



ST HELENA LEGISLATIVE COUNCIL

REPORT BY THE INVESTIGATIVE COMMISSION ON THE
INVESTIGATION OF THE APPEAL MADE BY THE HON
JEFFREY ELLICK

Report of the Inquiry by the Investigative Commission convened to investigate an Appeal by Councillor Jeffrey Ellick

Dated: 31st August 2023

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1. Convening of this Investigative Commission

- 1.1. On 7 August 2023, the Speaker of the St Helena Legislative Council convened an Investigative Commission under Order 7, Enforcement paragraph 7.2(b)(iii) of the Code of Conduct for Members of the Legislative Council made on 16th of December 2022 (the 2022 Code) to inquire into an appeal against a finding made by an earlier Investigative Commission that Councillor Jeffrey Ellick had breached the Code.
- 1.2. The Investigative Commission comprised:
 - a. Deputy Speaker – Chairperson;
 - b. Mr Timothy McDermott – Member;
 - c. Mr Daniel Weight – Member; and
 - d. Mrs Connie Johnson – Secretary
- 1.3. This Commission meets as appointed by Legislative Council, as outlined in Sessional Paper 16/23.¹

The 2018 Code and the 2022 Code

- 1.4. The initial allegation of an alleged breach against Councillor Jeffrey Ellick was made in accordance with the Code of Conduct for Members (the 2018 Code).² The 2018 Code operated until 2022, when it was superseded by a revised Code (the 2022 Code).³
- 1.5. Despite the conduct the subject to the alleged breach of the Code having occurred during November and December 2020 when the 2018 Code was in application, this Investigative Commission been formed under the 2022 Code, it was correct that the processes of the 2022 Code apply.
- 1.6. Both the 2018 Code and the 2022 Code were provided for Investigative Commissions to determine whether or not the applicable Code has been breached.
- 1.7. Being formed via the Codes of Conduct for the Legislative Council made from time to time, the powers of an Investigative Commission must be interpreted in

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1. St Helena Legislative Council, *Panel of Investigators*, Sessional Paper Number 16/23 <<http://www.sainthelena.gov.sh/wp-content/uploads/2023/06/Sessional-Paper-16-Panel-of-Investigators.pdf>>.
 2. St Helena Legislative Council, *Code of Conduct for Members of Legislative Council*, Sessional Paper Number 33/18 <<http://www.sainthelena.gov.sh/wp-content/uploads/2018/07/SP33-Code-Of-Conduct-.pdf>>.
 3. St Helena Legislative Council, *Code of Conduct for Members of Legislative Council*, Sessional Paper Number 49/22 <<http://www.sainthelena.gov.sh/wp-content/uploads/2023/01/SP-49-22-Code-of-Conduct-for-Members-of-LegCo.pdf>>.

light of the powers of the Legislative Council itself and any explicit or implicit limitations that appear in the Code or specific referral that establishes them.

2. The original complaint and finding of a breach

- 2.1. On 20 July 2021, the Original Investigative Commission provided a report to the Speaker. In relation to Councillor Jeffrey Ellick, that report determined as follows:

The Investigative Commission, having considered the evidence of conduct and actions by ...Councillor Jeffrey Ellick, concluded that [Councillor Jeffrey Ellick is] in breach of Section 6.5 of the Code of Conduct.

That Investigative Commission recommended as follows:

That...Councillor Jeffrey Ellick offer an apology to Councillors Buckley, Henry, Green and Thomas as set out in section 7.2 (a)(i) of the Code of Conduct.

- 2.2. The Original Investigative Commission made equivalent findings in relation to Councillor Christine Scipio, however, this appeal has been made by Councillor Jeffrey Ellick only. It would be inappropriate for this Investigative Commission to make findings regarding Councillor Christine Scipio without having been referred an appeal from her.

3. The grounds for the appeal

- 3.1. Councillor Jeffrey Ellick appealed the decision of the Original Investigative Commission under four broad grounds. Relevantly, the Appeal was stated in the following terms:

- 1) The [Original Investigative] commission did not carry out a thorough and fair investigation as to establish the truth.

I. They made no attempt to corroborate the allegations made, by either speaking with the other Executive member (Clint Beard), members of the public who attended the meeting at HTH [Half Tree Hollow], where there were some 113 member of the public or look at documents which in my view clearly showed evidence that the Executive Council had indeed made a decision to Exempt a group of people (FCDO [United Kingdom Foreign, Commonwealth and Development Office] Staff) which could have been easily obtained from any elected member and was pointed out to them during my interview.

