

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Annual Report for 2024 of the President of the EBRD Administrative Tribunal Chris de Cooker

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PART I INTRODUCTION

1. Under Section IV, paragraph 9.04(a) of the Appeals Process Directive dated 9 November 2021 (DIR/2021/28), the President of the EBRD Administrative Tribunal (“Tribunal”) is required to submit an annual report addressed to the President of the Bank. The report is to be made available to the Board of Directors and staff of the Bank.

9.04 Annual Report

(a) The President of the Tribunal shall prepare an annual report indicating, in summary form, the Appeals brought before it in the past year, the decisions taken, and the actions of the Bank in implementing those decisions.

(b) Subject to paragraph 9.03 above, the report shall maintain the essential confidentiality of all parties involved in Appeals brought before the Tribunal. The report shall be addressed to the President and shall be made available to the Board of Directors as well as to staff members of the Bank.

2. In accordance with Section IV, paragraph 9.03 (a) and paragraph 0.04 (b) of the Appeals Process Directive (DIR/2021/28), all case decisions and Annual Reports are published in full (where applicable anonymised at the request of one of the parties or both) on the Bank’s website in line with the Bank’s commitment to enhancing good governance, openness, transparency and accountability. The link for ease of reference is:

<http://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html>.

3. The table in Part II presents a schematic synopsis of cases submitted to the Tribunal in 2024 including an overview of the appellants’ requests for an appeal, the decision and the actions carried out by the Bank. A more detailed summary of each case follows the table.

PART II REPORT ON APPEALS BROUGHT BEFORE THE TRIBUNAL IN 2024 AND ACTIONS OF THE BANK IN IMPLEMENTING THE DECISIONS

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2024/AT/01 Final decision issued on 28 June 2024	Marielle Cohen- Branche (Chair) Chris de Cooker Joan Powers	<p>In April 2024 the Appellant submitted an appeal challenging the President's Decision of 17 January 2024 which found the Appellant's Request for Review of an Administrative Decision ("Request for Review") taken by the Managing Director, Human Resources and Organisational Development ("MDHROD") in October 2023 inadmissible as it was out-of-time.</p> <p>The Appellant had requested a review of HR's actions which resulted in her having accrued a negative leave balance of 4.5 days during maternity in 2021. The Appellant maintained the Request for Review was admissible as the negative leave balance was only made known in October 2023 and the time limit for any request for reconsideration of an Administrative Decision is 40 days from the date on which it was notified. Prior to October 2023 the Appellant alleged to have received confusing information and maintained they should have been informed earlier as the negative leave balance violated the EBRD leave procedure which does not allow for a negative accrual of leave. HR had also made an error in classification of leave, which was later corrected.</p> <p>The Appellant asked the Tribunal to annul the President's Decision on admissibility and to refer the case back to the President so that it could be referred to the Administrative Review Committee ("ARC") and be subject to Administrative Review.</p>	<p>The Tribunal considered three grounds for admissibility questions:</p> <p>1) <i>rationae materiae</i>,</p> <p>2) <i>rationae temporis</i> with a special examination of the starting point of the relevant deadline;and</p> <p>3) whether the Appellant had a legal interest at stake.</p> <p>The Tribunal found the Appellant's Appeal inadmissible as there was no legal interest at stake as the resulting leave entitlements would not have changed.</p> <p>The Tribunal determined however that Appellant should have been better and more promptly informed throughout the process.</p> <p>The Tribunal therefore awarded payment of moral compensation of £2,000, which took into account:</p> <p>1) the excessive length of time taken by the Bank to provide the Appellant with a clear and comprehensible explanation, and</p> <p>2) the undue anxiety and uncertainty suffered by the Appellant.</p>	The Bank provided the staff member with the compensation of £2,000 awarded by the Tribunal on 23 July 2024	4-21

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
<p>2024/AT/02-12 and 14</p> <p>Final decision issued on 24 October 2024</p> <p>2024/AT/13</p> <p>Final decision issued on 24 October 2024</p> <p>2024/AT/02-14</p> <p>Decision (Interpretation)</p>	<p>Plenum:</p> <p>Chris de Cooker (Chair)</p> <p>Joan Powers (Rapporteur)</p> <p>Marielle Cohen-Branche</p> <p>Thomas Laker</p> <p>Maria Vicien-Milburn</p>	<p>These cases concerned a set of appeals brought by 13 HQ-based locally hired staff members to contest the Bank's decision to change the reference interest rate used for the calculation of their mortgage subsidies, which they alleged had a significant and adverse financial impact on them.</p> <p>The Barclays Standard Variable Rate ("SVR") had been used as the reference rate from 2009 until early 2017 for the calculation of mortgage subsidies. In March 2017 the Bank switched to the Barclays Follow on Tracker Rate ("FTR").</p> <p>In February 2023 the Appellants, who were all pre-2012 Non-Flex Staff Members, requested a review of "the mortgage subsidy benefit and HR practices around the application of various rates and communication of the same" by the MDHROD.</p> <p>Between 11 and 26 May 2023, the Appellants submitted their respective Requests for Review of an Administrative Decision to the President of the Bank, who referred the matter to the ARC which recommended compensation for the losses incurred since 2017, for moral damages, and to allow those affected to move to the Flex Package after their mortgages were repaid.</p> <p>In March 2024, the President issued her final Decisions rejecting the findings and recommendations of the ARC.</p> <p>The Appellants challenged the President's decision as follows:</p> <p>1) The 2017 decision was within the scope of the review as it had been misleading and concealed information of decisive importance from affected staff.</p>	<p>In its evaluations the Tribunal considered jurisdiction <i>ratione temporis</i> concluding that the information provided to staff in March 2017 did not meet the necessary standard of notification required by the Procedure on General Compensation, Section IV, paragraph 17(i).</p> <p>Only in January 2023 when the staff, upon reviewing their payslips and not understanding how the reductions in the mortgage subsidy reflected in those payslips had come about and based on their own audit of the history of the Bank's selection of reference rates, were the Appellants in a position to actually understand the sequence of events and administrative decisions that had resulted in the reduction of their mortgage subsidies. On this basis, the Tribunal concluded that the Appellants met the 40-day deadline specified in Section IV, paragraph 6.1(a) of the Directive on the Administrative Review Process with respect to their initiation of the process that has ultimately resulted in these Appeals.</p> <p>The Tribunal also considered the decision to switch the reference rate. The Tribunal assessed whether the March 2017 decision to switch from the SVR to the FTR as the reference rate, met the standards for discretionary decisions set out in Section IV, paragraph 3.03(b) of the Directive on the Appeals Process, including lack of arbitrariness. In this</p>	<p>In January 2025, the Bank provided the Appellants and all affected staff members a compensation reflecting the difference between the SVR and FTR for the period between March 2017 and November 2022 (excluding the period between 1 March 2020 and 31 March 2021)</p>	22-44

