

Standards, Statutory Duties and Professional Relationships

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Agenda

- 1 Principles of public Life**
- 2 Standards rules and processes applying to ECC councillors**
- 3 Member roles vs Officer roles and working together**
- 4 Statutory Duties: sexual harassment prevention and statutory equality duty**

Why do we have rules about Councillor standards?

There have always been rules about standards.

- To maintain trust in public services
- Principles of conduct in public life
- Protect those in public life about what is or is not OK

The current rules:

- Localism Act 2011 says that ECC 'must promote and maintain high standards of conduct by members and co-opted members of the authority'
- Localism Act 2011 creates rules about 'disclosable pecuniary interests'
- It also says we must have a code of conduct 'consistent with principles of standards in public life'
- All Essex councils have adopted the Local Government Association Model Code.

Principles of Public Life: The Nolan Principles

Selflessness: Holders of public office should act solely in terms of the public interest.

Integrity: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty: Holders of public office should be truthful.

Leadership: Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

Code of conduct rules: Why is it important to know what the code says?

The LGA code says:

As a Councillor:

I undertake Code of Conduct training provided by my local authority

I cooperate with any Code of Conduct investigation and/or determination

I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings

I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct

When does the code apply?

It applies when you are acting as an Essex County Councillor

- At ECC meetings
- When communicating with the public, employees and other councillors on council business
- When acting as an ECC representative at other meetings.
- It doesn't apply in your private life – but things can become blurred, and you can bring the code into play.
 - Ken Livingstone case

Rules of behaviour



Code of conduct rules: Behaviour towards other people:

You must treat other councillors and members of the public with respect

You must treat employees and volunteers working for ECC with respect and respect the role they play

You must treat employees and representatives of partner organisations with respect and respect for the role they play

You can't discriminate unlawfully against any person do anything that would cause the Council to unlawfully discriminate

You must not do anything which compromises or attempts to compromise the impartiality of anyone working on behalf of the Council (including employees)

You must not bully or harass any person

Social Media and Members



STOP: THINK! Would you say it to or in front of a parent, your child or a friend?



The code may not apply if you make private and personal non-political social media contributions, unconnected to ECC business on a private account.



Must comply with the Member Code of Conduct whenever you... '**conduct the business of ECC... or if you are acting as a representative of ECC**'.



Anonymous postings are **not encouraged**, if you post anonymously but are conducting ECC business, you are **subject to the Code**.



If you **identify yourself as a member, county councillor, councillor for a division, the Code** will likely apply.



If your social media is used in a **personal capacity** ensure you have **appropriate privacy settings**. If it is open to the public, it may be decided that you are acting as a councillor.

Guidance on the Member Portal under Guidance, resources and key documents/other guidance and resources

Code of conduct rules: Disclosing information

Don't disclose
confidential
information unless

- You have consent
- You are required by law to do so
- You disclose on a confidential basis purely to get professional legal advice

Don't improperly use
knowledge

- gained solely as a result of your role as a councillor for the advancement of myself, my friends, my family members, you employer or your business interests.

Do not prevent

- anyone from getting information that they are entitled to by law.

