactorily through the conciliation process are resolved without any decision being made as to whether or not a breach of the CoP has taken place. For the complainant, this means that the complaint is processed more speedily than if a decision has to be made by the Press Ombudsman, and s/he often has a direct input into the resolution of the complaint (2009: 19)

It also appeared that a key stakeholder group - the Government - was happy with how the PCI was working at this point. Speaking at the launch of this first annual report, Minister Ahern said the PCI had “taken time to ‘settle in’” but that it had “made great progress” (Ahern 2009).

#### **4.4: The Defamation Act 2009**

The Defamation Act (2009) was signed into law in July 2009. Schedule 2 of the Act sets out the “minimum requirements” a press council must satisfy in order to be granted the statutory recognition under which particular benefits are available to the regulator and its members. The schedule is made up of ten sections, each with subsections. The schedule is relatively brief yet clearly outlines core principles the council must incorporate in order to be given legislative protection. According to an analysis of the schedule, no changes were made between the legislation’s first introduction in 2006 and its eventual signing into law in July 2009.

*Table 6: The Defamation Act 2009*

Section	Function	Summary
2	Goals	(2)(a) the press council shall “ensure the protection of freedom of expression of the press”; (2)(b) “protect the public interest by ensuring ethical, accurate and truthful reporting”; (2)(c) “maintain certain minimum ethical and professional standards among the press”; (2)(d) “ensure that the privacy and dignity of the individual is protected”

3	Independence	The council “shall be independent in the performance of its functions”
4	Membership	“The owner” of a periodical in circulation in the state “shall be entitled” to be a member publication
5	Board membership	(5)(1) 13 members; (5)(1)(a) a majority of seven “independent public interest directors”; (5)(1)(b) five-person limit for members who are “directors who represent the interests of owners and publishers”; (5)(1)(c) and a “director who represents the interests of journalists”
6	Independent board members	(6)(1)(a) Independent members be people “of standing in the community”; (2)(b)(i) be independent of owners and publications and (2)(b)(ii) the interests of journalists; (6)(c) states that public interest directors be appointed (c)(i) “by a panel of persons who are, in the opinion of the Minister, independent of the interests” and (cii) “in accordance with a selection process...in a manner that the Minister considers sufficient”; (6)(2) the selection criteria for independent members “be published in such manner as will enable them to be inspected by members of the public”
7	Funding	The press council “shall be funded from subscriptions paid by members of the Press Council calculated in accordance with such rules as the Press Council shall make for that purpose”; no funding allowed from any other source
8 & 9	Complaints handling	(9)(1)(a) The Press Ombudsman can “provide for the expeditious and informal resolution” of a complaint; (9)(1)(b) requires for a “determination of the matter by the Press Ombudsman, where all reasonable efforts...have failed”; (9)(c)(i) prescribes that the Press Ombudsman’s decisions be published at his or her direction “in such form and manner” as he/she directs; (9)(c)(ii) lays down a standard that corrections are given “due prominence”; (9)(c)(iii) grants the Press Ombudsman powers to order “the publication of a retraction”; (9)(c)(iv) allows for “such other action as the Press Ombudsman may, in the circumstances, deem appropriate”. (9)(2) and (9)(3) establish a mechanism of appeal and (9)(4) says a decision of the council “shall be published...as the directors of the Press Council direct and in such form and manner as they direct”.
10	CoP	The council adopt a code of standards “which shall specify the standards to be adhered to, and the rules and practices to be complied with” by member publications; including (10)(a) ethical standards and practices; (10)(b) accuracy rules and standards “where a person’s reputation is likely to be affected”; (10)(c) “rules and standards intended to ensure that intimidation and harassment of persons does not occur and that the privacy, integrity and dignity of the person is respected”

While Schedule 2 deals with the minimum requirements of the council, its make-up and function, the body to be recognised as the Press Council is also mentioned elsewhere in the Act. In Section (26)(2)(f) the legislation prescribes that courts shall take into account membership of the press council, adherence to its code of standards and to the council's determinations when examining whether it "was fair and reasonable to publish the statement concerned". In Section (44), the Act sets out a number of further procedures in relation to a press council including granting power to the Minister of Justice to withhold and revoke recognition of the regulator if he or she deems it is not meeting the standards required in the act. Approval by both the Seanad and the Dáil is required before revocation. The recognised council (and ombudsman) is also given privilege over its work and statements in Part 1, Sections 14, 15, 16, 17 and 18.

#### **4.5: 2009-2011 – PCI's initial phase**

In November 2009, in a newsletter (Press Council of Ireland 2009), the PCI reported a spike in complaints in the first six months of 2009 to 123 compared with some 91 for the same period the year before. This, the Press Ombudsman said, pointed "to a much greater awareness and understanding of the office, whose usefulness and efficiency is becoming increasingly apparent both to the reading public and the publishing industry" (ibid). Later, in 2011, the Press Ombudsman accepted that drawing conclusions on the basis of increases or decreases in complaint numbers was difficult (PCI 2011: 9). Newspaper editors were also being praised for their commitment to "resolve complaints in a speedy and satisfactory manner" on the back of an increasing number of informally resolved cases:

The many examples of conciliation and of remedial action by publications reflect the substantial and effective commitment of editors to the complaints process...They also point to the successful

development and refinement of complaint-handling systems within the various member publications of the Press Council (ibid)

The newsletter also confirmed changes to the CoP. First, the Code Committee decided to divide Principle 2.1 into two, splitting references to newspapers' views on topics and the treatment of comment as fact into separate clauses. Principle 8 was also changed from "incitement to hatred", which the code committee thought was misleading "because, although incitement to hatred is a breach of the Code, so is the publication of material "likely to cause grave offence". It was re-labelled as "prejudice". The PCI said the changes were introduced "in the interests of clarity and in the light of the experience...of the first two years operation".

In addition, the PCI highlighted a trend that complaints were being made under multiple principles of the code, each of which required a decision from him and, if appealed, the PCI. According to the regulation, this meant that "a decision upholding a complaint under any Principle - which has to be published by the publication concerned - also includes lengthy material about complaints that have not been upheld". In other words, the publication of partially upheld decisions also had to include the parts of the decision which were not upheld. Thus, the council decided on the "significant change" which meant that newspapers were only being obliged to publish those parts of decisions upholding a complaint.

There was another amendment to the publication guidelines not referred to in the newsletter or in other PCI material. It is not clear when this change occurred. In the first iteration of the publication guidelines, newspapers were obliged to publish an upheld decision against it "within 10 working days" (PCI 2009). However, in subsequent editions of the guidelines (see Table 7) the PCI insisted that newspapers publish upheld decisions "promptly" (PCI 2015). There is no longer a reference to 10 working days. This

change is a significant one given that the PCI Chairman referred to the publication guidelines as a “core” element of the regulatory system (PCI 2009: 12).

*Table 7: PCI Publication Guidelines for upheld decisions*

Existing Publication Guidelines	
1, 2, 3, 4	<p>Elements of upheld decision of Press Ombudsman and PCI must be published:</p> <ul style="list-style-type: none"> <li>• In full</li> <li>• Promptly</li> <li>• On the same page, or further forward, or, if offending article published on front page, on the first four editorial pages</li> <li>• Same day</li> <li>• With due prominence</li> <li>• Unedited</li> <li>• Without editorial commentary by way of headline or otherwise</li> <li>• With logo</li> </ul>
5	Publication of decisions not upheld or elements of complaints not upheld is at the discretion of editors but must be written and presented with fairness

In April 2010, almost two-and-a-half years after it began work, the Press Ombudsman and PCI were granted recognition under the Defamation Act 2009. In the PCI’s second annual report for the year 2009, the PCI Chairman said recognition would mean that members of the public would realise that the regulator “has the sanction of statute law as part of an open system that is fair, free, and independent of both government and the press” (PCI 2010). Despite the concept of a “free” regulator, the Press Ombudsman noted his concern about the number of complaints being made by solicitors on behalf of complainants (Horgan 2009). He said there was no need to engage solicitors because they would not ensure success and often slowed the process (ibid).

Under the leadership of a new chairman, Daithi O’Ceallaigh, who was appointed in July 2010, the PCI continued to trade on its initial goodwill and success with stakeholders. In its next annual report, 2010, the third report, the chairman said

recognition under the Act was “no mere formality” for the regulator. He argued that legislative approval was:

a significant and public recognition of the degree to which these new structures, since their institution in 2007, have met the exacting requirements laid down for recognition in the Act, and have contributed to the climate of enhanced accountability and public service within which our press industry operates (PCI 2011: 1)

Launching its fourth annual report in 2011, by which time the concept of independent regulation had bedded down, O’Ceallaigh reflected on the previous three years of operations concluding that the system had proven “robust” (2012: 4).

#### **4.6: 2012-2013 – PCI continuing operation**

In May 2012 the PCI held an Extraordinary General Meeting to debate changes to the Articles and Memorandum of Association (PCI 2012). The meeting approved a number of motions to update various elements of the original documents, referred to in Section 3.5. A record of the meeting and the motions is contained in documents submitted to the Companies Registration Office.

The most significant change was to Article 24, which dealt with the complaint procedures. The motion updated the earlier Article’s requirement that a complainant first “approach the publication concerned” to ask that “the complainant shall...make a complaint in writing to the editor”. The resolution added that in the case of an article published online, the date of publication would be the date from which the 3-month time limit would be assessed. More substantially, the resolution updated references to complainants showing that their “complaint falls within the code of standards”. In 2012, this was changed to showing a possible breach of the CoP and is a complaint which “is neither vexatious or insignificant”. The resolution also excluded appeals against

“administrative decisions” of the Press Ombudsman in relation to his/her decision on complaint time limits and his/her opinion of whether the complainant has shown that they were personally affected by the offending article. In addition, the informal process of dealing with complaints via conciliation was formalised in the updated Articles:

24.5 If the Press Ombudsman decides that a complaint is one that is appropriate for him/her to deal with, s/he will in the first instance seek to have the complaint resolved through conciliation or mediation as s/he deems appropriate. Any such conciliation or mediation shall be confidential to the parties...

24.6 In the event that a complaint is not resolved through conciliation or mediation, the Press Ombudsman, after making such further enquiries as s/he deems relevant, shall make a substantive decision on the matter...

This change was a significant departure, especially as there is no such references to informal complaint handling in the 2007 documents. A number of other minor changes, including the insertion of “gender-neutral” language throughout, were also passed at the meeting.

In addition to the formalising of the informal complaint procedure, the Press Ombudsman said in the 2011 annual report that the regulator had also been issuing “advisory notices” to newspapers.

Many readers of this Annual Report, including journalists, may be unaware that the Press Ombudsman will, on occasion, send out confidential advisory notices to editors on behalf of families, at a time of great tragedy for them, in circumstances in which they have suddenly and unexpectedly become the subject of intense media interest. Advisory notices are sent out only in response to requests from family members or individuals where the Ombudsman feels that the wishes of such people should be made known to editors. They are not issued

automatically regardless of the circumstances, and they do not prejudice the outcome of any formal complaint that may be made subsequently. They are purely for the information of editors, who remain entitled to make their own professional decisions; but they may also, on occasion, help to facilitate appropriate and necessary coverage of particularly distressing events. They are simply part of the service which the Press Ombudsman provides for journalists and members of the public alike (2012: 14)

The emergence of conciliation and the concept of the advisory notices are two examples of how the regulator evolved in the years after its establishment. Its claims to be providing robust accountability mechanisms to the public continued. These issues will be discussed in Chapter 7.

In July 2011, in response to a series of revelations about the hacking of phones by journalists working for News International, the UK Government ordered the establishment of an inquiry into the culture, practices and ethics of the press. Justice Brian Leveson carried out extensive public hearings throughout 2012.

Ireland's Press Ombudsman was invited to submit evidence to the inquiry and also attended a public hearing on July 13, 2012. In his evidence, the Press Ombudsman (Leveson Inquiry 2012) again promoted the conciliation and mediation efforts of his office. He argued that the "identification of a single individual", i.e. the Ombudsman, "as the key element in the complaint-handling process facilitates public recognition of, confidence in, and familiarity with, the system".

During the public hearing, the Press Ombudsman discussed a number of relevant areas of his work. First, he confirmed that the office worked to a "succession of time limits".

We try to ensure that from the time a complaint has been formally registered with us, if a decision of myself is required, that that decision

is reached within a maximum period of three months. And, for example, if somebody writes to a newspaper or a magazine to complain, the procedures of which all our publications are aware is that if after two weeks that complaint has not been replied to, or has been replied to in a way that's unsatisfactory to the complainant, then they come to us and we take it up (Leveson Inquiry 2012)

In other words, it appeared from the Press Ombudsman's evidence that, including initial attempts by the complaint to work with the publication concerned, the office had a 14-week timeframe for dealing with complaints.

When asked about the office's sanction powers – the publication of upheld decisions – the Press Ombudsman argued that there was significant industry buy-in for the process.

In my experience...the sanction that we operate, which is the requirement to publish in certain modalities any decision upholding a complaint against them, is taken extremely seriously by the editors of all our publications. The public may not see it as seriously as they do, but in my experience, editors take it extremely seriously and would take considerable steps to avoid finding themselves in that situation (ibid)

Indeed, the Press Ombudsman also pointed out that this core accountability mechanism was central to the office's success.

The bottom line really is that the success or failure of any system of this kind depends on two things in my view. It depends on the robustness of the measures that are put in place to ensure redress, and it depends on the whole-heartedness of the endorsement and uptake of these by the newspaper industry themselves. These two things are absolutely essential (ibid)

A number of other areas were also discussed. During the hearings, the Press Ombudsman said he believed that the office did not have widespread public recognition, outside of those who had used its services. However, a public awareness campaign was

underway to address this. He added that he believed that there had been no split in the PCI on any decision during its four-and-a-half years in operation at that point. The hearings also heard from a number of other witnesses such as Nick Clegg, the then Deputy Prime Minister, and Alex Salmond, then the Scottish First Minister, who made favourable remarks about the Irish regulatory solution (Hennessy 2012).

The work of the inquiry did not go unnoticed in Ireland. Despite the Press Ombudsman's remarks during the hearings that Ireland's privacy culture was different to that in the UK (ibid), others disagreed. Senator David Norris, a long-time critic of the Irish regulatory solution, said there was "a strong crossover between bad practices in the British and Irish press" and called for a Leveson style inquiry in Ireland (Dáil Eireann 2012). Melanie Verwoerd, a former director of UNICEF Ireland and a well-known public figure due to her relationship with the deceased Irish radio presenter Gerry Ryan, said details of press behaviour aired during the hearings reflected her negative experience of the Irish press (Hickey 2012).

I've been watching (the) Leveson (inquiry) and a lot of things rang true for me as well, having the face the media outside my door for months and my doorbell being rung and my children being hounded (ibid)

Nevertheless, the Press Ombudsman later said that the attention of Leveson was "gratifying" and said he believed no system of regulation was perfect (Heffernan 2012).

In my experience, readers whose complaints have merit get satisfaction if their legitimate expectations are met in two areas: an independent ombudsman, council or redress mechanism that operates swiftly and fairly, and a press industry that engages generously with its critics in applying the same standards of accountability to itself that it expects of others (ibid)

Justice Leveson published his report on November 29, 2012. As expected it was highly critical of the PCC and the British press industry. As a result, Justice Leveson proposed a new regulator which had many similar characteristics to the Irish model. He called for an independent and incentivised system of self-regulation that was supported by legislation but designed by industry.

The press needs to establish a new regulatory body which is truly independent of industry leaders and of Government and politicians. It must promote high standards of journalism, and protect both the public interest and the rights and liberties of individuals. It should set and enforce standards, hear individual complaints against its members and provide a fair, quick and inexpensive arbitration service to deal with civil law claims. The Chair and the other members of the body must be independent and appointed by a fair and open process. It must comprise a majority of members who are independent of the press. It should not include any serving editor or politician. That can be readily achieved by an appointments panel which could itself include a current editor but with a substantial majority demonstrably independent of the press and of politicians (Leveson 2012)

However, Justice Leveson's proposals also exhibited some significant differences with the PCI. These included stronger sanctions, such as fines, and oversight of the new regulatory authority by the statutory broadcasting regulator, Ofcom (Brady 2012, Foley 2012).

In tandem, the UK debates post-Leveson also continued to centre on the idea of "statutory" press regulation and the Irish solution. Then Deputy Prime Minister Nick Clegg, leader of the Liberal Democrats, was keen to differentiate what Leveson was proposing from the narrative of statutory control by referring to Ireland:

As the report notes, there is already an example of statutory underpinning in the Irish Press Council, which has been accepted by a

number of UK newspapers. The *Daily Mail*, the *Daily Mirror*, the *Daily Star*, *The Sun*, *The Sunday Times*, the *Mail on Sunday* and the *Sunday Mirror* are all members – they all publish Irish editions. I have not yet heard those papers complain of a deeply illiberal press environment across the Irish Sea (House of Commons 2012)

Eventually, the UK press established another form of self-regulation known as the Independent Press Standards Organisation. It has been set-up outside of any legislative recognition process and does not have the full co-operation of the industry with a number of large publishers, such as the *Guardian* and *Financial Times*, remaining outside of its scope.

#### **4.7: 2013-2014 – PCI criticism and praise**

Irish press regulation continued to operate post-Leveson despite the debate shifting to focus on stronger methods of regulation. In 2013, Denis O’Brien, a wealthy Irish businessman and media owner with significant interests in the Irish print and broadcast sectors, took a defamation action against the *Irish Daily Mail* newspaper over an article it had written about his charity work. During the hearing, O’Brien’s legal team dismissed suggestions that the claimant could have used the PCI instead of the courts. O’Brien’s barrister said the wrong could not be righted by being “batted off by some slap of the wrist from the Press Council” with newspapers “laugh(ing) all the way to the bank” when complainants take the PCI route (Gartland 2013).

From the comments it would seem that O’Brien, who at the time was building but now owns a significant stake in five member publications of the PCI via his shareholding in Independent News & Media, thought little of the complaints handling mechanism. However, academics, the media and the PCI itself were keen to rebut the claims. The PCI Chairman (2013) issued a statement when the case concluded on the basis of queries

“which appear to be based on a lack of knowledge of the record of these institutions, and a lack of awareness of its effectiveness and relevance in the matter of disputes concerning the press”.

In all cases where complaints were upheld, newspapers have published our decisions – some of them of substantial import – upholding the reputations of individuals and correcting serious errors (ibid)

The editor of PCI member publication the *Sunday Independent*, Anne Harris, also disagreed with the claims.

The office of the Ombudsman is but a few short years old. And yet, as anybody with even a basic knowledge of the working of the Irish media knows, it has put manners on us. It has the same deterrent effect on casual waywardness that having a police station in your village does — and yes, I understand the implications of the analogy. We are sometimes careless; we make mistakes. The difference now is — we right them quickly (2013)

Former journalist and lecturer Michael Foley (2014) claimed that “without doubt” the PCI had “had a good first six years”. Elsewhere, another former journalist Tom Felle (2013) argued that “despite [the PCI’s] shortcomings it is finely balanced, culturally sensitive and country specific, essentially an exercise in soft power, and arguably the right fit for Ireland” (2013: 173). Indeed, the PCI continued to insist that it was ensuring a robust method of accountability for the press. Launching its fifth annual report in 2012, the PCI Chairman said the regulator had built a strong reputation among peers in the press regulatory community. He said that the almost 2,000 complaints received were a signal of public confidence in the system and that newspapers had published all decisions against them (2013: 3). A year later, he paid tribute to the press for the industry’s support for the regulatory framework saying that newspapers in Ireland recognised that the PCI

was “not a marketing or a public relations exercise (2014: 3). Not only was the regulator ensuring compliance with its sanction powers, the industry was playing its part at a time of increasing financial pressure, he added. In both the 2012 and 2013 annual reports, the Chairman commended the newspaper industry for “putting its money where its mouth is” (2013: 3) and “maintaining” (2014: 3) financial support for the office.

I would like to express my appreciation, and that of the Council, for the substantial financial commitment of the press industry to our system of independent self-regulation, which is being maintained despite the many financial pressures which the industry continues to experience. The press continue to honour this commitment because the Council is not a marketing or a public relations exercise, but a highly significant development in independent institutional accountability in the private sector and, as such, a substantial contribution to the democratic ideals which the press, among other institutions, exists to serve (2014: 3)

In September 2014, John Horgan retired as Press Ombudsman and was replaced by Peter Feeney, a former broadcaster who also served on the PCI board for year starting in 2013. According to the chairman O’Ceallaigh, the first Press Ombudsman had been “fearless in upholding the right of the complainant to have the decision published properly” (2015: 5).

#### **4.8: 2008-2014 – PCI statistics**

Table 8 contains the main top-level figures covering the work of the PCI during the seven years 2008 to 2014. This information was taken from the PCI’s annual reports from which four complaint categories were identified:

- The total number of complaints received by the PCI in any one year.
- Complaints which were not examined by the PCI i.e. did not reach informal or formal adjudication
- Complaints which were informally resolved or conciliated between the parties
- Complaints which reached a formal adjudication of the Press Ombudsman and/or the PCI

Table 8: PCI total complaints 2008 - 2014<sup>13</sup>

	2008	2009	2010	2011	2012	2013	2014	
<b>Total</b>	372	351	315	343	575	381	350	2687
Not examined	293	285	224	266	491	300	265	2124
Informal assessment	29	18	26	27	35	36	29	200
Formally adjudicated <sup>14</sup>	36	35	51	43	42	29	37	273

#### 4.8.1: Total complaints received

Between 2008 and 2014, the PCI received 2,687 complaints from members of the public (See Table 8). The median number of complaints received every year was 351. As Figure 1 shows, the annual level of complaints made to the regulator showed a small upward trend year-on-year. Occasionally, the PCI has argued that a trend of increasing complaints showed that the regulatory system was both well-known and well-regarded among the Irish public (PCI 2009).

However, the positive trend is mainly down to the 575 complaints made in 2012. According to the Press Ombudsman (PCI 2013: 9), that year saw two articles attract 250 complaints between them, four of which were ‘formalised’ by complainants. Therefore, if these complaints are removed<sup>15</sup>, the number for complaints that year becomes 329, a figure more in line with previous years. As a result, the small upward trend becomes flat, as shown in Figure 2. Thus, concluding that the PCI received more complaints year-on-year as recognition of its growing place in the consciousness of the Irish public is not the complete picture. Indeed, the Press Ombudsman, as noted earlier, has made this point,

<sup>13</sup> The total number of complaints received every year includes a small number of complaints that were still going through the PCI procedures at various stages when the annual reports were being drawn up. Thus, the figures for cases not examined, informal assessment and formally adjudicated do not equal the total.

<sup>14</sup> The formally adjudicated figures are taken from those published by the PCI on its website and listed in the formal complaint database established for further study (see Chapter 5 and Chapter 6).

<sup>15</sup> 250 minus four formalised complaints = 246; 575 complaints that year minus 246 = 329

arguing that the drawing of firm conclusions on the basis of increases or decreases is difficult (PCI 2011: 9).

Figure 1: Total complaints received

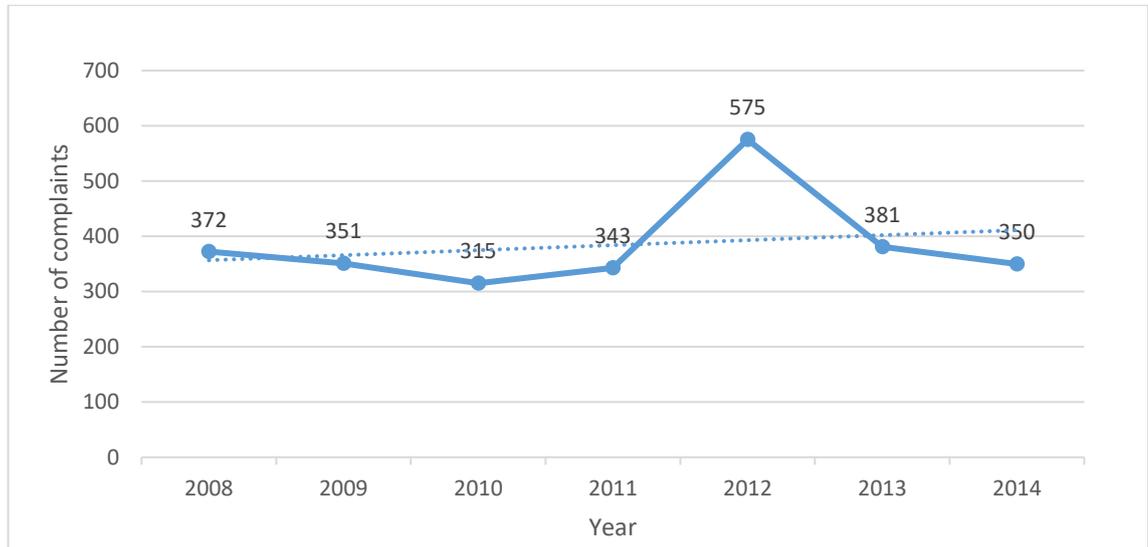
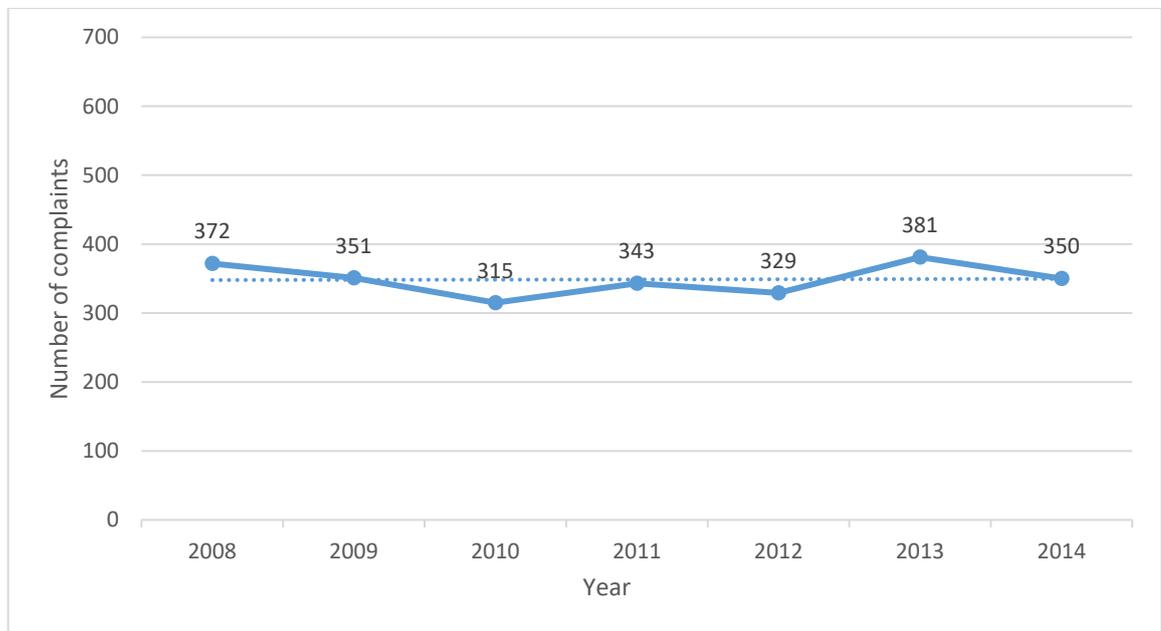


Figure 2: Total complaints (excl. 2012 outlier)



## 4.8.2: Complaints not examined

Table 9: Complaints not formally examined 2008-2014

	2008	2009	2010	2011	2012	2013	2014	TOTAL
<b>Not examined</b>	<b>293</b>	<b>285</b>	<b>224</b>	<b>266</b>	<b>491</b>	<b>300</b>	<b>265</b>	<b>2124</b>
Not processed/Outside remit	81	53	76	108	117	97	97	<b>629</b>
Non-member publications	45	28	20	10	13	20	14	<b>150</b>
Not pursued by complainant	141	157	98	144	356	170	150	<b>1216</b>
Ruled out on 1st reading	26	47	30	4	5	13	4	<b>129</b>

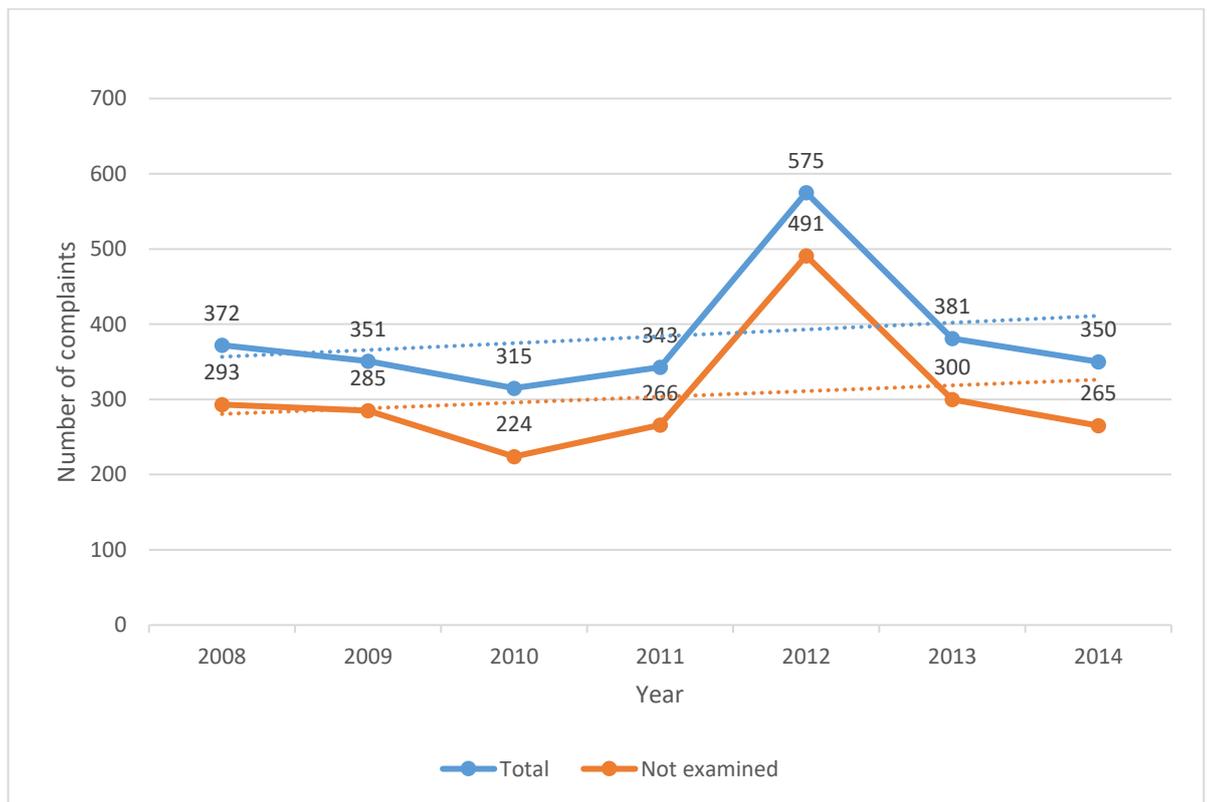
The second significant data point that emerged from PCI documentation was the number of complaints which were not examined. These complaints fell into four categories in the statistics presented by the PCI in its annual reports. The first were those complaints which were not processed or deemed to be outside of the PCI's remit. Complaints in this category included third-party complaints made without the permission of the affected individual and complaints which should have been made to another regulatory body. Second were complaints about non-member publications which could not be investigated by the PCI. Third were complaints which were not pursued by the complainant after initial contact with the PCI. Fourth were complaints which were ruled out on a first reading by the Press Ombudsman who could identify no possible breach of the CoP.

As Table 9 shows, the largest number of complaints which were not examined by the PCI were those not pursued by complainants in the three months allowed to make a complaint (1,216 complaints). This represents 45 per cent of all the complaints received by the office.

In total, complaints which were not processed or examined either formally or informally represented 79 per cent of the complaints the office received, some 2,124 out of the total 2,687. While some of these may have resulted in a positive outcome for

complainants who did not inform the office of the outcome, the vast majority of these complaints were likely to result in no outcome beyond the initial lodging of the complaint. As Figure 3 shows, the trend for complaints not processed or examined mirrored the trend for the overall number of complaints received by the office.

Figure 3: Total complaints Vs. Complaints not examined



### 4.8.3: Informal resolution and conciliation

Table 10: Cases informally resolved 2008-2014

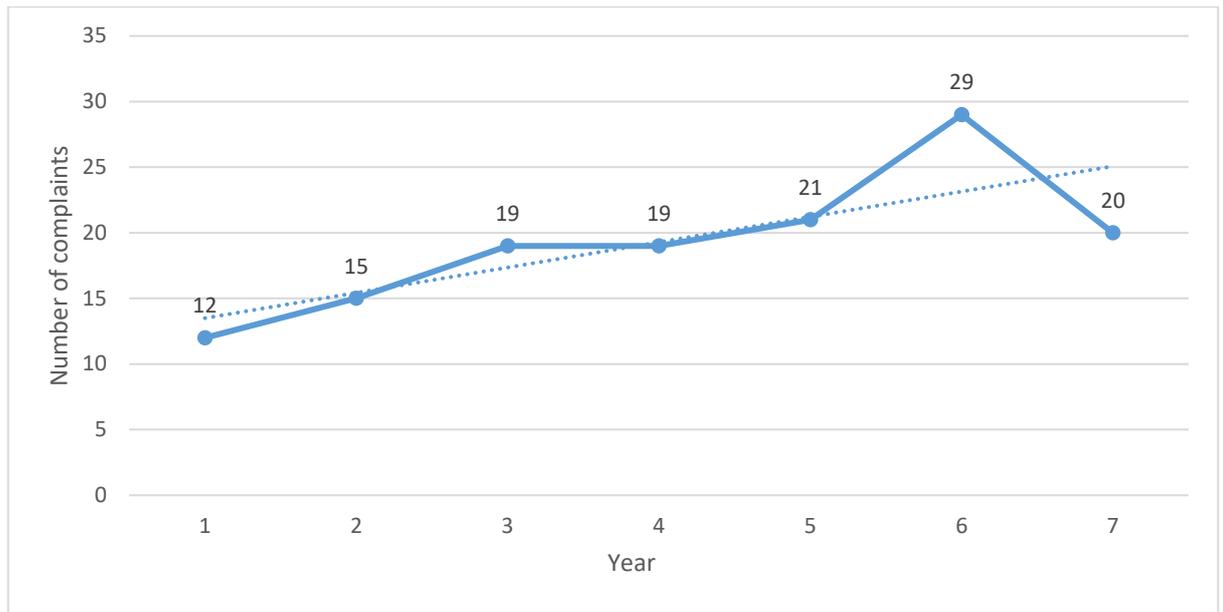
	2008	2009	2010	2011	2012	2013	2014	TOTAL
<b>Informal assessment</b>	<b>29</b>	<b>18</b>	<b>26</b>	<b>27</b>	<b>35</b>	<b>36</b>	<b>29</b>	<b>200</b>
Resolved			13	13		8		<b>34</b>
Conciliated	<b>12</b>	15	6	6	21	21	20	<b>101</b>
Withdrawn by complainant	11	3	<b>7</b>	<b>1</b>	6	3	3	<b>34</b>
Postponed due to legal action	<b>6</b>	0	<b>0</b>	7	8	4	6	<b>31</b>

The next category of complaints were those which were informally resolved (Table 10). There were four categories: resolved complaints, conciliated complaints, withdrawn complaints, postponed complaints. As this chapter has shown, the PCI has regularly highlighted the benefit of informal conciliation and mediation, both of which are represented in the first and second categories of those cases which are dealt with informally by the office. For the purposes of this assessment, both categories are combined to create a combined conciliated/resolved category. The PCI described the category of complaints in the following terms:

If the Press Ombudsman decides that a complaint is one that is appropriate for his Office to deal with, his Office will, in the first instance, seek to have the complaint resolved speedily by a process of conciliation. This will involve his Case Officer acting as a facilitator between the complainant and the editor to see whether a mutually satisfactory resolution of the complaint can be achieved (PCI 2015 online)

In total, some 135 cases have been conciliated/resolved since 2008, representing 5 per cent of the total. Given the PCI's highlighting of the area, one might have expected more and more cases conciliated and resolved informally by the office. The data confirms this. As Figure 4 shows, there is a year-on-year positive trend showing that the office is increasingly dealing with complaints informally prior to reaching the formal adjudication process.

