IRISH FINANCIAL SERVICES APPEALS TRIBUNAL

Register No. 031/2025

IN THE MATTER OF PART VIIA OF THE CENTRAL BANK ACT 1942 (AS AMENDED)

BETWEEN:

DAVID GUINANE

Appellant

-and-

THE CENTRAL BANK OF IRELAND

Respondent

Panel members: Mr Justice John MacMenamin, Chairperson
Patricia O'Sullivan Lacy, Deputy Chairperson
Úna Tighe SC, Member

DECISION ON PUBLICATION, HIGH COURT CONFIRMATION AND COSTS

TABLE OF CONTENTS

INTRODUCTION....3
PUBLICATION....4
CONFIRMATION BY THE HIGH COURT....5
The position of the appellant and PTSB....5
The Bank's submissions....5
Section 33AW and Section 33AWA....7
The Bank's approach to interpretation....10
Consideration of the confirmation issue....13
First step....14
Second step....15
Third step....15
Further analysis....15
COSTS....18
The Appellant....18
PTSB....20
PTSB's participation in the Inquiry....20
PTSB's participation in the appellant's appeal....22
Consideration of PTSB's application for costs....26

INTRODUCTION

1. This decision of the Irish Financial Services Appeals Tribunal (the **"Tribunal"**) is supplemental to, and to be read in conjunction with, the decision of the Tribunal of 21 September 2026 (the **"substantive decision"**). Capitalised terms in this decision, not otherwise defined herein, have the same meaning as ascribed to them in the substantive decision.

2. The Tribunal's conclusions in that decision can be found at paragraph 441 onwards. These are more briefly synopsised at paragraphs 459-463 of the decision.

3. In the inquiry the subject of the appeal to this Tribunal (the **"Inquiry"**), the appellant was fined €80,000 and was subject to a reprimand. The Tribunal concluded that the sole member of the Inquiry (the **"Inquiry Member"**) erred in law; acted *ultra vires* and unreasonably in the *State (Keegan) v Stardust Victims Compensation Tribunal* sense; failed to give fair notice of certain issues; and failed to give reasons for his decision.

4. Under the legislative scheme, the decision of the Inquiry Member was a decision of the Bank. Pursuant to section 57Z(2)(c) of the Central Bank Act 1942, as amended (the **"1942 Act"**), the Tribunal is empowered to *"substitute"* an appropriate decision that the Bank could lawfully have made in place of the Inquiry Decision actually made.

5. The Tribunal, therefore, *recommended* that Mr Guinane's appeal be allowed, and that the Allegation be dismissed for the reasons set out in the decision (section 57Z(2)(c) of the 1942 Act). Moreover, it held that the errors of law in the Inquiry Decision were manifest from the text and were fundamental so as to deprive the decision of its basis.

PUBLICATION

6. The first question which now arises is that in relation to publication of the substantive decision of the Tribunal. In fact, both parties directly concerned in the appeal – the appellant and the Bank - are agreed that the decision should be made public. The Tribunal is also of that view.

7. Section 57AC(1) of the 1942 Act provides that a decision determining an appeal takes effect on the date on which it is given, or such later date as may appear in the decision itself.

8. Section 57AC(2) provides that when any such decision varies or is made in *"substitution"* for a decision of the Bank, then the decision of the Tribunal is taken-

> *"(a) to be the decision of the Bank, and*
>
> *(b) unless the Tribunal orders otherwise-to have had effect as the decision of the Bank on and from the date of its original decision."*

9. Section 33BC of the 1942 Act provides for publication of an Inquiry Decision. It provides that in the event the Inquiry finds that a person concerned has participated in a contravention, the Bank *"shall"* publish the findings and such of the particulars as may be specified.

10. The Bank published the Inquiry Decision on 29 October 2025. It received significant publicity. The decision of the Tribunal reverses the Inquiry Decision, and substitutes a different decision, as indicated above. It may be that the issues arising in the substantive decision raise matters of broader concern than this one case.

11. Through its solicitors, the Bank has indicated that in its view nothing stands in the way of publication. The appellant is strongly of that view. PTSB, who participated in the appeal in the manner described below in the context of costs,

expressed no view on the question.

12. Subject to what is said below, therefore, the Tribunal intends to publish the substantive decision as soon as possible. The decision has unfortunately already received some coverage in the national media, although limited in nature. Subject to what is said below, therefore, the Tribunal respectfully hopes that the High Court may be in a position to indicate that it does not see any obstacle to very early publication.

CONFIRMATION BY THE HIGH COURT

13. A second matter arises. It is somewhat bound up with the provisions just cited. On 25 August 2026, the Tribunal took the precaution of circulating a draft of its decision to the appellant, the Bank and PTSB. The participants responded promptly, drawing attention to typographical errors and other matters, some of which arose under the heading of legal professional privilege, as asserted by PTSB.

The position of the appellant and PTSB

14. The appellant agreed with the Tribunal that confirmation was required. PTSB made no submissions on this issue.

The Bank's submissions

15. On 8 September 2026, McCann FitzGerald LLP, the solicitors for the Bank, raised an additional issue in response to the draft decision. This raised a legal question concerning whether the Tribunal decision was subject to confirmation by the High Court. In the draft decision, the Tribunal expressed the view that, regardless of the outcome, section 33AW(4) of the 1942 Act expressly provided for confirmation by the High Court.

