

**THE ADMINISTRATIVE TRIBUNAL
OF THE
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

Case No. 2021/AT/01

Appellant

vs

European Bank for Reconstruction and Development

DECISION

by a Panel of the Administrative Tribunal comprised of

Chris de Cooker (Chair)

Thomas Laker

Maria Vicien-Milburn

13 April 2021

I. Introduction

1. In the present Appeal the Appellant seeks the annulment of the decision of the Acting President of the European Bank for Reconstruction and Development (EBRD or Bank) dated 5 October 2020 confirming the administrative decision to terminate her employment at the Bank on the grounds of sub-standard performance.
2. On 29 May 2020, the Appellant submitted a Request for Review of an Administrative Decision (RARD) to the Administrative Review Committee (ARC) as well as to the President of the Bank (President) regarding the decision of the Managing Director of Human Resources and Organisational Development (MDHR), dated 7 April 2020, to terminate her employment on the grounds of sub-standard performance.
3. On 18 June 2020, the President determined that the Request for Review was admissible and referred the matter to the ARC for consideration.
4. In accordance with the ARC's direction, the Bank provided its Response to the ARC on 24 July 2020.
5. On 7 September 2020, the ARC submitted its Report (63/2020) in the matter to the Acting President for his consideration. It was not immediately forwarded to the Appellant.
6. Without knowing that the ARC Report had already been issued, the Appellant, on 23 September 2020, submitted comments to the Bank's Response, provided further evidence and alleged that the feedback during the performance management exercise had been tampered with. The ARC Secretariat forwarded the Report to the Appellant on the same day.
7. The following day, i.e. on 24 September 2020, the Appellant made additional submissions to the ARC, requesting that the ARC reconsider the ARC Report in light of her previous day's submissions and of the fact that she had not been provided with the ARC Report at the same time as the Bank.
8. On 28 September 2020, the ARC Chair replied that, as a final recommendation had been made, the ARC was not in a position to receive additional evidence or to alter the recommendations at that stage.
9. On 5 October 2020, the Acting President took the Administrative Review Decision (PARD). Having considered the ARC Report and the ARC Chair's subsequent position in relation to the Appellant's "Further Submissions", the Acting President determined that:
 - (a) he agreed with the ARC Chair's position in relation to the Further Submissions and did not consider that the Appellant's due process rights had been adversely affected by the fact that she had not received the ARC Report from the ARC Secretariat at the same time as the Bank;

and

(b) he would uphold the Administrative Decision as he concurred with the ARC Report's findings and recommendations that such decision was legal, reasonable and procedurally fair.

10. In the email communicating the PARD to the Appellant, the Acting President also informed her that the "Fraud Allegations" would be referred to the Office of the Chief Compliance Officer (OCCO) for investigation in accordance with the Directive on the Conduct and Disciplinary Rules and Procedures.

II. Procedural History

11. The present Appeal was lodged on 18 December 2020.

12. The Tribunal directed the Bank to provide its Response to the Statement of Appeal by 1 February 2021.

13. The Response was received on 28 January 2021.

14. On 3 February 2021, the Appellant requested the Tribunal to be allowed to submit a short pleading in reply to the Bank's Response, which in her opinion contained a number of points which she contests (for being incorrect or inaccurate).

15. On 5 February 2021, the Tribunal, recalling that the Appeals Process does not provide for a second exchange of written submissions, exceptionally granted the Appellant's request to submit a brief document outlining which points were in her view incorrect or inaccurate. It was emphasized that she should therefore limit herself to the facts and abstain from submitting further arguments. The document was to reach the Tribunal's secretariat on 17 February 2021 c.o.b..

16. On 17 February 2021, the Appellant submitted an eleven page document with "Additional Comments to the Bank's Response" and two Exhibits, one 35 pages and the other nine pages long.

17. The Respondent submitted its Further Response on 26 February 2021.

III. The ARC Report and the Administrative Review Decision

18. The Appellant submitted a Request for Review on 29 May 2020. She contended that the decision was incorrect or improper and that there were breaches of EBRD's own rules and procedures as well as generally recognised principles of administrative law. She also set out how the decision to dismiss her altered in an adverse manner her employment (in that she had been dismissed at the height of the COVID-19 pandemic), and was in breach of the terms and

conditions of her employment (in that she felt bullied throughout the process). She was, contrary to what MDHR asserted, not “adequately informed of the duties and requirements of my position” nor was she provided with “any guidance and advice”.

19. She concluded that the decision to dismiss her was:
- a. incorrect and/or improper and in breach of her terms and conditions of employment and generally recognised principles of administrative law; and
 - b. taken in violation of applicable procedures in a manner that affected the outcome; and
 - c. based on erroneous facts and disregarded essential facts; and
 - d. tainted by abuse of discretion and was arbitrary, discriminatory and improperly motivated.

She requested the President to reverse the decision to dismiss her and to reinstate her. She also asked to be paid her performance-based compensation for 2019 (PBC) and any compensation and benefits owed to her as a result of the termination. She also asked for reasonable legal costs to be paid in respect of the preparation of the Request for Review. She further asked for the summary of the report in her case and the resulting recommendation, together with a redacted version of the Administrative Review Decision to be published on the EBRD intranet.

20. On 18 June 2020, the President determined that the request for review was admissible and referred the matter to the ARC. On 19 June 2020, the Committee directed the Bank to provide its Response. The Bank provided its Response on 24 July 2020.

21. In its Response, the Bank contended that the Administrative Decision was taken on a reasonable and observable basis and was consistent with the Bank’s internal law and with generally recognised principles of international administrative law. It contended further that the impugned decision was not based on erroneous facts, took into account all essential facts, and was unimpaired by procedural defect in a manner that affected the outcome, discrimination or arbitrariness. It added that the overall assessment of a staff member’s performance and any recommendations made by a line manager as a result of that line manager’s assessment constitutes an exercise of managerial discretion and is subject to very limited review. The Bank noted that the Request for Review had not demonstrated how the MDHR’s Administrative Decision to terminate the employment for sub-standard performance was tainted by error of fact, law, or procedure, arbitrary, discriminatory or manifestly unreasonable. The Bank submitted that the Request for Review should be dismissed in its entirety by the ARC, that the Administrative Decision to terminate the employment for sub-standard performance should be confirmed and that no other remedies should be granted.

