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Dear David,

I am writing because I am concerned by recent media reports in relation to police misconduct reforms including a commentary piece written by Stephen Kerr on 17 October.

These have made a number of assertions regarding the Scottish Government's approach to police misconduct reform. It is important that these claims are considered in the context of the extensive and detailed parliamentary scrutiny that accompanied the development and passage of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 by the previous Criminal Justice Committee and the full Parliament. The legislation was developed in response to the recommendations arising from Dame Elish Angiolini's Independent Review of Complaints Handling, Investigations and Misconduct in Policing.

The Scottish Government has consistently accepted the broad thrust and intent of Dame Elish's recommendations and has sought to implement those recommendations through a framework that is legally robust, operationally effective and compatible with wider public law and human rights obligations.

Parliament endorsed significant reforms to police misconduct arrangements, including an enhanced role for the Police Investigations and Review Commissioner in senior officer misconduct proceedings and the establishment of independent panels to determine misconduct cases involving senior officers. These measures were scrutinised and approved by the Committee and Parliament.

The suggestion that a distinct misconduct framework for senior officers represents a failure to implement reform does not reflect the approach scrutinised and ultimately endorsed by Parliament. During consideration of the legislation, Parliament examined the rationale for differentiated arrangements and accepted that the unique leadership responsibilities, public visibility and accountability associated with senior officer roles justified additional safeguard, transparency requirements and independent scrutiny.

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As a matter of public record, the Criminal Justice Committee concluded that a differentiated approach to senior officer misconduct arrangements was proportionate given the unique responsibilities and public accountability associated with those roles. Parliament subsequently approved that approach through the passage of the legislation. Characterising differentiated arrangements as evidence of a failure to implement reform is therefore inconsistent with the conclusions reached during parliamentary scrutiny.

Accordingly, the existence of different procedures for senior and non-senior officers reflects a deliberate and proportionate policy choice which was subject to detailed parliamentary scrutiny and subsequently endorsed by Parliament.

The Scottish Government's position remains that the recommendations of Dame Elish should be implemented faithfully while ensuring that reforms are translated into a workable and legally sustainable framework. As with any major programme of legislative reform, recommendations must be considered alongside legal requirements, operational realities and the conclusions reached through parliamentary scrutiny.

The Government therefore sought to give effect to the substance and intent of the recommendations while retaining an appropriate degree of discretion as to their detailed implementation. This is consistent with the role of Government in developing primary and secondary legislation for parliamentary consideration and approval.

It is also important to recognise the rationale for certain differences between the senior officer and non-senior officer regimes. Senior officers occupy positions of significant public authority and visibility, with responsibility for the strategic leadership of policing. It is therefore appropriate that proceedings relating to their conduct are subject to a greater degree of public transparency. Different considerations arise in relation to more junior officers, where proportionality, privacy and fairness considerations require careful balancing. The existence of different procedural arrangements does not indicate a difference in standards of accountability.

Assertions that misconduct hearings chaired within Police Scotland are inherently lacking in independence also fail to acknowledge the wider statutory framework. Decisions taken under the misconduct regulations are subject to appeal to the independent First-tier Tribunal for Scotland, which provides external judicial scrutiny of disciplinary decisions. Parliament has therefore legislated for a system that combines first-instance decision-making with independent tribunal oversight on appeal.

The recent and deeply troubling cases involving serving officers convicted of serious sexual offences are rightly a matter of profound public concern. However, those criminal cases are prosecuted through the criminal justice system and are not determined by the police misconduct framework. The misconduct regulations do not affect the criminal law, criminal investigations or criminal prosecutions.

It is a fundamental principle that misconduct proceedings must not prejudice criminal investigations or prosecutions. Conduct proceedings are therefore subordinate to criminal processes where criminal allegations are under investigation. The primary objective must always be to ensure that criminal justice processes are able to proceed effectively and, where appropriate, secure criminal convictions before disciplinary matters are concluded.

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What the regulations do provide is a more effective mechanism for addressing conduct matters, including accelerated misconduct procedures in appropriate cases. This will allow disciplinary consequences to be determined more quickly where the relevant circumstances justify such an approach, including following the conclusion of criminal proceedings.

Taken as a whole, the reforms approved by Parliament represent a significant strengthening of independent scrutiny, accountability and public confidence within the police misconduct system. They also reflect Parliament's judgment that enhanced and more transparent arrangements for senior officers are both necessary and proportionate given the distinctive responsibilities of those roles.

The Committee may also want to note that some parties now calling for stronger action in related areas such as vetting, did not support vetting measures brought forward during parliamentary consideration of the Bill at Stage 2, indeed voted against, but I am pleased that at Stage 3 the Bill was passed unanimously bar one independent member who abstained.

NEIL GRAY

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