



Civil Nuclear Police Authority

## Capenhurst 5 Investigation Report

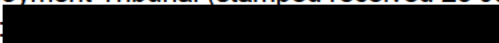
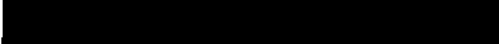
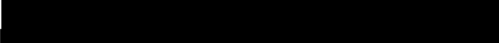
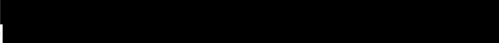

Report completed by [REDACTED]

30<sup>th</sup> March 2015

**Contents**

1.	Introduction	3
2.	The scenario	3
3.	The role of Authorised Firearms Officer (AFO)	4
4.	The investigation	5
<b>Report Part 1: The case review</b>		<b>6</b>
5.	Pre-notification situation	6
6.	Initial actions, responses and issues	9
7.	The handling of the developing case and dismissal action	11
8.	Pre-employment tribunal activities and issues	12
9.	The Employment Tribunal hearing	13
10.	Post ET actions and activities	14
<b>Report Part Two Recommendations for Change</b>		<b>15</b>
11.	Corporate strategy and management	15
<b>Report Part Three Workforce Risk Analysis</b>		<b>16</b>
12.	Introduction	16
13.	The financial risk process employed	16
14.	Officer numbers by contract type (date of entry)	16
15.	Officer numbers by contract type and location – location risk	17
16.	The age-range of pre-1997 officers	18
17.	The age range of pre-1997 AFO and non-AFO officers	18
18.	An approximation of the average financial cost per officer on leaving CNC	19
19.	An assessment of the total cost based around three levels of wastage	20
20.	Next steps	21
Annex A.	Terms of reference for the investigation	22
Annex B.	Gold Group	26
Annex C.	Handling Staff Association and Prospect Officials	26
Annex D.	Energy Act 2004 extracts	27
Annex E.	CNC Relationship Map	28
Annex F.	Case timeline	29
Annex G.	Document Information	30

**References and Links**

- Ref A: CNPA Strategy and Business Plan 2014-2017 (public version)
- Ref B: Reasons of the Employment Tribunal (stamped received 25 Jun 2014)
- Ref C: Claimants statement: 
- Ref D: Claimants statement: 
- Ref E: Claimants statement: 
- Ref F: Claimants statement: 
- Ref G: Claimants statement: 
- Ref H: Standard Operating Procedure for Fitness to perform Firearms Duties and suspension of Firearms Authority Procedure CNC/PP/0628 version 4.0

## 1. Introduction

- 1.1 This report follows a brief investigation into the situation leading up to an employment tribunal case involving five officers from a site operated by Capenhurst Nuclear Services – owned by Urenco Ltd<sup>1</sup>. The case – known as the Capenhurst five case - was heard at the London Central Employment Tribunal in February 2014. Of the five issues raised by the claimants they succeeded on two of the issues:
  - a. That they made protected disclosures under the Employment Rights Act 1996 – and were therefore unlawfully dismissed and subjected to a detriment;
  - b. That they were subjected to victimisation by CNC Executive officers;
- 1.2 On three other issues their case failed.
- 1.3 Following the tribunal all five cases have now been settled with sums awarded to the five claimants in addition to the settlement demanded through their employment contracts.

## 2. The scenario

- 2.1 Following a 1995 White paper asking all nuclear operators to draw up decommissioning strategies for their sites, Capenhurst began its long-term decommissioning activities in 2001. The outcome of this work allowed Urenco to request a downgrading of site security in 2012 with the consequent removal of firearms officers - which was duly approved.
- 2.2 Having been informed that its services were no longer required CNC explored a range of options for their Capenhurst staff. After initial discussions TUPE was not pursued given the changed nature of the security service requirement at the location.
- 2.3 As mobile staff all CNC personnel were either liable to be moved to alternative posts or considered for other employment actions. Five of the officers at the site – those at the centre of the case – decided to take unilateral action in advance of being moved to new posts. Over the course of five days they separately informed CNC managers that they would no longer serve as Authorised Firearms Officers, but were able continue as Police Officers on other, unspecified duties.
- 2.4 Following management actions the five officers were eventually deemed to have resigned from CNC and left employment in March 2012. Guided by their staff

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<sup>1</sup> Urenco (Capenhurst) Ltd is a UK subsidiary of Urenco Enrichment Company which is itself a subsidiary of Urenco Ltd.

association they took action against CNC on five issues at the London Employment Tribunal.

### 3. The role of Authorised Firearms Officer (AFO)

- 3.1 Officers who wish to become Firearms Officers have to undergo a rigorous selection procedure. During this they have to demonstrate their knowledge of the law, the appropriate and proportional use of force, their communication skills and basic common sense. If they pass the selection tests they then undertake courses that will teach them weapon skills and tactics. The firearms training and competence assessments carried out by CNC are fully licensed by the College of Policing.
- 3.2 Unlike other Police Forces:
- a. As CNC is an armed response organisation its AFO's have not completed a minimum of two years 'on the beat' as they would in a Home Office Force before commencing their AFO training. They are selected directly from public recruitment campaigns, immediately undergo training and assessment and are then posted to a CNC operational unit;
  - b. Since 2011 all new entrant AFO's are employed on a contract that specifies that they must carry out AFO duties (i.e. they are not volunteer AFO's). In the period from 1997 to 2011 each new applicant to CNC signed an undertaking that they would act as an AFO and comply with all relevant regulations.
  - c. The five officers in this case had joined CNC before those requirements had been introduced. However they had successfully undertaken AFO duties for between 16 and 21 years up to 2012.
- 3.3 It is worth noting that contractually police officers in the CNC are both office holders and employees, unlike Home Office forces where officers are purely office-holders.

