

Executive Summary

1. On 30 July 2016, the Deputy Counting Officer (the Complainant) for East Staffordshire Borough Council (ESBC) submitted a complaint (HL1) regarding the conduct of Councillor George Allen on 23 June 2016, the day of the EU Referendum, and the days shortly after.
2. The Complaint relates to two tweets that were posted by Councillor Allen. The first tweet was posted at 21.15 on 23 June 2016 and stated “80% turn out at my polling station! What ever the result, the people have spoken! #TakeControl@vote_leave.” The Complainant states that this tweet was potentially in breach of the Representation of the People Act 1983, which prohibits the publication of exit polls.
3. The second tweet which was posted at 03.39 on 24 June 2016 stated “22850 remain 39266 leave In East Staffordshire”. The Complainant alleges that this tweet was posted prior to the declaration of the formal result by the Counting Officer at approximately 03.45 on 24 June 2016. The Complainant states that this tweet was also potentially in breach of the Representation of the People Act 1983.
4. Councillor Allen published the tweets using the twitter handle “@CllrGeorgeAllen”. The Complainant alleges that this may have given the impression that Councillor Allen was tweeting in his official capacity as a Member of the Borough Council.
5. The Chief Executive and the Monitoring Officer met with Councillor Allen on 8 July 2016 to ask him about the tweets. Also present at the meeting was Councillor David Leese, in his capacity as the Conservative Group Whip and the Leader of the Council, Councillor Richard Grosvenor. It is alleged that Councillor Allen may not have been truthful during that meeting with Officers.
6. There was a further meeting on 19 July 2016, which was attended by the same people except for Councillor Grosvenor. It is alleged that Councillor Allen said that he needed to take advice before he told the truth.
7. On 18th August 2016, the Monitoring Officer considered the complaint in accordance with the Council’s Complaints Procedures. She considered that if Councillor Allen had been untruthful with Officers this would amount to a breach of the ESBC Member Code of Conduct. She also considered that if Cllr Allen was found to have tweeted the results of the Referendum prior to the final declaration, this would also amount to a breach of the Code. Accordingly, she referred the matter for formal investigation (HL2). I was appointed as the Independent Investigator.

8. I have only considered whether the tweets referred to above and Councillor Allen's behaviour at the meetings in July 2016 amount to a breach of the Member Code of Conduct. The possible breach of the Representation of the People Act 1983 is beyond the scope of the investigation and is a matter for the Electoral Commission. I understand that the Commission have advised that they do not consider there to have been a breach of the Representation of the People Act 1983.

Relevant Legislation

9. Under Localism Act 2011, the Council:
- a. is under a duty to promote and maintain high standards of conduct; and
 - b. must adopt a Code of Conduct which is consistent with the statutory principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
10. The Act requires the Council to have in place arrangements for investigating allegations of failure to comply with the code and taking decisions about them, including appointing one or more independent persons, one of whose views may be sought before a decision is made, and one of whose views may be sought by the member against whom an allegation is made.
11. The Council's current version of the Code of Conduct ("the Code") was adopted with effect from 20 June 2016 (HL3). The Council has also adopted arrangements for dealing with allegations that a member of failed to comply with the code (HL4).
12. The paragraphs of the Code which are relevant to this investigation state that:
- 3.1 Councillors must treat others with respect;
 - 3.7 Councillors must not disclose information given to them in confidence by anyone, or information acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature;
 - 3.9 Councillors must not conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute;
 - 3.12 Councillors must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
13. ESBC has also adopted a Social Media Policy for Councillors (HL5), which is to be considered in conjunction with the Code.

Subject Member's Official details

14. Councillor George Allen was elected as a Conservative Councillor for Heath Ward on 7 May 2015. He received training on the Code on 18 May 2015.

Summary of the Facts and Evidence Gathered

15. Following his election on 7 May 2015, Councillor Allen attended Code of Conduct Training which was delivered by the Council's Monitoring Officer. The training covered the Council's Social Media Policy for Councillors. Councillors were advised that in any biography where you are identified as Councillor, the account should state that the views expressed are your own and may not represent the views of the Council.
16. At the end of the session, Councillor Allen asked the Monitoring Officer about including "councillor" in his twitter handle. The Monitoring Officer advised that this should be avoided because it might suggest that the Twitter account was an official Twitter account rather than a personal one. Councillor Allen does not recall being advised that using "@cclr could give the impression he was acting in his official capacity".
17. During the EU Referendum Campaign, Councillor Allen was an agent for the Vote Leave campaign. There is a dispute as to the exact nature of his role in the Vote Leave campaign with Councillor Allen maintaining that he was only an agent for the Referendum Count.
18. Councillor Allen attended his polling station in Stramshall Village to cast his vote at approximately 21.00 on 23 June 2016. At 21.15, he tweeted "*80% turn out at my polling station! What ever the result, the people have spoken! #TakeControl@vote_leave.*" Councillor Allen states that he obtained this information from the polling station staff.
19. Councillor Allen subsequently attended the Referendum Count later that evening. He was present for and can recall the Chief Executive, in his capacity as Counting Officer (referred to as Returning Officer in the complaint) briefing everyone on the requirements to maintain confidentiality.
20. The Chief Executive shared the provisional results with the Agents at approximately 03.15 on 24 June 2016. Councillor Allen made a note of these in a draft text message because he did not have his notebook with him. The Chief Executive reminded Councillor Allen and the others present for the provisional result briefing that the information needed to "stay in the room" until a final declaration had been made.
21. The Chief Executive, the Complainant and an Electoral Services Officer left the room where the count was being held to share the provisional results with

