



HUMAN RESOURCES

DISCIPLINARY POLICY AND PROCEDURE

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HUMAN RESOURCES

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1. [POLICY STATEMENT](#)

1.1 [Aims of the Policy](#)

1.2 [Objectives of the Policy](#)

2. [INTRODUCTION](#)

3. [SCOPE](#)

4. [LEGAL REQUIREMENTS](#)

5. [RESPONSIBILITIES](#)

5.1 [Corporate Responsibilities](#)

5.2 [Departmental Managers](#)

5.3 [People and Organisational Development Directorate](#)

5.4 [Duties of Employees](#)

5.5 [Duties of Trade Unions](#)

6. [POLICY DETAIL](#)

6.1 [Representation](#)

6.2 [Resolving Minor Disciplinary Issues Informally](#)

6.3 [Suspension](#)

6.4 [Disciplinary Investigations](#)

6.5 [Attending a Disciplinary Hearing](#)

6.6 [Procedure at Disciplinary Hearings](#)

6.7 [Disciplinary Outcomes](#)

6.8 [Gross Misconduct](#)

6.9 [Appeal Against Disciplinary Action](#)

6.10 [Confidentiality](#)

6.11 [Grievance and Discipline](#)

7. [MONITORING AND REVIEW](#)

7.1 [Monitoring and Record Keeping](#)

7.2 [Privacy Statement](#)

7.3 [Consultation](#)

7.4 [Policy Review](#)

8. [EQUALITY](#)

9. [ASSOCIATED DOCUMENTS / REFERENCES](#)

1. POLICY STATEMENT

1.1 Aims of the Policy

- 1.1.1 The aim of this Disciplinary Policy and its associated procedure is to set out the framework within which managers can work with employees to maintain satisfactory standards with regard to the fulfilment of their employment contract and their conduct, as outlined by Scottish Fire and Rescue Service (SFRS) policies, including the [Code of Conduct](#), and to encourage improvement where necessary.
- 1.1.2 This Policy will ensure that any disciplinary matter is dealt with fairly and consistently and on the basis of natural justice by ensuring that steps are taken to establish the facts and to give employees the opportunity to respond before considering any formal action.
- 1.1.3 All managers who have responsibility for Disciplinary matters must attend the SFRS mandatory training course. For uniformed personnel, this will include the roles of Watch Commander and above and for Support Staff, Grade 5 and above, in line with the [Disciplinary Investigations Guidance Note](#). Where a manager has not yet completed the training course, they should be supported by a manager or refer the matter on to a manager who has completed the training.

1.2 Objectives of the Policy

- 1.2.1 As an employer, the Scottish Fire and Rescue Service (SFRS) has a duty to act fairly. This Policy is intended to encourage corrective behaviour/actions and should not be used as a punitive measure. This Policy will be applied in a fair, transparent and consistent manner.

1.2.2 This Disciplinary Policy and procedure aims to:

- Provide a clear and transparent framework for dealing with conduct related difficulties that may arise in the workplace;
- In conjunction with [SFRS Code of Conduct](#), ensure that all employees understand what is expected of them in terms of conduct within and outwith the workplace and the consequences of failing to meet these standards;
- Enable the Service and the employee to agree suitable goals and timescales for improvement in the employee's conduct;
- Ensure that everyone is treated equally and consistently for similar circumstances and, above all, ensure that all employees are treated fairly and reasonably.

2. INTRODUCTION

2.1 This document sets out the SFRS Policy for Discipline and contains guidance on how to deal with misconduct. It does not apply to cases involving approved absence, proposed redundancies or capability performance. In those cases, reference should be made to the appropriate SFRS Policy or Procedure.

2.2 By implementing this Policy, the SFRS will:

- Ensure that any Disciplinary matter is dealt with fairly and consistently.

This Policy outlines:

- The responsibilities of identified staff, to ensure the effective management of Disciplinary matters;
- The SFRS process to follow in the event of any Disciplinary matters arising.

3. SCOPE

- 3.1 This Policy and associated procedure applies to all SFRS employees. It does not apply to agency workers or self-employed contractors.
- 3.2 The content of this Policy is aligned with Section 6, Part B – Conduct, Capability and Discipline as set out in the Grey Book (NJC for Local Authority Fire and Rescue Services, 6th edition, 2004) (updated 2009) and Gold Book (NJC for Brigade managers, 5th edition). In accordance with those principles, specific additional guidance is available from HROD.

4. LEGAL REQUIREMENTS

- 4.1 In accordance with the Protection of Vulnerable Groups (Scotland) Act 2007, in some circumstances, SFRS has a duty to ensure that a referral is made to Disclosure Scotland regarding a disciplinary outcome. Further detail can be found in [Section 6.7.5](#).
- 4.2 The Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures outlines the requirement for written notification of disciplinary matters, conducting meetings and allowing employees to appeal. The requirement for reasonable behaviour is also emphasised throughout the ACAS Code.
- 4.3 As a public body, there are implications for the SFRS under the Human Rights Act 1998 that require to be observed. Examples include the right to privacy, confidentiality and the right to information about the case.
- 4.4 Where it is alleged that a criminal offence has been committed, SFRS may inform Police Scotland. Likewise, where SFRS are notified that an employee has committed a criminal offence, this may result in a disciplinary investigation being conducted, should the allegation breach SFRS policy.

5. RESPONSIBILITIES (who is responsible for compliance)

5.1 Corporate Responsibilities

Each Directorate/Area/Function is responsible for ensuring that they adhere to the content of this Policy and apply it in a fair and consistent manner.

5.2 Departmental Managers

5.2.1 Departmental Managers are responsible for providing support to Heads of Function (HoFs) to ensure the implementation of this Policy; specifically, they are responsible for:

- Ensuring they comply with this Policy within their areas/departments;
- Ensuring an appropriate HR Adviser is involved at the earliest opportunity regardless of the seriousness of the case.

5.3 People and Organisational Development Directorate

5.3.1 People and Organisational Development (POD) is responsible for:

- Providing advice and guidance regarding this Policy and other relevant policies;
- Providing appropriate training where necessary.

5.4 Duties of Employees

5.4.1 Employees are responsible for:

- Cooperating with managers to ensure the effective implementation of this Policy;
- Maintaining satisfactory standards with regard to the fulfilment of their employment contract and their conduct.

5.5 Duties of Trade Unions

5.5.1 Recognised Trade Union representatives are responsible for:

- Co-operating with the SFRS to ensure the procedures outlined within this Policy are effectively implemented;
- Consulting with managers and HROD on Disciplinary related issues; and
- Encouraging staff to co-operate and comply with this Policy.

6. POLICY DETAIL

6.1 Representation

6.1.1 Employees have a statutory right to be accompanied to any disciplinary or appeal hearing under the formal part of this procedure. While there is no statutory right to be accompanied at an investigation interview, employees can also be accompanied at these. The companion may be either a representative from an SFRS recognised trade union or a work colleague from within the Service. It is the responsibility of the employee to make the necessary arrangements for this. The employee should advise the Chair of the Hearing, in advance of any investigation and disciplinary hearing, who their chosen companion is.

6.1.2 An employee may be asked to choose another representative or work colleague, if the choice of companion is deemed unreasonable, for example:

- If, in the opinion of the Chair of the hearing, the companion may have a conflict of interest or may prejudice the hearing;
- If the companion is unavailable at the time a hearing is scheduled and will not be available for more than seven days afterwards.

6.1.3 The Chair of the hearing has the discretion to permit an employee to be accompanied by someone other than a work colleague or trade union representative in certain circumstances. For example, if this assists the employee in overcoming a disability, where the employee has difficulty understanding English or where, due to the sensitive nature of a case, the most appropriate support is provided from someone outwith SFRS. In these circumstances, guidance should be taken from HROD. Legal representation is not permitted at investigation interviews, disciplinary or appeal hearings.

6.1.4 If the employee's preferred trade union representative or work colleague is unable to attend the hearing, the Chair of the Hearing must be informed promptly of this. Consideration may be given to delaying the hearing for up to a maximum of seven days to allow the employee time to arrange alternative representation.

6.1.5 Further information on Time Off for Trade Union Duties for Disciplinary Investigations/Hearings can be found in the [Time Off for Trade Union Duties Policy](#).

6.2 Resolving Minor Disciplinary Issues Informally

6.2.1 If there are any concerns regarding minor misconduct, the line manager should discuss them promptly and informally with the employee, ensuring that any expected outcomes are made clear to the employee and, where relevant, the process by which they will be achieved. The employee does not have a statutory right to be accompanied at this meeting.

