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By Chris Thornton

10 November 2006

Peter Hain and his two most senior civil servants were not just foiled yesterday in an attempt to appoint who they wanted as victims commissioner.

It may be more serious than that: they now face a possible inquiry into whether the court case over the appointment involved a cover-up by the administration they run.

In his judgment criticising last year's appointment of Bertha McDougall to the post, Mr Justice Girvan called for an "immediate and searching" high-level inquiry. But it was not her appointment that the High Court judge wants examined.

Instead he made serious criticisms of the NIO. He said there was a "significant lack of candour" and concluded that evidence was deliberately withheld from the High Court - the matter that he said should be investigated by an inquiry. His call posed serious questions for Mr Hain and Ulster's two most senior civil servants - Nigel Hamilton, head of the Civil Service, and NIO permanent secretary Jonathan Phillips.

The latter two interviewed Mrs McDougall prior to her appointment and provided affidavits to the court, in each case with the authorisation of Mr Hain.

The judge said Mr Hain, as respondent, "failed in his duty of candour to the court".

"The inference to be drawn in the circumstances is that the respondent was attempting to divert attention from the true course of events," he said.

He said the departments run by Mr Hamilton and Mr Phillips "initially provided partial, misleading and incorrect information as to the manner of the appointment".

The judge said NIO lawyers had been given "obviously misleading" information to build their case, and said that in its first hearings - held before another judge - the High Court had actually been misled.

He said the NIO and First Ministers' Office failed to disclose the "true nature" of the way the DUP was consulted about Mrs McDougall's appointment to the

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exclusion of other political parties.

The judge said the departments had implied "that no consultation took place when it had taken place" and gave "the false impression" that the merit principle had been used to make the appointment when, he found, it had actually been "disregarded."

"Since within the NIO and OFMDFM the true factual situation was known it must be concluded that it was decided that the correct information should not be placed before the court," the judge said.

An initial letter explaining the appointment was "evasive, misleading and in certain respects clearly wrong".

"Since the letter was clearly carefully drafted having regard to the highly political nature of the issues I am forced to the conclusion that this was no mere drafting error," the judge said.

"The duty lying on the relevant department was thus to provide the information honestly and correctly. For some reason it was decided within government that incorrect and misleading information would be supplied."

The judge singled out Mr Hamilton's affidavit about the background to the appointment.

He said it was "ambiguous and incomplete", used "guarded, shrouded and carefully crafted language", and "failed to disclose all the relevant material pertaining to the appointment".

He said the wording "put a spin on the true situation which was misleading".

Mr Justice Girvan said the NIO accepted that the affidavit was "incomplete and unsatisfactory" even though it had been "seen and approved" by Mr Hain.

"One would have expected the Secretary of State, who read and sanctioned the affidavit, to have taken steps to ensure that it fully and accurately explained the situation," he said.

The judge added: "No explanation was provided as to how the Secretary of State came to approve and sanction the swearing and filing of an affidavit which Mr Phillips acknowledged was incomplete."

He also described a phrase in Mr Phillips' own affidavit as "misleading".

The judge noted that if the court had not pushed for more information, "the true evidential position would not have come to light and the interest of justice would have been frustrated".

"There is no explanation given by Mr Phillips, Mr Hamilton or the Secretary of State as to why the evidence given previously came to be so worded as to fall significantly short of being a full and accurate picture of the true course of events," he also said.

He said it was important to expose the Government's lack of candour. "If there has been a significant breach of the duty of candour it poses the question as to why this occurred and why the decision-makers considered it necessary to be less than open and frank in presenting their evidence and in dealing with pre-action inquiries," he said.



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Last night Relatives For Justice, the mainly nationalist victims' group which supported the case against the appointment, called for the two civil servants to be suspended pending the outcome of any inquiry.

A Government statement said: "It would not be appropriate to comment at this stage as we wish to reflect carefully on the detail of the court's decision."

It paid tribute to Mrs McDougall and "the excellent way in which she has undertaken a very difficult task".

High Court judgement on Peter Hain in full

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