



St Helena
Government

ST HELENA LEGISLATIVE COUNCIL

REPORT BY THE INVESTIGATIVE COMMISSION ON THE
INVESTIGATION OF A COMPLAINT MADE BY THE
CHIEF MINISTER, HON JULIE THOMAS

LAYS ON THE TABLE 5TH DEC 2024

Document	Investigative Review of alleged breach of Councillor Code of Conduct by Councillor K Thrower
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Introduction

- 1) On 31 January 2024, an Investigative Commission was formed under paragraph 7.2(b)(iii) of the *Code of Conduct for Members of the Legislative Council* (the **Code**).
- 2) The Investigative Commission comprised:
 - A. Mr Timothy McDermott – Chairperson
 - B. Mrs Gerarda Hubbard – Member
 - C. Mr Daniel Weight – Member
- 3) The Commission was formed to investigate a complaint made by Councillor Julie Thomas in relation to alleged conduct by Councillor Thrower that Councillor Thomas alleged breached certain aspects of the Code.

The complaint

- 4) On 18 June 2023, the Chief Minister, Councillor Julie Thomas, made a complaint to the Speaker under the 2022 *Code of Conduct for Members of the Legislative Council*¹ in relation to the alleged conduct of Councillor Karl Thrower. When providing complaint to the Speaker, Councillor Thomas provided a copy to all other ministers.
- 5) Broadly, the allegations against Councillor Thrower relate to a briefing provided by a prospective vendor of renewable energy solution for the island, Swiss Winds, to a meeting of non-ministerial members of the Legislative Council on 10 February 2023 (the **Swiss Winds Briefing**), and public statements that are alleged to have been made subsequent to that meeting by Councillor Thrower on Saint FM (the **Radio Interview**), and an allegation that Councillor Thrower misrepresented other non-ministerial members (the **Alleged Meeting of Councillors**).
- 6) Specifically, Councillor Thomas asserts that Councillor Thrower:
 - a) disclosed confidential information received by him at the Swiss Winds Briefing during the Radio Interview, contrary to paragraph (c) of Rule 6.9 of the Code;²

1. SP 49 2022, <https://www.sainthelena.gov.sh/wp-content/uploads/2023/01/SP-49-22-Code-of-Conduct-for-Members-of-LegCo.pdf>

2. Councillor Thomas's complaint contained an obvious error by referring to paragraph 6.8(c), not 6.9(c), of the Code.

- b) made false or misleading public statements during the Radio Interview; and
 - c) misrepresented other Councillors by alleging those other councillors held a meeting that confirmed his understanding of the information provided at the Swiss Winds Briefing (the Alleged Meeting of Councillors) that did not, in fact, occur.
- 7) In relation to the second and third limbs of the complaint, no specific clause of the Code was cited by Councillor Thomas. This Investigative Commission, however, has reviewed the Code and notes several clauses may be engaged by the conduct alleged in limb two and three. Specifically:
- a) in relation to the Radio Interview, the alleged conduct of Councillor Thrower could be considered under rule 6.9(d), which requires that a member “ensure absolute clarity as to whether [that] Member is expressing the Member’s own views or the Member’s understanding of the views of others; fact or opinion; proposals/suggestions, or agreed policy, and so on”; likewise
 - b) in relation to the Alleged Meeting of Councillors, the alleged conduct of Councillor Thrower could be considered under Rule 6.6(a), dealing with behaviour, as, if it could be substantiated, it might have “[caused] significant damage to the reputation and integrity of the [Legislative] Council of the members of the Council generally”.
- 8) For present purposes, however, it is not critical to determine precisely what rule of the code might be engaged; merely that the Code is engaged.

Alleged chronology

- 9) From Councillor Thomas’s complaint, it is possible to discern the following chronology of events as alleged by Councillor Thomas.