- colleagues in Birmingham who were co-ordinating the results for the West Midlands. The Chief Executive returned to the room once Birmingham had confirmed that the results could be declared.
22. On re-entering the room, the Chief Executive became aware that the results were already published on the BBC website despite him not having made the formal declaration. He recalls checking the time on his phone and his watch. When he made the declaration, he acknowledged that the results were already in the public domain.
 23. On 24 June 2016, the Chief Executive was made aware of the tweet posted at 21.15 referred to at paragraph 17 above. On 27 June 2016, the Complainant's office was made aware of a tweet from Councillor Allen posted on 24 June 2016 at 03.39; *"22850 remain 39266 leave In East Staffordshire"*
 24. The Chief Executive, the Complainant and the Monitoring Officer were concerned that these tweets constituted a breach of the Representation of the People Act 1983. Therefore, the Chief Executive and the Monitoring Officer arranged to meet on 8 July 2016 with Councillor Allen to understand why he had posted the tweets. Councillor Richard Grosvenor (Leader of the Council) and Councillor David Leese (Conservative Group Whip) were also present at the meeting.
 25. During the meeting Councillor Allen said that he had obtained the turnout information from the Polling Staff. The Officers state that Councillor Allen could not recall whether it was the Poll Clerk or the Presiding Officer. Councillor Allen is "fairly sure" he said it was the female member of staff.
 26. The Officers at the meeting recall Councillor Allen being asked a direct question about his twitter handle and whether he was still using @clrGeorgeAllen. The complaint states that Councillor Allen said he had changed his twitter handle. Following the meeting, the Officers checked the twitter handle and it was still @clrGeorgeAllen. They noticed it was changed on 11 July 2016.
 27. Councillor Allen states he did not say he had changed the twitter handle. He said he could not remember and needed to check. He checked it following the meeting and after considering the matter, he changed the twitter handle on 11 July 2016 to @GeorgeAllen54.
 28. Councillor Allen states that he tweeted the ESBC Referendum result because the BBC already had the results and he had seen it on Twitter. This would have been after the Chief Executive declared the final result.
 29. Following the meeting on 8 July 2016, the complainant made enquiries with three polling stations to see if they recalled Councillor Allen having attended

their polling station and requested information about turnout. The staff reported that nobody had identified themselves as Councillor Allen or had asked about turnout.

30. On 19 July 2016, the Chief Executive and the Monitoring Officer arranged to see Councillor Allen for a second time. Councillor David Leese was also present. The Officers explained where they had got to with their enquiries and that they wanted to clarify a few matters. The Chief Executive re-iterated the possible consequences of a breach of the Representation of the People Act 1983.
31. Councillor Allen cannot recall exactly what he said but if he could be prosecuted for an offence, he did not want to be giving information without taking legal advice.

The Evidence Gathered

32. The following witnesses were interviewed during the investigation:

- Andy O'Brien, Chief Executive (HL6);
- Chris Ebberley, Complainant, Deputy Returning Officer (HL7);
- David Brisbane, Presiding Officer (HL8);
- Wendy Kirk, Poll Clerk (HL9);
- Councillor George Allen (HL10);
- Councillor David Leese (HL11).

All have signed written records of their interviews.

33. Angela Wakefield, the Council's Monitoring Officer responded to my enquiries via email (HL12).
34. I have also considered the complaint form, code of conduct, social media policy and the Decision to investigate.
35. The Complainant and Councillor Allen have had the opportunity to consider a draft investigation report. Their representations and my follow up enquiries are included within the exhibits referred to above.

Evidence of Andy O'Brien

36. Andy O'Brien has been the Chief Executive/Returning Officer for ESBC for over 7 years. He was the Counting Officer for ESBC for the EU Referendum. Prior to the count starting Mr O'Brien explained the secrecy requirements in relation to the count and requested that people turn their mobile phones off. The briefing was delivered from the stage to all those in the room.
37. Mr O'Brien announced the provisional results to the Count Agents only from the stage area but without the assistance of a microphone. Before revealing the results, he reminded the Agents of the requirements of secrecy. Mr

- O'Brien recalls Councillor Allen taking the results down on his mobile phone and he emphasised to him the importance of not sharing the results before the final declaration.
38. Mr O'Brien recalls that he announced the provisional result at approximately 03.15am. He then left the room to communicate the results to the Counting Office in Birmingham and obtain confirmation that the final result could be declared.
 39. Mr O'Brien returned to the Count and on entering the hall, he overheard a member of staff say that the BBC had published that ESBC had voted to leave. Mr O'Brien asked to see the individual's phone and confirmed that the BBC had declared the result.
 40. Mr O'Brien proceeded to make the final declaration from the stage at approximately 03.45. In doing so, he acknowledged that the result was already being reported by the media.
 41. I asked Mr O'Brien how he could be so sure about the time that he made the declaration. He explained that on learning that the BBC had the result, he made a point of checking the time. It is not unusual for him to check the time at which declarations are made. As Returning Officer, he was mindful that it had been a long night for everyone and he had a large number of staff waiting to be released.
 42. On 27 June 2016, the Elections Office made enquiries as to how the BBC obtained the results prior to the declaration having been made. They found two tweets posted by Councillor Allen at 03.39 on 24 June 2016 and 21.15 on 23 June 2016.
 43. Mr O'Brien explained that they also discovered that the BBC received the results from a live feed at the Electoral Commission so that once they received the results from Birmingham they were instantly sent on to the BBC. It is therefore possible that the BBC had the results before Councillor Allen's tweets at 03.39.
 44. Mr O'Brien explained that the tweet about turnout (paragraph 17 above) was concerning because it might have given the impression that the Referendum was decided and people would be put off from voting. He was concerned that the tweet at 03.39 was posted before he had made the final declaration. Both tweets could amount to a breach of the Representation of the People Act 1983.
 45. The meeting on 8 July 2016 was an exploratory meeting to understand where Councillor Allen had got his information from and why he had tweeted it. Mr O'Brien said that Councillor Allen said very little during the meeting. He had

said that the polling station he had been in was staffed by a male and a female but he could not remember who had given him the information about turnout.