The ARC's findings of fact

22. The ARC summarized the facts as follows:

“Introduction

1. The [Appellant] commenced employment at the Bank in March 2015 as a Senior Manager within the [...] department [...]. Her job title was changed to Associate Director in December 2015. From 1 January 2018, she was appointed to head a new unit within [...] responsible for [...].

2. On 7 April 2020 the Managing Director of Human Resources and Organisational Development (“the MDHR”) notified the [Appellant] that her employment at the Bank was to be terminated on the grounds of sub-standard performance pursuant to Section IV paragraph 7(a) of the Directive on Ending Employment (the “administrative decision”). On 29 May 2020, the [Appellant] filed a request for review under Section IV paragraph 6.4.1(a) of the Directive on the Administrative Review Process (“ARP Directive”). On 18 June 2020, the President determined that the request for review was admissible and referred the matter to the Administrative Review Committee (“the ARC”) for consideration under Section IV paragraph 6.4.1(e) of the ARP Directive.

3. The [Appellant] contends that the administrative decision was in breach of her terms and conditions of employment and generally recognised principles of international administrative law and requests the reversal of the administrative decision, reinstatement and financial compensation in respect of lost wages, benefits and performance based compensation (“PBC”) flowing from the termination. She requests that the Bank also pay her reasonable legal costs.

4. The [Appellant’s] job title was changed to Associate Director in December 2015 as a result of the Bank carrying out a job evaluation exercise and developing a People Management Framework (“PMF”). In addition to being responsible for heading up the [...], she was given line management responsibility for several colleagues. At all times, her line manager was [X], the former Director and Head of [...] and currently Managing Director, [...] (“the line manager”).

The [Appellant’s] 2018 performance review

5. In accordance with the Directive on Organisation and Personnel Management and the Procedure on Performance Management and Development (“Procedure on PMD”), the [Appellant’s] performance was subject to mid-year and annual performance reviews. For the first three years at the Bank, the [Appellant’s] performance review ratings were generally satisfactory. However, she received a rating of “performing below requirements” for her performance in 2018. Although there were some positive comments about her in the 2018 360 Summary Report, some of her colleagues were highly critical of her performance. The line manager’s assessment of her performance was as follows:

“[C] took responsibility of managing the newly created [...] and money market unit within the [...] from January 2018. The scarcity of resource was recognised early and [C] was given the mandate to hire new staff early. [G] was hired from [...]equity funds team, to accompany the CCT and secondee positions within the [...] unit. However, hiring an Analyst failed and it took 9 months to make this work (Mar-Dec).

However, the bank-wide feedback on [C's] contributions in 2018 is mixed. Whilst many colleagues recognise [C's] strengths such as the drive towards new ideas and projects (particularly in SEMED), many find her initiatives and communication confusing and not collaborative. One underlying theme seems to be that [C] finds it difficult to understand what impact one or the other project or document is having on other teams at the EBRD (Banking, VP3, Treasury). More than one colleague found [C's] new TC framework on new [...] funding and guarantee application very confused and hard to understand what the approach is intended to achieve how the various banking teams would or could be affected (for example business vs subsidy).

[C's] and her team's engagement in SEMED is seen as positive and valued, yet there is a feeling that too much of effort of the [...] unit is targeted at SEMED, an area where [C] has had a geographic responsibility in the past years and perhaps feels most comfortable. We should recognise that the area of both [...] and perhaps even more so the [...] have a wide range of stakeholders, making specific actions more complex and sensitive than we would like. This makes communicating and stakeholder management absolutely crucial. There is a widespread feeling that [C] needs to do better at this. Deciding something on her own and putting things in motion before there is an understanding is causing unnecessary clashes and, ultimately, disappointment.

Going forward, the [...] team and [C] would need to take on new projects in areas where EBRD as a whole feels the need and impact is greatest. These projects would need to be executed with right sequence and pulling other internal stakeholders along. Several colleagues feel that [C] has been somewhat selective on sharing and disclosing the activities of her team. Yet there is often cross-over to other [...] areas such as DCM in particular, but also to Treasury and Banking projects.”

6. Among the critical observations by some of her colleagues in the 2018 360 Summary Report were claims that she was unwilling or unable to “take feedback on board”, work as “a team towards joint goals” or set a direction for the [...] team. It was alleged that she had a propensity to work in a “silo”, with there being “no evidence of her having cultivated working relationships with other teams of the Bank that are productive and positive”. One colleague concluded that the [Appellant's] “problems to establish meaningful working relationships with others, lack of sufficient knowledge and experience, unpredictable management style, at time disrespectful to colleagues and peers, may require a rethink of her role if these gaps are not appropriately addressed or can't be followed up by her line manager”. It was also maintained that she had on occasion assumed a hostile and bullying attitude to team members and lost track of priorities.

7. The line manager thus concluded that the [Appellant] displayed weaknesses in leading and defining strategy for the [...] unit, engaging productively with internal stakeholders and demonstrating key competencies, such as “collaboration, managing complexity and engaging suitably in difficult conversations with [...] colleagues and other EBRD staff alike”.

8. The [Appellant] did not challenge her 2018 performance review rating under the Bank's internal processes.

The follow up on the [Appellant's] performance in 2019

9. The line manager met with the [Appellant] on 27 March 2019. He recorded their discussions in an email sent later that day as follows:

“Thanks for the performance follow-up discussion this morning. I am trying to summarise our meeting below.

Based on the broad feedback and my own observations, I had identified and we agreed during the meeting three main areas that need improvement:

1. Leadership.

- a. Leadership of [...] Unit within the [...]. Need to create an atmosphere of open dialogue where different views are accepted. Focus on setting priorities and actions plans in collaboration with other team members, allowing team members to choose their own ways of implementation. Stop worrying about authority.
- b. Strategic vision. Whilst I see your ability to look at the big picture and draw up a theoretical strategy or roadmap, this does not always link to your day-to-day actions and setting specific priorities (countries, projects, travel, ...).

2. Stakeholder management internally. Management of relationships to other EBRD departments and colleagues: Treasury, Banking (FI in particular) and the rest of [...] (avoid working in a silo). There is feedback that others see your actions and trips as somewhat random. Even if this can be considered as a perception - perception is reality!

3. Problem solving and handling difficult conversations. When facing opposition or criticism, you have the tendency of (1) ignoring the problem and not responding, seemingly hoping the problem goes away; and (2) when reminded, responding by email, choosing to tackle not the latest or most critical point, but to go back on an earlier or lighter discussion. My own experience on this coincides with feedback from others.