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
		<p>2). The President had failed to consider the legitimate expectation of staff based on historical practice, that there would be some form of stability and predictability in the Bank's approach to administering the mortgage subsidy.</p> <p>3) The Appellants questioned the President's position that the absence of reasons about why the Bank switched rates absolved the Bank of responsibility.</p> <p>4) The Appellants considered that the President was incorrect to dismiss the ARC's recommendations.</p> <p>The Appellants sought the following remedies from the Tribunal:</p> <p>1) Compensation for the monetary loss incurred since 2017,</p> <p>2) Moral damages in the amount of GBP 10,000 per appellant, and</p> <p>3) The Bank be ordered to provide each Appellant with the option to move to the Flex Package once their mortgage has been paid off.</p>	<p>regard, the Tribunal observed that the Bank had been unable to provide any rationale to explain or justify the decision, as there were apparently no contemporaneous records or institutional memory as to how or why it was taken. Given the absence of such information, the Tribunal was unable to assess whether the decision was reasonable and objective, or whether the decision was taken by a duly authorised official. As a result, the Tribunal was unable to conclude that the exercise of discretion by the Bank was not arbitrary.</p> <p>In its consideration of the remedies requested, the Tribunal ordered the Bank to compensate each Appellant as if the decision to switch the reference rate in March 2017 from the SVR to the FTR had not been taken and the use of the SVR as the reference rate had been maintained until November 2022, excluding the period 1 March 2020 through 31 March 2021.</p> <p>All other claims were rejected.</p>		

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2024/AT/15 Final decision issued on 19 February 2025	Maria Vicien-Milburn (Chair) Chris de Cooker Marielle Cohen-Branche	<p>The Appellant was employed on a 12-month contract, which was not renewed. The Appellant argued that the decision for non-renewal was motivated <i>inter alia</i> by bias regarding their medical history.</p> <p>The Appellant submitted a Request for Review of the Line Manager's Administrative Decision not to renew their contract to the MDHROD. The MDHROD's response maintained the decision on the basis that there were no irregularities or abuse of discretion in the non-renewal decision.</p> <p>On 5 July 2024 the Appellant submitted to the President a Request for Review of the MDHROD's decision. On 25 July 2024 the President issued the Decision to declare the Appellant's Request for Review of 5 July 2024 inadmissible as time-barred, having been submitted after the deadline of 3 July 2024.</p> <p>The Appellant requested a waiver of the deadline due to personal circumstances, which was denied.</p> <p>In the Appeal to the Tribunal, the Appellant argued that the President erred in determining the Request for Review to be inadmissible on the grounds that exceptional personal circumstances were sufficiently compelling to warrant a waiver of the applicable time limits.</p> <p>The Appellant requested anonymity.</p> <p>The Appellant sought reversal of the President's Decision and requested the Tribunal to remand their Appeal back to the President to refer it to the ARC for administrative review.</p>	<p>The Tribunal considered the importance of adhering to time limits as well as the President's decision to not consider a waiver of the deadline due to exceptional circumstances.</p> <p>The Tribunal concluded that the Appellant's circumstances had been difficult but not exceptional enough to prevent them from effectively submitting a Request for Review to the President within the prescribed time limits.</p> <p>The Tribunal accepted the Appellant's request for anonymity.</p> <p>The Tribunal dismissed the Appeal.</p>	Not applicable.	45-64

Case Reference / Decision rendered date	Composition of the Tribunal	Details of the request for Appeal by the Appellant against the EBRD (the Respondent)	Tribunal Decision	Action taken and confirmed by the Bank	Full summary in paras:
2024/AT/16 Final decision issued on 19 February 2025	Thomas Laker (Chair) Chris de Cooker Joan Powers	<p>The Appellant joined the Bank in 2012 as an Executive Assistant. While on maternity leave, in December 2023, a potential transfer of the Appellant to a different position was discussed. Despite the Appellant's disagreement, this transfer was implemented by a decision of the MDHROD of 28 March 2024.</p> <p>The Appellant submitted a Request for Review to the First Vice President ("FVP") challenging the transfer decision. In a response on 25 July 2024 the FVP concluded that the transfer decision by the MDHROD did not contain procedural or substantive errors and was made in line with the provisions of the Organisation and Personnel Management Directive.</p> <p>Any Request for Review by the President of the Bank of the FVP's response was due within 40 days, i.e. on 20 September 2024. It was not until 23 September 2024 that the Appellant submitted to the President a request for an exceptional waiver of the deadline due to personal circumstances, and a review of the transfer decision. The President responded finding the Appellant's request inadmissible as it was not submitted within the timelines of the Bank's internal law.</p> <p>In the Appeal, the Appellant requested anonymity and the Tribunal to reverse the President's Decision on admissibility and remand the case for initiation of the administrative review process.</p>	<p>The Tribunal considered the importance of adhering to time limits as well as the President's decision to not consider a waiver of the deadline due to exceptional circumstances.</p> <p>The Tribunal concluded that the Appellant's circumstances had been difficult but not exceptional enough to prevent the submission of a Request for Review to the President within the prescribed time limits.</p> <p>The Tribunal accepted the Appellant's request for anonymity.</p> <p>The Tribunal dismissed the Appeal.</p>	Not applicable.	65-81

