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PM urged to intervene in Hain affair

By Noel McAdam and Mark Hookam

21 November 2006

Pressure was mounting on Secretary of State Peter Hain today as an Ulster MP asked Tony Blair to become involved in the controversy over a High Court case.

It came after the Attorney General agreed to establish an inquiry into whether Mr Hain and senior civil servants misled the court over their procedures for the appointment of the interim Victims Commissioner.

It also emerged the Attorney General Lord Goldsmith may make his first public comment on the issue on Thursday when he is due to answer a question on judicial reviews tabled by former First Minister Lord David Trimble.

Criticism, meanwhile, increased from Ulster Unionists and the DUP as a defiant Mr Hain prepared to kick off a seven-hour Commons debate on emergency legislation to restore power-sharing devolution in March next year.

Mr Hain pledged full co-operation with the investigation, which will look at a total of 67 questions put to the Attorney General by Mr Justice Girvan, and insisted there had been no intention to mislead the court.

Ulster Unionist MP Lady Sylvia Hermon said she had asked Mr Blair to explain the possible consequences if Mr Hain is held in breach of Ministerial rules.

"Since the judge held the Secretary of State to be in breach of the Ministerial Code, I've now asked the Prime Minister to elaborate on the consequences for his Cabinet colleague," the North Down MP said.

"Whatever the outcome, I don't think any of this can be good news for someone campaigning to become the next Deputy Prime Minister."

And DUP MLA Ian Paisley junior said: "If the Attorney General found there was any attempt by the Secretary of State to misdirect the court, or get his officials to do so, in any other country he would be indicted and I do not see why a different standard ought to apply to him."

The Conservatives' David Lidington said Mr Justice Girvan's ruling was "a devastating indictment" of Mr Hain.

Independence call for cover-up

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probe

By Chris Thornton and Mark Hookam

The Attorney General has been urged to ensure the independence of any cover-up inquiry examining Peter Hain's handling of a High Court case.

Lord Goldsmith said he will announce the leader of the inquiry at a later date.

Mr Hain promised full co-operation with the investigation, while insisting that he and his officials did not try to mislead a probe into the appointment of the Victims Commissioner.

Pressure for an inquiry grew yesterday when Mr Justice Girvan referred the matter to Lord Goldsmith - posing 67 questions about the conduct and knowledge of the Secretary of State and senior civil servants.

The judge said there could have been an attempt to pervert the course of justice and said his questions "must be addressed in a rigorous and searching investigation".

Two weeks ago the judge found that the appointment of Bertha McDougall as the Interim Victims Commissioner had been an improper political concession to the DUP. But he also called for an inquiry into whether there had been an NIO cover-up of the appointment.

The judge found that the NIO had provided misleading information to the court about the DUP's role in the appointment.

At least one contentious item - a statement by civil service head Nigel Hamilton - had been approved by Mr Hain before it was sent to court.

After the judge's call there was no immediate Government action, apart from a Cabinet Office statement saying that it would be up to Mr Hain to decide if there should be an inquiry.

But in another hearing yesterday, the judge returned to the matter and said he was referring the case to Attorney General Lord Goldsmith.

"The papers and manner in which the respondent met the legal challenge raised serious issues as to whether there was an attempt to allow the court to be misled as to the true factual and legal situation," he said.

Mr Hain was stung into a response.

"I absolutely reject any suggestion that there was a deliberate attempt to mislead the court in relation to the appointment of Bertha McDougall as the Interim Victims Commissioner," he said.

He said the inquiry "will receive our full co-operation".

Conservative spokesman David Lidington said the Attorney General who, like Mr Hain, attends Cabinet meetings, should appoint either a retired judge or a senior lawyer to act as an independent investigator.

Mr Lidington said such a report must be made public and Lord Goldsmith should wrap up the inquiry by Christmas.

The Conservatives sought to table three Commons written questions about the affair.



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The first asks the Secretary of State to directly respond to yesterday's judgment. The second asks the Solicitor General, Mike O'Brien, to reveal the terms of reference for the inquiry, the membership of the inquiry team, the timescale of the probe and whether the findings will be made public. The third asks the Prime Minister whether he was consulted over the appointment.



Robert Fisk

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In a separate development, Plaid Cymru, the Welsh nationalists, last night threatened to make a complaint to the Commissioner for Public Appointments if Lord Goldsmith's inquiry is not dealt with urgently.

Hain to face 67 questions and Attorney General probe

By Chris Thorton

20 November 2006

Questions about Peter Hain's conduct in the Victims Commissioner's case were referred to one of the UK's highest law officers today.

Scrutiny of the Secretary of State's role in the case intensified as Mr Justice Girvan called in the Attorney General - indicating there may have been a cover-up that amounted to an attempt to pervert the course of justice.

He also posed 67 questions about the conduct and knowledge of Mr Hain and senior civil servants, saying the questions "must be addressed in a rigorous and searching investigation".

His comments opened up the possibility of a criminal investigation and increased pressure on Mr Hain, who has yet to respond to the judge's criticisms.

Earlier this month the judge ruled that Mr Hain had appointed Interim Victims Commissioner Bertha McDougall as an improper concession to the DUP.

But at the same time he drew attention to a possible Northern Ireland Office cover-up, saying "misleading" evidence had been provided to the court and Brenda Downes, the woman challenging the appointment.

"The question arises in this case is whether there was a deliberate attempt to mislead and if so by whom," he said today.