16. The McCann FitzGerald letter noted that paragraph 463 of the draft decision stated that the Tribunal decision was subject to confirmation by the High Court, and then went on:

> *"We understand this to be in reference to section 33AW(4) of the Central Bank Act, 1942 (as amended). The Tribunal's decision substitutes the decision the subject of the appeal with a decision that the Allegation has not been made out and should be dismissed and as such there will be no adverse finding against the appellant."*

17. But the letter then stated:

> *"The view of the Central Bank is to the effect that there is no need for confirmation and that Section 33AW(4) is to be interpreted as only requiring confirmation in circumstances where there is an adverse finding and/or a sanction."*

18. The Bank's view was that the primary purpose of Section 33AW(4) was to provide a mechanism by which there would be judicial oversight of findings and sanctions which were not otherwise self-executing. As such, the Bank considered that an inquiry decision dismissing the allegation did not require confirmation, and that the same should follow for an appeal decision of that nature. The Bank's solicitors asked for the opportunity to address the Tribunal on that issue. The Tribunal acceded to that request and dealt with the issue together with the questions of publication and costs.

19. At the hearing on 30 September 2026, counsel submitted that authorities, such as *Keady v Commissioner of An Garda Síochána* [1992] 2 IR 197, set out the five indicia of cases which might otherwise contravene Article 34 of the Constitution. The thinking behind these *"McDonald"* indicia - *McDonald v Bord na gCon* [1965] IR 217 - is to give effect to sanctions by resort to the courts.

Section 33AW and Section 33AWA

20. The provision in question is to be seen in the context of the entirety of section 33AW of the 1942 Act (which was substituted by section 53 of the Central Bank Individual Accountability Framework Act 2023 (the **"2023 Act"**)).

21. Section 33AW provides (emphasis added):

> *"(1) In this section –*
>
> *(a) an 'inquiry decision' means any of the following:*
>
> *(i) a finding made by the Bank under section 33AQ(1) or (2);*
>
> *(ii) a decision of the Bank imposing a sanction under Section 33AQ;*
>
> *(iii) A decision of the Bank imposing the sanction under Section 33AR(2)(b) or (4)(b);*
>
> *and*
>
> *(b) an 'appeal decision' means the decision of the Appeals Tribunal affirming or varying,* ***or made in substitution for. an inquiry decision****.*
>
> *(2) An inquiry decision is an appealable appeal of a decision for the purposes of Part VIIA.*
>
> *(3) An appeal under Part VIIA against an inquiry decision may be made only on one or more of the following grounds.*
>
> *(a) any ground that could, but for section 33BF, be relied on in an application seeking judicial review of the inquiry decision;*
>
> *(b) so far as it is not within paragraph (a), the ground that any sanction imposed is not proportionate.*
>
> *(4) An inquiry decision and* ***an appeal decision do not take effect*** *unless confirmed by the High Court on an application under this section.*

(5) ***Where*** *–*

(a) a person who is the subject of an inquiry decision does not, under Part VIIA, appeal against that decision within the period required by that Part.

(b) an appeal under Part VIIA against an inquiry decision is withdrawn, or

(c) ***the Appeals Tribunal makes an appeal decision****,*

the Bank shall, as soon as practicable, make an application to the High Court for confirmation of the *inquiry decision or* ***appeal decision*** *as the case may be.*

(6) On an application under subsection (5), ***the High Cout shall confirm the decision unless it is satisfied, on the basis of the evidence that was before*** *the Bank or* ***the Appeals Tribunal*** *when making the decision –*

(a) ***that*** *the Bank or* ***the Appeals Tribunal made an error of law which is*** *–*

(i) ***manifest from the record*** *of the decision, and*

(ii) ***fundamental so as to deprive the decision of its basis****, or*

(b) is manifestly disproportionate.

(7)Where, on an application under subsection (5), the High Court does not confirm the decision, the court may –

(a) ***substitute for the decision*** *any appropriate decision that the Bank or the Appeals Tribunal, as the case may be, could have lawfully made in relation to the matter, or*

(b) ***set aside the decision*** *and remit the matter for reconsideration by the Bank or the Appeals Tribunal, as the case may be, together with any recommendation or direction of the Court as to what aspects of the matter should be reconsidered.*

(8) An application under subsection (5) may be made on an ***ex parte basis*** *provided that the person who was the subject of the decision*

informs the Bank in writing that the person agrees to the application being made ex parte.

(9) ***A decision confirmed by the High Court*** *under this section, and a decision of the High Court made under subsection (7)(a) in substitution for a decision -*

(a) ***takes effect on the day on which the Court's decision is given*** *or such later day as the court may specify in its decision, and*

(b) has effect as an order of the Court and may be enforced according."

22. For completeness, section 54 of the 2023 Act, under the rubric confirmation of sanctions imposed by consent, inserted a new section 33AWA into the 1942 Act. Section 33AWA provides (emphasis added):

"(1) Where the Bank ***by consent*** *imposes a sanction under section 33AR(2)(a) or (4)(a) the Bank shall, as soon as practicable, make an application to the High Court for confirmation of* ***the imposition of the sanction***.

(2) On an application under this section the High Court shall confirm the imposition of the sanction unless it is satisfied that the sanction imposed is manifestly disproportionate.

(3) Where on an application under this section the High Court does not confirm the sanction, the Court shall remit the matter for reconsideration by the parties, together with any recommendation of the Court as to what aspects of the matter should be reconsidered

…"

23. It will be noted therefore, that section 33AWA (as inserted by section 54 of the 2023 Act) uses a different from of words from that found in section 33AW (inserted by section 53 of the 2023 Act). There – section 33AWA - the

reference is to confirmation of the *"imposition"* of a sanction. These words are not found in section 33AW, which simply deals with an *"appeal decision"* without any reference to its effect or nature.