Figure 4: Resolved and conciliated complaints



According to the PCI, cases which were resolved through this process had a number of outcomes including:

- publication of a correction and/or apology
- publication of a clarification
- publication of a letter to the editor from the complainant
- private letter of apology to the complainant from the editor
- publication of a further article about the subject matter under complaint, taking the complainant's views into consideration
- assurances about future coverage of the subject matter under complaint the amendment and/or deletion of online material (PCI 2011: 15)

Indeed, the Press Ombudsman said “there is literally no limit to the range and type of agreement that can be reached through conciliation” (ibid). The analysis of the founding documents also revealed little structure in place around the conciliation process. Table 11 is a random selection of 5 conciliated complaints taken from the office's website (PCI 2015) which demonstrates the variety of conciliated complaints, their outcomes, and also the variation in available data types which made in-depth assessment of these complaints unviable.

Table 11: A selection of conciliated and resolved complaints (Source: PCI)

- A domiciliary midwife complained about the accuracy of an article in *The Irish Times* about a court case in which she was involved regarding an inquiry into allegations of professional misconduct by her. The newspaper published a correction of its error.
- A local authority complained about an article in *The Irish Times* which it said contained a factually incorrect statement. The complaint was resolved when the newspaper published a clarification.
- A man complained about an article regarding an EU Commission Report that he considered was unfair and inaccurate. The newspaper offered to give the complainant a right of reply by publishing a letter to the editor. While the complainant did not take up the offer, the complaint was resolved when a letter from him, setting out his views on the article under complaint, was sent to the newspaper’s editor for consideration in the context of any future coverage of the matters in question.
- A complaint was received on behalf of a convicted paedophile whose address was published in the *News of the World*. The complaint was resolved when the newspaper advised that it had no plans to publish any further articles about the man in question
- A man complained that an article published in *The Kerryman* which included a reference to him contained a number of inaccuracies. The complaint was resolved satisfactory when the newspaper very swiftly gave an undertaking to publish a further article clarifying the matters under complaint

#### 4.8.4: Formal adjudication

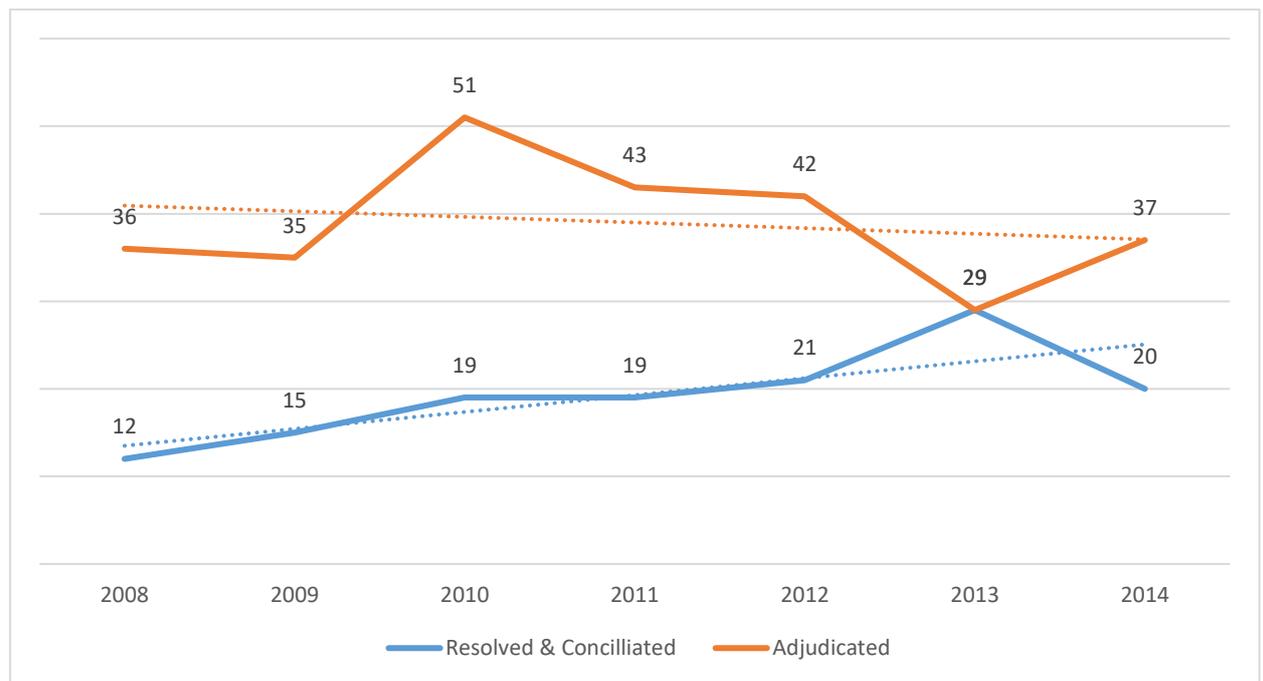
Table 12: Formally adjudicated complaints

	2008	2009	2010	2011	2012	2013	2014	TOTAL
<b>Formally Adjudicated</b>	36	35	51	43	42	29	37	273
Upheld	3	1	2	1	7	1	4	19
Partially upheld	10	13	15	16	13	9	12	88
Dismissed/Not Upheld	20	15	18	16	11	11	16	107
SRA	3	6	16	10	11	8	5	59
								273

An analysis of the published material concerning formally adjudicated complaints published on the PCI’s website showed that in total, some 273 complaints reached the

formal examination stage by either the Press Ombudsman or the PCI, or both. This represented just over 10 per cent of all complaints received by the PCI in the period 2008 to 2014.

Figure 5: Adjudicated Vs. Conciliated complaints 2008-2014



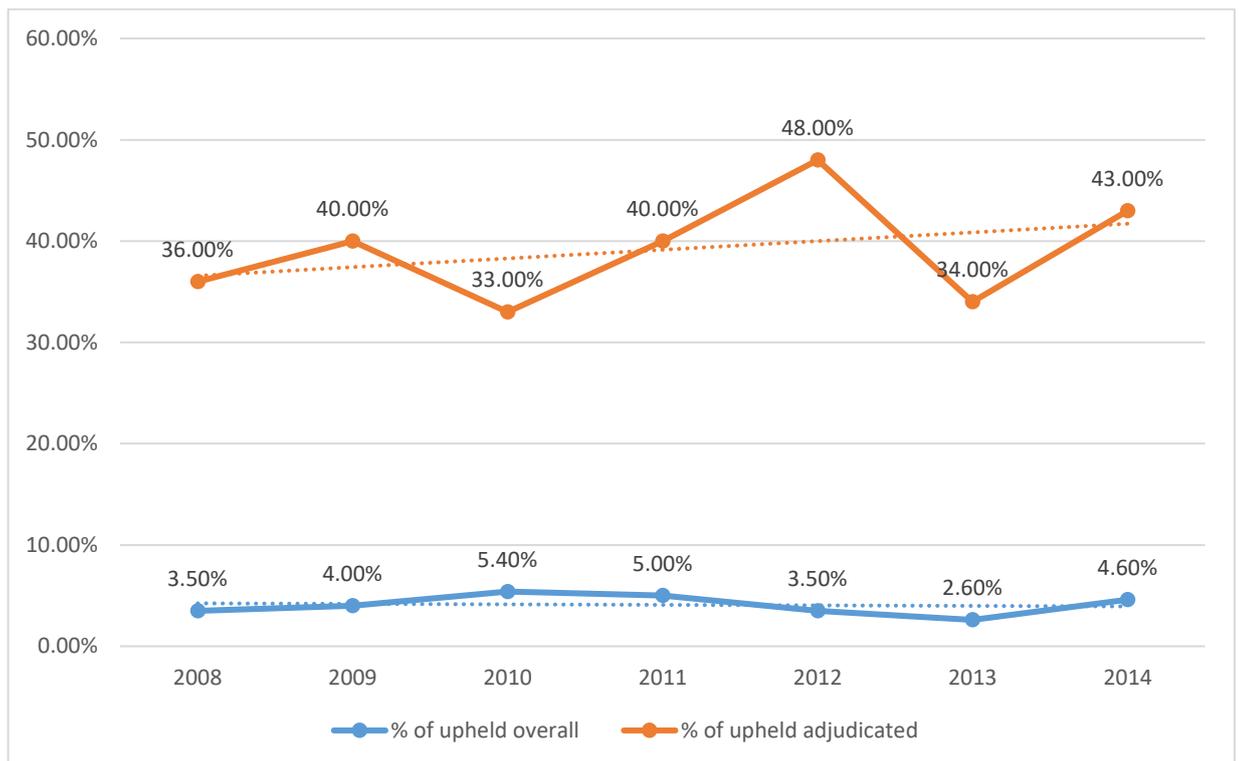
The trend, as shown in Figure 5, suggested a small negative movement in the overall number of cases which reached formal adjudication year on year. This is to be expected, given the emphasis placed by the office on attempting to deal with complaints informally through the conciliation and/or mediation process. This is further corroborated by comparing the conciliated/resolved category. The trend lines suggest that the two category types are converging.

There are four categories of formally adjudicated complaints:

- Upheld in full
- Upheld in part
- Not upheld/dismissed
- Sufficient Remedial Action (SRA)

In total, some 107 complaints were either upheld or partially upheld, with the vast majority, 88, being partially upheld. Of the overall number of complaints, this represented just under 4 per cent, or some 39 per cent of complaints which reached formal adjudication. An identical number of complaints are not upheld or dismissed. A further analysis of the data showed that (Figure 6) the number of upheld or partially upheld complaints marginally increased as a percentage of all adjudicated complaints. However, taken in isolation, upheld or partially upheld cases remained relatively stable when compared to the overall number of complaints the office received.

Figure 6: Upheld complaints as percentage of total Vs. upheld complaints as percentage of adjudications



## 4.9: Types of complaints

Table 13: Types of complaints 2008-2014

	2008	2009*	2010	2011	2012	2013	2014*	Total	Total %
<b>Truth and accuracy</b>	128	140	116	122	292	121	114	1033	38.40%
<b>Incitement to hatred/Prejudice</b>	74	40	36	87	216	28	112	593	22.00%
<b>Privacy</b>	39	70	90	40	40	44	33	356	13.20%
<b>Fairness and Honesty</b>	37	58	44	34	103	49	22	347	12.90%
<b>Fact and comment</b>	38	42	40	38	82	38	19	297	11.00%
<b>Respect for rights</b>	29	40	30	31	64	54	10	258	9.60%
<b>Children</b>	6	20	11	10	10	10	40	107	4.00%
<b>Court reporting</b>	10	10	5	7	13	14	16	75	2.80%
<b>Publication of decision</b>	0	0	0	1	2	0	1	4	0.15%
<b>Protection of sources</b>	0	1	1	0	0	0	0	2	0.07%
Number of complaints	372	351	315	343	575	381	350	2687	

When compiled, statistical information available in the PCI's annual reports showed that complaints under the truth and accuracy clauses of the CoP made up the majority of the complaints received. Some 38.4 per cent of complainants referred to the clause when making a complaint. The next most significant complaint category was incitement to hatred/prejudice. Some 22 per cent of complainants cited this clause when complaining about a newspaper article. Interestingly, privacy complaints made up just 13.2 per cent of the complaints. Given the long history of the topic of press regulation in Ireland and concerns of politicians and others in relation to privacy, the data shows that the PCI actually dealt with a small number of complaints on this topic. There were just 4 complaints under clause 10 of the CoP which governs how newspapers publish an upheld decision of the office.

#### **4.10: Conclusion**

This chapter examined the first eight years of the PCI as presented in the first seven annual reports. As this chapter has shown, during this time, the PCI secured the approval of a number of key stakeholder groups, including politicians and the press. The PCI was also keen to stress what it believed has been as a successful track record in dealing with complaints from the public about the conduct and content of member publications. Indeed, it also claimed to have secured the approval of the public for its work regulating newspaper content.

Assessing whether all stakeholders fully believe that the PCI is a robust and fair accountability mechanism is difficult. Nevertheless, this chapter has analysed the structures and operational blueprint to which the PCI has subscribed. While there have been a number of important changes in this regard – which will be discussed at length in Chapter 6 and 7 - an initial conclusion, based on the information contained in this chapter, would suggest that the PCI is operating as intended. Thus, statements of support from interested parties are understandable.

However, this chapter also references a number of areas which require further analysis. As discussed earlier, some 79 per cent of complaints received by the PCI do not make it to either an informal or formal decision. The PCI identifies a number of reasons for this including that complaints are outside of its remit (629 complaints), that complaints are about non-member publications (150 complaints) and that complaints are outside of the 3-month time limit (1216 complaints) or are ruled out on a first reading (129 complaints). Due to data protection restrictions, these complaints cannot be examined. Nevertheless, the fact that almost 4 in 5 complaints do not make it past the initial lodging of the complaint suggests that further study is needed.

This chapter has also shown how the PCI has regularly made clear that it is keen to utilise its informal complaints handling methods more regularly. The data supports this,

showing that, the number of informally handled complaints are rising. In all, some 5 per cent of complainants went through the informal conciliation/resolution process. However, as Chapter 5 will show, examining these complaints and their outcomes in any rigorous manner as to whether the PCI is ensuring complainants achieve strong accountability outcomes is extremely difficult.

This chapter has also found that, just over 10 per cent of complainants reach a formal adjudication of their complaints with the Press Ombudsman and/or PCI. In isolation, the data and content of this section does not provide the depth required to assess the central research question of this thesis - if independent, incentivised and institutionalised press regulation produces a robust accountability system in the North Atlantic area. Indeed, the Press Ombudsman, as referenced earlier, has cautioned against making conclusions on such headline data. Indeed, arguing that a 39 per cent average for upheld complaints in the formal adjudication process shows a robust regulator says nothing about the actual mechanics of the decisions or how accountability is provided on the back of that decision. Equally, arguing that the regulator is weak on the basis of it formally adjudicating on a small overall number of complaints – with the rest ruled out or resolved – is also problematic.

Nevertheless, the PCI, academics and politicians have consistently promoted its work as ensuring a robust accountability framework for press regulation in Ireland. A top-level examination of the data suggests that such a position does have some merit. Between the work on conciliating complaints, complaints which are resolved, complaints where the publication has offered some form of remedial action and the formally upheld complaints, a significant number of complainants get some form of recognition of their grievance. However, with the words of the late former Minister for Justice, Brian Lenihan, who described the regulatory system as “on the light side of the scale” providing a sharp

counterpoint to the overwhelming positivity about the office's work, a greater level of scrutiny of the data is required beyond the information presented here. This will allow for a full assessment of whether the office is actually achieving a suitable level of accountability when member publications breach its CoP.

## **Chapter 5: Methodology**

### **5.1: Introduction**

As Chapter 2 discussed, a measured political economy analysis (McChesney 1998; Herman and Chomsky 2010; Schudson 1989, 1991, 1997, 2011; Duncan 2014) of the literature suggests that non-institutionalised self-regulation in North Atlantic Liberal press systems (press councils) have failed to provide the public with effective and robust media accountability. The rare examples of substantive research carried out in Canada (Pritchard 2000), the United States (Ugland 2000, 2008), and in Britain (O'Malley and Soley 2000, Frost 2000, 2004, 2015) all support the conclusion that industry power over self-regulatory instruments has infected regulatory structures, procedures and decision-making, resulting in credibility problems and regulatory failures. Thus, this research is attempting to analyse a country – Ireland - where no significant systematic or empirical work has been undertaken in the press regulatory area. Ireland is a worthy candidate for further study due to the unique variation of its regulatory model when compared to the other North Atlantic Liberal countries. In Ireland an independent, legislatively underpinned and incentivised press council has been operating since 2008 (see Chapter 4).

This study examines what impact, if any, the institutionalisation of independent press regulation has on the public service commitment to accountability which is the third element of journalism professionalisation in the North Atlantic Liberal system proposed as part of the media systems classification model established by Hallin and Mancini (2004). Specifically, it will ask how institutionalised, independent press regulation ensures accountability for complainants and if it meets standards of accountability established in the literature (see Chapter 2). In addition, this study will also compare self-regulatory media accountability solutions with independent regulation in Ireland.

This chapter will outline the methodology utilised for examining these subjects. It will begin by looking at the main arguments and areas of controversy in methodological theory. It will also discuss Grounded Theory as a potentially useful basis for the research.

## **5.2: Methodology and methods**

To reach an acceptable standard in academic research, social science study should meet two criteria (King, Keohane and Verba 1994: 14). First, research should pose a question that is important in the real world. It should be “consequential for political, social, or economic life [and] for understanding something that significantly affects many people’s lives” (ibid). Second, research should make a contribution to the existing scholarly work on a particular subject by extending the ability to establish verifiable explanations of some aspect or phenomena.

This research, which is assessing independent press regulation, meets the first criterion. By examining new regulatory mechanisms in place to offer media accountability in Hallin and Mancini’s (2004) North Atlantic Liberal media system, the research is addressing areas of political and social importance. This is highlighted by the long history and current trend of political and societal alarm about the behaviour of journalists and the methods for ensuring compliance with ethical standards (see Chapter 2). As Chapter 2 discussed, journalism in the North Atlantic Liberal press system has outgrown its libertarian foundations to take on social responsibilities. There are many theoretical approaches to understanding journalism, however, as Chapter 2 showed, a growing sense of media responsibility to the media public is part of almost all viable theoretical frameworks.

In order to meet the second criterion of King, Keohane and Verba (1994), research must establish a robust methodological framework and evaluate the methods employed in coming to the conclusions. Without this, the authors argued, research will struggle to

meet the standards required to contribute to scholarly work. It will also fail to establish the verifiable conclusions needed to produce solid new empirical findings.

Researchers often confuse the terms methodology and method. The terms have similar connotations in media and communications research, but both have different - albeit sometimes complimentary - meanings. The literature strongly indicates that both methodology and method exhibit a somewhat symbiotic relationship in academic research. For Kaplan (1964: 23 cited in Brannen 2004: 282) the aim of methodology is the description and analysis of methods, “throwing light on their limitations and resources, clarifying their presuppositions and consequences”. “In sum the aim of methodology is to help us to understand, in the broadest possible terms, not the products of the scientific enquiry but the process itself (ibid).” Kothari and Garg (2014: 6-8) agreed with Kaplan. They argued that methods are the tools used to collect information, the statistical techniques to measure the data and the methods of evaluating accuracy. On the other hand, methodology is the way of systematically solving the research problem and the logic behind it:

When we talk about research methodology we not only talk of the research methods but also consider the logic behind the methods we use in the context of our research study and explain why we are using a particular method or technique and why we are not using others so that research results are capable of being evaluated by the researcher himself or by others (2014: 8)

A potential third characteristic of good academic research is the systematic and empirical testing of public claims made by organisations, governments, academics and so on. Indeed, the words of US inventor Hudson Maxim here are relevant (cited in Kothari and Garg 2014: 5). Maxim argued that “all progress is born of inquiry”. Doubt, he argued, is better than overconfidence “for it leads to inquiry, and inquiry leads to invention”. As

Chapter 2 and 3 showed, the media and politicians in the North Atlantic Liberal countries have regularly praised the work of press councils and other media accountability mechanisms. In the example of press regulation in Ireland – this study’s main interest – Chapter 4 showed that there has been much commentary since the PCI began work in 2008. Occasionally those involved in Irish press regulation have tempered their views about the success of the country’s particular regulatory system. However, on many occasions positive comments have been made about the system’s ability to provide robust accountability for readers. Others too have praised the work of the council (Felle 2013; Foley 2013; Kenny 2014). For the first time, this research will investigate the validity of such claims in an empirical manner.

According to King, Keohane and Verba (1994), there are a further four characteristics to scientific inquiry. First, the goal of research must be inference, whether it be descriptive or explanatory. Inferences are acquired on the back of empirical information which is collected according to a robust methodological framework and the employ of sound methods. The authors’ second characteristic is that such frameworks should be public. If methods are “left implicit, the scholarly community has no way of judging the validity of what was done” and the research is therefore “not a contribution to the social sciences” (1994: 7). The authors accepted that all methods have limitations but by being public, they can be addressed and recognised. Methodological limitations mean that conclusions are almost always uncertain - the third characteristic. The authors correctly argued that making inferences without uncertainty is not science. Finally, they argued that the content is the method, not the material, relying on Pearson’s (1892) argument that “the unity of all science consists alone in its method, not in its material”. Kothari and Garg (2014: 19) agreed with these characteristics, arguing that robust research should be systematic, logical, empirical and replicable.

### **5.3: Research type**

Methodological literature covers many different approaches to social science research. For example, Kothari and Garg (2014: 2-4) pointed out that applied research is an approach which “aims at finding a solution for an immediate problem facing a society”. Empirical research, therefore, “relies on experience of observation alone...It is data-based research, coming up with conclusions which are capable of being verified by observation or experiment”. Such quantitative research can be approached in two ways, inferential experimental and simulation. Simulation, according to the authors, is “characterised by much greater control over the research environment” with “variables...manipulated to observe their effect on other variables”. It involves “the construction of an artificial environment within which relevant information and data can be generated. This permits an observation of the dynamic behaviour of a system under controlled conditions”. This study, as the remainder of this chapter will show, is firmly rooted in the applied and empirical research genre as set out by Kothari and Garg.

Others have expanded on such contributions. Hammersley (2000) examined the differences between practical and scientific research:

‘Scientific inquiry’ refers to research that is designed to contribute to a body of academic knowledge, where the immediate audience is fellow researchers - though the ultimate aim is to produce knowledge that will be a resource for anyone with an interest in the relevant topic. By contrast, practical research is geared directly to providing information that is needed to deal with some practical problem, so that here the immediate audience for research reports is people with a practical interest in the issue; notably, but not exclusively, policymakers and occupational practitioners of the relevant kinds (2000: 223-224)

For Hammersley (2000), the difference between each sub set of research is the validation mechanisms used. In the former, it is about a cautious approach where academics “err on the side of rejection as false what is in fact true, rather than accepting as true what is in fact false” (2000: 224). While this produces sound knowledge, it also renders the process slow, the author argued. In the latter, assumptions are not restricted to those of the academic community due to the fact that practitioners “are dealing with particular phenomena in specific locales that have not usually themselves been subjected to scientific investigation” (ibid). Hammersley goes on to argue that combining both strands of research results in diluted outcomes. However, it is clear that in this instance, in order to meet good research criteria mentioned earlier, this study will contain both elements of practical and scientific research. Hammersley’s categories are too simplistic and there is no reason why this academic study cannot have practical and ‘real-world’ impacts.

A further methodological argument exists about the benefits of qualitative or quantitative research. Indeed such arguments have abounded since scientific inquiry began during the time of the great Greek philosophers (Sarantakos 2012). Whether research be grounded in the positivist (quantitative) or the non-positivist (qualitative) genres, both traditions deliver equally valid, sometimes different, results, and can be suited to different types of research. There is significant disagreement over which type of research produces better research (see King, Keohane and Verba 1994). Nevertheless, there is an emerging consensus that the differences are unimportant beyond the aesthetics. According to King, Keohane and Verba (1994: 4-6), all good research should derive from the same underlying logic of inference irrespective of how it is arrived at. Indeed, Brannen (2004) argued that qualitative and quantitative material should be thought of as complementary. The line of argument is supported by Glasser and Straus (2009: 10-11).

As the remainder of this chapter will show, this study lies in the mixed-method approach in that quantitative data will need illumination from qualitative material in order to establish firm, valid and reliable conclusions.

#### **5.4: Grounded theory**

As Chapter 2 discussed, establishing a suitable theoretical framework for the examination of the subject matter of this thesis – independent press regulation in the North Atlantic Liberal press system - is problematic. There are aspects of the various theories – the healthy scepticism of the political economy tradition, the practicalities of Schudson’s work or the universality of McQuail’s contributions – which appear suitable for studying the concept of media regulation. This study has relied on the geo-political categorisation of press systems established by Hallin and Mancini (2004) and their understanding of the public service ethic as a development of media accountability within the professionalisation movement. Yet, this particular theory has never been systematically employed to study press regulation (Fengler et al. 2014: 69). Indeed, as Fengler et al. noted, the theory has internal inconsistencies which make empirical conclusions potentially unfruitful. Others have also referenced such concerns, with Rioba, (2012) in a PhD on Tanzanian press regulation, noting how generalising about accountability mechanisms in the African country was difficult due to the cultural differences which exist between continents. Thus, conforming to a stated theoretical approach and hypothesising on the basis of a particular framework presents obvious problems. A methodological approach known as Grounded Theory offers the potential to overcome such difficulties.

Grounded Theory is regularly used by qualitative researchers (Charmaz 2014 & 2003). For Charmaz (2014: 87), however, all those who rely on it “assume that the

strength of grounded theory lies in its empirical foundation”. Indeed, Charmaz argued that the studying of data is key because it “sparks...awareness of...implicit meanings and taken-for-granted concerns”. Despite the obvious links to the qualitative genre, Charmaz (2003) correctly pointed out that Glaser, one of the theory’s key figures, argued that grounded theory is a “method of discovery” which:

treat(s) categories as emergent from the data, relie(s) on a direct and, often, narrow empiricism, develop(s) a concept-indicator approach, consider(s) concepts to be variables, and emphasise(s) analysing a basic social process (2003: 11)

Thus, grounded theory is becoming increasingly adopted in mixed-method research. Indeed, Charmaz pointed out (2003: 16) that Glaser favoured the flexible approach to grounded theory in order for researchers to construct their own strategies in carrying out research. Indeed, Charmaz also outlined her own predisposition towards such methodological flexibility in utilising the theory for mixed-methods research (ibid). Grounded theory has also been favoured by other researchers examining press regulation (de Haan 2012).

The theory’s main authors, Glaser and Strauss (2009), argued that grounded theory is about forming theory from data, rather than the traditional step of finding a suitable theory from which to assess data. Glaser and Strauss believed that researchers frequently distort data to fit “great man” theories. Grand theories, while useful, are generally static and rigid, thus potentially limiting the scope and creativity of research. Some “analysts are preoccupied with ‘checking out’ the ‘emergent set of propositions’,” they argued. Indeed many researchers look for negative cases or setting out deliberately to accumulate positive ones to gain further evidence for their hypothesis, Glaser and Strauss argued (2009: 18). Thus, “verifying a logico-deductive theory generally leaves us with at best a

reformulated hypothesis or two and an unconfirmed set of speculations, and, at worst, a theory that does not seem to fit or work” (ibid).

A grounded theory therefore can be used as a fuller test of a logico-deductive theory (2009: 17). Glasser and Strauss conform to the idea of “theory as process”, as a concept that is an “ever-developing entity, not...a perfected product” (2009: 18) as many of the grand theories espouse to be.

The discussional form of formulating theory gives a feeling of ‘ever-developing’ to the theory, allows it to become quite rich, complex, and dense, and makes it fit and...easy to comprehend. On the other hand, to state a theory in propositional form, except perhaps for a few scattered core propositions, would make it less complex, dense, and rich, and more laborious to read. It would also tend by implication to ‘freeze’ the theory instead of giving the feeling of a need for continued development (2009: 18)

In order to generate successful data for the abstraction of theory, Glasser and Straus (2009: 20-30) argued that ‘categories’ and ‘properties’ need to be identified as elements of a potential theory. A category is a conceptual element of a theory, they argued (e.g. media accountability). On the other hand, a property is an aspect of the element (e.g. a press council). Concepts are thus generated from the data which should be analytic (“sufficiently generalised to designate characteristics of concrete entities”) and sensitising (“yield a meaningful picture, abetted by apt illustrations that enable one to grasp the reference”). Thus, generating hypothesis “requires evidence enough only to establish a suggestion – not an excessive piling up of evidence to establish a proof, and the consequent hindering of the generation of new hypothesis”.

In the beginning, one’s hypotheses may seem unrelated, but as categories and properties emerge, develop in abstraction, and become related, their accumulating interrelations form an integrated central

theoretical framework – the core of the emerging theory. The core becomes a theoretical guide to the further collection and analysis of data (2009: 32)

Notwithstanding their critique of formulaic theories, Glasser and Strauss also correctly pointed out that the wide field of established theory remains an important consideration in any academic study.

Substantive theory is a strategic link in the formation and generation of grounded formal theory. We believe that although formal theory can be generated directly from data, it is most desirable, and usually necessary, to start the formal theory from a substantive one. The latter not only provides a stimulus to a ‘good’ idea, but it also gives an initial direction in developing relevant categories and properties and in choosing possible modes of integration. Indeed, it is difficult to find a grounded formal theory that was not in some way stimulated by a substantive theory (2009: 60)

In other words, it is best to study the grand theories and use these in order to establish a broad theoretical base for the study while maintaining distance when generating and analysing data. Thus, this study’s reliance on Hallin and Mancini’s work (2004) as a base for examining the broader question of effective press regulation remains relevant and suitable for an analysis of data according to the grounded theory approach.

### **5.5: The research method**

The complaint-handling work of the PCI (PCI) falls into three categories. These are covered in detail in Chapter 4. The categories are complaints which were not examined, those which reached an informal resolution and those which were formally adjudicated on by the Press Ombudsman and/or the PCI.

In early 2015, this researcher contacted the PCI to request access to case files for all complaints under all three categories. For complaints not examined, the office said that complaint files were not available for inspection due to data protection legislation. As a result, the only data available for this category is the overall statistical information in the PCI's annual reports thus making the category unsuitable for any in-depth empirical research. In the second category, data protection issues were again cited by the PCI preventing full access to the complaint files in order to make a full assessment of these complaints. The PCI publishes a basic description of the conciliated complaints on its website. However, much of the material does not include the full information behind the complaint, i.e. the date of the original article, the newspaper, the complainant, details of the correction/clarification/letter of apology and so on. Thus it was deemed unsuitable for any systematic categorising or analysis.

The third category – those complaints formally adjudicated – produced the best avenue for an in-depth examination of how the PCI meets the accountability criteria. In this category the decisions either upholding or dismissing complaints generally included important information for the study; such as article dates, newspaper title, complainant name, nature of complaint, date of adjudication, appeal date and so on. As Chapter 4 discussed, the only available sanction power held by the PCI is the publication of its upheld decisions in offending member publications according to the publication guidelines it upholds. Thus, the availability of core complaint data, mentioned above, produced an avenue for an assessment of this key accountability mechanism. This information allows for a near complete assessment of whether member publications are meeting the publication of decision criteria laid down by the PCI (see Table 14) and how the PCI manages formally adjudicated complaints.

It was decided that a full picture of the PCI’s work in this category could therefore be established by examining all of the upheld or partially upheld complaints (107 in total), locating the publication of the decision in each corresponding publication and recording data (Table 14) from each publication. This would allow the study to examine if the office’s only enforcement sanction – the publication of decisions – was being met by member publication in full. In addition, a variety of factors – such as the time taken to process complaints, the types of complainants, the most commonly upheld principles and so on – could also be examined by studying the decisions of the PCI from the some 273 formally adjudicated complaints it dealt with between 2008 to 2014.

*Table 14: PCI Publication Guidelines*

<b>Sanction category</b>	<b>Detail</b>
<b>10 working days*</b>	Decisions must be published within ten working days of the Ombudsman/PCI decision
<b>Page</b>	Decisions must be published on the same page, or further forward. Where offending articles were published on page 1, decisions must be published on one of first four editorial pages
<b>Day</b>	Decisions must be published on the same day of the week
<b>Edited/Commentary/In Full**</b>	Decisions must be published without any editing, editorial commentary or omissions. This includes the use of images, newspaper logos and so on
<b>Logo</b>	Decisions must carry the logo of the office
*despite change in 2009 to “promptly”, for the purposes of this study the 10 working day limit was used throughout all years of study	
** After the 2009 change, newspapers did not have to publish the full decision if parts of it were not upheld against it. Thus, after this, the word counts of only the upheld parts of the decisions were recorded for comparison	

As adjudicated complaints form the basis of the office’s only formal accountability function, the concept of accountability is integral to the in-depth study the formally adjudicated complaints. Chapter 2 examined the work of Schedler (1999) and McQuail (1997), both scholars who have studied the concept. According to an analysis of both

works, accountability contains two related elements: answerability and enforcement. For both authors answerability includes elements such as responsiveness, consistency and transparency, while enforcement deals solely with the idea of a sanction. In addition, Ugland and Breslin (2000), who have examined press self-regulation in the US, argued that a press regulatory regime requires legitimacy in order to establish the moral authority to sufficiently regulate press standards. Legitimacy, for the authors, means a regulator must “act within the boundaries of the power conferred upon it...in ways that advance the purposes for which it was created, and [follow] its own publicly communicated procedures” (2000: 234). For Ugland and Breslin (2000), moral authority is the ability of regulators – through credentials, impartiality, deliberations and judgments – to persuade constituents that their decisions and rationales are worthy of adherence, not just attention. Thus, legitimacy is part of the answerability element of accountability, while moral authority confines to the enforcement element of accountability. These studies prompted the establishment of a number of areas for analysis (see Table 15).

Table 15: Accountability framework

Answerability (A)	Enforcement (E)
Consistency & transparency/ Legitimacy <ul style="list-style-type: none"> <li>• Complaint outcomes per complainant backgrounds</li> <li>• Complaint outcomes per member publications</li> <li>• Outcome of appeals to PCI</li> <li>• Complaint outcomes per CoP principles</li> </ul> Responsiveness/Legitimacy <ul style="list-style-type: none"> <li>• Complaint timeframes</li> </ul>	Sanction/Moral Authority Compliance with publication guidelines: <ul style="list-style-type: none"> <li>• Promptly (10 working days)</li> <li>• Same page, or further forward/page1 = first four pages</li> <li>• In full and unedited &amp; logo</li> <li>• Same day</li> </ul>

In order to examine the three areas within the accountability framework, the decisions of the Press Ombudsman and PCI required individual examination in order to extract a variety of data points. At the start of this phase of the research, a sample of 20 complaints

were examined in chronological order from January 2008 in order to consider the number of fields of data which could be collected to study the different elements of accountability (Table 15). The following data types were identified (Table 16).

*Table 16: Data categories*

Data type	Accountability framework	Assessment type	Rationale
Publication/Title	A	Consistency	Table of worst offenders; examination of potential bias towards particular members
Dates: Article, decision, PCI hearing, publication of decision	A&E	Responsiveness, Consistency	Compare with dates to assess responsiveness of regulator and examine speediness of publication of decision by member publication
Article day & publication of decision day	E	Sanction	Compare to assess compliance with enforcement rules
Article page & publication of decision page	E	Sanction	Compare to assess compliance with enforcement rules
Principles cited, Principles breached, Principles not breached	A	Consistency	Compare to assess consistency of decisions
Complainant: Name, sex, background	A	Consistency, transparency	Assess outcome bias and consistency per complainant category
Decision	A	Consistency	Macro data on upheld, partially upheld and dismissed complaints
PCI appeal, appellant and outcome	A	Consistency, transparency	Assess outcome bias and consistency per appellant
Decision length & publication of decision length	E	Sanction	Compare to assess compliance with enforcement rules
Case notes, complainant detail, complaint detail	A	Consistency, transparency, responsiveness & sanction	Qualitative data noted on particulars of each complaint

The retirement of the first Press Ombudsman, Prof. John Horgan, was confirmed in September 2014. This presented a natural time period for the study, i.e. from January 2008 to September 2014.

The initial data collection phase began in January 2015 when various types of relational database software was tested such as Microsoft Excel, Nvivo and so on. Microsoft Access was chosen and a two-day training course was completed by the researcher. Once the training was completed, a database was designed and tested in January and February 2015. Microsoft Access was chosen for a number of reasons. First, it is a widely available piece of software available as part of the suite of other commonly available Microsoft programmes. This availability meant that this study's dataset can be made available to other researchers as a means of proving the reliability of the data gathered. Second, despite being a complex programme, Microsoft Access can be learned quickly and training in its use is widely and readily available. Access is a powerful relational database which allows for an endless number of queries to be raised against data for the testing of hypothesis and the production – and visualisation – of data.