- 2) They [the Original Investigative Commission] did not produce any evidence to show that we [Councillor Jeffrey Ellick, Councillor Scipio, and Councillor Gavin Ellick] had indeed mislead the public at the HTH meeting

II. The transcript has no evidence indicating that I or any other member mislead the public. But produce an email stating that the Health [Public Health Committee] had not asked for an exemption from isolation at Bradleys on diplomatic grounds but had exempt people as set out in law i.e. a proper officer. I had not said anything about individuals, only about EXCO [Executive Council] making a decision to elevate a group of people above others which in my submission is a fact.

- 3) There is a presumption in law that all persons are innocent until proven guilty and the onus is on the commission to prove such.

III. During interview [by the Original Investigative Commission] I was told by the Deputy Speaker that it was for me to prove that I didn't mislead the public and not for the commission. Therefore in effect I was not treated in accordance with a fundamental right (Right of innocence)

4. I have a number of documents some already public and others not public which I am happy to produce and explain, which will show that the four members who made the allegation were disgruntled and made false allegations against myself and Councillors Scipio and Gavin Ellick as a result of us putting forward a motion of No confidence against Executive Council, which was our right and in compliance with Standing Orders.

Mr Speaker, I asked that I be treated justly, allegations that are made, be corroborated, and factual evidence should be collected and examined in an impartial manner.

4. Determination of appeal

- 4.1. This Investigative Commission decided the grounds asserted by Councillor Jeffrey Ellick at paragraphs 1, 2, and 3 of his Appeal agitated the following two areas of concern:

- a. that the Original Investigative Commission did not correctly, objectively or fairly establish facts on the basis of the available evidence; and
- b. that the Original Investigative Commission did not correctly apply those facts to the relevant test in clause 6.5 of the 2018 Code.

- 4.2. These two grounds are clearly relevant to processes undertaken by the Original Investigative Commission, and therefore the outcome, and as such were accepted for consideration by this Investigative Commission.

- 4.3. Given the need to reformulate somewhat Councillor Jeffrey Ellick's grounds for appeal stated in paragraphs 1, 2, and 3 the Investigative Commission considered whether or not Councillor Jeffrey Ellick should be afforded an opportunity formally to restate his grounds of appeal so as to bring them squarely within the Commission's powers. This Commission, however, concluded that it did not need to do so because, in this case:

- a. the grounds for Councillor Jeffrey Ellick's Appeal were, in any case, sufficiently clear;
- b. given this Commission's preliminary views on this Appeal:
 - i. there would be no unfairness to Councillor Jeffrey Ellick by not inviting him to reformulate his grounds for appeal set out a paragraph 1, 2 and 3; and
 - ii. little was likely to turn upon the specific facts asserted by Councillor Jeffrey Ellick.

- 4.4. In paragraph 4 of his Appeal, Councillor Jeffrey Ellick made certain assertions about the motives of those other Councillors who made the original complaint. He further asserted that he had evidence to support his assertions. Those assertions are reproduced above and do not need to be repeated here.
- 4.5. This Investigative Commission can only deal with those matters that are referred to it. Whatever evidence as to the motives of those Councillors who made the Original Complaint Councillor Jeffrey Ellick might have it is:
- a. simply irrelevant to the matters that need to be determined by this Investigative Commission; and therefore,
 - b. cannot be considered or tested by this Investigative Commission.
- 4.6. This is not to say the allegations made by Councillor Jeffrey Ellick at paragraph 4 are not, on their face, of substance; it is merely a statement that any such assertions cannot be considered by this Investigative Commission.
- 4.7. Indeed, the claim from Councillor Jeffrey Ellick that the allegations made by the four Councillors were as a result of them being 'disgruntled' due to the motion of no confidence, and his statement that they 'made false allegations against' [him] may, in itself be considered by the Speaker as an allegation of misconduct by Councillor Jeffrey Ellick.
- 4.8. For the reasons stated above, this Investigative Commission did not accept for consideration the grounds asserted at paragraph 4 of Councillor Jeffrey Ellick's Appeal. It follows that this Investigative Commission did not seek, and did not receive, any of the evidence that Councillor Jeffrey Ellick purported to have in relation to his assertions at paragraph 4 of his grounds for appeal.
- 4.9. Specifically relating to item 3 of the Appeal by Councillor Jeffrey Ellick, this Investigative Commission thought it relevant to highlight that on St Helena, judicial power is vested in courts established or provided for by Part 6 of the *Constitution*, and nothing purports to vest in the Legislative Council established under Part 5 of the *Constitution* anything that could be described as "judicial power." It follows that an Investigative Commission created by the Legislative Council is not a court and cannot enter a finding of "guilt," or otherwise, in any particular matter. An Investigative Commission can only determine, on the basis of the available and credible evidence, whether or not there are facts that can be established that allow a conclusion that a Member has breached the applicable Code of Conduct.
- 4.10. Indeed, had there been any allegation of, or the suspicion of, a criminal offence, it would have been incumbent on this Investigative Commission to make referral to the correct and proper authorities.