6.2.2 The purpose of this informal approach is to enable minor problems to be highlighted and dealt with quickly and to encourage employees to correct their behaviour.

6.2.3 The line manager may take a note of the discussions, actions and any timescales for improvement and confirm the outcome of these discussions to the employee in writing. A copy of this should be kept in the employee's file.

Where reference is made within the note to the length of time a copy of it shall remain in the employee's file, line managers should ensure it is removed once this period has expired. Normally, this should be no longer than six months.

- 6.2.4 It is important that any informal action does not turn into formal disciplinary action (i.e. issuing of disciplinary outcomes), as this may unintentionally deny the employee certain rights. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.

6.3 Suspension

- 6.3.1 In some circumstances, an employee may be suspended from work as a precautionary measure while an investigation takes place. The suspension will be for no longer than is necessary to investigate the allegations or prepare for a disciplinary hearing where appropriate and the arrangements will be confirmed to the employee in writing. This should include the method and frequency of communication that will be used, welfare support and the period of suspension should be reviewed on a regular basis. Whilst suspended, the employee should not visit any SFRS premises or use any Service equipment (e.g. ICT equipment), unless authorised by their line manager to do so. With Line Manager agreement, an employee will be able to attend a meeting with their Trade Union representative on SFRS premises during a period of suspension.
- 6.3.2 Suspension of this kind is not disciplinary action and does not imply that any decision has already been made regarding the allegations and does not determine any guilt or fault. There will be no loss of pay or benefits during any period of suspension and this will be confirmed in writing. For employees on the Retained Duty System, this will be calculated on the basis of their retained payments averaged over a 12-week period.

6.3.3 Suspension can only be considered by an Area Commander / Head of Function or Support Staff equivalent, and above. The HR Adviser should be informed and consulted that suspension is being considered. The Head of POD should also be notified before any decision to suspend is communicated with the employee.

6.4 Disciplinary Investigations

6.4.1 The purpose of the investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The investigation should be completed as soon as practicable, with a disciplinary hearing concluded within six weeks of the start of the investigation, if it is deemed there is a case to answer. If this is unachievable, the employee should be informed of the reasons for this and the likely timescale for completion. The duration and extent of investigation required will depend on the nature and complexity of the allegations. It will involve interviewing the employee against whom an allegation has been made, as well as any witnesses and gathering any relevant documentation to ensure the facts are fully established.

6.4.2 Line Managers who identify that an investigation is required may, dependent on the level within the Service and the nature of the case, carry out the investigation. The Investigation Officer should be independent and suitably trained to determine the scope of the investigation and undertake it in accordance with relevant guidance. If this is not appropriate, management will liaise with their HR Adviser to identify an appropriate investigator.

6.4.3 Investigation interviews are solely for the purpose of establishing the facts and no decision on disciplinary outcomes will be taken until a disciplinary hearing has been held.

6.4.4 The employee will be advised in writing of the reason for the investigation interview and will be given reasonable notice to attend. The employee will

have the right to be accompanied at the investigation interview. On conclusion of the investigation, the investigating officer will compile a report to include all information gathered relevant to the allegation and recommend whether a disciplinary hearing should be convened.

- 6.4.5 If at the start of, or during the investigation an act or potential act of fraud is identified the Director of Finance and Contractual Services must be informed, in line with the [SFRS Anti-Fraud Policy Statement](#). In liaison with the Director of People and Organisational Development, a decision will be made on whether Police Scotland should be informed.

6.5 Attending a Disciplinary Hearing

- 6.5.1 In advance of any disciplinary hearing, the Chair of the hearing will write to the employee. This letter will contain sufficient information for the employee to fully understand the allegation against them. If the employee has a disability or if English is not their first language, the Chair of the hearing should ensure that the content of the letter is provided to them in an appropriate format. The letter should also invite the employee to a disciplinary hearing to discuss the allegation and inform the employee of their right to be accompanied.
- 6.5.2 The employee should be provided with all documents pertaining to the investigation, at least seven days in advance of the disciplinary hearing.
- 6.5.3 The employee should be advised in writing of the date and location for the hearing. Employees will be given a minimum of seven days' notice to attend a discipline hearing.
- 6.5.4 SFRS will ensure that any meeting is physically accessible for the employee and the employee's representative (e.g. providing wheelchair access).
- 6.5.5 Depending on the circumstances of the case, an investigation interview, disciplinary or appeal hearing can be conducted by a video meeting. This

would only be considered in exceptional circumstances, on a case by case basis and confirmed to the employee prior to the meeting taking place.