The Bank's approach to interpretation

24. The Bank's submission depends upon what was fairly conceded to be a nuanced or subtle interpretation of section 33AQ of the 1942 Act. Section 33AQ(1) provides (emphasis added):

> *"(1) At the conclusion of an inquiry held under section 33AO to determine* ***whether or not*** *a person … has committed a prescribed contravention, the Bank shall make a finding* ***as to whether****, on the balance of probabilities, the person is committing or has committed the contravention."*

25. Counsel for the Bank submitted that an *inquiry* is to be seen therefore as one into whether or not the contravention has been committed, whereas the *finding* only relates to *whether* the contravention has been committed. In other words, he submitted, that when an inquiry concludes that the contravention has not been committed, this is not a *finding* in the same way that a *finding* of a contravention is.

26. On this basis, the Bank submits that there is an equivalence between an inquiry decision and an appeal decision. It submits that if confirmation is not necessary for an inquiry decision, where there has been no adverse finding, then it is difficult to see how it would be required for an appeal decision that affirms, varies or substitutes a decision of *"no finding"*. It was the Bank which bore the burden of proof that it failed to discharge. The person concerned would leave with their good name intact with no finding against them.

27. Referring to section 33AQ, counsel submitted that it was the Bank's view that a finding of *"no contravention"* was not a *finding* within the meaning of section 33AQ(1). The Bank contends that the same applies with regard to an equivalent appeal decision. The case was made that section 33AW(4) was

confined to a finding under section 33AQ(1) and (2). Reliance was placed on section 33 AW, sub-section (4), which provides that an inquiry decision and an appeal decision did not "*take effect*" unless confirmed by the High Court on an application under this section.

28. The Bank's case is that the purpose of the confirmation procedure is, simply and only, to ensure the constitutionality of the statutory scheme, citing *McDonald v Bord na gCon* [1965] IR 217; *Keady v Commissioner of An Garda Síochána* [1992] 2 IR 197.

29. In *McDonald*, Kenny J. identified five characteristic features for the administration of justice:

(i) A dispute or controversy as to the existence of legal rights or a violation of the law;

(ii) A determination or ascertainment of the rights or parties or the imposition of liabilities or the infliction of a penalty;

(iii) The final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;

(iv) The enforcement of those rights or liabilities or the imposition of a penalty by the court by the executive power of the State which is called in by the court to enforce its judgment;

(v) The making of an order by the court which, as a matter of history, is an order characteristic of the courts in this country.

30. The Bank's submission is, therefore, that the purpose of the confirmation process arises subsequent to an inquiry, but only to ensure that the decision of an inquiry is not a final determination of rights and liabilities and is not self-executing – i.e., it still needs judicial intervention or confirmation before it actually becomes enforceable. It is said there was nothing to enforce in the

case of a decision of no finding.

31. The Bank refers to the influential decision of Murray J. in *Heather Hill Management Company CLG v An Bord Pleanala* [2022] IESC 43, [2024] 2 IR 222, where Murray J. stated, at paragraph 113, the following:

> *"What in fact the modern authorities now make clear is that – in no case can the process of ascertaining the "legislative intent" or the "will of the Oireachtas" be reduced to the reflexive rehearsal of the literal meaning of words, or the determination of the plain meaning of an individual section viewed in isolation from either the text of a statute as a whole or the context in which, and purpose for which, it is enacted."*

32. Murray J. went, at paragraph 115, on to endorse the statement of O'Donnell C.J. in *The People (DPP) v AC* [2021] IESC 74, [2022] 2 IR 49 to the following effect:

> *"… if, when viewed in context, having regard to the subject matter and the objective of the legislation a single plain meaning is apparent then effect must be given to it unless it would be so plainly absurd that it could not have been intended."*

33. The Bank submits that, applying this approach, it is *"clear"* that any contention to the effect that confirmation is necessary in circumstances where *"no finding"* has been made is questionable. This is particularly so when one looks at the issue by reference to criterion (iv) of *McDonald*.

34. It is said that no finding was made in this case and consequently there is no question of any further implication for the *"rights or liabilities"* of the person in question or *"the imposition of a penalty"*. Counsel for the Bank posed a number of rhetorical questions such as whether the appellant is in some state of *"limbo"* in the present situation; and what would be the situation in another hypothetical case if the Bank made application but the High Court might refuse to confirm some other Tribunal decision? Importantly, counsel submitted that

these questions pointed to a somewhat more purposive argument behind the submission and that the terms of the statute must be considered in the context of the statute as a whole. In simple terms therefore, it is said there is *"nothing to enforce and nothing to execute"*. As such, it is said that the decision of the Tribunal is *"self-executing"*.

Consideration of the confirmation issue

35. The Tribunal entirely agrees that *Heather Hill* provides assistance in the task of interpretation. It is difficult to avoid the conclusion that, to a significant degree, the Bank's case hinges on a purported *legislative intent* of the "parliamentarians", to quote Murray J. in *Heather Hill* (paragraph 117). In the same paragraph, Murray J. actually deprecates such an approach. The Tribunal considers rather, by reference to paragraphs 118 and 119 of *Heather Hill*, that what is necessary is to

> *"ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose.*
>
> …
>
> *… the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about."*

36. Murray J. went on to say that

> *"Those words are the sole identifiable and legally admissible outward expression of [the Oireachtas] members' objectives: … In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve [the legislation]"*.