Code of conduct rules: General behaviour

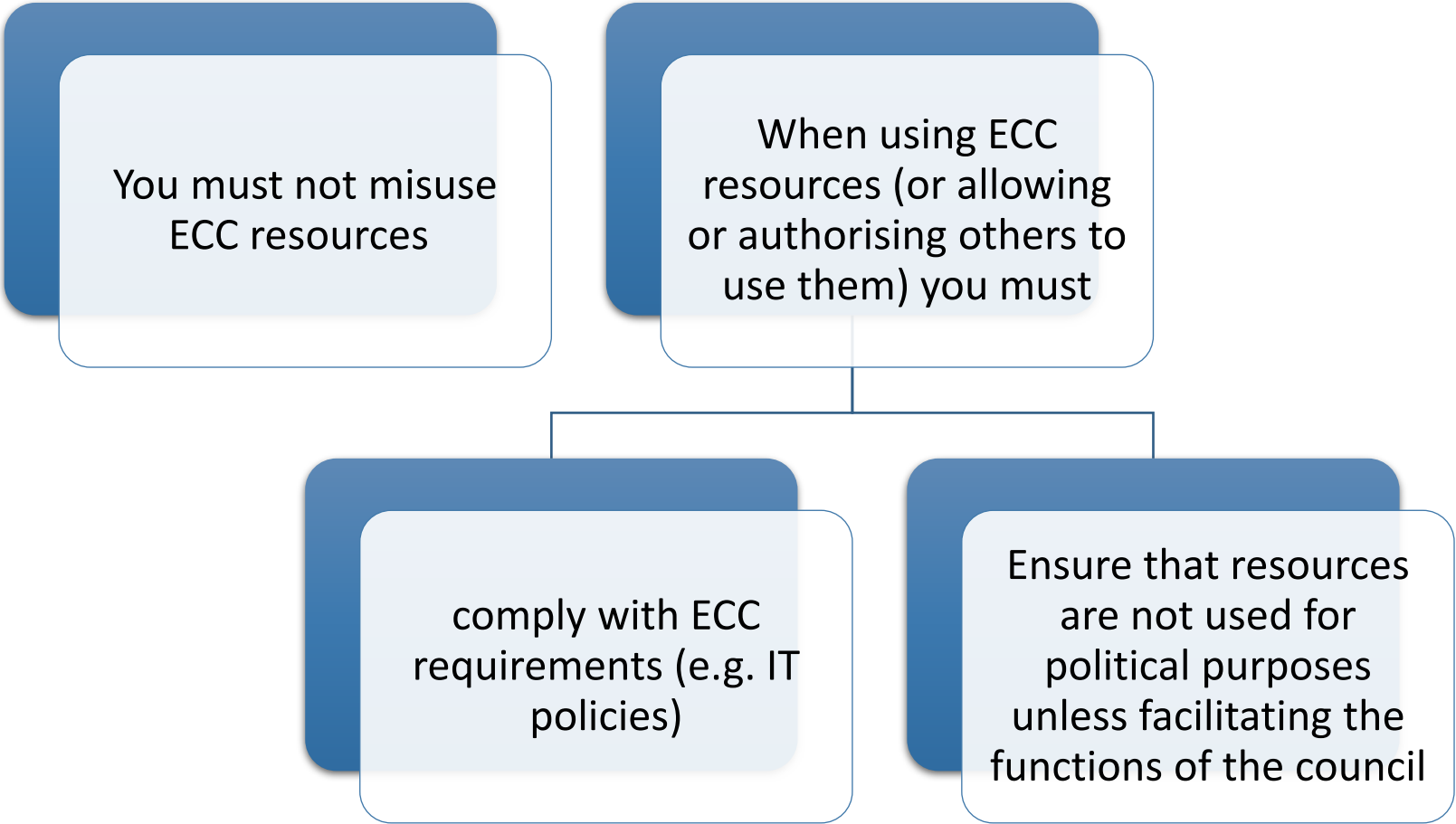


You **must not do** anything that will bring **your role** or **the local authority** into **disrepute**



You **must not** use the position to improperly get an advantage or disadvantage for yourself or any other person (financial advantage or otherwise)

Code of conduct rules: When using ECC resources (IT, employees, money, premises etc etc)...



Rules about what you have to register and declare – and when you cannot be in the room.

‘Declaring’ interests and ‘registering’ them. What on earth is the difference?

If you have a registrable interest you must

- REGISTER it in the register of interests**
- DECLARE the interest at a meeting if something comes up in your role as a councillor which relates to it.**

Four points for you to remember...

You are responsible for keeping your registration of interests complete and up to date

You have to register your interests and those of your spouse/partner

You don't have to register interests of friends or other relatives but you **may** need to declare them

You must register interests within 28 days of election and add in new interests within 28 days

The three types of interest

Disclosable Pecuniary Interests

- Criminal offence

Other registrable interests

- Enforced by ECC
- Very limited sanctions

Non-registrable interests

- Enforced by ECC
- Very limited sanctions

What must I register – your interests and those of your spouse/partner



The Seven categories of DPI:

Paid roles and businesses

Sponsorships - election expenses or expenses as a councillor – did your party pay for leaflets?

