AN CHÚIRT UACHTARACH

THE SUPREME COURT

[2024] IESC 37

S:AP:IE:2016:000116

Between/

STUDENT TRANSPORT SCHEME LIMITED

Applicant

v.

THE MINISTER FOR EDUCATION AND SKILLS

Respondent

and

BUS ÉIREANN

Notice Party

O'Donnell C.J.

Charleton J.

O'Malley J.

APPLICATION FOR ACCESS TO THE COURT RECORD

Ruling of The Court delivered the 29th day of July 2024.

Introduction

1. This is an application by Mr Tim Doyle for an order granting him the electronic recordings of each occasion on which aspects of the above-mentioned proceedings have been dealt with in this Court, involving a total of eleven different dates since 2013. As can be seen from the title of the proceedings, Mr Doyle was not a party in the case. He is one of two shareholders in Student Transport. Mr Doyle is represented for the purposes of this application by Mr Brian Lynch, solicitor, who is the other shareholder. His motion also seeks an order that he be provided with transcripts of the recordings, at the public expense. The hearings in question range from various motions brought by way of appeal while the matter was still pending in other courts through to two full hearings relating to a "*Greendale*" application made in this Court.

2. The main proceedings were commenced in 2011 by Student Transport Scheme Limited ("Student Transport"). The issues in the case concerned the School Transport Scheme ("the Scheme"), which has been operated by Bus Éireann since 1967. Essentially, the claim was that the respondent Minister was in breach of the Public Contracts Directive (Council Directive 2004/18/EC) and the implementing regulations (the European Communities (Award of Public Authorities' Contracts Regulations 2006 – S.I. 329/2006). Student Transport argued that the Scheme was based on a contract that should have been put out to public tender. It was unsuccessful in the High Court (McGovern J. – [2012] IEHC 425). An appeal to this Court was transferred to the Court of Appeal on the establishment of that Court. Student Transport was again unsuccessful ([2015] IECA 303 and [2016] IECA 152). An application for leave to appeal further, to this Court, was refused ([2016] IESCDET 123).

3. The proceedings were, in substantive terms, at an end at that point. However, some years later Student Transport brought an application before this Court on foot of what is known as the "*Greendale*" jurisprudence (see *Greendale Developments Ltd. (No. 3)* [2000] I.R. 514) seeking to set aside the refusal of leave to appeal and reopen the application for leave. This application was considered in accordance with Practice Direction SC 17 and was the subject of a full hearing by a five-member Court. By judgment delivered by the Chief Justice on the 14th June 2021 the Court unanimously rejected the application ([2021] IESC 35). The basis for that decision will be described in due course.

The rules relating to access to records of proceedings

4. The application is made pursuant to Order 123 of the Rules of the Superior Courts as amended. In the 1986 version of the Rules, this Order was concerned only with the procedure whereby the court could, on application by a party, appoint a shorthand writer who would be paid by the party that made the application. Rule 5 of the order provided that the judge could direct that copies of the shorthand writer's transcript should be furnished to him or her (at the public expense) or to any other party applying therefor (at the expense of that party).

5. The Order was extensively amended in 2008 (SI 325/2008). By this time, a Digital Audio Recording system was in place in all courtrooms, and it was necessary to make appropriate provision therefor. The following definition of "record" was inserted into O. 86 r. 1 of the Rules:

> "record" means a contemporaneous record of the proceedings concerned made by any one or more means, including without limitation –

(a) any shorthand or other note, whether written, typed or printed, and

(b) any sound recording or other recording capable of being reproduced in legible, audible or visual form, approved by the court;"

6. The Rules established the procedure by which the court could obtain a transcript from the person responsible for the storage or custody of the record of the proceedings. Under the 2008 version, such a facility was available to a party "interested in an appeal or application for leave to appeal", who could obtain from the Registrar the whole or any part of the transcript as related to such appeal or application, upon payment of the proper charges.

