



Service Confidence (Policy & Procedure)

OFFICIAL

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Policy

Statement

Merseyside Police Force recognises that it is legally accountable and subject to public scrutiny in respect of its delivery of policing services. It also acknowledges that in order to maintain and enhance public confidence in the Force it must create an ethically robust, corruption resistant, organisation

This policy introduces an ethical framework for dealing with loss of confidence in individual members of staff. The Force will take positive action to protect its staff, members of the public and its assets from risk.

Aims

The main aims of this policy are to:

- a) Address loss of confidence by the Force in any particular individual/s when serious concerns arise as to their suitability to perform a specific role or duty.
- b) Protect the integrity of the organisation, individuals and operations

The policy is designed to ensure all police officers and police staff are fully aware of their respective and joint responsibilities regarding confidence issues. It is underpinned by procedures that detail the steps to be taken at all relevant stages.

Objectives

The primary objective is to provide a framework that helps the Force deal with loss of confidence issues. Associated objectives are to:

- a) Protect the Force from organised groups or individuals who would benefit in any way from corrupting its staff
- b) Protect all Force staff from being subjected to unnecessary or unwarranted pressures, from organised groups or individuals, to compromise their professionalism and integrity
- c) Protect the public from any potential reduction in efficiency of the Police service or any increase in non-legitimate activities of any organised groups or individuals.
- d) Establish an ethical framework for dealing with those situations where management action is necessary without overt criminal or misconduct proceedings and where the reason for the action is based on information or intelligence that raises serious concerns about an individual occupying a particular post or carrying out a particular role.
- e) Establish the need to apply fairness, objectivity and proportionality in the application of the procedure.

Application and Scope

This policy applies to all members of the wider police family within Merseyside Police Force. The Chief Officer lead for Professional Standards is the Deputy Chief Constable.

Outcome Evaluation

Outcomes should reflect specific objectives and be measured against these objectives on a routine basis. The Superintendent of the Anti-Corruption Unit will determine responsibilities and activities involved in measurement.

In broad terms the basic required outcome should be greater understanding of respective roles, responsibilities and procedures amongst officers and staff involved.

Procedure

Version History

30/05/2012	V 2.0 – Section on Notifiable Associations removed to form basis of separate policy/procedure document. Minor additional amendments made to reflect current organisation and process.
07/03/2016	<p>V 2.1 – Amended on review. References to “action plans” qualified by “where appropriate”. Paras 6.5 & 6.6 amended to reflect change of emphasis.</p> <p>References to ACC Personnel amended to “an officer of at least rank of ACC”.</p> <p>References to Head of Personnel removed apart from attendees at initial case conference.</p>
18/02/2019	V 2.2 – 3 year review. References to Area Commander replaced with Functional Lead. Not Protectively Marked replaced with Official. Latest versions of Law and Misconduct Regs updated.

1. Context

- 1.1 Whenever any member of staff comes into possession of any information or material that raises concerns about the integrity of any member of the Force, they are under a duty to report it.
- 1.2 The Anti Corruption Unit will be responsible for evaluating the information / material, and ensuring that it is correctly investigated. Where appropriate it will be notified to an officer of at least the rank of Assistant Chief Constable who may appoint a Senior Investigating Officer. The Assistant Chief Constable will review the investigation of the matter at regular intervals. Conventional criminal or disciplinary outcomes will be sought whenever appropriate. However, if at any stage of the investigation it becomes apparent that criminal or misconduct proceedings are not possible or appropriate then the Assistant Chief Constable will consider the invocation of this Service Confidence Procedure.
- 1.3 It must be emphasised that criminal or misconduct procedures will always remain the preferred course of action, and only when they prove to be unsuitable will this Service Confidence procedure be invoked.
- 1.4 Concerns about achieving a balance between the needs of Merseyside Police and the rights of the individual should be addressed by:
- (a) Adopting an open and transparent system within legal constraints;
 - (b) Allowing individuals to be represented and the adoption of a reviews process;
 - (c) Maintaining a clear position that the use of the procedure is about the protection of staff and Merseyside Police by management action and not misconduct procedures or sanction.
- 1.5 There will be occasions when verifiable confidential or source-sensitive material comes to the notice of investigators, which brings into question the suitability of a member of staff to continue to perform their current role or duties. When the circumstances do not warrant criminal or misconduct proceedings yet are such as to raise serious concerns that require immediate management action both for the protection of individuals and the Force, individuals will be considered for transfer to a less vulnerable post.
- 1.6 The test of whether there are 'Serious Concerns' about an individual's integrity will be based on an assessment of all the intelligence and evidence, including source sensitive material. The evidence must establish that it is more probable than not that the individual's integrity is in question. Due regard will be paid to the principles of fairness as outlined above. This test is to be applied at all stages of the procedure.
- 1.7 This procedure applies to all police officers and police staff, including Special Constables and those working voluntarily or under contract to Merseyside Police.
- 1.8 Merseyside Police acknowledges that this procedure may impinge upon aspects of the Human Rights Act 1998, in particular:
- Article 6 - Right to a fair trial.
 - Article 8 - Respect for private and family life.
 - Article 11 - Freedom of peaceful assembly and association.
 - Article 14 - Prohibition of discrimination.

