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Peter Hain inquiry decision to be decided by Peter Hain

By Chris Thornton

13 November 2006

Whitehall has washed its hands of an inquiry into how the NIO misled the High Court - saying it's up to Peter Hain to decide if there should be an investigation into Peter Hain.

The Cabinet Office said it won't be taking up a senior judge's demand for an "immediate and searching inquiry at a high level" into attempts to cover up the reasons for the victims commissioner's appointment.

But SDLP Justice spokesman, MLA Alban Maginness, said it was "ridiculous" to expect Mr Hain to judge whether the case should go to an inquiry.

Mr Justice Girvan made the call for an inquiry last week after finding that the two most senior civil servants in Northern Ireland made "misleading" affidavits to a High Court case.

He noted that Mr Hain had "read and sanctioned" the two misleading statements, meaning his conduct during the appointment of Victims Commissioner Bertha McDougall would be a central concern for any inquiry.

The judge found that Mrs McDougall's appointment had been an improper political concession to the DUP.

He also attacked the NIO's conduct during the case, saying there had been a deliberate attempt to cover up the DUP's role in the appointment, although he indicated the NIO's actions should not be a reflection on Mrs McDougall's work.

Mr Justice Girvan said Mr Hain, as the respondent in the case, "failed in his duty of candour to the court" and had tried "to divert attention from the true course of events".

But after reviewing the judgment, the Cabinet Office said it would institute an inquiry.

"It is for the Secretary of State to decide how to address issues raised in the judgment," a spokeswoman said.

"That's ridiculous," said Mr Maginness, a barrister. "He would be a judge in his own cause, which goes against one of the basic rules of natural justice.

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"The judge in this case decided that NIO had behaved improperly in the affidavits it provided to the court and took great exception to that.

"He was very scathing. It should be up to the Government generally to decide on an inquiry. If Peter Hain was going to make a decision, would he take one in his own interests?"

Mr Hain ruled out suspensions for the two civil servants, NIO Permanent Secretary Jonathan Philips and the top civil servant, Nigel Hamilton

His statement came in for particular criticism from the judge, but he noted that Mr Hain "put him forward as the proper person to explain the factual background" to the appointment.

"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," the judge said.

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