

IRISH FINANCIAL SERVICES APPEALS TRIBUNAL
FREEDOM OF INFORMATION PUBLICATION SCHEME

A: WHO WE ARE AND WHAT WE DO:

The Irish Financial Services Appeals Tribunal, “the Appeals Tribunal” was established by the Central Bank and Financial Services Authority of Ireland Act 2003. The Appeals Tribunal is also referred to as IFSAT.

The Appeals Tribunal is an independent tribunal which will hear and determine appeals from aggrieved parties against certain decisions of the Central Bank of Ireland.

The Appeals Tribunal aims to provide an accessible, efficient and effective method of appeal in an informal and expeditious manner.

The members of the Tribunal nominated by the Government and appointed by the President of Ireland are:

Patricia O'Sullivan Lacy, Acting Chairperson

Paul Brennan

Helen Collins

Conor Power S.C.

Eilis Brennan S.C.

Úna Tighe S.C.

Helen-Claire O’Hanlon BL is the Registrar of the Tribunal and was appointed by the Chairperson pursuant to Section 57J of the Central Bank Act 2003. The Registrar is appointed on a part-time basis and is based in our offices in Arran Square.

How many staff does the Tribunal have?

As at the date of publication of this publication scheme, the Appeals Tribunal has not engaged any full-time or permanent staff.

ANNUAL REPORTS AND ANNUAL ACCOUNTS:

The Annual Report of the Appeals Tribunal, together with the Annual Accounts, are provided to the Minister for Finance each year and afterwards are published on the website. All of the Annual Reports and Annual Accounts can be found at www.ifsat.ie

THE FUNCTIONS AND SERVICES OF THE APPEALS TRIBUNAL

The Central Bank is the financial regulator. The Central Bank is responsible for regulating over 10,000 firms providing financial services in Ireland and overseas, including credit institutions; insurance companies; credit unions; investment insurance intermediaries; and mortgage intermediaries.

Some types of decisions from the Central Bank may be appealed by the providers of these services to the Appeals Tribunal. You can see more information about the Central Bank on www.centralbank.ie

What types of decisions can be appealed to the Tribunal?

If a party is unhappy with an ‘appealable decision’ made by the Central Bank they may appeal to the Tribunal **within 28 days** of being notified of the decision¹. An application may be made to the Registrar and the Chairperson of the Tribunal for an extension of time.

What is an ‘appealable decision’?

The Legislation specifies which decisions of the Central Bank are ‘appealable decisions’.² ‘Appealable decisions’ are broadly divided into two categories:

- **administrative decisions;** and
- **supervisory decisions.**

What is an ‘*administrative* appealable decision’?

Regulator may hold inquiry

If, in carrying out its administrative role, the Central Bank suspects that anyone in the regulated financial service sector has committed a ‘prescribed contravention’, an inquiry may be arranged.³

¹ Under Part VIIA Section 57L(1) of the Central Bank Act 1942, as inserted by Section 28 of the Central Bank Act 2003.

² Central Bank Act 1942 as amended by the Central Bank Act 2003 and the Central Bank and Financial Services Authority of Ireland Act 2004 (“Central Bank Act 2004”). See also, the numerous Acts and Statutory Instruments specified in the First and Second Schedules of the Central Bank Act 2004.

³ As defined in Part IIIC Section 33AN of the Central Bank Act 1942, as inserted by Section 10 of the Central Bank Act 2004. The inquiry is carried out as defined by Section 33AO of the Act.

Regulator may impose sanctions following inquiry

As a result of the inquiry, the Central Bank may:

- caution or reprimand the financial service provider;
- direct the financial service provider to refund or withhold all or part of the money charged or paid for providing financial services;
- impose a monetary penalty;
- direct that a person should be disqualified from managing a regulated financial service;
- direct the financial service provider to stop contravening the law.⁴

Can an affected party appeal a decision which they think is unfair?

Yes, if an affected party against whom an ‘appealable decision’ has been made by the Central Bank is of the view that the decision is unfair, they may appeal to the Appeals Tribunal.⁵

What can the Appeals Tribunal do?

When the Central Bank has made a decision based on an ‘administrative appealable decision’ the Appeals Tribunal may:

- uphold the decision;
- vary it;
- substitute it with another decision;
- refer the decision back to the Regulator; or
- set the decision aside.⁶

What is a ‘*supervisory* appealable decision’?

Decisions about licences, authorisation and their conditions

‘Supervisory decisions’ from the Central Bank are mainly about:

- granting or withholding licences or authorisation needed to carry on the business of a regulated financial service provider; or
- imposing conditions in relation to the granting of a licence or authorisation.

