



## PRESS COUNCIL OF SOUTH AFRICA

### COMPLAINTS PROCEDURES

Updated May 2023

Read the complaints procedure in full. It shall be of the essence of the mediation and adjudication proceedings that:

Complaints be considered and mediated or adjudicated on within the shortest possible time after the publication of the matter giving rise to the complaint;

Complaints be considered and mediated or adjudicated in an informal manner.

#### 1. Complaints

1.1. "Complainant" shall mean and include any person who or body of persons which lodges a complaint and has standing to complain in terms of the following rule:

anyone acting in their own interest;

anyone acting on behalf of another person who cannot act in his or her own name;

anyone acting as a member of, or in the interest of, a group or class of persons; and

an association acting in the interest of its members.

1.2. The "respondent" in respect of a complaint shall be either the proprietor of the publication or an individual subscriber member. A publication may delegate its editor or, in his or her absence, an assistant editor or other suitable editorial representative of the publication concerned, to act and appear in its stead in respect of any complaints dealt with by the Public Advocate, the Ombud or the Chair of Appeals.

1.3. A complaint shall be made as soon as possible, but not later than 20 working days after the date of publication giving rise to the complaint. The Public Advocate, who throughout the entire process (also at the Ombud and the Appeals Panel) will advise and assist the complainant if the complainant agrees, may on reasonable grounds accept late complaints if, in his or her opinion, there is a good and satisfactory explanation for the delay.

1.3.1 The Public Advocate shall require a complainant to answer a questionnaire in which the following questions are posed:

1.3.1.1 Are the issues which are the subject matter of this complaint against the publication concerned pending at present before any court of law; or

1.3.1.2 Does the complainant in the event that the complaint is resolved in his/her favour or to his/her satisfaction intend to or contemplate at any time in the future instituting proceedings in any court of law against the publication concerned based on the issues which are the subject matter of the complaint; or

1.3.1.3 Does the complainant in the event that the complaint is not resolved in his/her favour or to his/ her satisfaction intend to or contemplate at any time in the future instituting

proceedings in any court of law against the publication concerned based on the issues which are the subject matter of the complaint?

1.4. The complaint shall be made to the Public Advocate either in person, by telephone or in writing. "Writing" shall include cable, telegram, telex, SMS, e-mail and fax messages. Where a complaint is made other than in writing it shall be confirmed forthwith in writing or the Public Advocate's office shall assist the complainant to do so before the complaint can be formally accepted. On receipt of a complaint, the Public Advocate shall be entitled to request from the complainant a copy of the material published giving rise to the complaint, and the complainant shall be obliged to forward such a copy to the Public Advocate forthwith.

1.5. Recognising the importance of democratic elections at national, provincial and local levels of government, the Press Council will give top priority to finding speedy resolutions to complaints related to those elections when they are being held to secure free and fair elections.

1.6. The Public Advocate shall not accept a complaint or submission:

1.6.1. Which is anonymous; or

1.6.2. Which, in his or her opinion, is fraudulent, frivolous, malicious or vexatious, prima facie falls outside the ambit of the Press Code or where there has been no prima facie breach of the Press Code; or

1.6.3. Which is directed at a publication or individual subscriber member, whatever the case may be, outside the jurisdiction of the Ombud

1.6.3.1. Complaints against a publication that is not a subscriber member

- The Public Advocate will approach the proprietor or editor of the publication and request that the publication submits to the process for purposes of adjudicating the complaint.
- If a publication submits to the process, the process will proceed with the publication as respondent.
- If such a publication does not voluntarily submit to the process but the author of the article in question is an individual subscriber member, the process may proceed with the individual subscriber member as respondent. The complainant shall be informed about the limitation of possible sanctions against an individual subscriber member and be given an option to proceed with the process or not.

1.6.3.2 Complaints against an individual subscriber member

- Whenever the material in question was published by a publication that is a subscriber member or a publication that voluntarily subjects itself to the process, such publication shall be the respondent rather than an individual subscriber member.
- An individual subscriber member will be the respondent only in the event of publishing material in a non-subscriber publication which does not voluntarily subject itself to the jurisdiction of the Press Council.

1.7. Pending legal proceedings:

1.7.1. In the event that the complainant answers any of the questions posed in the subparagraphs 1.3.1.1, 1.3.1.2 and 1.3.1.3 respectively in the affirmative, the Public Advocate or the Ombud may in his or her absolute discretion defer acceptance of the complaint pending the finalisation of the pending or contemplated legal proceedings.