37. As *Heather Hill* makes clear however, pre-existing context and purpose are not to be ignored. As Murray J. explained (at paragraph 120), a court or tribunal should look to

> *"…the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in* The People (Director of Public Prosecutions) v. Brown *[2018] IESC 67, [2019] 2 I.R. 1. However — and in resolving this appeal this is the key and critical point — the "context" that is deployed to that end and "purpose" so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."*

38. The last sentence, just quoted, encapsulates the issue. Are the features identified by the Bank *"decisively probative"* of its contention?

39. The answer is clearly in the negative. Rather than being decisive or probative, the contextual and purposive arguments relied on, in fact undermine the Bank's case. For the very reason that they are <u>not</u> decisive or probative. It is very hard, indeed, to interpret the nuanced and subtle gloss of the words of section 33AQ(1) and the razor-thin difference between the words *"whether or not"* in the second line of section 33AQ(1) and the word *"whether"* on the fourth line as being a sound point of departure for the interpretive process for which the Bank contends.

40. While the Tribunal appreciates that the Bank may be of this view, the Tribunal respectfully differs from this view. When fully analysed, the text provides a clear answer. The Tribunal view proceeds in three steps:

<u>First step</u>

41. There can be no doubt that the decision of the Tribunal is an "*appeal decision*".

Second step

42. It, thus, comes within section 33AW(1), meaning *"a decision of the Appeals Tribunal affirming or varying or* ***made in substitution for****, an inquiry decision.* There are no words in this section of the 1942 Act which in any way distinguish or discriminate between the types or categories of conclusions which may be comprised in an *"appeal decision"*. Rather, the key words are *"made in substitution for an inquiry decision"*. The Tribunal decision was made in substitution for the Inquiry Decision.

Third step

43. Section 33AW(4) provides that *"an appeal decision"* does not take effect unless confirmed by the High Court on an application made under that section. This does not assist the Bank's case, but rather enforces the point that confirmation is necessary in the case of *"an appeal decision"*. Again, there is no distinction as to the category or type of decision.

Further analysis

44. Earlier, reference was made to section 33AWA (which was inserted by section 54 of the 2023 Act). Section 33AWA, which applies to a consent matter, states, in terms, that the Bank shall, as soon as practicable, make *"an application to the High Court for confirmation of the imposition of the sanction"*. No such words appear in the section 33AW (which was inserted by section 53 of the 2023 Act). It would have been quite simple for the Oireachtas to utilise the same words as in the preceding section.

45. It would, for a number of reasons, be odd and, indeed, incongruous, if the effect of the words *"appeal decision"* would be to draw a distinction between two categories of *decision:* one, involving the imposition of a sanction, presumably coming under the rubric of Article 37 of the Constitution; the other *"an exoneration"* not having that status. Were one to draw an imperfect analogy, it could hardly be said that in acquitting an accused person, a court or jury is not engaged in the administration of justice as much as in the imposition of a penalty as in the fourth *McDonald* characteristic.

46. In the course of argument, Counsel for the Bank was asked to consider a hypothetical instance of a decision by the Tribunal which very substantially *"varied"* the decision of an inquiry, perhaps reducing a fine of €1 million to €1,000. Counsel accepted that, even though that would be at variance from an inquiry decision, the Bank would, nonetheless, be under a duty to make application to the High Cout for confirmation even though it profoundly disagreed with the outcome. In those circumstances, it would be presumably open to the Bank to submit, while it was making an *"application"* for confirmation, that, nonetheless, such hypothetical Tribunal decision contained "manifest errors", and therefore, the appeal decision the subject of an application should not be confirmed by the High Court.

47. There is, moreover, a further point. Counsel accepted that he was seeking to persuade the Tribunal that it should adopt a *"purposive interpretation"*. However, in this connection, section 5 of the Interpretation Act, 2005, is relevant. This provides that in construing a provision of any Act *"other than a provision that relates to the imposition of a penal or other sanction"*-

> *(a) that is obscure or ambiguous*
> *(b) …*
> *the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned …*

48. Here, the distinction between what is provided for in section 33AWA(1) in contrast with section 33AW is particularly striking. In the former, there are added words which are not found in the latter. But, in either instance, the words governing *"appeal decisions"* undoubtedly *"relate"* to the imposition of a sanction. Thus, the literal interpretation is applicable.

49. It is decidedly not the function of this Tribunal (a statutory tribunal) to engage in constitutional interpretation. But in this connection, it is relevant to draw attention to the observations of O'Donnell J. in *Zalewski v Adjudication Officer* [2021] IESC 24, [2022] 1 IR 421, at page 499, where in the context of that case he observed that *"if it is correct that the adjudication officer and/or the Labour*

Court is engaged in the administration of justice when making decisions pursuant to the procedures of the 2015 Act in relation to questions of unfair dismissal and payment of wages (and I agree that it is), then as already discussed, I doubt that the elaborate machinery of the 2015 Act could be rendered an non-judicial administrative function merely by providing for an appeal to a court."

50. O'Donnell J. continued (emphasis added) *"Those cases in which recourse to a court has been found to have the effect of rescuing an adjudicatory function from unconstitutionality involve an application to a court for determination or confirmation of a determination with* ***the full capacity of the court to come to its own conclusion on the merits so that, indeed, the court could be said to be the "effective decision-making tribunal" and making the "vital decisions" in a real sense****, as explained by Finlay C.J. in K v An Bord Altranais [1990] 2 IR 396 at page 403. Indeed, the third limb of the test in* McDonald v Bord na gCon *[1965] IR 217 recognises that a decision-making function can be the administration of justice if it comes to a final and binding decision, even if those decisions are subject to appeal."*

51. O'Donnell J. added that he did not intend his judgment to be seen as involving a radical departure from precedent in the shape of *McDonald v Bord na gCon*. The function of a court, therefore, is not simply to "rubber stamp" the decision of a quasi-judicial body. A court must be free to make its own decision on the merits of the case. In the instance of this legislation, it is not simply confirming a finding or sanction save in the case of a consent application.