EBRDAT 2024/AT/01

4. In April 2024, the Appellant submitted an Appeal challenging the President's Decision of 17 January 2024, which found the Appellant's Request for Review of an Administrative Decision taken by the MDHROD in October 2023 inadmissible as it was out-of-time.
5. By way of background during the 2020/2021 leave year and to cover the Appellant's period of maternity absence, the Appellant had requested Annual Leave ("AL"), plus maternity leave and unpaid leave. The Appellant also purchased leave days from the flex allowance. At the time the Appellant sought guidance from HR regarding the number of days available to take.
6. The Appellant was informed in August 2021 that the AL quota had been exceeded by 4.5 days, because the AL entitlement had been reduced due to the period of unpaid leave. At the time the Appellant sought clarification and guidance with regard to what action was required but received no reply. In October 2021, the Appellant noted that the AL balance in EBRD Self Service ("ESS") was 28.5 and the balance was zero.
7. The Appellant proceeded to purchase a further five days AL from the flex allowance and at the suggestion of HR took 5 paid-return-to-work days granted to staff after unpaid maternity leave.
8. In April 2023, the Appellant noticed in ESS a carry-over of minus 10 AL days and queried this with HR. HR informed that the AL days had been exceeded by 9.5 days in 2021/2022. In June 2023 HR explained that, because unpaid leave had been classified as unpaid parental leave instead of unpaid maternity leave, the five days paid-return-to-work days had been denoted erroneously as AL and the Bank agreed exceptionally to retroactively correct this error.
9. On 4 August 2023, the Appellant was informed there remained an AL balance of minus 4.5 days.
10. On 2 October 2023, under Section IV, paragraph 6.1(a) of the ARP Directive, the Appellant wrote to the MDHROD requesting a review of the decision to deduct 4.5 days from the AL entitlement as communicated on 4 August 2023. The Appellant requested inter alia restitution of the 4.5 days that were deducted, an apology from HR and review of why the system had allowed the accrual of a negative leave balance, which was not in accordance with the Bank's Rules and Procedures.
11. On 26 October 2023, the MDHROD issued a decision, which, according to the Appellant, for the first time properly explained what had happened and how the calculations had been

made. The MDHROD apologised for the delay in providing clarifications when the Appellant began to question the accumulated negative AL balance. The MDHROD explained how the Appellant's unpaid leave taken during a leave year had reduced the AL entitlement for that year as AL does not accrue during periods of unpaid leave. The MDHROD referred to the errors made by HR with regard to the classification of unpaid leave and paid-return-to-work days, and that this had now been corrected with no adversarial effect on the Appellant. The MDHROD also stated that all staff need to familiarise themselves with the Bank's Rules and Procedures and had the Appellant wished to dispute the reduction in AL in 2021, that should have been done at the time.

12. On 21 December 2023, in accordance with Section IV, paragraph 6.4.1.(a), the Appellant submitted a Request for Review by the President of the EBRD of the MDHROD's Administrative Decision of 26 October 2023 concerning the entitlement to AL. In short, this request concerned the actions and decisions of HR that resulted in accumulating a negative leave balance related to the leave taken during maternity in 2021.

13. On 17 January 2024, the President issued a decision regarding the admissibility of the Appellant's Request for Review of the MDHROD's administrative decision, which concluded in summary that the request was not admissible because it was out of time as already in 2021 the Appellant was or should have been aware of the reduction in entitlement and its negative effect on the Appellant's AL balance. Section IV, paragraph 6.4.1.(a) of the ARP Directive explicitly states "A request for review by the President must be submitted by the Staff Member with 40 days of the date when the response of the MDHROD was notified to the Staff Member."

14. The President also commented that while the Appellant's Request for Review highlighted concerns with HR colleagues and the functionality of the Bank systems, these had not altered in an adverse manner, or breached, the Appellant's terms and conditions of employment and were therefore not subject to review under the ARP Directive.

15. On 11 April 2024, the Appellant submitted an Appeal to the Tribunal in relation to the President's Decision. According to the Appellant, the President of the Bank had erred in the analysis of the admissibility of the Appellant's request. The Appellant maintained that the Request for Review was admissible as the negative leave balance was only communicated in October 2023 following five months of often contradictory telephone calls, discussions and exchanges of information and e-mails on AskHR and the time limit for any request for reconsideration of an Administrative Decision is 40 days from the date on which it was notified.

16. The Appellant asked the Administrative Tribunal to annul the President's Decision on

admissibility and to refer the case back to the President so that it could be referred to the ARC for purposes of administrative review.

17. The Bank submitted its Response on 14 May 2024. It contended that the President's Decision was lawful and taken in compliance with the Bank's ARP Directive, and that the Appeal was out of time.

18. The Tribunal considered:

- Grounds for the admissibility question *rationae materiae*: Applicable Law. The Tribunal found that the Appellant had a plausible grievance challenging the application of the rules and concluded therefore that it had jurisdiction.
- Grounds for the admissibility question of *rationae temporis*: The Tribunal examined whether the Appellant knew or should have known that the AL balance had been exhausted. It also considered at which point the Appellant knew or should have known about the negative leave balance. The Tribunal found that it was only in October 2023 that the Appellant was put in a position to actually fully understand the existence of and the reasons for the negative leave balance. The Tribunal found therefore that the Appeal was timely.
- Grounds for the third admissibility legal question: whether the Appellant has a legal interest at stake. The Tribunal recognised there was no legal interest at stake as the resulting leave entitlements would not have been found more favourable.