1.9 Further legal basis for this procedure is provided by:

- Police (Conduct) Regulations 2004
- Police Regulations 2003
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Police Conduct Regulations 2012

The Service Confidence Procedure is not a trial.

1.10 The existence of the above articles does not prevent the imposition of lawful formalities, conditions, restrictions or penalties on the exercise of these rights by citizens, including police officers, special constables and police staff, which may be necessary for a number of reasons, in particular:

- For the prevention of crime or disorder,
- For the prevention of the disclosure of information received in confidence,
- For the protection of the reputation or rights of others.

1.11 Merseyside Police has a duty to ensure, so far as is possible, that all personnel comply with the provisions of the Data Protection Act 2018, particularly relating to their access to, and dissemination of, a wide variety of personal information and intelligence.

1.12 In the application of this procedure, Merseyside Police will not discriminate against any person on any grounds, including those of sex, race, colour, language, disability, religion, politics, opinion, national or social origin, minority association, property, birth or other status. This is as defined under Article 14 of the Human Rights Act 1998.

2. Definitions

2.1 Serious Concerns

- 2.1.1 It is not possible to provide a precise definition. Each set of circumstances must be judged on merit. As a guide, however, considerations could include:
- a) Whether the alleged action(s) of the individual concerned was / were undertaken knowingly or recklessly.
 - b) A risk assessment of the likelihood and impact of recurrence.
 - c) The damage to the credibility of the individual as a 'witness of truth' in Police/CPS Prosecutions, and the requirements for disclosure of such issues to prosecutors.
 - d) The nature of the current role or duties, and an assessment of potential risk to the public, colleagues or Police investigations or operations if the individual remains in post.
 - e) An assessment of risk caused by improper association with criminals or their close associates, and the potential for corruption.
 - f) Suspected dishonest or unethical conduct, or corruption.

2.2 Confidential Or Source Sensitive Information

- 2.2.1 This will be considered as information or intelligence obtained legitimately but which legislation prohibits use of other than for intelligence purposes, or where disclosure would compromise and put at risk investigations, investigative tactics or individuals.

3. Stages

3.1 Stage 1 - Referral

- 3.1.1 Where following Misconduct / Discipline proceedings, serious concerns are raised regarding the integrity of the individual in question, the Chair of the Panel or the Chair of the Staff Discipline meeting has a duty to make a report to the Head of the Anti Corruption Unit.
- 3.1.2 Where information or intelligence becomes available which raises serious concern that an individual's integrity is in question, the recipient has a duty to make a report to the Head of the Anti Corruption Unit.
- 3.1.3 The Head of the Anti-Corruption Unit will make a risk assessment based on all of the material, including source sensitive material, and will, where appropriate, recommend that an ethical interview be conducted.
- 3.1.4 In some circumstances it may not be appropriate for an ethical interview or there may be occasions where following an ethical interview it is deemed appropriate to proceed to Case Conference at Stage 2.

3.2 Stage 2 - Case Conference

- 3.2.1 The papers will be forwarded to an officer of at least the rank of Assistant Chief Constable who will review the recommendation for a case conference and decide whether to support or reject it.

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- 3.2.2 If the Assistant Chief Constable supports the recommendations, he or she will call a meeting which will involve all or some of the following, as appropriate.
- a) The Head of People Services
 - b) The Functional Lead of the individual concerned.
 - c) The Head of Anti Corruption Unit.
 - d) The Head of Professional Standards Department.
 - e) The Force Solicitor.
 - f) Any other personnel that the relevant ACC believes can give material assistance.
- 3.2.3 The meeting will be closed and confidential with the aim of a free and frank exchange of information and intelligence about the subject. Everyone invited will be expected to sign a confidentiality agreement (Appendix A). This meeting will decide whether to carry on with the procedure and if so to consider and recommend:
- a) What can be discussed beyond the closed meeting; (nothing will be disclosed which would frustrate any criminal or misconduct investigation, or the prevention or detection of crime; damage national security; breach any statute; compromise or endanger any operation or individual).
 - b) The detail of what protection measures should be put into place, such as 'action plans' where appropriate to address issues; or not to permit the subject to work on specific tasks, or redeployment. (In relation to police officers, such actions will be based on their conditions of service which dictate that they shall serve wherever they are ordered to serve);
 - c) If there are any vetting implications that should be brought to the attention of the Force Vetting Officer.
 - d) What can and cannot be disclosed to the individual and / or his or her representative.
 - e) Whether matter needs to be referred to next stage i.e. to Deputy Chief Constable.
- 3.2.4 Minutes will be kept of the conference and a full record of the decision-making processes maintained and kept on confidential file within the Anti Corruption Unit.
- 3.3 **Stage 3- Informing the Subject**
- 3.3.1 If the case conference has made a referral to the Deputy Chief Constable, which will include its recommendations; the Functional Lead will meet with the individual concerned to inform him or her of that referral. In accordance with normal practice, the individual will have the right to be accompanied at that meeting by a friend or a member of a Trade Union or Staff Association. Minutes will be maintained of the meeting and retained with the confidential file at the Anti Corruption Unit, Intelligence Cell. The meeting will address:
- a) The purpose of the meeting and the procedure being followed;
 - b) The reason for the decision to recommend to Deputy Chief Constable that the individual should be subject to the procedure;
 - c) The recommended action plan (where appropriate), redeployment or other intervention for the individual, to be implemented with immediate effect
 - d) The individual's right to make a written submission to the Deputy Chief Constable within 14 days of the meeting with the Functional Lead.
- 3.3.2 Wherever possible the subject will be informed of the reasons for the recommended action plan (where appropriate), redeployment or other intervention. However, nothing will be disclosed which might:

- a) Impede the apprehension or prosecution of offenders;
- b) Frustrate any investigation, or the prevention and detection of crime;
- c) Damage national security;
- d) Breach any legislation;
- e) Compromise or endanger any operation or individual.

3.3.3 When disclosure is not appropriate, the individual will be told that the action recommended is being effected on the basis of source sensitive information for the operational needs of Merseyside Police and that further disclosure is not appropriate at the present time for those reasons above.

3.4 **Stage 4 - Decision Making Process**

3.4.1 On receipt of a referral from a case conference, the Deputy Chief Constable shall consider:

- a) Whether there is sufficient evidence to support the recommendation.
- b) Any submission provided by the individual. (If none is available or the individual requests more time to prepare, this will not preclude the Deputy Chief Constable from making a decision to implement the procedure and recommendations forthwith);
- c) Whether the action plan (if appropriate), redeployment or other intervention recommended is necessary, proportionate and non-discriminatory.

3.4.2 The Deputy Chief Constable will then decide whether to implement the recommendations and will maintain a record of his or her decision, which will form part of the confidential file held at Anti Corruption Unit, Intelligence Cell.

3.4.3 In all cases the individual will subsequently be notified by the Functional Lead of the Deputy Chief Constable's decision.

4. **Appeal Process**

4.1 An individual can appeal against a decision made under the procedure. The application shall be in writing and made to the Chief Constable within 14 days of the individual being informed of the decision of the Deputy Chief Constable. The application must give the reasons and grounds for the appeal request.

4.2 The Chief Constable will appoint a Review Officer of the rank of Superintendent or above or equivalent Police staff to review the decision taking into account the material in the application. The Review Officer will have appropriate security clearance.