- 4.11. However, despite the reticence of the Investigative Commission to follow the use of judicial language as laid out by Councillor Jeffrey Ellick, attention should be drawn to an extract from the interview minutes of the Original Investigative Commission and Councillor Jeffrey Ellick which states:

J Ellick – You need to establish first that I have committed an offence, so from my perspective, I don't believe I have because I got all the emails and everything else there, as to what they actually did and what I requested from them.

Panel – On the other hand Jeffrey it is up to you to prove

J Ellick – No it not for me to prove

Panel – Yes it is because you have been accused of breaching the rules, breaching the Code. So if you got evidence to say no you didn't

- 4.12. The Investigative Commission reflects that this is a potential concern in the original investigation.

5. Determination of whether this Appeal is frivolous or vexatious

- 5.1. Paragraph 7.2(k)(i) of the 2022 Code provides that an Investigative Commission may determine that "a complaint is frivolous and vexatious and decline to deal with it".
- 5.2. The question here is not whether or not the matters the subject of the Original Investigative Commission were frivolous or vexatious (they may have been), but rather whether this Appeal against the adverse finding from that Commission by Councillor Jeffrey Ellick is frivolous or vexatious.
- 5.3. The matters asserted by Councillor Jeffrey Ellick in his various grounds of appeal assert, amongst other things, failures in relation to both the fact finding and decisional processes that were adopted by the Original Investigative Commission. Moreover, the Original Investigative Commission made findings that were adverse to Councillor Jeffrey Ellick, including a recommendation to impose a penalty.
- 5.4. These are issues of substance and this Appeal, therefore, is determined to be neither frivolous nor vexatious.

6. Determination and narrative evidence

The Original Investigative Commission did not correctly, objectively, or fairly establish facts on the basis of the available evidence.

- 6.1. The Report of the Original Investigative Commission purported to find certain facts that were relevant to its ultimate conclusions in relation to the matter.

- 6.2. Specifically, at paragraph 2 in the “Summary” section of its report, that Investigative Commission stated as follows:

It was said verbally but with no written evidence that the public requested a meeting because of a decision made by Executive Council regarding quarantine arrangements for FCDO (United Kingdom Foreign, Commonwealth and Development Office] employees.

(Emphasis added)

- 6.3. To this Investigative Commission, it is entirely unclear what the evidence that the Original Investigative Commission used to establish that “quarantine arrangements” was the reason for the meeting at Half Tree Hollow on the 4th of November 2020.
- 6.4. Indeed, the Original Investigative Commission stated that there was “no written evidence”. That Commission did, however, claim “[i]t was stated verbally”, but failed to identify who stated it verbally or in what context it was stated.
- 6.5. It is not clear to this Investigative Commission if the statement was made at a time contemporaneous with the Half Tree Hollow Meeting on the 4th of November 2020, or during the course the Original Investigative Commission’s inquiry that occurred later.
- 6.6. Equally, it is unclear why the Original Investigative Commission should determine that a public meeting to discuss such arrangements could result in an allegation of a breach of the Code of Conduct.
- 6.7. The Original Investigative Commission stated ‘in the Commission’s opinion, it was felt that support was being sought from those present as a mandate to remove Executive Council’.
- 6.8. Even if this were the case, this falls within the scope of the inherently political dimension of the role of an elected Member.
- 6.9. The report, through the use of emotive language such as ‘incomprehensible’ purports that Councillor Jeffrey Ellick *‘knowingly misled the public at the meeting on the 4th November’* and could have conducted the meeting differently due to knowledge he had received on the morning of the public meeting whilst sitting as a member of the Public Health Committee.
- 6.10. This Investigative Commission does not support that analysis. After reviewing the minutes of the Public Health Committee (Open Agenda), dated 4th November 2020, it is clear that under item 37.06 the criteria for exemption from quarantine was discussed at length.