19. On the basis of the foregoing, the Tribunal found the Appellant's Appeal inadmissible. It found nevertheless that the Appellant should have been better and more promptly informed throughout the process. The Tribunal therefore awarded payment of moral compensation of £2,000 which took into account 1) the excessive length of time taken by the Bank to provide the Appellant with a clear and comprehensible explanation, and 2) the undue anxiety and uncertainty suffered by the Appellant.

20. All other claims were dismissed.

21. The Bank provided the Appellant with the awarded compensation of £2,000.

EBRDAT 2024/AT/02-12+14 and 2024/AT/13 and 2024/AT/02-14 (Interpretation)

22. These cases concerned a set of appeals brought by thirteen HQ-based locally hired staff who, following the introduction of the flexible allowance package (“Flex Package”) in 2012, had made the one-time irrevocable choice not to opt for the Flex Package and to, notably, keep benefiting from the mortgage subsidy arrangements in existence at the time.

23. The Appellants contested the Bank’s decision to change the reference interest rate used for the calculation of their mortgage subsidies in 2017, which they alleged had had a significant and adverse financial impact on them.

24. As provided in the Staff Handbook (Directive General Compensation, Section IV.20), the “reference interest rate” used by the Bank for the calculation of the subsidy for HQ-based staff members must be a “rate for a variable-rate mortgage as published by a major home loan provider selected by the Bank; [...] capped at 10 percent.”

25. Until 2009, the Bank used a rate published by the Halifax Building Society. In February 2009, the Executive Committee (“Excom”) approved a shift to the Barclays Standard Variable Rate (“SVR”), which then was used as the reference rate from 2009 until early 2017. In March 2017 the Bank switched to the Barclays Follow on Tracker Rate (“FTR”). The Bank has acknowledged that they are unable to explain the reason for this change. The switch was not notified to those in receipt of a mortgage subsidy, although they were informed of a change in rate which decreased their subsidy.

26. Thereafter, the Bank utilised the FTR as the reference interest rate until November 2022, except during the Covid-19 pandemic between March 2020 and March 2021, when the Bank decided to maintain a fixed “reference interest rate” at the level of 4.24%, regardless of the rate changes published by Barclays, providing additional financial support to staff.

27. In 2020, a working group at the Bank reviewed the benefits available to pre-2012 Non-Flex Staff Members and proposed several adjustments. The outcome was that the eligible capital sum (“cap”) was increased, and the reduction from the applicable reference interest rate (“collar”) used in the calculation of the mortgage subsidy was reduced from 3% to 2%.

28. In November 2022, the Bank again switched the reference rate, shifting from Barclays FTR back to the SVR. At the time the SVR was higher than the FTR. Barclays then reduced the SVR. As a result of the switch back to the SVR, the amounts of the mortgage subsidy received by the Appellants decreased.

29. In January 2023, some pre-2012 Non-Flex Staff Members who received the mortgage

subsidy noticed in their pay slips that the amount of their mortgage subsidies had decreased significantly. To determine the reasons for this, they undertook an audit of the historical practice concerning the reference interest rate applied. The audit concluded that there had been a pattern of switching to less favourable rates, as well as deficiencies and lack of transparency by the Bank in its communications to staff regarding the selection of the reference rate.

30. On 28 February 2023, based on the findings of the audit, several pre-2012 Non-Flex Staff Members requested a review of “the mortgage subsidy benefit and HR practices around the application of various rates and communication of the same” by the MDHROD, seeking compensation of alleged losses for the period from March 2017 to November 2022. Their requests claimed that, since 2017, the Bank had made errors in their mortgage subsidy calculations and demonstrated inconsistency in approach to reference rates, as well as a lack of transparent communication.

31. On 28 March 2023, the MDHROD issued a decision rejecting the requests for review, finding that the Bank had complied with the relevant provisions of the Staff Handbook, specifically the Directive on General Compensation, and had in good faith applied variable mortgage rates with respect to the mortgage subsidy for Non-Flex Staff Members.

32. Between 11 and 26 May 2023, the Appellants submitted their respective Requests for Review of an Administrative Decision to the President of the Bank, who referred the matter to the ARC.

33. The ARC considered the requests jointly, except for two individual complainants whom the ARC determined had factual circumstances that justified an individual assessment. The ARC obtained further information through Directions to the parties and conducted interviews of persons named by both sides, including each of the individual complainants.

34. On 7 February 2024, the ARC issued its Reports and Recommendations to the President. With respect to the scope of its review, the ARC considered that it was authorised to review the Bank’s practice since March 2017, given that the complainants were not made aware of the switch in the reference interest rate from the SVR to the FTR in 2017 and only became fully aware of the impact, significance and consequences of the switch through an audit conducted in January 2023.

35. The ARC concluded that the Bank’s decision to change the reference interest rate in March 2017 was an unlawful act of administrative discretion and recommended that it be retroactively rescinded, and that each complainant be granted compensation for the monetary losses incurred between March 2017 and November 2022, in addition to three months’ net

salary for moral damages. The ARC also recommended each should be allowed to move to the Flex Package once their mortgage was paid off.

36. On 5 March 2024 and 18 March 2025, the President issued final Decisions in relation to the eleven complainants in the joined cases (EBRDAT 2024/AT/02-12), and EBRDAT 2024/AT/13 +14 respectively. The President's Decision(s) upheld the MDHROD's decision, rejecting the findings and recommendations of the ARC, which was considered to be flawed and deficient. With respect to the scope of the review, the President considered incorrect that the timeline for challenging the March 2017 decision to switch from SVR to FTR started in January 2023. On the merits, the President maintained that the Appellants had been treated fairly and that the Bank had acted in good faith in accordance with the Bank's legal framework. The President acknowledged that there had been a shortfall in communication but noted that these had been addressed. The President rejected all remedies recommended by the ARC.