Once the database was tested, the field work phase began in mid-February 2015. This process entailed the recording of the above fields of data for each formally adjudicated complaint published on the council's website (273 complaints). For each complaint that was upheld, or upheld in part (i.e. those resulting in a decision being published in a member publication), the corresponding publication of the decision was located. As the date of the publication of the decision is not recorded in a public forum by the PCI, this required a number of searches. These searches were carried out in a number of ways. First, online databases such as LexisNexis and the Irish Newspaper Archive were searched using key words from each decision. This search was limited as a number of the publications and many Irish editions of UK titles were unavailable on these databases.

For those unavailable via desk research, visits to the National Library of Ireland were required. Here, publications could be searched in the weeks and months after the decision date in order to locate the publication of the decision in the offending publication. This process was laborious and produced inconclusive results as a number of publications of upheld decisions could not be located despite numerous searches. For those which could not be located, a final step entailed sending a list of the unaccounted for upheld or partially upheld complaints to the PCI. From there, the PCI could locate the complaint file and source the PCI's copy of the publication of the decision – a publicly available, if difficult to locate, document. The PCI kindly supplied the researcher with this material. In instances where the PCI did not hold a copy of the published decision, it identified the date of the publication of the decision which could then be easily searched via the other two databases. This field research phase lasted until July 2015.

Once complete, the researcher began to extract a variety of datasets from the gathered data according to the categories established within the accountability framework (above). This material forms the basis for the discussion and analysis in following chapters.

## **5.6 Comparative**

As outlined in previous chapters, this study is confined to the North Atlantic Liberal area – Canada, the United States, the UK and Ireland – identified by Hallin and Mancini (2004). Thus the research required comparative analysis of the work of a press regulatory organisation in another country in order to highlight any differences between self and independent regulation. The literature review examined a number of studies of press regulatory regimes in North Atlantic countries (Pritchard 2000; Ugland 2000, 2008; O'Malley and Soley 2000; Frost 2000, 2004, 2015). However, due to the limited nature

of this research, and the unavailability of data required to conduct a comparison, many of the regulators were excluded.

*Table 17: PCC/PCI comparative data*

Type of data	Rationale	Outcome
Complaint type	Comparison of the types of complaints received by both bodies and those which make it to formal adjudication	Data on how complaints are treated in self versus independent regulators
Macro figures	Comparison of overall figures for how bodies operate: total complaints received annually, those which are not examined, those which are formally adjudicated, upheld and so on	Establish differences in headline data in self versus independent regulators
Upheld & rejected complaints	Compare percentages of complaints that are upheld	Outline possible differences in negative findings of each body
Conciliation & adjudication	Trends over time period in number of complaints that are formally adjudicated on versus those that are conciliated	Test for possible similarities or differences in approach to complaint handling

Nevertheless, Frost (2000, 2004, 2015) has produced in-depth analysis which examines the work of the UK's Press Complaint Commission (PCC's), a self-regulatory organisation which is no longer in operation. Despite the fact that the PCC's work has been discredited by many (O'Malley and Soley 2000; Frost 2000, 2004, 2015; Leveson 2014), it provided a viable case for comparative analysis for a number of reasons. First, it was a self-regulatory body set up by the press and controlled by the press thus conforming to the concept of self-regulation and producing a test case for comparison with an independent regulator. Second, Frost (2000, 2004, 2015) produced useful data which can be compared to similar data sets collected during the study of Irish press regulation thus providing obvious comparative opportunities. Third, the PCC operated in the UK which is part of the Hallin and Mancini's North Atlantic model thus allowing for

an examination of how institutionalised press regulation differs from a self-regulatory, non-institutionalised set-up within the same media system. Fourth, the PCC, like the PCI, operated in a hyper-competitive news market where titles are driven mainly by profit.

Frost's data provided potential comparative opportunities in the following areas (Table 17).

### **5.7: Conclusion**

A number of issues emerged during the research design which need to be highlighted. First, the lack of a pre-PCI self-regulatory body in the test case country means conclusions on how institutionalised and independent regulation impacts on the public service ethic, or the other areas of professionalization – autonomy and norms (Hallin and Mancini 2004) – are limited. Such a variable would have provided robust comparative data for an examination of how self and independent forms of press regulation operate. However, tentative conclusions are acceptable in academic research (King, Keohane and Verba 1994: 7). Indeed, the PCC, as outlined, does provide comparative opportunities, which are key to academic research in the grounded theory tradition (Charmaz 2008: 82).

In addition, as referenced earlier in this chapter, some complaint data could not be examined due to data protection laws. As a result of the unavailability – which was unavoidable – of full information on all complaint types, a full and exhaustive assessment of the work of the PCI could not be conducted. By assessing the two other complaint types – those ruled out on first reading and those which are informally conciliated – according to the criteria established for examining the third complaint type – formal adjudications – the research could have reached more substantive conclusions. Nevertheless, such a weakness is minor as the data which forms the basis of the research derives from the work of the PCI in respect of its only formal and measureable accountability function thus providing as complete a picture as possible of how the

institutionalisation of independent press regulation impacts on the public service ethic in journalism professionalisation.

The limited geographic nature of the study is also worthy of note. As outlined in Chapter 2, Hallin and Mancini (2004) have produced a media systems theory which established obvious geo-political boundaries. Indeed, other researchers have noted the potential for inconsistencies across and within these borders (Fengler et al. 2014: 69). However, the North Atlantic's libertarian tradition, the media's growth into a social responsibility and the political and industry preference for self-regulatory techniques of press regulation – all of which have been highlighted in Chapter 2 – produced a natural test-bed for this research, despite methodological concerns. Indeed, the literature suggests that there are now three models of press regulation: self-regulatory, state-regulatory and independent. Given the recent history of press regulation in other countries in Europe and further afield (see Fielden 2012; Fengler, Eberwein and Leppik-Bork 2000; Bertrand 2000, 2003) and the regular favoring and institutionalisation of state regulation, the geographic limitations of studying the development of the self-regulatory to the independently regulated – a 'third way' – becomes a strength of this research as the North Atlantic area has not seen state interference in regulatory structures thus producing a controlled test area.

## **Chapter 6: Accountability and independent press regulation**

### **6.1: Introduction**

This chapter examines the accountability functions of the Press Ombudsman and the PCI.

As outlined previously the focus of this research is on the accountability function of the PCI in its first period of operation; from 2008 to 2014, during the tenure of the first Press Ombudsman. In these years the PCI formally adjudicated on 273 complaints that are the focus of the remainder of this chapter.

The complaint data is examined according to a conceptual framework established in the wider literature outlined in Chapter 5. This framework is based on the work of Schedler (1999) and McQuail (1997) who defined accountability as a concept made up of two core elements, answerability and enforcement. For Schedler (1999: 14-15), answerability relates to those being held accountable and the accounting organisation. Indeed, much of the literature around the concept of media accountability focuses on how the media can account for its actions via the answerability process. In this research, the accountability function of the accounting organisation – the PCI – is being assessed. Thus, when answerability is referenced, it relates to how the PCI ensures its work meets the standards of answerability described in the literature.

The process of answerability concerns an obligation to respond to questions. Its mission, Schedler argues, is finding facts and generating evidence, and establishing a “dialogic relationship” between the accountable and accounting actors. McQuail adds that answerability “refers to the readiness” of involved actors to achieve reconciliation (1997: 517). For Sinclair (1995: 221), securing accountability – in terms of both answerability and enforcement – involves “shared agreement about how it is manifested”. In other words, the agreement between the professional body being held accountable and the accounting body establishes the criteria for accountability. Thus, in order to examine

the concept of answerability around the PCI, the research must assess whether its promise of being a “fair” (consistent) and “quick” (responsive) regulator stands up. This task is undertaken by means of an analysis of the consistency of complaint outcomes when gender, complainant background, legal representation, member publication, PCI appeals and CoP principles are examined. To examine responsiveness, the analysis will look at complaint timeframes.

This chapter also will analyse the enforcement of the PCI’s chief sanction and compliance with its rules concerning publication of its decisions. As discussed in Chapter 4, the publication of the decisions of the Press Ombudsman and/or the PCI is the only sanction available to the regulator when member publications are adjudged to have breached the CoP. These guidelines are supported by Principle 10.1 of the CoP which states: “When requested or required by the Press Ombudsman and/or the Press Council to do so, the press shall publish the decision in relation to a complaint with due prominence.”

In order to meet this due prominence requirement, the decisions must follow a set of “publication guidelines” drawn up by the PCI. The guidelines contain a number of elements, which, for the purposes of this analysis, were condensed into four categories. First, the guidelines require that member publications publish a negative decision “promptly”. In the first two years (2008-2010), the PCI asked that members publish decisions within 10 working days. For this analysis, the 10 working day limit was used as a measure of promptness. Second, members must publish a decision on the same day as the offending article. Third, the decision must be published on the same editorial page or further forward, or, where an offending article appeared on the front page, on one of the first four editorial pages. Fourth, the decision must be published unedited, without

editorial commentary, including headlines, and with the logo of the Press Ombudsman and/or PCI (see Table 14, p.140).

Finally, this chapter also presents a brief comparison of the Press Ombudsman and PCI with the UK's Press Complaints Commission (PCC) based on complaint data gathered by Frost (2000, 2004, 2015) prior to the PCC's closure in 2014.

## **6.2: Consistency – Member publications**

Of the 273 complaints formally examined by the Press Ombudsman and PCI that were published on its website, the vast majority of the complaints were about articles which appeared in national newspapers with 251 (92 per cent) of the cases involving national daily and Sunday publications. The PCI does not formally publish a table of the so-called 'worst offenders' in annual reports. This information is, however, available by examining each individual complaint and collating the data. According to newspaper titles extracted from the complaint database (Table 18), the *Sunday World* was the subject of the highest number of formally adjudicated complaints. Some 34 complaints lodged against the publication reached formal adjudication, 16 of which were upheld in some form. The *Irish Independent* had the second-highest number of formal complaints lodged against it, at 30. An identical number of complaints, 16, were upheld in some form against the publication. The *Irish Times* was the third most complained about member publication when formal adjudications are examined. The Press Ombudsman and PCI processed 29 complaints against the newspaper, five of which were upheld in some form. The two other publications among the top five was the *Herald* and the *Sunday Independent* with 26 and 22 complaints reaching formal adjudication respectively. The *Herald* received 8 negative rulings, while the *Sunday Independent* recorded 10. Of these five, four titles are published by INM, Ireland's largest newspaper group (see O'Brien and Rafter 2012). It

is a publicly listed company and includes shareholders such as Denis O’Brien, who also holds extensive interests across the wider Irish media industry. The remaining title is published by the Irish Times Trust (see O’Brien 2008). The trust was set up in 1974 to maintain the independence of the newspaper and has established a set of principles to guide the newspaper’s journalists (O’Brien 2008: 200-207). It also insulates the newspaper to a degree from the pressure to record significant profit (O’Brien 2008: 274).

Table 18: Member publication (national) complaints

<b>Publication</b>	<b>Type</b>	<b>Owner</b>	<b>All</b>	<b>Upheld</b>	<b>% upheld</b>
<i>Sunday World</i>	Tabloid	INM	34	16	47%
<i>Irish Independent</i>	Mid-market	INM	30	16	53%
<i>Irish Times</i>	Broadsheet	Irish Times Trust	29	5	17%
<i>Herald</i>	Tabloid	INM	26	8	31%
<i>Sunday Independent</i>	Mid-market	INM	22	10	45%
<i>Irish Mail on Sunday</i>	Mid-market	DMG	21	11	52%
<i>Irish Daily Mail</i>	Mid-market	DMG	14	5	29%
<i>Irish Sun</i>	Tabloid	News UK	14	5	29%
<i>Irish Daily Star</i>	Tabloid	INM/N&S	12	5	42%
<i>Irish Examiner</i>	Mid-market	Landmark	10	3	30%
<i>News of the World</i>	Tabloid	News UK	9	4	44%
<i>Sunday Times</i>	Mid-market	News UK	8	3	37%
<i>Daily Star Sunday</i>	Tabloid	INM/N&S	7	4	57%
<i>Sunday Tribune</i>	Mid-market	INM/TN PLC	7	3	43%
<i>Irish Daily Mirror</i>	Tabloid	Trinity Mirror	3	0	0%
<i>Irish Sunday Mirror</i>	Tabloid	Trinity Mirror	2	1	50%
<i>Irish Farmers Journal</i>	Specialist	Agricultural Trust	2	1	50%
<i>Sunday Business Post</i>	Broadsheet	Sunrise Media	1	0	0%

Of these five publications, an assessment of the complaint outcomes showed differing levels of upheld complaints (Table 18). The *Sunday World*, *Irish Independent* and *Sunday Independent* all recorded negative outcomes as a percentage of formally adjudicated complaints above 45 per cent, with the *Irish Independent* found to be in breach of the CoP in more than half of the cases against it. Figure 7 has taken all three data types – total complaints, upheld complaints and the percentage of upheld complaints – and shows

that there are varying levels of upheld complaints for each publication. In particular, Figure 7 shows that only 17 per cent of the 29 complaints formally adjudicated against *The Irish Times* resulted in a negative outcome for the newspaper. This compares with 53 per cent for the 30 complaints against the *Irish Independent*, and an average of 44 per cent across the other four titles in the top five list. Figure 7 essentially shows that complainants had a less than one in five chance of having a positive outcome of their case against the broadsheet *Irish Times* while complainants taking cases against the *Sunday World*, *Irish Independent* and *Sunday Independent* had a far better opportunity of success, around one in two in each case.

Figure 7: Top five publications

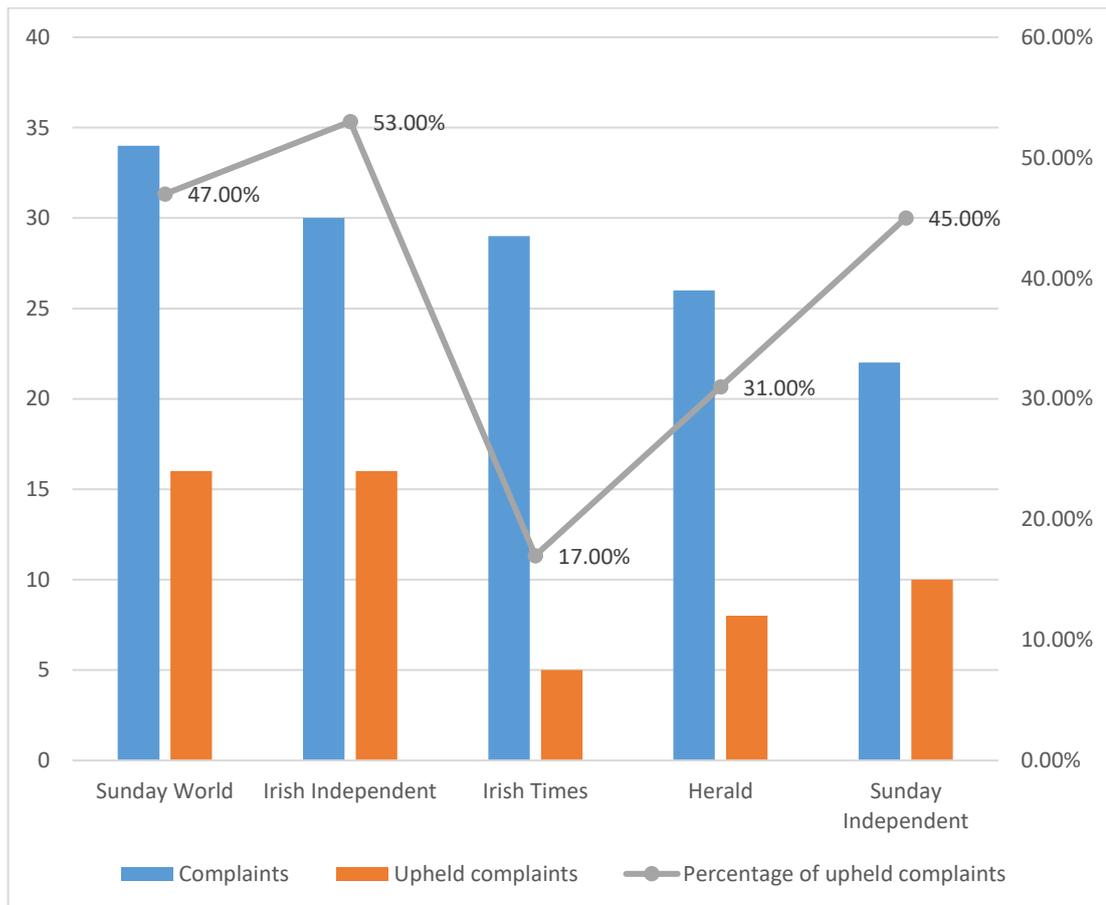
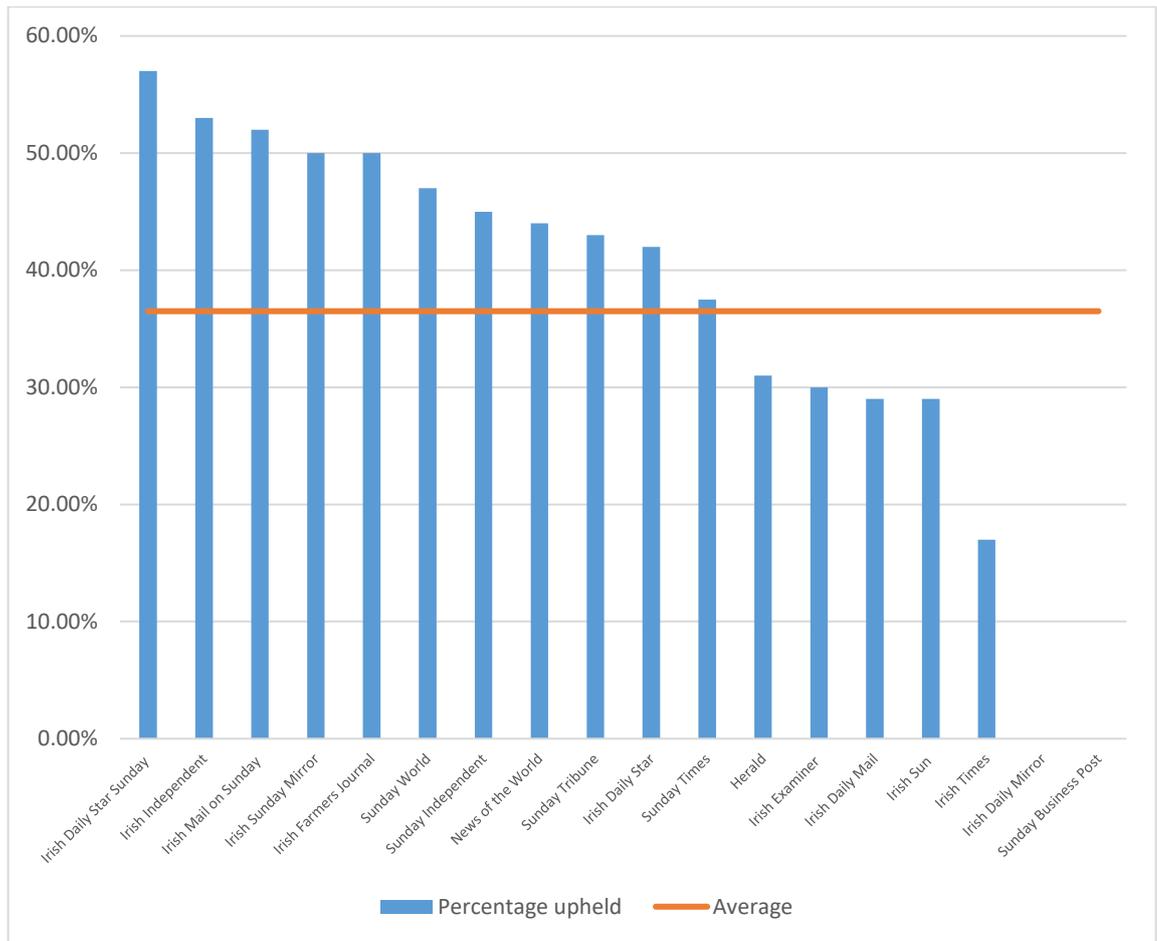


Figure 8 shows how many complaints are upheld as a percentage against all national member publications. The *Irish Daily Star Sunday*, which was owned jointly by INM and UK publisher Northern and Shell before ceasing publication in 2011, received four negative decisions from seven cases taken against it, with a 57 per cent success rate for complainants. As outlined above, the *Irish Independent* had a significantly higher number of complaints formally examined, at 30, but had a similar level of upheld complaints at 53 per cent. The *Irish Mail on Sunday*, a mid-market newspaper, had 52 per cent of the 21 complaints against it upheld in some form.

At the other end of the scale, *The Irish Times* recorded the lowest upheld rate at 17 per cent despite being a publication which dealt with among the highest level of formally adjudicated complaints. The *Irish Sun* recorded an upheld rate of 29 per cent for the 14 cases against it, with the *Irish Daily Mail* recording an identical level of complaints examined and upheld. In a similar vein, the *Irish Examiner* recorded an upheld rate of around 30 per cent off 10 complaints with the *Herald* seeing a similar level of complaints upheld against it from a total of 26 cases formally adjudicated by the Press Ombudsman and PCI.

Figure 8: Percentage of upheld complaints (national newspapers)



The overall average of complaints upheld against the national press is 36.5 per cent, the data showed. In other words, complainants were likely to succeed in just over one in three complaints which were formally examined by either the Press Ombudsman, PCI or both. As the analysis showed, there are wide variations either side of this figure. In addition, a number of publications – the *Irish Daily Mirror*, *Irish Sunday Mirror*, *Irish Farmers Journal* and the *Sunday Business Post* – all recorded less than 3 formally adjudicated complaints in the period from 2008 to 2014. This meant that where cases were upheld it distorted the data.

### 6.2.1: Publication by ownership

The national newspaper market in Ireland is dominated by four publishers, INM, DMG Media, News UK and the Irish Times Trust. Table 19 shows the total number of formally adjudicated complaints, those of which were upheld and the percentage of upheld complaints connected with publications owned by each news group.

Table 19: Complaints per news group/company

News Group	All complaints	Upheld complaints	Percentage upheld
DMG	35	16	45.71%
INM	138	62	44.93%
News UK	31	12	38.71%
Irish Times	29	5	17.00%

DMG Media, publisher of the *Irish Daily Mail* and *Mail on Sunday*, had 35 complaints against its publications reach formal adjudication. Some 16 complaints were upheld in some form. Ireland's largest publisher, INM, which published the *Irish Independent*, *Sunday Independent*, *Sunday Tribune*, *Irish Daily Star*, *Herald*, *Irish Daily Star Sunday*, and *Sunday World* during the period under study, dealt with 138 complaints in total over the time period. A total of 62 of these resulted in negative decisions against its publications, giving complaints a 45 per cent success rate. News UK, the publisher of the *Irish Sun*, *News of the World* and the *Sunday Times*, had 31 complaints, with 12 of these resulting in negative outcomes for the group, also around 39 per cent<sup>16</sup>. The Irish Times Trust, which publishes the *Irish Times*, recorded 29 complaints. As noted above, just five of these were upheld in some form, meaning complainants had a 17 per cent chance of

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<sup>16</sup> The *Sunday Tribune*, *Irish Daily Star Sunday* and *News of the World* are no longer published

receiving a positive outcome against the newspapers in the formal adjudication service. Trinity Mirror and Landmark Media, as well as a number of other smaller publishers, saw their publications receive only small numbers of complaints making any analysis meaningless.

*Table 20: Complaints for domestic and UK-based titles*

<b>Type</b>	<b>All complaints</b>	<b>Upheld complaints</b>	<b>Percentage upheld</b>
<b>Domestic</b>	161	62	38.51%
<b>UK-based</b>	90	38	42.22%

As referenced in Chapter 3, much debate around the setting up of the Press Ombudsman and PCI focused on the perceived influence of the UK-based press. Table 20 analyses and compares the complaints adjudicated against both the domestic Irish press (publications that are wholly Irish) and the UK-titled Irish editions<sup>17</sup>. It shows that the majority of the 251 complaints against national newspapers which reached formal adjudication, 161, concerned ‘domestic’ newspapers. Of these, 62 complainants achieved a positive outcome from their complaint, or 38.5 per cent. In contrast, a smaller number of complaints, 90, were taken against the Irish editions of UK-based newspapers. Some 38 of these were upheld in some way, or 42 per cent.

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<sup>17</sup> The Star titles were included in the UK-based category for this analysis. However, there is a case to be made for including these as domestic titles, largely due to the significant differences between the UK and Irish publications. When the Star titles are included in the UK figures, the “percentage upheld” column is 39.4% for Irish titles and 40.8% for UK-based titles on the basis of 180 and 71 formally adjudicated complaints respectively.

### 6.2.2: Publication by type

The analysis of publications also showed that complainants succeeded in 45.5 per cent of their cases against mid-market newspapers (Table 21). Some 112 formally adjudicated cases related to the publication type with the Press Ombudsman or PCI upholding 51 of the claims in some form. In the tabloid sector, complainants achieved their objectives in around 40 per cent of cases, with 43 instances of upheld complaints from a total of 107 claims. In stark contrast, some 30 complaints were levelled against broadsheet newspapers – the majority of which was the 29 cases levelled against the *Irish Times*. Some 5 of these were upheld, or just over 16.5 per cent.

Table 21: Complaints per newspaper type

Type	All complaints	Upheld complaints	Percentage upheld
Tabloid	107	43	40.19%
Mid-market	112	51	45.54%
Broadsheet	30	5	16.67%

Some 18 formally adjudicated cases involved the regional or local press. Just four of these cases were upheld in some form, meaning complainants had around a one in five chance of receiving a positive outcome. Just one case was taken against a magazine, which was upheld, while three complaints reached adjudication in relation to student publications, with two of the cases upheld in some form.

### 6.3: Consistency – Complainant background

In 269 of the formally adjudicated complaints, the background of the complainant was categorised by the researcher into one of 12 categories. Table 22 shows that almost half of all formally adjudicated complaints were made by complainants who decided not to

reveal their identity or for who an obvious background category could not be assigned due to lack of information or because the individual was unknown to the researcher. In these cases, complainants had a 34 per cent success rate with their complaints, with 45 cases upheld in favour of the complainant.

*Table 22: Complaints outcomes per complainant background*

<b>Background</b>	<b>Complaints</b>	<b>Upheld</b>	<b>Rejected/SRA</b>	<b>Percentage upheld</b>
<b>Civil servant/Public sector</b>	7	5	2	71.40%
<b>Education</b>	10	6	4	60.00%
<b>Celebrity</b>	7	4	3	57.10%
<b>Charity/NGO</b>	12	6	6	50.00%
<b>Politics</b>	15	7	8	46.70%
<b>Media</b>	15	7	8	46.70%
<b>Union/Representative Org.</b>	17	7	10	41.20%
<b>Business</b>	27	11	16	40.70%
<b>Unknown/Private</b>	132	45	87	34.00%
<b>Religious</b>	12	4	8	33.30%
<b>Health</b>	11	3	8	27.30%
<b>Legal</b>	4	0	4	0.00%

Once again, numbers of complaints for some categories were too small for any meaningful analysis. Nevertheless, the data showed that 8 of the 12 groupings identified in the complaint files achieved a greater level of successful outcomes than those in the unknown or private category.

Of particular note were complainants categorised as emanating from political or media figures. In both categories, complainants achieved an identical success rate of 46.70 per cent from 15 cases in each category. This is one-third higher than those in the base category of unknown or private.

Well-known or celebrity complainants took seven cases, four of which were upheld in some way with the remaining dismissed or deemed SRA. In ten cases related to the education field – i.e. university lecturers, teachers and so on – 60 per cent of complainants

achieved successful outcomes. Some 41.20 per cent of complainants from the union or representative group sector had cases upheld in as had those from the business sector.

At the other end of the scale, complaints originating from the religious were upheld in one-third of cases while those from a health background achieved a 27.30 per cent success rate. Interestingly, complaints from law firms – not those made on behalf of a complainant – were not upheld in any of the four cases taken and categorised as such.

However, establishing categories of this nature is potentially problematic as they do not take into account any objective analysis of whether the person in question is well-known in general. As Frost (2004: 104) noted, identifying complainants in this manner is “subjective”. Thus, assessing the backgrounds of the complainants for this study was also somewhat subjective rendering it limited, at least in terms of replicability. Nevertheless, in a number of categories, Frost attempted to “bring consistency” to his study by establishing criteria for each category of complainant. In the celebrity category, Frost ruled that such complainants could be categorised once they came from “any artistic community...who would be recognised by a reasonably wide section of the general community” (2004: 104). For politicians, Frost said that MPs were all listed irrespective of how “well-known” they were, while “councillors are only listed as ‘well known’ if they would be recognised by some section of the general community”. Frost also included “those who are well-known or notorious from any walk of life but particularly including entertainment, business, academe, trade unions, politics and charities” (2004: 104).

Using Frost’s methodology, a number of categories were re-examined in order to improve the reliability of the findings. Table 23 contains this analysis. For politicians, all TDs and Senators were included while councillors were excluded as none reached the Frost (2004) threshold. Of the 11 complaints deemed to come from politicians sufficiently well-known, six resulted in successful outcomes, or 54.50 per cent. The remaining five

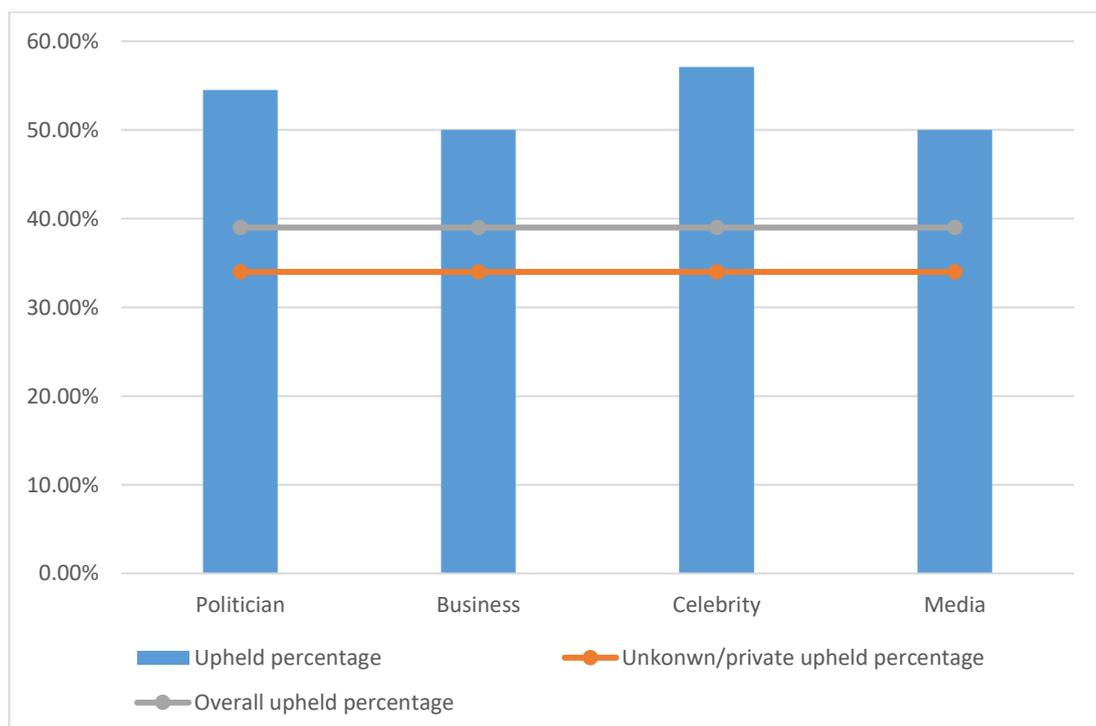
were rejected or deemed SRA. This compared to the lower figure of 46.70 per cent of complaints upheld in the general politician category before the Frost standard was applied.

Table 23: Complaint outcome per 'well-known' complainants

Background	Complaints	Upheld	Rejected/SRA	% upheld
Politics	11	6	5	54.50%
Business	16	8	8	50.00%
Celebrity	7	4	3	57.10%
Media	8	4	4	50.00%
<b>Overall average</b>				52.4%

Originally, some 27 cases were deemed to originate from the world of business. However, when revised, some 16 complainants were deemed “well-known”. Thus, the analysis showed that half of all complaints were successful. This compares to the 40 per cent success rate in the pre-Frost analysis.

Figure 9: Complainant categories



The success rate change was less pronounced in the media category. As Table 26 shows, those with a distinct media background recorded a 46.7 per cent success rate in having complaints upheld. In the new analysis half of the eight complainants received a positive decision of some kind. The number of “well-known” celebrity complainants did not change under the Frost revision criteria.

In total, according to the four categories of complainants identified in Table 26, some 42 complaints were made by people deemed under Frost’s analysis to be sufficiently “well-known”. Of these, 22 received successful outcomes, or some 52.4 per cent. This compared to the 34 per cent success rate for complainants in the “unknown/private” category and an overall upheld rate of 39 per cent (see Figure 9). Therefore, when viewed in conjunction with Table 26, the data suggested that those who are “well-known” or come from backgrounds such as politics, media, business and celebrity were more likely to achieve a positive outcome in the Press Ombudsman and PCI complaints process than those in the private or unknown category.

#### **6.4: Consistency – Gender**

*Table 24: Complainant outcomes per gender*

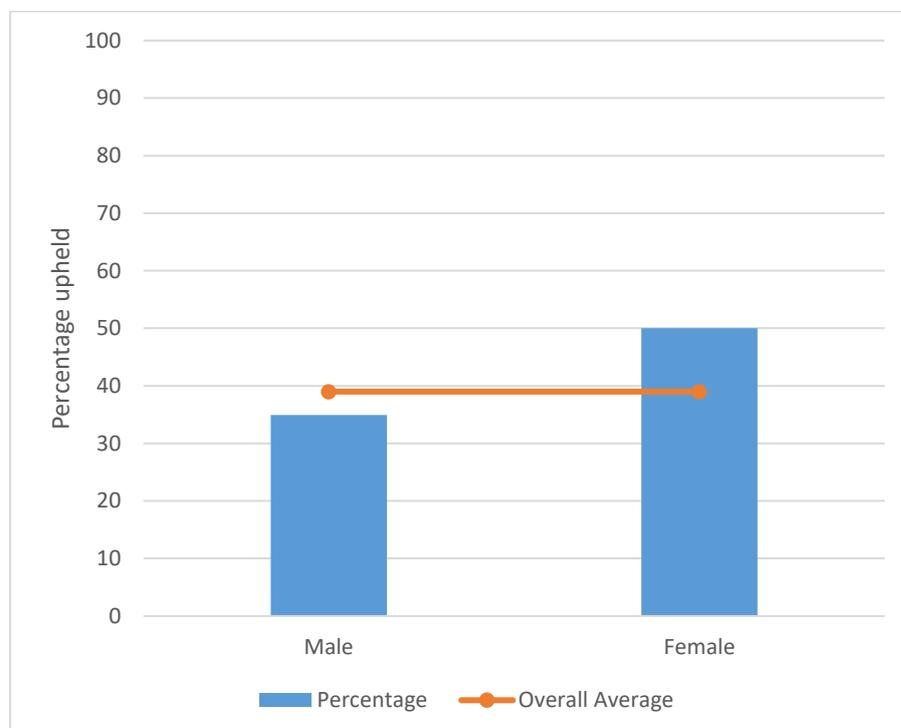
	<b>Total complaints</b>	<b>Total upheld</b>	<b>% upheld</b>
<b>Female</b>	56	28	<b>50.00%</b>
<b>Male</b>	166	58	<b>34.94%</b>
<b>N/A</b>	51	21	<b>41.18%</b>

In 222 cases, the gender of the complainant could be ascertained. Of these, 56 complaints were made by female complainants. The complaint database showed that half of all female complainants were successful with their cases, with 28 complaints upheld or

upheld in part. The remaining cases were either dismissed or cases where the publication was deemed to have offered SRA. In contrast, 166 complaints made by male complainants were formally examined by the Press Ombudsman and PCI. Just under 35 per cent of these – 58 complaints - were upheld.