- 6.11. A press release⁴ by the St Helena Government dated 22nd of October 2020 clearly states 'no changes to quarantine arrangements', yet the Incident Executive Group (a closed meeting, consisting of Executive Councillors) made a decision on the 23rd of October 2020 to exempt a number of FCDO employees from the requirement to quarantine at Bradleys.
- 6.12. Indeed the Hansard from Legislative Council on 11th of December 2020 notes that on the 3rd of November Executive Council agreed an exemption for a small number of journalists.
- 6.13. Therefore this Investigative Commission cannot support the Original Investigative Commission's statement that '*a decision was made by the Proper Officer for home quarantine therefore it was not a political decision*'. As a political decision it is within the right of all elected members to challenge.
- 6.14. Given that the Original Investigative Commission appears to have not reviewed these evidences, this Investigative Commission must conclude that they did not determine the facts based upon the evidence available.
- 6.15. An Investigative Commission, being a creation of the Legislative Council, is able to consider materials that are protected in other contexts by the privileges enjoyed by the Legislative Council and its Members. Specifically, an Investigative Commission is able to consider the Hansard of the debates in the Legislative Council, transcripts of Committee hearings, and documents tabled in either the Legislative Council or a Committee.
- 6.16. Similarly, in paragraph 3 of the "Summary," the Original Investigative Commission found as follows:

No thought was given by ... Councillor Jeffrey Ellick ...with regards to other functions or achievements that were made by Executive Council during their tenure.

- 6.17. This is a finding as to Councillor Jeffrey Ellick's state of mind at some unstated point in time. Again, it is unclear what the evidence the Original Investigative Commission relied upon to determine the purported state of mind of Councillor Jeffrey Ellick.
- 6.18. In the view of this Investigative Commission, both these issues demonstrate that the Original Investigative Commission did not find facts on the basis of available and credible evidence.

4. St Helena Government, 'No Changes to Quarantine Arrangements,' *Press release*, 22nd of October 2020 <<http://www.sainthelena.gov.sh/2020/news/no-changes-to-quarantine-arrangements/>>.

- 6.19. Based on this finding, it has been incumbent on this Investigative Commission to re-establish the facts the subject of the original complaint to reach its determination.

The Original Investigative Commission did not correctly apply those facts to the relevant test in clause 6.5 of the 2018 Code

- 6.20. The Original Investigative Commission appears to this Investigative Commission to have not applied the facts (such as they were established) to the requirements of the clause 6.5 of the 2018 Code, which deals with the “Behaviour” of Members. Again and relevantly, that clause provided as follows:

6.5 Behaviour

(a) Members shall never undertake any action, or in the course of both their public and private conduct, act in a manner which would cause significant damage to the reputation and integrity of the [Legislative] Council or of its Members generally. Members should at all times conduct themselves in a manner which will maintain and strengthen the public's trust and confidence in the integrity of the [Legislative] Council.

...

(Emphasis added)

- 6.21. In the fourth paragraph of the “Summary” section of its Report, the Original Investigative Commission stated as follows:

It does beg the question why a Motion [of no confidence in Executive Council] was brought to Formal Legislative Council for the removal of the Executive Council (albeit that was what some of the people at the meeting requested), as this could easily damage the reputation of Executive Council Members for the future. Even if Executive Council made this decision, no consideration was given to the factors if any, surrounding such decision being made...

(Emphasis added)

- 6.22. It appears to this Investigative Commission that the Original Investigative Commission applied clause 6.5 to the Executive Council, not the Legislative Council (the body to which it is directed), and then concluded that Councillor Jeffrey Ellick's conduct was in breach of clause 6.5 of the Code because it damaged the “reputation and integrity” of the Executive Council. This is a grave error.
- 6.23. Further, clause 6.5 of the 2018 Code required that any damage to the Legislative Council be “significant” for it to be a breach of that clause. Nowhere in the Original Investigative Commission's Report is there any consideration of what the meaning of “significant” is, or a statement as to why the Original Investigative Commission concluded that Councillor Jeffrey Ellick's conduct caused “significant” damage to the Legislative Council. As a minimum, the Original Investigative Commission should have set out what it considered the threshold for what constituted “significant” damage to the Legislative Council,

and how Councillor Jeffrey Ellick's conduct, as established by the available and credible facts, caused that significant damage.