#### **A complex issue – implied terms in employment**

- 3.4 All contracts of employment contain a range of express and implied terms. If the express terms do not cover a really important aspect, an implied term *may* be applied to cover the situation.
- a. Express terms  
These are terms which have been expressly agreed between the employer and the employee. They are written down by CNC in all cases and signed by the employee on joining the organisation.
  - b. Implied terms  
These terms can be implied both by what is known as the common law and by

legislation. They essentially fill in key gaps left by the express terms of the contract.

Whether a term is to be implied is ultimately a matter for a court or tribunal to decide.

- 3.5 One of the disputed elements in the case was whether having qualified and worked as AFO's over a long period created an implied term in the contract of employment for the five officers. The caselaw and legal opinions around this complex issue are many and varied.
- 3.6 In this case it was found by the Tribunal that carrying a firearm as an AFO was not an implied term - and hence was a voluntary act, despite their long-term service as operational firearms officers.

#### **4. The investigation**

- 4.1 This investigation has been primarily desk based and reviewed the many papers that surround the case. I have discussed it informally with several of those involved including officials at the Department of Energy and Climate Change (DECC). Given the history of the case I decided that interviewing the main actors was likely to be ineffective in generating any new insights since positions had become entrenched and responses well rehearsed. I also did not interview the Civil Nuclear Police Federation (CNPf) directly as they required notice of all questions before responding, as they wished to take legal advice in every case.
- 4.2 To add value to this report I have also undertaken some basic analysis of the financial risks of further instances of the Capenhurst five resignation tactic. This work needs to be expanded to cover a risk assessment for the whole of the Force. I have proposed that this work be then agreed and reviewed with DECC so that neither organisation is caught unawares in the future.
- 4.3 I am grateful to the CNC Legal team for their assistance in providing the papers and information required to complete the investigation and this report.

## Report Part 1: The case review

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### 5. Pre-notification situation

#### Corporate strategy and management background

- 5.1 In 2010 the Civil Nuclear Police Authority determined that CNC would become an all-AFO Force – effectively requiring all Officers (at all ranks<sup>2</sup>) to maintain a certified competence to operate weapon-carrying duties at any time.
- 5.2 The impact of this decision on the organisation and its management of the officer workforce - given the proportion of non-qualified or inactive weapons-carrying officers<sup>3</sup> - was very significant. The decision presented the CNC Executive with resourcing and operational problems of which some were:
- How to manage officers permanently assigned to support duties given that most were no longer able to operationally carry weapons;
  - To fund a very large one-off cost arising from the contractual rights of officers if all non-active AFO's were dismissed on capability grounds;
  - To fund the significant cost, training and service-continuity issues arising from the loss of a large and experienced workforce;
  - To manage the employment relations issues that would arise with the Civil Nuclear Police Federation (CNPF);
- 5.3 CNC management actions following this decision seemed to focus on pursuing greater training and development for AFO's in an effort to reduce the number of non-AFO officers. I have not seen any evidence of this being an element of a strategically driven workforce change project that addressed the extant demand arising from the 2010 CNPA decision. Furthermore if all non-AFO officers would eventually have to leave CNC, the cost of the severance of officer contracts – given their high-cost contractual rights on severance - does not seem to have been modelled<sup>4</sup>. The Capenhurst case brought the contractual cost of severance into sharp focus for CNC and DECC.
- 5.4 It should be noted that in Home Office Constabularies carrying a firearm is a voluntary assignment for officers. In these forces if an individual cannot continue being a firearms officer they would usually be moved into other duties. Given its very specific role, CNC does not have that option available for officers: other than working at HQ or operating in a local control room. The CNPA plan for an all-AFO force removed even those limited options and thus the impact of an inability to carry a firearm - for any reason accordingly demanded the removal of that officer

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<sup>2</sup> Removed by Constabulary Order 15/2014

<sup>3</sup> As Part Three indicates, only 33.5% of the pre-1997 over 50 aged officers were active AFOs.

<sup>4</sup> This case does in fact highlight the contractually-based financial cost of the all-AFO decision.

from the workforce. Given the specialised nature of CNC Officer training and operational experience there are unlikely to be any transfer options to other forces. Therefore in the absence of new areas of operations or business for CNC, the impact of the 2010 decision – once enacted – would require that all non-active AFO's would have to be dismissed by CNC.

### **Corporate financial issues**

- 5.5 CNC was spun out of the UK Atomic Energy Authority following the provisions of Chapter 3 of the Energy Act 2004. Thus officers and staff from that period have contracts of employment which offer very generous (in today's terms) guarantees in the event of forced severance through poor performance, or redundancy. As Part Three of this report indicates, the costs of removing just one 'pre-1997 contract' officer over 50 years of age costs approximately £188K for redundancy and £103K for a poor performance dismissal.
- 5.6 CNC corporate funding is complex – as shown by the diagram at Annex E - and the resulting organisational financial management systems are themselves complex. At first sight CNC would seem to be a standalone organisation, with all the usual duties and responsibilities of a Non-Departmental Public Body. This is not the case.
- 5.7 CNC is not awarded a fixed amount of money by DECC – its parent department - to deliver its services. Under the provisions of s60 of the Energy Act 2004<sup>5</sup> it receives funds from a mix of direct DECC funding and Site Licence Companies (SLC) charges – who themselves receive significant funding from DECC budgets. In the Annual Report and Accounts for 2012/13 it shows 86% of its income flowing from the four SLC's leaving 14% from other sources which I have presumed includes an unspecified amount from DECC. In following HM Treasury guidance contained in *Managing Public Money* (July 2013), neither DECC nor CNC is allowed to develop year-to-year reserves<sup>6</sup> to manage forecast costs – even down to the level of the Capenhurst officer settlements. Whenever these cases arise CNC have to apply to DECC officials for funds, who themselves are bound to involve HM Treasury legal and financial officials. Thus the settling of a simple employment matter requires the involvement of DECC and HM Treasury officials.
- 5.8 In the case of the Capenhurst officers the funding for the settlements had to be supplied by DECC as the site operators were not liable in this instance.

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<sup>5</sup> See the relevant clause reproduced at Annex D

<sup>6</sup> In line with *Managing Public Money* (ISBN 978-1-909096-18-9) s5.3.6

**Capenhurst local issues**

- 5.9 Despite no evidence seen of a force-wide strategy or plan to enforce the all-AFO ruling, Constabulary Order 17/2012 (closure of Capenhurst et al) stated that all officers at the closing stations would be expected to train and maintain their (AFO) competence. This brought the 2010 all-AFO decision into consideration, but only for the officers at the closing stations<sup>7</sup>. For those Capenhurst officers who had not been detailed for active firearms duties over considerable periods whilst apparently retaining their capability, this ‘new’ requirement came as a major shock.
- 5.10 On the 4th Oct 2012 after many years of plans and activities<sup>8</sup> CNC was officially informed that there was no longer a requirement for armed response capabilities at Capenhurst. This change allowed the site operators to significantly downgrade the scope and capability of their site security requirements. Accordingly this led to the planned removal of all CNC services and officers from Capenhurst.
- 5.11 As CNC is a national organisation and officers are presumed to be mobile, the officers at Capenhurst knew they would have to move their working location, and most likely their families. The officers themselves were open that they self-resigned their AFO status upon receiving instructions to move location<sup>9</sup>.
- 5.12 I did not observe any evidence of a sustained change management plan in the months or years leading up to this announcement to prepare the non firearms carrying Officers at Capenhurst for this change.
- 5.13 Clear differences are seen between the organisations view of the officers’ health and fitness, and those of the officers themselves as expressed to the Tribunal.
- a. In their manager and supervisor assessments for the AFO role they were all classed as fit and able to undertake duty and had been similarly assessed for many years. Some of the officers had failed elements of their training and assessment in prior years but most of these had been rectified.
  - b. By contrast, at the ‘handing in’ of their AFO authorisations, each officer stated in their tribunal statements that they were developing health and various ‘fitness problems’.
  - c. This difference of view between the organisation and individual is of concern since; in one case an officer had a BMI of ■ and was not attending training as required.
  - d. All five officers had valid ‘Fit Notes’<sup>10</sup> which listed ■ as their health issue at their dismissal.

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<sup>7</sup> Given the limited scope of this action, this tactic could be seen as victimisation

<sup>8</sup> See Sellafield Ltd Annual Review 2012/13 page 21 for a timeline of Capenhurst activities;

<sup>9</sup> See References C to G

<sup>10</sup> The fit note was introduced to replace the old sick note on 6 April 2010. Doctors issue fit notes to individuals to provide evidence of the advice the doctor has given about the individual’s fitness for work.



5.14 The CNC has a fully understood and implemented process to deal with an AFO who for some reason feels that they cannot carry a weapon. CNC explicitly recognises through its policy at Ref H that it is ethically and legally abhorrent to require a person to carry the responsibility of applying legal lethal force if they for any reason feel that they can no longer accept that burden. But in this case it was presented – and managed - as a group undertaking not to carry out their duties, rather than the action of several, separate individuals. CNC has no policy or process guidelines to follow when active firearms officers both refuse to carry weapons and to discuss their reasons with managers. The policy at Ref H only covers the issue of an individual, temporary self-suspension.

## 6. Initial actions, responses and issues

- 6.1 Letters were issued to the Officers at Capenhurst in late January 2013 to inform them officially of the station closure and their transfer to new locations.
- 6.2 Soon after these letters were received the five officers submitted notifications under Force policy (Ref H) to self-suspend their AFO authority – but intending to do so permanently. It should be noted that the form they used is only specified for a *temporary* self-suspension.
- 6.3 At this early stage CNC managers seem to have assumed that the organisation was faced with something akin to a *class-action*<sup>11</sup>. However whilst sometimes popularised by TV shows from the USA, the use of multi-party proceedings in the UK is much less developed or defined<sup>12</sup>. Hence it would have been better (in hindsight) to have treated the issue as five separate cases of employee dissatisfaction.
- 6.4 The situation was not helped by the gradual change in the AFO role at Capenhurst where over armed policing had gradually been reducing over a considerable period. This rundown of the service requirement and its pace was a source of tension between CNC, the regulator, DECC and the site operators which was only clarified by the eventual AFO removal decision.
- 6.5 In their tribunal statements the five officers each explained that they felt they were not able to transfer to fully operational AFO duties, at a new location. On their behalf CNPF pursued an end of service settlement (one that would deliver their terminal payment rights) arising from a partial inability to deliver their duties: i.e. not able to carry out their AFO duties but still able to undertake general guard

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<sup>11</sup> A form of collective redress in response to a civil issue of potential wrongdoing;

<sup>12</sup> See Professor Rachael Mulheron's work at Queen Mary, University of London

or control room duties. As Part Three of this report indicates, their terminal settlements entitled them to a significant cash settlement and pension enhancement if they left the force, but with only one exception: if they resigned their employment.