6.6 Procedure at Disciplinary Hearings

- 6.6.1 If the employee or their representative cannot attend the disciplinary hearing, then they should notify the Chair of this in good time. Reasonable arrangements will be made to reschedule. The employee should make every effort to attend the hearing, as persistent failure to attend may be treated as misconduct in itself. If the employee fails to attend without good reason or is persistently unable to do so (for example for health reasons), the hearing may proceed in the employee's absence and the Chair of the Hearing will take a decision based on the available evidence.
- 6.6.2 The Hearing will be chaired by the appropriate level of manager and an HR Adviser will be present. The Investigating Officer will normally be asked to attend and the employee would be notified of this in advance.
- 6.6.3 At the disciplinary hearing, the representative may make a statement on the employee's behalf, if the employee wishes them to do so. The employee will be asked to respond to any questions asked by the Chair of the Hearing.
- 6.6.4 Witnesses may be asked to attend the hearing in order to clarify points or provide evidence in relation to the allegation(s). Witnesses may be called by both the employee and management. The Chair of the Hearing will provide the presenting manager, the employee (and/or their representative) and the disciplinary panel an opportunity to ask any questions of a witness in order to clarify their evidence. Both parties should give a minimum of five days' notice to advise the Chair of the Hearing of the witnesses they intend to call. Where an employee intends to call a witness/witnesses, it is the responsibility of the employee to make the necessary arrangements for this.
- 6.6.5 The employee will be informed of any decision in writing within seven days of the Hearing. Details of the outcomes, the reasons for these outcomes, the

timescale required for any improvement and information on the right to appeal, where applicable, will be contained within the letter.

6.7 Disciplinary Outcomes

6.7.1 No Case to Answer

Where the Chair of the Hearing determines that there is no case to answer, the employee will be advised of this in writing and there will be no further reference to the investigation held on the employee's personal file.

6.7.2 Informal Action

In cases where allegations against an employee have been substantiated but there are mitigating circumstances that might be linked to a separate issue, e.g. a training need, the Chair of the Hearing may decide that, rather than issuing a formal disciplinary sanction, it may be more appropriate to take informal action. The employee will be informed of the required improvements, the nature of the informal action and the consequences of any repeated instances of misconduct in writing. There is no right of appeal against informal action and accordingly, it does not form part of the employee's disciplinary record.

6.7.3 First Formal Stage (First Written Warning)

This stage deals with cases of unsatisfactory conduct. Where the Chair of the Hearing is satisfied that the allegations against the employee have been substantiated, they will advise the employee and issue a first written warning.

A first written warning must provide an explanation for this sanction and the employee should also be informed of any required improvements and the consequences of failing to achieve this.

The employee should be advised of their right of appeal. A first written warning should be disregarded for disciplinary purposes after a period of six months.

6.7.4 Second Formal Stage (Final Written Warning)

Where there is a continued failure to improve or change conduct or behaviour in the timescale set at the first formal stage or where the offence is sufficiently serious to warrant moving directly to this stage, the sanction may be no greater than a final written warning.

A final written warning must give details and an explanation of the decision. It should inform the employee that failure to improve or modify behaviour may lead to dismissal or to some other sanction and advise them of their right of appeal.

A final written warning should be disregarded for disciplinary purposes after 18 months.

6.7.5 Third Formal Stage (Dismissal or Action short of Dismissal)

This stage deals with continued unsatisfactory performance or conduct or serious misconduct, which has not been resolved at Stage 2, or matters of gross misconduct which could justify summary dismissal.

Alternatively, the Chair of the Hearing has the discretion to issue a sanction less than dismissal. These are:

- a. A final written warning;
- b. Demotion either within role or no more than one role;
- c. Disciplinary transfer which should involve no loss of remuneration and, unless the employee agrees otherwise, should be within the same duty system. However, this will also be dependent on the employee's suitability for available roles;
- d. Loss of pay up to a maximum of 13 days.