Contracts between you or your companies and ECC

Land you own or rent in Essex (including your home)

Licences you have to occupy land in Essex

Land companies in which you have an interest etc. rent from the Council

Significant shareholdings of companies with a place of business in Essex (At least 1% or shares with nominal value of £25000).



Other Registerable interests

External bodies to which ECC has appointed you

Unpaid directorships

Membership or a position of management or control in a body

- which exercises **functions of a public nature**;
- which is directed to **charitable** purposes; or
- one of whose principal purposes includes the influence of public opinion or policy (including any **political party** or **trade union**).

Example

Fact	What has to be registered
Jane owns 10% of a company which trades from her home in Essex.	*Jane's home has to be registered as a DPI – whether she owns, rents or lodges there. * Jane's shareholding has to be registered because it operates from Essex and she owns more than 1% of it (DPI)
Her husband is a paid employee of the company	Spouse's employment must be registered as a DPI
The company also rents a lockup garage from the council	She must register that the company rents property from the Council (DPI)
The company has a contract to sell paperclips to the Council	This contract must be registered (DPI)
She has a pension from the Council from when she worked there 50 years ago	Nothing – membership of a pension scheme is not registrable
Jane is a Parish Councillor	This is an other registrable interest (ORI)

Some quick tips

The three interests you probably do have that need to be registered:

- **Your home**
 - You have an interest in the house if you own or rent it.
 - It's a licence to occupy land if you are a lodger or live with family.
- Membership of a political party.
- The fact that someone paid election expenses – even if your party just printed leaflets for you.

Things which you don't have to register:

- Land outside Essex
- Pension arrangements (unless your pension is investments owned by you or your company)
- Interests of your friends or relatives other than your spouse/partner – but they may still need to be declared.

Non-registrable interests

**Anything at all
which affects**

- **your well-being**
- **your financial position**

**Or the wellbeing or
financial position of**

- **a relative**
- **a close friend**

Declaring an interests - DPIs

If you 'have a DPI' (1) in an **item of business at a meeting** then you must declare and leave the room during consideration of the matter.... (2) **Not take an individual decision** unless

- You have a dispensation from ECC
- You are taking part as a member of the public and leave as soon as you have made your contribution

Don't declare a DPI and stay in the room or be involved in a decision or take a CMA.... unless you have a dispensation.

If you declare an unregistered DPI at a meeting and then don't add it to the register of interests then you need to register it within 28 days or it is an offence.

If you are a district councillor, you may be unable to consider a matter which directly affects the other authority (e.g. financial transactions or planning matters)

Declaring an 'Other Registerable Interest' (ORI)

External bodies to which ECC has appointed you

Unpaid directorships

Membership or a position of management or control in a body

- which exercises **functions of a public nature**;
- which is directed to **charitable** purposes; or
- one of whose principal purposes includes the influence of public opinion or policy (including any **political party** or **trade union**).

Always declare an interest if an item affects or directly relates to the ORI

If item **DIRECTLY RELATES** to the financial interest or well being of an ORI you must leave the room and not take part

If item **AFFECTS** the financial interest or well being (but not directly) you must leave the room if

- It affects you more than people in the division affected; and
- A reasonable member of the public would believe it would **affect your view of the wider public interest**

You may always stay in the room and speak as a member of the public if they are allowed to do the same.

Non registrable interests

You have a NRI in a matter if it affects the financial interest or wellbeing of you or a relative or close friend

If the matter **DIRECTLY RELATES** to your financial interest or well being or that of a relative or a close associate you must leave the room and not take part.

If it **AFFECTS** your financial interest or well being or that of a relative or a close associate you must leave the room if

- It affects you more than people in the division affected; and
- A reasonable member of the public would believe it would affect your view of the wider public interest

You may always stay in the room and speak as a member of the public if they are allowed to do the same.