- 6.6 CNC at this point was faced with five officers of long and meritorious service who would have most likely have had a good deal of influence on other AFO's and Control Room staff at other stations. This may have had an impact on the actions of managers who passed the matter to the top of the management chain in great haste. It was also known by managers that four sites were closing and a risk existed that the Capenhurst group action could have spread to other stations where officers were equally unhappy at the changes being forced upon them.
- 6.7 That these factors do not appear to have been modelled highlights a weakness flowing from the absence of a clear change strategy and plan for the sites.
- 6.8 Therefore the issue passed rapidly through the chain of command to [REDACTED]. By the 5<sup>h</sup> February an arrangement was made for the [REDACTED] to meet the five Capenhurst officers.
- 6.9 The meeting occurred on 11<sup>th</sup> February. Inexplicably [REDACTED] did not have any HR or legal advisor in place at the meeting, did not take notes, or ask that the meeting be/be not recorded. This despite the officers being represented by CNPF officials who spoke for their members throughout the meeting, the five officers themselves in fact not saying anything to their senior officers directly at all in the meeting. Later at the eventual Tribunal hearing the meeting was assessed as being intimidating and bullying (Ref B para 85).
- 6.10 From the brief meeting notes recorded in the statement of [REDACTED] it seems that [REDACTED] were surprised by the tone and content of the meeting. It is reasonable to conclude that they were ill-prepared for the meeting - whereas the CNPF officials had planned their approach to the meeting rather more carefully. I note from Ref B para 23 that the two senior officers only met in a lay-by prior to the meeting.
- 6.11 This meeting marked the start of a pattern of events during which the CNPF supported and guided their members to achieve their contractual rights under a severance of employment. A particular example of this occurred at the meeting of the 11<sup>th</sup>; the officers were allowed to say nothing to their managers throughout the meeting, leaving all discussions to be held with the CNPF representatives. Clearly had managers had HR advice it is likely that this precept would have been rightfully challenged as an invalid frustration of managers right to manage.

6.12 Arranging such a meeting would have been a sensible way forward had it been carried out with each individual by [REDACTED] or even better [REDACTED]. However as the group meeting was led by [REDACTED] and [REDACTED] the Tribunal supported the officers' case that this meeting was intimidatory and bullying. Allowing the CNPF to dictate the terms of such a meeting with officers showed a lack of experience in handling such matters as the CNPF had no right to manage the meeting in this way.

## 7. The handling of the developing case and dismissal action

7.1 This phase of the case brings an unco-ordinated approach taken by CNC managers into sharp relief. The series of events leading up to the dismissal decision, as included in the tribunal statements, indicates the [REDACTED] [REDACTED] made some attempts to find a solution to the case. However they were hampered by the uncoordinated engagement of [REDACTED] with CNPF officials who appeared to take the case forward on their terms. Evidence for this comes from [REDACTED] [REDACTED] tribunal statement which indicates that whilst he was trying to manage the case CNPF officials had gone directly to Executive Chief Officers as well as the Head of HR and the Force Health and Safety manager. The lack of clear lines of authority and objective, risk-based judgements of the situation hampered any effective handling of the case. [REDACTED]

7.2 This lack of coordination and control allowed CNPF officials to elicit the options being considered by the CNC and thus to optimise their own courses of action.

### Health issues

7.3 In this phase [REDACTED] was poorly served by the [REDACTED] [REDACTED]. Managers were suddenly presented with five 'capable' officers deciding they could no longer carry out firearms duties, but for no clear reason. I find the lack of a careful, competent physical and psychological assessment of each of them to be inexplicable. [REDACTED] only appeared to carry out a paper review of each officer and conclude that nothing needed to be done. I believe this was wrong and should have been challenged by [REDACTED] [REDACTED]. The differences between the official view of the officers' fitness and their statements for the Tribunal add further weight to the assertion that the occupational health service failed in its duty in this case.

- 7.4 From their actions it is reasonable to conclude that the CNC decision-makers viewed the actions of the five officers as a cynical, tactical, group action. However regardless of that view I continue to find it worrying that no psychological assessment of the officers – or their colleagues - was carried out at any stage. *(Was this a one-off, or a temporary issue? Were there psychological or local factors underpinning the situation? Could others be trusted to work effectively at the site? Would others follow suit?).*
- 7.5 Convening a risk assessment panel was a sound approach to the gathering issue but unfortunately it was only carried out by email, with continuing confusion over the decision-maker. In this period I can find no evidence of any contact between line managers and the five officers directly, all contact seems to have been allowed to be through the CNPF.
- 7.6 After the Risk Assessment Panel process ██████████ re-instated the officers as active AFO's against their stated wishes. They refused this order. Therefore by early March the Capenhurst officers were assumed to have resigned and matters moved into the legal arena.

## 8. Pre-employment tribunal activities and issues

- 8.1 At this stage the case moved out of the Line Management arena and into an intra-organisational zone of confusion over responsibility, case tactics, decision-making and financial provision:
- a. To fight the case, or settle, or compromise?
  - b. Who was the decision maker in the case: DECC or CNC?
  - c. Who would pay any settlement if required, DECC, the site owners, CNC?
- 8.2 The CNC at first handled the matter as any organisation would normally do by engaging counsel and assessing the case. However as previously stated CNC Executive officers knew they had no financial authority or reserves to settle any case - and thus they brought DECC departmental officials – supported by their legal team from Treasury Solicitors - into the case.
- 8.3 A key issue of concern to CNC was the risk of copycat actions by other pre-1997 contracted officers if the case was not robustly defended through the tribunal process. There was a clear risk that some of the remaining 144 pre-1997 contract officers might also take similar action and provoke a major service resource and financial issue.

8.4 ██████████

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

The subsequent notes of condemnation of CNC from DECC officials seems at odds with the facts and probabilities of the case.

- 8.5 The employer side arrived at the tribunal hearing with two legal teams representing two subtly different interests; DECC and CNC. In contrast the CNPF bided their time, prepared their case and maintained their opportunistic approach with CNC in achieving a settlement for their members.

## 9. The Employment Tribunal hearing

- 9.1 The hearing and its findings are well-documented at Ref B.