52. Finally, though hardly a canon of interpretation, recent experience surely speaks to the desirability of the courts (rather than simply a statutory Tribunal) having a supervisory function in conduct of procedures, such as fitness and probity or administrative sanctions procedures by a body such as the Central Bank, whereas the Bank is constrained to be investigator; decision-maker as to whether there should be an inquiry; prosecutor, and, actually, the decision-maker of the finding or outcome of the inquiry which, as the statute provides, is not in the name of the inquiry member(s) but rather *"the Bank"*.

53. In summary, therefore, the Tribunal is not persuaded by the submissions made on behalf of the Bank. The plain meaning of the words *"appeal decision"* are determinative. The reference to section 33AWA (inserted by section 54 of the 2023 Act) reinforces this conclusion. There is no statutory indication that the words are to be given a purposive interpretation. In fact, the indications are to the contrary. The Bank's reference to the wording of section 33AQ(1) places far too much weight on an interpretation which is simply unwarranted. The Tribunal presumes, therefore, that the Bank will, *"as soon as practicable"* make application to the High Court for confirmation of the Tribunal's finding, as recorded in its substantive decision.

54. In order to assist in this process, the Tribunal will instruct solicitors and counsel to appear in the High Court in order to seek guidance and directions from the court, at least in relation to the first issue which is publication, and potentially, the question as to how the matter of confirmation should be dealt with. It is fair to say that they are separate issues.

55. The reason why the Tribunal made a confidentiality order was as a matter of deference to the court, pending confirmation of the decision of the Tribunal by the court. The question of publication in the context of the fact that the Inquiry Decision was made public and attracted significant public attention.

COSTS

56. The Tribunal made directions for the filing of written submissions on costs in advance of the hearing held on 30 September 2026.

The Appellant

57. The appellant filed written submissions on 18 September 2026, appended to which was copy of a letter, marked *without prejudice save as to costs*, that had been sent by his solicitors on 23 February 2024 to the Governor of the Bank and copied to the Director of Enforcement/Investigations of the Bank. That

letter stated that the allegation against the appellant could not be made out and called on the Central Bank to confirm, within the stated deadline, that it would withdraw the Notice of Inquiry. Absent such confirmation, the appellant would, in the event that the Inquiry (or a court following any application made to it) determined that the appellant had not participated in the suspected prescribed contravention, seek its costs of the Inquiry.

58. In its replying written submissions filed on 25 September 2026, the Central Bank indicated that it was not opposing the appellant's application for costs and suggested that the appropriate order would be an order for the appellant's costs of the Inquiry and of his appeal on a party and party basis.

59. At the hearing on 30 September 2026, counsel for the appellant indicated the appellant's agreement that costs should be on a party and party basis.

60. The statutory link between an investigation and any subsequent inquiry has been considered in detail in the substantive decision in the appeal, including, at paragraph 113, where the Tribunal noted that 33AQ(5) of the 1942 Act confers on an inquiry member the power to require a person the subject of an inquiry to pay the Bank's costs *"in holding the inquiry* ***and in investigating the matter to which the inquiry relates****."* (emphasis added). On the question whether the *"costs in relation to the proceedings"* to be the subject of an order of this Tribunal should include the costs of the investigation that resulted in the decision to hold the Inquiry, counsel for the appellant suggested that that issue might appropriately be left to the Legal Costs Adjudicator in default of agreement of the parties. The Tribunal agrees, as did the Bank.

61. The Bank and the appellant are to be commended for their constructive approach to the issue of costs, which resulted in a saving of time for the Tribunal with consequent saving of costs for the parties.

62. Reflecting the submissions and concessions of the parties, as between the appellant and the Bank, the Tribunal will make an order in the following terms:

> *"**IT IS ORDERED**, pursuant to section 57AH of the Central Bank Act 1942 (as amended), that the appellant do recover as against the Bank the costs of and incidental to the hearing and determination of the appeal to this Tribunal, and the costs of and incidental to the Inquiry giving rise to the said appeal, to include (for the avoidance of doubt) the Appeal Fee of €5,000 paid by the appellant under Rule 5, sub-rule (4) of the Irish Financial Services Appeals Tribunal Rules 2008 (S.I. No. 224 of 2008), together with the costs of directions/case management hearings and of written legal submissions and any reserved costs, such costs to be adjudicated in default of agreement. On consent of the parties, the said costs to be recovered on a party and party basis."*

PTSB

63. PTSB indicated that it intended to seek costs in respect of the Inquiry and the appeal by letter dated 8 September 2026 from its solicitors, and filed written submissions, accompanied by authorities, on 18 September 2026.

PTSB's participation in the Inquiry

64. The allegation against the appellant was that he had participated in a "*strategy*" that PTSB should only give the more favourable tracker rate of interest back to those customers who asked for their original tracker rate, or who queried, or who complained when not offered that original rate. The *strategy* discriminated between customers with the same mortgage condition based on their state of knowledge and/or ability or willingness to advocate on their own behalf. The *strategy* and how it came to be devised and developed, as well as communications between PTSB personnel, are addressed, in detail, in the substantive decision in the appeal. The communications comprised emails and written records of meetings between the various PTSB personnel within PTSB's Marketing, Compliance and Legal Departments.