7. The 2008 SI also amended Order 123. Rule 5 of that Order empowers the judge to order, during the course of or at the conclusion of the trial or hearing, to direct that a transcript of the record or any part thereof be "furnished to him at the public expense or be furnished to **any party** applying therefor at the expense of that party". Under this rule, judges who feel it to be necessary can get transcripts for themselves. Since they will be doing this for the purposes of carrying out their judicial functions it is provided at the public expense. However, if a party to the case wants the transcript, they must pay for it.

8. Order 123 has been further amended by SI 101 of 2013 and SI 485 of 2014. Provision is now made under rule 9 for an application to be made by "**any party or person**" to seek access to any part of the record of proceedings, by way of motion on notice to the other party (if the applicant is a party) or to the parties (if the applicant was not a party).

9. Subrules 4 and 5 of rule 9 now provide:

(4) Subject to sub-rule (5), the relevant court may, where it considers it necessary in the interests of justice to do so, permit the applicant to have access to all or to such part of the relevant record concerned as is specified in the order made on the application, by such means and at such time or times as may be specified in that order and on such terms and under such conditions (including terms restraining the publication, dissemination or further disclosure of all or any part of the relevant record by the applicant, and the giving of an undertaking to such effect) as the relevant court may direct.

(5) Unless the relevant court otherwise directs, access to the relevant record shall, where permitted under sub-rule (4), be afforded solely by way of the provision to the applicant of a transcript of all or any part of that record, on payment by the applicant to the transcript writer of the transcript writer's fee for producing the transcript.

10. Mr Lynch accepts that he has misread the Order. Mr Doyle is clearly not entitled to a transcript at public expense, and he now offers to pay for it. It is also clear that he is not entitled to access to the record unless the court considers it necessary in the interests of justice.

The background to the application

11. In order to understand what is put forward on behalf of Mr Doyle by Mr Lynch, it is necessary to make some reference to the issues in the substantive proceedings.

12. Article 1(2)(a) of the Public Contracts Directive defines "public contracts" as "…contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of the Directive".

13. In the High Court, McGovern J. held that the Scheme was not "for pecuniary interest" within the meaning of the definition and was not, for that and three other reasons, a contract for the purpose of the EU public procurement rules. He considered that the fact that Bus Éireann received funding from the Minister did not establish a pecuniary interest, since in his view the Scheme was operated on a cost recovery interest. He also considered that it was an administrative arrangement, imposed by the Minister upon Bus Éireann and to be operated by the company in accordance with the Minister's policies and directions. The Minister could vary the functions to be served within the Scheme, and could (and did, during the period of cutbacks in public spending) alter its funding on a unilateral basis. McGovern J also held that, even if the Scheme did amount to a public contract, it was exempt from the application of EU procurement law under the "in-house" exemption set out in *Teckal Srl v. Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (Case C107/98).

14. For good measure, McGovern J. also found (a) that Student Transport's claim was time-barred, as having been brought outside the six-month time limit applicable to such proceedings and (b) that as a shelf company which had given very little evidence of its capacity to carry out the Scheme, it had not established that it had an interest in obtaining the contract. It therefore did not meet the eligibility test for bringing such a claim.

15. On appeal, the Court of Appeal held that McGovern J's assessment of the "pecuniary interest" issue could no longer be supported. Between the date of the High Court judgment and the hearing in the Court of Appeal, the Court of Justice of the European Union had ruled (in *Azienda Sanitaria Locale di Lecce, Università del Santo v. Ordine degli Ingegneri della Provinci di Lecce* (Case C159/11)) that a contract did not fall outside the concept of a public contract merely because the remuneration was limited to reimbursement of the expenditure incurred to provide the agreed services.

16. Nonetheless, the Court of Appeal ruled against Student Transport and dismissed the appeal because (i) there was no contract "concluded in writing" and (ii) the Scheme was of indefinite duration. Both of these factors took it outside the scope of the Directive. The Scheme was administrative in nature and lacked the *indicia* of a normal contract.