46. Mr O'Brien said that the Monitoring Officer asked Councillor Allen a direct question about his twitter handle and whether he was still using "cllr" in the handle. Mr O'Brien said that Councillor Allen said he had dropped "cllr" from his handle. However, when this was checked following the meeting, Councillor Allen was still using @cllrGeorgeAllen. The Monitoring Officer checked again on Monday 11 July 2016 and found that the handle had been amended to @GeorgeAllen54. It was also noted that the two tweets had been deleted.
47. Mr O'Brien referred to the enquiries that the Deputy Returning Officer had made with polling station staff to see if Councillor Allen or anybody else had been in to ask about turnout but they had no recollection of this.
48. On 19 July 2016, Mr O'Brien, the Monitoring Officer and Councillor Leese asked to speak to Councillor Allen at the rising of Planning Committee. The purpose of the meeting was to put some of the issues back to Councillor Allen because the polling station staff were saying something different. Mr O'Brien said that Councillor Allen said that he "would need to take advice on whether to tell the truth" and he had nothing else to say.
49. Mr O'Brien had been trying to understand Councillor Allen's position because his response at the meetings on 8 and 19 July would have a bearing on how the matter would proceed.
50. As Returning Officer, Mr O'Brien was keen to understand what had happened as he is responsible for elections and ensuring that there are no breaches of the rules. He was also concerned that Councillor Allen said that he had amended his twitter handle but it was found that he had not and that he had deleted the tweets under investigation.

Evidence of Chris Ebberley

51. Chris Ebberley has been the Deputy Returning Officer for ESBC since May 2015. Prior to taking up this role he has performed most roles associated with elections.
52. Mr Ebberley explained that the Council did not provide training to the Agents for the EU Referendum but they did provide them with information produced by the Electoral Commission. The referendum was different to a borough election where candidates and agents would receive a briefing from Council Officers. Mr Ebberley provided me with copies of the information / correspondence sent to Agents.

53. Mr Ebberley was aware that Councillor George Allen had been an Agent previously for the Police and Crime Commissioner election and for the ESBC elections. He therefore had previous experience of dealing with the Elections team and the rules regarding the count.
54. Mr Ebberley explained that following the announcement of the provisional result, he went with Mr O'Brien and another colleague to send the information to Birmingham. Mr O'Brien and his colleague returned to the count hall shortly before Mr Ebberley did. When Mr Ebberley returned to the Count, he observed Mr O'Brien talking to two of the count staff. He indicated to Mr O'Brien that he could proceed with the final declaration. Mr O'Brien told him that the BBC had already published the result.
55. Mr Ebberley said that when Mr O'Brien went on to the stage to make the formal declaration, he was aware of muttering from a group of individuals. He overheard one of them say "he is just going to read out the news from the BBC website." Mr Ebberley recalled that Councillor Allen was amongst the group.
56. After the final result had been declared, Mr Ebberley and Mr O'Brien had a discussion about what had happened. It was agreed that they needed to liaise with Birmingham to understand why the BBC had announced the result before ESBC had. Birmingham subsequently informed Mr Ebberley of the live feed link to between the BBC and the Electoral Commission.
57. Mr Ebberley explained that the people within the group he had overheard had all been on their mobile phones at the time. On the 27 June 2016, he had a look to see what they had been tweeting about around the time of the results. He found the tweet posted by Councillor Allen at 03.39 on 24 June 2016.
58. Mr Ebberley is confident that Mr O'Brien declared the final result at approximately 03.45am. Mr Ebberley recalls looking at the clock to see what time they finished. Mr Ebberley always checks the time they finish an election.
59. I asked Mr Ebberley how he could be sure of the times that Councillor Allen tweeted because the copies of the tweets I had were not time stamped. Mr Ebberley explained that he must have taken a note of the time that they were posted for his complaint to be so specific.
60. The tweet about the turnout had raised concerns about where the information had come from. Tweets about turnout should not be posted before the close of poll. Turnout figures must be verified before they are published.
61. Mr Ebberley checked the turn out figures. They were around 74% for the East Staffordshire area and 71% at Councillor Allen's polling station in Stramshall

Village.