In total, 39 per cent of complaints which reached formal adjudication were upheld in some way, i.e. a successful outcome for the complainant. As Figure 10 shows, the 50 per cent success rate of female complainants is somewhat higher than this average, with success for male complainants below this level. The Press Ombudsman and PCI dealt with roughly three times as many complaints made by males. Nevertheless, the data suggests that female complainants have been more likely to achieve successful outcomes when compared to their male counterparts, and also receive more decisions in their favour when compared with the overall average.

Figure 10: Gender outcomes

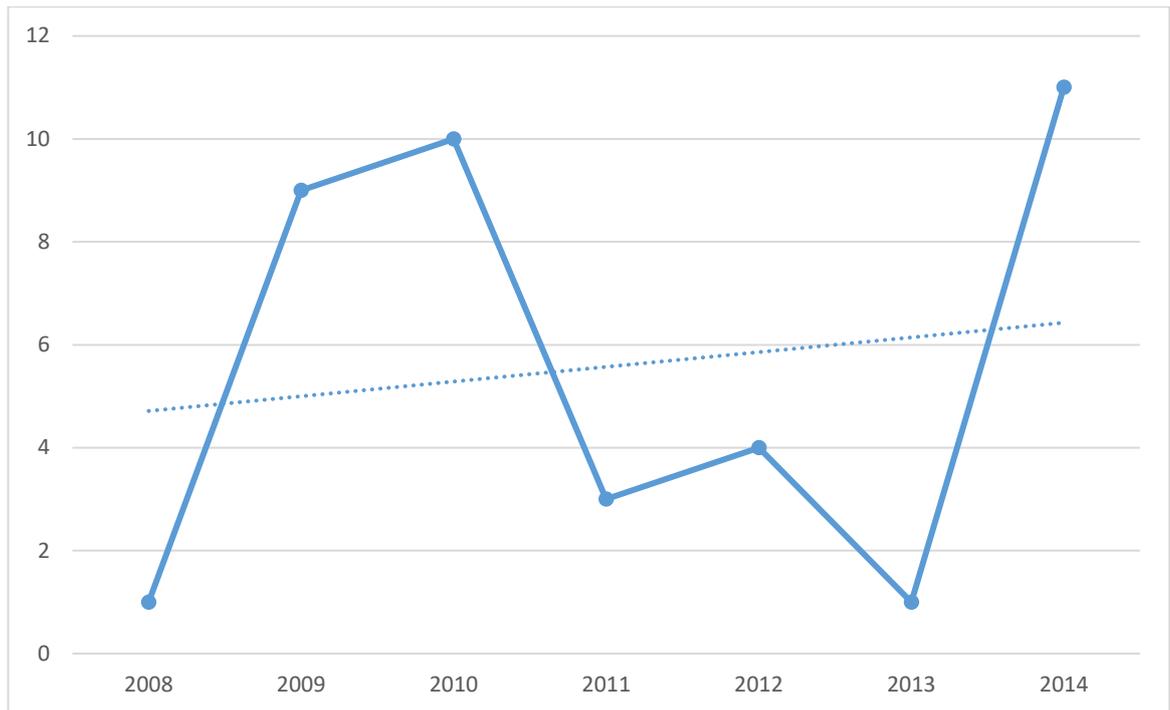


As Table 24 shows, there was also a further category of complaints. Labelled as N/A, these complaints fell into a number of different categories. These included complaints made by companies rather than individuals such as a case in which the airline Ryanair had a complaint partially upheld over an article in the *Irish Mail on Sunday* in February 2014 which alleged that a flight crew had kept passengers on a plane for a number of hours. The Press Ombudsman upheld a breach under Principle 1 Truth and Accuracy of the CoP (CoP) with the PCI upholding the decision under appeal. Other complaints in this category included those taken by families or couples, including five complaints taken by the Dwyer family on behalf of their deceased son, Michael, who was shot dead by security forces in Bolivia in 2009. The Press Ombudsman and PCI upheld two of the family's complaints, against the *News of the World* and the *Sunday World*, but found no breach of the CoP in articles in the *Irish Daily Star* and *Irish Sun* and a further *News of the World* article. A number of other complaint types are also included in this category including those taken by campaign groups such as the Irish Traveller Movement and those who took complaints but did not disclose their identity. When each category was extracted from the data the numbers were too small for further robust analysis.

### **6.5: Consistency – Legal representation**

As discussed in Chapter 4, the Press Ombudsman and PCI has, on a number of occasions, expressed negative sentiment about the use of solicitors by complainants (PCI 2009: 5). Indeed, the Press Ombudsman, said engaging solicitors would not ensure success for a complainant (Horgan 2009).

Figure 11: Cases involving solicitors



In total, some 39 complainants – or 14.23 per cent of all complaints - used the services of solicitors to make their complaints. As Figure 11 shows, the concerns expressed by the Press Ombudsman and PCI on the matter coincided with spikes in 2009 and 2010 in the use of legal representation. The following years, 2011, 2012 and 2013, however, saw a drop off in the use of solicitors. Nevertheless, some 11 complainants used legal representation in 2014, a significant increase on the three years previous.

When the outcome of these 39 complaints was examined, it showed 18 complaints resulted in a successful outcome for complaints with the remaining 21 dismissed/SRA. As Table 25 shows, some 46.15 per cent of complainants who used solicitors to make complaints on their behalf achieved successful outcomes. This compared with 38 per cent for the remaining 234 complainants who did not use legal services, and the overall average of 39 per cent.

Table 25: Complaint outcomes involving legal representation

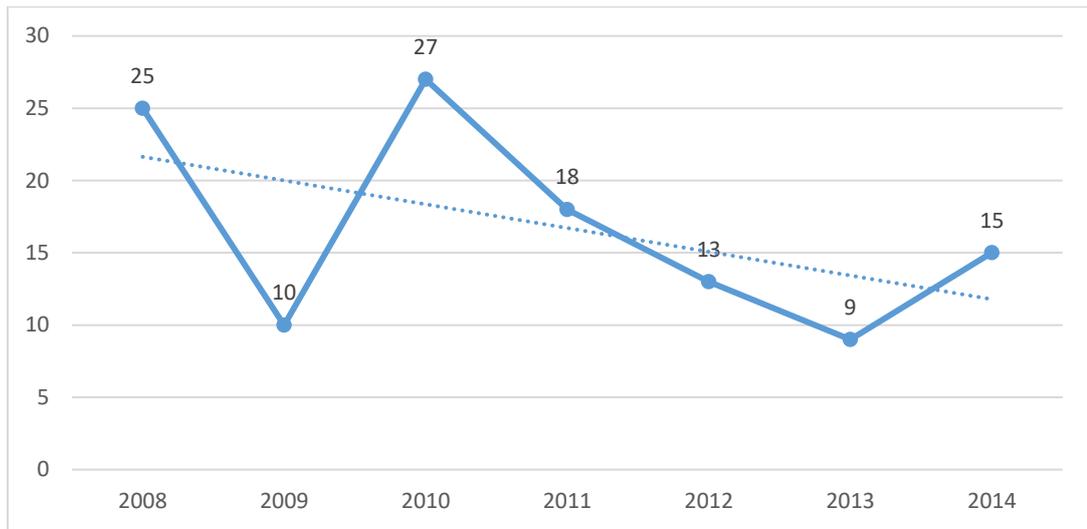
	Cases	Upheld	Dismissed/SRA	% Upheld
<b>Legal representation</b>	39	18	21	46.15%
<b>No legal representation</b>	234	89	145	38.03%

The analysis of legal representation in complaints is based on small numbers. Nevertheless, Figure 11 does suggest a marginally positive trend in the number of complainants deciding to use solicitors in the process, with a spike in 2014 likely to cause concern for the Press Ombudsman and PCI. The data in Table 25 showed that complainants were marginally more likely to achieve a successful outcome if they employ solicitors to deal with their complaint.

#### **6.6: Consistency – Appeals to the PCI**

Decisions of the Press Ombudsman can be appealed to the full PCI, which, as Chapter 4 showed, is a 13-member panel dominated by independent members. The complaint database showed that in all, some 117 of the 273 formal adjudications, or just under 43 per cent, were appealed to the full PCI. The data suggests that over time, the decision by a complainant or a newspaper (or both) to appeal a case had fallen in line with a downward trend (see Figure 12). This is unsurprising given the limited circumstances under which decisions may be appealed. Indeed, any appeal must either reveal some new information on the case or show that the Press Ombudsman has erred in his/her application of the office’s procedures (PCI 2009: 12). As the PCI notes, “mere disagreement with the Press Ombudsman’s decision is not grounds for appeal” (ibid).

Figure 12: Appeals to the PCI



Appeals were lodged by complainants and by member publications. A total of 117 appeals were lodged according to the analysis of the complaint data – 74 by complainants alone (63 per cent), 37 by member publications alone (32 per cent), and six by complainants and member publications (5 per cent).

The data showed that the PCI overturned or partially overturned the decisions of the Press Ombudsman on 9 occasions, or just over 7.5 per cent of cases it heard. In six of these cases, the PCI partially overturned the decision of the Press Ombudsman. In all of these, the partial overturn still meant that the negative element of the decision was published in the member publication. In only three cases (2.5 per cent of the total) the earlier Press Ombudsman’s decision was fully overturned.

As stated, complainants were responsible for 74 of the 117 appeals dealt with by the PCI. Of these, complainants succeeded on just three occasions in overturning the Press Ombudsman decision – all of which were partial overturns. These figures suggested an appeal success rate for complainants in getting decisions of the Press Ombudsman overturned of 4 per cent.

In comparison, newspapers appealed the decision of the Press Ombudsman on 37 occasions, exactly half as frequently as complainants. However, member publications were twice as successful as complainants in seeing decisions overturned. The data showed that on three occasions, the PCI partially overturned decisions of the Press Ombudsman. These cases still resulted in a negative decision being printed in the offending publications, but would have reduced the eventual length and scope of the decision as published. Newspapers also succeeded in successfully arguing for full overturns in three decisions of the Press Ombudsman. In each instance the negative decision of the Press Ombudsman would not have been published as the PCI overturned the decision in its entirety. On no occasion did a complainant succeed in arguing for such a full overturn. The data suggests that newspapers had a 16 per cent success rate in getting negative decisions overturned in full or in part in comparison with a 4 per cent for complainants.

### **6.7: Consistency – CoP principles**

The majority of complaints cited multiple principles of the PCI's CoP (CoP). Thus, the number of times particular clauses in the CoP were cited was far in excess of the 273 complaints formally examined. In addition, six of the ten clauses of the CoP contain individual sub-clauses. Complainants may cite the general clause, i.e. 3. Fair Procedures and Honesty, or they may cite individual sub clauses such as 3.2 which states that the press shall not obtain information, photographs or other material through misrepresentation or subterfuge, unless justified by the public interest.

Table 26: Upheld rates for CoP clauses

<b>Principle</b>	<b>Complaints</b>	<b>Upheld</b>	<b>% Upheld</b>
<b>1. Truth and Accuracy</b>	210	53	25.24%
<b>2. Distinguishing fact and comment</b>	129	28	21.71%
<b>4. Respect for rights</b>	116	13	11.21%
<b>5. Privacy</b>	116	25	21.55%
<b>3. Fair procedures and honesty</b>	105	7	6.67%
<b>8. Prejudice</b>	40	6	15.00%
<b>7. Court Reporting</b>	19	4	21.05%
<b>9. Children</b>	12	4	33.33%
<b>6. Protection of sources</b>	2	0	0.00%
<b>10. Publication of decision</b>	2	1	50.00%

When all complaints are collated under their specific headline clause, as Table 26 shows, complainants cited truth and accuracy more frequently than any other clause of the CoP. On 210 occasions in all, complainants claimed that newspapers had breached the truth and accuracy provisions of the CoP which states that journalists “shall strive” for truth and accuracy, and, with due prominence, correct inaccuracies where they occur and apologise where prudent. Some 53 of these complaints were upheld, or 25.24 per cent.

The distinguishing fact and comment clause establishes that newspapers can advocate their own views but that comment must not be presented as fact. It attracted the second-highest number of complaints. Some 129 complainants cited the clause and its sub clauses in their complaints with 28 of these instances resulting in the principle being upheld. For both Respect for Rights, which refers to “malicious misrepresentation” by journalists, and Privacy, which over five sub-clauses sets out strict provisions on the topic, 116 complainants were taken. In the former, 13 cases were upheld under the clause, while 25 were upheld under the privacy clause. The fair procedures and honesty clause details how journalists ought to approach information and newsgathering. It attracted 105 complaints in total, seven of which were upheld.

Figure 13: Upheld rates per CoP clause

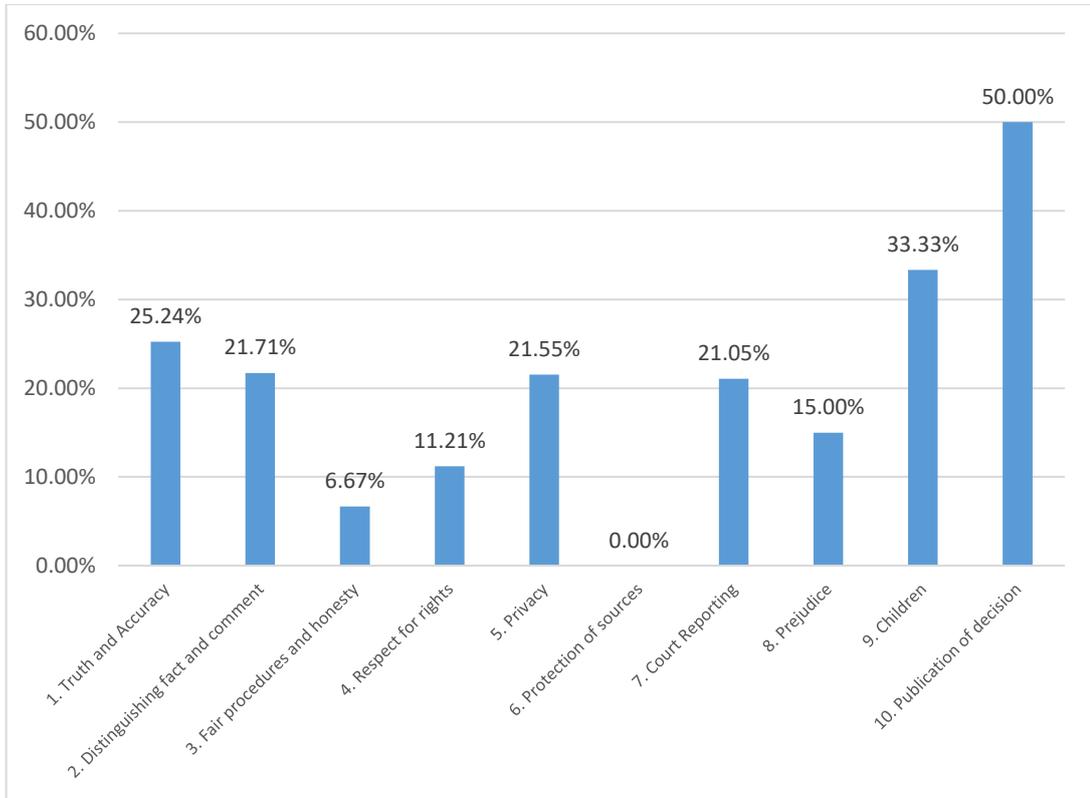


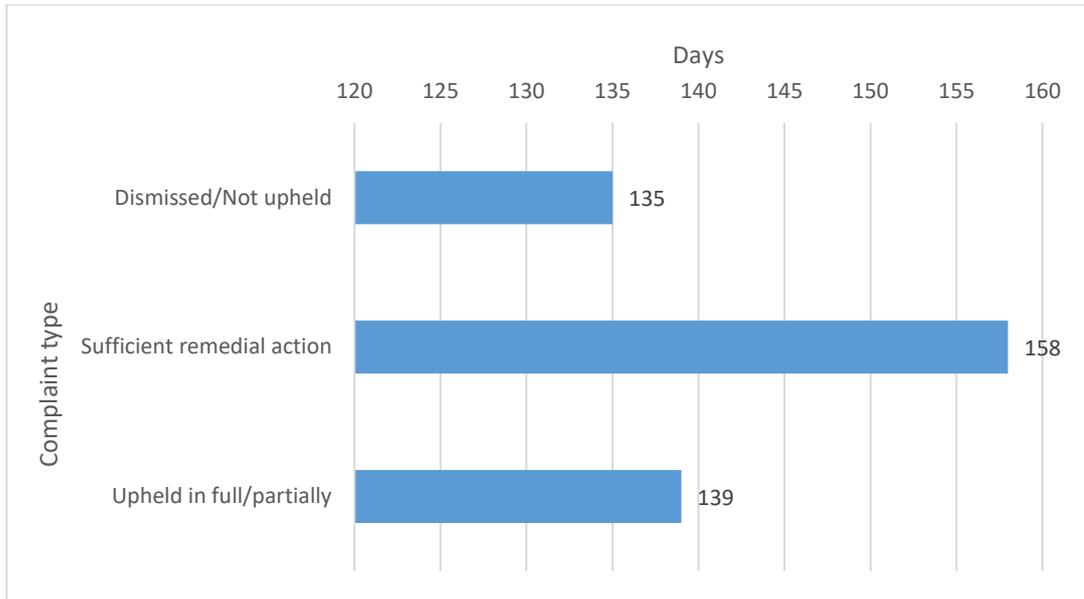
Figure 13 shows that the upheld rate for a number of clauses of the CoP was similar. For clauses truth and accuracy, fact and comment, privacy, court reporting and children, the percentage of upheld complaints was remarkably consistent, with children, which sets out guidelines for the press on the treatment of minors, attracting 12 complaints in all, four of which were upheld. However, Figure 13 also shows that a number of clauses have much lower upheld rates. Fair procedures and honesty, for example, was one of the most popular clauses for complainants to cite with 105 cases attracting complaints under the principle. However, just over 6.5 per cent of these were upheld, or seven in total. The majority of these, some four upheld complaints, dealt with clause 3.2 which states that “the press shall not obtain information, photographs or other material through misrepresentation or subterfuge, unless justified by the public interest”. In all, nine

complaints cited this clause with just under half successfully arguing for a breach. Respect for rights also attracted a high level of complaints under the principle with 116 complainants citing it. Just 13 of these complaints resulted in upheld decisions under the clause, or just over 11 per cent. In addition, while based on smaller numbers of complaints, prejudice also saw few complaints upheld under the principle with just 6 from 40 citations resulting in upheld decisions. The clause deals with content that is “intended or likely to cause grave offence or stir up hatred” against people or groups.

### **6.8: Responsiveness – Complaint timeframe (a)**

The majority of the individual complaint files published by the PCI on formally adjudicated complaints indicated the date the offending article was published and the date of the final decisions by either the Press Ombudsman or PCI. Due to data protection restrictions, the complaint files could not be accessed in order to ascertain the exact date that the complaint was made to the Press Ombudsman. Although complainants have three months in which to pursue a complaint via the PCI, it is reasonable to assume, that any complaint was likely to have been lodged in the days and weeks after the initial article, rather than on the same day as the article. Indeed, given the requirement that complainants must complain to editors in the first instance, there is likely to be some time lag between the article publication and the lodging of the formal complaint. However, as a result of the restrictions on the complaint files, the following analysis was based on timeframes between the date of publication of the article and the final outcome of the PCI’s adjudication as these were the only dates available to the researcher. Nevertheless, the data provided a good basis for examining the period of time it took for the Press Ombudsman and PCI to deal with complaints.

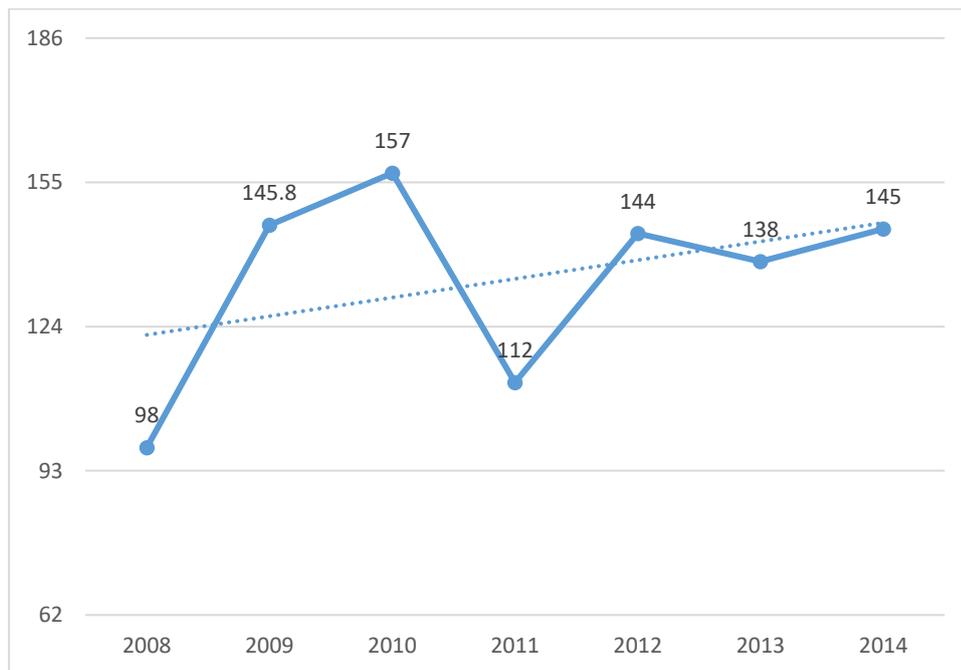
Figure 14: Days taken to conclude adjudications



As discussed in Chapter 5, there are three complaint outcomes in the formal adjudication process. The first category are complaints which were dismissed or not upheld by either the Press Ombudsman or PCI on appeal or referral. The analysis of the PCI data showed that there were 80 cases in this category which contained data that allowed for an assessment of how long the case took to be resolved. The data showed it took an average of 135 days, or approximately 4.4 months, for the PCI to dispose of complaints in this category. The data showed that the longest case in this category took some 347 days to conclude. The case was taken by Deirdre Walshe over articles in the *Irish Examiner* on 22 and 23 November, 2012. Ms. Walshe alleged a breach of the truth and accuracy, fact and comment and respect for rights provisions of the CoP over the articles which reported on an Employment Appeals Tribunal hearing involving the Irish Coursing Club. The case was not upheld under a ruling by the Press Ombudsman made almost a year later on 5 November 2013. The case was not appealed to the PCI. The shortest timeframe in this category took 30 days. It involved a complaint made by Brendan Price of the Irish Seal Sanctuary over an article in the *Sunday Times* on 3 July

2011. Mr. Price claimed the article, which examined a donation to the organisation, breached the truth and accuracy, fact and comment, fair procedures and honesty, respect for rights and privacy clauses of the CoP. The Press Ombudsman did not uphold the complaint in a decision on 2 August. The case was also not appealed to the PCI.

Figure 15: Timeframe - cases not upheld

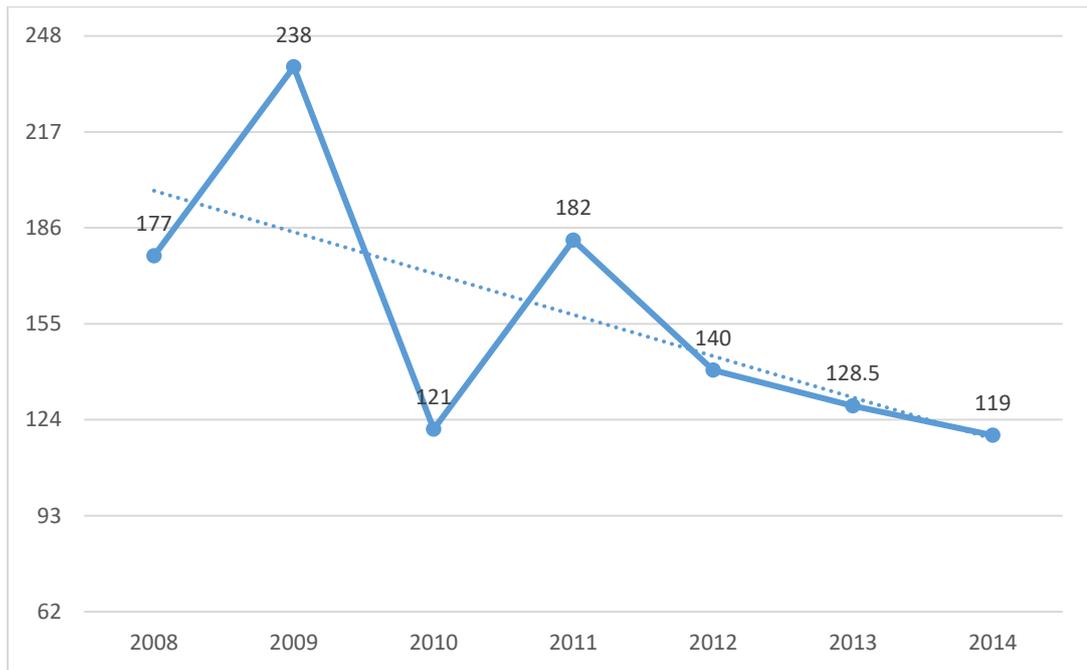


When assessed on a yearly basis, Figure 15 shows that the median number of days taken to resolve each complaint not upheld is on an upward trajectory. In 2008, the first year of operation of the Press Ombudsman and PCI, the quickest turnaround time for complaints in this category was achieved at an average of 98 days, or just over three months. However, the data suggests this timeframe has increased with 157 days – or five months - the median average recorded in 2010.

The second category of complaints are those where the member publication involved is deemed to have offered SRA. Surprisingly, given that the newspaper had already offered to resolve the complaint, the average days taken to resolve complaints in this

category was almost 158 days, or 5 months. This is almost a month longer than complaints which were not upheld. The longest period recorded in this category was 302 days. The complaint was taken by Luke Gardiner Ltd., a property business, about an article in the *Irish Times* which referred to the condition of a building it owned on Dublin's Henrietta Street. The company complained under truth and accuracy, fact and comment, fair procedures and honesty and respect for rights about the 2 February 2010, article. The Press Ombudsman on 9 November ruled that SRA had been offered when the newspaper offered to print a letter from the company setting out its grievances. An appeal to the PCI by the complainant affirmed the decision of the Press Ombudsman on 10 December. The shortest timeframe for resolution in this category was 50 days. The case was taken by Adam Levick, the managing editor of a website called CiF, who complained against the *Irish Times* over coverage of conflict in the Middle East. The article was published on 16 January, 2014 and on 7 March the Press Ombudsman ruled that SRA had been offered by the newspaper. Another case took 57 days, just less than two months. This case was taken by Melanie Schregardus, an air traffic controller in Dublin, against the *Irish Mail on Sunday* in relation to an article it published on 24 January 2010, which was based on the complainant's blog. The Press Ombudsman ruled on 22 March that the newspaper had offered the complainant SRA by publishing a later statement qualifying the article – albeit without the approval of the complainant. The case was not appealed to the PCI.

Figure 16: Timeframe - cases SRA



In contrast with Figure 15, Figure 16 shows that the yearly medians for complaints in the SRA category exhibited a downward yearly trend. Over the first four years of operation, the timeframe for dealing with complaints with this outcome hovered around the six month mark on three out of the four years which, again, is surprising given the assumption that an offer of SRA ought to lead to a less complicated case with the newspaper already accepting some form of remedial action was warranted and necessary. However, as Figure 16 shows, the timeframe for the category has decreased sharply over time and is now more in line with the other categories of complaint outcomes.

The third category of complaints are those which were upheld in some fashion. A total of 92 of these complaints contained the data required to examine how long the cases took to be resolved. Here, it took an average of 139 days, or 4.5 months, to reach the upheld resolution. This is a similar timeframe for complaints which were not upheld, but significantly shorter than those deemed SRA. According to the data, the longest case took 409 days to reach a resolution. It involved a complaint by James McCamley, a trade union

member, under five principles of the CoP over an article in the *Herald* on 28 April 2009, which reported on an industrial dispute involving the complainant. The Press Ombudsman upheld the complaint on 16 February 2010, with an appeal by Mr. McCamley to the PCI heard on June 11 at which the decision of the Press Ombudsman was affirmed. Two other cases in the same year taken by Mr. McCamley both took 408 days to complete. The shortest case took 33 days to formally adjudicate on. It was taken by a member of An Garda Síochána, who chose not to disclose his or her identity, over an article about overtime payments in the *Irish Independent* on 10 May 2012. The Press Ombudsman upheld the complaint under Principle 1 in full in a decision on 12 June.

Figure 17: Timeframe - cases upheld

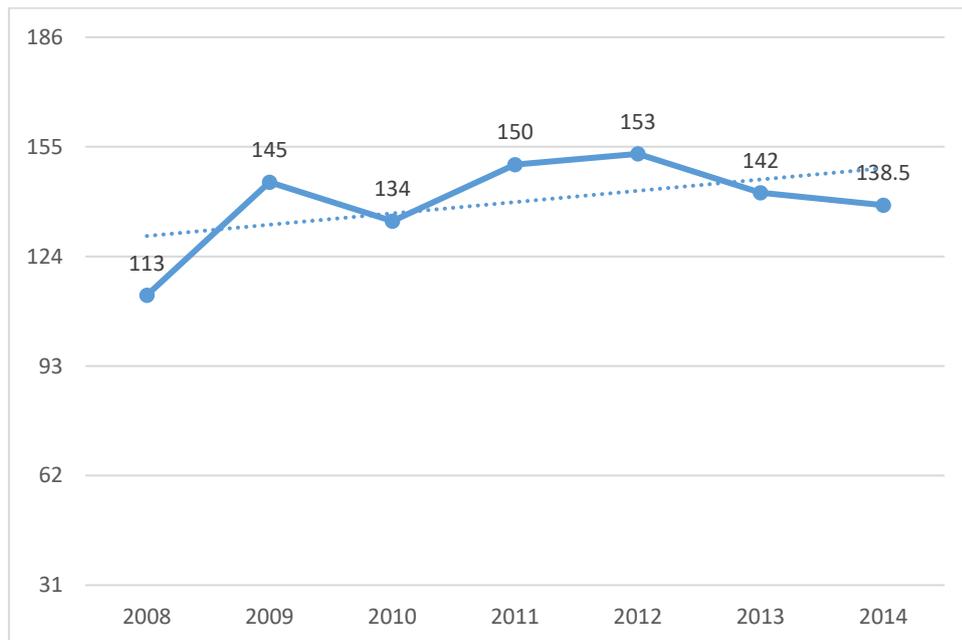
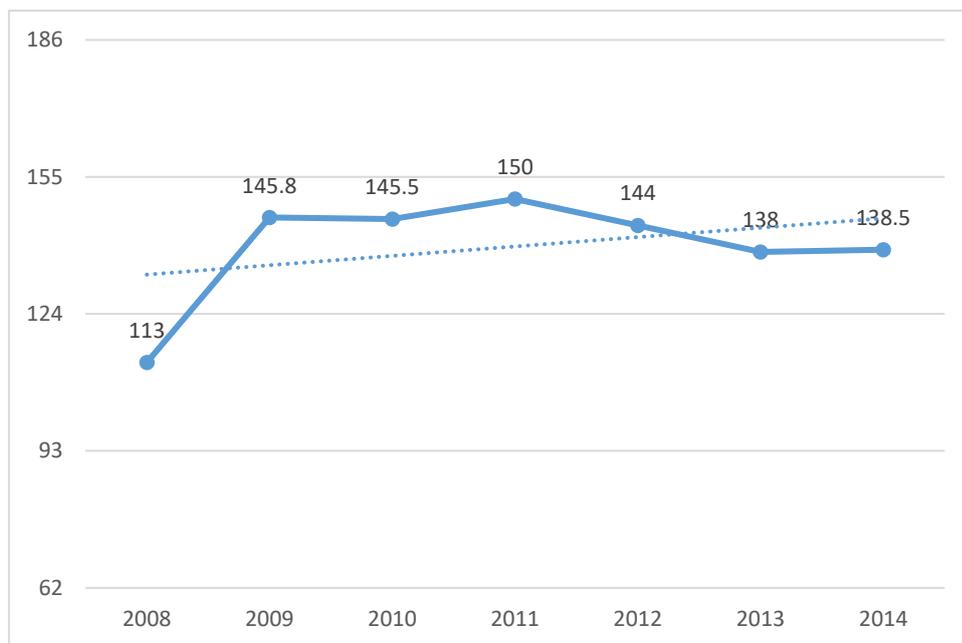


Figure 17 shows similarities with Figure 15 in that in its first year the Press Ombudsman and PCI maintained the lowest turnaround time for dealing with upheld complaints. All other years saw increases with the data suggesting that thereafter, the Press Ombudsman and PCI settled into a relatively stable timeframe between 134 days

and 153 days according to the median numbers extracted from the data. Nevertheless, Figure 17 also suggests that there has been an upward trend in how long it has taken the office to deal with this category of complaints.

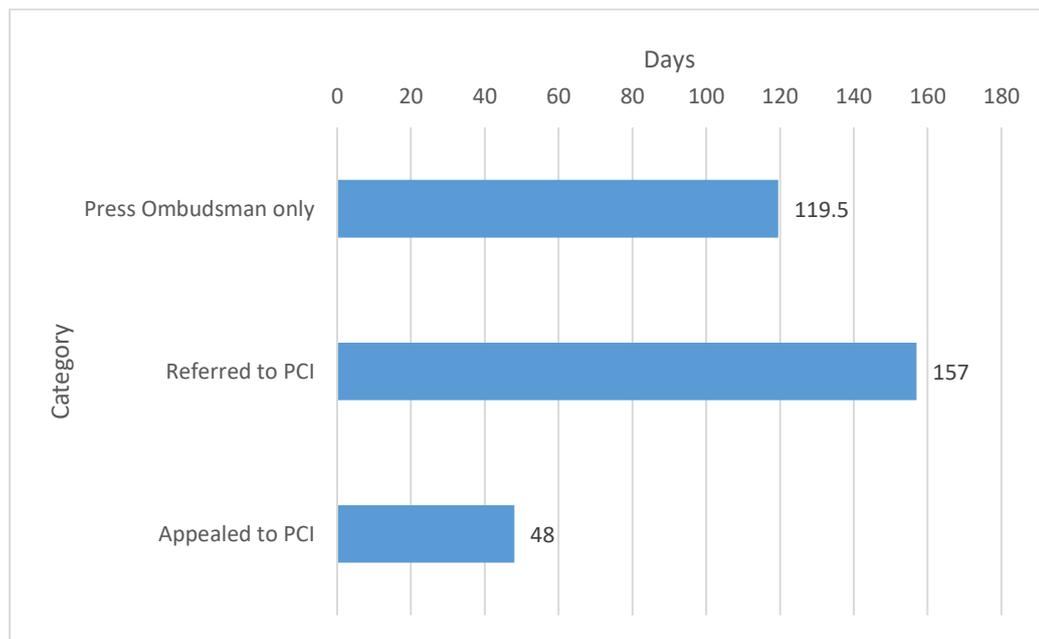
When the three categories were combined, Figure 18 shows that the overall trend matches those exhibited in the first and third categories. Here, the data showed that, once again, the Press Ombudsman and PCI disposed of formal adjudications in its first year around a month quicker than any other year of operation. Again, for the years 2009-2014, the timeframe suggested that decisions were being dealt with in a remarkably similar period of time. Nevertheless, the data also showed that since 2011, when the Press Ombudsman and PCI were taking a median of 150 days, or just under 5 months, to conclude complaints, the period of time has reduced, albeit marginally in the following three years. The median number of days taken to dispose of all 220 cases where dates were available was 140.5 days, or around four-and-a-half months.

