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23 November 2006

There were a dozen MPs in the Commons on Tuesday afternoon when Peter Hain stood up to introduce the St Andrews Bill, and not one of them shouted: "Resign!"

Herein lies one of the keys to understanding how British ministers can safely behave in ways here in Northern Ireland which would make toast of their political careers anywhere else.

It's been widely observed that last Monday's remarks by Judge Girvan about Hain's approach to the Victims' Commissioner case would have sparked calls for his resignation had they been directed towards any other cabinet minister. This reflects the disdain in which Northern Ireland is held across the water, it is said.

But it also reflects the fact that Northern politicians seem so focused on local concerns that questions of wider principle, which would arise more or less automatically elsewhere - even in New Labour Britain or the Fianna Fail Republic - are seen here as distracting irrelevancies.

Suggestions that Hain should consider his cabinet position following Judge Girvan's initial criticisms on November 9 came not from NI politicians, but from Plaid Cymru's Westminster leader Elfyn Llwyd and Clwyd West Tory MP David Jones. The pair won no backing from their colleagues here in raising the possibility of Hain being forced out of both the Welsh Office and the NIO - on an issue solely to do with Northern Ireland circumstances. Remarkable.

However, it may be that the implications of the case for Hain's career and the reputation of the NIO are set to become unavoidable.

Now, it has emerged, the Attorney General, (AG) Lord Goldsmith, may be asked to expand the inquiry ordered by Judge Girvan to take in the NIO's role in the court challenge mounted earlier this year by Garvaghy Road man Joe Duffy over the appointment of two members of the Orange Order to the Parades Commission.

Lawyers for Mr Duffy are studying Judge Girvan's ruling on November 9 and his referral of the issue to the AG on Monday, with a view to writing to Lord Goldsmith suggesting, in effect, that the Secretary of State has previous form in this area which should be taken into

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account.

The suggestion which Judge Girvan has asked the AG to investigate is that Hain sent two senior officials - the head of the NI civil service, Nigel Hamilton, and NIO political director, now Permanent Secretary, Jonathan Phillips - into court to give misleading evidence on oath in order to conceal the fact (and Judge Girvan found it to be a fact) that DUP nominee and police widow Bertha McDougall had been appointed Interim Victims' Commissioner in October 2005, not because she had been assessed as the best candidate for the job, but because her appointment suited Hain's political purposes at the time.

The charge is not of opportunistic or dishonest behaviour, but of misleading the court in an effort to pervert the course of justice.

It has been acknowledged by all sides that Bertha McDougall has been an entirely innocent party in this affair. There has been less acknowledgement that Judge Girvan also gave the DUP a clean bill of health. There is nobody in the frame for the wrong- doing which the court decided had happened, apart from the NIO and Peter Hain.

The most relevant aspect of the Parades Commission case has to do not with the validity of the appointments of Orangemen Don Mackay and David Burrows, but with evidence given on Hain's behalf by a senior civil servant.

Mackay had cited former SDLP mayor of Portadown Dolores Kelly as a referee. Hain had the application form containing this reference in front of him as he made the appointment. But it turned out Ms Kelly had not agreed to the reference, and said she wouldn't have had she been asked. Didn't this mean the appointment had been made on a false basis, Joe Duffy asked.

No, insisted NIO security official Carol Moore in court. "Having had the situation checked with the Secretary of State I am informed by him and believe that the identity of each of the candidates' referees (including those of Mr Mackay) played absolutely no part in his decision in respect of any of the appointments."

Joe Duffy's lawyers are minded to suggest to the AG that whoever is appointed to conduct the inquiry ordered by Girvan should examine the possibility that there may be a pattern emerging.

Meantime, Hain may ponder whether he might have responded more respectfully to Judge Girvan's initial remarks. On November 9, the judge had called for an "immediate and searching inquiry at the highest level". At the highest level of what, he didn't say.

Hain clearly assumed that it was he who would decide on the form of the inquiry and who would head it. He gave a number of interviews in which he covered behind the unchallenged integrity of Bertha McDougall while airily insisting that he'd deal with the inquiry business eventually.

A week ago, on November 16, the Belfast Telegraph's Chris Thornton reported that the cabinet office believed that "it's up to (Hain) to decide whether there should be an inquiry".

Following this, Judge Girvan postponed a hearing scheduled for the following day until



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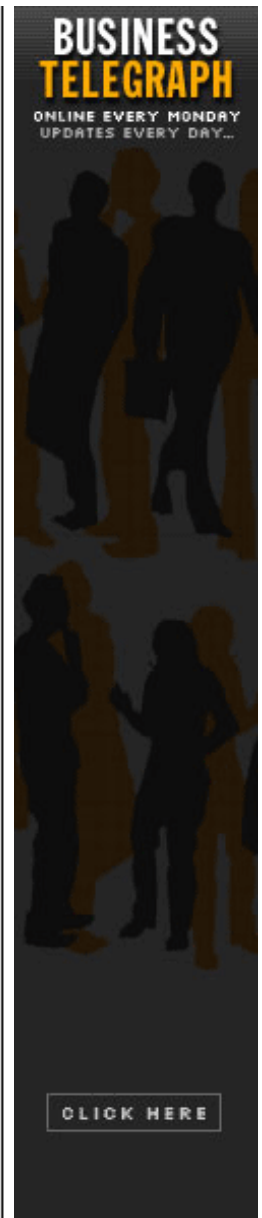
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Monday, when he made plain that it was not at all up to Hain to decide whether there'd be an inquiry.

There would be an inquiry, conducted through the AG's office. He listed 67 questions that need answered. He spelt it out that the AG was required to act in this matter "not as a Government minister but as the guardian of the public interest in the due administration of justice".

Peter Hain is in peril. The only thing he has going for him is that this is Northern Ireland.

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