The duties of the Central Bank in relation to the granting of licences – Where the Central Bank intends to reject an application for a licence or authorisation, the applicant must be notified that this is what is proposed and reasons for the decision must be outlined.

If it is intended to impose conditions that the financial service provider must meet to receive the licence, they must be notified in advance and reasons given. The Central Bank must afford the applicant a chance to respond.

Can an affected party appeal a ‘supervisory decision’ which they think is unfair?

Yes, but a party against whom a supervisory decision has been made **must appeal to IFSAT within 28 days** of being notified of the decision.⁷

What can the Appeals Tribunal do?

When a party appeals to the Tribunal about a ‘supervisory decision’ made by the Central Bank, the Appeals Tribunal may:

- affirm the decision; or
- refer the decision back to the Regulator.

Are there any exceptions?

Yes, an appeal must go the High Court when the Governor of the Central Bank and Financial Services Authority of Ireland directs or orders that a particular matter affects or may affect the financial stability of the State’s financial system.⁸

What is the procedure for appeals?

If a party wishes to appeal to the Appeals Tribunal in respect of a decision made by the Central Bank, a Notice of Appeal should be lodged setting out the grounds of the appeal. In addition to the legislation,⁹ you see the IFSAT rules at <http://www.ifsat.ie/>

⁴ The administrative sanctions are outlined in Part IIIC Section 33AN of the Central Bank Act 1942, as inserted by Section 10 of the Central Bank Act 2004.

⁵ Part IIIC Section 33AX of the Central Bank Act 1942, as inserted by Section 10 of the Central Bank Act 2004.

⁶ Section 57Z of the Central Bank Act 1942, as inserted by Section 28 of the Central Bank 2003. ⁷ In accordance with Part VIIA Section 57Z of the Central Bank Act 1942, as inserted by Section 28 of the Central Bank Act 2003, as amended in turn by Section 14 of the Central Bank Act 2004.

⁸ Section 57G of the Central Bank Act 1942, as inserted by Section 28 of the Central Bank Act 2003, and as amended by Section 12 of the Central Bank Act 2004.

⁹ Part VIIA Section 57L(1) of the Central Bank Act 1942, as inserted by Section 28 of the Central Bank Act 2003.

Fees:

The fee for an appeal is €5,000 pursuant to the IFSAT Rules 2008. However, you may make an application to the Appeals Tribunal for a reduction or waiver of the appeal fee in the event that the set fee would cause an injustice or financial hardship.

Once a Notice of Appeal has been filed, the Appeals Tribunal will serve Notice of the Appeal on the Central Bank and anyone else affected by the decision.

The Central Bank or anyone else affected by the decision will have 14 days to file a response. The Appeals Tribunal may grant an extension of time to respond. Once a response has been received, a copy will be sent to the Applicant. The Applicant may then file a Reply to the Response within a period of ten days, but the Appeals Tribunal may grant an extension of time to file a Reply.

Preliminary hearing

The Tribunal aims to hold a preliminary hearing within 21 days of the Reply to Response by the Central Bank and any other interested party.

The Applicant, the Central Bank and any other interested parties are invited to attend that hearing. Preliminary issues are identified and agreed where possible between the interested parties. The Appeals Tribunal may make preliminary orders or directions in order to progress the appeal efficiently and promptly.

Oral evidence

It may be necessary for witnesses to give oral evidence at the Tribunal. If this is the case the Appeals Tribunal will attempt to confirm in advance the identity of any proposed witnesses and what type of statements or proofs they will present at the Tribunal.

If necessary, the Tribunal may order either party to produce particular documents. However, the parties are encouraged to identify the documents, or types of documents, in their possession which are relevant to the appeal and to furnish them in advance to the Tribunal and the interested parties.

Who sits at preliminary or full hearings?

The members of any particular Appeals Tribunal are appointed by the Chairperson or, in the Chairperson's absence, by the Deputy Chairperson. At preliminary or full hearings, or making any decisions on pending cases, the Appeals Tribunal includes:

- the Chairperson or the Deputy Chairperson; and
- two other members of the Appeals Tribunal.

The Appeals Tribunal may reserve its decision. However, it would be expected that the decision (and the reasons for it) will be delivered within 21 days of the hearing of appeal.

Who pays the costs?

After hearing the case presented by all parties to the appeal, the Tribunal may decide (pursuant to Rule 23) that one or other of the parties pays the costs.

Who can represent a party before the Tribunal?

Anyone appearing before the Tribunal is entitled to represent themselves, or be represented by a barrister, solicitor or other competent person.

Where does the Appeals Tribunal hold hearings?