Figure 18: Timeframe - all categories



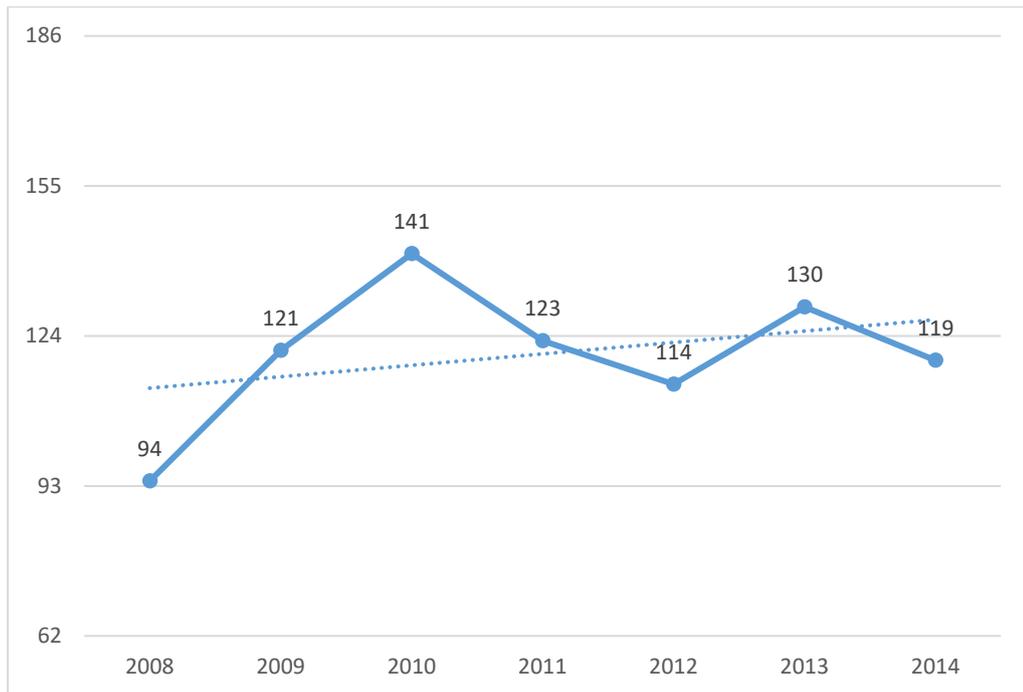
## 6.9: Responsiveness – Complaint timeframe (b)

Figure 19: Timeframe - days taken during each complaint phase



The three types of complaints examined in the previous section were all dealt with in one of three ways. First, they would have been adjudicated by the Press Ombudsman. This category includes cases that were not appealed beyond the Press Ombudsman’s decision, as well as those that were appealed to the PCI. According to complete data for 210 complaints which were examined by the Press Ombudsman, it took a median of 119.5 days, or just under four months, to issue his decision. The data showed that the Press Ombudsman dealt with five cases in less than 40 days including a case which took just 27 days to issue a formal adjudication on. The data also included at least 15 cases which took more than 200 days to conclude, including two cases which took almost a year – 333 and 347 days respectively – to be adjudicated on.

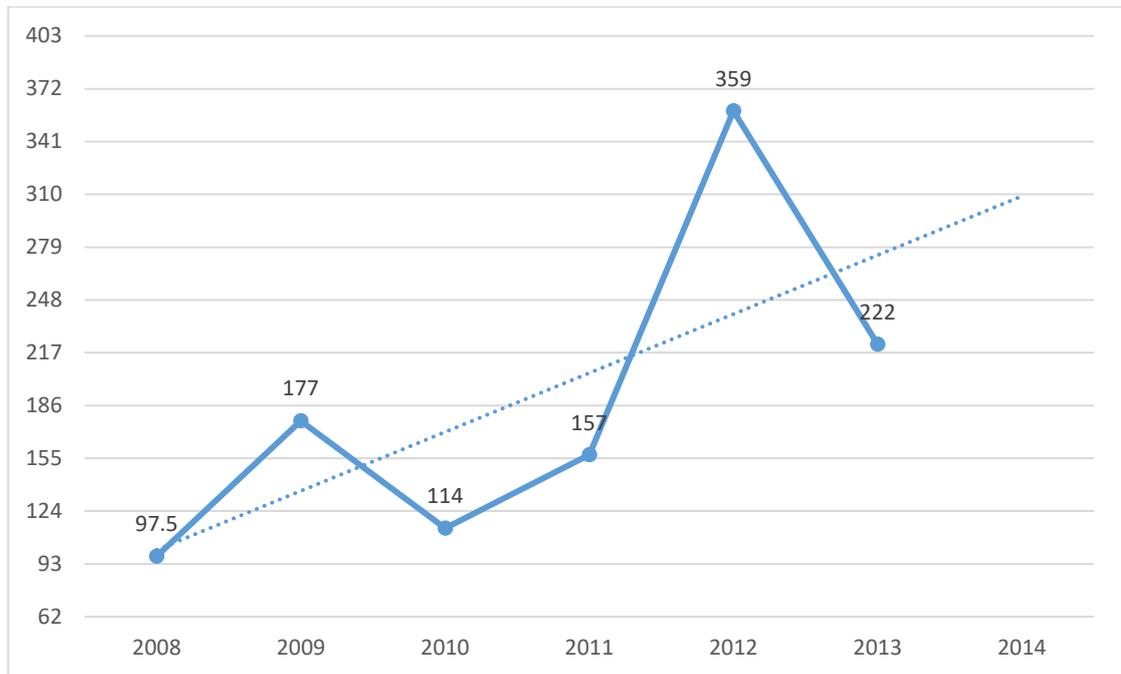
Figure 20: Timeframe - days taken for Press Ombudsman adjudications



Again, Figure 20 indicates that the Press Ombudsman dealt with its workload quickest in 2008, its first year. Thereafter, the data suggests that complaints took around a further month, on average, to reach an adjudication. The year 2010 saw the slowest work rate, at almost five months and, in general, the data suggested a modestly upward trend.

The second category were cases which were referred by the Press Ombudsman directly to the PCI for adjudication. Although there were just ten of these cases recorded during the time period examined, the data suggested that it takes a median of 157 days for the PCI to adjudicate on cases referred to it by the Press Ombudsman. In the first three years, the Press Ombudsman referred 7 cases to the PCI. This has dropped off to one every subsequent year except in 2014 when there were none.

Figure 21: Timeframe - days taken for PCI referral adjudications

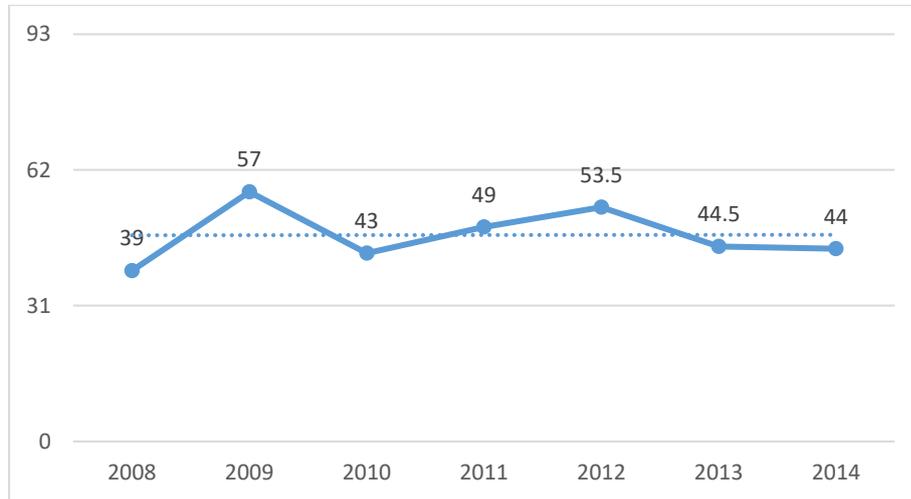


Albeit limited, the data does suggest an increasing trend in the amount of time it took for the PCI to deal with complaints in the period under review. This is somewhat distorted by the 359 days it took the PCI to deal with a single complaint in 2012. It involved a complaint taken by the Irish Traveller Movement against the *Herald* under Principle 10 alleging that the newspaper had not published an earlier negative decision according to the due prominence guidelines set out by the office. Despite the relatively clear cut nature of the complaint, the PCI, which upheld the case, made its decision on 7 September, almost a year after the initial decision was published. Nevertheless, the data in Figure 21 again indicates that timeframes for dealing with complaints never returned to levels recorded in the first year.

The final category of complaints are those which were appealed to the PCI. In this category, comparing the date of the PCI's determination with the date of the Press Ombudsman's decision gave an indication of how long it took for the PCI to rule one an

appeal. As expected given the holding of monthly PCI meetings, the figures suggested a much shorter timeframe, with 48 days the median emerging from the data.

Figure 22: Days taken for PCI appeal hearings



In contrast with much of the earlier data, the trend line was flat for appeal timeframes, suggesting the PCI had maintained its workload. Nevertheless, Figure 22 showed that the first year in operation was again the quickest for dealing with complaints at 39 days. While this replicates earlier data, it also showed there is a smaller increase from the first year in comparison with the following years.

### 6.10: Responsiveness – Complaint timeframe (c)

In addition to section 5.2.2 which examined the backgrounds of complainants, this section further assesses how long it took for each grouping of complainants to have their complaints formally adjudicated.

Figure 23: Timeframe - days taken by complainant grouping

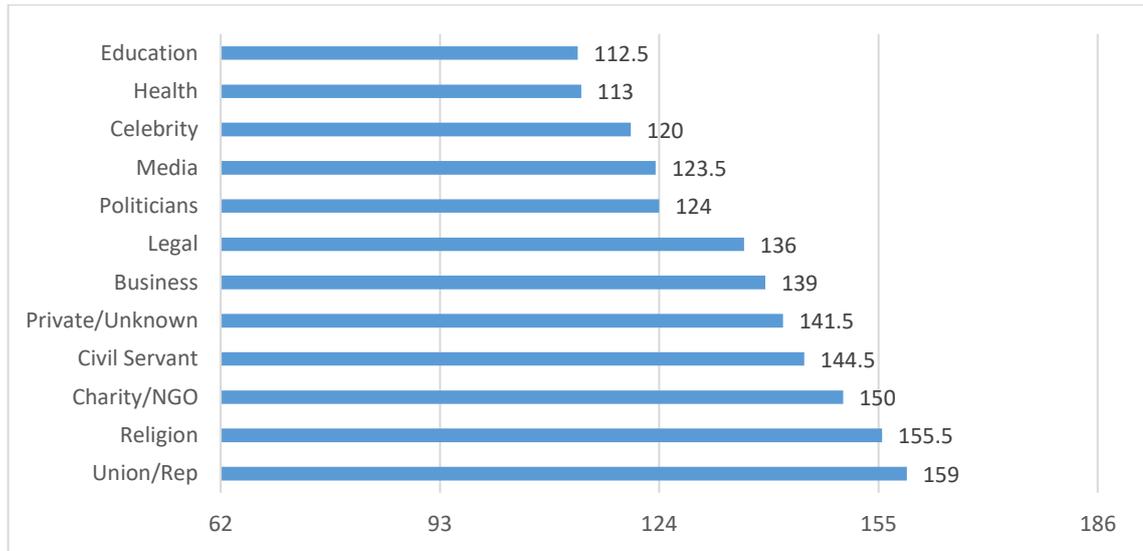


Figure 23 shows a range stretching from just over three-and-a-half months to just over five months for the median times for dealing with complaints when each grouping is examined. The largest of these, complainants whose background was unknown or deemed private, it took a median of 141.5 days, or four-and-a-half months, for their complaints to be concluded from the time the offending article was published. This compares to faster timeframes for those categorised as celebrities, media professionals and politicians. As referenced above, these categories contained those complainants deemed ‘well-known’. Each of the groupings saw their complaints dealt with in around four months, with a median of 120, 123.5 and 124 days respectively, or around 20 days less than those in the private or unknown grouping.

A further analysis was undertaken in four categories using the classification referenced in earlier sections as proposed by Frost (2004). The four categories were politicians, business people, media figures and celebrities. In only one of the categories, business, did a difference in the median number of days occur when compared to the overall results in Figure 23. Complaints taken by well-known business people took the regulator a median of 136 days to process the complaint, compared to 141.5 for those in the

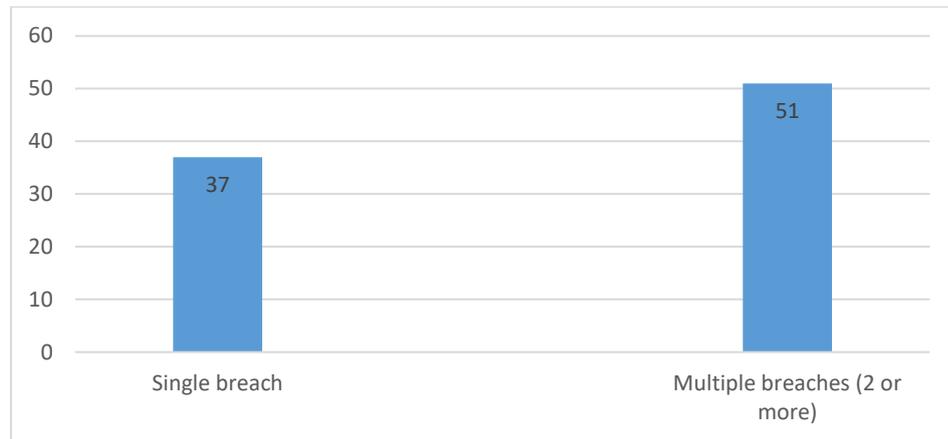
private/unknown category. The difference of three days is too small to base any conclusions on.

Overall, despite the restrictions of the analysis due to the limited numbers of complainants in each category, the data does show that there are different timeframes for different complainant groups.

### **6.11: Compliance**

In total, 107 cases resulted in decisions which were upheld in some form, resulting in a requirement that the publication involved publish the decision according to the publication guidelines. In 15 of these cases, incomplete data – mainly complainants who took complaints anonymously – meant that full assessments of whether the newspaper met the criteria could not be completed. Thus, 92 upheld complaints formed the basis of the analysis in this section. When the publication of decisions were analysed in these cases, it showed that in 88 cases, or 96 per cent, the newspaper in question had breached one or more of the publication guidelines thus failing to adhere to Principle 10.1 of the publication guidelines. Figure 24 shows that in the majority of the cases, member publications breached the guidelines on more than one of the four criteria on 51 occasions. In a substantial minority, 37, newspapers breached a single criteria.

Figure 24: Types of breaches of publication guidelines



Included in those cases where multiple breaches occurred, are three cases where member publications did not publish the upheld decision at all. Two of these cases related to upheld complaints against the *News of the World* newspaper. The newspaper ceased publication on 10 July 2011. The decisions in both cases, which were both partially upheld, were published by the PCI after 10 July thus resulting in no publication of the upheld decisions. The second of these cases resulted in a partially upheld decision for Michael Scanlon and Rosanna Farrell under the CoP privacy clause. The complainants successfully argued that an article about their return home with a newborn baby to a location where their first child had died tragically was a breach of privacy. In his decision, the Press Ombudsman indicated that the complaint was postponed for a “considerable time” to allow the newspaper to engage in conciliation in light of the fact the *News of the World* had ceased publication.

However, despite several postponements granted at the request of the parent company’s legal representatives, in the light of the fact that the newspaper concerned had ceased publication, renewed requests by the Office of the Press Ombudsman for a reply to this complaint did not elicit a response (Office of the Press Ombudsman 2011)

The final involved an upheld decision published involved a 2010 case taken against the *Sunday World*. It related to a complaint taken by Wayne O’Donoghue, who was convicted in 2005 of the manslaughter of a minor. Mr. O’Donoghue argued that a front-page article which included details of his location, university degree and girlfriend was a breach of privacy and fair procedures and honesty. The Press Ombudsman found the article had breached Mr. O’Donoghue’s privacy but had not breached Principle 3. The PCI affirmed the decision declining to admit an appeal by the newspaper. Despite numerous searches of the newspaper’s archive and correspondence with the PCI, evidence that the newspaper had published the decision could not be located.

One case that is representative of those where newspapers failed to follow the publication guidelines is the first upheld case adjudicated on by the Press Ombudsman and PCI. It involved a complaint taken by Tony Gregory, a well-known independent TD, who argued that a report in the *Herald* about his illness – based partly on a visit by a journalist to his home - was a breach of his privacy. The Press Ombudsman upheld the complaint in full, one of 19 cases upheld in full between 2008 and 2014. The newspaper appealed the decision. However, the PCI affirmed the Press Ombudsman’s decision. The PCI concluded that

intrusion into the complainant’s home, especially at a time of illness and anxiety, and when other ways of contacting the complainant were available, was not justified either by the complainant’s public position as a Dáil deputy, or by the significance of the information being sought. It concluded that the practice of so-called “door-stepping”, especially when it involves the person’s private home, requires a high level of justification (PCI 2008)

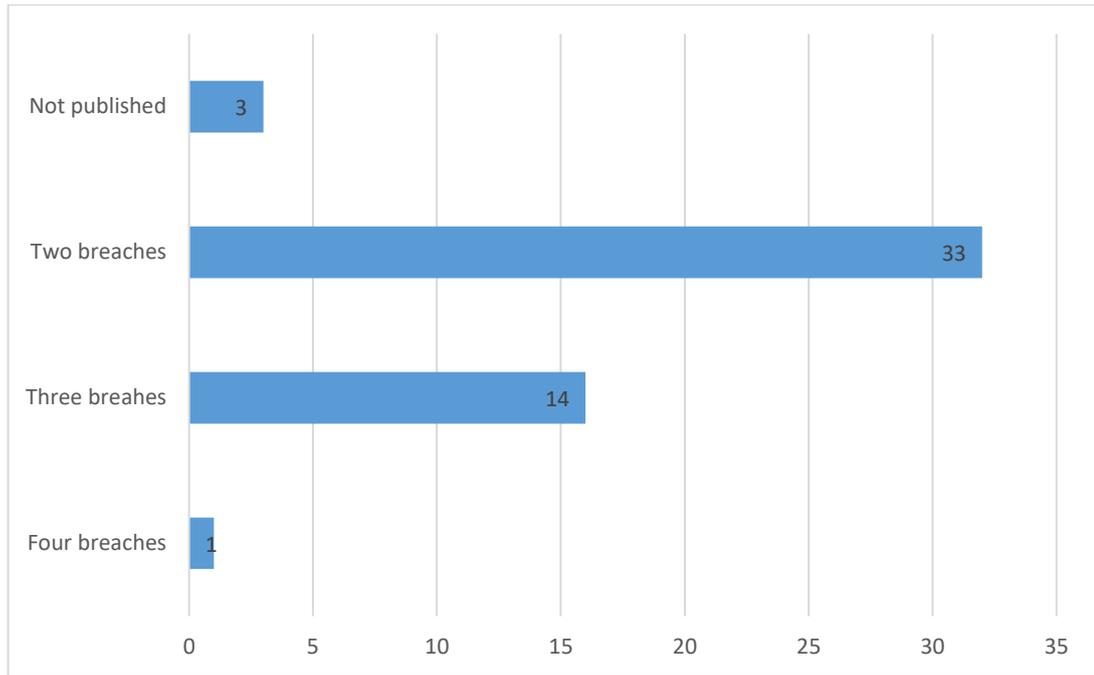
Speaking about the case in the Dáil, Dermot Ahern, the then Minister for Justice, highlighted how the upheld decision and its publication in the offending newspaper boded well for the Press Ombudsman and PCI.

I commend the recent decision of the PCI and the Office of the Press Ombudsman, which vindicated the right to privacy of a member of this House. The decision will be welcomed by all sides in the Oireachtas and beyond. The good start that has been made by the Press Council augurs well for the future. I welcome the fact the newspaper in question published the decision in a position of prominence, similar to the position in which the offending article was printed. Such an approach is required under the legislation before the House. I am pleased that this requirement has been observed by the newspaper concerned in this instance (Dáil Éireann 2008b)

The Press Ombudsman and PCI did uphold Mr. Gregory's right to privacy, however, Ahern's assertion that the newspaper involved had published the decision with due prominence is more problematic. When the publication of the decision was examined in the offending newspaper, according to the PCI's guidelines, it breached three of the four criteria; the upheld decision was published on 3 May, more than 10 working days after the PCI's determination on 18 April, the upheld decision was published on the wrong day, a Saturday rather than a Wednesday, and the publication of the decision was edited as it did not include the correct headline nor the logo of the PCI.

Ahern was, however, unlikely to have been aware of these breaches, and was perhaps heartened by the fact that the decision was published on page 4 of the newspaper, further forward than the page 5 the offending article had appeared on. Nevertheless, asserting that due prominence had been achieved, particularly considering the PCI's own guidelines for achieving this, cannot be considered entirely accurate in this case.

Figure 25: Multiple breaches of publication guidelines



Of those decisions which breached one or more of the four publication guidelines, Figure 25 shows that the majority involved instances where newspapers breached two of the guidelines. Illustrative of these was a case taken by Gerry Adams, the Sinn Féin President and TD, against the *Irish Independent* over a report in May 2014. Mr. Adams complained that the article, which reported that he had attempted to stop the newspaper from investigating him, had breached fair procedures and honesty and respect for rights principles. The Press Ombudsman upheld part of the complaint under the respect for rights principle, but dismissed the remainder of the complaint. An appeal by the newspaper was unsuccessful. The offending article had appeared on the front page of the *Irish Independent* on a Saturday. The decision, however, was published on page 22 of the newspaper and on a Friday, thus resulting in two clear breaches of the publication guidelines. The decision was, however, published without additions and within 10 working days of the PCI determination.

A further 14 cases involved three breaches of the publication guidelines. These included a complaint by the Teaching Council about two articles in the *Irish Independent*. The articles, which appeared on page 1 on Tuesday, 22 November 2011, and page 10 on Friday, 16 December, reported on a study carried out by the organisation. The Teaching Council complained that the articles – with an emphasis on the first article - had breached truth and accuracy and fair procedures and honesty. The Press Ombudsman ruled on 9 March, the following year, that the articles had partially breached Principle 1. A month later, on Monday 9 April, on page 11, the newspaper carried the decision. The publication thus breached three of the guidelines for publication in that it was not published promptly, appeared on the wrong page and the wrong day.

A single article breached all four of the publication guidelines. The case involved a complaint by Justine Delaney-Wilson, an author, who argued that the *Irish Independent* had breached truth and accuracy when it carried a report about the complainant’s book on page 12, on Monday, 2 February 2008. The Press Ombudsman partially upheld the complaint on May 30. More than a month later, on page 20 on Thursday 17 July, the newspaper published the decision on the wrong page, more than 10 working days late, on the wrong day and without the PCI logo. The decision included a criticism of the newspaper’s management of the complaint for its "failure...to respond to the complainant’s correspondence, in relation to what it later agreed was an error on its part” which “prolonged the handling of what should have been a relatively simple matter”.

Figure 24 also identified 37 cases where member publications breached a single criterion of the publication guidelines. The vast majority of these decisions – 31 - were not published promptly within the 10 working day range. The data showed that the median days for these cases is 25 days, which is almost double the 14 normal days covering the 10 working day limit set down by the PCI.

Figure 26: Days taken to publish upheld decisions

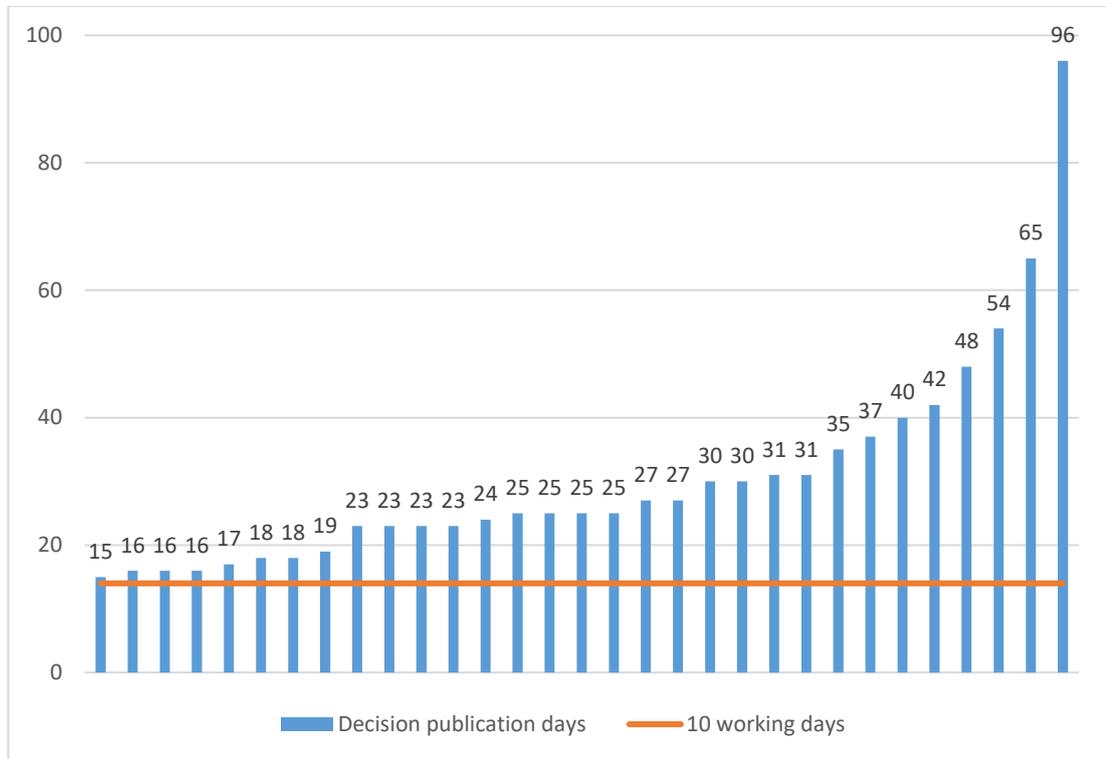


Figure 26 shows the number of days taken to publish the upheld decision in each of the 31 cases. It shows that the majority of those were published within a month, which is, nevertheless, outside of the initial 10 working day timeframe. A number are also just outside of the 10 working day (14 ordinary days) limit, with 8 cases resulting in publication of the decisions in less than 20 days, or around 15 working days.

According to the analysis of the publication of decisions, just four cases were recorded where member publications did not breach any of the four criteria. The first record of a newspaper abiding by the publication guidelines occurred in 2008. It involved a complaint by Liam Lonergan, a businessman, who complained that a front page article in the *Sunday Times* breached truth and accuracy and fact and comment principles of the CoP over the newspaper’s decision to quote an employee as a spokesman. The Press Ombudsman partially upheld the complaint under truth and accuracy. An appeal by the

newspaper to the PCI affirmed the decision on 12 September in the same year. Some nine days later, the *Sunday Times* printed the decision on page two in full and unedited, and on the same day – albeit the newspaper’s only day of publication, Sunday. Another of the four cases involved a complaint by Harry Browne, a journalist and author, about an editorial addition to a letter Mr. Browne had sent for publication to the *Irish Times* (the letter dealt with a previous PCI complaint Mr. Browne had made against the newspaper over a review of one of his books). The complaint, under truth and accuracy, was fully upheld. On 3 February, some 10 days after the Press Ombudsman decision, the newspaper published the decision in full, on the same day, Monday, and further forward in the newspaper on page two (the letter was originally published on page 15). Thus, the *Irish Times* met, on this occasion, the guidelines established by the PCI.

As has been discussed, the only sanction available to the PCI is the power to enforce publication of its adjudication in a member publication according to the publication guidelines. Therefore, non-adherence to this by member publications is a serious issue which strikes at the heart of the credibility of the Irish system of press regulation. The following sections will look at the breaches in more detail.

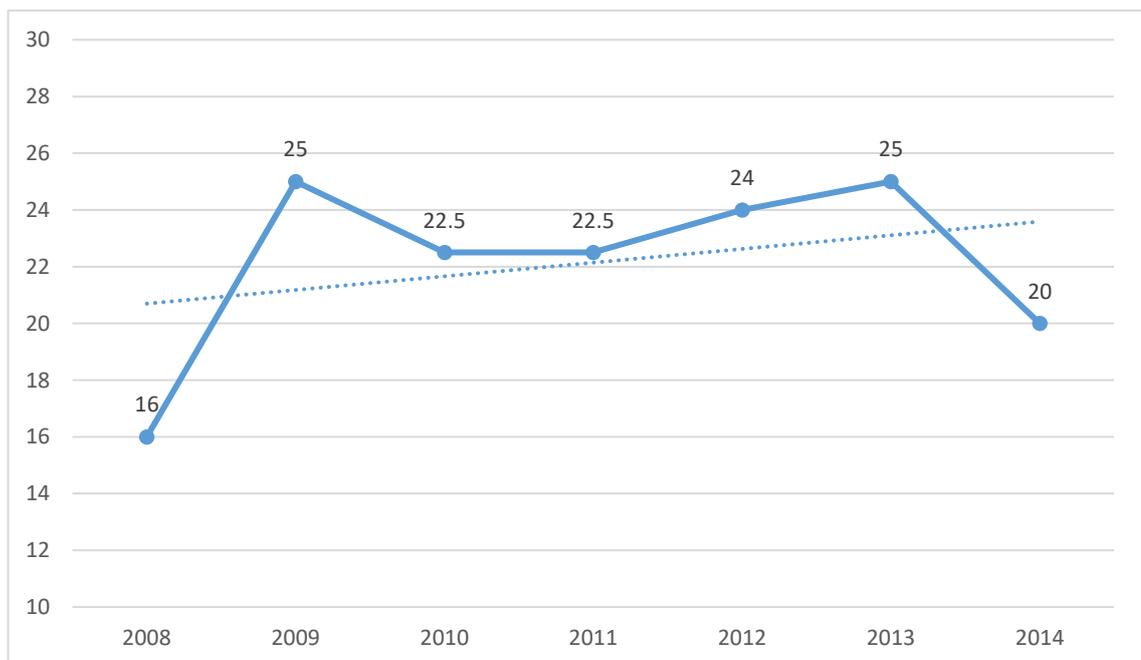
#### **6.12: Decision publication timeframe**

By far the most common of the four criteria breached when publications published upheld decisions was a failure to carry the Press Ombudsman and PCI’s decision within the 10 working day range, changed in 2009 to the more nebulous term “promptly”. The particular criterion was breached on 76 occasions from a total of 92 upheld complaints where complete data could be collected. The longest time taken for a newspaper to publish an upheld decision was 114 days, or well over 3 months. The complaint was taken by a Ms. McLoughlin about an article in the *Sunday World* in March 2008 which

identified a deceased relative as a drug trafficker. The Press Ombudsman partially upheld the complaint, which was unsuccessfully appealed to the PCI. On January 4, 2009, the newspaper published the decision, some 100 days outside the 14 day (10 working days) limit.

In all 92 cases where data was available, the median days taken for newspapers to publish decisions of the Press Ombudsman or PCI was just over 22 days. The year 2012 saw most decisions published, with 17 member publications carrying upheld decisions in that year. The following year saw the fewest, at 9.

Figure 27: Annual averages for publication of decisions



When the median number of days taken to publish decisions was analysed on a yearly basis, it showed that the first year saw the lowest median number of days at 16. However, each year after this saw the number of days increase to 20 or above, with the overall trend suggesting an increase in the number of days taken, over time, by newspapers to publish decisions.

### **6.13: Decision publication day**

A total of 24 cases recorded breaches of the same day requirement. Given the number of member publications which are Sunday newspapers published only on a Sunday or regional or local newspapers which are published once a week on the same day, the lower instance of this breach is to be expected. Nevertheless, in total 41 upheld complaints related to member publications which are published on multiple days of the week. This suggested that where newspapers had the capacity to print decisions on another day, 58 per cent breached the requirement to publish on the same day.

The single upheld case taken to the Press Ombudsman and formally examined under Principle 10 Publication of the Decision dealt with a failure of a newspaper to publish an upheld decision against it on the same day of the week. The initial complaint was taken by the Irish Traveller Movement in relation to an article in the *Herald* on Wednesday, 14 September 2011 which it argued linked the Travelling community with criminality. The complaint was partially upheld by the Press Ombudsman and the PCI in March 2012. The *Herald* published the upheld decision on a Saturday almost a month after the PCI decision in April (also a breach of the prompt rule). As a result, the complainant took a case under Principle 10 which the Press Ombudsman referred directly to the PCI.

The complainants pointed out that the decision had not been given due prominence in accordance with Principle 10 of the Code because it had not been published on the same day of the week – Wednesday - as the original article, but on a Saturday, a day when the paper had a much smaller circulation. The newspaper responded that the decision to publish the decision on a different day of the week had been taken because of production requirements (PCI 2012)

The PCI upheld the complaint, concluding that the publication of the decision had not met the due prominence requirement under the code and the guidelines. It said the decision should have been published on a Wednesday. The *Herald* duly obliged, printing the decision within the 10 working day period after the PCI decision on Wednesday, 19 September. However, the publication of the decision still breached the guidelines, the analysis showed, as it was published on the wrong page, 29, when the initial article appeared on page 27 (the first publication of the upheld decision was on page 18).

#### **6.14: Decision publication page**

On 25 occasions, member publications breached the requirement to publish decisions on the same page or further forward, the data showed. Two particularly illustrative examples involved the *Sunday World* in 2009. The first case was taken by James Gantley whose complaint about an article which linked him to crime was partially upheld. The original article was published on page 16 while the decision was published on page 46 of the newspaper. The second case was taken by Mr. and Mrs. Frank Ennis about a report in the *Sunday World* which carried comments attributed to Mrs. Ennis in relation to the death of their son. The article appeared on page 6. The upheld decision was carried on page 50.

Further analysis of the complaint database showed that in total, 34 complaints were taken by complainants over articles which appeared on the front page of a member publication. Of these, 24 complaints were upheld. The majority of those which were upheld, 16, followed the publication guidelines which state that where offending articles appeared on the front page, the publication of the decision must be carried on one of the first four editorial pages. The analysis showed that no member publication corrected their breaches of the CoP on their front pages or on page 3. In some 9 cases, the decisions were published on page 2, while in 7 cases the decisions were published on page 4. In one case

no record could be found of publication of the decision. It involved a complaint – referenced earlier - taken by Wayne O’Donoghue against the *Sunday World* referred to above.

The complaint database showed that in a further 7 cases which centred on front page articles, member publications breached the publication guidelines by printing the decision further back in their newspapers. Two of these cases were about complaints taken by Gerry Adams, a Sinn Féin TD, against the *Irish Independent* and *Sunday Independent*, referred to above. Both newspapers carried reports on their front pages on successive days in May, 2014, claiming that Mr. Adams had tried to stop coverage of him. The Press Ombudsman and PCI partially upheld Mr Adams’ complaints. However, the decisions were published on page 17 in the *Sunday Independent* and page 22 in the *Irish Independent* in clear breach of the publication guidelines.

### **6.15: Decision publication treatment**

Analysing the text of published decisions showed that on numerous occasions, newspapers changed tenses or words in decisions in order to comply with their publication style. However, these were not regarded as significant enough to constitute breaches. In addition, the requirement that newspapers only print upheld parts of decisions meant that assessing whether elements were unedited etc. was difficult. Indeed, many publications disregarded this requirement and printed the full decisions, including parts which were not upheld.

However, on 24 occasions newspapers committed publication errors which resulted in clear breaches of the requirement that decisions be published unedited, without commentary and alongside the logo of the Press Ombudsman and/or PCI. A number of different categories of omissions illustrated breaches on this criterion.

The first is the editing of decisions. The first example of this was a complaint taken by Janet French about coverage of her deceased daughter in the *Irish Sun*. The complaint was upheld by the Press Ombudsman. An appeal to the PCI by the newspaper resulted in a partial overturning of the decision, however, the newspaper was still obliged to publish parts of the decision which were upheld. At publication, the newspaper edited the decision text to lead with the information about the successful part of its appeal to the PCI. This is a breach of the guidelines given that the text of the decision begins with an outline of the case taken by Mrs. French. Another case involving Mrs. French saw a similar breach. In this case, Mrs. French had a complaint about the *Irish Star Sunday* partially upheld. However, when published, the newspaper edited the decision to lead with the fact that “following a lengthy process” part of the complaint was not upheld. The newspaper did, however, acknowledge its breach in a later publication.

In our publication of the decision...an introductory paragraph added to the decision may have created the impression that the complaint made by Mrs. French against the newspaper had not been upheld. This was not the case. We regret any misleading impression that may have been created by the manner in which this decision was published, and we accept that in line with Principle 10 of the CoP, newspapers against which complaint are upheld are required to publish the text of decisions by the Press Council or the Press Ombudsman in full and without editing, alterations or additions (*Irish Star Sunday 2008*)

The second category are complaints which failed to carry the logo of the Press Ombudsman and/or the PCI. These breaches included a case taken by James Gantley about a report in the *Sunday World*. According to the partially upheld decision, the newspaper did not engage with either Mr. Gantley or the Press Ombudsman in relation to the complaint. It breached the guidelines as the publication of the decision did not carry

the logo of the Press Ombudsman (it was also not published within the 10 working days and was on the incorrect page).

