



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

Laid 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
10 February 2023 (circa 10 am)	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.
10 February 2023 (circa 11 am)	Alleged Meeting of Councillors

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 to 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.

Conclusion 3

- 43) The Commission has been unable to substantiate the allegation that Councillor Thrower made a misrepresentation of the facts during his exchange with Councillor Thomas. The Commission notes that the relationship between the two Councillors is one of a professional challenge between politicians, but cannot make a determination based on the available evidence that Councillor Thrower misrepresented or damaged the reputation of other councillors.

Report conclusion

- 44) The information required by paragraph 7.6(e)(i) of the Code of Conduct is set out in the preceding paragraphs.
- 45) For the purposes of paragraph 7.6(e)(ii) of the Code of Conduct, the Investigative Commission finds that Councillor Thrower has not breached the Code. Or alternatively, the complaint is not upheld.
- 46) For the purposes of paragraph 7.6(e)(iii) of the Code of Conduct, the Investigative Commission recommends no penalty be applied to Councillor Thrower.
- 47) The Investigative Commission is not aware that its investigation has become a matter of public knowledge; and it is certainly not a matter of public controversy. Accordingly, for the purposes of paragraph 7.6(e)(iv) of the Code of Conduct, the Investigative Commission recommends the its report, and fact that the complaint has not been upheld, not be made public.
- 48) The Commission asks the Speaker to consider whether it would be permissible and beneficial for the discussion of certain issues identified during the conduct of this investigation to be extracted from this report and tabled in the Legislative Council. In particular, the Commission asks the Speaker to consider whether it would be beneficial if the Legislative Council was provided:
- a) Paragraph 61, dealing with the status of meetings of Informal Legislative Council; and
 - b) Paragraphs 64-68, dealing with the treatment of confidential information during investigative commissions.

Other matters not determinative of the outcome

49)The following other matters, not directly relevant to the investigation, arose during the Commission.

Principle of collective responsibility

50)Councillor Thomas, in the complaint, made reference to the principle of collective responsibility. Specifically, Councillor Thomas stated:

Due to the potential damage that Cllr Thrower's actions could have, I wish this to be logged as a formal complaint as **it is our collective responsibility to be accountable for the information we place in the public domain.**⁷

[Emphasis added]

51)Upon first reading, it appeared to the Commission that Councillor Thomas's complaint relied upon the principle of Collective Responsibility set out in section 36 of the *Constitution*, which binds members of Executive Council collectively to the Legislative Council. As Councillor Thrower is not a member of Executive Council, he could not be bound by the principle of Collective Responsibility.

52)During an interview with Councillor Thomas, she clarified to the Commission that she was not referring to the principle of Collective Responsibility in section 36, but rather a broader notion of the preferable, prudent, or wise conduct she believed Councillor Thrower should have exhibited.

53)On this basis, the Commission did not consider Councillor Thrower's alleged conduct against the requirement of section 36.

Councillor Thrower's declared interests

54)As part of his declaration of interests to the Legislative Council,⁸ Councillor Thrower has declared an interest in a renewable energy-related business called Green Island Energy Limited. The Commission understands this business mainly supplies solar photovoltaic systems to individual households.

55)While being interviewed, the Commission sought Councillor Thomas' view on whether or not Councillor Thrower's interest in a renewable energy business may have influenced his conduct in relation to the Swiss Winds proposal. Councillor Thomas response was to the effect that:

a) she was not alleging Councillor Thrower's declared interest may have influenced his conduct; but

7. Complaint from Councillor Thomas

8. Legislative Council website, Register of Interests – Hon Karl Thrower, June 2023.

b) she was not closed to the possibility it might have.

56) During his interview, Councillor Thrower was also invited to address the issue of his declared interests and his alleged conduct. Councillor Thrower's response was words to the effect of 'The better Swiss Winds does on this island, the less money I make!' Whether this is the case, or otherwise, it still holds that there was a potential interest, and it was for the Commission to determine whether this in anyway impacted his alleged behaviour.

57) On the balance of the information available to the Investigative Commission, there was no evidence to suggest that Councillor Thrower was motivated by any possible improper or personal gain related to his declared interests. The Commission is satisfied that Councillor Thrower's declared interest would be diminished if the Swiss Winds proposal were successful, and that his radio appearance was not an attempt to damage any potential arrangement between Swiss Winds and SHG.

Status of meetings of Informal Legislative Council

58) In the present matter, the information alleged to have been confidential was conveyed to non-ministerial members of Legislative Council at a meeting of "Informal Legislative Council." The standing orders, however, make no mention of such sittings of Informal Legislative Council, and it was unclear whether the meeting of 10 February could have constituted a sitting of Legislative Council at all.

59) Additionally, while the minutes make quite clear that the Deputy Speaker was the Chairperson, it was unclear whether the mace, which denotes a sitting of the Legislative Council or a sitting of the Committee of the Whole, was present.

60) At one point, the Commission was led to believe, based on the information given by members, that the meeting could have had no formal status as a proceeding of the Legislative Council, but merely been an informal discussion between interested councillors and Swiss Winds.

61) This Commission found it difficult to discern the basis upon which meetings referred to as Informal Legislative Council were subject to the standing orders or how they attracted the rights and privileges of members speaking in the Legislative Council or a committee under the *Legislative Council Proceedings Ordinance 1974*.