Chronology as alleged by Councillor Thomas

Date and time	Alleged event
<p>10 February 2023 (circa 10 am)</p>	<p>Swiss Winds Briefing A meeting of Informal Legislative Council, at which a presentation was provided by representatives of a prospective renewable energy solution vendor, Swiss Winds. The pricing point of 18p per unit for renewable energy by Swiss was conveyed to those in attendance.</p>
<p>10 February 2023 (circa 11 am)</p>	<p>Alleged Meeting of Councillors</p>

Date and time	Alleged event
	Councillor Thrower falsely asserted that a meeting of most non-ministerial Councillors occurred following Informal Legislative Council at this time, but the alleged meeting did not, in fact, occur.
13 June 2023 (circa 10 am)	<p>Ministers' Question Time</p> <p>Minister's Question Time in the Legislative Council, focusing on the St Helena Government's (SHG's) energy strategy.</p> <p>Relevantly for present purposes, during questions Minister Scipio conveyed the following information:</p> <ul style="list-style-type: none"> • negotiations about a power purchase agreement with another renewable energy solution provider, PASH Global, had been discontinued; • the procurement process that identified PASH Global was still on foot, and negotiations with the reserve bidder were underway; and • care needed to be taken to ensure the procurement process was completed. <p>Specifically, Councillor Thomas cited the following passage from the Hansard:</p> <p style="padding-left: 40px;">The reviews are intended to provide the required information to make a decision on which way is now the way forward – otherwise known as the policy which will be adopted. No decision has yet been made. However, the preferred policy proposal at this stage is a mix of a power purchase agreement with a system designed by a utility provider, expanding wind and solar and battery storage technology.³</p>
13 June 2023 (circa 1 pm)	<p>Radio Interview</p> <p>Councillor Thrower, along with Councillors Coleman and Turner, appeared on Saint FM to discuss renewable energy.</p>
16 June 2016 (early morning)	<p>Newspaper article</p> <p>An article was published in the St Helena Independent entitled "Backbenchers on Radio – Talking Energy". That article purported to be a report of the radio interview held on 13 June 2023.</p> <p>That article attributed the following representations to Councillor Thrower:</p> <p style="padding-left: 40px;">...during Ministers Question Time in the Council Chamber it was explained, from the minister's side, that Swiss Winds offered a proposal which could not be accepted for the same reasons the PASH deal failed. This is taken to mean that it was too expensive.</p> <p>And:</p> <p style="padding-left: 40px;">... Swiss Winds representatives met with backbenchers when they were here [in February 2023] to explain their offer...</p> <p>And:</p>

³ Hansard 13 June 2023.

Date and time	Alleged event
	<p>Swiss Winds told the [non-ministerial members of Legislative Council] their investment in St Helena's renewable infrastructure would be funded by charging 18p per unit over a defined number of years. [emphasis added]</p> <p>Councillor Thrower is further quoted as asking: ...why the deal was not accepted?</p>
<p>16 June 2023 (morning)</p>	<p>Discussion between Councillor Thomas and Councillor Thrower</p> <p>Councillor Thomas and Councillor Thrower both attend St Helena Community College in relation to an unrelated matter. Councillor Thomas alleged that Councillor Thrower:</p> <ul style="list-style-type: none"> • stated that an informal meeting of several of the Councillors who were in attendance at the Informal Legislative Council Meeting on 10 February 2023, at which Swiss Winds presented, occurred immediately following the Informal Legislative Council meeting of 10 February 2023 (the Alleged Meeting of Councillors) and all other Councillors in attendance at the informal meeting understood the briefing by Swiss Winds to have conveyed that its offer had been declined by the Government because it was too expensive; • was adamant that Minister Scipio had stated in Question Time on 13 June 2023 that the St Helena Government would continue with Connect Saint Helena Ltd, at the exclusion of other possible vendors; including Swiss Winds; • blamed ministers' poor communication for any public confusion; and • declined to take responsibility for placing incorrect information into the public domain. <p>In relation to the assertion by Councillor Thrower, as alleged by Councillor Thomas, that the Alleged Meeting of Councillors occurred, following the 10 February 2023 Swiss Winds Briefing (a meeting Councillor Thomas alleges did not occur), Councillor Thomas stated that Councillor Thrower:</p> <p style="padding-left: 40px;">was prepared to lie and implicate his colleagues, in an effort to shirk the responsibility of his actions, which is concerning and unacceptable</p>

Issues agitated by the complaint

10) In the view of the Investigative Commission, the complaint agitates three areas of potential concern under the Code.

- a) Disclosure of confidential information, contrary to paragraph 6.9(c) of the Code
- b) Misrepresentation of other Councillors
- c) Damage to reputation and integrity of Councillors

Each of these are discussed below.