A number of member publications also carried different headlines to those stipulated in the decision text published by the Press Ombudsman and PCI, which, although minor, constituted breaches of the guidelines. This type of breach included a complaint taken by Rev. Guy Chave-Cox about a report of his property ownership in the *Sunday Times*. The Press Ombudsman and PCI upheld the complaint, however, when published, the newspaper carried a headline which stated “Press Council Decision” when it should have read “Rev. Guy Chave-Cox and The *Sunday Times*”. Included in this criterion were cases where newspapers included their logo in the headline of the publication of the decision. This occurred on a number of occasions, including a complaint taken by Keith Fahy over a breach of his privacy by the *News of the World* which published the location of his place of work. The Press Ombudsman and the PCI partially upheld the complaint. However, when published, the newspaper edited the headline of the complaint to include its red-top style logo in place of the name of the newspaper.

Perhaps the most obvious breach of this criterion is the *Irish Times*' response to an upheld complaint by Kevin Myers, a newspaper columnist. Myers complained about the newspaper's coverage of a separate complaint against him for one of his articles in another newspaper. The case was referred to the PCI by the Press Ombudsman which partially upheld the complaint. Instead of publishing the decision in the manner governed by the guidelines, the *Irish Times* carried a news story style report by-lined by one of its reporters. While the report featured the text of the decision in its proper format, the report contained the wrong headline of “Press Council partially upholds complaint against ‘*Irish Times*’” rather than the correct headline, “Myers and the *Irish Times*”. The publication did, however, meet all of the other criteria under the publication guidelines. Nevertheless,

the publication is clearly designed to appear as editorial and breaches the criterion as a result.

### **6.16: The Press Complaints Commission**

Press self-regulation commenced in the UK in 1953 with the establishment of the original Press Council. Throughout its more than 30-year existence, it faced criticism over a number of perceived failures, including an inability to robustly regulate the British print press (O'Malley and Soley 2000: 51-96). The Press Complaints Commission (PCC) replaced the Press Council in 1991 in response to similar threats of privacy laws and political disquiet (Frost 2004: 101-103) about press standards that prompted the establishment of the PCI (see Chapter 3). Many have argued that the PCC failed to properly regulate the press (Cohen-Almagor 2015; Frost 2015; Brock 2010; Bingham 2007). Frost (2004, 2015) concluded that none of its work supported the claims that it was an effective regulator or that it had brought about a change in the culture of the British press. Indeed, he also argued that the PCC's structures were designed as a mechanism to reject or not deal with the vast majority of complaints (2004: 113-114). The Leveson Inquiry (2012) corroborated much of this academic criticism.

The rare examples of substantive research carried out in other Liberal model press systems, in Canada (Pritchard 2000), the United States (Ugland 2000, 2008), and in Britain (O'Malley and Soley 2000; Frost 2000, 2004, 2015), all support the conclusion that industry power over self-regulatory instruments has infected regulatory structures, procedures and decision-making, resulting in credibility problems and regulatory failures. And, while the PCC may have clearly failed to provide a robust regulatory framework, it is the only substantive example of press self-regulation suitable for

comparison in the Liberal model system. Indeed, its failure produces a very obvious basis for comparison with institutionalised independent press regulation.

### **6.17: PCC comparison (a)**

The PCC received almost 55,000 complaints during its 18 years in existence, with the complaint data analysed by Frost (2015) indicating an upward year on year trend in the number of complaints lodged. In its first year, 1991, the PCC received some 1,520 complaints, while in 2008, some 4,698 complaints were lodged with it, an increase of over 200 per cent. In comparison, as shown in Chapter 4, the complaints received by the Press Ombudsman and PCI remained relatively stable over the period under examination, with 372 complaints lodged in 2008 compared to 350 in 2014, albeit over a much shorter time period. According to Frost (*ibid*), the PCC consistently stated that the increase in annual complaints was evidence of increasing awareness of the organisation. The Press Ombudsman (PCI 2011: 9) has been more circumspect, arguing that the reasons behind increases or decreases in complaints are difficult to pinpoint.

*Table 27: PCC headline data 1991-2009 (Frost 2015)*

		per cent of total
Not pursued by complainant	1783	3.28%
No case under code	13908	25.61%
Outside remit	11093	20.43%
Disallowed for unjustified delay	1419	2.61%
Third party	3672	6.76%
Complaints not formalised	10733	19.77%
Resolved	10673	19.66%
Adjudicated	1016	1.87%
<b>Total</b>		54297

Table 27 outlines how the PCC dealt with the almost 55,000 complaints. As Frost pointed out (2015), the majority of complainants to the PCC did not receive a formal

hearing of their complaint with just under 1.9 per cent of complaints reaching formal adjudication by the PCC while a further almost 20 per cent were resolved informally. As noted by Frost (ibid), a complaint resolved by the PCC occurred where complaints were “resolved to the express satisfaction of those complaining or those complaints in which the Commission judged that an offer of remedial action by the editor was sufficient to remedy any possible breach of the CoP”. The resolution took many forms, Frost noted, with corrections, apologies, private letters of apology, undertakings of future conduct and so on all common. Some complaints involving offers of remedial action that have been turned down by complainants also reached formal adjudication where they PCC held SRA had been offered (Frost 2012: 28). Of the formally adjudicated complaints dealt with by the PCI, 59 from a total of 273 concluded with an SRA adjudication. Nevertheless, the PCC data showed that just under 80 per cent of complaints never reached formal or informal adjudication by the Commission.

*Table 28: PCI & PCC headline data comparison*

	<b>Ireland</b>	<b>UK</b>
<b>Total</b>	2687	54297
Not examined		
Outside remit/Non-member publications/3rd party <sup>18</sup>	810	14765
Delay & withdrawn	1250	13935
Ruled out on 1st reading	129	13908
Total not examined	2189 (81.5 per cent)	42608 (78.5 per cent)
Informal examination		
Resolved/Conciliated	135 (5 per cent)	10673 (19.6 per cent)
For adjudication		
Adjudicated	273 (10.2 per cent)	1016 (1.9 per cent)

<sup>18</sup> Included in this category for the PCI were the 31 cases between 2008 and 2014 that were postponed due to legal action that was ongoing.

Table 28 has grouped various different categories in Table 27 for the purposes of a comparison with similar complaint data from the Press Ombudsman and PCI. It shows that the Press Ombudsman and PCI both rule out examination of a larger percentage of complaints. Some 81.5 per cent of complaints lodged with the Press Ombudsman and PCI are not examined for a variety of reasons as listed in Table 28. This compares to 78.5 per cent of complaints which were not examined by the PCC during its existence. However, a far larger number of complaints are formally adjudicated on by the PCI, with 10.2 per cent of complaints receiving a formal examination compared with the PCC's 1.9 per cent. This is explained by the PCC's "gradual shift in emphasis from adjudication to resolution" which Frost (2015) alluded to. Indeed, almost 20 per cent of cases informally assessed by the PCC were deemed resolved compared to 5 per cent with the PCI. However, as Chapter 4 also showed, the Press Ombudsman and PCI are also examining increasing numbers of complaints under the resolution and conciliation route.

In addition, Frost (2012) found that between 1993 and 2010, national newspapers made up 47.9% of complaints that the PCC adjudicated on followed by 34.5% for regional and local newspapers and 5.6% for magazines<sup>19</sup>. In comparison, 92% of formally adjudicated complaints dealt with by the PCI related to national daily and Sunday titles. The remainder of the cases involved local, regional and student publication as well as a limited number of complaints about magazines. The contrast can be partly attributed to the difference in size and diversity in the UK and Irish newspaper markets.

In further research, Frost (2010: 384) found that 12.2 per cent of complaints dealt with by the PCC concerned privacy issues. The majority of the complaints that the PCC dealt

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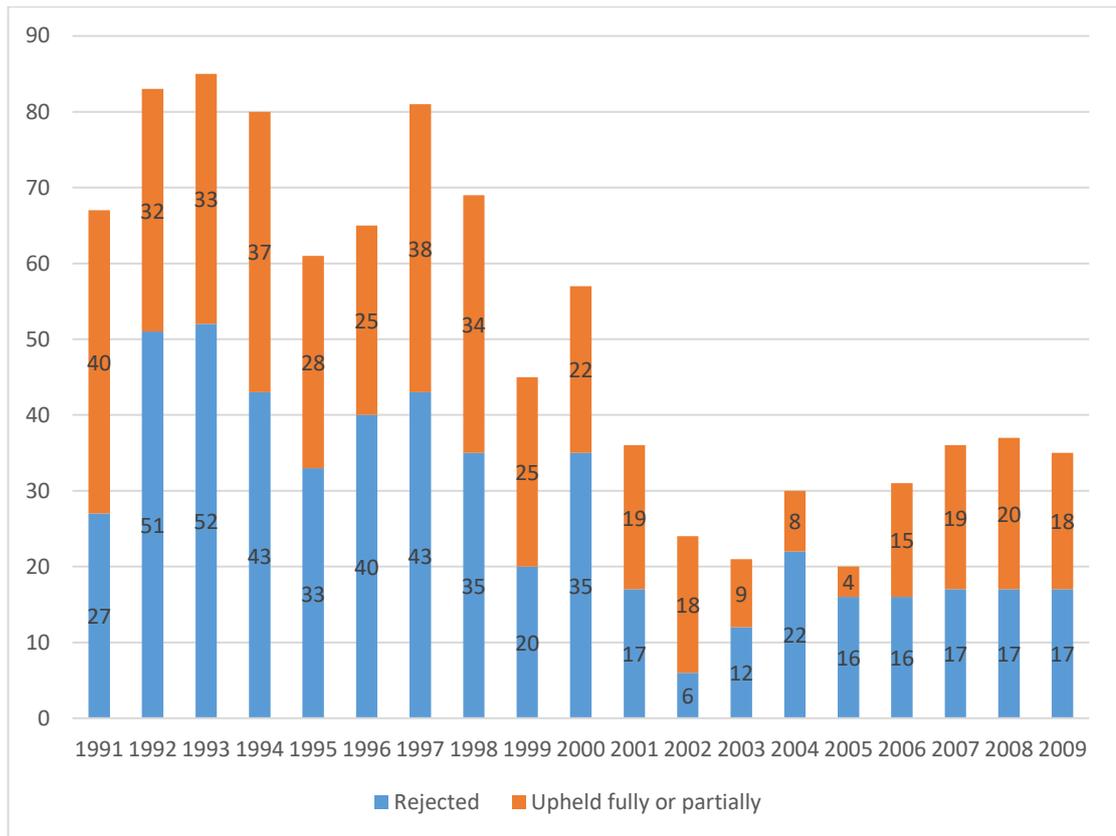
<sup>19</sup> Scottish newspaper (8.7%), Northern Irish papers (2.3%) and others (0.9%) made up the remaining categories.

with concerned accuracy. These statistics are reflected by the complaint data gathered from the PCI, where between 2008 and 2014 some 13.2% of complaints concerned privacy (see Table 12, p.127). Similarly, the majority of complaints (38.4%) were made under the accuracy provisions of the PCI CoP which also includes reference to truth.

#### **6.18: PCC comparison (b)**

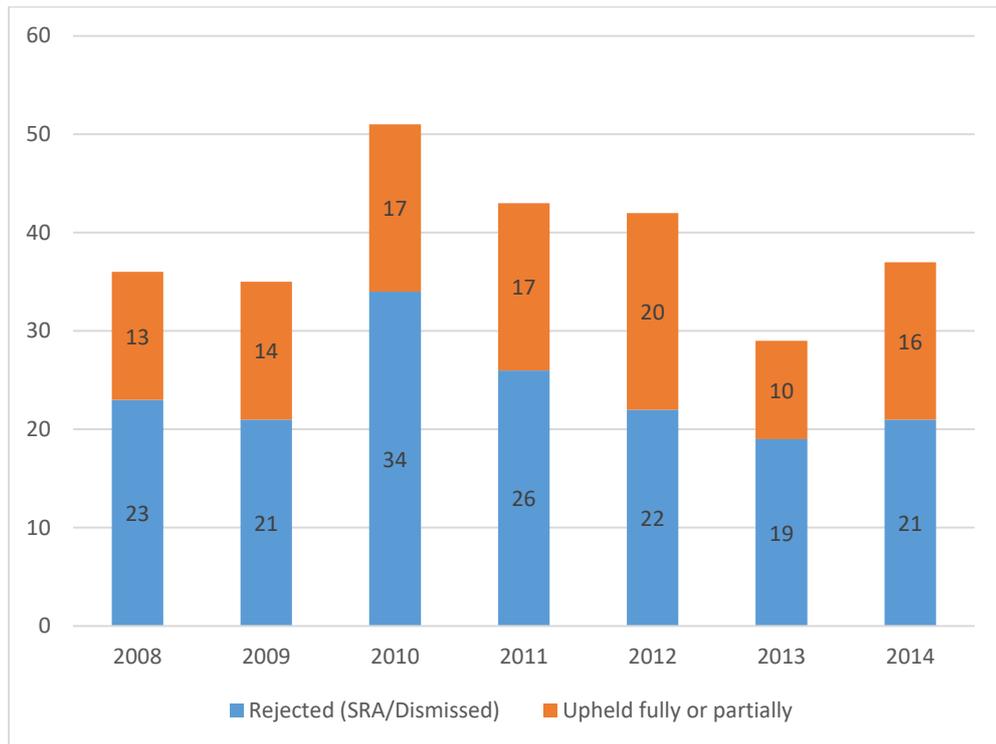
According to PCC data analysed by Frost (2015), the organisation upheld or partially upheld an average of 51 per cent of the cases it formally adjudicated on. As with the PCI, the only sanction the PCC had was that members were obliged to publish the adjudication (Frost 2015). Figure 28 shows a year by year analysis of the number of formally adjudicated complaints examined and ruled on by the PCC. It also shows an obvious downward trend in the number of overall formal adjudications in later years which was offset by a rise in informal resolutions references earlier.

Figure 28: PCC annual complaints, upheld and rejected



In comparison, the database of complaints of the Press Ombudsman and PCI showed that an average of 39 per cent of complaints formally assessed were upheld in full or in part. Figure 29 showed a year by year break down of complaints which were deemed SRA or dismissed and those which were upheld in some fashion. Absent from the PCI data, however, was an obvious downward trend in the number of annual adjudications.

Figure 29: PCI annual complaints, upheld and rejected



### 6.19: Conclusion

This chapter examined the work of the Press Ombudsman and PCI with reference to a selective accountability framework. It assessed concepts of consistency and responsiveness as measures of answerability, the first element of accountability. The chapter then investigated industry compliance with the Press Ombudsman and PCI's sanction powers in order to satisfy the second measure of accountability, enforcement. In addition, the chapter also compared the complaint and adjudication levels achieved by a liberal system self-regulatory organisation, the PCC, with the Irish scenario, an independent, legislatively underpinned regulatory body.

The data has revealed a number of interesting areas of contrast. When complainant genders and backgrounds were examined, it showed that female complainants succeeded more often with their complaints when compared to their male counterparts, while complainants classed as well-known from politics, media, celebrity and business had higher upheld rates than the private, regular complainants. In addition, the data showed

that when complainants employed legal representation, their complaints were upheld more frequently.

As expected, there was a wide variation in the number of complaints and the number of upheld adjudications against each member publication. However, a further analysis of the data, showed that some news organisations achieve better outcomes than others despite being the subject of similar levels of adjudicated complaints. In addition, there was contrasting outcomes per publication type – mid-market, tabloid or broadsheet. The research also found that there is a difference, albeit limited, where overseas and domestic titles were concerned. In addition, the research established that member publications were far more successful with cases which were appealed to the PCI. This is surprising given the independent nature of the board.

There are no obvious reasons for the divergence in outcomes in these examples. Further study is needed in this regard. For example, conducting research on the particular journalistic ethos of each publication could yield useful indicators of reasons for the number of complaints and complaint outcomes. This would be particularly interesting given the fears expressed over Irish journalism moving closer to the UK tabloid culture (see Chapter 3) and the similar upheld adjudications against INM and DMG Media. In addition, more study on the particular complaint type per title may provide interesting findings.

The various data types examined are unpersuasive when assessed in isolation as a measure of consistency of the PCI . However, the data is slightly more persuasive when examined collectively but ultimately does not show any glaring inconsistencies in the work of the Irish system. Nevertheless, the variations shown in the treatment of complainants, the outcomes of appeals and the outcomes of complaints across the newspaper type spectrum all suggest that more research is needed on the consistency

element of the conceptual framework of accountability and the work of the Press Ombudsman and PCI. This subject will be further examined further in Chapter 7.

As Chapter 4 discussed, there is no formal limit for how long it should take the Press Ombudsman and PCI to deal with complaints. However, during his evidence to the Leveson Inquiry, Press Ombudsman John Horgan (2012) said he tried to reach a decision on cases within a “maximum period of three months”. In addition to this, he referred to a two-week period which the complainant has to attempt to resolve the complaint directly with the member publication before the formal adjudication process begins. The PCI’s website also gives complainants informal advice on how long it might take for a complaint to conclude. It says that the process may “vary” but if conciliation fails over an up to 6-week period, the Press Ombudsman may take “a further two weeks” to make a decision which will be delayed if appealed. This suggests that from the date of publication of the article, it may take up to 8 weeks, or two months, for a complainant to get an adjudication, with a further month expected in the case of a PCI appeal given the monthly meetings of the board.

The data showed that in 2008, it took over three-and-a-half months on average to deal with complaints from the date of publication of the offending article to the decision. However, in each of the years after this to 2014, the average time period for reaching an outcome took four-and-a-half months, with the peak reached at almost five months in 2011 (Figure 18). Further analysis of complaints which were not appealed beyond the Press Ombudsman, showed that the Press Ombudsman began his work in 2008 by dealing with complaints in three months. However, in each of the following years, it took the office around four months to adjudicate on complaints. In total, it took a median of 140.5 days – or four-and-a-half months – for complaints to reach a decision through the formal adjudication process.

The findings on responsiveness can be interpreted in two ways. First, in the absence of any formal limits for dealing with complaints, is a median of 140.5 days from the date the article appeared to the complaint outcome a ‘speedy response’? Bearing in mind that the data in this study used the original article date – the actual date the complaint was first lodged was unavailable - for the basis of the assessment, an overall average for dealing with complaints of four-and-a-half months is a good outcome for the PCI for a number of reasons. First, it is substantially less than the time it would take complainants to reach a conclusion in a legal case that they may take through the courts which can often take many years to come to hearing and ruling. One of the reasons for setting up a complaints-handling system such as the PCI is to help people who have complaints avoid the adversarial, costly and lengthy legal route. Second, the PCI was still in its early phase during the years under review. Chairman Mitchell said the most “urgent challenge” during these years has been to “embed the new system” and “refine its procedures” (Mitchell 2015: 121). Thus, dealing with complaints in such a time period suggests that the PCI has made a good start in terms of responsiveness. It is reasonable, however, to expect that the timeframe for dealing with complaints should decrease in the coming years, particularly in light of the debates on the setting up of press regulation in Ireland discussed in Chapter 3, and the promise of a quick complaints handling service.

In addition, in light of the informal attempts by the Press Ombudsman and the PCI to establish some form of guidance for complaint handling time limits at around eight weeks, it is also reasonable to conclude that complaints-handling is failing to meet this promise. It is clear from the data that in the first year of operation, the regulator was achieving success with these time periods. However, since then, the time period for dealing with complaints has extended, thus suggesting that the Press Ombudsman and PCI are not meeting their informal deadlines it offers to complaints for dealing with

complaints. Perhaps the PCI's suggestion on speediness (as well as some of the other remarks from the Press Ombudsman and others over the years) is somewhat ambitious, particularly considering that the system is still young. However, the eight-week timeframe, which would obviously be extended should any PCI appeal be lodged, is a strong benchmark for the system to aim at in its next phase of development.

As discussed, the second core element of accountability is sanction. The Press Ombudsman and PCI's only sanction is the publication of its upheld decision in the offending member publication. Decision must be published according to a set of publication guidelines which are reinforced by the CoP in order to ensure due prominence with the offending article. This is the standard of enforcement which was examined. The analysis of all upheld complaints and the subsequent decision publication showed that there is widespread non-cooperation with this standard, with varying levels of non-compliance found. It is worth pointing out that in all except three cases, newspapers published the negative decision against them. That is to be commended and suggests that member publications cooperate with the PCI in this regard. This is particularly important given the mixed record that self-regulatory press councils have on ensuring that their decisions are published (see Chapter 2). It is also worth highlighting the fact that, on occasion, newspapers published decisions which were not upheld against them. This shows a basic level of co-operation between the newspaper industry and the regulatory organisation. However, a deeper analysis showed that 96 per cent of decision publications breached one or more of the four categories required to meet the due prominence standards. This strongly suggests that there are problems with the core sanction power operated by the Press Ombudsman and PCI. There are no obvious reasons from the material studied that suggest reasons for the errors in publishing decisions. The word 'guidelines' may give member publications the impression that they are optional,

although this is not the case as the PCI says newspapers “must” follow these rules on its website. It may also be the case that layout staff on newspapers are not aware of, and not given proper direction, on where to place and how to treat PCI decisions. Although outside the scope of this research, interviews with newspaper editors and the Press Ombudsman/PCI may shed light on this.

The main consideration of this chapter was to assess whether the Press Ombudsman and PCI met standards of accountability using the twin related concepts of answerability and enforcement. The research suggests that in relation to answerability, the Press Ombudsman and PCI partially met consistency and responsiveness standards. While a number of areas suggest that further research is required, the PCI in its first six years of operation has achieved some success on both elements. However, in relation to enforcement, while the research shows there is widespread compliance with the requirement to publish a negative decision, it also suggests that the publication of upheld decisions in member publications is not being carried out in accordance with the PCI’s Publication Guidelines and therefore cannot be said to be meeting due prominence requirements. Given that the publication of decisions is the PCI’s sole sanction power, this presents a mixed picture in terms of enforcement for the PCI during the years under review.

In addition, the chapter set out to examine whether independent regulation differed in any way from self-regulation, and what strengths and weaknesses it exhibited when compared to industry-led regulation. The comparison with the PCC suggests a number of areas where further study is needed on independent regulation. The independent Irish regulatory system formally dealt with fewer complaints than the failed self-regulatory system and it also upheld fewer complaints than the PCC – both subjects for which Frost (2015) criticised the PCC. Complaints were not examined for a variety of reasons, all of

them entirely legitimate. However, further study could contextualise and suggest possible reasons why, for example, 1,216 complaints to the PCI were made outside the three-month time limit and what were the reasons for ruling out 129 complaints on a first reading. In general, finding that the PCI dealt with fewer informal and formal complaints was surprising given the independent and institutionalised nature of Irish press regulation.

The comparison with the PCC also highlights potential strengths of independent regulation showing that the Press Ombudsman and PCI dealt with a far higher number of complaints via the formal adjudication process than the PCC which favoured informal resolution of complaints. These findings will be discussed at length in Chapter 7. A number of areas emerged from the comparison that are outside of the scope of this study but could be areas for further research. These include a deeper examination of why the PCI's work is dominated by national newspapers when compared to the PCC (Frost 2012: 33). In addition, there is scope to look deeper at privacy complaints made to the PCI given the subject's central role in the setting up of the Irish system as well as other systems in the Liberal North Atlantic area (see Frost 2010). It would also be interesting to compare the types of complaints levelled against individual newspapers in both systems as well as compare the types of titles that are most commonly involved in complaints.

## **Chapter 7: Analysis and discussion**

### **7.1: Introduction**

Press regulation in the Anglo-American journalistic milieu emerged after the philosophical shift to a socially responsible media during the 20<sup>th</sup> century. Chapter 2 traced how the work of the Hutchins and Ross Commissions in the US and UK respectively highlighted an erosion of liberal journalistic traditions of unrestrained freedom. The media in the dominant North Atlantic liberal system began to accept greater extra-judicial responsibilities to their audiences and readers.

However, as Chapter 2 showed, the literature strongly suggests that defining a definitive set of journalistic responsibilities for the North Atlantic liberal system is problematic. Nevertheless attempts to codify a set of standards have been made at both the nation state and international level. The clearest and most common manifestation of this has been self-regulatory press councils which usually publish an agreed code of ethics and take complaints on the basis of alleged breaches of specific clauses. Indeed press councils in the UK, US and Canada have been in the vanguard of attempting to hold journalists in the North Atlantic liberal tradition accountable, while at the same time striking the balance with maintaining the concept of a free press.

Despite their ubiquitousness, self-regulatory press councils in the North Atlantic liberal system have failed to enforce their mandates to hold journalists accountable for ethical breaches (Pritchard 2000; Ugland 2000, 2008; O'Malley and Soley 2000; Frost 2000, 2004, 2015). Chapter 2 examined press councils in the US, Canada and Britain. The existing literature has found that none of these press councils successfully upheld journalistic responsibilities in any systematic manner due, in large part, to structural flaws and a failure to enforce accountability mechanisms.

Nerone (1995: 29), in the political economy tradition, has argued that the concept of social responsibility was an idea promoted by the media as it is in the institution's interests to perpetuate a 'myth' to maintain its own freedom, mainly for economic advantage. McChesney has also pointed out that "the political economy of communication has focused on how capitalist control and commercial support of media have tended to serve elite interests in a manner that is anathema...to core democratic values" (1998: 8), which, as Chapter 2 established, mirror journalistic responsibilities. Indeed, Herman and Chomsky's (2010) 'flak' concept – public complaints about media coverage – is also relevant, as the authors argued it is controlled by the same power sources which played, and continue to play a key role in fixing basic journalistic principles and dominant ideologies suitable to capital. As Chapter 2 showed, the literature on regulation of the press strongly supports the political economy agenda. Research has shown that industry power over self-regulatory instruments has infected structures, procedures and decision-making, resulting in credibility problems and accountability failures (Pritchard 2000; Uglund 2000, 2008; O'Malley and Soley 2000; Frost 2000, 2004, 2015).

Academics, governments and media commentators have all highlighted the failures in the self-regulatory approach to press councils. These failures of media accountability in the North Atlantic liberal press system have pushed the concept of social responsibility into a new space. The increased focus on journalism ethics and media accountability has led to a questioning of the orthodoxy of self-regulatory approaches. However, there has been little substantive action by policy makers or the media in forming new, and robust, approaches to the failures of self-regulatory press councils.

Ireland – a country considered by Hallin and Mancini (2004) to be part of the North Atlantic liberal tradition - has produced the only substantive example of change. Chapters

3 and 4 established that the Irish media, in conjunction with government, set up a unique press council in an attempt to avoid many of the failures that had undermined self-regulatory systems. The PCI is an independent, legislatively underpinned and incentivised body where the formal process of institutionalisation and legal recognition has resulted in the codification of an accepted set of professional norms created and accepted by industry. The PCI exhibits striking differences with Hallin and Mancini's (2004) analysis of the dominant non-institutionalised and informal press regulatory approaches in the North Atlantic liberal area.

This chapter reviews and analyses the findings in Chapter 6 to examine if independent press regulation in the Irish case has resulted in a robust accountability processes, or, if independent regulation exhibits the same weaknesses prevalent to date in self-regulatory press councils in the North Atlantic liberal press system. It discusses initial observations based on work in Chapters 2, 3 and 4. This can be split into two sub-sections, structural and operational. The structural-subsection examines three key areas of discussion around independence, transparency and the PCI CoP. The operational sub-section discusses working aspects of the PCI including the informal complaint handling procedures and some basic data comparisons with the PCC in the UK. The chapter then lays out the findings from the formal complaint analysis undertaken in Chapter 6. The final part of this chapter points out the wider significance of some of the findings and how they contribute to ongoing press regulation debates.

## **7.2: Independence**

The literature suggests that structural independence from both the state and industry is an important characteristic for successful press regulation (Bertrand 2003; McQuail 2003; Sawant 2003; Cohen-Almagor 2005; Duncan 2014) and effective ombudsmanship

(Kliadman and Beauchamp 1989; Meyer 1991; Van Soye 2007; Kenney and Ozkan 2011; Mollerup 2011; Evers 2012). It has been one of the core elements lacking in self-regulatory approaches. In his report into the ethics, practices and culture of the British press Justice Leveson concluded that the self-regulatory PCC was “constrained by serious structural deficiencies” which limited its work. He said the power of the Press Standards Board of Finance, a committee of senior newspaper executives which oversaw the work of the PCC on appointments, the CoP and funding, “means that the PCC is far from being an independent body”:

It is a clear flaw in the self-regulatory system that the Editors’ CoP Committee, the body with sole authority to amend the Editors’ CoP, is made up exclusively of serving editors and executives. This gives rise to at least the perception that rules are being made which suit the editors themselves and not the public (2012: 1529)

Leveson argued that more journalists and those familiar with the industry, such as NUJ members, should replace senior editors on the board of the PCC (2012: 1527). Similar concerns about the independence of self-regulatory efforts in Britain had been expressed previously (Bingham 2007). In addition, Leveson (2012: 1530) said the PCC acted, on occasion, as an “unabashed advocate or lobbyist” for the press’s commercial interests. He also argued that by promoting the status quo of self-regulation, the PCC “was in at least the short term interests of the industry, promotion of the merits of self-regulation was an advancement of that interest”.

In my view, this served to create a real conflict of interest between the core function of the PCC, applying the Code and achieving a balance between the interests of the subjects of stories and the press, and the role it arrogated to itself in advocating the interests of the industry as a whole (2012: 1530)

Similar concerns were also noted in other jurisdictions. For example, Pritchard (2000) included a lack of independence as a “structural flaw” in the make-up of the Quebec Press Council in Canada.

Given these concerns about the lack of independence of self-regulatory models of press regulation, one would have expected the PCI to exhibit strong and obvious structural differences that would set it apart. There are a number of areas where the PCI does differ from self-regulation in its structural make-up. As Chapter 4 discussed, the board of the PCI is dominated by independent members and an independent chairperson both of whom have no professional connection to the press. Indeed the appointments committee is also overseen by the independent chair and a committee chosen by the board. In addition, the Press Ombudsman is granted full authority over the administration, operation and staffing of the regulator with subsequent administrative changes strengthening this independence, as highlighted in Chapter 4.

While self-regulatory press councils have often appointed independent chairs to govern board meetings, no press council in the North Atlantic liberal area that has won widespread buy-in by the press has ever been dominated by a lay membership nor guaranteed the function of an autonomous press ombudsman. The PCI board also contains non-editor industry members such as a member of the NUJ. These are significant differences and do suggest that independent press regulation does offer at least the perception of independence from industry, thus significantly improving on the structural failures of self-regulation, as for example, identified by the Leveson Inquiry (2012) in the UK. However, there are a number of areas where there are striking similarities with self-regulation in Britain and elsewhere.

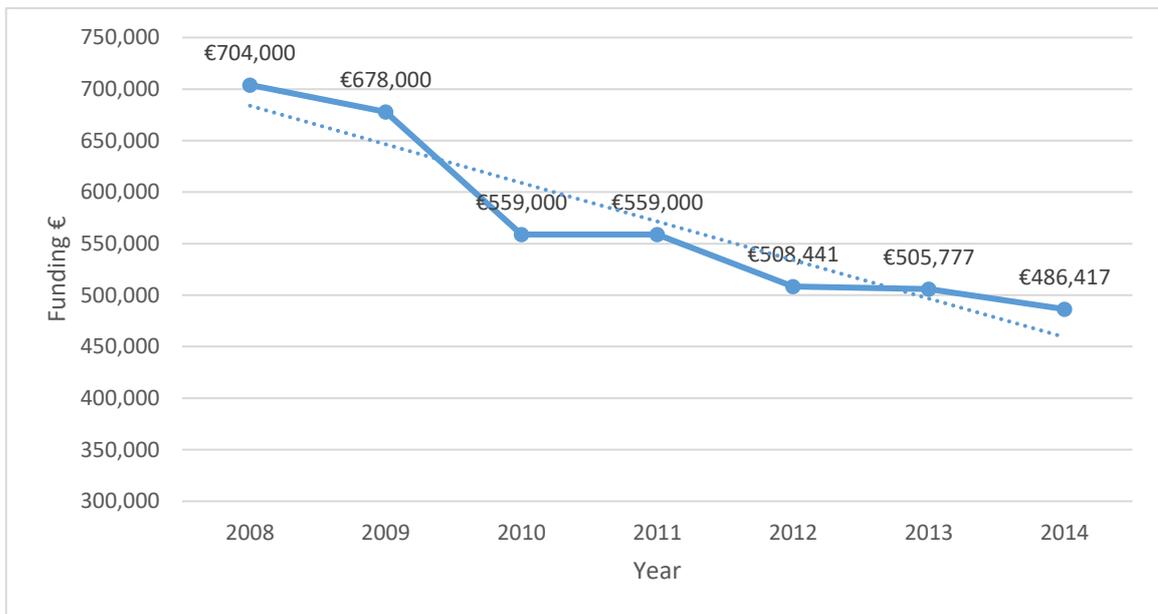
First, two of the PCI’s committees – the code and administrative committees – are controlled by the newspaper industry. As Chapter 4 established, the code committee,

which draws up and monitors the PCI's CoP, is made up of six newspaper editors, a representative of the NUJ, the Press Ombudsman and a chair nominated by the PCI. The code committee also has powers to appoint its own members. The administrative committee is made up of five members from the newspaper industry and an independent chair. It also has power over appointments to the committee. The administrative committee's main work focuses on securing funding for the PCI, which comes entirely from industry.

Second, in terms of resourcing, confidence that the PCI is adequately resourced needs further exploration. This is a subject beyond the scope of this study but in terms of budgetary independence, in the UK Leveson found the PCC was "barely given enough money to perform its key function of complaint handling" (2012: 1577). In terms of funding, the PCI is supported solely by member publications. Data contained in the PCI's annual reports showed that funding for the PCI has fallen year-on-year since it began operation in 2008 (Figure 30). As one would have expected, due to initial set up costs, the first two years of the office saw the largest budget allocation. Significant investment would be required to establish an office such as this at the outset. Whether the office requires a decreasing level of funding each year, or if industry is unwilling to meet higher demands is unclear and cannot be independently verified. Nevertheless, the data undermines the position of the PCI which has repeatedly stated that funding levels have remained consistent (see Chapter 4). In addition, the reliance on industry to fund the PCI somewhat undermines the perception of independence on which the Irish regulatory system has been set up. The falling level of funding year-on-year is a concern for Irish press regulation and further research and attention is needed to find out if the PCI is adequately funded and to examine what other sources of funding could be made available. One option could be for the government to offer financial support, however, that may be

unpalatable to the newspaper industry. Another option could be the levying of a subvention on newspaper readers, perhaps as part of any future public broadcasting licence proposals that are likely to see significant reforms due to technological changes in how viewers consume media. The spectre of fines for breaches of the CoP may also be raised at some point in the future and could be used to fund the office.

Figure 30: PCI funding



Third, it appears that the PCI does not have powers to launch its own investigations into ethical matters concerning the press and also lacks the ability to compel evidence from either party to a complaint, evidenced by the several complaints where no adjudication was reached due to a lack of evidence. In a 2009 case taken by Ray O’Donoghue on behalf of his son Wayne against the *Irish Daily Star* – that was partially upheld – the Press Ombudsman concluded that his “investigative role is confined to assessing evidence voluntarily made available to both parties” (PCI 2010). Leveson concluded that “the failure by the PCC to initiate its own investigations...has meant that the PCC is not able to act as a regulator so called” (2012: 1577). Leveson also criticised

the PCC over a lack of powers to compel evidence from member publications which left the organisation in a position where it was trusting newspapers to respond fully to complaints (2012: 1578). “At every step it has to trust that newspapers are properly examining the issues and are not being economical with the truth” (2012: 1578).

Fourth, Nordenstreng (2003) argued that a press council must also be independent of the political and judiciary system to be independent. The legislative underpinning of the PCI via the Defamation Act 2009 confirms many of the above structures which had already been adopted by the PCI. However, Section 6 of the Act gives the Minister for Justice a role in the selection of independent board members. It says that appointments of independent members must be carried out by a panel of people “who are, in the opinion of the Minister, independent” of the media. In addition, the section says that the selection process must be carried out “in a manner that the Minister considers sufficient”. Although it is unclear if – or even how – this provision operates in practice, it nonetheless suggests there is a potential role for government.