62. Mr Ebberley stated that the Birmingham Polling Area Returning Officer and the Electoral Commission had advised that polling staff were not to give out information in relation to turnout. Whilst polling staff do not give out this information in an election, the rules were particularly strict for the Referendum. Consequently, Presiding Officers were given guidance on what information could be provided. Polling station staff are trained to provide very little information and provide general responses to questions in relation to whether the polling station has been busy.
63. The polling station staff for Stramshall Village are experienced polling station staff and they received training prior to the Referendum.
64. Following the meeting on 8 July 2016, Mr Ebberley contacted the Presiding Officers for 3 polling stations, including Stramshall Village to see if anybody had been in the polling stations to ask for information about turnout. Mr Ebberley asked each Presiding Officer a series of questions about how things had gone on the day. None of the Presiding Officers could recall anyone attending the Polling Station and identifying themselves as an agent or as Councillor Allen. The Presiding Officers said that nobody had asked for specific turnout figures.
65. Mr Ebberley explained that following the meeting on 8 July 2016, he checked Councillor Allen's twitter handle and found that it was still @cllrGeorgeAllen. He checked it again on 11 July and it had been changed to @GeorgeAllen54. Mr Ebberley also found that the two tweets had been deleted.
66. Mr Ebberley was concerned that there may have been a breach of the Regulations regarding elections and that Councillor Allen had not been entirely truthful when explaining where he had got the information from or about his twitter handle.
67. Following representations received on the draft report, I asked Mr Ebberley if he could provide a copy of the correspondence sent to Councillor Allen rather than a copy of the mail merge document previously provided. Mr Ebberley was unable to do this but did provide further information as to why Councillor Allen was considered to be an Agent for the Leave campaign (HL7).
68. On 16 June 2016, the Regional Director (West Midlands) for the Vote Leave Campaign confirmed that Councillor Allen was one of 20 count agents and that he was the "Designated Counting Agent".
69. Mr Ebberley explained that the Elections Team had a number of dealings with Councillor Allen where he gave the impression that he was one of the lead Agents. Councillor Allen provided the list of count observers and the team

contacted him in respect of Vote Leave posters being fly-posted on the highway.

Evidence of David Brisbane

70. Mr Brisbane was the Presiding Officer at Stramshall Village for the EU Referendum. He has been a Presiding Officer since 1972 and been based in the polling station at Stramshall Village for a long time.
71. Mr Brisbane attended training prior to the Referendum. He explained very clearly to me the requirements of anyone entering the polling station other than to vote. Mr Brisbane recalled that the only person to visit the station was an ESBC Officer who came to collect the postal votes and check everything was ok.
72. Mr Brisbane explained that when people ask about turnout, he has been trained to respond generally by saying "it has been steady or busy". He is aware of the need to be impartial.
73. Mr Brisbane did recall that someone came into the polling station later in the day and commented that there looked to have been a high turnout nationally, possibly around 80%. Mr Brisbane responded by saying that they might have a similar turnout but he did not get into specifics.

Evidence of Wendy Kirk

74. Ms Kirk confirmed that she has been a Poll Clerk for about 7 years and has done 4 or 5 elections at Stramshall Village.
75. Ms Kirk attended training prior to the Referendum and was very clear about the procedures on Polling day. She does not recall anyone coming in on Referendum day and specifically asking about turnout. She explained that the village is small and "everyone knows everyone so there is general chat". She explained that people come in and ask whether they have been busy, how many cups of tea they have had. She explained they keep their answers general without being rude. They would say no more than whether it has been busy or quiet.
76. Ms Kirk said that nobody came into the Polling Station and identified themselves as Councillor Allen or an Agent.

Evidence of Councillor George Allen

77. Councillor Allen disputes that he was a nominated Agent for the Leave Campaign. He stated that this is one of many inaccuracies within the complaint. He explained that he had been an Agent in the elections in May

2016. He had to complete paperwork and was given information in relation to confidentiality and the roles and responsibilities. Councillor Allen contacted the Electoral Services Team and explained that he was supposed to be doing the same thing for the Leave campaign. He asked what the roles and responsibilities were but there was no paperwork. The Vote Leave Regional Director had asked him to arrange for 20 people to attend the count.

78. Councillor Allen had asked the Vote Leave Regional Director about his role and responsibilities and he was advised to contact Electoral Services who would tell him what was going on.
79. Councillor Allen only visited his local polling station in Stramshall Village on 23 June to vote. He did not attend on behalf of the Leave campaign and he was not wearing a rosette. He did have identification with him in case he needed it in order to vote. Councillor Allen said if his tweet was posted at 21.15, then he would have arrived at the polling station at approximately 21.00.
80. Councillor Allen recalls that as he cast his vote, he asked the polling station staff how it was going and what turnout was like. He said the woman was crossing names off the list, she looked over the list and said it was going quite well, turnout was about 80%. Councillor Allen was not aware that you cannot calculate turn out until after the close of poll.
81. I explained to Councillor Allen that the polling station staff were very clear that they should not comment on turnout and only provide general comment. Councillor Allen confirmed that it was the woman who had told him turnout was 80%. He added that he was not sure if she was talking from previous experience or based on the numbers through the door. He said he was "fairly sure" he told Officers on 8 July 2016 that it was the woman that had given him the information.
82. Councillor Allen explained that he tweeted the turnout figure because he did not know that he had been given information that the general public would not have had. He did not think about what effect such a tweet might have on people still to vote. It could have encouraged people to go out and vote.
83. I queried whether Councillor Allen was aware of the rules on Local Authority publicity during Purdah. He confirmed that he was aware that local authorities cannot publish certain information during a certain time period.
84. In relation to the count, Councillor Allen confirmed that he was present for the Chief Executive's briefing regarding the need for confidentiality. Councillor Allen recalls that the Chief Executive gave a further warning to the Agents before he briefed them on the provisional results. Councillor Allen explained that he took a note of the results down in a blank text message on his mobile phone because he did not have his notebook with him. He said that the Chief