Disclosure of confidential information

11) Councillor Thomas claims that, via the **Radio Interview** of 13 June 2023, Councillor Thrower disclosed confidential information regarding the renewable energy proposal of Swiss Winds that was obtained via meeting of Informal Legislative Council on 10 February 2023. In particular, Councillor Thomas alleges that Councillor Thrower disclosed the indicative PASH Global offer price of 18p per unit for energy.

12) Councillor Thomas alleges that the alleged disclosure was contrary to paragraph (c) of Rule 6.9 of the Code. It is convenient to reproduce Rule 6.9 of the Code in full, as other paragraphs of the Rule may also be relevant.

6.9 Dealing with the Media

- (a) A Member, like any other person, enjoys the right to freedom of expression and may (subject to issues of confidentiality and respect for the rights of others in terms of their privacy) speak freely to and in the media.
- (b) Subparagraph (a) notwithstanding, a Member must take care to make clear whether the Member is expressing the Member's personal opinion, or the collective position of the Council or a Committee because members of the public must have a clear understanding as to which expression is the Member's personal opinion and which is the expression of the Council or Committee.
- (c) Further to subparagraph (a) and (b) care must be taken by a Member not to report to members of the public, informal discussions in such a way as to suggest that a formal decision has been made in any respect.
- (d) A Member may, subject to the relevant media legislation and codes of practice, present radio or television programmes or publish articles in the printed media but, it is especially important in such circumstances for the Member to ensure absolute clarity as to whether the Member is expressing the Member's own views or the Member's understanding of the views of others; fact or opinion; proposals/suggestions, or agreed policy; and so on. For example, the expression "I understand that ..." is not an acceptable substitute for verifying a fact before reporting such fact in a public forum.
- (e) A Member must be cognisant that the Member's utterings and writings may, in the Member's capacity as a Member, have greater public impact than the impact of another person who is not a Member; the position of a Member is a special position and carries with such position, a special responsibility to ensure clarity and accuracy.

13) In the view of the Investigative Commission, the alleged conduct, if it could be concluded on the balance of the available evidence that it occurred, would be conduct that might engage Rule 6.9 of the Code.

Misrepresentation

14) The complaint by Councillor Thomas includes an allegation that Councillor Thrower “lied,” and did so as to “implicate his [Legislative Council] colleagues, in an effort to shirk the responsibility of his actions.”

15) If, on the balance of available evidence, it could be concluded the alleged conduct occurred, it would also engage some parts of the Code.

16) Specifically, such conduct could constitute a breach of the Code under paragraph (a)(i) of Rule 6.6(a), which deals with “Behaviour”. That paragraph states:

(a) A Member must—

- (i) never undertake any action, or in the course of both the Member’s public and private conduct, act in a manner which would cause significant damage to the reputation and integrity of the Council or of the Members of the Council generally; and
- (ii) at all times ensure that the conduct of the Member is in a manner which will maintain and strengthen the public’s trust and confidence in the integrity of the Council.

17) If established, the alleged conduct of Councillor Thrower might, inter alia, cause damage to the reputations of other Legislative Councillors.

Damage to reputation and integrity of Councillors

18) In relation to the **Alleged Meeting of Councillors**, the conduct alleged of Councillor Thrower could be considered under Rule 6.6(a), dealing with behaviour, as, if it could be substantiated, it might have “[caused] significant damage to the reputation and integrity of the [Legislative] Council of the members of the Council generally”.

Determination on whether the complaint is frivolous or vexatious

19) Paragraph (k)(i) of Rule 7.2 of the Code allows an Investigative Commission to determine whether or not a complaint is frivolous or vexatious, and, if so, decline to investigate it.

20) In relation to the present complaint, the Commission is satisfied that the facts alleged, if established on the balance of any available evidence, would raise

issues that would engage at least two of the Rules relating to the conduct of members in the Code: namely Rules 6.6 and 6.9. That is not to say that, if the facts are established on the balance of any available evidence, those facts will show that the Code had been contravened; merely that the facts, if established, would raise real issues that should be determined against the requirements of the Code.