- 6.24. Finally, the Original Investigative Commission, at paragraph 4, appeared to suggest that proposing, seconding or supporting a Motion of No Confidence in Executive Council in the Legislative Council could lead to a conclusion that Councillor could be in breach of a Code of Conduct for Members.
- 6.25. This Investigative Commission has reviewed the Hansard of the 4th of December 2020 Legislative Council sitting at which the relevant Motion of No Confidence was debated.⁵ Throughout the Hansard of that sitting there are a number of statements by other Members to the effect that the Motion of No Confidence was entirely in accordance with the Standing Orders.
- 6.26. Indeed, in response to the tabling of the motion, Councillor Clint Beard stated '[...] I would hope that you see this as a fair and transparent approach to dealing with your concerns', and Councillor Anthony Green states he will 'respect the democratic process'.
- 6.27. Besides some interventions by the Speaker to deal with interjections by Members who did not have the call, the sitting appeared entirely orderly.
- 6.28. How Councillor Jeffrey Ellick's contribution to that debate, as a seconder to the proposal, could have caused significant damage to the 'reputation and integrity of the [Legislative] Council' or undermine the 'public's trust and confidence in the integrity of the [Legislative] Council' is entirely unclear to this Investigative Commission.
- 6.29. It could be justly argued, that by using the prescribed mechanism of a vote of no confidence, in accordance with section 37 (1) (f) of the Constitution, that public trust and confidence has been increased in the sure knowledge that due process has been followed.
- 6.30. Furthermore, the assertion by the Original Investigative Commission that the Motion of No Confidence and actions in the Legislative Council caused 'significant' reputational harm bring into question a wider concern that Councillors should be cognisant of.
- 6.31. Section 70 of the *Constitution* allows the Legislative Council to, via an Ordinance, determine and regulate the privileges of Members of the Legislative Council, subject to a limitation that the privileges so determined 'shall not exceed the corresponding privileges, immunities and powers of the House of Commons of the United Kingdom or of its members.' Via the *Legislative Council*

5. St Helena Legislative Council, *Hansard*, 11th of December 2020, <http://www.sainthelena.gov.sh/wp-content/uploads/2021/06/2020Dec11th-LegCo-Transcript_Final.pdf>.

Proceedings Ordinance 1974, the Legislative Council has determined the privileges of Members.

- 6.32. Notably for present purposes, section 3 *Legislative Council Proceedings Ordinance 1974* provides for immunity in legal proceedings to a Member in relation to words spoken by that Member in either the Legislative Council, or a Committee of the Whole. This protection provides for freedom of speech in the Legislative Council and its Committees in a similar way to article 9 of the *Bill of Rights 1689* (UK) does in relation to the Parliament at Westminster.
- 6.33. Further, section 4 of the *Legislative Council Proceedings Ordinance 1974* provides that records of debates (the Hansard) and documents tabled in the Legislative Council are not admissible in any court.⁶ This protection also appears to have its origins in article 9 of the *Bill of Rights 1689* (UK).
- 6.34. While not explicitly stated in the *Legislative Council Proceedings Ordinance 1974*, both principle and the practice in other similar parliaments support the view that the privileges of Members extend to Members' participation in any Standing or Select Committee of the Legislative Council. This view is a simple consequence of the fact that Standing and Select Committees are creations of the Legislative Council, and—absent some reason to conclude otherwise—they should be assumed to have all the powers and privileges of the Legislative Council itself. Moreover, to not adopt this interpretation would fetter one of the key powers of the Legislative Council; to hold the Executive Council to account via committees that enjoy the full breadth of the powers and protections that the Legislative Council itself possesses.
- 6.35. This Investigative Commission contends that the Code of Conduct must be read in light of the privileges enjoyed by Members, as provided for by the *Legislative Council Proceedings Ordinance 1974*. In particular and in the view of this Investigative Commission, the Code of Conduct cannot be interpreted or applied in a way that would allow it to impinge upon the privileges of the Legislative Council and its Members, such as the right to freedom of speech within the Legislative Council and its Committees.

7. Power of Legislative Council to regulate the conduct of its proceedings and control the conduct of Members

- 7.1. As part of its determination of an outcome of this Appeal, the Investigative Commission is mindful of the manner by which the initial allegation was made, and the findings of the Original Investigative Commission.