Proceedings in this Court

17. As already noted, Student Transport was refused leave to appeal to this Court. It initiated a *Greendale* application in respect of that refusal in November 2020, grounded upon an affidavit sworn by Mr Lynch. The application relied heavily upon a report by the Comptroller and Auditor General in 2017 and certain correspondence from the European Union Commission to the Irish State. The issue raised concerned the question of the payments made by the Minister to Bus Éireann. It had previously been accepted by the parties that those payments were made on a cost recovery basis, but the Comptroller and Auditor General's report was said by Student Transport to show that Bus Éireann had made a net surplus. This, it was asserted, meant that the High Court had been misled. The Minister and Bus Éireann disputed this interpretation of the report

and continued to maintain that Bus Éireann did not profit from the Scheme. They also argued that the question of profitability was not, in any event, relevant to the decision of the Court of Appeal and hence was not relevant to any appeal from that decision.

18. The context for the letters received by the Irish State from the EU Commission (in 2019) was a complaint made by Student Transport in 2013. Mr Lynch interpreted the letters as a finding of infringement of EU law on the part of the State. The respondent and notice party argued that this was a misreading, since the correspondence referred only to "alleged" incompatibility with EU law. The complaint was resolved to the satisfaction of the Commission through an informal procedure.

19. After the *Greendale* application was taken into case management pursuant to SC 17, Student Transport brought a motion for discovery. Because of the novelty of, and the issues raised by, such an application in that context, it was heard by a full panel. Judgment was delivered by Clarke C.J. on the 29th March 2021 ([2021] IESC 22). It was held that, in the light of the constitutional significance of the value of finality in respect of decisions of this Court (with the determination of an application for leave to appeal coming within the same category), the entitlement to discovery in a *Greendale* application must be very limited indeed. In that context, it was also noted that, while it was possible that a final order of the Court might be set aside in a case where it was obtained by fraud, it was clear that the proper procedure to adopt where a party wished to achieve that was to commence plenary proceedings in the High Court.

20. The purposes of the discovery application, and their relationship to the issues in the appeal, are set out in the judgment in the following terms:

"5.2 In essence, the case which Student Transport wishes to make is that the defence which the Minister (supported by Bus Eireann) made, both before the High Court and before the Court of Appeal, has now been demonstrated to be false by reason of matters which have subsequently arisen involving both certain interactions between the European Commission and Ireland, and also a report of the Comptroller and Auditor General. However, it became clear at the hearing of this application that at least one of the central matters relied on by Student Transport, being the question of whether Bus Eireann simply recovered its costs on foot of its arrangements with the Minister or whether a surplus was earned, had appeared to become irrelevant by the time this case came before the Court of Appeal.

5.3 It is true that the issue in question was significantly debated by the High Court which found against Student Transport on that point. However, developments in the jurisprudence of the Court of Justice of the European Union ("CJEU"), which occurred in the period intervening between the High Court and the Court of Appeal, would appear to have made that issue irrelevant. Any potential defence to the proceedings which might have relied on a contention that all that was involved was cost recovery would appear to have disappeared as a result of the decision of the CJEU in Azienda Sanitaria Locale di Lecce, Università del Salento v. Ordine degli Ingegneri della Provinci di Lecce (Case C159/11) (ECLI:EU:C:2012:817). (See in that context, para. 69 of the judgment of Hogan J. speaking for the Court of Appeal). On that basis, those questions would not appear to have been live at the time when the application for leave to appeal was brought so that, in turn, it is difficult to see how such

issues could have any bearing on the question of whether it might be appropriate to set aside the refusal of leave to appeal.

5.4 It is also, however, clear, from paras. 70 and 71 of the judgment of Hogan J., that the reasons why Student Transport's appeal to the Court of Appeal failed were first based on a conclusion that any relevant arrangements fell outside the scope of Directive 2004/18/EC (the Public Procurement Directive) because the arrangements in question were found to be of indefinite duration. A second reason for coming to a similar conclusion was the finding that the scheme was an administrative arrangement with no concluded contract in writing.