The Chair may decide to issue more than one of the above outcomes. In the case of summary dismissal related to gross misconduct, the dismissal will be without notice, immediately following the hearing.

In all other cases of dismissal, contractual notice will be given following the hearing and every effort will be made to hear an appeal within this notice period.

Any sanction within the third formal stage can only be given by an Area Commander, Head of Function or above.

In some circumstances, SFRS must, in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007, make a referral to Disclosure Scotland regarding a disciplinary outcome. This is required where harmful behaviour has been identified and which may make the individual unsuitable to work with children and/or protected adults. By law, employers must report harmful behaviour, even if it takes place outside of work, or if the employer only finds out about it after an employee or volunteer has left. Guidance on behaviours considered relevant for referral is available from Disclosure Scotland: <https://www.mygov.scot/pvg-referrals/>

In such cases, SFRS must make a referral to Disclosure Scotland explaining the circumstances. The referral must be submitted as soon as possible and no later than three months after the disciplinary outcome. This is only required if the harmful behaviour meant that the person involved:

- Was dismissed as a result;
- Would have been dismissed but resigned from the Service prior to dismissal taking place;
- Was transferred permanently away from work with children or protected adults.

In cases where harmful behaviour is identified and any of the above occurs, further guidance must be sought from an HR Adviser regarding a referral to Disclosure Scotland.

6.8 Gross Misconduct

6.8.1 Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and thus potentially liable for summary dismissal. It is still important to establish the facts and follow the process outlined above prior to taking any action. Examples of gross misconduct might include:

- Theft or fraud;
- Physical violence or bullying;
- Deliberate or serious damage to property;
- Serious misuse of the Service property or name;
- Deliberately accessing pornographic, offensive or obscene material;
- Unlawful discrimination or harassment;
- Bringing the Service into serious disrepute;
- Serious incapacity at work through misuse of alcohol or illegal drugs;
- Causing loss, damage or injury through serious negligence;
- A serious breach of health and safety rules;
- A serious breach of confidence.

6.9 Appeal Against Disciplinary Action

6.9.1 The employee has the right to appeal any disciplinary action taken against them.

Appeals should be in writing within seven days of receipt of the outcome.

6.9.2 There are two types of appeal:

- The first type is an appeal against a disciplinary sanction, short of dismissal and shall be heard by a higher level of manager than that which chaired the disciplinary hearing;
- The second type is an appeal against a dismissal. Any appeal against a dismissal shall be heard by a panel chaired by a member of the Strategic Leadership Team (SLT), supported by member of SLT, and a Board member of the Staff Governance Committee. An HROD Manager will be in attendance to provide professional advice to the panel;
- Appeals against a dismissal involving a member of SLT shall be heard by a special committee, comprising members of the Staff Governance Committee or a designated independent panel. Further guidance in this regard will be provided by an HROD Manager.

6.9.3 Where an employee appeals against disciplinary action taken against them, they must outline the grounds of their appeal in writing. The grounds of appeal will normally be one or more of the following:

- There was a defect in the procedure;
- The allegation is not proven on the balance of probabilities;
- The disciplinary sanction was too severe;
- New evidence has come to light since the hearing which will have an impact on the decision.

6.9.4 Depending on the nature of the appeal, the Chair of the appeal will carry out a review of the process and documentation and, only if there is new evidence, will the need for a rehearing be considered.

6.9.5 At all appeal hearings, the Chair of the appeal will have all relevant documentation pertaining to the original hearing. The Chair of the appeal will

reach a decision based on the documentation available and any submissions at the appeal hearing.

- 6.9.6 The outcome of the appeal hearing will be either that the case against the employee is upheld (in whole or in part) or the case against the employee is not upheld. If the case against the employee is upheld (in whole or in part), then the sanction may be the same or a lesser sanction may be invoked.
- 6.9.7 In cases of gross misconduct, dismissal will have been summary following the hearing. If the employee is reinstated on appeal, pay and other contractual benefits will be reinstated and backdated.
- 6.9.8 The internal appeal procedures are exhausted at Stage 3, with no further rights of internal appeal.

