The Clerk
Criminal Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP
By email to: criminaljustice.committee@parliament.scot

25th October 2026

Dear Convenor

Police Service of Scotland (Conduct) Amendment Regulations 2026
Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026

I am writing because the Committee is approaching a decision on two instruments which, in my considered view, risk embedding a fundamental inequality in police misconduct proceedings. Unless the concerns set out below are addressed before the instruments are approved, the opportunity to prevent that inequality from becoming part of the system will be lost.

I urge the Committee to treat this as an immediate decision about fairness and independence, not simply as a technical exercise in amending regulations. I ask members not to endorse the instruments in their present form without first properly confronting the risks set out in this submission.

I recognise that the Committee may find it unusual to receive correspondence at this stage from a retired official of the Scottish Police Federation (SPF). Nevertheless, I served as its General Secretary for 15 years, having been a full-time official for some years before that, and believe my experience gives me a particular insight into the implications of these proposals.

I was also one of very few police officers – only four over a period of more than 20 years, from recollection – to have successfully challenged a dismissal decision before a Police Appeals Tribunal (PAT) without the benefit of legal representation. My concerns are informed by direct experience of these processes, both in individual cases and at an institutional level. They relate not only to the fairness of the proposed arrangements, but also to the foreseeable consequences for officers, the potential additional costs to the public purse, and the reputational damage that will inevitably follow.

Historically, police misconduct proceedings have maintained one fundamental principle above all others – substantial parity between the arrangements applying to junior and senior officers. That parity serves an important purpose: it helps maintain confidence among junior ranks that the standards and processes they are required to accept are also considered appropriate for those in senior positions, and simultaneously that senior officers have sufficient confidence in such processes should they ever find themselves subject to them.

Before the creation of the Police Service of Scotland (PSoS), the relevant Police Board or Authority effectively performed the equivalent role of the Deputy Chief Constable in these matters. Following the creation of PSoS, the Scottish Police Authority (SPA) assumed that function. In practical terms, the underlying processes remained substantially identical.

These SSIs depart from that longstanding principle, particularly in their approach to independent legally qualified chairs (ILQCs). With respect to the Cabinet Secretary for Justice and the PSoS, I consider the rationale offered in support of this fundamental change entirely unconvincing. More importantly, the proposed arrangements introduce further risks to procedural fairness that are not adequately addressed by the arguments advanced in their support.

The Angiolini Independent Review of Complaints Handling, etc. gave rise to numerous recommendations intended to improve confidence in police misconduct processes. The separation of the arrangements now proposed was not among those recommendations.

On the contrary, the review recommended ILQCs for both junior and senior officers, thereby retaining the principle of parity in the decision-making process. That recommendation should not be departed from without compelling justification and consideration of the consequences of doing so.

Members may also wish to consider the Scottish Government's pre-consultation consultation (PCC) on the recommendations arising from the Angiolini Review. I authored the SPF's response. It is my understanding that the response has not been made available to the Committee.

Unfortunately, as I am now retired and no longer have access to my former files, and given the limited time available before the Committee considers these instruments, I am unable to append that response. I would nevertheless urge the Committee to obtain and consider it, as it is directly relevant to the issues before you.

I can state categorically that the SPF's response supported independent legally qualified chairs for all ranks as a fundamental measure for restoring confidence in a misconduct system that many federated officers had long regarded as inherently unfair. The SPF also supported, among other measures, an enhanced role for the Police Investigations and Review Commissioner (PIRC), including the ability to oversee police officer grievances – another area in which officers lacked confidence.

The SPF's position was that these changes could deliver transformative improvements in scrutiny, learning and efficiency, ultimately benefiting both the police service and the public alike. Those benefits will simply not be realised if the Committee approves the SSIs in their present form.

The perceived unfairness of misconduct proceedings also has consequences beyond individual cases. If officers lack confidence in the fairness of the system, that acts as a de-facto barrier to reporting colleagues whose conduct gives cause for concern. The implications for professional standards and public confidence are obvious, particularly in light of recent high-profile cases involving alleged misconduct and serious criminality by police officers.

Existing concerns about misconduct proceedings

I do not propose to catalogue every perceived deficiency in the existing system. However, four issues from my experience are particularly relevant to the Committee's consideration.

1. The classification of allegations as gross misconduct

In my experience, allegations are too readily classified as gross misconduct. This prolongs investigations, increase costs, and cause considerable stress and potential mental ill-health for officers and witnesses. It also results in cases ultimately being disposed of at a substantially lower level than the original classification might suggest.

During my time at the SPF, I became firmly of the view that, in some cases, this approach was used deliberately, with the effect of subjecting officers to prolonged and unnecessary distress.