37. The Statements of Appeal from eleven of the Appellants were submitted between 29 and 31 May 2024 (EBRDAT 2024/AT/02-12). Two further Appeals (EBRDAT 2024/AT 13-14) were submitted on 10 June 2024. The Tribunal joined the twelve Appeals EBRDAT 2024/AT/02-12 and 14 and considered them together, as the factual circumstances and legal issues at stake raised were largely identical. The Appellant in case EBRDAT 2024/AT/13 indicated the wish not to be joined with the other Appellants (and this Appeal was the subject of a separate but concurrent Decision by the Tribunal).

38. The Appellants challenged the President's decision as follows: 1) The 2017 decision was within the scope of the review as it has been misleading and concealed information of decisive importance from affected staff; 2). The President had failed to consider the legitimate expectation of staff, based on historical practice, that there would be some form of stability and predictability in the Bank's approach to administering the mortgage subsidy; 3) The Appellants questioned the President's position that the absence of reasons about why the Bank switched rates absolves the Bank of responsibility; and 4) the Appellants considered that the President was incorrect to dismiss the ARC's recommendation for compensation for the losses incurred since 2017 and for moral damages, as well as in the refusal to allow them to move to the Flex Package after their mortgages are repaid.

39. The Appellants sought the following remedies from the Tribunal: 1) Compensation for the monetary loss incurred since 2017 as itemised in their Request for Review and by the ARC in its Report, including interests on the same amount, which should be set at 8% in line with the market practice and statutory rate in the UK; 2) Moral damages in the amount of GBP 10,000; and 3) The Bank be ordered to provide each Appellant with the option

to move to the Flex Package once their mortgages had been paid off.

40. In its evaluations the Tribunal considered jurisdiction *ratione temporis*; given the factual scenario set out above, the Tribunal was of the view that the information provided to staff in March 2017 did not meet the necessary standard of notification required by the Procedure on General Compensation, Section IV, paragraph 17(i). It was not until January 2023 when the staff, upon reviewing their payslips and not understanding how the reductions in the mortgage subsidy reflected in those payslips had come about, that several of the pre-2012 Non-Flex staff undertook their own audit of the history of the Bank's selection of reference rates and requested a review by the MDHROD (see paragraph 29 above). Only at that point were the Appellants, based on their own audit of the history of the Bank's selection of reference rates, in a position to actually understand the sequence of events and administrative decisions that had resulted in the reduction of their mortgage subsidies. On this basis, the Tribunal concluded that the Appellants met the 40-day deadline specified in Section IV, paragraph 6.1(a) of the Directive on the Administrative Review Process with respect to their initiation of the process that has ultimately resulted in these Appeals.

41. The Tribunal also considered the decision to switch the reference rate; the current Appeals called upon the Tribunal to assess whether the March 2017 decision to switch from the SVR to the FTR as the reference rate met the standards for discretionary decisions set out in Section IV, paragraph 3.03(b) of the Directive on the Appeals Process, including lack of arbitrariness. In this regard, the Tribunal observed that the Bank had been unable to provide any rationale to explain or justify the decision, as there were apparently no contemporaneous records or institutional memory as to how or why it was taken. Moreover, the identity and scope of authority of the decision-maker were unknown. Given the absence of such information, the Tribunal was unable to assess whether the decision was reasonable and objective, or whether the decision was taken by a duly authorised official. As a result, the Tribunal was unable to conclude that the exercise of discretion by the Bank was not arbitrary.

42. In its consideration of the remedies requested, the Tribunal ordered the Bank to compensate each Appellant as if the decision to switch the reference rate in March 2017 from the SVR to the FTR had not been taken and use of the SVR as the reference rate had been maintained. Specifically, this remedy calls for the payment of material damages to each Appellant equal to the difference between the mortgage subsidy that the individual Appellant actually received and what they would have received if the Bank's reliance on the SVR had not been discontinued in March 2017 and had continued until November 2022, other than during the period 1 March 2020 through 31 March 2021

43. All other claims were rejected.

44. In January 2025, the Bank provided the Appellants and all affected staff members a compensation reflecting the difference between the SVR and FTR for the period between March 2017 and November 2022 (excluding the period between 1 March 2020 and 31 March 2021).

EBRDAT 2024/AT/15

45. In October 2024 the Appellant submitted an Appeal challenging the President's Decision of 4 September 2024, which found the Appellant's Request for Review of an Administrative Decision inadmissible as it was out-of-time.

46. The Appellant argued that the President erred in determining the Request for Review to be inadmissible on the grounds that exceptional personal circumstances were sufficiently compelling to warrant a waiver of the applicable time limits.

47. The Appellant sought reversal of the President's Decision and requested the Tribunal to remand the Appeal back to the President and to refer it to the ARC for administrative review.

48. By way of background, the Appellant joined the Bank in May 2023 on a 12-month short-term contract as an Analyst. In February 2024 the Appellant was informed by the Line Manager that the appointment would not be extended on the basis of budgetary and resourcing considerations. The Appellant left the service of the Bank at the end of May 2024.

49. Prior to leaving the Bank, the Appellant submitted in April 2024 a Request for Review of the Administrative Decision taken by the Line Manager to the MDHROD alleging that the non-renewal decision was not motivated by budgetary reasons but instead by bias against the Appellant because of medical history and the subsequent disclosure of a medical condition. In addition, the Appellant maintained that the Line Manager had failed to accurately assess the performance and made insensitive and other inappropriate comments. The Appellant also asked for protection against retaliation by the Line Manager.