5.5 In light of those findings of the Court of Appeal, the only basis on which leave to appeal to this Court could have been granted would have been if this Court were satisfied that the constitutional threshold was met in relation to a potential appeal, which suggested that the Court of Appeal was wrong on the actual grounds on which that court ultimately decided to dismiss Student Transport's appeal and uphold the decision of the High Court. The focus of any Greendale motion must, therefore, engage with how it is said that the Greendale threshold is met in the particular context of the decision of the Court of Appeal which, after all, was the foundation on which the application for leave sought to appeal, which is now sought to be revisited, was based.

5.6 In my view, Student Transport has not demonstrated that any of the documents sought would have a material bearing on whether it could be demonstrated that there was a sufficient want of fundamental constitutional

fairness in relation to the specific decisions concerning that constitutional threshold which were the subject of the determination, so as to warrant exercising the very exceptional jurisdiction to order disclosure in the context of a Greendale motion. In addition, Student Transport did not, in my view, demonstrate that there was a real and substantial risk that the absence of disclosure of any or all of the documents sought might lead to an order which ought, in accordance with the Greendale jurisprudence, be considered a nullity, nonetheless standing."

21. In the judgment on the substantive issue – whether there were grounds for setting aside the refusal of leave to appeal – the Court held that a party seeking such an order must establish that there was something about the leave process itself giving rise to the sort of constitutional issues that would justify setting aside the determination.

22. It was repeated (in paragraph 6.11) that where a party claimed that a final decision had been procured by fraud the proper procedure was to commence plenary proceedings in the High Court seeking the appropriate orders. The reason why plenary proceedings would be necessary to set aside a judgment due to fraud was explained in paragraph 6.14. Any such allegation required to be fully considered by a court of first instance with the capacity to hear and have tested evidence relevant to the serious allegation involved.

23. In that context, it is significant for present purposes that the judgment notes that counsel for Student Transport did **not** go so far as to assert fraud.

"Rather, counsel sought to place reliance on the principle that state authorities should conduct litigation in an open manner 'with all the cards face upwards on the table'".

24. While it was accepted by the Court that such a principle was recognised, the judgment (in paragraph 7.4) expresses "significant" doubt as to whether it could ground a jurisdiction to set aside a final decision. No definitive decision was made by the Court, however, because the question whether the principle was capable of grounding such a jurisdiction was an issue that would firstly have to be considered in the High Court.

25. In paragraph 7.9 of the judgment, it was noted that the cost recovery/profit issue had been a central issue in the hearing of the application.

"However, as was pointed out by Hogan J in the Court of Appeal, the question of whether or not there was a profit or surplus element in the arrangements had ceased to be of any relevance by the time the case came to that Court because of the judgment of the CJEU in Azienda, which was delivered after the judgment of the High Court but before the case came to the Court of Appeal. As a result of Azienda, it was no longer open to the Minister to argue that the arrangements with Bus Éireann were not subject to EU public procurement law on one of the grounds on which the Minister had succeeded in the High Court, being the contention that there was no profit or surplus involved." (Emphasis added.)

26. Therefore, Student Transport could not have appealed to this Court on that issue, since the Court of Appeal had found *in its favour* on the particular point.

27. The judgment points out that Student Transport lost the case in the High Court on four independent grounds. One of those grounds disappeared on appeal and was, in substance, found in Student Transport's favour but to succeed, it had to reverse all of the grounds on which it had lost. Nothing had been put before the Court to suggest even that the Court of Appeal was wrong in its reasons for dismissing the appeal, and that would not, in itself, have been sufficient for the Greendale threshold.