2. Pressure on misconduct hearing chairs

I have received accounts from numerous officers suggesting that pressure is exerted on misconduct hearing chairs to deliver sanctions acceptable to professional standards departments (PSDs), before the evidence has been heard.

Although I would not suggest this is commonplace, the accounts I received are concerning. I have personally spoken to serving and retired superintendents who described pressure being applied, including through implicit or explicit references to career progression.

Those individuals assured me that they resisted such pressure, and I have no reason to doubt their integrity. However, the existence of such reported practices raises a wider question: can the

independence of hearing chairs be adequately protected by relying solely on the personal integrity of the individuals involved?

A properly designed system should provide institutional safeguards against such pressure, rather than simply assuming that it will always be resisted.

3. The investigation of allegations

Misconduct investigations focus disproportionately on pursuing evidence supporting an allegation, without considering evidence that may undermine it or exonerate the officer concerned. Such an approach risks distorting the assessment of the evidence and undermining the impartiality that should underpin every investigation.

An effective process must seek to establish the relevant facts, rather than simply assemble a case against the officer under investigation.

4. The use of performance procedures

In my experience, the service has often been dogmatic in its reluctance to embrace the powers available to it under police performance regulations, viewing them as too onerous a means of addressing (perceived) performance problems.

That approach reinforces a culture in which dismissal is regarded as the only satisfactory outcome for an officer considered to be underperforming. Such attitudes inevitably influence the wider approach to misconduct.

The service may dispute these concerns. Nevertheless, they reflect my experience and understanding of how misconduct allegations have been investigated and managed. I believe the tendency to overclassify allegations and the approach I have described as investigating with a view to dismissal, or using the process itself as part of the punishment, help explain the continuing demand for additional PSD resources, irrespective of questions about efficiency and cost. They also explain the significant number of PAT challenges now being pursued and increasingly to successful conclusion. Crucially it is impossible to believe these issues are not forefront of the opposition to ILQCs.

<u>Proposed regulation 15: creation of regulation 16A (SSI 2026/276)</u>

1. Regulations 16A(2), 16A(3) and 16A(4)

When read together, as they must be, these provisions appear to offer little of practical value to either the service or the officer subject to a misconduct hearing. Their limited utility is underscored by regulation 16A(13). The Committee should consider what meaningful benefit these provisions deliver and whether that benefit justifies their inclusion in the proposed arrangements.

2. Regulations 16A(5) – 16A(9)

These provisions present a more serious concern. They contemplate a person conducting a misconduct pre-hearing who is not legally qualified having to determine potentially complex legal arguments raised in advance of the hearing.

In practice, those arguments may be advanced by legally represented parties and may require a sophisticated understanding of the relevant law and procedure. It is difficult to see how this arrangement will operate consistently and effectively in cases involving substantial legal complexity. It creates entirely foreseeable risk of errors in decision-making and subsequent legal challenge, with the associated costs and consequential delays.

Those costs will ultimately have consequences for the parties involved and, where public resources are required to fund the proceedings, for the taxpayer. The costs of pursuing such actions almost always falling on the subject officer through the finite resources of SPF.

3. Regulation 16A(8)

This provision creates a further concern by apparently allowing the person conducting the hearing to revisit an earlier decision without an evident mechanism for resolving the resulting dispute other than through further legal proceedings, potentially including judicial review.

If such a challenge becomes necessary, the consequences could include additional legal costs and substantial delays to the underlying misconduct proceedings. Ironically, the appointment of ILQCs, as originally recommended by the Angiolini Review, would substantially reduce the risks arising from the need to determine complex legal questions in this context.

The Committee should therefore consider whether the proposed arrangements are likely to achieve their intended purpose or instead create additional procedural complexity. In my view there is little doubt that the latter will transpire.

Proposed regulation 17: amendment of regulation 18

The proposed amendment to regulation 18(2)(a)(iii) raises a separate concern about the role of the presenting officer. The change appears to move that role away from the objective presentation of evidence and towards the expression of subjective opinion.

That distinction matters. A misconduct hearing should determine the allegations on the basis of the evidence and the applicable standards, rather than the personal opinions of those presenting the case. Indeed, read in its entirety as they must be, it appears the presenting officer has carte-blanche to freely opine at any point – including after the defence or mitigation has been delivered – an anathema in any judicial or quasi-judicial process. Allowing a presenting officer to introduce subjective commentary in this way unquestionably compromises the fairness of the proceedings and inevitably gives rise to challenges by way of judicial review.

The proposed substitution of regulation 18(4), allowing the chair to accept written statements as evidence, raises a further concern. A written statement cannot, by itself, provide the opportunity to test the evidence through cross-examination. Depending on the circumstances, accepting such statements may prevent relevant questions from being asked and important issues of credibility from being explored.

