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Judge calls for inquiry into victims commissioner row

([Irish News](#))

Secretary of State Peter Hain was under pressure last night (Thursday) after a judge called for a high-level inquiry into his handling of the appointment of a victims commissioner.

Mr Justice Girvan held in the High Court yesterday that Mr Hain's decision had been motivated by an improper political purpose – a confidence-building gesture to the Democratic Unionists.

The judge ruled that Mr Hain had failed to take account of the fact there was no evidential basis for concluding there would be cross-community support for Bertha McDougall, the widow of an RUC reservist killed by the INLA in 1981.

Her appointment was in breach of the accepted merit norms applicable to public appointments, the judge said.

Mr Hain was ordered to pay the legal costs, estimated at more than £100,000.

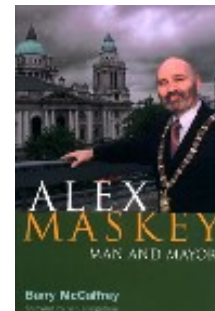
Mr Justice Girvan was upholding an application for judicial review challenging Mrs McDougall's appointment to the £50,000-a-year interim post.

The case was brought by a west Belfast woman, Brenda Downes, whose husband John was killed by an RUC plastic bullet in 1984.

Mrs Downes said outside the court: "Right has overcome might. Justice has prevailed. Today is a victory for justice."

The judge had earlier referred to "evasive and misleading" information in correspondence that had led to Mr Hain contending there was no evidence to justify Mrs Downes's challenge based on allegedly improper political considerations.

He said that, if the Court of Appeal had not allowed that ground to stand, Mr Hain would have frustrated her challenge by withholding material evidence.



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by Barry McCaffrey

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"This case thus raises very serious issues which should be the subject of immediate and searching inquiry at a high level," said the judge.

He said spin had been put on the situation by a statement by Nigel Hamilton, head of the civil service, that Mr Hain was "mindful" the DUP had recommended Mrs McDougall.

"The inference to be drawn is that the respondent (Mr Hain) was attempting to divert attention from the true course of events," he said.

According to an affidavit sworn by Jonathan Phillips, permanent secretary at the Northern Ireland Office, factors taken into account by Mr Hain were that the DUP had suggested Mrs McDougall and that her appointment would build DUP confidence in the political process.

The judge said civil servants had avoided answering the question of how Mrs McDougall had come to be aware of the vacancy and they had given a wholly misleading impression that senior officials had put her name on the list and that no consultation had taken place.

"The reality is that the secretary of state did consult the DUP. The secretary of state did in fact invite them twice to informally propose a particular individual whom he would consider," he said.

"The impression that the appointee was the best candidate on merit was false as further written submission lodged on behalf of the secretary of state frankly conceded."

Mr Justice Girvan said he had concluded that Mr Hain had been motivated by political considerations in deciding not to carry out a proper procedure to identify the best candidate.

"This leads to the conclusion that he acted for an improper motive," he said.

The judge sharply criticised civil servants advising Mr Hain.

"The relevant government departments initially provided partial, misleading and incorrect information as to the manner of the appointment – failing to disclose the true nature of the limited consultation which took place with one political party (the DUP); implying that no consultation took place when it had; and giving the false impression that the appointment was made on the basis that the appointee was the best candidate in terms of merit when in fact the ordinary principles applicable to an appointment solely on merit were disregarded," Mr Justice Girvan said.

He said nothing in his judgment should be taken as in any way reflecting on Mrs McDougall's competence or integrity.

"She was in no way privy to the inner workings of government in relation to the manner of her actual appointment," he said.

"Similarly, it should be recorded that there is no evidence the DUP expected or demanded that their nominee should be given preference in disregard of the ordinary merit principle."

Mr Justice Girvan said Mrs Downes had been a victim of unlawful discrimination under section 76 of the Northern Ireland Act 1998.

"I conclude that she can rely on a breach by the secretary of state of the section 76 duties," he said.

Solicitor Paul Pierce, who acted for Mrs Downes, said: "The judge has clearly acknowledged that the evidence presented throughout the proceedings had the effect of misleading the court."

Mark Thompson of the campaign group Relatives for Justice said: "This judgment gives the ownership of the whole process back to the victims and away from the improper manner in which the government and the Secretary of State handled it.

"We welcome the judge's call for an immediate and high-level inquiry."

After the court ruling, a spokesman for the Office of the First Minister and Deputy First Minister said: "Obviously we are disappointed. It would not be appropriate to comment at this stage as we wish to reflect carefully on the detail of the court's decision.

"In addition, a further hearing on any appropriate relief to be granted in the light of this ruling is set for next Friday.

"However, we would wish to make clear, as the court did, that this judgment is in no way a reflection on Mrs McDougall or the excellent way in which she has undertaken a very difficult task."

Sinn Féin spokesman Philip McGuigan said: "If victims of the conflict are to have confidence in a victims commissioner then people have to be confident that their appointment was free from political intervention and not part of some wider game being played by the NIO."

Patricia Lewsley of the SDLP said: "The appointment was unfair to victims and placed the interim victims commissioner in a very difficult position.

"The SDLP's problem was never with Bertha McDougall – rather with the nature of her appointment."

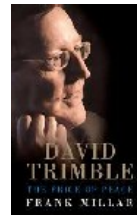
November 11, 2006

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