The grounds for the current application

28. The central feature of the application is that Mr Doyle and Mr Lynch suspect fraud on the part of the State, Bus Éireann and the legal advisors to those parties but have no evidence to substantiate that suspicion.

29. According to Mr Doyle, the aim is to assess if sufficient evidence exists to contest the High Court judgment on the basis of fraud, which he sees as requiring "proof of criminal intent or revealing a degree of recklessness on the part of the state in potentially supporting a concocted defence". He believes that he is entitled to information that will assist in that regard, and thinks that the transcripts and, in particular, the audio record of court proceedings, will provide some such assistance. This is not because any particular statement made in court can now be shown to have been false, but because he believes that the record will demonstrate that relevant information was not furnished to the court.

30. Mr Doyle has sworn two affidavits, with exhibits totalling over two hundred pages. A short replying affidavit has been sworn by Ms Shirley Kearney. From the material put

before the Court it can be seen that the following has happened since the decision of this Court in 2021.

31. Mr Doyle and Mr Lynch have gone to extraordinary lengths to obtain details of Bus Éireann's bank records in respect of the payments for the School Transport Scheme as of the end of 2011. Apart from relatively innocuous matters such as Freedom of Information Act requests (40) and Parliamentary Questions (over 100) they have made personal allegations of criminal conduct against the officials and legal advisors involved in the case at all levels. The pattern here is one of writing to the individuals concerned, from the Minister for Education and Skills and the Attorney General through the ranks of officials and legal advisors including solicitor and counsel in the case. The theory upon which both Mr Doyle and Mr Lynch appear to have been operating is that a refusal to give them the information they seek is (a) grounds for suspicion and (b) evidence, in itself, of criminal culpability because those involved were legally obliged to report any suspicions they had to the authorities.

32. Thus, in his voluminous correspondence, Mr Lynch has made statements such as the following (from letters to the Chief State Solicitor and the CIÉ solicitor's office on the 22nd August 2023) – "While everyone is presumed innocent until proven guilty, we respectfully note that silence and concealing evidence without a reasonable excuse has been criminalised under Section 19 of the Criminal Justice Act 2011(updated)".

33. A text message was sent to the Attorney General's personal mobile phone on the 2nd February 2024. By letter to the Attorney General on the 15th February 2024, Mr Lynch stated that he was writing to him personally "to serve as evidence for possible civil and criminal proceedings if necessary". Mr Lynch further stated that the correspondence should give rise to suspicion on the part of the Attorney General that "notifiable

corruption offences" had been committed, such that he was obliged to notify the authorities. It was also stated that there was a "legal obligation" to release the Bus Éireann bank statement sought. Mr Lynch asked whether the Attorney had "fact-checked whether the leadership of the State's legal team had broken the civil and criminal law". Again, the comments in this Court's judgments about the correct jurisdiction in which to raise the issue of fraud were utilised in the suggestion that such comments were sufficient to give rise to reasonable suspicion that there had been a fraud on the court.

34. Apart from the Attorney General, Mr Lynch wrote to the Minister (on the 5th September 2023) urging her to "fact-check" the manner in which the State's lawyers had handled the case. It was stated that if there had been a breach of the law relating to disclosure and withholding of information then there were reasonable grounds to suspect a violation of anti-corruption laws. "Silence has been criminalized, and ignorance of the law is not an excuse. Those who suspect corruption and choose to remain silent about others who should be held accountable and decide not to notify the authorities commit an anti-corruption offence **unless there is a reasonable excuse.**" (Emphasis in the original.)

35. The letter just quoted referred to the fact that previous correspondence addressed to the Minister personally had not been answered. It was stated that this could be incriminating evidence of criminal intent on her part. The Minister was warned that the former Minister for State in her Department "faced criminal prosecution" and that his responsibility had passed to her – "While you did not commit the original acts of corruption it is to act corruptly not to disclose the wrongdoing to our client".