I confirmed my support to tackle these issues and work together. You were open and receptive, admitting certain shortcoming and your willingness to improve. As this is your first management experience, you may have been somewhat overwhelmed leading people that have direct management experience themselves ([Z], [S]). We agreed on what your and your teams' strengths are (supporting building longer term ecosystem development, central bank frameworks, donor relationship and raising TC funding, ...) and how to use these wisely; but also on what you should do less of (venturing into specific areas of Treasury and Banking where there is less concrete value for us/her to add; cover less countries and focus on where the value added of [...] unit is stronger: SEMED, CA, Ukraine).

I have sent an email to [T] asking her to identify courses for you on:

- Leadership and management course
- Managing difficult conversations

We also discussed the option to get a formal 360 feedback and a coaching session from [Y], but you preferred to keep this as an option for later.

Finally, we agreed to have another performance follow-up discussion in June and I clarified how the success should look like (your actions better aligned with strategic priorities, positive feedback from stakeholders such as Treasury, Banking and [...] team members). I will of course seek such feedback discreetly.

I trust this is helpful.”

10. This email (read with the annual performance review) provided the [Appellant] with a clear indication that her supervisor was of the view that she did not meet the required performance standard and that there was perhaps an issue of compatibility or fit. The problems identified were: i) leadership; ii) the need to create an atmosphere of open dialogue and tolerance on different points of view; iii) setting priorities and action plans; iv) greater collaboration with other team members; v) allowing team members to choose their own ways of implementation; vi) strategic vision; vii) better

stakeholder management internally including the management of relationships with other departments and colleagues; viii) problem solving and handling difficult conversations; and ix) dealing better with opposition or criticism from others.

11. The email records that the [Appellant] had acknowledged some of her shortcomings and the line manager had offered support and made specific suggestions for how improvement could be achieved, in particular further training on management issues. The [Appellant] apparently declined the offer of a formal 360 feedback and coaching.

12. In an email dated 2 May 2019, the line manager made certain suggestions about further training as follows:

“As a follow-up to our earlier discussions:

In terms of management courses – you have been put forward for the **Management Essentials course** (date yet to be confirmed, please speak to [T] at HR). This course is designed for those stepping into a people manager role for the first time and it covers the basics that a manager needs to understand and be aware of.

For managing difficult conversations, there is the training catalogue on the Learning Matters Guide that identifies trainings that would potentially be helpful for situations similar to those that occurred in relation to your confrontations with [Z] last year. The guide provides details of formal development programmes and self-led learning solutions, such as videos, webinars, interesting publications, articles and fluid books. Please take a look.

Let me know whether these courses available at EBRD are helpful and meet your needs.

Let’s catch up with a follow-up meeting this month.”

13. It is not clear from the documentary record whether the [Appellant] attended the proposed training. Subsequent events however confirm that the performance and compatibility issues persisted.

The [Appellant’s] mid-year performance review 2019

14. In the [Appellant’s] mid-year performance review of 19 June 2019 concerns were again raised about her performance and relationships with colleagues in other teams (particularly Treasury and Banking). The areas identified for improvement remained the same as those discussed previously. In the review, the line manager commented negatively about the [Appellant’s] performance against objectives and in relation to EBRD competencies and development goals in the following terms:

“[C] continues to struggle on some of the issues pointed out during the appraisal in respect of 2018 such as:

1. Defining and prioritising the strategy and value added by her [...] unit, and
2. How she works and collaborates with others such as Treasury (mostly, Banking and other internal counterparts.

On the positive side, two achievements should be pointed out:

1. The short term commercial paper TC in Egypt has been awarded a policy award in 2019. There is now a realistic investment project with EBRD involvement being developed, based on the earlier TC.

2. [C] managed to attract €15mln of EC donor funding for EBRD and Frontclear.

Regrettably, the feedback on [C] continues to be mixed. Whilst she has been seen as becoming less abrasive and more accommodating towards the views of others, her value added is often being questioned, by the Treasury team in particular, but also by Banking (for instance, the EC TC grant mentioned above seen as too small to make a difference - however, it should be seen as a start and something to work on).

A major source of criticism is the way [C] plans travel. Her efforts are being seen as a silo and not coordinated with others (Treasury, Banking HQ/ROs). The fact that [C] has not been to a specific country is not a sufficient reason for travel. When asked about what specific outcome is being targeted from her planned trip to Caucasus, the response was not convincing and the trip was cancelled. Only a few weeks later she travelled to Ukraine, again separately and only a few weeks apart from A and A from Treasury being there, as well as Z from [...], again only a short period apart. Situations like this are negatively affecting the reputation of [C], and, ultimately, the [...] team.

The latest document drafted by [C] on "[...]" left me and other readers (again, Treasury) wondering: what is [C] seeing as her role? Is this document an alternative to the [...] strategy that was Board approved in late 2018? Why? Of the five pillar roadmap outline, it is evident that all five pillars are being delivered by others, either within the [...] team, or other EBRD departments. The suggestion to prioritise Kazakhstan as one of the countries for [...] in 2019 is unclear, as Kazakhstan has been the #1 country for [...] number of projects financing by EBRD for each of the past 3 years.....

[C's] strength is driving for results. However, she often tends to set her targets in isolation and starts moving towards these without sufficient consultation with others. It is for this reason that cooperation with [C] is often seen as unproductive.

Collaboration, driving engagement and valuing differences are the weak points of [C]. Treasury and Banking feedback has been mentioned above. The cooperation with [Z] who has been delivering on the first pillar of [C's] 2019 roadmap (Modernise central bank practices) is non-existent. Whilst [Z] has received positive feedback for his work from central banks, ROs and Treasury, [C] seems to have found it easier to not get involved in any way, despite and against guidance from team Director in every opportunity in both 2018 and 2019.....

[C] is listed to attend an internal management course. However, becoming a manager in January 2018 represented a different and difficult challenge for [C]. We have discussed [C's] shortcomings with her on a regular basis since 2018. However, she continues to struggle with defining her ways as a manager of the [...] unit within the [...], and for successful cooperation with other stakeholders relating to [...] development. She needs to make a significant and pro-active effort to turn the tables and prove her worth and value to [...].

15. The Bank maintains that the travel issue mentioned by the line manager in the mid-year review is an illustration of the [Appellant's] tendency to work as a "silo" without collaborating with colleagues in other teams. She travelled to Ukraine a short period apart from colleagues in the [...] team and another colleague within the [...] team, thereby revealing a lack of co-ordination and planning. She was also criticised for failing to co-operate with a colleague on the project to modernise central bank practices. Of particular concern to the line manager was the [...] strategy document drafted by the [Appellant]. In his opinion, it did not align with either the Board approved [...] strategy for 2019 or with other teams within the Bank.

16. On 8 October 2019, the line manager set out his ongoing concerns about the

[Appellant's] performance and compatibility in an email addressed to her which in relevant part reads as follows:

“I am sending you this email as a record of our earlier discussions at mid-term performance review on 19/06, our catch-up on 9/09 and the discussion this afternoon.

At our meeting in June, we both came to the conclusion that the tensions with your key counterparts at [...] have grown to the point where it is difficult for you to rectify the relationship. These views also started to weigh negatively on [...]’s overall relationship with [...]. We discussed options for you to further your career outside [...]. You agreed, but asked me to not push too fast and leave you time to look around. At that time, I also offered you a secondment with DG FISMA at the European Commission. In Sep, at our meeting over tea during the fire drill at EBRD, you told me that summer has been very quiet regarding vacancies. You also told me only then that you are not interested in the secondment opportunity with the EC in Brussels, due to the Brexit risk and your desire to gain the right to stay in the UK, whether or not you are covered by the EBRD immunities and privileges.

I am afraid that since these discussions the feedback on your relationships with other internal stakeholders continues to be negative. Both Treasury and Banking have expressed significant concerns about your selection of priorities and lack of coordination. You will remember that early summer, you planned a trip to Ukraine, to meet very much the same counterparts that [...] was meetings just two weeks apart, rather than doing a joint trip. The local RO was equally confused. I spoke to you and we called off the trip. I regret no lessons were learned, as your trip to Belarus last week copied the same pattern – again, no coordination with [...] (asking me “why”), and very limited consultation with relevant colleagues at [...] ([A] who covers Belarus at [...] coming to me, unhappy that he was “invited” to join the trip at very short notice; your initial focus on institutional investor base that falls in [B’s] area, but no inputs from him). Following the feedback on the trip, I am not convinced what has changed in Belarus that opens up new and better opportunities for us to make a difference in terms of local capital market development.

The demands on our operating standards at the EBRD are high, especially for people managers such as yourself. I trust that you have learned important lessons since last year, incl. from last year’s internal conflict with [Z] who now keeps proving his value internally and externally, following your request to let him go or transfer to a different unit. But it’s not about him. It’s about the fact that we are yet to see a qualitative improvement in your ability to cooperate with colleagues internally. I am afraid this casts a long shadow on positives (such as developing the short term debt instrument in Egypt). We need to make sure that our efforts are valued by our key internal shareholders.

I understand that you have been looking for an alternative job at the EBRD, incl. at FI. Please ask me to support you in case you have a realistic lead.”

17. The email reflects the line manager’s continuing concern about the [Appellant’s] performance and incompatibility as evidenced in the tensions between her and her counterparts in the Bank’s [...] department. The evident breakdown in the relationships and the unlikelihood of improved performance no doubt accounted for the discussion about finding alternative employment and the possibility of a transfer to another position. It appears however that the [Appellant] did not identify alternative positions to which she feasibly could be transferred.

The SSPM Process

18. On 6 November 2019, the line manager decided to initiate the sub-standard performance management process (“the SSPM Process”) set out in Section IV

paragraph 3 of the Procedure on PMD in relevant part as follows:

“3.1. Management of sub-standard performance

If a line manager determines that a Staff Member’s performance does not meet required standards of performance in one or more aspects over a reasonable period of time, the line manager may initiate the process described in paragraphs 3.2 to 3.5 below to manage the substandard performance.

3.2. Step 1 of sub-standard performance management

(a) The line manager shall inform the Staff Member of:

- i. the specific aspects of the Staff Member’s performance which do not meet required standards of performance; and
- ii. what improvement(s) are required and, where appropriate, ways in which the line manager may assist the Staff Member in making such improvements.

(b) The line manager shall then set a date (the “Review Date”) to review performance with the Staff Member in a review meeting. Such Review Date shall be set after a minimum of 4 weeks but no later than 12 weeks following the line manager informing the Staff Member as set out in paragraph 3.2(a) above of the improvement(s) required except where the line manager considers that a longer time period is appropriate taking into account the nature of the improvement(s) required. [...]

(c) The line manager shall record a summary note of matters discussed with the Staff Member. The line manager shall provide a copy of such note to the Staff Member. The Staff Member may provide their own written comments in response to the note.

3.3. Step 2 of sub-standard performance management

(a) If the Staff Member continues not to meet the required standards of performance by the Review Date, the line manager, after consultation with a representative from the Human Resources Department, shall meet to discuss with the Staff Member and inform the Staff Member in writing of:

- i. the specific aspects of performance which still do not meet required standards of performance;
- ii. what improvement(s) are still required and by when such improvements should be made, and, where appropriate, ways in which the line manager may continue to assist the Staff Member in making such improvements; and
- iii. the fact that failure to improve to the required performance standards may result in demotion or termination of employment on the grounds of sub-standard performance.

Such improvements as referred to above shall be required to be made by the Staff Member within 8 weeks of the line manager informing the Staff Member as set out in this paragraph 3.3(a) of the improvement(s) required except where the line manager considers that a longer time period is appropriate taking into account the nature of the improvement(s) required. [...]

(b) The Staff Member may provide their own written comments in response to the written communication from the line manager.”

19. When all the necessary steps under the SSPM Process have been exhausted, Section IV paragraph 3 of the Procedure on PMD provides that in the event that a Staff Member fails to perform at the required standards of performance at the end of the timeline set under step 2, the line manager may recommend demotion or termination of the Staff Member’s employment on the grounds of sub-standard performance. Section IV paragraph 7(a) of the Directive on Ending Employment provides that the Bank may terminate the employment of a Staff Member whose work performance does not meet expected performance standards, provided that the Staff Member has been given a reasonable opportunity to demonstrate sustained work performance at expected standards.

Step 1 of the SSPM Process

20. The line manager initiated Step 1 of the SSPM Process in a meeting held with the [Appellant] on 6 November 2019 at which he again discussed the specific aspects of her performance which did not meet required standards. He set a review date of 6 December 2019 to further review the [Appellant’s] performance. The discussion at the meeting is recorded in an email dated 6 November 2019 as follows:

“This email follows our discussion on your performance issues today and is in line with our earlier discussions during 2018-2019, the 2018 performance assessment, and the mid-year assessment in June 2019. To confirm, I have now initiated a formal substandard performance management process in relation to yourself.

