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Local & National

Hain refuses to put up white flag over court case

Tuesday, January 16, 2007

By Chris Thornton

It hasn't been Peter Hain's finest hour.

Accused of breaking the law, playing political favourites and under investigation for perhaps attempting to cover it all up, you might conclude he would be happy to see an end to the Victims Commissioner case.

Not so. Faced with the chance of a soft landing yesterday, Mr Hain decided he would rather go back to court and fight the fight all over again.

That decision means the court case over the Interim Victims Commissioner's appointment now looks set to run longer than the post itself.

Mr Hain announced yesterday that he will appeal the High Court ruling that says he acted unlawfully by giving RUC widow Bertha McDougall the year-long post at the behest of the DUP.

Currently it's been more than a year since legal papers were first filed in the case taken by Brenda Downes, whose husband was killed by a plastic bullet fired by a policeman.

The west Belfast woman claims Mrs McDougall's appointment does not command cross-community support and was a sop to the DUP.

By the time the appeal is heard, Mr Hain can confidently expect that Mrs McDougall will have published her final report and returned to private life.

Which may be one point of the appeal.

After weeks of consideration about how to respond to the illegality, Lord Justice Girvan ruled yesterday that Mrs McDougall should not be sacked.

He concluded that her post had actually expired last month, even though the NIO is still paying her £5,200 a month to finish her report.

Yesterday's judgment appeared to allow Mrs McDougall to issue her report, but only in a personal capacity - as the former, rather than current, Victims Commissioner.

Lord Justice Girvan said it was a "matter of common sense and practicality" that Mrs McDougall should be allowed to finish her work - especially since the faults with her appointment were not her doing.

But he added that publication in her own name would be a way of "distancing herself from the illegality of the appointment process".

Mr Hain's decision to appeal could throw that situation into question.

Legal opinion on the matter is uncertain, but it seems possible that Mr Hain could go ahead and publish the report as the Interim Victim Commissioner's work while the matter is undecided by the Court of Appeal.

"It would be pretty brazen," said one source who has examined the case.

But there is precedent for that belief. While Lord Justice Girvan was first considering the appointment - but after it became apparent that he could rule it illegal - officials went ahead and told Mrs McDougall that they would extend her contract.

The proof will be in publication. Mrs McDougall's lawyers said yesterday that she has completed her report, meaning it is a matter of weeks away from publication.

In announcing his appeal yesterday, Mr Hain repeated his contention that he has acted from the purest of motives - to help victims.

He said the latest ruling "recognises the importance of the work being undertaken by Mrs McDougall and I make no apology of getting this process started because for too long the needs of victims have not been comprehensively addressed".

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Mark Thompson of the victims group Relatives for Justice said that assertion was "nonsense".

Mr Thompson's group has supported Brenda Downes, the widow who challenged the appointment.

"Peter Hain politicised the victims' issue," he said. "He didn't allow the victims any say in this appointment, only the DUP.

"It's his political integrity that has been called into question by this case.

"This whole business of an appeal is an attempt to create a diversionary spin. He's still attempting to vindicate himself and the day of vindication is long gone."

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