

## IN THE UNDERCOVER POLICING INQUIRY

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### SUBMISSIONS ON UNDERTAKINGS SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY

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1. These submissions are served on behalf of the National Crime Agency ('the NCA') in response to the skeleton argument served on behalf of the non-police, non-state core participants ('NPSCPs') dated 13 April 2016.
2. The NCA respectfully adopts the reasoning at paragraphs 10-12 of the Chairman's 'minded to' note dated 3 March 2016, and in particular his proposal not to seek the extended undertaking, without ruling out the possibility of revisiting this issue in due course if "special circumstances arise during the Inquiry." There is nothing in the skeleton argument that has now been served on behalf of the NPSCPs that undermines that reasoning, or that should lead to an outcome different to that proposed by the Chairman at paragraph 12 of his note.
3. In addition to being unprecedented, the undertaking that is sought by the NPSCPs would be both wide-ranging and inflexible. Once given, it could not readily be withdrawn or varied and there is a risk of unintended consequences. It follows that the Chairman should only seek an undertaking of this nature if satisfied that there is no other workable solution to the difficulties that have been raised by the NPSCPs.
4. That position has not yet been reached. No disclosure has yet been made and no (substantive) evidence has yet been served. The moment for witnesses to give oral evidence during the course of the Inquiry is still some way off. The issue that has been raised by the NPSCPs is therefore still very much hypothetical. It is notable in this regard that the NPSCPs themselves accept (see skeleton argument, paragraph 33) that the fact that these proceedings are

still at such an early stage makes it difficult for them to consider tailoring or refining the terms of the proposed undertaking. That in itself suggests that it would be premature for the Chairman to seek the (untailored) undertaking from the Attorney General at this point.

5. The NCA submits that the Chairman should adopt the course set out in his 'minded to' note. As witness evidence is served, the question of whether witnesses do have any real concerns along the lines suggested in the NPSCP's skeleton argument, and whether they can be adequately addressed by means other than an undertaking, can be kept under review. This would not preclude an application identical or similar to this being renewed in due course. Any such application would be made on the basis of concrete facts and could be addressed on its merits rather than, as at present, in something of a vacuum.

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20 April 2016.