6. Subject to a proviso that the Governor may approve the admission of such evidence in a proceeding in a court.

7.2. While the Code of Conduct supports the regulation of the conduct of Members by the Legislative Council, it is not the only mechanism by which the Legislative Council may regulate the conduct of Members. In particular, the Standing Orders provide for the regulation of debate within the Legislative Council, and provides the Speaker the power to deal with conduct that is disorderly. While conduct in the Legislative Council might conceivably be so grossly disorderly that it might also sustain a complaint under the Code of Conduct, the Standing Orders would appear to be the primary way by which disorderly conduct in the Legislative Council should be dealt with. It would be extraordinary if conduct in the Legislative Council or a Committee that was not in breach of the Standing Orders could nonetheless be found to be a breach of a Code of Conduct.

7.3. The *Constitution* as it was in 2020 provided for the regulation of the conduct of its own proceedings by the making of Standing Orders. In 2020 section 68 in Part 5 of the *Constitution* provided as follows:

Standing Orders

68. The Legislative Council may make, amend and revoke Standing Orders consistent with this Constitution for the regulation and orderly conduct of its proceedings and the despatch of business and for the passing of Bills and for their presentation to the Governor for assent.

(Emphasis added)

7.4. Section 71 in Part 5 of the *Constitution* as it was in 2020 provided for a Code of Conduct for Members of the Legislative Council. It stated as follows:

Code of Conduct

71. Subject to this Constitution and to any other law, and to the Standing Orders of the Legislative Council, a Code of Conduct, approved by the Legislative Council, shall detail the behaviour expected of members of the Executive Council and of the Speaker and other Members of the Legislative Council, and shall regulate their relationship with officers of the St Helena Public Service.

7.5. Taken together, sections 68 and 71 allowed the Legislative Council to make rules to regulate the conduct of Members.

Standing orders

7.6. In various ways, the Standing Orders impose rules about how the Legislative Council shall conduct its business.

7.7. While many of the rules in the Standing Orders may have significance at different times, for present purposes it is noteworthy that clause 7 within Rule 6 in the "Preliminary" section of the Standing Orders as they were in 2020 provided as follows:

Rule 6. Speaker's and Chairperson's Power to enforce order

...

(7) The Speaker may direct a Member whose conduct is grossly disorderly, to withdraw immediately from the Council Chamber for the remainder of the sitting.

8. Conclusion

- 8.1. This Investigative Commission finds that the original complaint was ill conceived, and could not, even if the facts asserted in the original complaint were established, ever be the basis for a finding that Councillor Jeffrey Ellick breached clause 6.5 of the 2018 Code.
- 8.2. Put simply, the complaint is directed at purported damage to the Executive Council, not the Legislative Council. Clause 6.5 of the 2018 Code only applied to the Legislative Council.
- 8.3. The determination of this Investigative Commission is that Councillor Jeffrey Ellick seconded a motion, that was in compliance with the Standing Orders, in the Legislative Council on the 11th of December 2020, as was his right as a sitting Member of the Council, and as such the findings of the Original Investigative Commission, specifically in relation to the Motion of No confidence, cannot be accepted as fair or correct.
- 8.4. The Original Investigative Commission's report made a ruling that Councillor Ellick misled the public at the meeting on the 4th of November 2020, yet this Investigative Commission cannot find evidence to support that, but on the contrary, are satisfied that the information provided at that meeting, were consistent with the messaging that the St Helena Government and Executive Council had provided the public on a number of days prior.
- 8.5. Directly reflecting on the first paragraph of Councillor Jeffrey Ellick's ground of appeal, that *'the [Original Investigative] commission did not carry out a thorough and fair investigation as to establish the truth'*, this Investigative Commission would contend that the investigation undertaken by the Original Investigative Commission potentially exceeded the remit given to it as a creation of the Legislative Council. As any individual Investigative Commission's powers are confined to the specific matter or matters that are referred to it for determination, an Investigative Commission is not a free ranging inquiry into any controversy that appears before it; it must only deal with those matters referred to it for determination by, ultimately, the Legislative Council and determine those matters using powers no broader than those conferred upon it by the Legislative Council.
- 8.6. By reporting subjectively, basing the rulings on such determinates as 'we found a bit strange' or Councillors failures to give regard to 'other functions or achievements', the Original Investigative Commission demonstrated that it was unable to provide a fair and balanced review of the allegations.