21) Accordingly, the Investigative Commission concluded that the complaint is neither frivolous nor vexatious and does not decline to investigate it under paragraph (k)(i) of Rule 7.2 of the Code

Key considerations

Was the Swiss Winds Briefing a meeting of Informal Legislative Council?

22) In relation to the Swiss Winds Briefing, it became necessary during this Commission to first determine whether or not it was a meeting of Informal Legislative Council, or not. This will determine what rules regarding the information obtained during the Swiss Winds Briefing should apply.

23) The Commission had to consider:

- a) If the Swiss Winds Briefing was a meeting of Legislative Council generally or a committee thereof, public reporting of its proceedings might be protected because of the privilege in section 6 of the *Legislative Council Proceedings Ordinance 1974*, which provide protections (known as “privileges”) for “Protection of persons publishing proceedings without malice”. This Commission notes that it is an established principle within investigative commissions that the Code should not be interpreted in a way that overrides the fundamental privileges of the Legislative Council or its members.⁴
- b) Alternatively, was the Swiss Winds Briefing merely an informal meeting of councillors at which they, as interested parties, received a briefing from Swiss Winds? If this were the case, then how do the obligations of confidentiality etcetera within the Code become engaged?
- c) Finally, if it were a meeting of the so called “Informal Legislative Council,” upon what basis does the Legislative Council meet, and what rules govern

4. See: Sessional Paper 33/2023 St Helena Government – Report by the Investigative Commission on the Investigation of the Appeal made by the Hon Christine Scipio, paragraph 6.36; Sessional Paper 32/2023 St Helena Government – Report by the Investigative Commission on the Investigation of the Appeal made by the Hon Jeffrey Ellick, paragraph 6.35.

it? The Standing Orders provide make no mention of such a sitting of Legislative Council.

24) In order to assist its characterisation of the Swiss Winds Briefing, the Commission sought the views of all current member of the Legislative Council.⁵ The views differed from both councillor to councillor, and between ministers and non-ministerial members.

25) Based upon the information received by the Commission the following question was determined:

Was the information provided at the Swiss Winds Briefing confidential, and, if so, on what basis?

26) In response to the request for information from all other members of Legislative Council, including ministers, about the status of 10 February 2023 meeting and the information conveyed, a variety of views were expressed. For example:

a) One minister stated that such information “should be commercial in confidence” and that Informal Legislative Council “should be a safe and trusted environment [for sharing such information with members] by convention”. (emphasis added)

b) Another minister stated they did not consider the meeting confidential, but stated their view that some elements of the meeting would be best only discussed between non-ministerial members and the public service “as to not jeopardise any potential procurement process”.

c) One non-ministerial member said they did not believe the contents of the briefing by Swiss Winds was confidential.

d) Another non-ministerial member said of the Swiss Winds Briefing:

As this was during an InfoLegCo meeting, I would have most certainly expected the contents therein to have been kept confidential, unless express permission had been given to discuss content with parties outside of the meeting...

e) But another non-ministerial member, who did not actually attend the Informal Legislative Council sitting at which the Swiss Winds briefing was provided, advised as follows

5. Former Councillor Bargo was not asked to provide a response.

If a confidential topic arises in the course of [an Informal Legislative Council] meeting, the Chair (or a relevant Member/attendee) states this to be he [sic] case.

27) It is clear that views between different Members of Legislative Council differ on whether:

- a) Informal Legislative Council sittings are confidential generally, and
- b) whether the specific information provided in the Swiss Winds Briefing was confidential.

Conclusion 1

28) Given this uncertainty in relation to Councillor Thrower's alleged conduct in disclosing the content of the briefing at the Radio Interview, this Investigative Commission concludes as follows:

- a) Given the ambiguity of the confidential nature of the briefing, or otherwise, it was potentially reasonable for Councillor Thrower to treat the 10 February 2023 meeting of Informal legislative Council (the **Swiss Winds Briefing**) as not being the subject of any general rule requiring confidentiality; and
- b) it was open to Councillor Thrower to treat the specific information provided by Swiss Winds at the briefing as not being subject to any specific rule requiring confidentiality.

Did Councillor Thrower disclose the contents of the Swiss Winds Briefing during the Radio Interview?

