



The Scottish Parliament
Pàrlamaid na h-Alba

21 September 2026

David Linden MSP
Convener, Criminal Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Convener,

Forthcoming Police Conduct Regulations – Committee Scrutiny

I am writing as a member of the Criminal Justice Committee to raise concerns about the forthcoming regulations governing police conduct, particularly the proposed arrangements for gross misconduct hearings.

I appreciate that the relevant SSI has not yet been laid and that, as a result, there is not currently a formal Committee process through which the regulations can be scrutinised.

My concern is that, by the time the Committee acquires that formal role, the opportunity to influence the substance of the regulations may effectively have passed.

The specific issue which concerns me is Dame Elish Angiolini's Recommendation 27. She recommended that gross misconduct hearings for all ranks should include an independent legally qualified chair, an independent lay member and a policing member.

The Scottish Government subsequently consulted on that proposal. For officers below Chief Superintendent, 31 respondents answered the question about who should chair a gross misconduct hearing. Twenty-four supported an independent legally qualified chair. Only three selected a serving senior police officer.

Despite that, the Government's policy position appears to be that independent legally qualified chairs will apply to senior-officer hearings but not to equivalent proceedings concerning officers below that level.

The Government's Policy Memorandum makes clear that this is a deliberate policy choice, based in part on its view that concerns about proximity bias apply more directly to senior-officer cases and that extending independent chairs to non-senior cases could create additional cost and delay.

I believe this raises a legitimate scrutiny question for the Committee.

What is the principled justification for independent adjudication where an Assistant Chief Constable faces a gross misconduct allegation, but not where a constable, sergeant, inspector, superintendent or Chief Superintendent faces the same finding and potentially the same sanction of dismissal?

There may plainly need to be different arrangements for the investigation or presentation of cases involving a Chief Constable or other senior officer. I am less clear why the independence of the person or panel determining gross misconduct should depend upon rank.

This is not an argument for weakening police discipline. Serious misconduct must be dealt with robustly. The issue is whether the system commands confidence both from the public and from serving police officers.

There are also wider concerns about the operation of the present system. DCC Alan Speirs told the Committee in May 2024 that the 2014 Conduct Regulations were “not fit for purpose”, and Police Scotland subsequently called for a root-and-branch review. Police Scotland reporting has also referred to significant legal challenge and appeals arising from misconduct proceedings.

I have written separately to the Cabinet Secretary for Justice asking the Government to explain:

- why it is departing from Recommendation 27 for non-senior officers;
- what weight it gave to the 24 out of 31 consultation result;
- what evidence supports the distinction between senior and non-senior officers;
- what quantified assessment supports its claims on cost and delay;
- what assessment has been made of procedural fairness and legal risk;
- what lessons have been learned from successful appeals and legal challenges; and
- when the SSI will be laid, what procedure will apply and whether 1 October remains the intended implementation date.

I wanted to raise this with you separately because I think there is an important Committee issue here irrespective of members’ eventual views on the substance.

Once the SSI has been laid, our ability to alter its contents may be very limited. Depending on the procedure, Parliament may effectively be faced with allowing the instrument to stand or seeking its annulment rather than being able to amend individual provisions.

I therefore welcome the fact that SPICe has been asked to begin preparing a briefing.

I would also ask you to consider whether the Committee should, before the SSI is laid:

1. seek a clear statement from the Scottish Government of its intended policy for gross misconduct hearings at each rank;
2. request the Government’s evidence and reasoning for departing from Recommendation 27 in relation to non-senior officers;
3. seek the relevant representations from Police Scotland, the SPA, SPF and ASPs, together with the Government’s analysis of them; and
4. seek confirmation of the intended laying date, commencement date and parliamentary procedure.

I am not suggesting that the Committee should reach a view before seeing the regulations.

My concern is simply that, when we are asked to scrutinise them formally, we should have the evidence necessary to do so properly and should not have lost the opportunity to examine the Government's underlying policy choices while there is still time for them to be reconsidered.

I would be very happy for you to share this letter with the other members of the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kerr', with a stylized, wavy line extending from the end.

Stephen Kerr MSP
Member for Mid Scotland and Fife
Member, Criminal Justice Committee