50. On 7 May 2024, the MDHROD informed the Appellant that the decision not to extend the appointment would be maintained on the basis that the essence of a time-limited contract is the very fact that it expires and that staff on short term contracts do not have an automatic right to an extension or renewal of their appointment. In addition, the MDHROD explained why no irregularities or abuse of discretion in the non-renewal of the Appellant's short-term contract had been identified.

51. On 5 July 2024, the Appellant submitted to the President, under Section IV paragraph

6.4.1(a) of the ARP Directive, a Request for Review of the MDHROD's decision dated 7 May 2024.

52. On 25 July 2024, the President issued a Decision to declare the Appellant's Request for Review of 5 July 2024 inadmissible as time-barred, having been submitted after the deadline of 3 July 2024. Section IV, paragraph 6.4.1.(a) of the ARP Directive explicitly states, "A request for review by the President must be submitted by the Staff Member within 40 days of the date when the response of the MDHROD was notified to the Staff Member."

53. On 23 August 2024, the Appellant wrote to the President providing evidence and justification for having missed the deadline due to exceptional circumstances, maintaining that the mistake to not observe the time limits constituted an oversight motivated by the serious "medical and personal challenges" that hindered the Appellant's ability to plan and prepare the Request for Review.

54. The Appellant requested a waiver of the deadline in accordance with Section V: Waivers, Exceptions and Disclosures of the ARP Directive, which provides that the "President may grant a deviation from a requirement of the Directive."

55. On 5 September 2024, the President informed the Appellant that there was no reason to revisit the Decision of 25 July 2024 and declined to grant a waiver.

56. In the Appeal, the Appellant argued that the President had erred in determining the Request for Review inadmissible and that exceptional personal circumstances together with the fact that the delay in the submission was not material, were both such to warrant a waiver of the applicable timelines under Section V of the ARP Directive.

57. The Appellant requested anonymity, which was accepted by the Tribunal.

58. In its evaluation, the Tribunal emphasised the importance of adhering to time limits as they are important for effective administration. Maintaining procedural time limits is consistent with international administrative law and widely recognised by international tribunals and courts.

59. The Tribunal also observed that 'justifiable grounds for the delay' must be genuinely extraordinary.

60. Furthermore, pursuant to Section V of the ARP Directive that the "President may grant a deviation from a requirement of this Directive," the use of the word "may" indicates that any such deviation lies within the discretion of the President. The Tribunal considered whether the President's decision fell within the bounds of reasonableness, was based on a thorough review

of the available relevant facts, was not tainted by improper motives or procedures and was consistent with Bank law and international administrative law.

61. It was also noted by the Tribunal that in response to the Tribunal's request to the Respondent of 19 December 2024, on 6 January 2025 the Bank informed the Tribunal that no President to date had exercised their authority to grant a deviation to the time limit for filing a Request for Review or to any other provision of the ARP Directive.

62. The Tribunal considered the President's view that there were no "exceptional circumstances", was consistent with the general principles articulated by various international administrative tribunals. Therefore, there were no reasons for the President to issue a waiver of time limits and the decision fell within the bounds of the President's discretionary authority. The Appellant had therefore missed the deadline to file the Request for Review as established by Section IV, paragraph 6.4.1(b) of the ARP Directive.

63. The Tribunal accepted that the Appellant's overall personal and professional circumstances at the time were difficult, but none amounted to a situation which could have effectively prevented the Appellant from submitting a Request for Review to the President within the prescribed time-limit. Therefore, the Tribunal found no grounds to overturn the President's Decision of 25 July 2024.

64. The Tribunal rejected the Appeal in its entirety.

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65. In November 2024, the Appellant submitted an Appeal challenging the President's Decision of 11 October 2024, which found the Appellant's request for an extension to the deadline for submitting a Request for Review of an Administrative Decision, inadmissible as it was out-of-time.

66. By way of background, the Appellant joined the Bank in 2012 and in 2017 was appointed as an Executive Assistant. While on maternity leave, in December 2023 a potential transfer of the Appellant to a different position was discussed. Despite the Appellant's disagreement, this transfer was implemented by an MDHROD's decision of 28 March 2024.

67. On 14 May 2024, the Appellant submitted a Request for Review of an Administrative Decision (Stage 1) in accordance with Section IV, paragraph 6.3(a) of the ARP Directive to the First Vice President ("FVP") challenging the MDHROD's transfer decision. After

unsuccessful efforts of mediation which concluded on 11 July 2024, the Appellant's Request for Review of 14 May 2024 was rejected by the FVP. This was duly notified to the Appellant on 25 July 2024. The FVP's response held that the decision to transfer the Appellant did not contain any procedural or substantive errors and was made on an observable basis in line with the provisions of the Organisation and Personnel Management Directive.

68. Any request for review of the FVP's decision was due within 40 days (on or before 20 September 2024) in accordance with Section IV, paragraph 6.4.1(b) of the ARP Directive.

69. On 23 September 2023, the Appellant submitted to the President, under Section IV paragraph 6.4.1(a) of the ARP Directive, a Request for Review of the FVP's Administrative Decision requesting 1) an exceptional request for waiver of a deadline due to special circumstances at the time, and 2) a review of the decision to be transferred to a new role during maternity leave.

70. The President responded on 11 October 2024 finding the Appellant's Request for Review inadmissible as the request had not been submitted within the timelines of the Bank's internal law. In addition, the President considered that the Appellant's personal and professional circumstances did not amount to exceptional circumstances that prevented meeting the applicable deadline.

71. In the Appellant's view, the Request for Review was admissible because the President had abused discretion by denying a modest extension of the deadline by only two working days. The Appellant deemed to have been unable to meet the deadline due to extremely challenging professional and personal circumstances, emphasising that the transfer to a new position upon return from maternity leave had been very traumatic and had caused significant stress.