The judge has been severely critical of a statement to the court by Nigel Hamilton, the head of the civil service in Northern Ireland, which had been read and approved by Mr Hain.

"The papers and manner in which the respondent met the legal challenge raised serious issues as to whether there was an attempt to allow the court to be misled as to the true factual and legal situation," he said.

Two weeks ago the judge called for an "immediate and searching inquiry at a high level".

Today, he clarified those remarks after the Cabinet Office said it was up to Mr Hain to decide on an inquiry into the case.

The judge said an investigation could not be "fair and meaningful" if it was "conducted by any of the personnel involved in the handling of the case".

Lord Goldsmith is a Cabinet colleague of Mr Hain, but he is also charged with guarding the justice system.

The judge said the case is about preserving the integrity of the judicial review process.

"Any possible attempted interference with or obstruction of the course of justice is a grave matter which demands a proper investigation," the judge said.

The judge said that if "incorrect and misleading information was deliberately given to put the applicant on a false trail, then prima facies that conduct would appear to fall in within the concept of perverting the course of justice".

"If in the course of the substantive judicial review there was a deliberate attempt to mislead the court the same would be true.

"The letter and the evidence provided by Mr Hamilton as approved by the Secretary of

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State had the tendency to mislead."

The Secretary of State reacted quickly saying: "I absolutely reject any suggestion that there was a deliberate attempt to mislead the court in relation to the appointment of Bertha McDougall as the Interim Victims Commissioner.

"I would welcome any decision by the Attorney General to hold an inquiry. It will receive our full co-operation.

"On the wider issue of the judicial review judgement on public appointments, which have implications beyond this specific case, an appeal is still under consideration.

"The one group of people who must not be forgotten are the victims. I make no apology for preparing the ground for a permanent champion for victims who will, for the first time in Northern Ireland's history, have a voice at the highest level.

"I want to re-iterate that Bertha McDougall has done an excellent job on behalf of victims."



Analysis

Judge moves Hain affair to different level

By Chris Thornton, Political Correspondent

He says he did it for the victims. Last week Peter Hain told Welsh reporters that "the big picture" from the Victims Commissioner court case was that "I was acting on behalf of victims".

In that case, Mr Justice Girvan concluded that the Secretary of State had actually done it for the DUP - appointing Bertha McDougall, Ian Paisley's choice for the post, as an improper political concession to the unionist party.

But there were more serious implications - the High Court also rebuked the Secretary of State and senior civil servants for their handling of the case.

Today the judge went further, firmly underlining that the case has become about more than Mrs McDougall's appointment.

In perhaps the most serious development so far, he called on the Attorney General to investigate the NIO's handling of evidence, opening the way for a possible criminal investigation.

According to the judge, material provided by the NIO misled the court at an early stage, and the integrity of the judicial review system is at stake.

If there was a deliberate attempt to kill off the case, that would amount to an attempt to pervert the course of justice and contempt of court.

As the head of a Government department, Mr Hain can come in for criticism from courts from time to time.

But this case isn't about him being a figurehead for decisions by civil servants further down the food chain - his fingerprints are on some of the material the judge wants investigated.

It was late last year that two widows found themselves headed for court. Brenda Downes, whose husband was killed by a police plastic bullet, challenged the appointment of Mrs McDougall, whose RUC husband was murdered by the INLA.

The legal challenge arose after DUP sources boasted they had secured the appointment.

The court found that was the case - Mr Hain had ordered shortcuts to get an appointment made, the DUP had nominated her, and she was the only person interviewed for the post.

But that's not what the NIO initially revealed. First, in a letter to Mrs Downes' solicitors, officials indicated the appointment of Mrs McDougall was based on merit and "gave a false answer" about DUP consultation.

When the case came to court, an affidavit was provided by the head of the Northern Ireland Civil Service, Nigel Hamilton.

Mr Hamilton had interviewed Mrs McDougall, along with Jonathan Phillips, now the Permanent Secretary of the NIO.

In that statement - which, crucially, was read and approved by Mr Hain - he set out the

background to the case.

But when that material was challenged in court, it emerged that the statement didn't tell the whole story. Mr Phillips provided a new affidavit indicating Mr Hamilton may not have been fully aware of the DUP's involvement in the appointment.

That helped the judge to conclude Mr Hamilton's statement as misleading.

"The question which arises in this case is whether there was a deliberate attempt to mislead and if so by whom," he said in yesterday's statement delivered in court.

"The papers and manner in which the respondent met the legal challenge raised serious issues as to whether there was an attempt to allow the court to be misled as to the true factual and legal situation."

Attached to that statement were the 67 detailed questions that the judge described as the "key questions which need to be addressed in a rigorous and searching investigation".

When the judge initially called for an inquiry two weeks ago, the Cabinet Office said it would be a matter for Peter Hain to decide whether one should be set up.

That wasn't good enough for the judge. "If such an investigation is to be fair and meaningful it could not be conducted by any of the personnel involved in the handling of the case," Mr Justice Girvan said.

The 67 questions will be forwarded to the Attorney General, Lord Goldsmith.

He is a Cabinet colleague of Peter Hain, but the judge noted that he is "the guardian of the public interest in the due administration of justice". It's in that role that he is supposed to decide what happens next.

[Read the full judgement at www.courtsni.gov.uk](http://www.courtsni.gov.uk)

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