65. PTSB asserted legal advice privilege over parts of those communications. That

claim was ultimately resolved by agreement without need for a formal determination on the issue and consequently, the question whether any exception to the principle of legal professional privilege might apply does not appear to have been considered. As the Inquiry was to be held in public, a protocol on privilege – the Inquiry Privilege Protocol - was drawn up to apply to the Inquiry.

66. As is properly acknowledged in its written submissions on costs, PTSB participated in the Inquiry *"to ensure that its claims to legal professional privilege over certain core evidence were maintained at public hearings"* (paragraph 2.2 of the submissions). In similar vein, in oral submissions at the costs hearing, PTSB's role was described as one where:

> *"PTSB had no interest in the allegation against Mr Guinane and did not wish to engage with it and so declined the opportunity to do so, consistent with the position that it had adopted from the outset."*
> (Transcript, Costs Hearing, 30 September 2026, page 42, lines 8-11).

67. The case was made:

> *"PTSB, however, did need to engage and did intervene on a number of occasions in respect of privilege related issues. Because unfortunately at times privilege related documents were put up on the screen in the context of public hearings. And so PTSB was obliged to engage in that."*
> (Transcript, Costs Hearing, 30 September 2026, page 42, line 26 *et seq*).

68. PTSB's submissions on costs were consistent with submissions made on behalf of PTSB on Day 4 of the substantive appeal hearing, where counsel outlined PTSB's participation in the Inquiry. The following are illustrative examples.

(a) *"[Before the Inquiry], PTSB had a focus, a very strong focus, on the legal professional privilege, in particular the legal advice privilege. And we made various submissions to the Inquiry Member in respect of that and he*

took steps to ensure that that privilege was protected. And obviously PTSB were grateful for that.

(Transcript, Appeal Hearing, Day 4, 4 February 2026, page 45, lines 16-22)

(b) *"…PTSB's focus at the inquiry was about protecting privilege. And you can see through the transcripts that when submissions are made on behalf of PTSB, it is focused on privilege. Because there seemed to be some doubt at the start about the guarding of that privilege by the inquiry, and so the position was made clear that PTSB absolutely wanted to protect its privilege. And that ultimately was respected. But that was the focus of the submissions made.*

(Transcript, Appeal Hearing, Day 4, 4 February 2026, page 51, lines 20-28)

69. PTSB's written submissions on costs stated, at paragraph 2.4, that "*PTSB, and its legal advisors, attended all of the Inquiry hearings as a formal participant*". That is certainly correct insofar as PTSB's role in protecting its legal advice privilege is concerned. Paragraph 2.4 further stated that, during the Inquiry hearings, the Inquiry Member repeatedly requested PTSB's views on various matters. Importantly, in oral submissions at the costs hearing, counsel for PTSB again confirmed that PTSB had not availed of any such opportunity to comment. Nor had PTSB cross-examined any witnesses at the Inquiry. (Transcript, Costs Hearing, 30 September 2026, page 42, line 3 – line 11).

PTSB's participation in the appellant's appeal

70. The Tribunal's jurisdiction, under section 57G(1)(a) of the 1942 Act, is to hear and determine appeals made by *affected persons* against decisions of the Bank. The term "affected person" is defined in section 57A(1) as follows:

> *"'affected person' means a person whose interests are directly or indirectly affected by an appealable decision"*.

71. An "*appealable decision*" is defined, in section 57A(1). An inquiry decision

is an appealable decision by virtue of section 33AW(2). As explained in the substantive decision on the appeal, the inquiry into the appellant's alleged participation into a prescribed contravention of PTSB required, as a necessary first step, a finding that PTSB had committed the stated contravention. That is uncontroversial. The complication in this case arises from the Inquiry Member's finding that PTSB had acted in bad faith when bad faith was not a constituent element of the specified prescribed contravention alleged against PTSB in which it was alleged the appellant had participated. That finding of bad faith raises a question whether a regulated service provider in the position of PTSB who has entered into a prior settlement with the Bank and against whom an adverse finding is subsequently made, affecting or potentially affecting one or more of their constitutional rights, is an "affected person" with a right of appeal to the Tribunal. Put another way, were the interests of PTSB directly or indirectly affected by the inquiry decision? Also relevant to this issue is section 33BF of the 1942 Act, which provides that an inquiry finding may not be the subject of judicial review. In any event, as PTSB did not appeal the Inquiry Member's finding of bad faith, it is not necessary for the Tribunal to determine the question.

72. Rather, PTSB made an application under the Irish Financial Services Appeals Tribunal Rules 2008 (S.I. No 224 of 2008) (the **"Rules"**).