72. The Appellant's Appeal dated 7 November 2024 requested the Tribunal to reverse the President's Decision on admissibility and remand the case for initiation of the administrative review process.

73. The Appellant requested to remain anonymous, which the Bank did not oppose. The Tribunal granted this request, recalling that it is inherent to an appeal that certain facts and opinions become known, both inside and outside the Bank. This being said, it is the Tribunal's approach to limit to the maximum extent possible, inter alia, the exposure of facts or descriptions that may identify participants in the process.

74. In its evaluation, the Tribunal emphasised the importance of adhering to time limits as they are important for effective administration. Maintaining procedural time limits is consistent with international administrative law and widely recognized by international tribunals and

courts.

75. The Tribunal also observed that ‘justifiable grounds for the delay’ must be genuinely extraordinary.

76. Furthermore, pursuant to Section V of the ARP Directive that the “President may grant a deviation from a requirement of this Directive”, the use of the word “may” indicates that any such deviation lies within the discretion of the President. The Tribunal considered whether the President’s decision fell within the bounds of reasonableness, was based on a thorough review of the available relevant facts, was not tainted by improper motives or procedures and was consistent with Bank law and international administrative law.

77. It was also noted by the Tribunal that in response to the Tribunal’s request to the Respondent of 19 December 2024, on 6 January 2025 the Bank informed the Tribunal that no President to date had exercised the authority to grant a deviation to the time limit for filing a Request for Review or to any other provision of ARP Directive.

78. The Tribunal considered the President’s view that there were no “exceptional circumstances” was consistent with the general principles articulated by various international administrative tribunals, and that there were no reasons for the President to issue a waiver of time limits and that the decision fell within the bounds of the President’s discretionary authority.

79. The Tribunal therefore concluded that the Appellant had missed the deadline to file the Request for Review by the President as established by Section IV, paragraph 6.4.1(b) of the ARP Directive.

80. The Tribunal accepted the Appellant’s overall personal and professional circumstances had been difficult, but none amounted to a situation which could have prevented the Appellant effectively from submitting a Request for Review to the President within the prescribed time-limit. The Tribunal found no grounds, in the absence of exceptional circumstances, to overturn the President’s Decision of 11 October 2024 to not waive the submission deadline.

81. The Tribunal rejected the Appeal in its entirety.

PART III INFORMATION REGARDING THE ADMINISTRATIVE TRIBUNAL, ITS COMPOSITION AND ITS ACTIVITIES IN 2024

82. On 23 March 2006, the Board of Directors approved the Review of the Grievance and Appeals Procedures (BDS06-039 final), and on 25 July 2006 it approved the implementation of the Appeals Procedures (BDS06-132 and BDS06-132(rev1)). The Appeals Procedures became effective on 3 December 2007 upon the appointment of the judges of the Administrative Tribunal. As of 1 April 2019, the Appeals Procedures were transposed into the new “directive” template and became the Appeals Process Directive (DIR/2019/14). Effective from 9 November 2021 the Directive on the Appeals Process (DIR/2021/28) was amended, in accordance with the terms of the Appeals Process, following consultation with the Chair of the Budget and Administrative Affairs Committee (BAAC), the Staff Council and the President of the EBRD Administrative Tribunal.

83. There have been no amendments to the Directive on the Appeals Process (DIR/2021/28) since the last Annual Report of the President of the EBRD Administrative Tribunal.

84. The composition of the Administrative Tribunal during 2024 remained as follows:

- Chris de Cooker was appointed on 3 December 2018. On 6 September 2024 his appointment was extended for a further period of 3 years until 2 December 2027. Mr de Cooker was elected President of the Tribunal on 30 December 2022.
- Maria Vicien Milburn was appointed on 3 December 2018. On 6 September 2024 her appointment was extended for a further period of 3 years until 2 December 2027.
- Thomas Laker was appointed on 3 December 2020. His current appointment end date is 2 December 2026.
- Marielle Cohen-Branche was appointed on 3 December 2022. Her current appointment end date is 2 December 2025.
- Joan Powers was appointed on 3 December 2022. Her current appointment end date is 2 December 2025.

85. Chris de Cooker attended the BAAC meeting on 5 June 2024 to present his 2023 Annual Report to Board Members and spoke about:

- the informal process for resolving grievances at an early stage involving dialogue between parties, mediation, the availability of a 3rd party to facilitate, e.g. the Ombuds or the Staff Legal Adviser.
- the formal process – the ARC, whose members are either appointed by the President or

elected by staff, plus the Chair who is a lawyer with experience in international administrative law, and finally the Administrative Tribunal. The role of the Tribunal is to study the jurisprudence as well as the merits of a case.

The Board of Directors raised questions to the President of the Tribunal on inter alia the following issues: timing and costs of cases, the importance of the rule of law and fairness, as well as administrative support for the Tribunal.

86. A Town Hall meeting took place on 6 June 2024 with all members of the Tribunal present, as well as the ARC Chair, the Ombuds and the Staff Legal Adviser. The Staff Council asked questions on behalf of the staff.

PART IV CONCLUSION

87. During 2024, the Tribunal received 16 new appeals. One appeal was dismissed as irreceivable. Of the remaining 15 appeals, 12 were joined, as the substance was considered the same. A decision concerning these 12 appellants and a separate decision concerning another appellant in which the factual circumstances and legal issues were largely identical were issued in 2024. Decisions with respect to the other two appeals were issued in early 2025. This compares with three appeals in 2023, two appeals in 2022, five appeals in 2021 and six appeals in 2020. The appeals of 2024 concerned calculations of Annual Leave, the interest rate applied to the payment of mortgage subsidies, and admissibility issues related to time-limits. The Tribunal held a second Town Hall in 2024, which provided an opportunity for staff of the Bank to engage with the Tribunal, the ARC chair, the Ombuds, and the Staff Legal Adviser to gain first-hand insight and understanding of the Bank's internal dispute resolution system.