- Executive checked with him that he would not be publishing the results until he had made the final declaration.
85. Councillor Allen is almost certain that the tweet posted at 03.39 was after the Chief Executive had made the final declaration. He explained that he tweeted the information because the BBC already had the information. I queried why this was relevant if he had posted after the formal declaration. Councillor Allen repeated that he had seen the results on Twitter.
86. I queried why Councillor Allen had created his own twitter post rather than re-tweet the results he had seen. He explained that since he already had the provisional results noted in a draft text message, he simply copied that into a tweet.
87. Councillor Allen said it was hard to recall what he did back in June but that he was not acting with any "intent". He wanted to check whether the Chief Executive announced to the room that he was going to provide the results to Birmingham. If he had, that might have created confusion.
88. Councillor Allen said that in the original complaint he received, the time of the declaration was stated as 04.45am. I confirmed that the complaint states 3.45am. Councillor Allen said that it must have been amended. He pointed to this as a further example of the inaccuracies in the complaint.
89. Councillor Allen does not think he breached the Code of Conduct. He thought the meeting on 8 July 2016 was to discuss other issues from the count. He said that the Monitoring Officer asked him about his twitter handle and he said he could not remember, he would need to check. He did not say he had changed it. Councillor Allen explained that the Monitoring Officer was concerned that the twitter handle might give the impression that the information was coming from the Council. He was unable to check it at the time so he did so when he got back to his car. He gave it some thought over the weekend and changed it on the Monday.
90. Councillor Allen recalled that when he was first elected, the 'bio' on his Twitter page referred to him being an ESBC Councillor. He recalls taking advice (but not who he spoke to) and they confirmed that adding that the views posted were his own would be sufficient. He does not consider using the Twitter handle @cldrGeorgeAllen would create the impression he was acting in his official capacity. He does not recall having been advised that such a Twitter handle could create this impression. If he was advised, he "hadn't taken it in". He said that at the meeting on 8 July, it was left that he would check his handle. There was no suggestion that he had done anything wrong. He said that the Complainant must have got the details of his new Twitter handle on the Monday he changed it, not from the meeting on 8 July.

91. In relation to the meeting on 19 July, Councillor Allen recalled that Officers wanted “to be a bit clearer about things because I had not said much at the meeting on 8 July”. The Chief Executive explained that the tweets were potentially a breach of the Representation of the People Act and Councillor Allen could be prosecuted by the Electoral Commission. Councillor Allen cannot remember exactly what he said but he was concerned that if he could be prosecuted he should not provide information without first taking legal advice. He denied saying that he needed to take advice on whether to tell the truth. Councillor Allen said it was Councillor Leese that said “you shouldn’t need to take advice to tell the truth”.
92. Councillor Allen did not take legal advice. He waited to hear from the Electoral Commission. The Chief Executive had said that he might need to refer the matter to the Police. Councillor Allen thought the Police would want to interview him quickly. When the Police did not contact him, he assumed that the Chief Executive had not reported the matter.
93. Councillor Allen highlighted what he considered to be a number of inaccuracies within the complaint. These included grammatical errors; turnout in the first tweet being stated as 81% instead of 80% and Councillor Allen being a nominated Referendum Agent. Councillor Allen also said the complainant cannot accuse him of being untruthful at the meeting on 8 July because he was not there.
94. Councillor Allen said given the seriousness of the allegations, he should have been told what the meeting was about and been given the opportunity to be accompanied by someone he trusted. Councillor Allen said that “it looks to him as if he has been set up”. He queried what is he to do when four people are saying he said things that he knows he did not. Councillor Allen said he wanted to check his mobile phone to see if he made any calls before he posted the second tweet to see if that would help clarify if he had tweeted after the declaration. Councillor Allen subsequently advised that these enquiries did not assist in this regard.
95. Councillor Allen submitted representations on the draft report and provided further evidence for me to consider. These are appended to Exhibit HL10. Councillor Allen submitted a photograph of a Leave Campaigner wearing a T-Shirt with the slogan “We did it!” The properties of the photograph show that this was taken at 03.40 on 24 June 2016.
96. Councillor Allen also provided some further tweets of the Referendum coverage. These include one post by DE13News which states “And the results for the EU Referendum in East Staffs, announced at around 3.40am by Andy O’Brien are:”

Evidence of Councillor David Leese

97. Councillor David Leese has been a Conservative Councillor on ESBC since May 2007. He was most recently elected in May 2015. He has been Chief Whip for the Conservative Group for the last year.
98. Councillor Leese confirmed that he was present at the meeting on 8 July 2016. He was invited because the Leader and the Chief Executive thought it was appropriate for him to be there in support of Councillor Allen. He understood his role at the meeting was to ensure that it was even-handed, to say if he thought Officers were being too hard or unfair. In Councillor Leese's opinion, the Officers handled the meeting well and everyone had the chance to have their say.
99. Councillor Leese recalls that the purpose of the meeting was to ask Councillor Allen what he had done and how certain statements had appeared on social media. Councillor Leese thought Councillor Allen had been pro-Brexit and had been actively campaigning for Brexit with the lead campaigner. He also thought that Councillor Allen had visited some polling stations on Referendum day. It appeared from his statements on social media that Councillor Allen maybe knew more than he should and said more than he should have before polls closed.
100. Councillor Leese recalled the issue with the meeting was Councillor Allen's "obfuscation". He did not want to say anything concrete. Councillor Allen said very little. Councillor Leese recalls that Councillor Allen kept saying he needed to consult with someone (understood to be the lead Leave campaigner) who was on holiday for two weeks. The purpose of the meeting was to get a sense of what happened. They wanted Councillor Allen to tell them what he had done, why, when and how he got the information. Councillor Leese recalls that nothing came out of the meeting and that he, the Leader and the Officers were disappointed not to have been able to advance the meeting.
101. Councillor Leese recalls asking Councillor Allen if he realised this could be quite serious and that he could be open to criminal charges. Councillor Leese does not know what Councillor Allen was thinking. Councillor Leese believes that if he had explained what had happened, the matter could have been resolved. Councillor Leese thought Councillor Allen had done something silly but perhaps he misunderstood or got carried away. Councillor Allen never explained why he tweeted what he did. Councillor Leese said that perhaps the tweet was posted to increase turnout but in his view, saying it was a good day for Brexit might have put people off voting. Those present at the meeting were surprised Councillor Allen had nothing to say.