1.7.2. Where the Public Advocate has reason to believe that in addition to the complainant who has answered the said questions in the affirmative, there may be other potential complainants who could complain or litigate on the same issues as the first mentioned complainant, he or she may likewise defer acceptance of the complaint pending the finalisation of the pending or contemplated legal proceedings.

1.7.3. Where at any stage of the proceedings it emerges that proceedings before a court are pending on a matter related to the material complained about, the Public Advocate, the Ombud or the Chair of Appeals, depending on status of the complaint at that stage, shall forthwith stop the proceedings and set aside the acceptance of the complaint by the Public Advocate, unless it is shown that the issue complained about is not among those that the court is adjudicating.

1.8. Where the Public Advocate declines to accept a complaint, the complainant may, within seven working days, with adequate reasons, forward a request for adjudication to the Press Ombud. If the request is granted, the matter is referred back to the Public Advocate, for the process to continue as if the complaint had been accepted. Furthermore, where the Public Advocate has accepted a complaint, the respondent can within seven working days, with adequate reasons regarding standing of the complainant, lateness of the complaint, or legal proceedings, forward a request for non-adjudication to the Press Ombud. Either party may take the Ombud's ruling to the Chair of Appeals in terms of normal procedures.

1.9. Where, within 30 working days after the date of publication there has been no complaint, but the Public Advocate is of the view that a prima facie contravention of the Press Code has been committed and it is in the public interest, he or she may file a complaint with the Ombud for adjudication in terms of Section 3 below.

## **2. Settlement procedure by the Public Advocate**

2.1. No complaint written in disparaging, insulting, demeaning or vexatious or similar language shall be accepted.

2.2. Upon formal acceptance of a complaint by the Public Advocate he or she shall immediately notify the respondent(s) of the complaint in writing, giving sufficient details to enable the respondent to investigate the matter and respond within seven working days unless a satisfactory reason is given to the Public Advocate for an extension of time.

2.3. The Public Advocate shall forthwith endeavour with the complainant to achieve a speedy settlement with the publication.

2.4. If the complaint is not settled within 15 working days of the publication receiving notice of the complaint, the Public Advocate shall refer the complaint to the Ombud for adjudication, unless she or he feels the timeframe needs to be lengthened because of the circumstances.

### **3. Adjudication by the Ombud**

3.1. No submission written in disparaging, insulting, demeaning or vexatious or similar language shall be accepted.

3.2. The Ombud may, if it is reasonable not to hear the parties, decide the matter on the papers.

3.3. If the Ombud finds that the matter cannot be decided on the papers, but some aspects of a complaint need to be clarified and sees no need for a formal hearing, the Ombud may convene an informal hearing with the two parties.

3.4. Where the Ombud decides to hold a hearing, he or she shall convene an Adjudication Panel in which the Ombud is joined by a public and a press member drawn from the Panel of Adjudicators, to adjudicate the matter with him or her at a hearing.

3.4.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Adjudication Panel to consider the matter.

3.5. Both parties are expected to attend and address the Adjudication Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.

3.6. Decisions by the Adjudication Panel shall be by a majority vote.

3.7. Within 7 working days of receipt of the decision, anyone of the parties may apply for leave to appeal to the Chair of Appeals and the grounds of appeal shall be fully set out.

3.8. The application and grounds must be filed at the Ombud's office.

3.9. The Ombud shall inform the other party of the application for leave to appeal and shall advise the party that he or she may file a response to the application for leave to appeal within 7 working days of receipt thereof.

3.10. If the Chair of Appeals is of the view that there are reasonable prospects that the Appeals Panel may come to a decision different from that of the Ombud or the Adjudication Panel, as the case may be, the Chair of Appeals shall grant leave to appeal.

### **4. Adjudication by the Appeals Committee**

4.1. No application for leave to appeal, grounds of appeal or submissions written in disparaging, insulting, demeaning or vexatious or similar language shall be accepted.

4.2. Where leave to appeal is granted in terms of rule 3.9, the Ombud shall place before the Chair of Appeals all the documentation that he or she had before him or her.