4.3 The review process will:

- a) Test the integrity of the process
- b) Test the strength and quality of the information and or intelligence on which the decision was based
- c) Ensure that the decision is proportionate, necessary and non-discriminatory
- d) Consider other options, if appropriate

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- 4.4. The review process will be completed as soon as practicable and the Functional Lead will notify the individual of the result in person.
- 4.5. All reasonable steps should be taken to resolve appeals and the individual will be notified of the result within 21 days. The Chief Constable should consider whether the decision to subject an individual to a SCP was necessary, proportionate and non-discriminatory. The decision of the Chief Constable will be final.
- 4.6 The Merseyside Police grievance procedure cannot be used to appeal against decisions made under this procedure.

5. **Records and briefings**

- 5.1 The Head of Anti Corruption Unit will retain supporting documentation and other material at each stage of the implementation of this procedure.
- 5.2 If the decision involves transfer to a different area of command, the Head of the Anti Corruption Unit will be responsible for ensuring that the receiving Functional Lead receives an appropriate briefing. A briefing paper will form part of the individual's personal file.

6. **Monitoring**

- 6.1 The Functional Lead will be responsible for any training or development issues resulting from use of the procedure and will create an action plan, of appropriate, for the individual aiming to regain the confidence of the Organisation. Any welfare issues that may arise from the process must also be considered.
- 6.2 If there are any prohibitions on an individual's operational capacity, for example, not to work on certain issues, access certain material or handle covert human intelligence sources, then the Functional Lead will ensure that the necessary procedures are in place to ensure that, should the Functional Lead be replaced, the procedure has resilience and the subject is not left unmonitored.
- 6.3 If the individual is subsequently redeployed or transferred to another place of duty, the Functional Lead will ensure that any restrictions on the subject are clearly identified to the new Functional Lead by confidential memo. A copy of this memo should be forwarded to the Anti Corruption Unit for retention.
- 6.4 Details of any outstanding prosecutions for which the individual has provided a statement of evidence will be obtained by the Functional Lead and reviewed by a nominated officer. This officer will consider disclosure to the CPS Unit Head or Special Casework lawyer, in accordance with Chapter 18 CPS Disclosure Manual 2005. The assistance of the Head of the Anti Corruption Unit should be sought on this issue. In cases where the revelation to the CPS is deemed necessary the individual will be provided with a form of words agreed by the Head of A.C.U and the CPS for inclusion on the form MG 6b. This obligation will be effective until the individual has been informed that it is no longer necessary.
- 6.5 Individuals subject to the procedure will be the subject of ongoing monitoring by a supervisor (Monitoring Officer) nominated by the Area or Departmental Commander.

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- Performance should be monitored at least every six months. Any further development needs should be identified and addressed.
- 6.6 If the Monitoring Officer believes that there has been sufficient improvement in performance to warrant a review of the process then the Functional Lead should notify the Head of the Anti-Corruption Unit in writing. On receipt of the notification, the Head of the Anti-Corruption Unit will present the case papers, together with any further relevant information and intelligence, to an officer of at least the rank of Assistant Chief Constable who will reconvene the case conference to consider:
- a) Whether the risk of recurrence has reduced sufficiently.
 - b) The basis of the original decision and its ongoing validity.
 - c) The potential risk to colleagues, the public, or Police operations should the Service Confidence procedure be terminated.
 - d) Alternative options as appropriate.
 - e) Issues surrounding any requirement to disclose the process to the Crown Prosecution Service.
- 6.7 The case conference will again notify the Deputy Chief Constable of their recommendations and the individual will be personally informed of the decision of the Deputy Chief Constable.
- 6.8 If the decision is to terminate the procedure, then the Functional Lead should arrange for a review of the individual's position taking into account:
- a) Any learning needs of the individual as a result of being absent from the normal place of duty or identified as a consequence of the procedure.
 - b) Consideration of issues surrounding:
 - Any organisational needs;
 - Reducing risk to staff of victimisation of any person;
 - Any human rights issues or any other relevant factor.
- 6.9 The individual concerned may remain in the post to which they were transferred under the Service Confidence procedure, if appropriate, or a programme of induction should be agreed. Subject to the issues within the managerial review, consideration should be given to returning the individual to the same, or a similar, role or duties, which the individual was performing prior to the Service Confidence procedure being invoked.
- 6.10 Consultation will take place with the individual subject of reinstatement, and their Staff Association representative, if required. Any disagreements will be referred to the Deputy Chief Constable for decision.