6.10 Confidentiality

- 6.10.1 Disciplinary matters should be dealt with fairly, sensitively and with due respect for the privacy of any individuals involved. All parties must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 6.10.2 No party may make electronic recordings of any meetings or hearings conducted under this procedure, unless this has specifically been agreed by the Chair beforehand as a reasonable adjustment in relation to a protected characteristic under the Equality Act 2010.
- 6.10.3 The identity of any witnesses, whose evidence forms a part of the disciplinary investigation, will be made known to the employee, unless the Service believes that a witness's identity should remain confidential.
- 6.10.4 Where allegations involve more than one employee, each employee should be provided with a copy of the findings that relate to only them.

6.11 Grievance and Discipline

6.11.1 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the discipline and grievance cases are related, it may be appropriate to deal with both cases concurrently. In these circumstances, guidance should be taken from HROD.

7. MONITORING AND REVIEW

7.1 Monitoring and Record Keeping

SFRS is committed to evaluating the effectiveness of its activities and operations, and meeting its statutory obligations for monitoring. To do this, we will:

- Create and capture necessary data to demonstrate evidence, accountability and information about our decisions and activities and the effectiveness of policies, procedures and processes;
- Maintain securely and preserve access to records, as long as they are required to support SFRS operations, in accordance with the [SFRS Records Retention Schedule](#);
- Meet legal recordkeeping requirements, including the Data Protection Act 2018 and the Freedom of Information (Scotland) Act 2002, and confidentially destroy those records as soon as they are no longer required.

7.2 Privacy Statement

7.2.1 SFRS processes personal data collected as part of this Disciplinary Policy in accordance with the Data Protection Act 2018 and General Data Protection Regulation 2018 (GDPR). In particular, data collected as part of this Policy is held securely and accessed by and disclosed to individuals, only for the

purposes of supporting employees. In addition, Data Protection Impact Assessments are carried out where necessary for all new and revised policies, involving the processing of personal data.

7.3 Consultation

7.3.1 This Policy has been developed following full consultation with relevant stakeholders and representative bodies. It has been agreed by the relevant SFRS Boards/Committees who provide strategic advice and advise on matters affecting employees, whilst ensuring it supports the strategic aims of the SFRS.

7.4 Policy Review

7.4.1 This Policy will be subject to update and review as necessary by the POD Directorate, at no more than five yearly intervals or earlier, should any relevant legislative, precedent, judgement, operational review or organisational changes occur prior to that date.

8. EQUALITY

8.1 The equality issues associated with this Policy have been considered and are detailed within the [Equality Impact Assessment](#), to which interested parties are directed for associated equality issues, both directly and indirectly relevant to this Policy.

8.2 SFRS will monitor and analyse information regarding equality or diversity trends in relation to the disciplinary process, using anonymised confidential information from case and personal records. This will enable us to fulfil our duties and commitments under the Equality Act 2010 and Public Sector Equality Duty 2012 to eliminate discrimination, advance equality of opportunity and foster good relations by ensuring that no individuals or

groups are less favourably treated in this process, through unfair inclusion or outcomes, because of a protected characteristic.

9. ASSOCIATED DOCUMENTS / REFERENCES

[Anti-Fraud Policy Statement](#)

[Code of Conduct](#)

[Disciplinary Flowchart](#)

[Disciplinary Guidance – Appeal Hearings](#)

[Disciplinary Guidance – Dealing with Addictions during Disciplinary Process](#)

[Disciplinary Guidance – Disciplinary Hearings](#)

[Disciplinary Guidance – Investigations](#)

[Disciplinary Hearings – Suspension from Workplace](#)

[Disciplinary Template Letters – D01-D17](#)

[Equality Impact Assessment – Disciplinary Policy and Procedure](#)

[Grievance Policy and Procedure](#)

[Records Retention Schedule](#)

[Time Off for Trade Union Duties Policy](#)

[ACAS, Code of Practice on Disciplinary and Grievance Procedures, 2015](#)

[Disclosure Scotland, Make a Referral to Disclosure Scotland](#)

[Gold Book \(NJC for Brigade Managers, 5th edition\)](#)

[Grey Book \(NJC for Local Authority Fire and Rescue Services, 6th edition, 2004\) \(updated 2009\)](#)

[Data Protection Act 2018](#)

[Equality Act 2010](#)

[Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#)

[Freedom of Information \(Scotland\) Act 2002](#)

[General Data Protection Regulation \(GDPR\) 2018](#)

[Human Rights Act 1998](#)

[Protection of Vulnerable Groups \(Scotland\) Act 2007](#)