9. Interviews

- 9.1. While ordinarily an Investigative Commission would seek to afford at least the Member to whom a complaint is directed an opportunity to respond to the facts alleged and the alleged breach of the relevant Code, in this case and given the grounds of appeal asserted in this matter, there was no need to conduct interviews with Councillor Jeffrey Ellick, the complainants, or any other person.

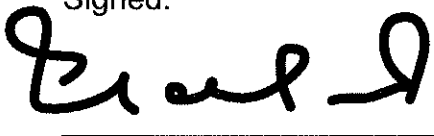
10. Decision

- 10.1. This Investigative Commission has determined that there is no clear and demonstrable evidence available that enables it to make a finding that Councillor Jeffrey Ellick did, via the conduct alleged in the original complaint, breach clause 6.5 of the 2018 Code of Conduct for Members of the Legislative Council.
- 10.2. This Investigative Commission does not support the findings or outcomes in the Report of the Original Investigative Commission made on the 20th of July 2021
- 10.3. For the reasons set out above, **this Investigative Commission upholds Councillor Jeffrey Ellick's Appeal in full.**

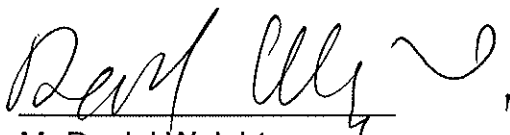
11. Recommendation

- 11.1. This Investigative Commission recommends that in accordance with Section 7.8 of the 2022 Code of Conduct that **No Sanction be Imposed.**

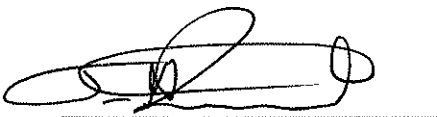
Signed:



Deputy Speaker



Mr Daniel Weight



Mr Tim McDermott

Appendix C – List of Evidences & Meetings of Investigative Commission

| Date | Item |
|--------------------------------|--|
| 2018 | Code of Conduct |
| 22 nd October 2020 | Press Notice SHG – No changes to quarantine |
| 4 th November 2020 | Open Session Minutes, Public Health Committee |
| 4 th November 2020 | Public Meeting at Half Tree Hollow Transcripts |
| 11 th December 2020 | Proceedings of the Legislative Council Hansard |
| 20 th July 2021 | ORIGINAL INVESTIGATIVE COMMISSION'S Report |
| 15 th August 2021 | J Ellick Appeal |
| 2022 | Code of Conduct |

Meeting Dates

| | | |
|-----------------------------|---------------------|---|
| Friday 18 August 2023 | Jamestown Museum | Deputy Speaker, Mrs Catherine Cranfield (Chair) Mr Daniel Weight (Member) Mr Timothy McDermott (Member) Mrs Connie Johnson (Secretary) |
| Wednesday 23 August 2023 | Jamestown Museum | Deputy Speaker, Mrs Catherine Cranfield (Chair) Mr Daniel Weight (Member) Mr Timothy McDermott (Member) Connie Johnson (Secretary) |
| Wednesday 30 August 2023 | Jamestown Museum | Deputy Speaker, Mrs Catherine Cranfield (Chair) Mr Daniel Weight (Member) Mr Timothy McDermott (Member) Mrs Connie Johnson (Secretary) |



REPORT BY THE FIRST INVESTIGATIVE COMMISSION
ON THE INVESTIGATION OF A COMPLAINT MADE BY
COUNCILLORS LAWSON HENRY, CRUYFF BUCKLEY,
DEREK THOMAS AND ANTHONY GREEN

INVESTIGATIVE COMMISSION

20th July 2021

Report on Investigation into the complaint laid against Councillors Gavin Ellick, Christine Scipio and Jeffrey Ellick by Councillors Lawson Henry, Cruyff Buckley, Derek Thomas and Anthony Green

Preliminary

The Code of Conduct is approved by the Legislative Council to provide guidance to Members as to the standards of Conduct expected of them in the discharge of their duties as Members of the Legislative Council. All Members of the Legislative Council are required to comply with the provisions of the Code and are subject to its disciplinary provisions.