73. The Rules recognise that an appeal may be of interest to persons other than affected persons or the Bank. Rule 4, which deals with the initiation of appeals, provides at sub-rule (4):

> *"The Registrar shall send a true copy of every Notice of Appeal and any annex to the Regulatory Authority and to any other person whom the Registrar considers has an interest in the subject matter of that appeal which would justify that person's submissions (if any) on the appeal being considered by the Appeals Tribunal ..."*

74. By letter dated 17 June 2025 from PTSB's solicitors to the Tribunal Registrar, PTSB requested that it be provided with a copy of the notice of appeal and any

enclosed grounds of appeal, together with a copy of any response provided by the Bank; and that it be invited to attend the preliminary directions hearing. It did so on the basis that it was, a person having an interest in the subject matter of the appeal., stating:

> *"… PTSB participated in the Inquiry, albeit to a limited extent and principally to ensure that its claims to legal professional privilege over certain core documents that were in evidence, and which were ultimately referred to in the Decision, were maintained during the course of the Inquiry process and in particular at any public hearings.*
>
> …
>
> *PTSB, together with this firm and senior counsel, attended the various Inquiry hearings as a formal participant in the Inquiry. During the course of those Inquiry hearings, PTSB's views were requested on various matters but PTSB did not make detailed substantive submissions during the Inquiry hearings. The Decision now under appeal includes specific findings in relation to PTSB, concerning the commission by PTSB of the relevant prescribed contravention, separately and in addition to findings in relation to Mr Guinane (including that Mr Guinane participated in that prescribed contravention). As noted above, it was necessary for the Inquiry to determine whether PTSB committed the relevant prescribed contravention prior to determining whether Mr Guinane participated in that contravention and, if so, what if any sanction should be imposed on Mr Guinane."*

75. The Tribunal determined that PTSB was a person having an interest in the appeal. It should be noted that the question whether PTSB, independent of its interest in the appeal, had a right of appeal as an *affected person* was not the subject of application to, or determination by, the Tribunal, albeit that the issue was touched on in written submissions delivered by the Bank on 30 January 2026.

76. An understanding of the role adopted by PTSB in relation to the appeal is important.

77. The question whether PTSB should be permitted to be heard in the appeal was the subject of submissions made in the substantive appeal hearing. PTSB framed its role as one of assisting the Tribunal by drawing to the Tribunal's attention certain "*discrete factual matters*" that it wished to bring to the attention of the Tribunal; see, Transcript, Appeal Hearing, Day 4, 4 February 2026, page 39, lines 20-25. On that occasion PTSB emphasised that it was not an appellant and was not seeking to be an appellant.; Transcript, Appeal Hearing, Day 4, 4 February 2026, page 59, lines 10-11. PTSB's oral submissions reflected written submissions delivered by it on 23 January 2026 wherein it stated:

> *"PTSB is not challenging the [Inquiry] Decision, or any part of the [Inquiry] Decision, but seeks to address the Tribunal on certain factual matters relating to the [bad faith] finding against PTSB."*

78. At the appeal hearing, PTSB also referred to a letter dated 17 September 2025 from its solicitors to the respective solicitors for the Bank and the appellant in which it had characterised its position on the bad faith issue as follows:

> *"While PTSB does not currently intend to provide written submissions on this topic in the context of the appeal, it is PTSB's view that it may assist the Tribunal to be directed to correspondence which PTSB sent the Inquiry Member in respect of this finding."*
> (Transcript, Appeal Hearing, Day 4, 4 February 2026, page 62, lines 4-11, emphasis added).

79. In response to a question from the Chairperson as to what PTSB was asking the Tribunal to do, counsel responded:

> *"… I simply wanted to draw your attention to, because nobody else has, the basis upon which PTSB finds itself referred to in the notice of inquiry*

> *and statements that are made about good faith/bad faith or intent. So its understanding of how matters were going to be dealt with and how, in fact, they were dealt with throughout the inquiry hearing. So it's to fill in a gap in the factual knowledge of the Tribunal."*
> (Transcript, Appeal Hearing, Day 4, 4 February 2026, page 67, lines 10-19)

80. Importantly, as recorded at paragraph 418 of the substantive decision in the appeal, PTSB did not ask the Tribunal to make any order in respect of the finding of bad faith or otherwise.

Consideration of PTSB's application for costs

81. It is beyond doubt or dispute that PTSB's overriding motivation for appearing at the Inquiry was to preserve the confidentiality of materials over which it claimed legal advice privilege. Insofar as it was submitted, at paragraph 2.4 of its written submissions on costs, that *"PTSB, and its legal advisors, attended all of the Inquiry hearings as a formal participant"*, it did so for the purpose of protecting its privilege claim.

82. Insofar as complaint is made that the Inquiry Member either offered PTSB the opportunity to cross-examine witnesses and/or frequently sought PTSB's position on issues, which offers were universally declined by PTSB, self-evidently, had PTSB not been present, no question of the Inquiry Member seeking to engage with PTSB could have arisen.

83. As noted, PTSB did not appeal the finding of bad faith made against it by the Inquiry Member. Before the Tribunal, it confined its application to be heard on certain factual matters for the stated purpose of assisting the Tribunal on matters of which the Tribunal might not otherwise be aware. Further, PTSB did not ask the Tribunal to make any order in relation to the finding of bad faith. The bad faith issue was a ground of appeal pleaded by the appellant. Accordingly, in light of the Tribunal's reasoning and conclusions in the substantive decision, PTSB has indirectly obtained the benefit of the Tribunal's conclusion that the finding of the Inquiry Member on the bad faith issue is void

(subject to the question of whether confirmation by the High Court of the Tribunal's decision is necessary, a question that is considered earlier in this decision).

84. In its written submissions, PTSB relied on the following in support of its application for costs: first, section 57AH(1) of the 1942 Act, which sets out the circumstances in which the Tribunal may award costs, and Rule 24(1) of the Rules; second, an alleged discretion of the Tribunal over and above what the Rules provide, by analogy with case law on the Rules of the Superior Courts; and third, case law on the circumstances in which notice parties to judicial review and/or statutory appeal proceedings might be awarded their costs. At the oral hearing on costs, the focus of counsel for PTSB was 57AH(1) of the 1942 Act; see, Transcript, Costs Hearing, 30 September 2026, page 45, lines 13-21; page 53, lines 11-15; page 55, lines 7-55; page 55, line 27 to page 56, line 3.