Chris de Cooker

President of the EBRD Administrative Tribunal

11 April 2025

ANNEX 1 BOARD DOCUMENTATION ON APPOINTMENTS AND RE-
APPOINTMENTS OF JUDGES SERVING ON THE ADMINISTRATIVE
TRIBUNAL DURING 2024

Reappointment of members of the Administrative Tribunal BDS24-171

In September 2024 the Board of Directors approved on a no-objection basis the re-appointments of Chris de Cooker and Maria Vicien-Milburn for their third terms as members of the Administrative Tribunal.

ANNEX 2 *CURRICULA VITAE* OF JUDGES SERVING ON THE ADMINISTRATIVE TRIBUNAL DURING 2024

Chris de Cooker (President of the EBRD Administrative Tribunal) (Dutch) has more than forty-five years of direct experience in international administrative law. He was an academic for nine years at the University of Leiden, where he developed a special course on international administration. Between 1984 and 2011 (when he retired), Mr de Cooker worked at the European Space Agency in a number of posts, including Head of Staff Regulations and Central Support Division and Head of International Relations Department. Since 2010, he has been a judge on a number of international arbitration and administrative tribunals. He is President of the Administrative Tribunal of the International Centre for Migration Policy Development and of the SKAO Independent Employment Tribunal. He is a judge at the OECD Administrative Tribunal and the GAVI Appeals Tribunal. He is the former President of the NATO Administrative Tribunal (2013-2023) and a former judge of the Asian Development Bank Administrative Tribunal (2015-2024, President from 2022-2024). He was Chair of the Appeal Board of The Global Fund from 2016-2020 and of the BIPM Appeals Committee from 2020-2023. He is Mediator in ITER and an Arbitrator at the Permanent Court of Arbitration. He is since 2024 a Member of the Panel of Independent Reviewers of the Asian Infrastructure Investment Bank as well as of the New Development Bank. Mr de Cooker has advised many international organisations, in particular on their respective internal justice systems.

Marielle Cohen-Branche (French) has over 20 years of judicial experience and served as a judge at the French *Cour de Cassation* from 2003 to 2012. Ms Cohen-Branche served as a member of the World Bank Sanctions Board from 2007 to 2012 and was a member of the Sanctions Commission at the French Stock Exchange Regulator (*Autorité des Marchés Financiers – AMF*), where she currently acts as their ombudsperson. Ms Cohen-Branche was a senior executive and legal manager at an international banking institution. Ms Cohen-Branche was appointed as a judge on the World Bank Administrative Tribunal from 2013-2023 and from 2019-2023 was appointed as the Vice President of the Tribunal. Ms Cohen-Branche was awarded the French *Officier de la Légion d'honneur* and the *Commandeur de l'ordre national du mérite* for her distinguished national service.

Thomas Laker (German) has over 30 years of experience as a judge of administrative law courts. For the past 15 years, Mr Laker has served as a judge on various international administrative tribunals for several different international organisations, among them, the United Nations, the United Nations Relief and Works Agency for Palestine Refugees, the Organization for Security and Co-operation in Europe, the Council of Europe, and the World Bank. Mr Laker was among the first generation of judges to have established the new system of administration of justice at the United Nations and served as the President of the United Nations Dispute Tribunal twice, from 2010-2011 and from 2013-2014.

Joan Powers (American) has over 35 years of legal experience in the field of international administrative law. Ms Powers was in the Legal Department of the International Monetary Fund from 1984 to 2009. As Assistant General Counsel of the IMF, she had principal responsibility for providing advice on administrative legal matters, in particular, the legal aspects of the employment framework and the internal justice system, including cases before the Grievance Committee and the IMF Administrative Tribunal, the standards of conduct and the related investigative and disciplinary processes. Since retiring from the IMF, she has been a consultant to over a dozen public international organisations on various aspects of their internal legal framework. Ms Powers is currently a judge on the GAVI Appeals Tribunal. She has served as the Chair of the Appeal Board of the World Intellectual Property Organization since 2020 and was previously Chair of the Appeals Commission of the International Federation of Red Cross and Red Crescent Societies.

Maria Vicien-Milburn (Spanish and Argentinian) is an independent international arbitrator in commercial and investment disputes, and a specialist in public international law. She is the Chair of the World Bank Sanctions Board, the Alternate Chair of the Enforcement Appeals Committee of the Asian Development Bank, and judge of the Administrative Tribunals of the Inter-American Development Bank and the International Monetary Fund. She has over 30 years' experience as a senior international civil servant at the United Nations. She served as General Counsel of the United Nations Economic, Social and Cultural Organisation (UNESCO) between 2009 and 2014, and prior thereto between 1999 and 2009 as Director and Deputy of the General Legal Division, Office of the Legal Advisor of the United Nations. She acted for 14 years as the Registrar of the United Nations Administrative Tribunal. She has also been engaged by the International Criminal Court on a short-term assignment as a dispute resolution expert.

ANNEX 3 GLOSSARY OF TERMS

Appeal	Statement of Appeal
ARC	Administrative Review Committee
ARP	Administrative Review Process
ARP Directive	The Bank's Directive on the Administrative Review Process (DIR/2022/1)
ARC Report	ARC Report and Recommendations
AP Directive	The Bank's Directive on the Appeals Process (DIR/2021/28)
EBRD	European Bank for Reconstruction and Development
EBRDAT	EBRD Administrative Tribunal
ESS	EBRD Self-Service
FVP	First Vice President
MDHROD	Managing Director, Human Resources & Organisational Development
President	President of the EBRD
Request for Review	Request for Review of an Administrative Decision
Tribunal	EBRD Administrative Tribunal