

Village stands by Varadkar-leak story but, after due process, the Tánaiste remains innocent in the eyes of the law

Issue 77

August/September 2022

Challenging the endemically complacent and others by the acute promotion of equality, sustainability and accountability

ONLINE

www.villagemagazine.ie

@VillageMagIRE

EDITOR

Michael Smith

editor@villagemagazine.ie

DEPUTY EDITOR

J Vivian Cooke

REPORTER

Róisín O'Shea

DESIGN AND PRODUCTION

Lenny Rooney

ADVERTISING

sales@village.ie

PRINTERS

Boylans, Drogheda,
Co Louth

VILLAGE IS PUBLISHED BY

Ormond Quay Publishing
6 Ormond Quay Upper,
Dublin 7

Village Magazine published correspondence in November 2020 under the headline 'Leo Always Delivers'. It showed that in April 2019 then-Taoiseach Leo Varadkar transferred the confidential draft (it was subsequently amended 30 times) heads of agreement for the contract being negotiated between government and the Irish Medical Organisation to a friend of his. That friend was the president of a rival doctors' representative organisation, the National Association of GPs (NAGP), Dr Maitiú (Matt) O Tuathail.

As this magazine said at the time, the transfer constituted a crime under the Official Secrets Act (OSA) 1963 and, possibly, under the Criminal Justice (Corruption Offences) Act 2018 (the "Corruption Act").

At no time has *Village* ever said that Mr Varadkar had been convicted of a crime but, instead, the assertion we made was that his actions were, objectively and precisely, a crime.

Village has seen definitive legal advice that the maximum allowable period for a summary prosecution of an offence under the OSA is six months from the date of the commission of the offence. An alternative prosecution on indictment only applies in cases of breaches of the OSA that affect national security.

This one did not and so it would not have been possible for the DPP, Catherine Piersé, to prosecute this particular crime under the OSA. *Village* believes that Piersé's decision not to prosecute will most likely have been determined by the fact a prosecution had *run out of time*.

It is worth, as an aside, recording, with exasperation, that no Minister has ever been prosecuted, let alone convicted, under the OSA, in Ireland (or the similar UK legislation).

To be clear, a decision by the DPP not to prosecute is not the same thing as a decision that there has been no criminality.

Any decision by the DPP not to prosecute could be because prosecution has run out of time — or because there is not enough evidence to prove the case beyond reasonable doubt; or because the case might not be, for whatever reason, in the public interest.

Therefore the DPP's decision not to prosecute probably does not affect the validity of our claim. We cannot be expected to row back from it.

As to the Corruption Act, it provides in Section 7 (2): "An Irish official [which all agree includes a Taoiseach] who uses confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person shall be guilty of an offence".

We will not rehearse the arguments we have made as

to the applicability of the Corruption Act in this case.

However, the key point is that it focuses on advantage rather than simply monetary gain, and that the advantage can be conferred on either the person passing, or the person receiving, the information.

A solicitor with Arthur Cox, Tara Roche, recently wrote: "to date, investigations into allegations of bribery or corruption in Ireland have been uncommon and there have been no prosecutions under the Corruption Act". However, this trend appears to be changing slowly. The Garda National Economic Crime Bureau now has a team dedicated to the investigation of serious and complex economic crimes.

That suggests that, one way or another, white-collar crime will now be prosecuted far more often.

The complexity, including, presumably, huge degree of legal complexity, of the Varadkar case resulted in inevitable delays. The Garda took 18 months to create a file of several hundred pages, in which they made no recommendation.

Furthermore, it is believed that the DPP also obtained external counsels' advice. There cannot be any doubt that this was, and was treated by the authorities as, a non-trivial case, despite the contrary claims of many charlatans - especially charlatans in Ireland's one-time newspaper of record.

Despite all this, some still persist in claiming that *Village's* headlines are defamatory. Mr Varadkar himself originally and rudely said he would not sue *Village* for defamation as it would be like suing someone on Twitter. The analogy is unsound.

Then, after the decision not to prosecute him, Mr Varadkar declined to sue for fear that his "sworn enemies" would use the opportunity to immiserate him.

However, he also acknowledged some time ago that the time at which it was permissible for him to launch defamation proceedings has now passed..

Arguably he could apply for an extension to that period but the preferred procedure would have been to initiate his defamation action and then apply to postpone proceedings until the investigation into his criminal conduct had concluded.

The way he went about claiming defamation by *Village* was, to borrow his own phrase "not best practice".

Village asserts Mr Varadkar's right to due process of the law in full and we share his concerns about the invidious position in which people find themselves while waiting for a criminal complaint to be resolved. *Village* also asserts Mr Varadkar's right to the presumption of innocence under the law. For all that we disagree with the outcome, the criminal process has been exhausted and the matter is closed.

Politics aside, we wish Mr Varadkar well.

But *Village* stands by its story. 