36. Ms Kearney has exhibited several letters in similar threatening terms written to solicitors in the Chief State Solicitor's office, officials in the Department of Education, and counsel in the case. One junior counsel was told that he was "the guiltiest person". This barrister was the subject of particular complaint to the gardaí, including about the fact that he was withholding his home address, which Mr Lynch wanted for the purpose of serving him with a summons. Several complaints have been made to the gardaí (including gardaí in the Minister's constituency). An unsuccessful attempt was made to issue a criminal summons against the Minister of State concerned.

37. Mr Lynch also wrote to the Director of Public Prosecutions (on the 27th April 2023) complaining about "delay" in the Garda investigation.

38. Throughout, the judgment of this Court has been referred to in support. For example, in an email on the 19th April 2023 to a Detective Superintendent in the Garda National Bureau of Criminal Investigation (copied to the Minister, several officials and several lawyers) it was stated that the Supreme Court had in 2021 "established that the issue of profit was the subject of the judgment". A letter to the Chief State Solicitor's Office on the 16th October 2023 stated that the Supreme Court had "made it abundantly clear that the matter at hand concerning the use of profits remains unresolved". Another letter, on the 27th September 2023, stated that this Court had been the first to suggest that there was a potential approach to the issue of fraud.

39. The "anti-corruption" laws in question are generally specified as being the Criminal Justice (Corruption Offences) Act 2018, the Criminal Justice (Theft and Fraud) Act 2001, s. 9 of the Offences Against the State (Amendment) Act 1998 and s.19 of the Criminal Justice Act 2011.

Grounds for seeking the records

40. In a replying affidavit, Mr Doyle has made it clear that his purpose in obtaining the court records is to assist in criminal proceedings against persons involved in the case, including the lawyers, for failing to disclose information. He believes that interactions between the members of the Court and counsel in the case will demonstrate that the lawyers should have suspected that a notifiable corruption offence had been committed, and will therefore incriminate them. He repeats his view that this Court had, in its judgment, outlined "an alternative avenue of restoring justice".

41. Apart from the question of profit, Mr Doyle believes that the courtroom dialogues will assist him because they will show that counsel did not tell the Court what the "mindset" of officials and lawyers was about the proper legal characterisation of the School Transport Scheme. He also continues to maintain that he is entitled to the details of the bank account and the use to which the money paid for the Scheme was put. He refers to a need to bring "finality" to this dispute.

42. In oral submissions, Mr Lynch has said quite frankly that he has no evidence of fraud. For some reason, he believes that the absence of evidence is in itself "evidence". Nor can he say that counsel at any point stated something to the Court that he can now show to be untrue. He believes, however, that the audio record will demonstrate that counsel on occasion paused before answering questions from the Court, which will demonstrate guilty knowledge, and that it will demonstrate that the Court was not told what successive Attorneys General and Departmental officials thought about the legal characterisation of the Scheme. Mr Lynch contends that, even in the absence of proof of fraud, he will be able to prove that the State did not comply with the principles applicable to it as a litigant.

Decision

43. The campaign described above in outline would be highly objectionable if engaged in by an unrepresented litigant. For a qualified, experienced professional to behave in this manner is, in the view of the Court, reprehensible.

44. Apart from the unprofessional nature of the communications described, they are entirely based on fundamental misunderstandings of legal matters. These are a) a serious misreading and faulty understanding of the judgment delivered in this Court, b) a serious misreading and misunderstanding of the various criminal laws referred to and c) a serious misunderstanding about the status of the litigation.

45. For some reason, Mr Doyle and Mr Lynch appear to read the judgments as suggesting that they should commence plenary proceedings to have the judgments in the case set aside on grounds of fraud, or at least as a suggestion that there were grounds for such proceedings such that the persons involved were obliged to investigate and disclose any relevant information. The Court did no such thing. It simply pointed out (on the basis of well-established principles) that such an issue could not be raised for the first time in the application before the Court.

46. Turning to the various pieces of legislation that Mr Lynch has cited in both his correspondence and his submissions, it will be seen that none are applicable to the current circumstances of the case.