102. Councillor Leese recalls something being said about Councillor Allen's twitter handle. He thinks Councillor Allen "signed himself as Councillor Allen". He understands that something was taken down quickly after the meeting.
103. Councillor Leese also attended the meeting on 19 July. He was the only party representative there and his role was the same as before. Councillor Leese thinks that it was felt Councillor Allen would respond better if there was a party colleague present. He recalls that the Chief Executive and the Monitoring Officer brought Councillor Allen up to date with their enquiries. Councillor Leese thinks he reminded Councillor Allen to co-operate with the Officers. Councillor Allen accused Councillor Leese of "judging him already". Councillor Leese responded saying that they simply wanted to know the truth. Councillor Allen said that he would need to consult on that. Councillor Leese responded by saying something like "since when has anyone had to consult on telling the truth."
104. At that point, Councillor Allen left the meeting. In Councillor Leese's opinion, the meeting was conducted properly and fairly.

Evidence of Angela Wakefield

105. Angela Wakefield is the Council's Monitoring Officer. She delivered induction training to new Councillors on 18 May 2015. Councillor Allen attended one of the sessions. The training covered the Council's Social Media Policy. The following advice in relation to Twitter bio's was provided:

"In any biography where you are identified as a Councillor, the account should state that the views expressed are your own and may not represent the views of the Council. Use of the Council's logo on a personal account or website should only occur with the written permission of the Chief Executive – and the logo should not be used on sites or applications which are unrelated to or not representative of the Council's official position – if in doubt, contact the Chief Executive."
106. Ms Wakefield recalls that at the end of the session, Councillor Allen spoke to her about the inclusion of "Councillor" in his twitter handle. Whilst she cannot recall exactly what was said, Ms Wakefield knows that she advised against this because to do so might suggest that the twitter account was an official rather than personal one.
107. Prior to the meeting on 8 July, Ms Wakefield had seen the tweets from 23 and 24 June and was aware that Councillor Allen was still using @cldrGeorgeAllen in his twitter handle. At the meeting, she asked him if he was still using that handle because she was interested in his reply. Councillor Allen said that he had changed it.

108. In response to representations received on the draft report, I asked Ms Wakefield to confirm why she had not considered attempting to resolve this matter by way of informal resolution. She responded by saying that she considers the Decision Notice dated 18 August 2016 to speak for itself and provides reasons as to why it was necessary to refer the matter for investigation. She also confirmed that a copy of the Decision Notice was sent to Councillor Allen on 18 August 2016. A copy of this correspondence is attached at Exhibit HL12.

Findings of Fact

109. Having considered the evidence of Mr Eberley and the copies of correspondence he provided, I am satisfied that Councillor George Allen was a nominated Referendum Agent. In his interview, Councillor Allen said that he had been an Agent for the elections in May and that he was supposed to be doing the same thing in the Referendum (para 4 HL10). He was sent correspondence from the Elections Team in that capacity, which refers to one of his roles to be to bring 20 people to the count. There is documentary evidence that Councillor Allen was the designated counting agent. The Elections Team also corresponded with Councillor Allen in relation to fly-posting of Leave Campaign posters, which would have been a matter for the campaign agents.
110. Councillor Allen was not entirely clear on what his role and responsibilities were as nominated Agent. Therefore, he did not visit polling stations as he was entitled to do. The only polling station he visited was his local one and this was in order to vote.
111. I consider that it is likely that Councillor Allen obtained the figure of 80% from his conversations with the polling station staff. However, I conclude that this is likely to have come from the general discussion which was recalled by David Brisbane. I do not accept Councillor Allen's explanation about the Poll Clerk providing him with the information having checked the electoral roll. Both the Poll Clerk and Presiding Officers clearly understood their responsibilities on polling day and how to deal with enquiries about turnout. I consider Councillor Allen's account to be implausible. A check of the electoral register would have only provided an indication as to the number of people who had been into the polling station. It would not have taken account of postal votes cast and therefore could not provide an indication as to turnout. Had Councillor Allen obtained the information in the manner suggested by him, I would have expected him to have explained this at the meeting on 8 July 2016.
112. Councillor Allen has an awareness of the rules relating to Local Authority Publicity and has previous experience as a Count Agent. He therefore ought to have been aware that posting a tweet about turnout using the twitter handle "@CllrGeorgeAllen" was inappropriate (regardless of whether the Electoral

Commission permitted such information to be public) because it could have influenced whether or not people went out to vote. It makes no difference whether the tweet encouraged or discouraged people to vote.