Treatment of confidential information during investigative commissions

62) A concern was raised by Councillor Thrower during the investigation process, specifically in relation to information that had been supplied to him confidentially in his role as a councillor. Councillor Thrower contended that the sharing of this information was potentially beneficial to establishing his position, but that it could compromise his undertakings as to confidentiality to another individual not named or implicated in anyway in the complaint, nor indeed linked to the Legislative Council in any way.

63) In this case, the Commission concluded that, should Councillor Thrower submit the evidence then the Commission would be duty bound to include it as part of its deliberations. Given that the report of the Commission is to be tabled in the Legislative Council, the Commission could not give equivalent assurances of confidentiality that the Councillor had given to the individual.

64) This Commission was satisfied that the Code allows it to access to various documents; including documents held by individual councillors, but it provides no definitive scope or boundary to that power, and it could potentially be interpreted by different Commissions differently.

65) In particular, the Commission was concerned that future investigative commissions could require councillors to provide information obtained in confidence, or to disclose the source of information used in the debates in the Legislative Council. Either occurrence could effectively demolish the freedom of speech of councillors, by requiring sources of information to be disclosed or the veracity of words spoken in Legislative Council to be tested via a complaint under the Code. This would prevent councillors from receiving representations and information from constituents and others, and jeopardise their ability to freely raise matters of concern in the debate in the Legislative Council.

66) The Commission notes that, in the United Kingdom:

The principle of freedom of speech protects not only Members, but others taking part in parliamentary proceedings, or, depending on the closeness of the relationship, preparing material for such proceedings.⁹

67) The Commission also notes that, in the Australian Senate it is recognised that privilege might extend to:

the provision of the information ... [by others] "for purposes of or incidental to" proceedings in a House [of Parliament] or a committee.¹⁰

And:

9. See: Erskine May's treatise on the law, privileges, proceedings and usage of Parliament, 25th ed, 2019, paragraph 13.2.

10. See: *Odgers' Australian Senate Practice*. 14th ed, chapter 2.

If a person requests a senator to raise a matter in the Senate or a committee, or if a senator has in fact used information in parliamentary proceedings, such facts could determine whether the provision of the information is covered [by privilege]...

- 68)The Commission believes consideration should be given to a potential mechanism within the Code for the redacted inclusion of evidence that may cause harm to a councillor, or another person, from its disclosure, or because of the identification of its source.

Provision by ministers of purportedly confidential information to members of Legislative Council

- 69)Another difficulty faced by the Commission was understanding the practice by ministers in providing information to non-ministerial members of Legislative Council on a confidential basis, and what consequences do, or should, flow from non-ministerial members of Legislative Council being in receipt of information denoted as "confidential."
- 70)It was suggested, fairly, by Councillor Thomas that the concerns over breaches of confidentiality may impact the flow of information from ministers to councillors.
- 71)The Commission is concerned that if any councillor is believed (correctly or otherwise) to be breaching confidentiality, for whatever reason, there is a potential for information not to be shared with other non-ministerial members.
- 72)Importantly, the Commission expresses no view on the desirability, or otherwise, of the provision of information to non-ministerial members of Legislative Council by Ministers. It notes, however, that in some instances specific information may not be able to be provided due to legislative requirements or contractual obligations that might prevent its disclosure.
- 73)It is likely for policy and administrative issues, the provision of information to other members of the Legislative Council by ministers will assist with the smooth implementation, avoid unnecessary confusion, or aid understanding. Ultimately, it is a judgement for ministers about what information might be provided to non-ministerial members of Legislative Council, and when and how.
- 74)The Commission was concerned, however, that the provision of information that was "confidential" on a specific topic may effectively remove the capacity of Legislative Council members to effectively scrutinise the government on that topic, as to do so would breach the purported confidentiality.

75) While accepting that, ministers have a broad discretion to provide confidential information to non-ministerial members of Legislative Council, the Commission struggled to identify a basis upon which non-ministerial members of Legislative Council were bound to maintain confidentiality, or how that confidentiality could be enforced. Excluding legal considerations that require confidentiality, it appears to the Commission observance of such confidentiality requirements is more a matter of convention and practice, rather than an enforceable rule or requirement.

Conduct of the Investigative Commission

76) The Investigative Commission was established by the Speaker on 31st January 2024.

77) The Commission held meetings and conducted those interviews as follows:

8 Feb 2024	Museum, Jamestown	Meeting to review and determine nature of complaint and assess against the Code of Conduct requirements
14 Mar 2024	Museum, Jamestown	Interview with Cllr Thomas
27 May 2024	Chambers	Interview with Cllr Thrower
14 Jun 2024	Speakers Office	Meeting to review evidence

78) The Commission recognises the significant delays in the publication of this report, but it should be noted that significant delays were caused by a conflict of interest concerned raised by Councillor Thrower, alongside Councillor Thrower travelling overseas during the investigation period.

79) For transparency, Commission Member, Mrs Gerarda Hubbard is married to the former CEO of Connect St Helena Ltd., and a concern of a potential conflict was raised by Councillor Thrower. The Speaker challenged Mrs Hubbard about the potential conflict and was content she was not conflicted. Neither Mr McDermott nor Mr Weight held any concerns regarding the impartiality of Ms Hubbard during the investigation

Signed



T McDermott
Investigative Commission Chair