### **7.3: Transparency**

The second structural issue – transparency – can be seen as an inseparable element of media accountability that is linked to Hallin and Mancini’s (2004) professionalisation variable (Lauk and Denton 2011: 218). Indeed the concept of transparency is frequently mentioned in the literature, often as an ideal characteristic of press regulation (O’Malley and Soley 2000; Sawant 2003; Barker and Evans 2007; Duncan 2014) and for press ombudsmen (Evers 2012) who Lauk and Kus (2012: 171) described as “transparency agents”. Leveson also argued that press regulation must operate a transparent decision-making process (2012: 1774). Indeed Leveson was critical on a number of occasions about what he believed was a lack of transparency by the PCC in the carrying out of its work (2012: 1577, 1559, 1551, 1524). Uglund and Breslin (2000: 246) concluded that the

Minnesota News Council lacked any transparent decision-making process and Pritchard found that the Quebec Press Council operated in an “ad-hoc” and unclear fashion (2000: 95).

The PCI operates a Code or Practice that guides its work on complaints from the public. The CoP is a clear reference point for each formally adjudicated complaint and is clearly and carefully examined in relation to each reading of a complaint by the Press Ombudsman and the PCI. Indeed, the Press Ombudsman and the PCI unfailingly publish their decisions and always explain the complaints in an accessible fashion on the PCI’s website. In addition, the PCI publishes annual reports which detail top level statistics about the number of complaints it receives and the outcome of these complaints. Thus the basic standards of transparency are being met. However, there are a number of areas which require further attention.

First, there is the question of the openness of the PCI in its own work. As discussed in Chapter 4, an independent member of the PCI’s first board resigned in 2008, citing the PCI’s policy not to publish dissenting opinions as a critical reason for his decision. The board member said the PCI was upholding a “façade of unanimity” by not publishing all details about the decisions on the board. He also raised concerns about “excessive confidentiality” and said the PCI came “close to collusion” with the industry due to the withholding of procedural information about how decisions were made. No systematic analysis of the work of the PCI is possible as it does not publish the minutes of board meetings or the voting patterns of board members. The limited information available in the Articles of Association (see Table 5 p.99) shows there is a quorum of five for all meetings and that the board meetings are being recorded in minutes. In addition, there is no information about the meetings or deliberations of any of the PCI’s three committees,

the code committee, the administrative committee and the appointments committee. All meetings are held in private.

Second, the PCI does not publish a table of the most common offenders. Although this information can be collated (see Chapter 6). The PCI does publish an annual table of the number of complaints under each clause of the CoP, but there is no ongoing overall statistical record of this. Leveson also voiced his displeasure over the failure by the PCC to publish a league-table of the worst offenders and the most breached CoP clauses.

I think this is very important: the regulator must have a clear sense of the scale of code breaches that it is dealing with both in relation to individual publishers and in relation to the industry as a whole. This information about breaches of the code would be of critical importance to the management at the individual publishers and to the regulator in its role of promoting and maintaining standards (2012: 1633)

Third, concern may arise due to the operation of an internal complaint resolutions mechanism. As Chapter 6 discussed, the PCI formally adjudicated on 10.2 per cent of complaints, compared to the PCC's 1.9 per cent, with conciliation and mediation undertaken in 5 per cent of cases in Ireland compared to 19.6 per cent in Britain. Thus, Irish press regulation does exhibit strong differences in its treatment of complaints with a far higher proportion being examined via formal structures in a transparent fashion. Nevertheless, Chapter 4 also established that the number of cases being informally resolved is increasing. Indeed, the PCI also changed its structures to formalise the informal conciliation process, also discussed in Chapter 4. Notwithstanding the concerns expressed by Leveson and others in relation to the issue, there are a number of other potentially problematic issues with this approach in the Irish case.

The concept of transparency is lost when complaints enter the conciliation process given that the structures in place mean mediating complaints is "confidential to the

parties” involved, as the PCI mandated in its revised Articles of Association (2012), discussed in Chapter 4. The PCI does, however, publish some details of the conciliated complaints on its website. Many of the cases have resulted in clear breaches of the CoP. For example, in one case a woman complained about the *Evening Herald’s* coverage of a court case which stated inaccurately that her husband had been left without a conviction by the court “after paying her compensation”. The woman complained that it was inaccurate to state that her husband had paid her compensation. In this case, the newspaper “published an agreed clarification”. In another case, a “man complained about an article published in the *Sunday Tribune* which he said gave an incorrect account of his role in a dispute involving the company for which he worked. The complaint was resolved when the newspaper published a clarification”. In another case, “Mrs Catherine Griffin complained about an article in *The Corkman* that reported on the death of her son which contained a headline stating “Brian Griffin died after row”. The complaint was resolved when the newspaper published a clarification stating that Mr Griffin had not died as a result of the row, and apologised to the family for any distress caused.”

The above three cases are all likely to be breaches of the CoP under its accuracy provisions. However, as the PCI (2009: 19) has said, the conciliation and mediation mechanisms of complaint handling are concluded “without any decision being made as to whether or not a breach of the CoP has taken place”. None of these three cases would have been included in the PCI data as breaches of the CoP. Thus the PCI operates – albeit to a lesser extent – a similar system to the informal complaint handling mechanism that was operated by the PCC and led to widespread criticism (Frost 2004; 2015; Leveson 2012).

As the PCI has said, the outcome of conciliated complaints in terms of what member publications offer complaints in return for errors and/or breaching the code is endless.

Some are private, such as letters of apology and the removal of content such as images from internal newspaper systems, and some are public such as clarifications or letters to the editor. Further study is required to examine whether conciliated complaints in the Irish case meet any standard of due prominence but this may be difficult due to the limited data made available. Nevertheless, private outcomes are unlikely to meet any standard of due prominence, albeit perhaps sometimes requested by aggrieved parties. In addition, public ones may also struggle to meet any metric of due prominence. In one conciliated complaint, David Elio Malocco complained the *Irish Independent* wrongly reported that he did not respond to a request for comment. The news story at the centre of the complaint appeared on Saturday 2 March on page 4 (no year is given). The clarification was published in an “in brief” column on page 8 on Saturday 27 April. In another case a woman complained that an inaccuracy over paternity in a report of a man’s death in a road traffic accident. The offending item appeared at the top of page 6 on Tuesday 2 April. After conciliation, a two-paragraph clarification appeared on Saturday 1 June as the final item in an “in brief” column on page 14.

These are two random examples from the conciliated complaints disclosed on the PCI’s website. In most instances, due to a lack of identifying information about the complainant, the article, the date of publication, the headline and so on make a full examination of whether due prominence is being met impossible. Thus, a reasonable case can be made for seeking greater transparency from the PCI, not just in the outcome of these complaints, but also in the *process* by which these complaints come to a conclusion.

Conciliation systems may have merit. Indeed, Hallin and Mancini (2004) argued that one of the central characteristics of the journalistic professionalisation movement in the North Atlantic liberal model is the development of non-institutionalised and informal methods of self-regulation. Referring to the use of informal mediation and conciliation

by the PCC, Leveson said that mediation and conciliation by the PCC was “often helpful” (2012: 1518). However, Leveson also expressed caution about *informal* complaint handling.

It is...important that mediated complaints are recorded, with code breaches identified. It is difficult to see how systemic failures in code compliance could be detected if code breaches are not identified as such by the Complaints Committee (2012: 1633)

He argued that most cases dealt with informally do concern instances where a breach of the code is committed, thus dealing with them informally means the PCC operated away from the transparent manner in which formally adjudicated complaints must be dealt with. Indeed, only those that get through to full adjudication are actually recorded as breaches. “This allows the fiction that only a handful of breaches of the code occur each year to go unchallenged” (2012: 1632).

A cursory examination of the statistics shows that few complaints reach the stage of formal adjudication, and that – although the figures vary from year to year – about half of these are resolved in favour of the complainant. This very last statistic does not give cause for concern in itself, but given the number of complaints in any one year what is troubling is the paucity of cases which eventually arrive at the adjudication stage. The PCC would claim that this is a mark of the success rather than the weakness of the system. That is because many complainants welcome a relatively speedy resolution, and in a different context it might be remarked that well over 95 per cent of all civil disputes are resolved consensually, although as I note elsewhere, resolution through mediation is not always speedy. However, given that a mediated complaint does not feature in any statistics as a breach of the Code, it seems clear that from the point of view of public accountability and compliance there is a misleading picture. Further, this different context does need to be understood. The policy reasons

militating in favour of the compromise of private disputes (cost; avoidance of court time; the preference for settlement over a fight to the bitter end) do not apply with anything like the same force in relation to matters which possess, or at least ought to possess, a regulatory or standards dimension. In most regulatory regimes, the complainant and the regulated party are given the opportunity to sort out the dispute between themselves, but once that process breaks down the regulator takes over and investigates the matter. There is a balance to be struck between mediation and formal adjudication, but I have little doubt but that under the current system that balance has fallen in the wrong place (2012: 1558)

Leveson (2012: 1558) also found that “given that a mediated complaint does not feature in any statistics as a breach of the Code, it seems clear that from the point of view of public accountability and compliance there is a misleading picture”. Indeed, he argued that newspapers could – as a result of the lack of clarity surrounding conciliated complaints – “point to near unblemished records in relation to breaches” (2012: 1560).

Given the Hallin and Macini (2004) conclusions in relation to the dominant informality of complaint handling measures in the North Atlantic liberal system, one would have expected to observe a greater emphasis on formal adjudication methods – and therefore transparency - in an independent, institutionalised media accountability framework that would set such a system apart from the hitherto norm of self-regulation.

#### **7.4: CoP**

The third structural issue identified for discussion is the CoP. This study’s focus is on the accountability mechanisms of the PCI. While the CoP is the document which sets out the manner in which journalistic behaviour is to be judged, a formal evaluation of its contents is outside of the scope of this study. Nevertheless, there are a number of areas which suggest that further examination is required.

For Cooper (1989: 30) and White (1995: 455-456), the clearest text for understanding journalistic norms is the code of ethics. As well as elevating the professional status of journalism in order to protect the industry, White argues, codes are central to laying down specific professional norms. McQuail (2010: 172) supports Cooper and White's arguments, pointing out that codes set out principles of professional conduct that journalists believe ought to govern and guide the industry.

Regular substantive comparative research has examined the content of journalistic codes of ethics (Laitila 1995; Hafez 2002; Himmelboim and Limor 2008). Despite the obvious geo-political influences, the research supports the conclusion that codes of ethics define clear professional journalistic norms. Indeed, the most striking finding is that enough similarities exist in almost every code to establish a universal set of journalism ethics (Laitila 1995: 543), thus indirectly supporting the argument that codes provide the clearest text for studying professional norms in the industry. Despite a caustic assessment of codes of ethics in practice by some (Randall 2000: 145-146; Iggers 1998: 35), and the conflict in journalistic debate between theory and practice which Sanders (2003: 3) labels as journalism's "resistance to reflection" or "anti-intellectualism", great diversity exists in the number, type and adherence to codes of ethics in media industries all over the world (Laitila 1995; Hafez 2002; Grevisse 2003; Himmelboim and Limor 2008). Indeed, codes are potentially rich texts for further study on the philosophical basis. As Frost (2000: 96) and Cooper (1989: 30) have noted, all codes are fixed, tangible texts which have a moral underpinning. Thus, they reflect certain worldviews and provide not only a nuanced text but also a means of accountability for journalism.

Laitila (1995: 533) identifies 13 categories common in codes across Europe with 61 principles of journalistic ethics identified (Table 30):

Table 30: Laitila's code of ethics commonalities (1995)

<b>Accountability</b>	<b>Professional identity</b>
<ol style="list-style-type: none"> <li>1. To the public:               <ol style="list-style-type: none"> <li>a. Truthfulness of information</li> <li>b. Clarity of information</li> <li>c. Defence of public rights</li> <li>d. Responsibilities as creators of public opinion</li> </ol> </li> <li>2. To the sources and referents:               <ol style="list-style-type: none"> <li>a. Gathering and presenting information</li> <li>b. Integrity of the sources</li> </ol> </li> <li>3. To the state               <ol style="list-style-type: none"> <li>a. Respect for state institutions</li> </ol> </li> <li>4. To the employers               <ol style="list-style-type: none"> <li>a. Loyalty to the employer</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Protection of the integrity of journalists               <ol style="list-style-type: none"> <li>a. General rights and prohibitions</li> <li>b. Protection from public powers</li> <li>c. Protection from employers and advertisers</li> </ol> </li> <li>2. Protection of the unity of the profession               <ol style="list-style-type: none"> <li>a. Protection of the status of journalism</li> <li>b. Protection of the solidarity within the profession</li> </ol> </li> </ol>

Laitila found that 85 per cent of ethics codes stress these principles with the codes calling for professional journalistic activities based on accountability to the public and other regulatory groups. Indeed, the study showed that the most common principles in European codes emphasise different aspect of truthfulness, the need to protect the integrity and independence of journalists, the responsibility of journalists in forming public opinion, fair means in the gathering and presentation of information, protection of the rights of sources and referents, and the freedom to express and communicate ideas and information without hindrance. Laitila's work has been replicated by others (Hafez 2002; Bertrand 2003; Grevisse 2003; Himelboim and Limor 2008;) and the findings suggest a vast commonality in terms of the elements that make-up codes of journalistic ethics across the world. Such work has prompted much discussion on the concept of a universal code for journalists (Herrscher 2002; Tehranian 2002; Ward 2005; Couldry 2012; Hansen 2014; Ziff 1986; Cooper 1989; Merrill 1989; Wright 2005; Steele 2013).

The PCI's CoP contains both elements of accountability and professional identity, as referenced by Laitila (1995). An examination of the CoP shows that it references elements of Laitila's accountability with truth, clarity of information, public rights and responsibilities all referenced. It also discusses the gathering and presentation of information and protects the integrity of sources. There is no mention of respect for state institutions or employers – which is an uncommon feature of liberal model ethics codes in any case. In terms of Laitila's professional identity, the CoP starts with the preamble in which the concept of journalistic identity is referenced. Several principles also reference the role of journalists including protections for sources and the wider journalistic role.

Identifying the common elements of codes of ethics is straight forward. However, examining the practical impact that ethical clauses have on journalists and their work is more problematic. Various studies have attempted to establish the importance of ethics codes in the everyday work of journalists (Fengler et al 2014, Boeyink 1995, Pritchard and Morgan 1989). The studies present varying findings, which have, one could argue, led to the many critiques of the concept of journalistic codes of ethics (Slattery 2014; Mair 2012; Nyilasy and Reid 2011; Smith 2003; Stark 2001; Iggers 1998; McManus 1997; Merrill 1989; Elliott-Boyle 1986). Contemporary debate about codes focuses on the potential for interplay between ethics and legal issues (Christians 1986; Bertrand 2000; Drechsel 2014; Frost 2015), the concept of a global code of communication ethics (Herrscher 2002; Tehranian 2002; Ward 2005; Couldry 2012; Hansen 2014) and the impact that technological advancements and their use in the journalistic practice have had on codifying principles (Cooper 1998; Deuze and Yeshua 2001; Phillips 2010; Dodson 2012; Hansen 2014; Wyatt and Clasen 2014).

Examining how journalists in Ireland view the PCI CoP has not been examined as part of this research. However, there are some areas noted during this research which require highlighting.

First, the Irish code was written by the Press Industry Code Committee (Reid 2006) which said that the code was “intended as a work in progress and it is expected that it will continue to evolve”. Indeed, the NNI told an Oireachtas Justice Committee in 2008 that it was expected that the “code will develop with the jurisprudence of the press council” (Dáil Eireann 2008). The concept of ethical evolution of codes is well established as an important element in their success (Cooper 1989: 30). Bertrand argued that the writers of codes do not intend a sacred text but a guide which needs to be “discussed, cleansed, updated, structured” (2000: 38) and Nordenstreng pointed out that codes are kept alive by regular revision (2003). However, as Chapter 4 discussed, there have been just two limited changes to the PCI CoP between 2008 and 2014. Evaluating the updated material is beyond this study’s scope. Nevertheless, given the literature’s commitment to the concept of an evolving code, it is surprising to see few substantial additions or changes to the code as it was first published in 2008. As the PCI enters its next phase of operation, it may be an opportune time to review the CoP in light of its operation over the first six years.

Second, consistency is a key principle in the accountability framework established in this study. The principle is one of the elements of answerability. For Cooper (1989: 30), White (1995: 455-456) and McQuail (2010: 172) the clearest text for understanding journalistic norms is the code of ethics. As well as elevating the professional status of journalism in order to protect the industry, White argues, codes are central to laying down specific professional norms. Thus, as Christians (1986: 46-49) and Barker and Evans (2007: 17) have argued, codes of ethics are important texts for establishing consistent

accountability frameworks. One of the ways that codes operate is to provide regulators with a clear guide in deciding on cases as well as the establishment of a form of precedent.

Ugland and Breslin (2000) argued that

If the Council ignores its earlier decisions, rejects their authority, or makes no effort to intelligently link them, it instructs journalists and the public to be equally dismissive. If there are no rules that transcend the most immediate cases, and if there is no acknowledgement of those who have already grappled with the same problems, the council cannot help but be perceived as hopelessly situationalist (2000: 236)

A non-systematic analysis of the Irish complaints shows that the PCI has consistently dealt with complaints by, for example, reaffirming on a number of occasions that unverified information – including in headlines and opening paragraphs - must be attributed correctly so as not to mislead readers over whether the information is factual. In one of its first cases in 2008 involving a report in the *Irish Mail on Sunday* about the death of the model Katy French, the PCI upheld the complaint, and concluded:

It was the judgement of the Press Council that, when a news story is based on unofficial sources which cannot be named and whose accounts have not been, or cannot be, verified, the story cannot be reported as if it were established fact, and the basis for it must be made clear from the outset (PCI 2008)

This sentiment has been expressed by both the Press Ombudsman and the PCI repeatedly. This level of consistency must be seen as a positive contribution to the complaints system.

Interestingly, there was also one instance which showed the challenges that the Press Ombudsman faced (and press regulatory regimes in general) in applying the CoP consistently. In January 2009, the Press Ombudsman partially upheld a case taken by Ray O'Donoghue on behalf of his son over a report in the *Irish Sunday Mirror* which quoted

from a planning application that concerned the family. In his decision, the Press Ombudsman ruled that reporting information in a document of public record – in this case a planning filing – was not a breach of the complainant’s privacy once the document was quoted and referred to correctly, as was the case in this incident. In another case, taken by Dick Hogan in relation to a report in the *Sunday World* in February 2009, the Press Ombudsman again affirmed that the use of a public document – this time a record from the Companies Registration Office – was not a breach of privacy. He argued that what the complaint described “as his private affairs are in fact public affairs as documented in the Companies Registration Office”.

In a similar case, in October 2013, the Press Ombudsman partially upheld a complaint taken by Dirk Folens in relation to a May 2013 report in the *Irish Mail on Sunday* which relied, in part, on a planning document filed by the complainant. In his ruling, the Press Ombudsman

accepted that the graphic of the property was, if based upon public planning records, publicly available. Principle 5.2 states that ‘... the right to privacy should not prevent publication of matters of public record ...’ However, the Press Ombudsman decided that ‘should not’ allow for the possibility of exceptions, and that it therefore does not exclude the possibility that the inclusion of material that is publicly available may, in certain circumstances, be an unacceptable breach of the right to privacy. The Press Ombudsman decided, in the light of all the circumstances, that the inclusion of the graphic of the complainant’s home was not justified by the provisions of Principle 5.2 of the Code in relation to matters of public record or – as argued by the publication, because it was in the public interest or was material that was publicly available - and it was therefore a breach of the entitlement of readers to have news and comment presented with respect for their privacy and sensibilities as also expressed in Principle 5.2 (PCI 2013)

In the main, the CoP is a fair, accessible and straight-forward set of ethical principles. It is not an A-to-Z list on what newspaper journalists can and can't do, but rather it offers a set of overarching principles that firmly roots Irish journalistic culture in the Anglo-American tradition and also guides journalistic behaviour. The examples given here are just two instances of how the CoP was used during the period under review. Further study could expand on these points to provide a more in-depth analysis of the strengths and weaknesses of the CoP that could inform any ongoing or future reviews of the ethical code.

### **7.5: SRA**

As Chapter 4 established, 59 complaints (22 per cent of total formally adjudicated) were formally adjudicated by the PCI as having been instances where the member publication offered SRA to the complainant. The Press Ombudsman makes a decision that SRA has been offered in formal adjudication where he feels the member publication had already offered the complainant a sufficient response to correct the error during the pre-formal adjudication phase of the complaint. In these cases, the offer of remediation is turned down by the complainants who then decide to pursue a formal complaint. Where newspapers offer SRA, one can make the assumption that the member publication accepted that it had breached the code in some manner. However, when the complainant turns down the offer of remedial action (which can take many forms) and the Press Ombudsman rules that SRA was offered after formally adjudicating the complaint, the PCI and Press Ombudsman have no role in reviving the member publication's offer to the complainant to correct the inaccuracy. This was confirmed by the Press Ombudsman in his ruling of a complaint taken by Tom Quirke against the *Irish Examiner* in December 2011.

When a newspaper's offer of a clarification has been refused by the complainant, but has been considered satisfactory by the Press Ombudsman, a newspaper is not required to publish this clarification. However, the Press Ombudsman recommends that in this case the newspaper should nonetheless consider publishing its proffered clarification as a goodwill gesture, and in recognition of the delay involved in arriving at this conclusion (PCI 2012)

Given that there is a clear case to be made that newspapers accept that they have breached the CoP in some way, failing to insist that newspapers carry out the remedy offered appears unfair to complainants who have taken formal complaints in a bid to ensure that their case is upheld. In addition, the Press Ombudsman has ruled that where SRA is offered, complainants should consider whether to take a formal complaint at all. Robert O'Farrell complained that the *Irish Examiner* had breached Principle 1 (truth and accuracy) of the PCI CoP in relation to a report of a legal action taken against the HSE as well as coverage of an inquest which involved his late father. The Press Ombudsman ruled that SRA had been offered by the newspaper when it offered a meeting with the editor and a clarification which was turned down by the complainant. This was upheld on appeal to the PCI.

It should be emphasised that relatively uncomplicated complaints such as this one should require a decision by the Press Ombudsman only after all other reasonable options, including options that do not necessarily involve publication, have been fully explored. A decision not to engage in this process militates substantially against a satisfactory outcome (PCI 2008)

The reason behind the complainant's decision in this case to pursue a formal adjudication is unknown. Further research is required in this area to understand why complainants turn down offers of remedial action to pursue formal complaints. However,

one of the reasons in this case may well have been to ensure that the breach of the CoP was corrected with due prominence under the PCI's publication guidelines. The Press Ombudsman's ruling that his decision to pursue the case "militates substantially" against a satisfactory outcome for the complainant is surprising. Perhaps formalising the type of remedial action that newspapers can offer to bring it closer into line with the sanction in formally adjudicated complaints – i.e. the publication of the decision according to the publication guidelines - could provide an incentive to complainants to accept SRA offers. At present, there is no limit to the remedial offers that member publications can advocate, many of which may well be unpalatable to complainants. An incentive to publish a correction/apology with due prominence at the end of the informal complaint stage between the complainant and the member publication may result in the Press Ombudsman having to deal with fewer complaints of this nature and may also satisfy some complainants.

## **7.6: The PCC and PCI**

Chapter 6 included comparing the work of the PCI to the PCC in the UK. Given the theoretical assumption of this study – that independent press regulation is a more robust system than self-regulation – one would expect to have found wide divergence in a number of categories. There were, however, both differences and similarities.

First, in its first year, 1991, the PCC received some 1,520 complaints, while in 2008, some 4,698 complaints were lodged with it, an increase of over 200 per cent (Frost 2015). In comparison, as shown in Chapter 4, the complaints received by the Press Ombudsman and PCI remained relatively stable over the period under examination, with 372 complaints lodged in 2008 compared to 350 in 2014, albeit over a much shorter time period. According to Frost (2015), the PCC consistently stated that the increase in annual

complaints was evidence of increasing awareness of the organisation. The Press Ombudsman (PCI 2011: 9) has been more circumspect, arguing that the reasons behind increases or decreases in complaints are difficult to pinpoint.

Second, the PCC was heavily criticised for not admitting a large number of complaints for either informal or formal adjudication (Frost 2004). According to data compiled by Frost (2015), the PCC did not examine 78.5 per cent of the complaints it received for a variety of procedural issues. Given the well-publicised criticism of this, one would have expected independent press regulation to rule out fewer complaints. However, the data in Chapter 6 shows that 81.5 per cent of the complaints lodged with the PCI were neither informally or formally examined. Frost (2004: 113-114) concluded that the PCC was designed as a mechanism to reject the majority of complaints, in part due to the high numbers that are not admitted beyond a first reading. It is clear, however, that a press council requires structures to operate effectively. It must have limitations on what type of complaints it can investigate. Many of these rules, such as the ruling out of complaints from non-member publications, are pragmatic and help the PCI streamline its work. Nonetheless, the high number of complaints that are withdrawn, ruled out on a first reading and excluded over delay are issues that require further study. That study is likely to be limited by data protection issues which bar any examination of the complaint files of the PCI. One potential avenue to overcome this is for the PCI to begin publishing basic data about all complaints, and the reasons why the complaints did not meet the standards required. It is too early to say if the PCI mirrors the findings of Frost (2004) in relation to the PCC in this area, however, given the higher rate of complaints that do not make it to informal or formal adjudication via the PCI during the period studied, that perception could develop should this trend continue.

Third, in terms of the outcome of adjudicated complaints, in order to prove itself as a robust regulator one would expect to see a higher level of upheld complaints via the independent system of press regulation. The PCI upheld or partially upheld 107 complaints during the period examined. This amounts to 4.1 per cent of the overall number of cases it received and 39.2 per cent of the complaints it formally adjudicated on. According to data produced by Frost (2015), 444 complaints were upheld by the PCC either fully or in part. This equates to less than 1 per cent of the overall complaints received by the PCC, but 51 per cent of the cases formally adjudicated.

The Irish data shows that complainants to the PCI have a 4.1 per cent chance of having their complaint upheld, compared with 1 per cent at the PCC. This is a sign that independent regulation of the press via the Irish system has been more robust in terms of formal adjudications which are the only sanction that carry the full weight of the PCI's enforcement powers. Such a finding is to be expected, however, given the independence and legislative underpinnings of the PCI. In isolation, a 4.1 per cent rate for upholding complaints from all complaints received is less persuasive. In addition, the PCI upholds fewer complaints than it formally adjudicated on when compared to the PCC. This finding is somewhat unexpected.

Fourth, the data also suggests further differences with the PCC in terms of what happened with complaints once they were admitted for assessment. Indeed, one would expect that the PCI would informally conciliate cases less frequently than the PCC given Hallin and Mancini's belief (2004: 223-224) that informality is a hallmark of professional self-regulation. Other authors have referred this as a self-regulatory press council's standard position (Bertrand 2003: 122-125) and there has been regular criticism of the approach (Frost 2004, 2015). The data showed that the PCI did informally conciliate on fewer cases than the PCC, with some 5 per cent of complaints being resolved via informal

arbitration compared to 19.6 per cent of cases at the PCC. However, as Chapter 6 established, the level of complaints in Ireland that are being concluded informally is on an upward trajectory year-on-year and given the lack of any transparent or overtly public outcome via this method, this trend should be analysed on an ongoing basis to ensure that formal adjudication remains the dominant method for assessing complaints.

Fifth, one would have expected independent mechanisms of press regulation to formally adjudicate on more cases than self-regulatory bodies. The data also showed this to be the case, with the PCI formally adjudicating on 10.2 per cent of cases compared to the 1.9 per cent of cases examined by the PCC.

## **7.7: Conclusion**

In this study the main data gathering concerned formal adjudications published by the Press Ombudsman and/or PCI between 2008 and 2014. In Chapter 5, a methodology was established for examining this data. It split accountability into two constituent parts based on theoretical contributions in the area. In the first, answerability, the framework highlighted the concepts of consistency and responsiveness. In the second, enforcement, sanction is central. In order to be a robust regulatory system, the PCI must exhibit strong standards in each field, i.e. complaint outcomes must show consistency and must be concluded speedily, and the sanction for upheld complaints must meet a standard of due prominence. In the following sections, the data in Chapter 6 will be discussed to examine if the PCI meets these standards.

### **7.7.1: Answerability - Consistency**

Chapter 6 began with an analysis of a number of data points relevant to the first element of the methodological framework, consistency. It highlighted a range of areas, including

the outcome of complaints by each member publication, ownership and type. It also examined complaint outcomes per complainant background, gender and whether the complainant used legal representation in making the complaint. In addition, Chapter 6 examined the outcome of appeals to the PCI from both member publications and complainants, and highlighted how the CoP has been cited by complainants and what parts of it are more successful than others in terms of getting an upheld complaint.

When viewed in isolation, each of the above elements do not suggest any significant inconsistency in how the PCI and Press Ombudsman dealt with the cases in terms of favouring one side or the other. Chapter 6 (section 3) showed that there was a small difference between gender for upheld complaints (35 per cent for male, 41 per cent for female) and the outcome if complainants used legal representation (46 per cent success for those who did, 38 per cent for those who didn't). However, there were some data points that revealed wider statistical divergence.

First, as Chapter 6.2 discussed, one newspaper, *The Irish Times*, has a lower negative adjudication rate when compared to many other national newspapers, despite having a similar number of formal adjudications during the period under study (Figure 7). Indeed, at 17 per cent, the newspaper was less than the overall average of 36.5 per cent of adjudicated cases that concluded in favour of the complainant. In addition, *The Irish Times* publisher has a lower rate of upheld decisions against it than the three other major newspaper publishing companies – DMG Media, INM and News UK - when all titles are collated into their respective groups. As the only broadsheet in the market other than the *Sunday Business Post*<sup>20</sup>, *The Irish Times* is largely responsible for the 16.8 per cent

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<sup>20</sup> *The Sunday Independent* is also published in broadsheet format, however, its content and ethos is very much in the mid-market tradition of its sister title the *Irish Independent*. For that reason, it is included in the mid-market category.

upheld rate for that genre of newspaper. This compares with 45.5 per cent for mid-market newspapers and just over 40 per cent for tabloid newspapers.

Second, there were further specific areas that also showed statistical differences. Complaints involving well-known national politicians, business people, media personalities and celebrities concluded in the complainants' favour at a rate of 50 per cent or higher compared to an average rate of 34 per cent of those who were coded in the unknown or private category, and an overall average of 39 per cent upheld in all 273 cases examined. Moreover, complainants successfully appealed the decision of the Press Ombudsman in part in 4 per cent of appeals, compared with 16 per cent in part or in full for member publications. Again, however, viewed in isolation, this data cannot be pointed to make a strong conclusion about consistency.

However, the data, when viewed collectively, could be suggestive of underlying trends in how the PCI deals with complaints. First, the finding that outcomes differ significantly depending on which type of newspaper is at the centre of the case is unusual. One would expect that member publications of the PCI, which sign up voluntarily to the system albeit with the attractiveness of new defences in defamation cases, would expect that their complaints are dealt with consistently by the regulatory body. This conclusion is not suggesting that the PCI does this. However, the data does suggest that broadsheet newspapers have a far better chance of arguing their case successfully than mid-market or tabloid newspapers. There may be several reasons for this situation. The brashness of mid-market and tabloid newspapers is likely to attract more complaints and may present more obvious breaches of the CoP. Broadsheet newspapers may also be more aware and attentive to codes of ethics given the traditional perception of that type of journalism compared to the history of 'red top' newspapers. Indeed, the *Irish Times* is published by the Irish Times Trust which publishes an internal code of ethics that the newspaper's

journalists are obliged to follow. Given the failures of self-regulatory approaches that have been highlighted in this regard, in particular the reticence of some publishers to be part of the PCC system (see Chapter 6), the obvious divergence in terms of upheld complaints is surprising. Further research, which is outside of the scope of this study, could conduct an in-depth analysis on each of the complaints to gain a better understanding of why the broadsheet press has fewer upheld complaints in formal adjudication.

In addition, the research found that there are differences among the main publishers in respect of upheld adjudications. The percentage of formally adjudicated complaints which resulted in an upheld decision against DMG Media titles was 45.7% and for INM titles it was 44.9 per cent in total. In comparison, the same figure at the *Irish Times* was 17 per cent from 29 complaints. News UK (38.7 per cent) also recorded a higher upheld complaints rates than the *Irish Times*.

At the hearings of the Leveson Inquiry (2011), witnesses from the Northern and Shell group of newspapers – which had left the PCC in 2011 - gave evidence that suggested the PCC “was run by and for the benefit of a particular section of the press” (2012: 1529). Richard Desmond, who owned the group, told the inquiry that the PCC had unfairly treated his newspapers, which are mainly tabloid publications. Leveson declined to say whether this suggestion was supported by evidence, but added that the suggestion of a lack of consistency in dealing with certain newspapers was important given that the *Private Eye* publication had also declined to be involved with the PCC. Its editor Ian Hislop also cited a perceived lack of fairness in how the PCC dealt with member publications.

The majority of scholarship in this field assesses consistency as an inherent characteristic of a code of ethics and in respect of how particular principles are interpreted

by regulators (Pritchard 2000; Uglan and Breslin 2000). This type of analysis is outside the scope of this study as this research deals with outcomes of complaints rather than the standard by which complaints are assessed. Leveson (2009: 1686) recommended that his new system of press regulation be consistent in the way it handles complaints (but did not substantively set out what this meant) and referring to outcomes, Cohen-Almagor (2005: 456) believes journalists would feel “ill served” if found guilty of violating the code when another newspaper had been acquitted “after committing the same questionable deed”. “Furthermore, it is unjust to inconsistently penalise different papers for similar ethical misconduct...Diversity of interpretations is fine within boundaries. Each panel of judges should not decide inharmoniously without being aware of precedents.” Pritchard (2000: 102) found that one of the structural flaws of the self-regulatory Quebec Press Council was that it decided on complaints in an inconsistent fashion. The author argued that such inconsistency was not random and “clearly suggested” that the press council “had undue sympathies for parties to which it had financial ties”.

In addition, the independent nature of the PCI and the founding concept of the regulatory system – to give people a fair, free and speedy complaints handling system - one would expect that the PCI would represent the interests of ordinary citizens strongly. However, as the data on complainant background suggests, in addition to the wide divergence on outcomes when Press Ombudsman decisions were appealed, it appears that well-known individuals have a better chance of having their complaints upheld.

The findings here are interesting. Further study is required in order to attempt to establish reasons for the differences. However, it is not possible to definitively conclude that the Press Ombudsman and PCI have dealt with cases in an inconsistent fashion on the basis of this data. The data is suggestive of emerging trends and similar research over

the coming years could add to this work and, in time, the outcomes may be used to further understand how the Irish system deals with complainants and member publications.

### **7.7.2: Answerability - Responsiveness**

Many authors correctly argue press regulation and media accountability mechanisms should function in a speedy manner (Cohen-Almagor 2014; Henry 1989: 156-158; Leveson 2008: 1759; Robertson 1983: 2). However, there is extremely limited academic work that goes into specifics on how long a press council should take to deal with a complaint. Nevertheless, at its most basic, and considering the overarching theoretical framework of this study which starts from the position that independent regulation is tougher than self-regulation, one would expect to see the former deal with complaints in a speedier manner than the latter.

Chapter 6 found varying results for the time taken to deal with the three different types of complaint outcomes - dismissed, upheld and SRA. When combined, it has been established that it took the regulatory system a median of 140.5 days, or just under 4.5 months, to process complaints. Looking deeper into the statistics, the data showed it took the Press Ombudsman a median of 119.5 days, or just under four months, to dispose of complaints and, on average, it took the PCI a further 48 days to rule on appeals of these decisions, just over a month. As discussed in Chapter 6, there are internal divergences within these median and average figures which suggest that some complaints were dealt with in less than a month while others took almost a year. It is worth pointing out, of course, that the actual figure is likely to be somewhat shorter, given that the actual date the formal complaint was initiated is not available, as mentioned previously. Nevertheless, the data does provide a guide that demonstrates how long it takes the PCI to deal with complaints.