Gifts and hospitality



Members must register all **offers** of gifts and hospitality with a value of £50 or more in connection with ECC role. You must register even if you reject it. This can be done by e-mailing democratic.services@essex.gov.uk



Registration must take place within 28 days of the offer



The register is published online and reviewed by Audit, Government and Standards Committee



Accepting gifts and hospitality needs careful consideration



Avoiding offers of gifts and hospitality

General	Election History	Party History	Division History	Members Interests
Committees	Outside Bodies	Training History	Hospitality and Gifts	
Allowances and Expenses				
Date	From	Description	Value	

Complaints process for alleged code of conduct breaches

- **Complaint made in writing**
- **Should we investigate? Decision taken by Monitoring Officer (MO), assessed against criteria set by Audit, Governance and Standards Committee (AGS)**
- **Investigation**
- **Hearing**
- **All complaints are considered by an independent person**



Sanctions for breaches of the code

- **'Name and shame'**
- **Recommend that privileges are removed**
- **Recommend that someone is removed from a committee**
- **Ask to apologise**

Proposed changes – Gov statement November 2025



Mandatory minimum code of conduct



A requirement to convene formal standards committees to make decisions on code of conduct breaches, and publish the outcomes of all formal investigations. Independent members on standards (not necessarily the IP)



Introduction of the power for all local authorities to suspend councillors or mayors found in serious breach of their code of conduct for up to 6 months. Interim suspension available for the most serious and complex cases



Disqualification for those subject to a sanction of 6 month suspension more than once in a 5-year period



A role for a national body to deal with appeals and issue guidance

Protocol on member officer relations

Members and Officers

Members are Councillors

All employees are officers

Important for each to have their role

In political decision making:

- Members make decisions and are accountable for the decisions they make
- Officers advise and are accountable for the advice they give.

At meetings

- Members speak
- Officers do not usually speak – other than at scrutiny, planning, audit committees.
- Members should not criticise officers in public meetings because officers cannot answer back

Protocol on Member/Officer relationships

- **Part 25 of the constitution**
- **Closeness of relationships**
- **Who is responsible for decisions**

How members take decisions

How members can – and cannot influence decisions.

- **Officer advice**
 - **Impartiality**
 - **Compliance with policy**
- **Involvement of members in recruitment and dismissal**
- **Supporting political groups – officers providing information and advice about council business, not party business**
- **Access to information**

Criticising performance or behaviour of an officer

- All officers are expected to maintain very high standards of behaviour
- If a member has a concern about the performance or behaviour of an officer they should raise it with the Chief Executive. If the concern is about the Chief Executive they should raise it with the Monitoring Officer. It should not be raised in public.
- It should not be discussed at a public meeting unless the Council has first considered excluding the press and public.

Issues affecting a particular area



All affected members should be invited to any meeting



All affected members should be notified of any consultation.

Friendly but not friends.

It's important that there are strong working relationships between councillors and officers

It's also important that power is distributed

If Members and Officers are too close

- Members may not get the advice they need
- There's a risk of 'group think'
- Important voices may be silenced if they are not part of the 'in crowd'
- Important advice and decisions may not be documented, destroying accountability