Today, we reviewed your plans for the next four weeks. This will form the review period under this process. We shall have a formal review meeting on 6 Dec 2019. During the period, I stand ready to support you in this process, please approach me proactively and engage.

As stated, I expect significant evidence-based and sustained improvement in the following three key areas:

1) Better stakeholder management and more collegial work with internal counterparts: primarily with Treasury and Banking, but also with VP3 and OGC on relevant projects during the review period. Please make sure to agree a strategy and specific steps with relevant stakeholders and follow the agreed roadmap, discussing difficult issues proactively as these arise. As discussed, to our external clients, we need to come across as one Bank, not as [...] Unit, [...] Team or Treasury pursuing same or similar topics. This is relevant for any capital market assessment, policy dialogue, TC project or any other interaction. You will need to make sure that you and people reporting to you contribute and add value.

2) Leadership and joint ownership of [...] affairs: you as one of the managers at [...] have a shared responsibility for the delivery of [...] strategy and policy objectives, scorecard and budget goals. Lead by example, think and act on behalf of the Team and EBRD. Proactive problem (such as the unexpected cost to EBRD for the incoming [...] secondee) solving forms part of this area, as does your giving me feedback on your actions (such as booking your attendance at the [...] Lab meetings in Paris in Oct, without discussing with me or Treasury, and then giving me no feedback on the meetings within nearly a month should not happen again). The argument that you are eligible to fly business class under the EBRD policy has little meaning when we can’t make our budget last till the year end.

3) Better strategic planning of actions. You will need to prioritise much better. The

two recent capital market diagnostics (Albania and Belarus) are not great examples. The fact that the country leaders within the [...] did not feel the need to join these diagnostics is a major red flag. As is the fact that [...] visit to the same country is separate from yours but only 2 weeks apart. The buy-in and active participation is important. I have received direct criticism of your ad hoc engagements in several countries outside SEMED (Caucasus, Ukraine, Belarus and Albania in 2019 alone), where our key local country counterparts felt confused as to what the [...] unit is trying to achieve (vs the rest of [...] Team, vs Treasury and Banking, etc.). We should pick our battles carefully and not raise expectations in countries that are unlikely to implement useful reforms or produce new [...] business for the Bank.

You see that there is little new in these areas, as much of it is covered by your job description, your 2019 objectives, mid-year review, and our correspondence during the course of this year. Before we do things right, we have to make sure we do the right things. And we need to make sure that when we finally get something done, we are not abandoned or disliked by our colleagues. The How is as important as the What.

Following the four week review period, I am seeking feedback from Treasury ([...]), Banking ([...]) and others that you may interact with. Based on these, and my own observations, I will have to make a decision how to proceed. As stated during our conversation, I am doing my best to support you during the review period and beyond.”

21. A recurring criticism of the [Appellant] was her tendency to book international travel and meetings without consulting the line manager or colleagues in Treasury, resulting in a lack of collaboration, and then not feeding back promptly about the meetings following her attendance.

22. The principal areas identified for improved performance were: i) better stakeholder management; ii) improved collegiality; iii) better working relationships and collaboration with internal counterparts; iv) leadership and joint ownership of [...] affairs; and v) better strategic planning and prioritising of actions.

Step 2 of the SSPM Process

23. At the end of the initial review period, the line manager remained of the opinion that the [Appellant] still did not meet the required standards of performance and that Step 2 of the SSPM Process should be initiated. He accordingly arranged a review meeting with the [Appellant] on 6 December 2019. A further meeting was held on 16 December 2019. [Y], a Human Resources Business Partner (“the HRBP”), attended both meetings. The line manager recorded a minute of the meetings in an email dated 17 December 2019, which reads:

“This is to follow up on our meetings with yourself and [Y] on 6th and 16th of December.

As discussed, I regret the feedback from your key stakeholders continues to be negative. During the one-month review period, I have been in touch with Treasury ([...]), Banking ([...]) and [...] Team ([...]). I summarised the aggregate feedback to you during our discussions. Whilst there are also some positive comments on your contribution, there is, regrettably, an overwhelming view is that the value added by you as a senior member of [...] team, and your ability to collaborate, are below the requirements for your position.

At the follow-up meeting yesterday, you brought examples of how you have improved on the three key points below. I touch on some of those below in more detail.

1) Better stakeholder management and more collegial work with internal counterparts

· For example, you brought up the [...]. However, [B] came to see me first thing on 5 Dec, claiming he only saw your engagement on this project – which clearly falls under his DCM responsibility – only at the [...] Team meeting minutes on 4 Dec. It serves as an example of rather random selection of projects and actions by you, venturing into countries and products where the primary responsibility lies with other colleagues at [...] Team (and/or other departments at EBRD). It is crucial that we act in collaborative way, rather than in silos, often meeting the same counterparts.

· You also brought the example of our joint trip to [...] in November. You will recall my request for you to plan a joint trip to SEMED in mid-2018. I provided you with my availability windows, but for more than a year, no joint trips were organised (realising that the West Bank & Gaza plan had to be cancelled due to security reasons). The trip to Morocco took place at my initiative after [S] had asked me to attend an event in [...]. As stated during our visit, I do not think it is right to continue starting new TC projects in Morocco in the situation when the Moroccan authorities have not implemented a single reform based on our TC.

· There are further negative comments on the large projects that you have started in SEMED with limited follow up ([...] was mentioned).

2) Leadership and joint ownership of [...] affairs

· When talking about your joint leadership of [...] affairs, you focussed on small details and mechanics, such as saving money of a flight and bringing a secondee from [...]. Whilst these are important points, they are also natural and we all contribute to it on a daily basis. What you did not even mention was leadership. How do we visualise the [...] mandate and bring others along to deliver success to EBRD and our clients.

· Your representing the [...] team at SLOG and OGR meetings received poor feedback, with comments from two participants stating that you added no value to these meetings.

3) Better strategic planning of actions

· You mentioned the need to fly to Tunis with a few [...] colleagues to start a covered bond legal and regulatory project there. I asked you about the size of the mortgage market in Tunisia, you did not know. How can we possibly choose to do this without even knowing how big the mortgage market is in a country? No mortgage market, no [...] covered bonds.