113. Councillor Allen argued that because his Twitter 'bio' stated that his views are his own, his Twitter handle could not give the impression that he was acting in his official capacity. However, as the screen prints of the tweets show, you can see posts on Twitter without viewing the poster's bio. I therefore consider that the twitter handle could give the impression that Councillor Allen was acting in his official capacity. The tweets are therefore covered by the Code of Conduct.
114. I am unable to conclude whether or not the tweet at 03.39 was before or after the Chief Executive made the final declaration. The copies of tweets provided by Councillor Allen show that the information was in the public domain as early as 03.35. It appears that the BBC were the first to publish the ESBC results and it is likely that they obtained these from the live feed from the Electoral Commission.
115. The photograph provided by Councillor Allen, whilst taken at 03.40 does not prove that it was taken after the declaration had been made. The photo could have been taken prior to the declaration in response to the provisional results and/or in response to the ESBC results appearing in the public domain before the declaration and/or in response to the results that were coming in elsewhere.
116. The tweet from DE13News states that the Chief Executive declared the results at approximately 03.40. It is not clear whether DE13News were using information already in the public domain or had actually observed the final declaration.
117. The evidence of the Chief Executive, which is supported by the Complainant, that he made the declaration at approximately 03.45 is not inconsistent with the tweet by DE13News. It is plausible that he checked the time having been made aware that the results were already in the public domain. It is common practice for Returning Officers and Deputy Returning Officers to note the time final declarations are made and I consider this particularly likely to happen where the results are published prior to the declaration.
118. However, in the absence of any definitive evidence I cannot conclude that Councillor Allen tweeted the results prior to the final declaration.
119. There is a conflict of evidence as to what was said at the meetings on 8 and 19 July 2016 and I have to form a view, on the balance of probabilities, as to what was said.

120. I accept the evidence of Ms Wakefield that she did speak to Councillor Allen at the end of the training session in 2015 about his twitter handle. If this conversation had not taken place, it would not have been necessary for her to ask Councillor Allen on 8 July what twitter handle he was using. It was clear from the screen prints that his twitter handle was still “@cllrGeorgeAllen”
121. I find the accounts of the Chief Executive, the Monitoring Officer and Councillor Lease as to what happened at the meeting on 8 July 2016 to be more plausible than that of Councillor Allen. I therefore conclude that Councillor Allen was asked if he was still using the Twitter handle “@cllrGeorgeAllen” and he did say he had changed it.
122. Councillor Allen said that at the meeting on 8 July 2016 there was no suggestion that he had done anything wrong. I consider this to be very unlikely. If that was the case, Councillor Allen would not have had cause to think about whether his Twitter handle was appropriate and subsequently change it. Consequently, I find Councillor Allen was untruthful.
123. In relation to the meeting on 19 July 2016, the evidence indicates that Councillor Allen did not say very much other than to say he wanted to take advice. Councillor Leese recalls that he said Councillor Allen should not need to take advice to tell the truth. This corroborates Councillor Allen’s account of the meeting and I accept that account.
124. Councillor Allen said his statement that “it looks to him as if he has been set up” did not constitute an allegation. However, it does infer that the Complainant and/or the other witnesses to the investigation (including 2 Statutory Officers) have acted improperly. There is no evidence of a “set up.”
125. Councillor Leese explained that his role during the meetings in July was as a supportive party colleague and if necessary to appropriately challenge the Officers. Councillor Leese was very clear that the Officers conducted the meetings fairly and properly.
126. The Officers, the Polling Station Staff and Councillor Leese appeared to be truthful and sincere witnesses. In contrast, I found Councillor Allen to be inconsistent and some of his explanations were implausible. His criticism of the complaint centred largely on grammatical and typographical errors rather than a rebuttal of the content.
127. Throughout the investigation, Councillor Allen has sought to confuse the issues and criticise others. He queried the validity of the complaint because the Complainant was not present at the meetings in July. However, this ignores the fact that the meetings were held to understand the circumstances surrounding the Councillor Allen’s tweets, which were the Complainant’s

primary concern and that I have been able to speak to those present at the meetings including Councillor Allen.

128. Councillor Allen appears to suggest that the meetings were not meetings because they were not formally constituted. It does not matter that the meetings were informal, his conduct at those meetings is still caught by the Code of Conduct.
129. Councillor Allen stated he did not know what the meetings were about but in his interviews with me, he said that the Chief Executive explained why they had asked to see him at the outset. Councillor Allen also cites the seriousness of the matter, the possible criminal proceedings and the need for him to take advice as the reason why he said very little during the meetings. However, at no point did he take advice.
130. Councillor Allen suggested in his response to the draft report that the Monitoring Officer has failed to comply with the Council's procedures for dealing with complaints. He suggests that the Monitoring Officer either failed to consider dealing with the complaint informally or failed to explain why the matter was too serious to be considered informally. I have considered the Council's procedures and note that they do not require the Monitoring Officer to consider informal action. In any event, the Decision Notice dated 18 August 2016 sets out the reasons why the Monitoring Officer referred the complaint for investigation. A copy of the Decision Notice was sent to Councillor Allen on 18 August 2016. Councillor Allen's criticism of the Monitoring Officer in this regard is surprising given his criticism of the informal nature of the meetings on 8 and 19 July 2017.
131. Whilst denying that he had done anything improper, Councillor Allen suggested things may have happened to cause confusion. For example, he wanted to clarify whether the Chief Executive had announced from the stage that he was going to pass the provisional results to Birmingham. "If he had, it would have created confusion." This is inconsistent with Councillor Allen's position that he had tweeted the results after the final declaration. I interpret this more a possible explanation as to why he tweeted the results when he did.