7. Responsibilities

- 7.1 The Responsibilities of the various parties involved in the delivery and operation of paragraphs 1 to 6.7 of this policy this policy are outlined below:
- a) There is a responsibility on all members of staff to report any information or intelligence that raises concern over the integrity of a member of staff.
 - b) The Head of Anti Corruption Unit will be responsible for recommending case conferences, maintaining confidential records in relation to the procedure and keeping an overview of all ongoing cases.

- c) The relevant Assistant Chief Constable will convene case conferences.
- d) Functional Leads will attend case conferences, interview individuals concerned, implement training / development and monitoring.
- e) Force Solicitor will attend case conferences and will ensure compliance with Human Rights and Employment legislation.
- f) Deputy Chief Constable considers the recommendations of case conferences and the outcomes of interviews with individuals concerned; and decides on measures to be implemented.
- g) Chief Constable will provide the final level of appeal against the decision.
- h) Review Officer, on behalf of the Chief Constable, will conduct any appeal against the decision of the Deputy Chief Constable.
- i) Monitoring Officer will have responsibility for 'hands on' management of action plans (where appropriate) and agreeing time scales for monitoring and review of performance, and for supervision of health and safety and welfare issues. Will be of the rank of Inspector/Police staff equivalent, or at least one rank higher than the individual subject of this procedure, whichever is the higher.

Appendix A – Ethical Interview Procedure

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Procedure

1. Introduction

- 1.1 The Ethical Interview procedure provides a framework for dealing with unresolved integrity issues in relation to individual members of staff, which do not constitute misconduct or criminal proceedings. If appropriate, it may be considered together with the Service Confidence procedure.
- 1.2 It aims to introduce clear direction and guidance to address unresolved allegations or intelligence relating to individual members of staff, when all other investigative methods (with the intention of proving or disproving the allegation) have failed or have been rejected as being inappropriate.
- 1.3 The objectives of an ethical interview are to:
 - seek a truthful account of an allegation through informal and confidential means
 - seek an appropriate resolution according to the needs of the individual and the organisation
 - make a positive approach towards finalising unresolved integrity investigations
 - provide the subject of an unresolved investigation the opportunity to offer an explanation or to make comment
 - identify and action any areas of individual or organisational learning

2. Guidance

General Principles

- 2.1 Merseyside Police, in appropriate circumstances, will utilise an ethical interview to seek a truthful account and an agreed resolution. This positive and open approach will provide an opportunity to deal with unresolved conduct or integrity issues concerning individual members of staff, (where misconduct or criminal proceedings are not appropriate); provide protection from potential risks to staff and Merseyside Police assets; and provide any necessary support to members of staff.

2.2 Initiation of Proceedings

Whenever information or material becomes available which raises concern about the conduct or integrity of a member of Merseyside Police, the recipient is under a duty to report details to the Professional Standards Department, either directly or by means of confidential reporting mechanisms, to allow an assessment to be conducted and, where appropriate, the commencement of an investigation.

- 2.3 The Head of the Professional Standards Department has oversight of all such investigations. If it becomes clear that neither criminal or misconduct proceedings will be possible or appropriate, but concerns remain about the conduct or integrity of a member

of staff, the Head of the Professional Standards Department will determine whether it is necessary to proceed by way of an ethical interview (or alternatively, where appropriate, the Service Confidence procedure - refer to separate Force Procedure for guidance)

- 2.4 Each case will be considered on its own merits when deciding if an ethical interview would be an appropriate course of action.