47. Section 9 of the Offences Against the State (Amendment) Act 1998 provides that a person shall be guilty of an offence if he or she has information which he or she knows

or believes might be of material assistance in (a) preventing the commission by any other person of a serious offence, or (b) securing the apprehension, prosecution or conviction of any other person for a serious offence and fails without reasonable excuse to disclose that information as soon as it is practicable to a member of the Garda Síochána. A "serious offence", for the purposes of this section is defined in s.8 of the Act – it is one that "*involves loss of human life, serious personal injury (other than injury that constitutes an offence of a sexual nature), false imprisonment or serious loss of or damage to property or a serious risk of any such loss, injury, imprisonment or damage*." This provision is manifestly irrelevant to any of the issues raised by Mr Lynch or Mr Doyle.

48. Section 19 of the Criminal Justice Act 2011 creates the offence referred to as "withholding information". However, contrary to Mr Lynch's impressions, the offence is not committed every time a person refuses to provide information to another person on request. A person is guilty of this offence if he or she has information which he or she knows or believes might be of material assistance in (a) preventing the commission by any other person of a "relevant" offence, or (b) securing the apprehension, prosecution or conviction of any other person for a "relevant" offence and fails without reasonable excuse to disclose that information as soon as it is practicable to a member of the Garda Síochána. A relevant offence is one that comes within the definition in s.3 and is listed in Schedule 1. That Schedule sets out a list of offences created under various statues concerned with matters such as insurance, investments, consumer credit, financial markets, and company law.

49. The Schedule does include certain corruption offences. The Criminal Justice (Corruption Offences) Act 2018 defines the word "corruptly" in s.2 as including "acting

with an improper purpose personally or by influencing another person, whether (a) by means of making a false or misleading statement, (b) by means of withholding, concealing, altering or destroying a document or other information, or (c) by other means".

50. However, it appears to be necessary to point out that s.2 is an interpretation section – that is, it explains how a word is to be understood when used elsewhere in the Act. The section does *not* create a freestanding offence of doing something with an improper purpose. The substantive offences created by the Act are trading in influence; doing something in relation to one's office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage; giving a gift, consideration or advantage knowing that it will be used to facilitate the commission of an offence under the Act; creating a false document, and intimidation of another person with the intention of corruptly influencing that person.

51. In the circumstances of this case, Mr Lynch has not been able to specify any offence that might come within any of these provisions.

52. Finally, Mr Lynch has relied upon the principle that the State should, in its litigation, "put its cards out face up". As with the Court's judgment in 2021, it is not necessary for the purposes of this ruling to consider the full impact of this principle. What is clear is that it has no particular meaning in the context of this application. The litigation is over. This is not an "unresolved" dispute, that needs to be "brought to finality" – it was resolved with the decision of the Court of Appeal, the refusal of this Court to grant leave for a further appeal and the refusal of this Court to reopen that refusal.

53. The application now before the Court requires consideration of the question whether it would be in the interests of justice to grant either access to the audio record or a transcript of the proceedings conducted in this Court.

54. In general, the Court would be prepared to hold that if a person, whether a party or non-party, wishes to obtain a transcript for a legitimate purpose connected with the administration of justice, and is willing to pay the necessary cost involved, then (subject to any counter-argument raised by a party) that person should be facilitated.

55. Here, however, it is clearly intended by Mr Doyle and Mr Lynch that the record would be used in attempts to further their wholly improper and legally unfounded campaign against every individual connected with the litigation on the part of the State and Bus Éireann. It is, moreover, a pointless campaign. It is entirely clear that Student Transport did not lose its appeal in the Court of Appeal on the issue of payments for or profitability of the Scheme.

56. In these circumstances the Court is satisfied that the application for the record and transcript is not in the interests of justice and that it would be an abuse of the Court's process to facilitate the applicant further.

57. The application is accordingly refused.