· Planning a capital market diagnostics in Belarus, with a focus on institutional investor base. Yet you did it from a silo perspective of [...], with limited involvement from the relevant country relationship manager [J], who could not fit this in his agenda with just a week's notice) and other unit heads at [...] team. As we know, there is no institutional investor base in Belarus worth talking about, no funded pension funds or life insurance companies. The property and casualty insurance is dominated by one dominating state owned provider ([...]). Again, I question your judgement on this call.

In summary, I could not observe significant evidence based and sustained improvement on the three key points that were raised in my 6 November email below.

As summarised yesterday, we are now entering the second phase of the substandard performance management process with you. Whilst the minimum period of this phase is 8 weeks, we agreed, keeping in mind the holiday period, to extend this to 10 weeks in total, i.e. until 28 February 2020.

You should know that I am doing this with a heavy heart and would like you to do better. However, we are not able or willing to micro-manage managers (referring to your request to tell you what you should say and do), it is you who should come up with ideas, solutions to problems, whilst managing relationships to your internal and external clients.”

24. Thus, the line manager provided the Step 1 feedback and gave the [Appellant] a full opportunity to engage with the issues of performance and compatibility. The points of difficulty essentially remained the same and were elaborated on with reference to other specific examples confirming the problems, namely: stakeholder management and more collegial work with internal counterparts; leadership and joint ownership of [...] affairs; and strategic planning of actions. The various examples referred to by the line manager in the email of 17 December 2019 point variously to a lack of communication and collaboration, poor visualisation of the mandate and a lack of judgment and knowledge of local financial markets which led to an incorrect focus from the perspective of strategy and efficient use of resources. The line manager also recorded his preference for the Step 2 review to be done simultaneously with the annual assessment of the [Appellant’s] performance for 2019.

25. During the second review period, feedback was obtained from various internal stakeholders within the Treasury, Banking and [...] teams through the 360 Summary Report used for the 2019 performance review. The [Appellant’s] colleagues made many positive comments but also criticised her for: i) taking decisions unilaterally; ii) poorly communicating in relation to a number of projects; iii) failing to collaborate in a timely fashion; iv) failing to add value to projects; and v) not being willing to compromise and work as a team. The line manager also contacted colleagues suggested by the [Appellant], some of whom made positive comments while others were critical.

26. On 28 February 2020, the line manager met with the [Appellant] and the HRBP again. This meeting constituted a combined review for Step 2 of the SSPM Process and the 2019 annual performance review. At the meeting, the line manager informed the [Appellant] that her performance had not sufficiently improved to the standard required and that he would be recommending to the MDHR the termination of her employment. A minute of the meeting was sent to the [Appellant] by email on 28 February 2020. It reads:

“Further to our meeting today at 11am, attended also by [Y], our HR Business Partner, I write to summarise our discussion and to confirm the conclusion of the sub-standard performance management process.

Due to the timing of the year-end process, we held a combined meeting of your 2019 year-end performance review and the sub-standard performance management process.

During the meeting we discussed your performance for 2019 and the latest review period of the sub-standard performance management process to date. You highlighted your key achievements and challenges over the 2019 performance year and your performance during the sub-standard performance management process. You advised us that you felt you had made some specific progress in enhancing your communication, improving visibility and collaboration. On the leadership of your unit, you acknowledged that there are improvements to be made and there is a learning curve to move in the right direction. You believed that overall you are performing to a satisfactory standard whilst managing complex projects and stakeholders.

I provided you with my own assessment based on the feedback provided on you during the 2019 appraisal process (from 13 colleagues) and feedback from those that responded to your request of 21/02 to seek further feedback on your performance on January-February (7 out of your requested 9 responded). I gave examples of seven specific situations from the past two months where I felt your performance fell short of expectations across the three key areas as highlighted in my 6 Nov 2019 email, i.e. 1.Stakeholder management; 2.Leadership; and 3.Strategic planning and prioritisation. The feedback is endorsed by my own concerns of your performance being below the requirement.

I informed you about my conclusion that your performance is still not to the standard that is expected within your role and as such your rating for 2019 would be 'performing below requirements'. You have an important role for the EBRD and [...], and compared to your peers at the same level within the team and other EBRD departments, I do not feel that your ability to originate the right type of projects, to positively engage other stakeholders and your persistence to follow through corresponds to the high requirements for an Associate Director and Head of Unit level at the EBRD. This was repeatedly confirmed by the feedback from the 20 colleagues that we approached. These shortcomings were also highlighted in your 2019 mid-year review, i.e. lack of defining and prioritising the strategy and value add by you as a leader, and collaborating with others such as Treasury, Banking and other internal counterparts. Issues regarding your performance were highlighted to you on an ongoing basis; during 2018 where your end of year review rating was 'performing below requirements', during the whole of 2019, and more recently upon initiation of the sub-standard performance management process late last year.

Due to the ongoing concerns regarding your performance I informed you that I have made the decision to recommend to the MD HROD to terminate your employment with the Bank, as a result of your sub-standard performance. Should you wish to provide any response to this recommendation you have five working days to do so (to be received by COB on Friday 06 March 2020). After this period I shall provide my recommendation to [D], MD HROD and you will be informed thereafter of [D's] decision.

I wish you well."

27. The line manager's recommendation was thus based on his own observations and assessment during an engagement over a period of two years, as confirmed in some of the feedback from the [Appellant's] colleagues. He concluded that the [Appellant's] overall performance in that period demonstrated incapacity in the three key areas that he had repeatedly raised. Although he did not expressly say as much, it is apparent that he also believed there was a problem of compatibility and that he regarded the [Appellant] as a poor fit. In his email of 28 February 2019, the line manager mentioned that he had given seven specific examples which were symptomatic of the overall problem. These are set out in paragraph 29 of the Bank's response as follows:

- a. A lack of collaboration with another [...] Associate Director in respect of Tunisia and Morocco [...] projects whereby, although the [Appellant] was supposed to be working with her colleague (who had the specialist expertise in the area) on the projects, all documents continued to be drafted only in French, thus hampering the colleague's involvement. There was also a reputational issue regarding the [Appellant] terminating the retainer of the law firm assisting on one of the projects without discussing it first with the Line Manager as head of [...].
- b. Failing to adequately supervise one of the secondees in the [...] unit in relation to a proposed organisation of a study tour to South Korea in respect of a subject matter in which it was inappropriate for [...] to be involved.

