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Court rejects challenge to Scottish ministers' abuse inquiry chair

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The court of session has rejected a legal challenge by two Catholic orders, after they claimed the head of the Scottish Government's historical child abuse inquiry might be biased.

The Sisters of Nazareth and the Sisters of Charity of St Vincent de Paul had sought a judicial review over the appointment of Susan O'Brien QC to chair the inquiry, because she had previously taken on the cases of victims of alleged abuse.

Ms O'Brien was due to start work on the Inquiry today [July 1].

Alastair Duncan QC had argued that because Ms O'Brien had acted in 2007 for two clients in relation to a case for damages against the Sisters of Nazareth, her appointment by education secretary Angela Constance was in breach of the Inquiries act, due to a "close association" with an interested party.

As well as acting for the two clients when they appealed against the three year 'time bar' which prevents many abuse victims from seeking compensation, she had also advised a pressure group which sought to change the law relating to the time bar.

Mr Duncan also argued that because she had 'supported' the claims of her clients, it would appear to a fair minded observer that there was a risk of bias.

However Lord Woolman ruled that there was no breach of the inquiries act, as Ms O'Brien's previous involvement with victims of abuse did not amount to a 'close association', and neither could it be regarded as affecting the impartiality of the inquiry.

The charities needed to meet a high legal bar and establish that no reasonable minister could have made the decision to appoint Ms O'Brien he said. "In my view they have failed to do so."

He said no fair minded observer could conclude there was a real possibility of bias.

Lord Woolman said that if an advocate was deemed to have a close association with anyone they had ever acted for "every advocate would have a myriad of close associations. In Ms O'Brien's case that might amount to thousands."

Mr Duncan had already acknowledged the integrity of his fellow QC, the written opinion points out. The charities "accept that she has no actual bias and that as the chair of the inquiry she would do her level best to discharge her role fairly."

Ministers have said the inquiry will be inquisitorial, rather than adversarial and concerned with establishing the truth rather than attributing blame, Lord Woolman noted.

Lord Woolman said there was no breach of the Inquiries act and rejected the claim that her appointment breached common law, which relies on the perceptions of a "fair minded and informed observer".

"In my view the fair-minded and informed observer would not conclude that there is a real possibility that the tribunal was biased," he said.

Prior to her appointment Ms O'Brien herself raised the issue of her past involvement in historic sexual abuse cases in a letter to the education secretary. "I have been trained to put out of my mind knowledge and prejudice which might have an impact on the case I am hearing," she said. "I believe you can have confidence that my training and experience will minimise any risk of compromise to the inquiry."

As well as the two cases in which Ms O'Brien had involvement, several hundred other actions have been raised against the Sisters of Nazareth by people who lived in its children's homes and several hundred more have been raised against other institutions which ran children's homes during the same period.

David Whelan, spokesman for Former Boys and Girls Abused in Quarriers Homes (FBGA) said: "We are pleased with this judgement. Victims - survivors have waited a long time for this inquiry and many are very ill and elderly.

"We hope all the parties respect the courts decision and that the work of the Inquiry begins on time. This was an ill-advised legal challenge which has caused real anger and upset amongst many survivors who have suffered abuse."

A Scottish Government spokesman said: "We welcome Lord Woolman's decision, which means that Ms O'Brien can continue the work she began this morning as the Chair of the Inquiry."

A spokesman for the Sisters of Nazareth said the order would take time to consider the judgement before making any comment.

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