### Comments and observations

#### The honesty of the 5 officers

a; A critical element of the DECC/CNC case is that the officers were not being honest – whether they had a *reasonable belief* in these enclosures (Ref B para 42). [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### On the implied term in a contract of employment

6b; This issue is a long running low-level conflict between CNC and CNPF which has never been settled to the satisfaction of either party. The DECC/CNC approach in this case was that after carrying a weapon for a long period of time without comment that it was most likely that there was an implied term in their contracts to carry a weapon. At first sight and when considering case law this seems perfectly reasonable. However, and again fatally for the case:

- CNPF have never agreed to this implied term (thus weakening the CNC case);
- At the hearing, each of the five officers stepped around the narrow legal issue emoting that in effect they were no longer prepared to kill someone with a firearm in the course of their duties;

6c; Regardless of the legal technicalities in the argument, the Tribunal clearly sympathised with their expressed view;

[REDACTED]

6d;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6e: The tribunal result

The Tribunal found that:

1. The officers did make protected disclosures and were therefore unlawfully dismissed;
2. They had been subjected to victimisation and bullying

The remaining three counts were not upheld.

## 10. Post ET actions and activities

- 10.1 Whilst the loss of the case was a blow for DECC, CNC and their legal teams, the additional costs – over those contractually required – was an injury to feelings award of £15,000 per officer; a total of £75,000. Whilst this is a significant sum of money, when weighed against the risk of copycat actions by other officers it seems in line with a reasoned business case for fighting the action.
- 10.2 The CNC case was also found in three of the five actions (a 60% success rate), leaving only two that were found for the claimants. [REDACTED]  
[REDACTED]
- 10.3 Following the loss of the case there were recriminations between CNC/CNPA and DECC. Whilst perhaps understandable, the ill-feeling has not enabled all the organisations to come together, reconcile their differences and learn from the case.
- 10.4 Its important to note that since the case was brought there have been no further cases raised individually or in groups, using the tactic followed by CNPF and the Capenhurst officers.

## Report Part Two Recommendations for Change

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### 11. Corporate strategy and management

- 11.1 CNC, CNPA and DECC need to jointly agree to learn lessons from this case and put that learning into place through new processes to manage Capenhurst type issues.
- 11.2 CNC and DECC should establish a joint planning arrangement to model strategic workforce risks, agree risk levels and accordingly have in place suitable funding options.
- 11.3 Actions such as the Capenhurst 5 should not be dealt with as a group action but as individual cases – each with a genuine concern.
- 11.4 When a case such as the Capenhurst situation is created a Gold Group<sup>13</sup> style approach led by the nominated lead for staff-side affairs with Head of Legal and the relevant senior line manager should be brought into being. As already mentioned it may be wise to involve DECC officials at an early stage.<sup>14</sup>  
*(I understand that this is being introduced)*
- 11.5 The responsibility for people management needs to be made more explicit for managers at all levels across CNC through clear statements of delegation. It is important that authority is moved away from Executive Officers and into the hands of managers at the appropriate level. [REDACTED]  
[REDACTED]  
[REDACTED]
- 11.6 The CNC approach to handling CNPF and the Prospect Trades Union requires an urgent management and executive change – see the outline at Annex C.
- 11.7 Meetings between managers and officers and/or staff to discuss individual cases must not involve Executive members as it can be taken to be intimidating – as it was in this case even though it might have been well-meaning.  
*(I understand that this is being introduced)*
- 11.8 CNC should never allow CNPF officials to speak for officers, they are only present to advise and support their members who must observe the normal requirements for talking with managers.  
*(I understand that this has been introduced)*

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<sup>13</sup> See Annex B

<sup>14</sup> Both the CNPF and Unison would be very unhappy with this sort of arrangement and may well complain, but it does reflect best practice in unionised workplaces;















## Annex A. Terms of reference for the investigation

### Investigation Task

To enable the CNPA to lawfully and effectively manage its AFOs under the circumstances of a Capenhurst 5 or related situation.

Investigation is to deliver a report to the Chair of CNPA that achieves the following objectives:

1. To review the process and handling of the Capenhurst 5 up to and including the Employment Tribunal;
2. To produce a comprehensive appraisal of the current and forecast of risk to CNPA and its stakeholders should further cases occur;
3. Based around the risk assessment to bring forward any recommendations for changes to the contractual, policy, procedural, legal or support requirements that are required to enable CNPA to effectively and lawfully manage its AFOs in Capenhurst 5 or related situations;

### Review staff and responsibilities

Sponsor: [REDACTED]

Review Lead [REDACTED]

National Policy expert [REDACTED]

Legal Adviser [REDACTED]

### Scope

The review will have access to:

- All the relevant policies, procedures, practices and legislative instruments required to complete its work;
- The case material and review documents, including lessons learnt document from Capenhurst 5 matters;
- Interviews with CNPA staff should it be required and agreed with the Sponsor;
- Interview with representative of Police Federation
- Guidance and support in legal matters and National Policing policy matters;

### Timeframe

The report will be presented to the Chair of the CNPA by the end of October 2014.

### Situation overview

#### The Issue

In 2013 a group of five Authorised Firearms Officers at a CNC location informed CNPA that they no longer felt able or willing to carry a firearm as part of their normal duties. The options for CNPA were very limited, and aggravated by significant corporate factors including:

- CNC's mandate to be a firearms only force, i.e. no non-firearms posts for officers;
- No effective and agreed policy and financial framework to manage this unexpected occurrence;
- Exposure to significant contractual costs associated with termination of employment;
- No CNPA financial capability to meet the contractual costs of employment action;

- The potential for other officers to view this tactic as a sufficiently effective and financially attractive way to consider leaving CNC - with the attendant risk to force capability and public finances;

Following management action the five officers were dismissed and they subsequently took legal action against CNPA.

#### The judgement

An Employment Tribunal giving full reasons on 24 June 2014 (Ref A) found that the Civil Nuclear Police Authority (CNPA) had unfairly dismissed five police officers (known as the Capenhurst 5) for making protected disclosures<sup>15</sup> under section 103A of the Employment Rights Act 1996<sup>16</sup>.

#### The employee's affected

The Capenhurst 5 were Officers employed on pre-1997 Officer employment contracts which did not include an express term to undertake the duties of an Authorised Firearms Officer (AFO).

#### Sequence of events leading to the case

In 2012 CNC was informed that there was no longer a requirement for an armed response capability at Capenhurst and The Springfields. CNC subsequently informed the affected AFOs that they would be redeployed to alternative operational units. The impact of the transfer was that the officers should be fully deployable AFOs. At the time the Claimants were largely non-operational AFOs and therefore were faced with a combination of re-training and fitness improvement activities to be assessed as competent in their new roles.

During April 2013 and in contemplation of the impending CNC withdrawal from the site, the Capenhurst 5 collectively informed CNC they no longer desired to carry out AFO duties. They stated that this was because of Health and Safety concerns linked to *the passage of time*, and the absence of any explicit contractual enforcement of the requirement to carry a firearm. This complied with the relevant Standard Operating Procedure for AFOs<sup>17</sup>.

As no Medical or Health and Safety concerns were apparent to managers, CNPA treated the Officers as having resigned from their employment as they were *in effect* refusing to comply with an implied term in their employment.

The Capenhurst 5 subsequently issued a claim that they were unfairly dismissed due to:

- Having made protected disclosures;
- Direct Age discrimination
- Indirect Age Discrimination
- Victimisation
- Harassment

The claimants sought compensation and a declaration.

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<sup>15</sup> A protected disclosure is broadly a disclosure of information where the worker reasonably believes (and it is in the public interest) that one of several criteria given in the Act may occur. ([Link](#))

<sup>16</sup> See ([Link](#))

<sup>17</sup> Policy 0628: Fitness to Perform Firearms Duty and the Suspension of Firearms Authority issue number 4.0;

Case outcome

In the course of the ensuing legal process the London Central Employment tribunal found as shown below:

Having made protected disclosures;	Found	<i>Thus unfairly dismissed</i>
Direct Age discrimination	Not found	
Indirect Age Discrimination	Not found	
Victimisation	Found	
Harassment	Not found	

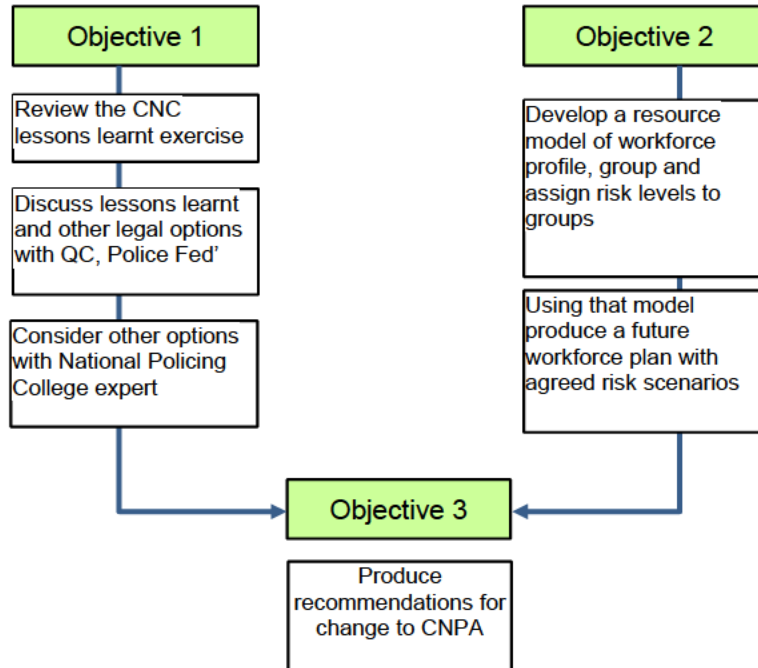
Impact

Given this outcome the CNPA does not appear to have a process or capability to manage AFOs with similar contractual rights should they decline to carry out the full duties of an operational AFO.

Investigation Strategy

The investigation will commence with two workstreams to meet objectives 1 and 2;

at their conclusion these will be linked to meet objective 3 as shown below:



Project Timeline

Ref	Element	Resources	Date
I.	Develop plan and organise resources	Investigator with support from Legal Office	Sept
II.	Review lessons learnt document	As supplied by Head of Legal	Sept
III.	Assess legal approach and future issues	Access to Tom Linden Support from CNC HR and Legal as required	Sept
IV.	Meet National Policing Expert and explore employment and other options or practices	National expert to be available	Sept
V.	Obtain workforce data and develop stratified workforce model	Access to relevant CNC databases; Database expert (if reqd) to develop reports and assemble data	Sept



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VI.	Developed stratified risk model of current staff	Workshop with key Force Managers who will agree risks; Collation and report writing time.	Sept
VII.	Develop and publish future workforce risk model	Force manpower plans, Workshop or consultation with key force managers and CNPA if required to agree model and its options.	Oct
VIII.	Develop recommendations for change	Based on all preceding work with support as required.	Oct

Resources

- Twelve days of investigator time – to be invoiced through *HRFirst*;
- Travel costs to meet key parties;
- Access to relevant people, files and reports as required and agreed;
- Workforce Database manipulation support, probably 1 to 3 days work;

Communications

Communications will be limited to Senior Managers within CNC, CNPA Chair, and those from whom information is required. No force-wide communications are required by this investigation.

Exception handling

For minor matters of scope these will be managed by the Investigator and reported by email to the Sponsor.

For potentially significant issues that go beyond the scope of the investigation the investigator will arrange to meet the Sponsor and others as required to determine a suitable course of action.

Costs and charges

The investigation costs and expenses will be managed by [REDACTED], Senior Consultant at HR1st directly with the sponsor.

Risk assessment

<b>Occurrence</b>	<b>Impact</b>	<b>Management</b>
Stakeholder misalignment	High	Decision with Sponsor
Senior Officer/Manager time not available	High	Decision with Sponsor
Rumour or internal comms issues arise		Moderate; Sponsor to manage comms

End of plan

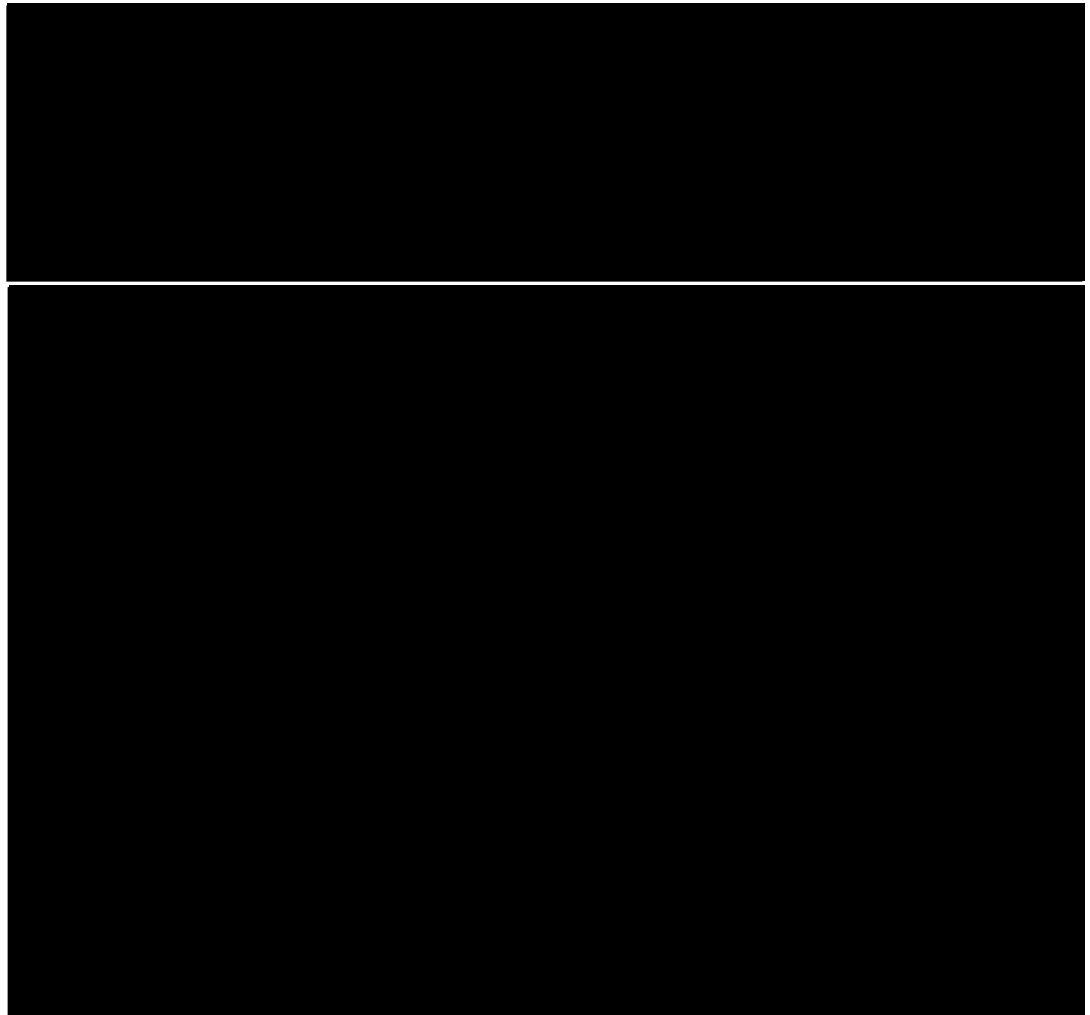
## **Annex B. Gold Group**

### **Gold Group**

A Gold Group is a meeting designed to add value to the police response to an internal or external incident, crime or other matter. This involves bringing together appropriately skilled and qualified internal or external stakeholders who can advise, guide or otherwise support the management of an effective response to the identified incident, crime or other matter.

The purpose of any Gold Group should be to ensure the effectiveness of the ongoing police response and, if confidence issues exist for the victim/victim's family and/or the community, to resolve or prevent the escalation of their impact.

## **Annex C. Handling Staff Association and Prospect Officials**



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<sup>18</sup> It should be noted that the use of this terminology is not in any sense frivolous but the application of an approach to gain success over an adversary;

## Annex D. Energy Act 2004 extracts <sup>19</sup>

### Section 60

#### Charges

(1) A person falling within subsection (2) must pay to the Police Authority such charges (if any) in respect of services provided by the Constabulary as are—

- (a) agreed between that person and the Police Authority; or
- (b) in the absence of agreement, determined by the Secretary of State.

(2) A person falls within this subsection if—

- (a) he is the owner or occupier of a site in respect of which services are provided by the Constabulary;
- (b) he is a person with an interest in, or with custody or control of, nuclear material in respect of which services are so provided; or
- (c) he is a person not falling within paragraph (a) or (b) who is the recipient of services provided by the Constabulary.

(3) The Secretary of State may pay to the Police Authority such sums as are—

- (a) agreed between him and that Authority, or
- (b) in the absence of agreement, determined by the Secretary of State,

in respect of services provided by the Constabulary to such persons as he may determine.

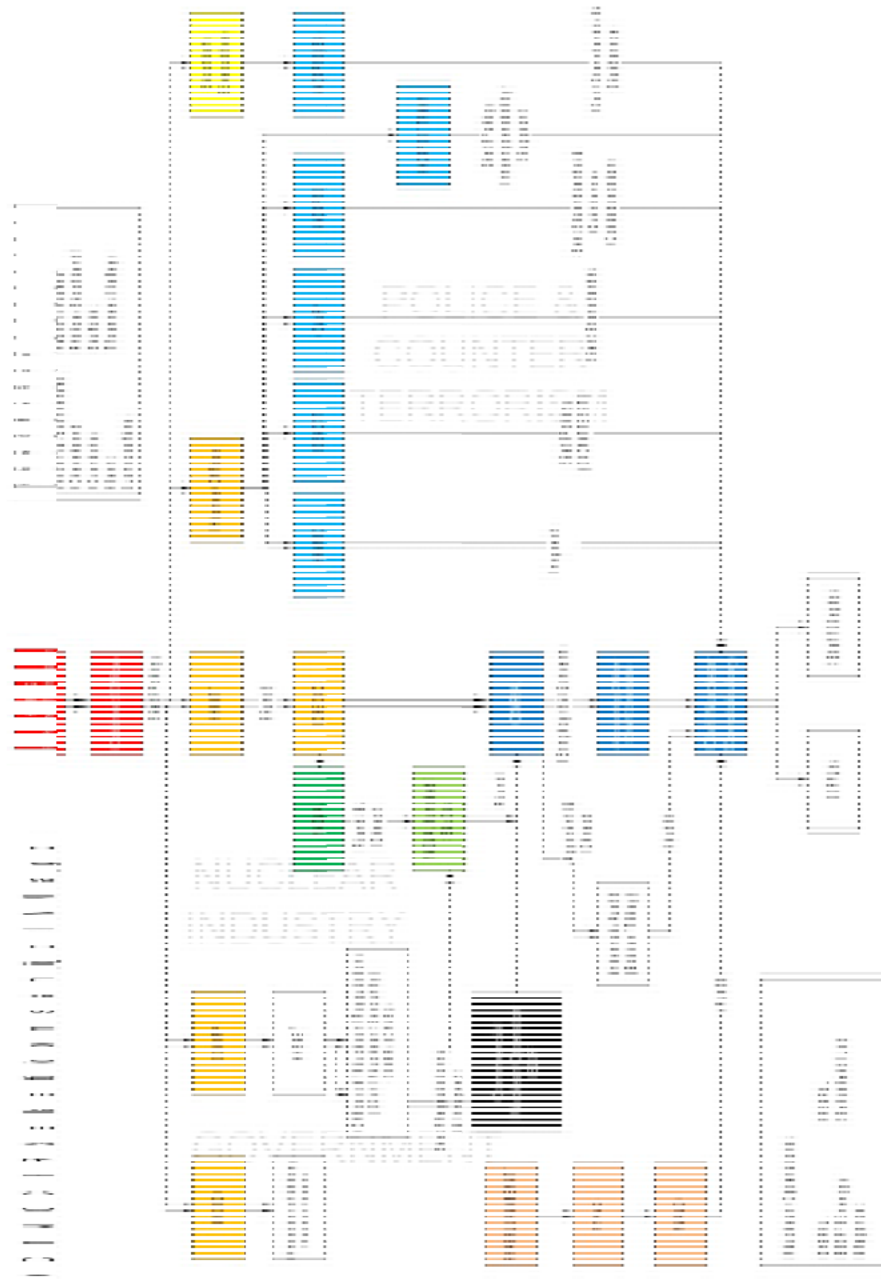
(4) The services in respect of which charges or sums may be imposed or paid under this section include—

- (a) services which it is the duty of the Constabulary to provide; and
- (b) services which it is the duty of the person charged to have provided.

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<sup>19</sup> Copied and pasted from <http://www.legislation.gov.uk/ukpga/2004/20/part/1>

### Annex E. CNC Relationship Map



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**Annex F. Case timeline**

Date	Occurrence
1995	White paper issued (Cm2919) asking all nuclear operators to draw up decommissioning strategies
2004	Energy Act and creation of CNC
2001 and 2007	Capenhurst decommissioning strategy quinquennial review and plan to complete clean-up programme by 2009
2012	Urenco request downgrading of site security from HSE

2010	CNPA Decision : 'All-AFO' force
Oct 2012	Formal notice to CNC of the end of armed police security requirement at Capenhurst; Weapons removed from Capenhurst site
Jan 2013	Letters issued to all Capenhurst officers informing them of closure and their future postings
Jan 2013	Five officers informed managers of their resignation from firearms carriage duties
Feb 2013	Meeting between Capenhurst 5, CNPF and [REDACTED] [REDACTED]
	Risk Assessment Panel convened and concluded
Mar 2013	Officers informed employer refusal to accept their declarations of their future duties
Mar 2013	Officers dismissed
Apr 2013	Officers register legal case through the central London Tribunal
Jul 2013	Transfer of CNC Capenhurst duties to commercial guard force
Apr 2013 to Feb 2014	Case preparation; (CNC made two applications to settle the case to DECC officials in this period, which were refused)
Feb 2014	Tribunal held
Jul 2014	Tribunal judgement received
Aug 2014	Case settlement activity begins
Dec 2014	Case settlement activity concludes and case closed

## Annex G. Document Information

Sponsor: [REDACTED]  
 Author: [REDACTED]  
 Version: 1.0  
 File Ref: [REDACTED]

### Revision History

Version	Date	Summary of changes
0.1d	15/10/14	Part 2 report added
0.6d	7/1/15	Detail changes made after useful discussion with CNC Legal team.
1.0	7/1/15	First completed version for review by CNPA Chair;
2.0d	15/1/15	Update version following first review by PT
2.1d	22/1/15	Changed introduction sections and added timeline
2.2d	12/2/15	Updated following comments
2.3d	25/2/15	Removal of endnotes and change to recommendations plus other changes

### Distribution

This document has been distributed to:

Name	Date
[REDACTED]	30 <sup>th</sup> March 2015
[REDACTED]	30 <sup>th</sup> March 2015
[REDACTED]	30 <sup>th</sup> March 2015