If Members and officers do not have a culture of respectful challenge

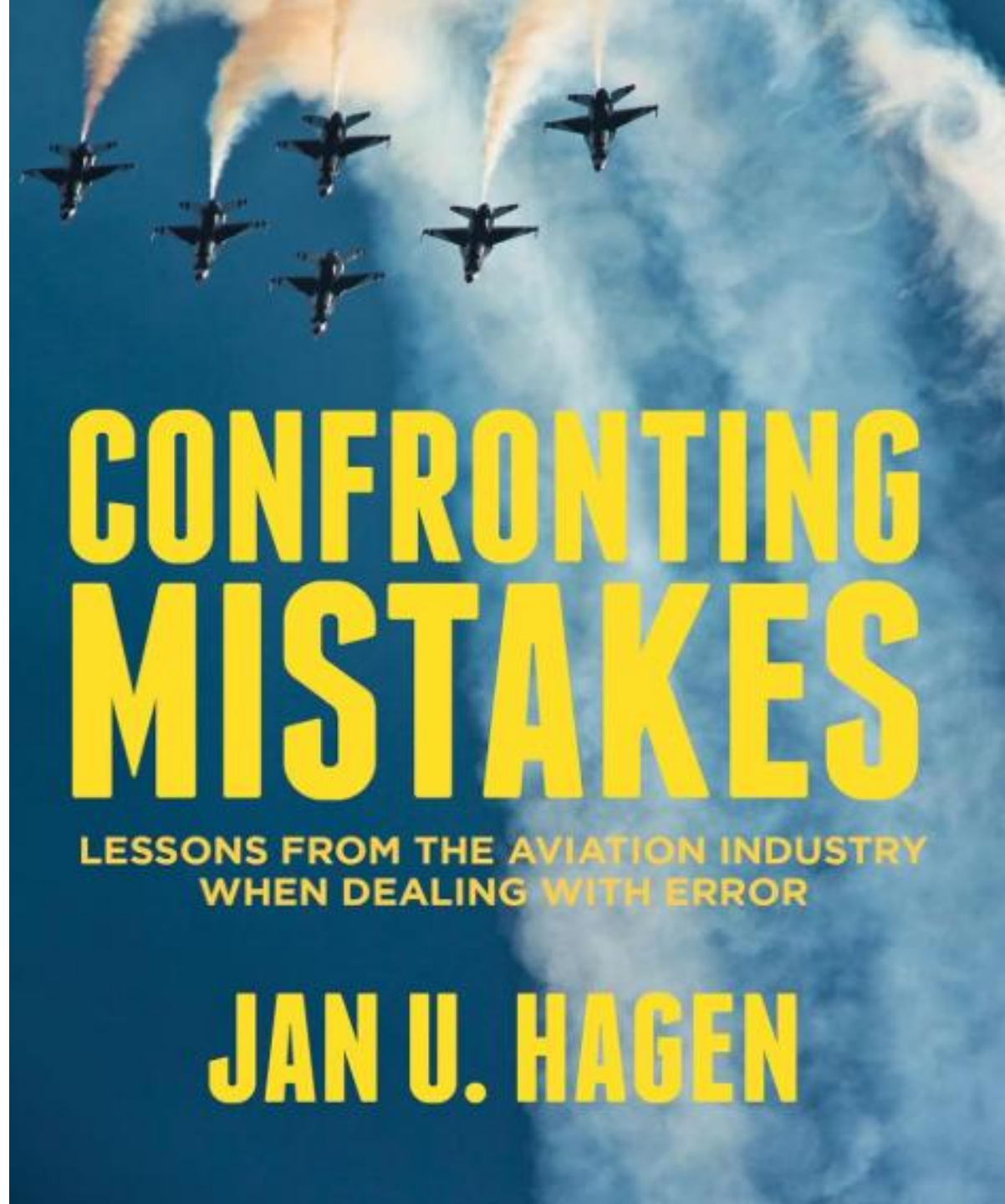
- **One group may dominate**
- **People may not speak up**
- **Voices may not be heard**

The importance of 'psychological safety'

Psychological Safety

This book highlights how miscommunication and failures to speak up were behind so many aviation disasters, and the foundation for this dynamic was often the perceived hierarchy, power and status that captains held (even if the captain was drunk). In all of the incidents in the book, a common theme is low psychological safety – that people, even experienced and well qualified co-pilots, did not speak up about concerns or mistakes, which either contributed to or led directly to the disaster.

Errors could be traced back to poor interaction. In none of the cases were they down to a lack of technical knowledge or insufficient flying ability."



Meanwhile, in local government...



Statutory intervention started in September 2022. Borrowing strategy failed when other LAs were advised not to lend to it. This created a sudden urgent need to secure government funding. As a result of this the nature and scope of the investments became clear. The increase in interest rates exacerbated the situation. Best Value Inspection report published 15 June 2023 identified serious and systemic failures across political and corporate leadership, poor decision making, inadequate scrutiny and culture of secrecy. £1.2bn debt, annual spend of £135m



Slough made many property investments in the Borough which proved unsustainable and a restructure put people in jobs which didn't match their professional experience or knowledge. No corporate ownership of internal audit. Senior Leaders were apparently unaware of outstanding audit recommendations. Some risks on strategic risk register had no 'owner'



Government announced intervention due to serious financial and governance issues 19 September 2023: Max Caller appointed commissioner. Birmingham City Council's s151 issued a s114 report caused by backdated equal pay liability (est. £760 million), large in-year budget deficit and failure to implement a new finance IT system. There are grave financial concerns.