Chapter 6 also showed that over time, the time taken to adjudicate on complaints showed an upward trend during the period studied in all categories of complaints, except for SRA outcomes which decreased over time. The analysis showed in all instances, except for SRA, that in the first year of operation, 2008, the PCI and Press Ombudsman dealt with complaints speedier than in any other year of operation thereafter reaching a regular and consistent level with limited variations either up or down annually.

As Chapter 4 discussed, there are no formal time limits included in the PCI's structural documentation. There have been, however, a number of informal public comments on this topic, as Chapter 3 discussed. Before the PCI was operating, Frank Cullen of the National Newspapers of Ireland and a member of the PCI Steering Committee, said one of the three main principles of the office was speed. Elaborating further, he said this means the PCI would attempt to deal with cases "within one month or sooner". "If possible, a complaint should be dealt with instantly, as speed is critical" (Dáil Eireann 2007). Later, in 2008, the Press Ombudsman tentatively referred to a six-week timeframe for dealing with complaints but said the PCI was covering new ground in its first year of operation and was not yet sure how long it would take to deal with complaints. Going further still, the Press Ombudsman said there is a "succession of time limits", including a "maximum period of three months" not inclusive of a two-week period where complainants must contact newspapers directly. This equates to 117 days. The Press Ombudsman appeared to be discussing decisions by his office alone rather than those which are also appealed.

The most definitive statement of the time taken for the PCI to deal with complaints is included on its website:

The time to process a complaint will vary. Complaints are usually resolved through conciliation within about four to six weeks. If the complaint is referred to the Press Ombudsman for a decision, it may

take a further two weeks for him to make a decision. If his decision is appealed, that will lengthen the process again.

While it accepts that some complaints may take longer than others, the statement sets down a 1.5 month period for conciliation and a further half month for a Press Ombudsman ruling. Thus presenting a 2-month timeframe for a complaint to clear formal adjudication via the Press Ombudsman. As data on conciliated complaints is unavailable, there is no way to independently verify how long these cases take to be resolved.

The data, as highlighted here shows that it has taken the Office of the Press Ombudsman 3.9 months to deal with complaints, almost double the 2-month time frame set out on the PCI's website, a longer timeframe than the 3.5 months signalled as the "maximum" by the Press Ombudsman and significantly longer than one month maximum mentioned by Cullen. Interestingly, in the first year of operation, decisions by the Press Ombudsman took an average of 94 days, somewhat closer to each of these targets. However, in each of the years since, the Office of the Press Ombudsman has taken longer with the slowest rate of 141 days recorded in 2010. In addition, it took a median of 140.5 days for all complaints – including those referred or appealed to the PCI – to be adjudicated on, with 2011 recording 150 days or 4.8 months, the highest found. Given Horgan's referral to the first year being a trial period, one would have expected to see complaints being dealt with a lot slower in the first year and decreasing thereafter as complaint procedures were refined. However, the data shows the opposite occurred.

In addition, one would have expected to see far quicker complaint handling by the independent system when compared to self-regulatory ones. However, the results are mixed. In Canada, Pritchard (2000:95) found the Quebec Press Council (QPC) was hindered by "chronic inability to decide cases quickly" with some cases taking six months for a variety of reasons. At an average of 4.5 months – with some cases having taken

almost a year to complete – the PCI is not significantly quicker than the failed QPC. It also appears slower than the now-closed PCC in the UK. Although Frost (2004) found that its claim to be a speedy complaint handling mechanism was unsupported by any evidence, the PCC claimed that it reached a conclusion “in most cases...within a month of the complaint first being lodged” (Leveson 2008: 242). Leveson concluded that the PCC was a system that “can be relatively quick” (2008: 1696) albeit referring to informal conciliation. The PCC’s successor, the Independent Press Standards Organisation is also regarded as press self-regulation and claims it tries to deal with complaints within 90 days, or three months. “To help us do so, we require that both publications and complainants comply with reasonable deadlines for replying to us” (IPSO 2017). Irrespective of whether either of the UK examples achieve this speed, the existence of targets that are far quicker than the one set out by the PCI of 2 months is surprising. The average of 4.5 months recorded in the data for complaints to conclude suggests that the PCI is quicker than many other methods or arbitration and complaint handling, including the legal route. In this regard, the PCI’s claims to be a speedy system for dealing with complaints is upheld. However, the data also suggests that the PCI is outside many of its publicly stated goals for the time taken to dispose of complaints. In the next phase of the PCI’s operation it should focus on reducing the period of time for complaint adjudication. In addition, the date that the complaint is made should be made public in order to assess with accuracy how long it is taking for the complaint to go through all stages of the process, including the informal conciliation, formal adjudication and PCI appeal. .

Of course, there may be many reasons behind the data gathered in terms of speediness. Macia-Barber (2014: 120-21) pointed out that work overload is a common complaint which reduces effectiveness “not least a reduction in speedy response to complaints”. Combine this with the annual drop in the level of funding for the PCI and it may well

limit the administrative abilities of the PCI. In addition, as Chapter 6 discussed, the PCI has no powers to compel member publications to produce evidence. In the effort to close a case, this could well slow the process. Indeed, it may well be that complainant prevarication could also be responsible for slowing progress on occasion.

Nevertheless, the Press Ombudsman has managed to rule on complaints in very short timeframes. According to the data, the Press Ombudsman reached a formal adjudication on seven complaints during the period studied in two months or less. This suggests the office along with the PCI (which generally takes just over a month to rule on appeals) are capable at least of disposing of complaints quickly. However, the analysis shows these cases were the exception rather than the rule during the first six years of operation

### **7.7.3: Enforcement**

The PCI's single power of enforcement is the publication of its decisions upholding complaints in offending member publications. Indeed, most codes of conduct mention that clarifications, corrections and apologies ought to be published with due prominence (Harris 1992: 71-73). As Chapter 4 established, the PCI has a set of publication guidelines which newspapers must follow when publishing the decisions in order to ensure its standard of due prominence is met. Indeed, Principle 10.1 of the CoP affirms that member publications "shall publish the decision in relation to a complaint with due prominence". However, despite the good record of newspapers when it comes to publishing decisions, there are a number of issues borne out by the data.

First, Chapter 6 revealed widespread non-compliance with the publication guidelines. In total, 96 per cent of adjudications breached one or more of the criteria which all newspapers under the PCI system have voluntarily signed up to. A majority (58 per cent) breached two or more of the guidelines. The data showed that the most common breach

was a failure on behalf of newspapers to publish the decisions within 10 working days or “promptly” as the requirement later changed to. Indeed, the 2009 alteration is significant when viewed in this context. Chapter 6 showed that in on 76 occasions in a total of 92 upheld cases newspapers did not meet the 10 working day limit. The decision to change the requirement to “promptly” was not highlighted by the PCI and nor has it been explained. However, it is clear that the leeway offered by such a subjective word as “promptly” is a softening of the guidelines and it is reasonable to conclude that one of the reasons for the change was the widespread problems newspapers may have been having with publishing adjudications within ten working days.

While publishing an adjudication quickly is likely to be a key concern of any complainant, in and of itself it is not directly connected to the concept of due prominence in terms of the actual physical manifestation of a printed adjudication. The other criteria, which one could argue are central to the concept – days, page and treatment – also saw non-compliance. In 24 of 92 adjudications assessed, decisions were not published on the same day as the original article, in 25 cases decision were not published according to the provisions on the page of the newspaper and in 24 cases member publications committed breaches in that their treatment was outside the scope of what the PCI required, including many relatively minor breaches such using a logo the newspaper in the headline which is not published by the PCI. Thus, the data suggests that editors are failing to uphold the due prominence requirement set down by the PCI.

Second, the PCI does not publicly display information on where, when and how its adjudications were published. From a transparency point of view, this is of particular concern especially given the findings of Chapter 6. Under principle 10.1, complainants can request that the Press Ombudsman and PCI examine the publication of a decision. Indeed, as Chapter 6 discussed, a case was upheld under the provisions. In this instance,

the newspaper published the adjudication a second time, but this time on a page further back thereby breaching another criterion. Indeed, there are at least two further instances of complaints taken against newspapers who failed to adhere to the instructions. The PCI refers to two informal complaints which were conciliated by it involving a failure to publish decisions correctly. In the first instance, involving the Teaching Council and the *Irish Independent* the PCI said “the complaint was resolved when the newspaper published a follow-up article from the complainants”. In the second, a complaint made by Gerry Adams TD against the *Irish Independent’s* treatment of the publication of a decision upholding an earlier complaint, the PCI said the complaint “was resolved when the newspaper published a statement apologising for the error”.

The three cases referenced clearly indicate that the PCI had been made aware that on occasion member publications were not following the guidelines. However, there was no obvious public acknowledgment of this, and the very fact that two of the cases went through informal conciliation procedures and resulted in outcomes where the decision did not have to be published again suggest a reluctance to highlight, publicly, any problems in the due prominence field. This issue goes to the very heart of the PCI given that the publication of its decision is the only sanction available to it. As Chapter 6 found, there is widespread non-compliance with its own rules for publication, and, as has been alluded to here, there is no public highlighting or recognition of the fact.

In addition, as Chapter 4 established, the Defamation Act 2009 sets down a minimum standard that the PCI must meet in order to be recognised under the act as the regulator of the press in Ireland. Section (9) of the Act requires that that corrections are given “due prominence” and says that a decision of the council “shall be published...as the directors of the Press Council direct and in such form and manner as they direct”. The data in Chapter 6 suggests that member publications are not following the publication guidelines

to meet due prominence which, in turn, could have implications for the legislative recognition under the Defamation Act.

The question also arises, does the PCI have the powers to investigate breaches of Principle 10.1? As referenced earlier, where complaints are made under this principle, the PCI has investigated and made findings against newspapers in this regard, and has insisted that the decision is published again – albeit again breaching the publication guidelines. The PCI and Press Ombudsman’s role is rather limited, however, in that the concept of the regulatory regime is to be a complaints handling service. It has never started and conducted its own investigations, and does not appear to have the structures or power to. However, the Defamation Act does extend some leeway to the Press Ombudsman. It grants the office holder power to enforce his decisions by “such other action as the Press Ombudsman may, in the circumstances, deem appropriate”.

The concept of due prominence has been an area of controversy in self-regulatory systems. Tim Toulmin, a former director of the PCC, said that “due prominence...could be a matter of interpretation” which often gave rise to further complaints due to the ambiguity (2012: 53). Leveson also noted the subtle distinction between “due” prominence and “equal” prominence, and pointed out that victims of privacy or other breaches did not agree with newspaper editors on what constituted due prominence (2012: 714). The PCC, Leveson correctly concluded, did not have powers to direct publication of its decisions in offending newspapers, rather it asked that decisions be published with “due prominence” (2012: 714), with no particular criteria upon which to base the publication of decisions. A number of those who gave evidence of having won complaints, said during the Inquiry’s hearings that the publication of decisions were not published with what they expected to be due prominence (ibid). Leveson also referred to

a specific example in his report. The article in question was published in *The Sun* and headlined “Boy, 12, turns into girl”.

The article was held by the PCC to be inaccurate and a breach of the girl’s privacy. The original article had appeared on the front page of the newspaper, with a further full page on page 5. The adjudication was published on page 6, at the request of *The Sun* and agreed by the PCC, in a narrow column on the right of the page, adjacent to an eye catching article headlined “£1m Baby P Bungle”. That the adjudication was published further back in the newspaper than the article was directly contradictory to Mr Mohan’s (former editor of *The Sun*) written evidence, where he had written: “Corrections are never placed further back in the newspaper than the original article, except for those connected with page one stories where the correction is published on page two”. Nonetheless, Mr Mohan appeared to defend the prominence claiming that it was one of the longest adjudications ever published. That may be so, but if Mr Mohan was claiming the publication of this particular adjudication as an example of due prominence, that causes significant concern (2012: 714-715)

During the hearings, James Murdoch, the former chief executive of News International, complained that *The Guardian* had not corrected around 40 errors in its reportage about the company he led with any sort of due prominence (2012: 715). In addition Christopher Meyer, a former PCC chairman, accepted that a lack of powers of direction hampered the publication of decisions with due prominence. He accepted that the issue had been a problem for the PCC as well as the wider newspaper industry (ibid). Leveson concluded:

Parts of the press have, at times, sought to avoid corrections and apologies and have sought to minimise the prominence of those corrections and apologies. I agree with Sir Christopher Meyer that any new regulator must address this issue and must have the power to order

editors where, when, and how they should publish apologies, retractions, corrections and/or adjudications (2012: 716)

Elsewhere the Australian Press Council, a self-regulatory system, interprets “due prominence” as requiring the publication to ensure the clarification is capable of “neutralising any damage arising from the original publication, and that any published adjudication is likely to be seen by those who saw the material on which the complaint was based” (Donovan et al 2012: 25). Donovan et al (2012) asked newspaper readers to adjudicate where a clarification should have been published in the case of an incorrect front page article in the Australian newspaper the *West Australian*. In this case, the newspaper published a decision of the Australian Press Council on the letters page on page 24 (Donovan et al. 2012: 26). A total of 89 per cent of respondents believed that the adjudication in the case did not meet due prominence requirements and that the publication of the decision should have been published on the front page (58 per cent) or one of the first three pages (31 per cent) (Donovan et al. 2012: 28). The authors concluded that decisions of the APC should be published on the same page that the offending material was published on, or at least in the same section (ibid: 29). An APC survey found that 54 per cent of complainants were unhappy with the publicity that their complaint received in the offending newspaper (ibid). According to the authors, the APC claimed to examine where its adjudications were published but there is no public record of this (ibid). Donovan et al. (2012: 31-32) concluded that newspapers need to be given stronger publication guidelines such as those issued by the PCI to ensure due prominence requirements are met.

Newspaper readers (and complainants) are led to believe that print media organisations will willingly comply with the Australian Press Council’s adjudication requirements because, according to the Council, these organisations ‘are committed to self-regulation’. However, the

case of Adjudication 1468 suggests that *The West Australian* newspaper is not willing to print an adverse adjudication with due prominence. Furthermore, it appears that the Press Council is prepared to not just overlook but to endorse the paper's non-compliance and in fact, act as an apologist for the newspaper by constructing post hoc justifications for the newspaper's non-compliance (2012: 31)

Donovan et al (2012) found that there is a significant lack of academic research on the effectiveness of enforcement powers for regulatory bodies, not just in the field of journalism. They quote a number of conceptual and theoretical studies of self-regulation (Heritier and Eckert 2007; Hemphill 2003; Porter and Ronit 2006; Ashby et al. 2004) but point out that there are “few empirical analyses of effectiveness”. The analyses conducted here of the enforcement of the PCI's publication guidelines has been undertaken for this reason and in light of the fact that the PCI publishes a clear set of guidelines for decision publication – whether it goes far enough or not – provides a sound base for such an examination, as was conducted in Chapter 6.

To reach a conclusion about the content of the PCI's publication guidelines is beyond the scope of this study. In any case, the subjective nature of “due prominence” would make any such analysis meaningless. Nevertheless, Donovan et al (2012: 25) said the PCI's guidelines represented an “elaboration of what the Australian Press Council's ‘likely to be seen’ requirement would mean in practice”. The authors went further to suggest that the Irish instructions “are consistent with common sense and with our newspaper readers' interpretations of ‘due prominence’” (2012: 30). In this study, the PCI's publication guidelines were used as a framework for examining how its decisions were published in member publications. Given the failure to enforce standards of due prominence and to highlight these failures, it is reasonable to hypothesise that the PCI would have used its power of direction in relation to adjudications and would have

highlighted when and where these provisions were not being met on the basis of it being a stronger regulator than self-regulatory solutions.

In a draft “criteria for a regulatory solution”, Leveson (2012: 29) argued that compliance with the regulatory mechanism “must be the responsibility of editors and transparent and demonstrable to the public”. Of the 107 upheld or partially upheld cases, almost all resulted in a publication of the decision of the Press Ombudsman and/or the PCI in one form or another. Thus, on the face of it, it would appear that member publications and their editors comply with the sanction power of the PCI and are ensuring transparent treatment of complaints. The failure to publish a decision was mainly down to the newspaper in question going out of business. The almost complete adherence to the requirement that decisions be published – no matter how negative – is a welcome sign. There is no reliable information on the number of adjudications not published by newspapers in Britain following on from PCC decision. However, independent regulation has secured the buy-in of newspaper in this regard. Nevertheless, the widespread non-compliance with the publication guidelines is more problematic. If the guidelines are the standard against which due prominence is to be assessed, it cannot be said that complainants are securing this standard and, in turn, that suggests that from an accountability point of view the PCI’s sole sanction power is lacking. Although there is no research on the topic, the PCC did claim that 84 per cent of corrections and clarifications appeared on the same page or further forward or in a dedicated corrections column” (Donovan et al 2012: 30). When compared to the findings of this research, the Irish system has some way to go to ensure that complainants secure fair outcomes that are already offered to them by the PCI.

### **7.8: Concluding remarks**

The concept of the PCI is an admirable one. The board of the PCI does, and always has, featured more lay members than members from the media. The perception of independence is important for the success of any regulatory as it encourages complainants to have confidence in the complaints-handling process. The PCI certainly meets this criterion, and it deals with complaints in a relative speedy fashion of just over 40 days on average.

This research has also established that the Press Ombudsman has got through a significant body of work in the years studied. Setting up, running and maintaining a system of press regulation is a difficult task. During this time, it has received virtually no significant criticisms from any of the main stakeholders. The Press Ombudsman has not missed opportunities to criticise and censure the press when it breached the CoP and sometimes when it hadn't.

The analysis of the years studied show that the Press Ombudsman dealt with formally adjudicated complaints in a clear manner by unfailingly using the CoP as a guide, which has allowed the Irish system to establish a clear working rationale. That rationale is obvious to both member publications and complainants given the publication of decisions and their justifications. This work can be counted as one of the major successes of Irish press regulation in the first six years and it is a significant contribution to the concept of press regulation globally given the deficiencies that self-regulatory systems have exhibited.

It is also worth highlighting that the limitations and narrow focus of this study precluded an examination of many other aspects of the PCI's work. There are a range of areas where the PCI engages that should be highlighted. For example, the PCI engages with regular outreach with the media and the public, as well as student journalists. Such work is invaluable for spreading awareness of the office. The Press Ombudsman has also

issued alerts to member publications when contacted by people concerned about ongoing press coverage that is particularly controversial. This channel of communications is an important one as it may not only protect peoples' privacy at times of intense media coverage but it may also guide newspapers in the best and most ethical course of action. How often such alerts are issued and their true impact is unknown but it is an important part of the PCI's work nonetheless, and could be a potentially fruitful avenue for further research.

Although outside of the scope of this research, the PCI's CoP is a practical and realistic charter of journalistic ethics. Many codes are aspirational and display a level of nativity that throws up fissures between journalistic practice and theory. However, the PCI's CoP avoids this. Over ten clauses and the preamble, it is an entirely sensible guide for journalists that is straight forward and useful. It does not set out an A to Z of rules not to be broken, but takes a more nuanced and accessible approach to ethical decision making and conduct.

It is worth stating that the sanction of the PCI – the publication of its decision in member publications - is something that newspaper editors are keen to avoid. In the UK, the *Daily Mail* editor Paul Dacre said the notion that newspaper editors view the publication of a decision of the PCC as a “slap on the wrist” was a myth (cited in Frost 2012: 24). “They are genuine sanctions. I, and other editors, regard being obliged to publish an adjudication as a real act of shame” (ibid). Including a substantial decision of the Press Ombudsman in an edition is embarrassing for PCI member newspapers and can lead to coverage by other newspapers of the decision. It undermines the credibility of the journalism in that member publication and could ultimately hurt newspapers by turning readers off due to the ethical breaches disclosed and censured by the PCI.

The PCI has achieved almost complete buy-in from the print media in Ireland. As previous chapters have established, there is widespread support from policy makers, academics and the media for its work. This research has established that there is compliance with the PCI during the complaint process by member publications almost all of whom have published the decisions – sometime extremely negative – of the Press Ombudsman and the PCI. In addition, as the PCI has noted, it appears that newspapers have improved their own internal mechanisms of accountability and complaint-handling in response to the setting up of the PCI. However, as Chapter 6 showed, there are also some areas that will require further work to improve as the PCI enters its next phase of work.

First, some of the findings of this research suggest that the PCI suffers from some of the same issues that led to criticism of self-regulation. Frost (2004) concluded that the PCC was effectively used more for the ruling out of complaints against the UK press than for actually dealing with grievances, given the structures that were in place and the difficulty that complainants had reaching formal adjudications.

In the case of the PCI, at the outset of a complaint, complainants must deal with newspapers directly. There is no data to reflect how newspapers react to complainants or how these cases are resolved beyond a limited publication of the complaint on the PCI's website. As Chapter 6 showed (see Table 28), some 81.5% of complaints from a total of 2,687 lodged during the years studied were neither informally or formally concluded by the PCI. There were some entirely legitimate reasons for some of these complaints not meeting the standard required, including that complaints were about non-member publications or outside the remit of the PCI. However, other categories, such as complaints that were not made within the three-month time limit, those that were withdrawn and those ruled out on a first reader, require further research. The comparable

percentage of complaints that did not pass to informal or formal reading at the PCC was 78.5 per cent. Given the well-publicised failures of self-regulation that were widespread during the years that press regulation in Ireland was being debated and set up, and the eventually institutionalisation of independent regulation – a so-called third way – the high level of complaints that do not progress to the latter stages of PCI assessment was surprising.

At the next stage, complainants must enter a process of conciliation where the outcome, as Chapter 6 established, is uncertain from a public accountability point of view. Again, how this process works in practice is not disclosed, and there is limited data to study if any sort of answerability, responsiveness and enforcement is achieved. While the PCI resolved fewer cases informally than the PCC, more and more complaints are being examined and concluded in this manner. Given the lack of data on how these cases are dealt with, how the outcomes work in practice and the decision not to record these cases as breaches of the CoP, it will be interesting to monitor the progression of this strand of complaint handling.

At the final stage of the process, once the complaint enters formal adjudication, this research also suggests a mixed picture in terms of the three elements of accountability. First, from a consistency point of view, the research has shown that complaint outcomes vary between newspaper groups and types. For complainants, there are also variations in outcomes depending on whether the complainant is well-known or not. These findings were not enough to suggest that the PCI deals with complaints inconsistently. Indeed, the research has shown that the Press Ombudsman and PCI generally interpret the CoP in a fair and consistent manner. Nonetheless, the findings are suggestive of underlying dynamics that do need further explanation.

Second, the responsiveness element of accountability also threw up mixed results. The vast majority of member publications did engage with the Press Ombudsman and PCI over the years studied. Where, on occasion, they did not, the system was quick to point that out and criticise the newspapers for it. The key element of responsiveness was, however, the time taken to decide on complaints. Here, the Irish system took around four-and-a-half month to deal with complaints. In isolation, such a time frame is commendable given the slowness of many other forms of arbitration, both non-legal and legal. However, when compared to the PCI's suggestions of how long it should take for it to deal with complaints, it shows that over the first six years of operation the PCI has struggled with such targets. Although the PCI does not have power to compel evidence from member publications, it is clear that it did not suffer from the same "chronic inability" to decide cases quickly that Pritchard (2000: 95-103) found the Canadian self-regulatory system suffered from.

At the final stage of the formal process and post-adjudication there was, yet again, a mixed outcome. As the research has shown, complaints concluded in one of three ways. First were those deemed SRA. A total of 59 of the 273 cases of formal adjudications published on the PCI's website, or just over 21.5%, ended with this declaration. Although member publications effectively accepted in these complaints that there was some error on its part, which varied in severity, the complainant had no chance of securing any rectification for the wrong committed. The offer of remedial action that had been refused by the complainant does not have to be followed up on by the member publication once the Press Ombudsman or PCI deemed the case SRA and the categorisation of the case as such also does not necessitate the publication of the decision. In addition, these complaints are not recorded as breaches of the CoP. From the point of view of the

sanction element of accountability, it is difficult to conclude that SRA cases meet the standard required.

Second, a total of 107 formally adjudicated complaints, or 39%, were not upheld. In isolation, no conclusions can be drawn about the figure in this category. Indeed, as this research has found, the Press Ombudsman and PCI use the CoP to adjudicate on complaints in a consistent fashion. Further research could look into complaint treatment in a more systematic fashion and produce more findings in this regard. Nonetheless, when combined with the SRA category, the research shows that 166 complainants failed to secure any accountability via the PCI's formal system. This represents just over 60% of formally adjudicated complaints and is surprising when compared to the just under 54% of complainants that did not have their cases upheld in the formal process operated in the UK by the self-regulatory PCC.

Third, of the formally adjudicated complaints, some 107, or just over 39%, were either upheld in full or in part. This compares to a figure of 46% at the PCC. Again, the research on this category of complaints shows that there was a mixed picture. As stated, almost all decisions upholding complaints were published in member publications which showed strong support and acquiescence to the work of the PCI among newspaper editors. This is particularly striking when one considers the problems with compliance that self-regulatory press councils in other North Atlantic Liberal countries have had in terms of ensuring decisions are published. However, a deeper look in this area has shown that there is widespread non-compliance with the PCI by member publications when it comes to publishing the decisions in the manner directed by the publication guidelines. The research has shown that complainants are struggling to secure due prominence – as mandated by the publication guidelines – even when their complaints are upheld.

The theoretical framework established in Chapter 5 held that in order to be a robust regulatory regime the PCI must exhibit consistency, responsiveness and meet its own standard of enforcement via its only sanction. On all three counts, there are arguments both for and against that can be made based on the data that this research has examined. Perhaps that is to be expected given that this research analysed the work of the PCI in its first six years in operation, a relatively short time frame. Indeed, the challenge of these early years was to “embed the new system, refine its procedures and, above all, building understanding of its mission”, as the first PCI Chairman said (Mitchell 2015: 121). There is a case to be made that the PCI has done well in these areas. However, this research also suggests that further work is needed to embed the system, particularly given the worrying findings in respect of publication of decisions. The research also suggests that further work refining the procedures of the PCI is required, including ensuring speedier outcomes as well as establishing more transparent complaint handling and outcomes.

However, the more concerning findings of this study are issues that not only lie with the PCI, but must also be the responsibility of the press industry which, as Chapter 4 showed, exerts a strong influence over the PCI’s work. On both responsiveness and enforcement the press industry has a key role to play. Part of the delays in dealing with complainants could well be due to inaction or obfuscation by member publications. Indeed there are complaints where the Press Ombudsman has highlighted the role played by member publications in this regard. In terms of enforcement, the PCI is clearly struggling to ensure that its decision are published according to its publication guidelines, but member publications are also utterly failing to follow the guidelines that they have voluntarily signed up to print adjudications with due prominence. The guidelines are not onerous and appear eminently fair, however, the almost total disregard for one or several elements of the guidelines – in addition to the lack of any substantive highlighting of the

matter – strikes at the very heart of independent press regulation. It ultimately undermines the system and could lead to the perception that both industry and the regulator are complicit in ensuring that complainants are not receiving fair and proper treatment.

This study has contributed to the understanding of press regulation in the North Atlantic Liberal model press system identified by Hallin and Mancini (2004). By focusing on the Irish case, this study has found that a so-called third way of independent and institutionalised press regulation exhibits many strengths when compared to self-regulatory systems. However, this study has also highlighted that the Irish system exhibits many of the weaknesses that have been present in self-regulatory solutions. Overall, this study found a mixed picture on all three elements of accountability. In addition, it has also shown that there were problems with the publication of decisions, which in turn suggests that full accountability was denied to complainants when their cases were upheld. In the course of this research a number of other important areas requiring examination emerged.

First, as Donovan et al (2012) have noted there is very little study in the field of assessing how press councils enforce the sanction power they hold. Much of the existing research examines overview complaint data and structural make-up, however, this information is limited. Reaching conclusions on such limited data is problematic as such information gives a picture of how press regulation may be working without qualitatively or quantitatively assessing specific actions such as complaint adjudication and enforcement of sanctions. If researchers expanded to study enforcement standards and methods a far better picture would emerge of how press regulation operates. It would also produce a far better idea of the interplay between the media and the regulator to combat the stock response of editors that they ‘fear’ or ‘loathe’ publishing adjudications. Such analysis should be conducted of all self-regulatory regimes, including the PCC, as it

would provide a far more complete picture than we currently have. While few self-regulatory regimes have prescriptive guidelines for publication of decisions, the PCI's ones would provide at least a basic starting point for examining if standards of due prominence are being met.

Second, there is a dearth of study that examines the complainant experience with press regulatory organisations. Barker and Evans (2007) surveyed the attitudes of those who had dealt with press self-regulation in New Zealand. The findings, albeit limited, produced a mixed picture that nevertheless suggested widespread unhappiness with how complaints had been handled. Similar research here is required to shed light on the complaint process and understand whether complainants believe standards of answerability and enforcement are being met. Indeed, it would be important to study the responses of complainants whose complaints were upheld in order to understand their opinions about the publication of PCI decisions, whether they are aware of the breaches of the PCI publication guidelines and if they believed the decision was published with due prominence. Such data would add to the findings available in this research by illustrating in a quantitative and qualitative manner the complaint-handling process.

Third, the work of the PCI during the period under examination also requires further study. The informal conciliation techniques needs to be examined. This method of complaint handling is promoted by the PCI and has been promoted by other failed regulatory regimes. However, in order to assess whether it is a credible and fair mechanism, a full assessment of responsiveness, consistency and enforcement must be undertaken. This, however, is difficult as the PCI carries out this process with confidentially guaranteed to both parties. Further study is also needed of the complaints that are ruled out by the PCI. Again confidentiality issues barred an examination for this study. Given the vast majority of complaints do not even reach informal handling, it is

imperative that these complaints are examined independently to ascertain if the bar is being set too high for complainants. Given that the proceedings of the PCI were also unavailable to this researcher, a full study of all of the PCI meetings by studying the minutes as well as the voting patterns of members would be invaluable to illustrate how an independent press council operates and what the independent majority means in practice.

Fourth, the lack of available information, referenced above, is a concern. Transparency is a cornerstone of successful regulation, as discussed in Chapter 5. However, much of the work of the PCI is conducted in a manner that is not accessible. At every stage of the complaint process, except the formal adjudications of the Press Ombudsman and some PCI rulings, there is a dearth of publicly available information. Within a month of starting its work, John Horgan, an independent member of the PCI board, expressed these concerns about the new system of regulation. Horgan criticised “excessive confidentiality” and argued the limitations the PCI imposed on making its business public came “close to collusion in withholding information from the public”. Transparency is a theme that runs throughout much of the engagement with the PCI. Simply put, more transparency is required in order to fully understand how the PCI operates, what its strengths and weaknesses are and how it can improve.

A first and basic step to improving transparency standards would be collating all published decisions on the PCI’s website. In order to assess whether newspapers were following the publication guidelines, it was necessary to search through each publication for the published adjudication in the absence of information highlighting what date the decision was published, on what page and in what format. The PCI holds some of this data and did supply some of it for this research. However, it is reasonable to suggest that this information should be published on the PCI website in order to make it more

accessible. For example, a pdf version of the page of the newspaper could be attached to the published decision on the PCI's website. This could be accompanied by a note identifying all of the information about the offending article and the adjudication in order for a quick and transparent highlighting of whether the newspaper met the due prominence standards.

Fifth, the importance of Principle 10.1 of the PCI CoP must be underlined. It says that “when requested or required by the Press Ombudsman and/or the Press Council to do so, the press shall publish the decision in relation to a complaint with due prominence”. During the period studied, there were just 2 formal complaints under the principle, despite the almost complete non-compliance with the due prominence guidelines that the PCI asks all member publications to follow. First, the publication of the published decision on the PCI website in the above fashion would empower complainants to file a complaint under principle 10.1 thus highlighting that the decision was not in compliance with publication guidelines and ensuring the adjudication met the due prominence standards required. Second, it is clear that the Press Ombudsman must be empowered to identify these breaches independently of a complainant and force the newspaper to adhere to the CoP. Leveson identified a failure to launch investigations into breaches of its code as one of the key weaknesses of the PCC (2012: 1548). Given the clear widespread non-compliance of the Irish press, a failure to do the same – solely under principle 10.1 – must be regarded in the same manner.

The findings in this study suggest that a widespread review of the PCI is needed. That review should address a number of areas. It is clear that there are significant problems with the publication of decisions. As Chapter 6 established, the PCC and PCI had the same sanction power, namely the publication of decision with due prominence. There is a body of opinion that favours the option of fines. It is likely, however, that there would

be strong opposition in the Irish print media, in particular given the financial difficulties that many publishers still face, in relation to fines. Nevertheless, the strengthening of the PCI's sanction power to include fines could be considered, perhaps solely as an option should upheld decisions not be published correctly. As this research has shown, the requirements of the existing sanction power were not adhered to and went uncorrected and unchallenged. Thus the media has shown that it is unwilling to comply with Irish press regulation and other avenues of enforcement must be examined.

Related to this is the PCI's funding, which this chapter discussed and which has declined every year since 2008. It is not clear if the PCI is given adequate funding to carry out its function. Nevertheless, the time taken to address complaints suggests that the PCI may need further staff. While the PCI has repeatedly praised the newspaper industry for its perceived financial commitment to the regulator, more funding would allow it to speed up complaint-handling and devote more resource to tackle non-compliance and transparency improvements discussed.

The conclusions of this study suggest a mixed attitude in terms of the newspaper industry's commitment to independent press regulation in Ireland. On the one hand, member publications are engaging with and publishing the decisions of the Press Ombudsman and PCI. On the other hand, however, there is severe non-adherence to due prominence provisions. The system requires significant buy-in from newspapers in order to operate effectively, and has partly met this standard. However, given the powers of the PCI are limited to the publication of its decisions, the undermining of this sanction by member publications is an area that requires attention as the PCI enters the next phase of operation. As has been discussed, self-regulation has failed as a form of press regulation because media control has infected structures to such an extent to render any efforts at accountability devoid of any true impact thus subjugating the interests of the media over

the public. While Irish press regulation is some way from this particular precipice, further work is required to ensure the PCI can offer complainants the standard of accountability that has been referenced in this study. Member publications have a leading role, if not the lead role, in reviewing the current system and strengthening it.

However, the track record of the newspaper industry is far from exemplary in this regard with almost all press regulation being a reactive rather than proactive solution that derives from state or other threats to impose regulation on newspapers. Can the print media be trusted to insist on change? Member publications may not be needed to do this, however, as the Department of Justice has started a review of the Defamation Act 2009. Under the review, the Minister for Justice held a public consultation requesting submissions in relation to “the experience regarding the operation of the Press Council (recognised under section 44 of the Act) and Press Ombudsman”. The review can be the first step to addressing the weaknesses in the system. Indeed, the Minister for Justice could ascertain whether in light of these weaknesses the PCI still meets the standards required to be recognised under the act.

This research has shown that the PCI exhibits a number of strengths and weaknesses. In addition, its structures and operation contrasted with the work of self-regulatory systems, but also exhibited similarities on many fronts. This study set out to examine if independent press regulation is a robust system for regulating the press, and whether it ensures greater accountability than self-regulatory approaches. While there are many laudable features that suggest a strong start for independent press regulation in the Liberal North Atlantic system, further work is required to ensure complainants have access to true accountability mechanisms. Independent press regulation must also remain cognisant of the failures that have led to what Leveson referred to as the “twin failure” of both the regulatory system and the industry in respect of the PCC. That failure, he argued,

is itself evidence that there has been no real appetite for an effective and adequate system of regulation from within the industry, in spite of a professed openness to reform and self-criticism. It is difficult to avoid the conclusion that the self-regulatory system was run for the benefit of the press not of the public (2012)

Irish press regulation is still in its infancy, however, this study has found no conclusive evidence that it is being run for the benefit of the press industry. Nonetheless, as the PCI enters a new phase of operations, it must look at some of the weaknesses – especially the non-compliance with its publication guidelines – to ensure that when a fuller assessments of its work can be undertaken, that it is not included in the same category as the PCC and is run in a fair, consistent and transparent manner that ensures adequate redress for newspaper readers when their complaints are upheld.

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