The Committee should consider whether the proposed arrangements provide sufficient safeguards to ensure that written evidence is accepted only in circumstances consistent with a fair hearing. In my view, these provisions risk increasing the likelihood of disputes about procedural fairness and further legal proceedings.

Article 6 ECHR: the risk to procedural fairness

The proposed arrangements raise a serious question about compliance with Article 6 of the European Convention on Human Rights. In particular, the provisions allowing a person conducting a misconduct hearing who is not legally qualified to determine potentially complex legal arguments, including arguments that may have a decisive bearing on the fairness or outcome of the proceedings, create a foreseeable vulnerability.

This concern is not simply that the proposed arrangements may be less satisfactory than the alternative. It is that they may expose misconduct proceedings to a substantive legal challenge where the safeguards necessary to secure a fair hearing have not been adequately provided. The provisions concerning the reconsideration of earlier decisions, the role of the presenting officer and the acceptance of written evidence without the opportunity to test that evidence must be considered in that context.

The Committee should not assume that any resulting difficulties can safely be left to individual officers to resolve through appeals or judicial review after the event. Such challenges would bring further cost, delay and uncertainty, while leaving the officer concerned to bear the personal and professional consequences of proceedings whose fairness is in question.

The possibility of an Article 6 vulnerability is a matter the Committee must confront before endorsing these instruments, not a problem to be left for the courts to address once the regulations are in force. The Committee should seek a clear and convincing explanation of how the proposed arrangements adequately protect the right to a fair hearing, particularly where legally complex issues arise. In the absence of satisfactory assurance, this is an additional and compelling reason to reject the instruments in their present form and pursue the Angiolini Review's recommendation for ILQCs for all ranks.

Independent legally qualified chairs

The question of ILQCs is central to the concerns I have outlined. The Committee may not fully appreciate the disparity in the financial arrangements applying to chief officers and junior officers.

The enormous legal costs incurred by chief officers from the point at which allegations are made, through misconduct proceedings, appeals and potential judicial review, are all paid by the SPA. This provides access to substantial public (taxpayer) resources in defending their position.

Experience has also demonstrated that protracted legal proceedings involving chief officers all too regularly result in a financial settlement or other resolution that avoids a definitive determination of the allegations, without either side admitting wrongdoing.

I do not suggest that any chief officer should be denied the ability to defend themselves robustly against allegations. However, the financial arrangements are materially different for junior officers, who have no such call on the limitless deep pockets of the state. Instead legal costs are increasingly borne by themselves through the finite resources of the SPF. The proposed procedures risk compounding this disparity. Additional legal challenges will place further pressure on SPF resources while simultaneously extending the demands on public funds associated with resisting such proceedings.

This is not simply a question of the cost of legal representation. It is a question of whether the procedures themselves provide a fair and sufficiently independent means of determining allegations, thereby minimising avoidable disputes and expense.

The proposal to introduce ILQCs for all ranks would address an important part of this problem. Independent legally qualified chairs would provide greater assurance that decisions are taken impartially and that the relevant legal principles are properly applied. Their reasoned decisions would also improve transparency and provide a clearer basis for understanding the outcome of proceedings. It is impossible to understand why such outcomes would be resisted.

In turn, a more legally robust and transparent process should reduce the avenues for successful challenges arising from procedural deficiencies. It would also remove the potential for inappropriate pressure from PSDs to influence the outcome of misconduct hearings, while encouraging more proportionate and impartial investigative practices.

The refusal to extend these arrangements to junior officers is therefore difficult to reconcile with the stated objective of improving confidence in police misconduct proceedings. If independence and legal competence are considered necessary to ensure fairness for chief officers, it is difficult to justify denying equivalent fairness to junior officers.

Conclusion

The Committee is now faced with a decision that has consequences well beyond the technical provisions of these two instruments. It must decide whether to endorse a framework that departs from the longstanding principle of parity between junior and senior officers, despite the Angiolini Review having recommended independent legally qualified chairs for both, or to endorse delivery of what on presentation is substantially a PSoS shopping list.

I urge members not to underestimate the practical consequences of endorsing these proposals. The concerns set out in this submission are not confined to theoretical imperfections. They relate to the potential for unfairness in individual cases, the risk of innumerable further legal challenges, unnecessary expense and delay, and the continuing erosion of confidence in a system that must command the confidence of those subject to it as well as the public it serves.

This is an opportunity to prevent a further loss of confidence in police misconduct proceedings, rather than leave officers to challenge the consequences after the event. I ask the Committee to recognise the significance of the decision before it and reject the SSIs in their current form.

Yours sincerely

Calum Steele

Former General Secretary
Scottish Police Federation (2008 – 2023)