29) Councillor Thomas's complaint relies, in part, on the article entitled "Backbenchers on Radio – Talking Energy" published in the St Helena Independent on 16 June 2023 that purports to be an account of the Radio Interview held on 13 June 2023. It was not clear to this Commission whether, however, that article was a full and comprehensive account of the Radio Interview. In particular, many assertions and statements in that article are not attributed to any one of the three Councillors who participated.

30) The Commission sought from Saint FM a copy of either a transcript or an audio recording of the Radio Interview to determine precisely what information was conveyed by Councillor Thrower. Unfortunately however, no transcript or audible recording was available.⁶

6. Saint FM did provide an audio recording but this was submitted after the period of evidential collection.

- 31) Upon being interviewed by the Investigative Commission, Councillor Thrower provided a range of printed materials, including the published open letter from the representatives of Swiss Winds to the Independent Newspaper following the loss of its initial bid, as well as the energy strategy drafted in part by Councillor Thrower; much of which containing analysis and discussion of renewable energy proposals on the island. He was also able to point to other public briefings during the prior visit to St Helena by Swiss Winds.
- 32) Councillor Thrower contended that at least some of these materials and briefings had been provided confidentially to him and at least partly on account of his position as a councillor.
- 33) There are several difficulties in establishing the allegations against Councillor Thrower made by Councillor Thomas in relation to the Radio Interview. Specifically:
- a) as established above, it was potentially open to Councillor Thrower to not regard either the Informal Legislative Council meetings generally, or the specific information provided by Swiss Winds, to be confidential: — establishing that it was conveyed during the Radio Interview, therefore, does not demonstrate Councillor Thrower breached any part of the Code; and
 - b) the Commission does not have access to any information that substantiates, or otherwise, what is alleged to have been said during the Radio Interview, and cannot, therefore establish what was conveyed.
- 34) Additionally, Councillor Thrower was able raise as a possibility that he obtained potential commercial information about the Swiss Winds proposal from another source.

Conclusion 2

- 35) Because it was *potentially* open to Councillor Thrower to not treat the material as confidential and because the Commission cannot determine what was actually stated during the Radio Interview, it cannot make any conclusion regarding the Radio Interview and the Code.
- 36) Indeed, subsequent communication between the then Head of Communications for SHG and the article's author, obtained by the Commission, raised further concerns about the accuracy of the information in the newspaper article cited by Councillor Thomas in her complaint.

37) In relation to the Radio Interview and the alleged disclosure contrary to paragraph 6.9(c) of the Code:

- a) this Commission cannot identify evidence that would allow it to reach the conclusion that Councillor Thrower disclosed the information alleged; and
- b) if he did disclose such information, is not satisfied it was not available to him via another forum or source, nor is it satisfied that Councillor Thrower believed that the information was confidential and not able to be disclosed.

Did an informal meeting of councillors occur following the Swiss Winds Briefing, and did Councillor Thrower make misleading representations to Councillor Thomas that he spoke with the backing of all councillors?

38) During his interview with the Investigative Commission, Councillor Thrower was clear that he does not generally purport to speak on behalf of the Councillors, but highlighted that, on occasions, if in a particular context he does, he would typically email all councillors to make sure each is in agreement. For example, Councillor Thrower cited his speech to the United Nations' Special Committee on Decolonization (C24), which was sent to all of the Councillors for them to provide comment.

39) Councillor Thrower noted that there were regular meetings between non-ministerial members, and there was a rotational programme of councillors who represented the voice of the non-ministerial members.

40) Councillor Thrower dismissed the idea that there was a meeting between himself and other councillors between the Swiss Winds briefing and the radio interview. Other councillors including Councillor Gillian Brookes were not present on island. This supports the statement from Councillor Thomas that no meeting occurred. However, Councillor Thrower denies having made that statement to Councillor Thomas and the Commission has no independent information to support either of the conflicting statements.

41) The complaint by Councillor Thomas suggests that Councillor Thrower made a misrepresentation to Councillor Thomas, and, in doing so, potentially damaged the reputation of the non-ministerial councillors. Despite the interaction between the two individuals occurring in the Jamestown Community College, no direct evidence, such as that of witnesses, as to the contents of the exchange has been provided.

42) Both councillors give a differing account of the content of the discussion, but both agree that it was a terse exchange.