

Standard of Proof Chairman's 'minded to' letter

1. Subject to further argument, if any, I am minded to apply to issues of fact that arise in the evidence given to the Inquiry a **flexible and variable standard of proof**. By that I mean:
 - (i) My starting point for most decisions of fact should be the civil standard, the balance of probabilities, but I should not be bound by it because:
 - (ii) Depending upon what the issue is, it will be more useful if, having examined the evidence, I express my state of certainty or uncertainty upon it with such accuracy as I can.
2. It is not possible, in advance of the hearing of the evidence, to forecast the circumstances in which I will find it appropriate to depart from or enlarge upon the civil standard when expressing a "a determination of fact" (as to which see e.g. section 2 (2) and section 24(1)(a) of the Inquiries Act 2005) or to express in my report a comment upon an issue by a measure unrelated to standard of proof (as to which see section 24(1)(b) of the Inquiries Act 2005). I will need to make a judgement how best to express myself when I can see the issue of fact in its full Inquiry context. What matters is that the approach I adopt is transparent and properly explained.
3. The words used in the terms of reference demonstrate the investigatory nature of the Inquiry's task to ascertain or identify what happened during the 47 year period under review. Recollections are likely to be imperfect and contemporaneous documents may no longer be available. A fuller understanding of the essential history of undercover policing is likely to become available by the application of a flexible rather than an inflexible approach to the standard of proof.
4. I am also required to "assess the adequacy" of justification for undercover policing and of the statutory, policy and judicial regulation of undercover policing. Ultimately, I will "make recommendations" as to the future deployment of undercover officers. The essential quality of any assessment or recommendation is that it is explained by the range of findings I make. Provided that I express accurately the route that I have taken to my assessment and recommendations, the reader will be able to judge whether they are justified.

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5. I agree with the opinion of the distinguished panel of the Bloody Sunday Inquiry at paragraph 23 of its ruling upon the issue of proof and the achievement of fairness in the resolution of allegations of misconduct (see paragraph 20 of the Inquiry counsel team's note).
6. In my opinion, the conclusions expressed by the Inquiry's counsel team at paragraphs 35 – 39 of their note are accurate.

17 December 2015

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry