

## SUMMARY OF REVIEW

### Setting up of post 6.22D and its operation up to & including 27 April 1981

1. There appeared to be no written assessment of risk in relation to the setting up of observation post 6.22D in March 1981
2. I conclude that given the exposed nature of 6.22D, the absence of an NCO, the inadequacy of manning, the failure to provide a landline and the absence of reports of incidents, that there was a persistent inadequate assessment of risk in the prevailing circumstances.
3. The special orders for 6.22D (referred to as 6.22A in the body of the orders) stated that the mission of the outpost was to man 6.22A (sic) and to "*report on and prevent incursions into the area of operations by armed elements*" (2c). Specifically, the execution of the mission required timely, accurate and concise reports of all incidents in the area (3(g)(e).
4. The undated draft of special orders for Post 6.22D, were not finalised and are internally inconsistent and, in relation to strength of the post, were not complied with. The absence of an NCO affected the provision in the Orders regarding Command, Signals and Service Support. Moreover, those who served at 6.22 who contacted me did not remember being given any written orders.
5. The permission to temporarily reduce the strength of post 6.22D should have been communicated to the Battalion Commander.
6. The request to reduce the strength of the post was made without reference to the special orders which suggests unawareness or non-existence of such orders. No reference was made to an assessment of risk regarding the reduction in strength of the manning of the post. The absence of an NCO was a critical factor in the compliance with the requirements of the orders, particularly in relation to reporting and communications.
7. There seems to have been what is best described as a casual approach to the posting and supervision of the post. Even if rosters had been recorded and kept they might not have reflected such casual changes. No records were found of postings.
8. Given the statements of Lt Carthy and Capt Herbert contained in the Savino Report, I conclude that Lt Carthy did post Ptes Joyce and Doherty. The orders with regard to having an NCO with two Privates should have been complied with.
9. It seems, on the balance of probability, that there were no special orders finalised and that there was never an NCO with the two Privates at post 6.22D. There were no systematic visits made to the post by the Platoon Commander; indeed, there was not an adequate, or any system of checks of, and of visitation to, the post.

10. It seemed to have been a significant oversight for a Platoon Sergeant not to have known the characteristics of an outpost to which he was posting his men.
11. The men should have been briefed by the Platoon Commander or Platoon Sergeant each morning to report all incidents according to their orders. There would appear to have been oversight in relation to the orders in respect of the organisation, instructions and supervision of reports.
12. None of the six men interviewed who had served there remembered any guidance being given of the scope of reporting "all incidents in area".
13. Moreover, it was unclear what instructions had actively been communicated to the men serving at 6.22D in relation to making reports given that the orders required that an NCO in charge of the Observation Post was responsible for submitting reports (4(1) of the Special Orders for 6.22D). There appeared to be confusion or lack of clear instruction regarding the standard operating practice of communication.
14. One of the reasons given by Comdt Downes for the reduction of strength of the post was that there were no reports of incidents. Col Savino did not establish whether, or if so when, a written order to reduce the strength was made. Given the evidence of those who had served at 6.22D, I am of the view that if there had been a change in strength it was likely to have been close to 10 April 1981 when the post was established. In that case there was a limited opportunity to make any reports.
15. The visiting party of commanders observed hunters with guns on 27 April 1981. They were known to Pte Joyce. Two Lebanese boys indicated to the visiting party that they had seen armed men in the vicinity. No instruction was given that these observations were to be reported.
16. Ex-Pte Michael Halloran told me that he had observed with binoculars what he believed to be armed PLO men in the area from a distance of about 2 miles and as they were far away he did not make any report.
17. Ex-Pte Reilly's statement to Col Savino when asked whether he remembered making any report from 6.22D replied "*only of aircraft movements. There was no sign of people or vehicles in the area which was generally rocky and deserted.*" Pte McLoughlin, the sentry at 6.22, had also said that he made reports of aircraft. However, Col Savino found that "*...no report, other than routine radio checks were made from post 6.22D during the entire 3 weeks that it was in existence...*". I was unable to verify these differing statements but observe that some reports may not have been regarded as relevant.
18. The presence of the visiting party of officers of the 48<sup>th</sup> and 49<sup>th</sup> Battalion during the early afternoon and the later bombing of Tyre and Sidon may have been a factor in 6.22D non-communication but did not absolve 6.22 in not adverting to loss of contact.

19. The visiting party were at 6.22D at 14:30 on 27 April 1981. They left 20 to 30 minutes later. This was the last contact with Pte Joyce and Pte Doherty.
20. Col Savino's finding, based on the evidence of the sentry in 6.22, Pte McLoughlin, was that the last contact between 6.22 and 6.22D was at 1340 hours. This may be a typographical error as the evidence of Pte McLoughlin was 1540 hours. The "C" Company Radio Log Book as extracted by Col Savino which shows the last attempted radio check from 6.22 (Dyar Ntar) to 30 (As Sultaniyah) which logs *"Incident Report not sent as unknown number of jets are attacking a place between Tyre and Sidon"*. The closest radio logs in time is at 1534 from 6.22 to 30 logs: *"two more jets bombing Tyre..."*. Significant discrepancies between the report and logs make it difficult to come to a firm conclusion.
21. The finding that *"from then on the radio man on the roof at 6.22 failed to contact 6.22D"* is not corroborated by the radio log extracts. It is significant that the Medical Officer, Capt McNamara, 48 Bn in his statement to Col Savino revised his conclusion on the time of death from *"not later than 1700 hrs"* to possibly being *"up to two hours earlier"* than the original approximate time. He confirmed to me that the time of death could have been close to 1500 hours which was the approximate time of the departure of the visiting party. I accept their evidence that they were not aware of any shots at the time of their departure from 6.22D as found by Col Savino.
22. I am satisfied that the last radio communication was at 1400 hours *"r/c ok ew"*. This corresponds to the radio log and with the evidence of Pte Barry Reilly who says he was told by the sentry, Pte McLoughlin that, he had not heard from 6.22D since lunchtime. There is no log at 1600 hours for a Battalion or Company check as found by Col Savino.
23. On occasion, there was difficulty in getting a signal at 6.22D. There is no record of any testing of signal strength at the inception of manning the position. There was evidence of men having to leave the post in search for a signal uphill from 6.22D towards the village of Dyar Ntar. In an isolated post, out of line of sight this was a weakness.
24. There was no evidence of radio jamming either in the Battalion or radio logs or in the interviews with any of the officers or men.
25. In relation to reports of incidents, one of the witnesses understood that the sentries had been told not to send such reports which were clogging up the radio network. Without having access to the full radio logs, I have been unable to verify this. It may have been an exculpatory remark.
26. The issue of the Israeli bombing of Tyre distracting all radio operators may have been a temporary difficulty from the point of view of hearing radio calls as the bombing was intermittent in its intensity and it would not appear to be a complete answer to the failure to communicate.

27. I am satisfied that, in the wake of the events at 6.22D on 27 April 1981, the actions by all commanders were commendable and correct. The focus was on the location and rescue of Pte Joyce. All available personnel with the aid of Battalions other than IRISHBATT were employed.
  
28. It is unclear, however, at what time the Platoon Commander had set up a checkpoint on the road or why he took no further action on being told that there were PLO in the area. The assumption was that an attack would have been by means of a vehicle and not by foot.

### **UNIFIL Investigation**

(Redacted due to confidentiality of UNIFIL Investigation)

### **Savino Investigation & Report**

1. The authenticated copy of the UNIFIL Headquarters Board of Inquiry dated 11 September 1981 together with the reports and statements in relation to the inquiry (with the exception of the UNIFIL statement of Pte Barry Reilly) are in the Military Archives. However, neither the original nor copies of the Savino Report were in the archives. An undated, unbound and poorly photocopied incomplete copy with Ex Pte Reilly's annotations was handed to the Military Police on 25 July 2012 by Ex Pte Reilly with his statement of that date. Ex Pte Reilly may have had possession of a complete copy of the Savino Report when he wrote to the Minister on 6 October 2011.
  
2. The Savino report was not expressly requested in discovery for Ex Pte Reilly's 2003 legal action. I am satisfied that it was not obtained in the discovery process in October 2005. I have not been able to ascertain how the copy came into the possession of Ex Pte Reilly.
  
3. The original Savino report is not in the files of the Department of Defence or Defence Forces, nor in the Military Archives, or in the files of the Adjutant General, the Provost Marshal, the Director of Legal Services or in "A" Administration.

4. I have been unable to locate any reference to the report in "A" Administration which I had been told had changed its location from Colaiste Caoimhin to Parkgate Street and then to storage in the Curragh Camp. More recently I was given access to documents which emanated from "A" Administration and were transferred directly to storage in the Curragh Camp. The Savino Report is not in the Chubb cabinets which I was able to examine. Files relating to Pte Doherty and Pte Joyce made no direct reference to the Savino Report. A request by the Adjutant General as to the progress of his investigation, sent in January 1984 was contained in that storage facility.
5. Comdt Gerald Aherne had a copy of the Savino Report as well as other relevant documentation when he submitted his report of the searches for Pte Kevin Joyce in 2001. He returned the report to "A" Administration which is part of the former Adjutant General's Office. I have been unable to ascertain where the report may be or who had access to it since 2001.
6. Major Gen Savino (Retd) told me that he had loaned his copy of the report to two unnamed researchers in the School of Psychology in Trinity College Dublin in late 1980s who were interested in studying Post Traumatic Stress Disorder (PTSD) in the armed forces. The administrator of the School made inquiries on my behalf but was unable to locate the report. She referred me to Dr. Matthew McCauley who was not aware of the report.
7. The absence of the Report from the Military Archives and the inability to identify the source of the photocopied report raises serious security issues for the Defence Forces. Departmental records are required to be retained and preserved in the Department of State in which they are made or are held, and should not in any case be disposed of except in accordance with sub-section (5) of Section 7 of the National Archives Act, 1986. Disposal requires authorisation by a designated officer. I am satisfied from a perusal of the Military Archives that no such authorisation was made in relation to the Savino report.
8. Major Gen Savino (Retd), as he now is, was satisfied that the incomplete copy which I showed him was his report and told me that he had put considerable thought into its findings, other matters and recommendations. He did not know the whereabouts of the original.
9. The absence of the original report and, indeed, of copies of the report has not been explained and constitutes a serious breach of custody of the findings of a critical investigation. The absence is exasperated by the unexplained circumstances of the roughly photocopied incomplete report which came into the hands of Ex Pte Reilly. I have been unable to make any finding other than the document did not result from the discovery requests pursued by Ex-Pte Reilly's lawyers.
10. The absence of Ex-Pte Reilly's statement to the UNIFIL Military Police in May 1981 is also of concern. I am satisfied that the Department of Defence did not have that statement or his subsequent statement made to Col Savino (and contained in his report) at the time of making the affidavit of discovery in Ex-Pte Reilly's action for damages against the Department.
11. The original Commanding Officer's reports as well as copies of the Military Police Witness Statements taken by UNIFIL Military Police are in the Defence Forces Military Archives.

However, I did not find any of the original or copy statements made to Col Savino in the Archives. The statements are contained in the copy supplied to the Military Police by Ex Pte Barry Reilly in 2012.

12. None of the authors of reports or statements referred to by Col Savino were aware of the publication on or about January 1984 of the Savino Report until recent years when complaints arose. The report was commissioned in August 1982.
13. The investigation undertaken by Col Savino, on the formal directions of the Adjutant General dated 27 August 1982, was referred to as a further investigation to that of the UN Board of Inquiry dated 11 September 1981. It was not a Court of Inquiry.
14. The Military Police appeared to have had no role in the Savino investigation. The statements included in Col Savino's report were not witnessed by any Military Police member. In the terms of reference given to Col Savino, Maj Prendergast had directed that the Provost Marshall would arrange to provide Col Savino with any assistance he might require. No such assistance was sought.
15. Such further investigation might have included, inter alia, a listing of personnel on duty at Platoon Headquarters (6.22) stating the nature and duration of their duty in each case as required by paragraph 2(a)2 of the terms of reference of 27 August 1982.
16. Col Savino was further directed to obtain and comment on the adequacy of all orders governing the operation of Posts 6.22 and 6.22D. He was asked whether these orders were complied with by all those concerned and, if not, to indicate to what extent they were not complied with and the responsibility for non-compliance in each case. There was no analysis of the orders, compliance with the orders, or of responsibility for non-compliance in the Report of the investigation.
17. Comdt Duffy's report to Lt Col Steven Murphy was made on 9<sup>th</sup> May 1981. He did not submit a report to Col Savino on 29<sup>th</sup> November 1982.
18. Comdt McCorley was informally approached by Col Savino at the Curragh and made a report to him on 5<sup>th</sup> October 1982 and not 22<sup>nd</sup> December 1982. He was not aware that Col Savino was carrying out an investigation.
19. The Platoon Sergeant, Sgt Scanlon, made a statement to Col Savino but was not questioned by him.
20. Pte Barry Reilly was the only soldier who had served at 6.22D to be asked to make a statement. His statement in the Savino report was accurate but incomplete in that it did not allude to differences he said he had with the Platoon Commander. Col Savino did not have Private Barry Reilly's MP statement made in May 1981. I have been unable to locate such a statement but accept that it was likely that he did make a statement to the Military Police on or around 5<sup>th</sup> May 1981.

21. Pte McLoughlin, the sentry on 6.22, was questioned on his duties and why he had not informed someone in authority of his failure to contact 6.22D. His statement differs from that given to the UNIFIL Military Police in the Lebanon in April 1981. He stated to Col Savino that he did not know why he did not do so. He made a critical statement on the timing of the last contact with 6.22D which he said was approx 1540 hrs, whereas the radio log indicated 1400 hrs but he was not questioned on the discrepancy.
22. I conclude that Pte McLoughlin who had arrived in Lebanon on 22 April 1981, five days before the date of the incident on 27 April 1981, and admitted that he was not familiar with his duties, was not adequately trained, instructed, or supervised notwithstanding the presence of the Platoon Sgt and Commander on that afternoon.
23. Signalman Tuohy, the radio operator at As Sultaniyah, believed that Pte McLoughlin had informed either the officer or Platoon Sgt of his failure to contact 6.22D. Signalman Tuohy said that he had called 6.22 by landline on the afternoon of 27 April 1981 regarding the failure to contact 6.22D. I have been unable to so verify.
24. The Savino investigation was tasked to obtain and comment on the adequacy and compliance and responsibility for non-compliance of all orders governing the operation of posts 6.22 and 6.22D on the relevant date. It was clear that the orders for 6.22D were not finalised and, on their terms, were not complied with. The changes to the strength of the post was not communicated to the Battalion Commander. Neither the orders themselves nor the changes thereto are in the Military Archives.
25. Neither the observations of Col Timothy O'Shea, the Deputy Judge Advocate General made on 19 May 1982 nor the directions of Major Gen Prendergast the Adjutant General given on 27 August 1982 refer to the underlying issues of the choice of location or of the safety thereof. Col Savino was not asked to investigate such issues.
26. Of the nine officers whose reports or statements are included in the Savino report, five are undated and may have been made prior to the appointment of Col Savino. In particular, the report of Col Stephen Murphy (the last page of which is in the copy of the Savino Report at page 5) appears to have been made shortly after his report of 10 May 1981. Both reports are in the archives. There were two dated reports included: Comdt Duffy (29 November 1982) and Comdt McCorley (22 December 1982) which dealt with subsequent searches.
27. Only two officers were questioned. The Platoon Commander Capt Herbert was asked about the orders for Post 6.22D, the strength of the post, system of supply, visits and communication – the questions were appropriate though inadequate, in that his questions did not extend to timing and pattern. Col Savino's findings refer to the orders for 6.22 and 6.22D being complied with but no finding nor reference was made regarding the undated

and unwritten permission to man post 6.22D with only two men. The Medical Officer Capt McNamara was the second officer questioned – he was asked about the time of death of Pte Doherty and told Col Savino that the death, in all probability, occurred up to two hours earlier than his initial report that time of death was “... *NOT later than 1700 and was most likely earlier*”.

28. I am satisfied that Col Savino did comply with the instructions of the Adjutant General in relation to the taking of statements and was entitled to exercise his discretion regarding the taking of statements from other personnel. Nonetheless, it is remarkable that, other than Pte Reilly, none of those selected had served at 6.22D. Pte Reilly was not questioned on the manning, visitation, or supervision of the post. None of the witnesses were asked if they had a copy of the special orders. In hindsight, it would also have been desirable to have had statements from others who had served at 6.22D as to the strength and supervision of the Post and compliance with orders.
29. Col Savino questioned five of the nineteen who had made reports or statements: Capt T.D McNamara MO, Capt Herbert, Pte B. Reilly, Pte P. McLoughlin and Signalmen Patrick Tuohy. He did not probe the underlying weakness of the manning and supervision of the post nor of the system of monitoring communications. He did refer to a pattern of murder against UNIFIL but only cited one incident prior to April 1981. He did not refer to any analysis of risk in setting up the post. I have been unable to find any written reference thereto in the military archives.
30. The Defence Forces investigation entrusted by Maj Gen Prendergast to Col Savino, Director of Operations, did not fully address all the questions posed and, in critical areas, made findings without corroborative evidence in relation to manning, communications and supervision of the observation post. He did not investigate whether there had been compliance with orders or a sufficiently thorough assessment of risk of establishing an observation post out of line of sight of 6.22 and in an exposed and unprotected site.
31. Some findings appeared to be an extrapolation of evidence from one day to the norm for the period of existence of the observation post.
32. The lack of involvement of colleagues in the subsequent investigation of the tragic incident deprived the investigator of information and participation from those on the ground. This is particularly so where the circumstances of the death could have applied to each of those who had served at 6.22D.
33. I am of the view that, in hindsight, the investigation was, to that extent, inadequate. Notwithstanding, Col Savino made three important recommendations at the conclusion of his report: observation posts should be located where there was visual contact with other posts; posts should be opened only where commanders are satisfied that they can be garrisoned in sufficient strength to maintain their safety; the relevant UN HQ must not be allowed to over-ride the Battalion Commanders view on this matter.



34. Col Savino had been Deputy Chief of Staff and the Senior Irish Officer with UNIFIL from September 1980 to April 1981. While there is no evidence of partiality, he could have been seen to have had a conflict of interest in relation to the investigation.

### **Complaints & representations by Ex-Servicemen**

1. Ex Pte Reilly was a key witness to the tragic event. Both he and Ex Pte Walker had sued the Department of Defence in relation to their involvement, inter alia, with the incident. They became tenacious critics of what they regarded as a cover-up, in particular in relation to Col Savino's investigations into the incident. I have found however, that there is no specific evidence or particulars of a cover-up by either the UN or Savino investigations.
2. Ex Cpl Sumner's book chronicled their criticisms. Despite shortcomings they have provided a catalyst to this review. They became polarised on the scope of taking statements from 'all' rather than 'any' personnel at 6.22.
3. Ex Pte Reilly, Ex Pte Walker and Cpl Sumner raised some serious issues regarding the compliance with the manning, safety and supervision of post 6.22D.
4. Ex Pte Walker was instrumental in arranging a meeting of the family of Hugh Doherty with the Secretary General of the Department on 1 July 2014 which was helpful to the family. Ex Cpl Michael Sumner accompanied him.
5. In meetings with me, both Ex Pte Reilly and Ex Pte Walker were each consistent with their correspondence with the Minister and with statements to the Military Police.
6. Despite some shortcomings, Ex Cpl Sumner's book raises and reaffirms the criticisms made by Ex Ptes Reilly and Walker. Those criticisms have been a persistent thorn in the side of the Department of Defence which had been hampered by a lack of documentation in relation to the Savino Report and by the reluctance of the Defence Forces to authenticate the version given to the Military Police on 25 July 2012 by Ex Pte Reilly.
7. The non-disclosure of the results of the Savino Report had increased concern and the agitation of Ex Privates Reilly and Walker and Ex Cpl Sumner.
8. I agree with the conclusion of Col White, Provost Marshal, that the statements of Ex Pte Reilly and Ex Pte Walker, made to the Military Police in July 2012, do not throw any new light on the killing of Pte Doherty and the abduction of Pte Joyce.

### **Family and Colleagues**

1. The family of Pte Hugh Doherty accepted the circumstances of their son's and brother's death and for many years was satisfied with the explanations given by the Defence Forces. However,

the Doherty family later heard a rumour that Pte Kevin Joyce had shot their brother which was not assuaged until they met with the Secretary General of the Department of Defence on 1 July 2014. This rumour would not have had credence if they had been told the results of the findings of the investigation undertaken by Col Savino from 1982 to 1984.

2. I am satisfied that the concerns of the Doherty family arose from the non-communication by the Defence Forces as to the findings of the Report as was the practice at the time.
3. The Joyce family had accepted the fact of the abduction and probable death of Pte Kevin Joyce and were satisfied with the information and explanations given to them by the Defence Forces. They were upset and unhappy with the criticisms and complaints made 30 years after the incident to the Minister and the Department by Ex Ptes Barry Reilly and Michael Walker in 2013.
4. Both families bore their respective loss with dignity and acceptance.
5. The interests of the families of soldiers killed or missing in action is paramount and should not be inhibited by concerns regarding liability. The absence of, or delay in communication of the result of inquiries fosters resentment and misunderstanding.
6. Colleagues of those killed, injured or missing in action have a legitimate interest in the outcome of investigations particularly where they have made statements to the Military Police.
7. See the Review, Section 27, 'Meeting of Doherty Family with Department of Defence', and Section 28, 'Findings regarding fourteen issues raised by Doherty Family'.

## **Recommendations**

1. Military records, including physical evidence, needs to be clearly identified as to which records are to be archived, and for what period each category should be retained. The location of such records should be specified and securely retained in centralised military archives.
2. From an operational level, in setting up outposts, a full written risk assessment should be made and periodically reviewed particularly in relation to potential dangers and communication with personnel posted.
3. The drafting of special orders needs to be based on such written risk assessment and reviewed periodically.
4. All Defence Force personnel posted should be given copies of such orders and instructed as to their duties including in relation to the scope of their reports of all incidents observed.
5. The role of the NCOs in Command is crucial in relation to reporting of incidents or lack thereof, and in relation to communications. Regard should be had to this crucial role in all decisions on manning of posts.

6. Where it is deemed necessary to have a further investigation in relation to an overseas incident the investigation should be independent and be seen to be impartial. It should also serve as a management tool to identify and address potential gaps in procedures and policies.
7. The interests of the families of soldiers killed or missing in action is paramount and should not be inhibited by concerns regarding liability. The absence of, or delay in communication of the result of inquiries fosters resentment and misunderstanding and should be avoided.
8. The findings of the report of investigation into fatal incidents should be promptly disclosed to the families of the deceased.
9. Colleagues of those killed, injured or missing in action have a legitimate interest in the outcome of investigations particularly where they have made statements to the Military Police. This should be taken into account in all such cases in future.