4.3. The Chair of Appeals shall appoint one press member and up to three public members from the Panel of Adjudicators appointed in terms of clause 5.6 of the Constitution, to hear

the appeal with him or her. The Chair of Appeals will have discretion on the number of public members he or she invites to hear an appeal with him or her.

4.3.1. A person employed by a publication which is the subject of the complaint, or with any other vested interest in the matter, may not serve on an Appeals Panel to consider the matter.

4.3.2. Members of the Panel of Adjudicators who heard a case with the Ombud may not be part of a panel hearing the appeal against the earlier decision.

4.4. The Chair of Appeals shall determine a date, time and venue for adjudication of the appeal, which shall be heard as soon as possible after receipt by him or her of the documents referred to in rule 4.1.

4.5. The Ombud shall inform the parties of the date and venue of the hearing before the Appeals Panel.

4.6. Both parties are expected to attend and address the Appeals Panel, which is, in any case, entitled to question them personally or in writing on the matter. Failure by the publication to send a representative may lead to the matter being adjudicated in their absence.

## **5. Hearings**

5.1. Discussions between the Public Advocate and the complainant, on the one hand, and the publication, on the other, are private and confidential and are conducted on a without prejudice basis. No person may refer to anything said at these discussions during any subsequent proceedings, unless the parties agree in writing. No person may be called as a witness during subsequent proceedings in the Press Council or any court to give evidence about what transpired during the discussions.

5.2. The hearings of the Adjudicating Panel and of the Appeals Panel shall be open to the public unless the identity of a rape victim or victim of a sexual offence, a child under eighteen, or a victim of extortion is at issue.

5.3. The Public Advocate may assist the complainant at a hearing of the Adjudicating Panel or the Appeals Panel.

5.4. Legal representation shall not be permitted at hearings unless:

5.4.1. The Ombud or the Chair of Appeals and all the other parties consent;

5.4.2. The Ombud or the Chair of Appeals concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:

5.4.2.1. The nature of the questions of law raised by the dispute;

5.4.2.2. The complexity of the dispute;

5.4.2.3. The public interest; and

5.4.2.4. The comparative ability of the opposing parties to deal with the dispute.

5.5. At the conclusion of a hearing, and after a Panel has reached a decision, both parties shall be entitled to address the Panel, personally or in writing, on sanctions and where appropriate mitigation.

## **6. Variation of Procedure**

6.1. The Ombud or Chair of Appeals may, depending at which level the matter is being adjudicated, if satisfied that no injustice will result, and upon such conditions as he or she may impose:

6.1.1. Extend any time period contemplated in these rules;

6.1.2. At any stage require any allegation of fact to be verified on oath; and

6.1.3. Call on the parties to a dispute to furnish such further information as he or she may consider necessary.

## **7. Findings of the Ombud, Adjudication Panel, the Chair of Appeals and the Appeals Panel**

7.1. The Ombud, the Adjudication Panel, the Chair of Appeals and the Appeals Panel may uphold or dismiss a complaint or appeal, as the case may be.

### **Sanctions available against publications**

7.2. If a finding is made against a subscriber publication or a publication that has voluntarily become subject to the jurisdiction of the Ombud, the Ombud, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the proprietor of the publication:

7.2.1. Caution or reprimand the publication;

7.2.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombud, the Adjudication Panel, or the Appeals Panel be published by the publication in such manner as they may determine. Such correction, retraction, explanation, or apology may not be removed in future by the publication.

7.2.3. Order that a complainant's reply to a published article, comment or letter be published by the publication;

7.2.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombud, the Adjudication Panel, or the Appeals Panel.

## Sanctions available against individual subscriber members

7.3. If a finding is made against an individual subscriber member, the Ombud, the Adjudication Panel, or the Appeals Panel, as the case may be, may make any one or more of the following orders against the individual subscriber member:

7.3.1. Caution or reprimand the individual subscriber member;

7.3.2. Direct that a correction, retraction or explanation and, where appropriate, an apology and/or the findings of the Ombud, the Adjudication Panel, or the Appeals Panel be published by the individual subscriber member on any platform under the control of the individual subscriber member, including their social media platforms, regardless whether the content under complaint was originally published on those platforms. Such correction, retraction, explanation, or apology may not be removed in future by the individual member.