Commissioners appointed in May 2023. The Council has 15 wholly owned companies and eight joint ventures ranging from property developments to investments designed to increase the number of guest houses in the Borough. Debts of £1.2bn, annual budget of £16m.

Statutory Duties



Worker Protection (Amendment of Equality Act 2010) Act 2023

Sexual harassment

A harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

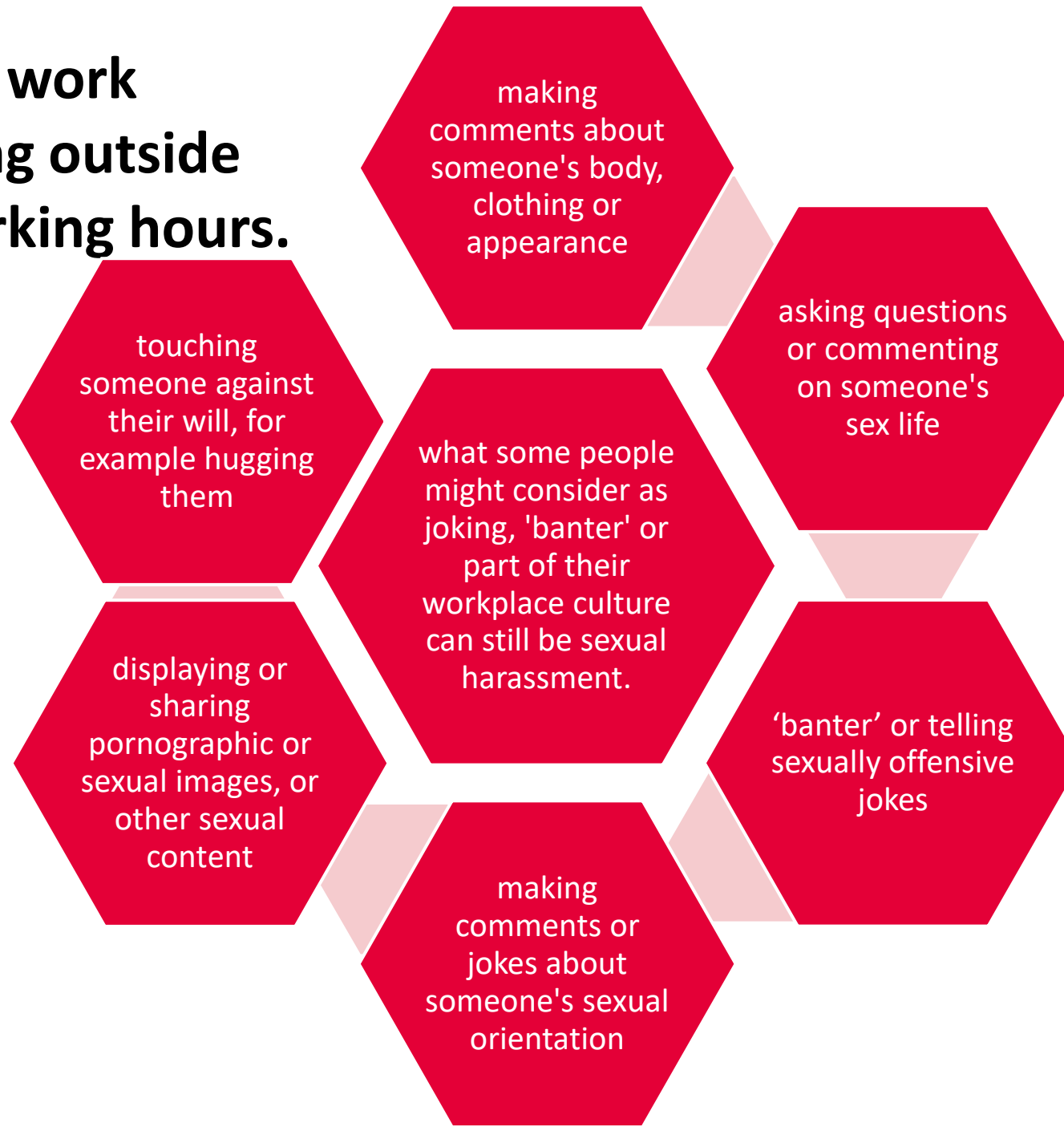
(b) the conduct has the **purpose or effect** of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