In general, hearings are conducted in public in our Tribunal Room at 4/5 Arran Square, Lincoln Lane, Arran Quay, Dublin 7.

Since the Covid 19 pandemic, the Tribunal has made arrangements to conduct some hearings remotely and by way of Designation Order in October 2020 the Irish Financial Services Appeals Tribunal was designated for the purposes of Section 29 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 as a body which is authorised to conduct hearings remotely.

The parties will be notified in advance by the Registrar as to the format of the hearing, depending on social distancing requirements.

Can a party have access to a transcript of the hearing?

Preliminary hearings and appeal hearings are recorded by an official stenographer engaged by the Tribunal. Parties are not automatically entitled to a copy of the recording but may apply to the Tribunal for a transcript of the recording upon payment of a fee.

Do I have to take an oath?

Any party giving evidence to the Tribunal gives evidence on oath or affirmation, administered by the Registrar.

The procedural rules adopted by the Appeals Tribunal are set out in the IFSAT Rules 2008 (S.I. No 224 of 2008) available on www.ifsat.ie and www.irishstatutebook.ie

B. FINANCIAL AND PROCUREMENT INFORMATION:

What we spend:

Each year, IFSAT produces Annual Accounts which are provided to the Minister for Finance together with the Annual Report. All past Annual Reports and Annual Accounts are available on our website www.ifsat.ie.

- **Procurement Policy:** Decisions in respect of expenditure and procurement are made between the Chairperson and the Registrar with such input as may be required from the Tribunal members.
- **Capital Expenditure:** At present IFSAT has no plans for major Capital Expenditure
- **Payments or Purchase Orders for goods and services:** To date, IFSAT has not made any payments nor incurred any purchase orders for goods and services of more than €20,000.
- **Tenders:** To date, IFSAT has not had tender competitions for the provision of good or services of over €25,000
- **Public contracts awarded:** To date, IFSAT has not awarded any public contracts for values over €25,000 (exclusive of VAT)

**C. FOI DISCLOSURE LOG AND OTHER INFORMATION TO BE PUBLISHED
ROUTINELY:**

Other information

- **Reports:** Each year, IFSAT produces an Annual Report which is provided to the Minister for Finance together with the Annual Accounts. All past Annual Reports and Annual Accounts are available on our website www.ifsat.ie

FOI DISCLOSURE LOG:

Previous non-personal FOI requests:

(1) **01/2020:** On the 13th of January 2020 a request was received from Shauna Bowers for: *“The minutes of any board/governing authority/management committee meetings that took place in 2019.”*

RESPONSE: The request was refused by letter of the 10th of February 2020 pursuant to Section 15(1)(a) of the Freedom of Information Act 2014 on the basis that there were no such records. The letter outlined that *IFSAT is an appeal Tribunal established under the Central Bank Acts to determine appeals against certain decisions of the Bank. It is comprised of a Chairperson, a Registrar and a panel of members amongst whom the members needed to hear appeals are nominated as and when required. It has no board/governing body or management committee. A full account its activities each year is publicly available on its web-site at www.IFSAT.ie*

(2) **01/2021:** On the 16th of February 2021, a request was received from Ken Foxe for: “A list/database/or spreadsheet of all purchase orders of over €20,000 for the period 2018, 2019 and 2020.”

RESPONSE: The request was refused by letter of the 15th of March 2021 pursuant to Section 15(1)(a) of the Freedom of Information Act 2014 on the basis that there were no such records. The letter explained that *“there are no purchase orders of over €20,000 for the period 2018, 2019 or 2020.”*

(3) **01/2022:** On the 20th of June 2022, a request was received from Dr Kris Shrishak of the Irish Council for Civil Liberties for:

“1. In relation to all CCTV cameras that you have procured from 2017 until the present, please provide:

- the names of each company and the names of the products including the model numbers
- the contracts with each company
- the cost per unit and the total costs, and - the duration of contracts and/or licenses.

2. Please provide records that state the capability of the CCTV cameras (along with their storage and processing units whether locally, on a server or in the cloud), such as facial recognition, temperature/thermal scanning, behaviour analysis, object detection or demographic detection (i.e. age, gender, clothing etc).

3. For all CCTV cameras procured between 2019 and present, please also provide the documents and communication (such as letters and emails) involving the company that was awarded the contract.”

RESPONSE: The request was refused by letter of the 26th of July 2022 pursuant to Section 15(1)(a) of the Freedom of Information Act 2014 on the basis that there were no such records. The letter explained that *“the answer to question 1 of your request is that IFSAT has not procured any CCTV cameras from 2017 to the present and there are therefore no such records. It follows that the answers to questions 2 and 3 are also that there are no such records.”*