- c. Failing to co-ordinate with the Treasury team and the Uzbek Resident Office (“RO”) in relation to a [...] project in Uzbekistan and speaking to an Analyst in the [...] team in an inappropriate manner.
- d. Feedback received that the [Appellant] had been very “passive” on following up on a grant financing opportunity from the European Commission Neighbourhood Investment Platform, following a presentation at the European Commission that she had participated in, alongside Banking and Treasury colleagues. The opportunity was followed up by a Banking colleague without any material input from the [Appellant].
- e. Going against the specific advice of the Bank’s Kyiv RO in relation to whether a Ukrainian primary dealers project should go ahead by communicating in relation to the ongoing preparation of a Terms of Reference and failing to consult with one of the other Associate Directors in [...] who was the expert on the area.
- f. Involvement in a [...] project that was out of scope for [...] and should have been left for other departments (thereby being an inefficient and inappropriate use of [...]’s limited resources).
- g. Poor and vague communication by the [Appellant] to one of her direct reports regarding whether he should have attended the office following his return from Singapore in February 2020 in the context of the Covid-19 pandemic.

The [Appellant’s] representations to the MDHR prior to her dismissal

28. In the email of 28 February 2020 email the line manager invited the [Appellant] to provide her comments to him before he proposed the termination of her employment. The [Appellant] instead provided her response, challenging the recommendation, directly to the MDHR on 6 March 2020. The line manager then sent his recommendation for the termination of the [Appellant’s] employment to the MDHR.

29. In her email of 6 March 2020, the [Appellant] comprehensively deals with the issues of her performance. She objected to combining the SSPM with her year-end appraisal for 2019 on the grounds that the two processes had different objectives. She also felt the meeting was unwieldy and rushed and that the line manager did not appreciate the “very real progress” she had made in improving her communication, visibility and collaboration. She conceded though that she was “not the finished product when it comes to leadership issues”.

30. The [Appellant] confirmed that she and the line manager had discussed the seven situations of identified shortcomings in the preceding two months with regard to the three key areas highlighted in earlier correspondence. She appeared to recognize that some of the issues were problematic but sought to justify her shortcomings on the basis of some personal and professional challenges, which she contended needed to be taken into account in the assessment of her performance.

31. In this regard the [Appellant] referred to the fact that she was diagnosed with [a medical condition] in November 2018 and started treatment about a year later in October 2019. She maintained that from March 2018 she suffered from fatigue, slowness of mental processes, low mood, and reduced resistance to stress. She stated though that her health began to improve in November 2019.

32. In addition, the [Appellant] contended that her performance had been negatively impacted by professional challenges, including: i) a lack of skills within the team where there was “an abysmal lack of knowledge and experience about the subject of currency or debt markets”; ii) difficult implementation of the 3-Unit [...] structure in

which there was obvious tension within the team regarding lines of authority in relation to projects and evident difficulty in collaboration with other departments; iii) problems with the “legacy projects in the SEMED region” managed by the [...] Unit and required her special attention as the only French speaker which increased her workload as she did not have anybody to whom to delegate “these heavy projects”; and iv) understaffing of the unit.

33. The [Appellant] acknowledged that the feedback from some of her colleagues was indeed negative. In this respect she stated: “it is clear that it takes time to change people's perceptions of you and sometimes... that may not be possible as they only have one objective, which is to see me fail”. She complained that she had not had adequate time given her health and the organisational challenges to “change people's views”. She pointed to her strengths claiming that she listens to feedback and can adapt her style, if given the chance to do so. She believed that she could add enormous value to EBRD, is a good speaker, and it was able build a rapport with Belarussian authorities during the Capital Market Assessment there. She is always available to discuss issues, she said, and cares about her colleagues and their wellbeing. She maintained that she was making a sustained and demonstrable effort to improve her communication style.

34. The [Appellant] attached a summary of the key achievements of the [...] over the period to show that all the projects and interventions managed by the [...] were aligned with the Bank's strategy thus gainsaying the criticism of her as not strategic.

35. The [Appellant] then discussed in detail with specific factual issues in an attempt to rebut the holistic view of her performance. She dealt in turn with the seven examples raised by the line manager in the meeting of 28 February 2020. The [Appellant's] responses to the allegations in some respects do not align with the allegations made in paragraph 29 of the Bank's response, showing perhaps some measure of miscommunication or misunderstanding of the criticisms of her performance.

36. As regards the first matter, her drafting documents only in French and the termination of the French law firm's retainer with discussing it with the line manager, the [Appellant] merely examined the events leading up to and at a meeting with the law firm without focusing on the two points of criticism, which must then be accepted as valid.

37. The second specific example related to the [Appellant's] alleged failure to adequately supervise a secondee in relation to a study tour to South Korea in respect of inappropriate subject matter. Here the [Appellant] claimed to have told the secondee that his/her topic was inappropriate but that the proposal was reduced to writing and was progressed while she was absent on leave.

38. The third instance of criticism was the allegation that the [Appellant] failed to co-ordinate with the Treasury team and the Uzbek Resident Office in relation to an [...] project and had spoken to an analyst in an inappropriate manner. In her response to this criticism, the [Appellant] focused on the alleged bullying of the analyst. She believed that she had acted appropriately but was willing to apologise if the analyst felt undermined by the tone of the interaction. The [Appellant] did not deal coherently with the allegation that she had not co-ordinated with the Treasury team and the Uzbek Resident Office.

39. The next contention was that the [Appellant] had pursued a grant financing opportunity from the European Commission after her presentation in Brussels. She

dealt only with what she perceived as criticism of her presentation at the event, claiming that the line manager conceded that she did a good job but admitted there was no co-ordination with other presentations made on behalf of the Bank. She did not address or explain why she had not followed up on a grant financing opportunity.

40. The fifth criticism was that the [Appellant] went against the specific advice of the Bank's Kyiv Resident Office about whether a primary dealers' project should go ahead by communicating in relation to ongoing preparation of terms of reference and failing to consult with the [...] expert on the area. The [Appellant] confirmed that she did communicate about the preparation of terms of reference but said she did not commit to the project. She did not address the allegation that she acted against advice or failed to consult the [...] expert.

41. The sixth criticism was that the [Appellant] was involved in a micro-lending project in Lebanon that was outside the scope of [...], and should have been left to another department, and was thus an inappropriate use of [...] resources. The [Appellant's] discussion of this project consists of a detailed rejoinder to an allegation that she was not sufficiently involved in the project, had not contributed and was "disengaged". She sets out a comprehensive explanation of her involvement in the project which does not address the criticism that she should not have been involved at all.