Application of the Code to the Findings

132. The relevant paragraphs of the Code which I have considered during my investigation are 3.1, 3.7, 3.9 and 3.12 (as set out in full at paragraph 11 of this report).
133. The test in deciding whether or not there has been a breach of the Code is objective: would a reasonable person aware of all the material facts and

- ignoring all immaterial factors consider that there has been a breach of the code?
134. The Code only applies to the conduct of a member acting in an official capacity and not at any other time. As previously indicated, I consider that using the Twitter handle @cldrGeorgeAllen could create the impression that he was acting in his official capacity. Therefore, the tweet posted at 21.15 amounts to a breach of paragraph 3.12 of the Code in that Councillor Allen failed to have regard to the Local Authority Code of Publicity under the Local Government Act 1986.
 135. The tweet posted at 03.39 does not amount to a breach of paragraph 3.7 of the Code because I am unable to conclude whether it was posted before or after the final declaration.
 136. These two tweets amount to a breach of paragraph 8.1 of the Council's Social Media Policy in that Councillor Allen disclosed information, apparently on behalf of the Council, without authorisation.
 137. The finding that Councillor Allen was untruthful is a breach of paragraphs 3.1 because it amounts to a failure to treat the Officers and Councillors present at the meeting on 8 July with respect. It also amounts to a breach of paragraph 3.9 in that dishonesty can reasonably be regarded as bringing Councillor Allen's office into disrepute.

Findings

138. Councillor Allen has breached paragraphs 3.1; 3.9 and 3.12 of the Member Code of Conduct.
139. Councillor Allen has also breached paragraph 8.1 of the Council's Social Media Policy for Councillors.

Helen Lynch
Acting Monitoring Officer
06 February 2017

Response to Final Report

1. I agree that a complaint has been made but do not agree that it was necessary as I was not acting in the capacity of a Borough Councillor.
2. Again I do not agree that this tweet was made in my official capacity as a Borough Councillor. The complainant states that this tweet could be in breach of the representation of the peoples act 1983, I disagree with this.
3. I do not agree that this tweet was posted prior to the declaration of the returning officer and I refer to GA1 to GA11.
4. I do not agree with the complainant that this gives the impression that I was tweeting in my official capacity as a Borough Councillor.
5. I agree with the date and the individuals present but do not agree that I have been untruthful.
6. I agree with the date and the individuals present but do not agree that I said that I needed to take advice before I told the truth.
7. I do not agree that the monitoring officer sought to resolve the complaint informally, without the need for a formal investigation as required in 4.1 of the standards committee complaints procedure.
8. I have no comment on this point.
9. I have no comment on this point.
10. I have no comment on this point.
11. I have no comment on this point.
12. I have no comment on this point.
13. I have no comment on this point.
14. I agree I received training on the code of conduct.
15. I agree with this point.
16. I have no recollection that I spoke to the monitoring officer following this session but I do recall the MO telephoning me and asking me to put "all views are my own" in my bio, which I did.
17. I disagree that I was an agent for the vote leave campaign and confirm that I have not signed any declaration with reference to the referendum.
18. I agree I obtained this information from the polling station staff, however I have no idea whether this was a calculated number or general opinion.
19. I have no comment on this point.
20. I agree with this point although I do not recall the time being 3:15
21. I have no comment on this point.
22. I have no comment on this point.
23. I have no comment on this point.
24. I agree the meeting was arranged, however I was not advised the purpose of the meeting, although I enquired, and was not advised to bring someone I trust with me.
25. The officers never asked if it was a poll clerk or the presiding officer that gave me the information at this meeting.
26. I was not asked a direct question concerning my twitter handle and whether or not I was still using @cllrGeorgeAllen. I did not state that I had changed my twitter handle. The officers

98. I have no comment on this point, although I would point that while cllr Leese may think he was there in support of me, if given the opportunity, I would not have chosen cllr Leese as my support.
99. I have no comment on this point.
100. I do not agree with this point.
101. I have no comment on this point.
102. I have no comment on this point.
103. I have no comment on this point, although I would point that while cllr Leese may think he was there in support of me, if given the opportunity, I would not have chosen cllr Leese as my support.
104. I have no comment on this point, refer to my comments on point 103.
105. I agree with this point.
106. I have no recollection that I spoke to the monitoring officer following this session but I do recall the MO telephoning me and asking me to put "all views are my own" in my bio, which I did.
107. I disagree that I said I had changed my twitter handle.
108. I disagree that the matter could not have been resolved informally. In the decision notice to investigate the MO states that "these are serious allegations and the factual background is complex" however there is very little factual evidence available to prove that I had been untruthful and there is more evidence that suggests I tweeted the results after they were officially announced rather than the suggestion that I tweeted them before.
109. I disagree that the Investigator has considered the evidence that Mr Ebberly has provided. I disagree that I was sent correspondence from the elections team that referred to me as an election agent. I agree there is evidence that I was a counting agent.
110. I agree with this point.
111. I agree that I obtained the figure of 80% from the polling staff. I agree that it was a general discussion. I disagree that I said the polling staff "checked" the electoral roll, I merely said they looked over the list. I would just point out that the tweet about turnout was clearly with reference to the turnout at that poll station and not anything to do with postal votes.
112. I have no comment on this point.
113. I disagree that the tweets are covered by the social media policy.
114. I have no comment on this point.
115. I disagree that the photo provided does not prove that it was taken after the official declaration.
116. I disagree that the tweet from DE13News is not clear whether they were using information already in the public domain.
117. I have no comment on this point.
118. I disagree that the investigator cannot conclude that I tweeted the results after the declaration. The Investigator has more than enough information to conclude that it is likely that I tweeted the results after the official declaration.
119. I have no comment on this point.
120. I disagree with this point.
121. I disagree with this point
122. I disagree with this point

123. I agree with this point.
124. I disagree with this point
125. I disagree with this point
126. I disagree with this point
127. I disagree with this point
128. I disagree with this point
129. I disagree with this point
130. I disagree with this point
131. I disagree with this point
132. I have no comment on this point
133. I agree with this point
134. I disagree with this point
135. I disagree with this point
136. I disagree with this point
137. I disagree with this point
138. I disagree with this point
139. I disagree with this point