Conduct of the interview

- 2.5 It is important that staff selected to conduct ethical interviews not only have a detailed knowledge of the investigation but also the requisite skills and experience. It is for this reason that investigators from within the Professional Standards Department will normally conduct such interviews.
- 2.6 Where this is deemed inappropriate, the Head of the Professional Standards Department will consult with the relevant local policing commander or departmental head to determine who will conduct the interview.
- 2.7 An ethical interview will be conducted under the following conditions:
- The timing of the interview will take account, wherever possible, of the staff member's personal and operational commitments.
 - The subject will be given the opportunity to be accompanied by a Staff Association/Union representative, a nominated supervisor, line manager or other member of Merseyside Police.
 - At the commencement of the interview, a warning will be given to the subject regarding possible consequences resulting from the admission of criminal offences or misconduct **outside** of the allegation being investigated. The purpose of this is to encourage the subject to give a truthful account of the matter concerned without the fear of facing disciplinary proceedings. Unless there is an admission of a criminal offence or misconduct that falls outside of the allegation investigated, information obtained from an ethical interview cannot be used in any criminal or disciplinary proceedings.
 - The interview will be recorded using a digital recording device. However, it will only be recorded with the consent of the interviewee. The purpose of recording the interview is to give the staff member reassurance that there will be a fair and accurate record of what has been said. When an interview is recorded, then the staff member will be offered a digital copy of that interview.
 - Following an ethical interview, a summary will be prepared of what has been said. The interviewee will be given the opportunity to comment on its accuracy.
- 2.8.0 Information provided by the member of staff concerned may be used to form the basis of an action or development plan to prevent the matter from being repeated or to minimise future risk to either the individual or organisation. Such a plan may include informal advice or training. This will **not** be a disciplinary outcome and will not be recorded as such.
- 2.9 A copy of any such action/development plan should be linked to the officer's current appraisal and copied to the personal file, but such entries, to reflect the confidential nature of the process, should not indicate that the staff member has been subject of the ethical interview procedure. The content of any action/development plan must be agreed by the Head of the Professional Standards Department **prior** to inclusion within the appraisal or personal file.

- 2.10 At the conclusion of the interview, the interviewing officer will ensure that the subject is supported and the nominated supervisor deals with any welfare issues.

Administration

- 2.11 At the conclusion of the process, the investigating officer will ensure that any open file/record within the Professional Standards Department is updated accordingly. Such records will be stored securely and confidentially within the Professional Standards Department.

Appendix B – Introduction to be read at start of an Ethical Interview

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“Thank you for agreeing to be interviewed. Please can you confirm that you are happy for this interview to be recorded? The purpose of doing so is so that there is a clear and accurate record of what is said. A digital copy can be made available to you in the future.

Yes/No.

You are not under arrest and this is not a suspect interview as defined by the Police and Criminal Evidence Act. Therefore, you are free to leave at any time and you are not obliged to answer any questions that are put to you.

You are not under caution.

The aim of today is to explore and clarify issues that have been identified as raising concern as to your potential breach of the standards of professional behaviour as a member of Merseyside Police. What you say today may be used as the basis for an action plan if appropriate, but nothing more.

The purpose of the interview is to make you aware of the allegation and to offer you the opportunity to give your account of what has happened.

If you do disclose any conduct which would amount to a criminal offence or a breach of the Standards of Professional Behaviour, then this interview may be terminated in order to allow for further investigation of what you have said. The content of this interview could be used in future criminal or misconduct proceedings if that became appropriate.

Should new information come to the attention of the organisation in the future, then the content of this interview may also be used in any further investigation.

Please can you give your full name, including collar number

The time and date is

I am

Other persons present

Conclusion of the interview.

Summary.

Do you agree with that summary?

Is there anything else that you would like to say?.

The time is and this interview is concluded.

**Appendix C – Confidentiality Agreement.
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**SERVICE CONFIDENCE PROCEDURE CASE CONFERENCE
 CONFIDENTIALITY AGREEMENT**

SUBJECT:

DATE & TIME:.....

Information discussed within the case conference or contained within any documents related to the case conference is to be held in the strictest of confidence and must not be divulged to other parties except in accordance with any action or request arising from the case conference.

CHAIR OF MEETING	SIGNATURE
HEAD OF ACU (PRINT NAME)	SIGNATURE
HEAD OF PSD (PRINT NAME)	SIGNATURE
FUNCTIONAL LEAD (PRINT NAME)	SIGNATURE
HEAD OF PEOPLE SERVICES (PRINT NAME)	SIGNATURE
FORCE SOLICITOR (PRINT NAME)	SIGNATURE

OTHERS PRESENT: Specify role

ROLE	PRINT NAME	SIGNATURE

This confidentiality agreement is to be retained with all of the case conference papers by the Head of the Anti Corruption Unit.