7.3.3. Order that a complainant's reply to a published article which was authored by the individual member, comment or letter be published by the individual subscriber on any platform under the individual's control, including their social media platforms, regardless whether the content under complaint was originally published on those platforms;

7.3.4. Make any supplementary or ancillary orders or issue directives that are considered necessary for carrying into effect the orders or directives made in terms of this clause and, more particularly, issue directives as to the publication of the findings of the Ombud, the Adjudication Panel, or the Appeals Panel.

## Publication of findings and sanctions

7.4. Findings of the Ombuds, Adjudication Panel, Chair of Appeals and the Appeals Panel shall be published on the website of the Council and may also be published on the social media platforms of the council.

## 8. Hierarchy of sanctions

8.1. A hierarchy of sanctions shall be applied:

<b>Tier 1: Minor breaches</b>	<b>Examples of breaches</b>	<b>Hierarchy of sanctions</b>
The Ombud or the Chair of Appeals will give directions on the prominence of an apology  A stamp with the Council's logo (to be supplied by Council) should accompany a ruling.	Wrongly spelled names  Minor factual errors that do not change the thrust of the story	Sanctions, including an apology, on any inside page (but not on the front page or in the case of an online publication, the home or landing page), as directed by the Ombud or the Chair of Appeals

<b>Tier 2: Serious breaches</b>	<b>Examples of breaches</b>	<b>Hierarchy of sanctions</b>
<p>The Ombud or the Chair of Appeals will give directions on the prominence of an apology.</p> <p>A stamp with the Council's logo (to be supplied by Council) should accompany a ruling.</p> <p>Editors will be allowed to draft their own apologies, but they have to be approved by the Ombud, who makes the final decision.</p> <p>In imposing a sanction for publication on the front page, the publication's design should be taken into account, allowing for a page 1 teaser and continuation on an inside page.</p>	<p>Views of subjects of critical reportage not sought.</p> <p>Inaccurate or unfair reporting</p>	<p>Sanctions (reprimands, caution, corrections, retractions, apologies) with the Ombud's or the Press Appeal ruling, on any inside page or on the front or home page (which may continue to an inside page)</p>
<b>Tier 3: Serious misconduct</b>	<b>Examples of breaches</b>	<b>Hierarchy of sanctions</b>
<p>The same as under Tier 2</p>	<p>Allowing commercial, political, personal or other non-professional considerations to influence or slant reporting</p> <p>The publishing of child pornography</p>	<p>In addition to the sanctions from Tier 2, the Ombud or the Chair of Appeals may impose a "space sanction" ranging from a few centimetres to a full page for the complainant or the Press Council to use as determined by the Ombud or the Chair of Appeals</p>

8.2. Monetary fines will not be imposed as a penalty for the content of the press. However, monetary fines according to a formula determined by the Press Council and included in this sub-clause and/or suspension for a period or expulsion from the jurisdiction of the Ombud may be imposed as sanctions for a respondent's failure to appear for adjudication hearings and repeated non-compliance with the rulings of the adjudicatory system. If it is reinstated because it complied with the conditions and then it defaulted again within twelve months, it would immediately be expelled from the system.

8.3. If the Ombud finds:



(a) that a subscriber publication or member has committed a serious breach as provided for in Tiers 2 and 3 of the Hierarchy of Sanction as set out in Clause 1.8 and

(b) the subscriber publication or member has previously committed similar or substantially similar breaches for which it has been sanctioned;

8.3.1. He/she shall specifically make a finding to this effect in the ruling and may recommend that a special hearing be convened by the Press Council

8.3.2. At the hearing convened by the Press Council the subscriber publication or member will be required to provide an explanation for its apparent repeated infringements of the same or materially similar provisions of the Code and if a finding is made that it has repeatedly infringed these provisions, it shall undertake to abide by a set of recommendations aimed at ensuring that similar infringements do not occur in future.

## **9. Records**

9.1. The Ombud shall cause any findings, and reasons for a finding to be sent to the complainant and to the respondent who shall comply with the Press Ombud Panel or the Press Appeals Panel's orders or directives, if any.

9.2. The Ombud shall keep on record all findings and reasons for findings by the Press Ombud Panel or the Press Appeals Panel.

9.3. The records referred to in rule 9.2. shall be public documents except insofar as those documents identify a rape victim, a person who has been a victim of a sexual offence or a child under eighteen, or a victim of extortion or identify any other person whose identity is protected in the Press Code or by law.