

# The Irish Financial Services Appeals Tribunal

January 2024

The Irish Financial Services Appeals Tribunal (“**IFSAT**”) is a quasi-judicial independent body that was established in 2003 to hear appeals from a broad range of decisions made by the Central Bank of Ireland (the “**Central Bank**”).

## Who can bring an appeal to IFSAT

If the Central Bank makes a decision that an “*affected person*” does not agree with then, provided the decision is an “*appealable decision*” under the relevant legislation, they may lodge an appeal with IFSAT.

An “*affected person*” is a person whose interests are directly or indirectly affected by an appealable decision of the Central Bank.

It is clear from the decisions of IFSAT that an affected person covers not just a person but also an organisation affected by the appealable decision of the Central Bank.

## What decisions can be appealed to IFSAT

An appealable decision includes:

- the refusal to grant authorisation or licence;
- the revocation of authorisation or licence;
- a decision to oppose an acquiring transaction;
- a decision to refuse the appointment of an individual to perform a senior function in a regulated firm; and
- the imposition of administrative sanctions following an inquiry pursuant to the Central Bank’s Administrative Sanctions Procedure.

These are just some examples of the types of decisions which can be appealed to IFSAT. The schedules to the Central Bank Act, 1942 and various other pieces of financial services





legislation detail other decisions of the Central Bank that can be appealed to IFSAT.

## What are the powers of IFSAT

Depending on the decision being appealed, IFSAT can,:

- affirm the decision of the Central Bank;
- remit the matter back to the Central Bank for further consideration;
- vary or substitute the decision of the Central Bank.

### Individual Accountability Framework and the Administrative Sanctions Procedure

The Central Bank has published updated guidelines on its Administrative Sanctions Procedure (“ASP”) following the introduction of The Central Bank (Individual Accountability Framework) Act 2023 (‘IAF Act’). These guidelines came into operation on 13 December 2023.

The ASP is the procedure by which the Central Bank investigates and imposes a sanction in respect of a ‘prescribed contravention’ by a firm or individual. An inquiry decision pursuant to the ASP can be appealed to IFSAT but only on one of the following grounds:

- Any ground that could be relied on in an application seeking judicial review of the decision.
- To the extent not covered by the above ground, the ground that any sanction imposed is not proportionate.

IFSAT may decide to affirm, vary or substitute the inquiry decision, or it may set aside the inquiry decision and remit the matter for reconsideration by the Central Bank, together with any recommendation or direction as to the matters to be reconsidered.

### Other Appealable Decisions

In cases other than appeals against an administrative sanction where IFSAT is of the view the decision of the Central Bank is not to be affirmed, it is obliged to remit the matter back to the Central Bank to reconsider. IFSAT can include a recommendation or direction as to what aspects of the matter should be reconsidered.

## What is the procedure for bringing an appeal to IFSAT

An appeal to IFSAT is commenced by lodging of a Notice of Appeal, by way of IFSAT’s own prescribed form. This notice must set out the decision which is being appeal against and the grounds of appeal. All of the documentation relevant to the appeal should also be included. The Notice of Appeal must be lodged within 28 days after the Central Bank has notified the affected person of the decision (or within such other time as IFSAT may allow).

The Central Bank is then given the opportunity to respond to the allegations set out in the Notice of Appeal by way of a “Response to Appeal” document, following which IFSAT will fix a date for a preliminary directions hearing.

At the directions hearing any pre-trial formalities will be addressed and a hearing date is fixed for the appeal.

While oral evidence is allowed at the appeal hearing the process is largely paper based and the IFSAT aims to narrow the issues in dispute between the parties as much as possible in advance of the hearing.

## How long does the appeal process take and who pays the costs?

IFSAT’s aim is that appeals are heard as expeditiously as possible with the process generally concluding within weeks whenever possible. By making the process largely paper

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based IFSAT also aims to keep the hearing itself as short as possible. However, each party to the proceedings will be given a reasonable opportunity to present their case and to make submissions in relation to the issues arising.

in this new regulatory environment.

All decisions and orders made by IFSAT are published on its website. However, if one of the parties wants an appeal to be held in private an application can be made to IFSAT. The parties can also look to redact names from the decisions and orders issued by IFSAT.

The Central Bank also publish statements arising from decisions of IFSAT on their own website.

IFSAT has discretion to award costs in favour of either party at the determination of the appeal and importantly costs includes not only the costs of and incidental to the hearing and the determination of the appeal but also the costs of or incidental to the proceedings giving rise to the appeal.

## Does any further right of appeal exist if I am unhappy with the decision of IFSAT?

IFSAT can either of its own volition, or on the application of either party, refer a question of law to the High Court for consideration.

The parties to the appeal are also entitled to appeal to the High Court against a decision of IFSAT. The High Court may make whatever order it considers appropriate including confirming the decision of IFSAT, setting aside its decision or ordering that the matter be remitted back to IFSAT to be heard again.

## Likely Future Trends

Dillon Eustace has acted for a number of parties in appeals to IFSAT and from our experience the Tribunal offers an expeditious and effective avenue for parties affected by a decision to challenge and appeal the finding of the Central Bank.

The Individual Accountability Framework has further increased the regulatory and enforcement capabilities of the Central Bank. For example, the new ASP regime now enables the Central Bank to investigate breaches of financial services obligations by individuals participating in those breaches, as well as investigating the firms involved. An increase in the number of appeals heard by IFSAT in future years seems likely

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