Complaint

- ❖ Complaint against Councillors Gavin Ellick, Christine Scipio and Jeffrey Ellick alleges that the said Councillors had sought support from members of the Public who attended a meeting held in the Half Tree Hollow Community Centre on the 4th November 2020 to use as their mandate from the Public to remove from office Members of the Executive Council.
- ❖ As a result of this meeting a motion was brought to Formal Legislative Council on the 11th December 2020 by Councillor Scipio, which has subsequently led to further criticism of Members of Executive Council, which undoubtedly stems from a home isolation issue. Executive Council contend that Councillor Jeffrey Ellick in particular, knowingly misled the public at the meeting on the 4th November 2020, as he was fully aware from the information he received at a Public Health Committee meeting that same morning that the home isolation decision was one taken by the Proper Officer based in law, which all Elected Members were party to.
- ❖ Attention is drawn to 6.5 (a) of the Code of conduct which states "Members shall never undertake any action, or in the course of both their public and private conduct, act in a manner which would cause significant damage to the reputation and integrity of the Council or its Members generally. Members should at all times conduct themselves in a manner which maintain and strengthen the public's trust and confidence in the integrity of the council.

Enforcement

In accordance with the Code of Conduct, section 7.1(c) – Enforcement, we the Investigative Commission carried out an investigation on the above complaint as instructed by the Hon Speaker.

Summary

On receiving the complaint made by the abovenamed Executive Council Members, the Investigative Commission was formed, consisting of Mr Merlin George, Mr Paul Laban and the Deputy Speaker. The Commission met and studied the transcript of the meeting held at the Half Tree Hollow Community Centre on the 4th November 2020, by Councillors Gavin Ellick, Christine Scipio and Jeffrey Ellick, along with the two emails provided by the Complainants. The Commission then made the decision to interview the three Councillors in question.

It was said verbally but with no written evidence that the public requested a meeting because of a decision made by Executive Council regarding quarantine arrangements for FDCO employees. At the meeting in question Councillors Christine Scipio and Jeffrey Ellick were both very vocal against Executive Council, strongly criticising their colleagues for making the decision on home isolation for FDCO employees, and accusing them of being dishonest and in the Commission's opinion, it was felt that support was being sought from those present as a mandate to remove Executive Council.

Executive Council is the decision-making body and so it would be incomprehensible to think that all decisions made by them would appease everyone. The Commission felt that the meeting could have been conducted differently. Councillor Jeffrey Ellick was aware from a Public Health meeting, held earlier that same morning of the meeting in Half Tree Hollow, that a decision was made by the Proper Officer for home quarantine therefore it was not a political decision. With this information, the Commission felt that Councillor Jeffrey Ellick should have recognised that no exemption was in place and therefore should have tried to sort out this matter internally. No thought was given by either Councillor Jeffrey Ellick or Councillor Scipio with regards to other functions or achievements that were made by Executive Council during their tenure.

It does beg the question why a Motion was brought to Formal Legislative Council for the removal of the Executive Council (albeit that was what some of the people at the meeting requested), as this could easily damage the reputation of Executive Council Members for the future. Even if Executive Council made this decision, no consideration was given to the factors if any, surrounding such decision being made, notwithstanding there were comments made at that meeting such as, "couldn't you discuss it amongst yourselves, the way forward", "Politely request that they stand down" and "we need to understand why the decision was made".

It is also did not go unnoticed that with the exception of one other Councillor, no other Councillors were present. When the question was raised, the Commission was told the meeting was announced via the radio, which we found a bit strange when an email could have been sent to their colleagues, informing them of this meeting.

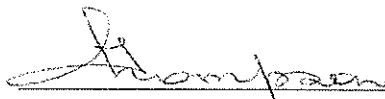
Taking all factors into consideration the Commission's findings are as follows:

1. Although Councillor Gavin Ellick went to the meeting in support of Councillors Christine Scipio and Jeffrey Ellick, there was little participation from him therefore the Investigative Commission concluded that he did not breach Section 6.5 of the Code of Conduct.
2. The Investigative Commission, having considered the evidence of conduct and actions by Councillor Christine Scipio and Councillor Jeffrey Ellick, concluded that both are in breach of Section 6.5 of the Code of Conduct.

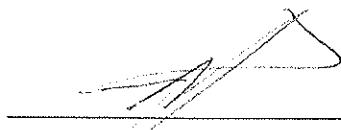
Recommendation:

That both Councillor Christine Scipio and Councillor Jeffrey Ellick offer an apology to Councillors Buckley, Henry, Green and Thomas as set out in section 7.2 (a) (i) of the Code of Conduct.

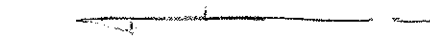
This report will be sent to the Hon Speaker, Mr John Cranfield, and shall thereafter be laid on the table as a Sessional Paper.



Hon Deputy Speaker



Mr Merlin George



Mr Paul Laban