- ALL employers – not just public sector - must take **[ALL]** reasonable steps to prevent sexual harassment.
- Compensation can be increased if an employment tribunal finds that sexual harassment has occurred anywhere in ECC **and that** ECC has not taken reasonable steps to prevent sexual harassment.
- The increase applies even if those steps wouldn't have prevented the harassment in question.

Conduct - in any work context, including outside the office or working hours.



- Touching
- Gestures
- Commenting
- Joking
- Threatening

What do Councillors need to do?

We have training for employees, but training for employees on its own will not count as [all]reasonable steps.

Everyone in ECC, officer or member, must do what they can to ensure that the culture is appropriate:

- **Don't behave that way yourself**
- **Call out bad behaviour if you see it**
 - Don't tolerate it from anyone
 - If you don't feel you can call it out report it as soon as possible to the Chief Executive (Nicole), the Monitoring Officer (Paul) or the Assistant Director, Democracy and Transparency (Joanna)

Public Sector Equality Duty

Section 149 Equality Act 2010

Applies to public authorities and those delivering public services.

It is not a duty to do specific things or achieve a specific outcome.

It is a duty to “have regard to” when making decisions.

The Duty does not permit any activity which would otherwise be illegal under the Equality Act 2010.

Three elements to the duty

- **Have due regard to the need to eliminate discrimination which is unlawful under the Equality Act 2010.**
 - Discrimination
 - Harassment
 - Victimisation
- **Have regard to the need to advance equality of opportunity between people who have a 'relevant protected characteristic' and persons who do not share it.**
 - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic (if those disadvantages are connected to that characteristic)
 - Take steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - Encourage persons who share a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low
- **Foster good relations between people who share a relevant protected characteristic and who do not share it**
 - Tackle prejudice and promote understanding

What are the 'relevant protected characteristics'?

age

disability

gender
reassignment

pregnancy
and maternity

race

religion or
belief

sex

sexual
orientation

In practice

- Many challenges to decisions of local authorities include PSED as a reason for challenge.
- R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin), the court said:
 - i) The public authority **decision maker must be aware** of the duty to have "due regard" to the relevant matters
 - ii) The duty must be fulfilled before and at the time when a particular policy is being considered
 - iii) The duty must be "**exercised in substance, with rigour, and with an open mind**". It is not a question of "**ticking boxes**". There is no duty to make express reference to the regard paid to the relevant duty, but reference to it and to the relevant criteria reduces the scope for argument;
 - iv) The duty is non-delegable - the decision maker must comply with the duty
 - v) The duty is a continuing one.
 - vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty.