85. In light of that focus, it is not necessary give detailed consideration to the alternative grounds relied on in the written submissions filed by PTSB on costs. Nonetheless, it is important to state that the Tribunal is a creature of statute and its powers, including its power to award costs, are limited to those created by statute. It has no discretion other than that which the legislature has provided in the 1942 Act. As far as the Rules are concerned, Rule 24(1) clearly refers to a *"party to the proceedings"*. The term "party" is defined in section 57A(1) of the 1942 Act as meaning *"the appellant or the Bank as respondent"*. As noted, an *"affected person"* has a right of appeal so that, had PTSB filed an appeal, it would (subject to any issue as to whether it was an affected person that might have arisen) have been an appellant and consequently, a *"party"*. It did not and consequently, was not.

86. On the notice party point, PTSB's oral submissions accepted that the position of PTSB differed from that of a notice party to judicial review or statutory appeal proceedings where the notice party applies, or very much wishes, to be joined to the proceedings (Transcript, Costs Hearing, 30 September 2026, page 36. Lines, 12-24). That distinction is critical. Were it not for the imperative,

as PTSB considered it, to protect its legal professional privilege, PTSB, on its own case, would have had no interest in the inquiry into the appellant. For that reason, the Tribunal agrees with the Bank's submission that PTSB's analogy with notice parties was misconceived. Even *if* the analogy held good, it is difficult to see how the authorities cited support PTSB's application for costs. To illustrate, at paragraph 10 of the judgment in ***O'Connor v Nenagh Urban District Council***, unreported, Supreme Court, 16 May 2002, where Dunnes Stores Limited was the notice party, the Supreme Court identified seven factors relevant to the exercise of a discretion as to costs in favour of a notice party. A cursory review thereof indicates that PTSB fails to meet some or all of the criteria identified: there was no element of public interest; PTSB was, on its own submissions, not a necessary party, rather, it was represented to preserve its legal privilege and to be heard on discrete facts to assist the Tribunal; PTSB participated fully in neither the Inquiry nor the appeal; in light of its settlement with the Bank in respect of 42 regulatory contraventions pursuant to which it was reprimanded, and fined €21 million, it is difficult to see how PTSB could be described as *"entirely innocent"*. Even if one considers that PTSB was *"entirely innocent"* in relation to the Inquiry Member's finding of bad faith, absent an appeal against that finding, it was not possible for PTSB to be successful in the proceedings. Nor could there be said to be an "event" for costs to follow.

87. As PTSB relies on the statutory discretion of the Tribunal to award costs, it is appropriate to set out section 57AH in full:

> *"(1) The Appeals Tribunal may award costs in relation to proceedings before it and may determine by whom and to what extent costs are to be paid.*
>
> *(2) In this section, 'costs' includes not only costs of or incidental to the hearing and determination of an appeal, but also the costs of or incidental to the proceedings giving rise to the appeal."*

88. A critical factor in the Tribunal's consideration of whether to exercise its discretion to award costs is the reason why PTSB was represented at the

Inquiry and in the appeal. In the Inquiry, PTSB's objective and focus were to preserve the confidentiality of material over which it asserted legal advice privilege. Likewise, on appeal. Insofar as PTSB sought an additional role in the appeal, it was, on its own case, simply to aid the Tribunal on certain discrete factual matters and PTSB neither sought to make, nor made, legal submissions. Indeed, in fairness to PTSB, at the costs hearing it was candid in stating that its role before the Tribunal *"was much more limited"* than at the Inquiry. That said, the privilege issue was always very much a live issue before this Tribunal and, PTSB had legal representation, by counsel and/or solicitors, to monitor the movement from public session to private session to ensure that its privilege was preserved. It inexorably follows that PTSB's involvement in both the Inquiry and the appeal was directed at protecting its position. It was perfectly entitled so to do. However, having, in effect, volunteered to be represented at the various hearings to protect its own interests, it has no stateable basis for seeking to fix the Bank with the costs it thereby incurred. That difficulty is not resolved by PTSB's oral submission that *"there is nothing in [section 57AH] that would prevent the Tribunal from making an award in respect of PTSB's costs, some or all of them"* (Transcript, Cost Hearing, 30 September 2026, page 53, lines 11-15). It was for PTSB to establish a legal basis on which the Tribunal, by reference to the facts, might properly exercise its discretion in favour of PTSB. It did not do so.

89. PTSB did not appeal the Inquiry Member's finding that PTSB had acted in bad faith, a finding that was made without notice to PTSB or any party to the appeal. There may be many valid reasons why a regulated financial services provider might decide <u>not</u> to appeal an adverse finding of an inquiry, noting that an inquiry, however constituted, is an inquiry of its regulator, the Bank. However, any such decision, however valid, has consequences. Counsel for the Bank submitted that the fact that PTSB sought no order from the Bank meant that there was *"no event of any sort that PTSB can point to"*. The Tribunal agrees with that submission.

90. In light of the foregoing, it is not necessary to engage with the nature and breadth of the discretion conferred on the Tribunal by section 57AH, including

whether, as PTSB contends, section 57AH empowers the Tribunal to award costs to a non-party to the proceedings. It is prudent to leave that question over to a case, if one arises in the future, where the issue is engaged and the legal principles of statutory interpretation might be applied to concrete facts underpinning a particular application.

91. For these reasons, PTSB's application for costs is refused.

Dated this 6th day of October 2026



Mr Justice John MacMenamin

Chairperson