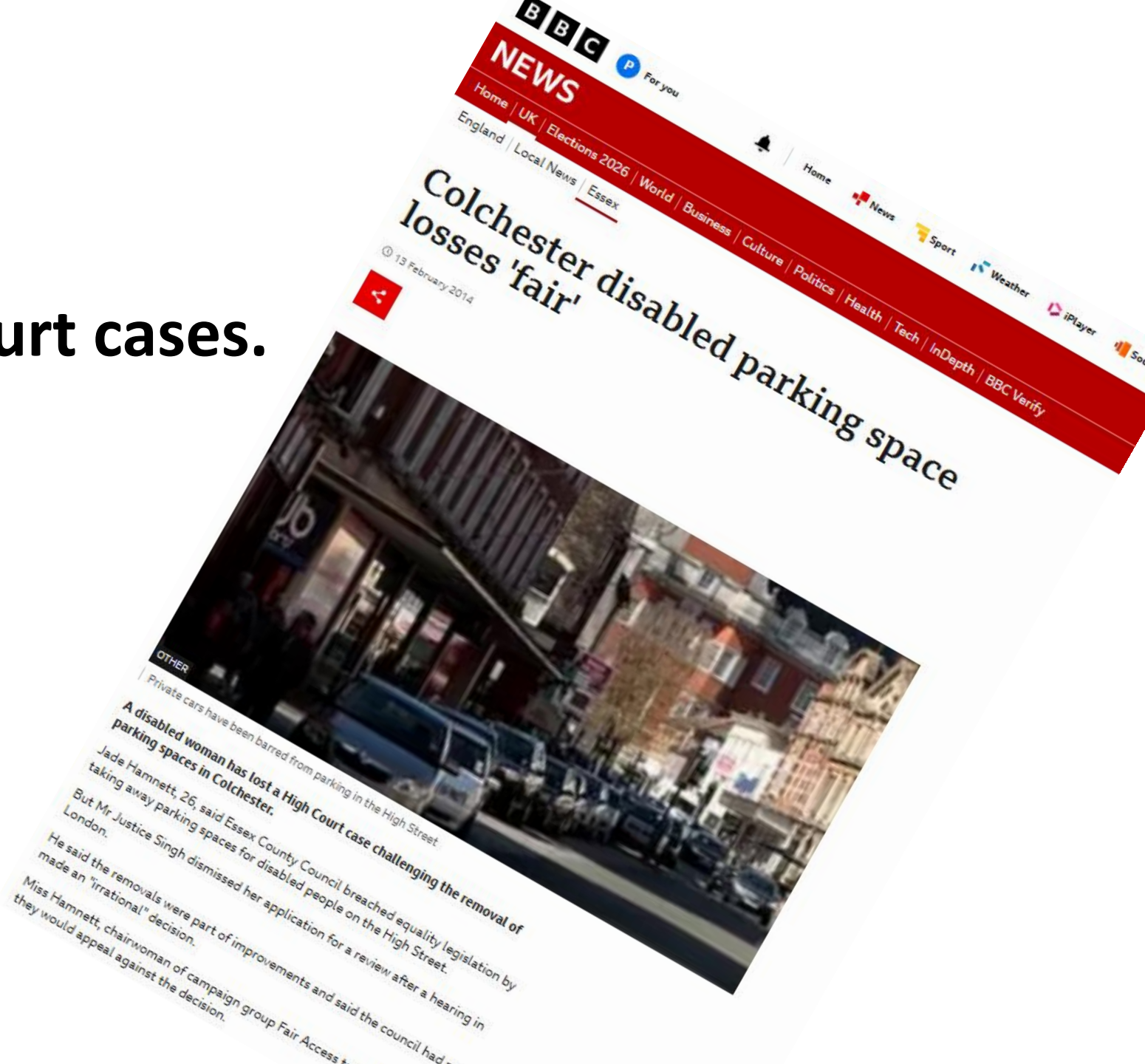
What does this mean in practice?

- **Gathercole v Suffolk County Council (2020)**
- **SCC granted planning permission for a new school in Lakenheath. Site was on the flight path for USAF jets. The planning application was accompanied by the clear statement that the design did not take into account the needs of students with disabilities. That was not picked up anywhere in the officer's report. Court said that 'it should have been, and there is nothing in the report or the subsequent decision to show that any regard was had to the PSED'.**
- **This was a breach of PSED. However in this case court decided it wouldn't have made any difference and refused to quash planning permission – this process still took two years and lots of legal fees.**

Essex

Regularly argued in court cases.

- Highways
- Social care
- Libraries



What about equality impact assessments?



There isn't and never has been any legal requirement to produce a document called an 'equality impact assessment'.



But courts view it as good practice to keep a record of consideration of Public Sector Equality Duty (PSED).



Equality Impact Assessments is a good way of doing that.



Currently at Essex County Council.

Most member decisions are presented to members with an assessment in an appendix. This is summarised in the report alongside a summary of the duty itself.



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