42. The [Appellant] denied the seventh point of criticism that there was poor and vague communication by the [Appellant] to one of her subordinates about his self-quarantine. It is clear though that there was a difference of opinion between the line manager and the [Appellant] about how this matter should have been handled.

43. Notwithstanding this catalogue of performance problems, the [Appellant] submitted that it was grossly unfair for the line manager to conclude that her performance for 2019 should be rated "below requirements" and that the outcome of the sub performance review was that her employment should be terminated. She accepted though that she was "not the finished product as a manager" and could still improve. She noted that she had applied and been interviewed for a different role, was awaiting the outcome of that interview and requested the MDHR to delay her decision until the outcome of that interview or to help her find an alternative within EBRD.

The termination of the [Appellant's] employment and the request for review

44. After considering the recommendation and the [Appellant's] representations, the MDHR accepted that the SSPM Process had been appropriately conducted and decided that there were sufficient grounds to terminate the [Appellant's] employment on the grounds of sub-standard performance, as recommended by the line manager. In the letter of termination dated 7 April 2020, the MDHR stated she was of the view that the [Appellant] was suitably informed of the duties and requirements of her position, that shortfalls and weaknesses in performance were brought to her attention and she was provided a reasonable level of guidance and advice. Nonetheless she did not meet the required standards and the termination of her employment was justified."

The ARC's considerations

23. In its report the ARC emphasised that "[w]hen reviewing a decision to terminate a staff member's employment on grounds of incapacity, it is limited to considering whether the decision was taken in violation of the principles of administrative law. There must be a

reasonable or rational basis for the decision, but the ARC may not substitute its own evaluation of the staff member's performance or workload with its own. The termination of a staff member's appointment should only be interfered with or set aside if it appears that the evaluation has not been reached by a fair procedure, is arbitrary, discriminatory or improperly motivated or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed. It is not the role of the ARC to undertake a so-called "microscopic review" of a staff member's performance or to substitute its own judgment about that performance for the judgment of the line manager."

24. The ARC considered that the [Appellant's] "objection to combining the SSPM process with the year-end review was technical and formalistic. The processes were both aimed at a substantive determination of her performance. The convenience of combining them outweighed any formal requirement. The [Appellant] had not shown having suffered any undue prejudice in doing the assessments simultaneously."

25. Regarding [Appellant's] claims that she was not adequately informed of the duties, responsibilities and requirements of the position she agreed to assume with the reorganization or provided with appropriate guidance and advice, the ARC observed that the [Appellant] was seeking a microscopic review of her performance, but that the request failed "adequately to get to grips with the key criticisms of her performance, namely, her apparent inability to: i) provide appropriate leadership and manage stakeholder relationships; ii) focus on priorities; iii) problem-solve; and iv) offer strategic planning. In fact, for the most part, the [Appellant] concedes her weaknesses in these areas." The ARC noted that "[h]er failure to focus on and address these criticisms meaningfully in the request to some extent confirms their validity."

26. The ARC noted that the [Appellant's] line manager "had provided frank, constructive feedback and direction. The SSPM Process was engaged as a last resort and was not premature or rushed. The problems of performance endured over a reasonable period of time (from early 2018 until November 2019) before the SSPM Process was initiated. The [Appellant] was given proper notice of the identified shortcomings in performance and was afforded a full opportunity to improve." The ARC concluded that there was accordingly no basis for a claim of procedural irregularity or any submission that the dismissal was an inappropriate sanction.

27. The ARC also found the [Appellant's] complaint that she was set up to fail, by not receiving adequate guidance, support and resources, unconvincing. It noted that the line manager consulted with the [Appellant] before assigning her to the new role. The [Appellant] was chosen to lead the unit in light of her previous responsibilities and her experience. She did not object and accepted the position. Her role then changed to include a formal line management responsibility, planning the strategies of the unit and day to day engagement for it.

28. The ARC underlined that the role of an Associate Director, a senior position, requires the formation of productive and collaborative relationships with other teams within the Bank and responsibility for formulating and leading projects complementing those of other teams.

Her deficient performance in this respect was flagged as an area of concern early on by the line manager in her 2018 performance review. Her weakness was raised with her repeatedly and remained a problem that she appeared unable to redress.

29. At the start of the SSPM Process, the line manager identified specific objectives on which he expected [the Appellant] to focus. “These objectives related to her suitability for the role and how she was carrying it out, rather than to her competence with regard to specific technical tasks. The feedback and examples given to her during the process confirm that her performance in relation to these competencies remained sub-standard at the end of Step 2.” The line manager “reasonably concluded that the [Appellant’s] stakeholder management and collegiality had not improved in that she seemed unable to act as a team player, did not collaborate effectively and demonstrated a lack of strategic vision in pursuing projects that did not fit in with the department’s strategy. The documentary evidence confirmed that the line manager considered both positive and negative feedback and evaluated that information against his own assessment of the [Appellant’s] performance. He determined that she was not performing to the standard required despite required areas of improvement having been clearly identified and communicated and her being given the time and opportunity to improve.”

30. Furthermore, the [Appellant’s] “approach and performance were incompatible with her seniority and level of responsibility and provided a rational basis to conclude that by disposition she was unsuitable for the role.” “It is apparent from the 2018 and 2019 360 Reports and the feedback obtained during the SSPM Process, that some of the [Appellant’s] colleagues had justifiable concerns about her leadership style, managerial abilities and non-collaborative way of working. These were the primary topics of concern before and during the SSPM Process. The situation had become unsustainable to the extent that the operational requirements of the Bank merited the termination of her employment in this role. While the [Appellant] deserves credit for her positive accomplishments at the Bank, they do not compensate for, or exonerate, the deficit in her performance.”

31. With respect to the [Appellant’s] contention that that her health condition accounted in part for her poor performance, the ARC noted that the [Appellant] was diagnosed with a medical condition in November 2018. She contended that her condition worsened at the end of August 2019 causing her to suffer from a lack of energy, low mood, fatigue, forgetfulness and confusion. However, on her own version, she started to feel better in November 2019 and was largely recovered at the time of her dismissal. The ARC observed that the [Appellant] informed the HRBP of her condition for the first time in December 2019, after the line manager had decided to commence Step 2 of the SSPM Process. The [Appellant], however, provided no evidence that she made any submissions regarding her health during the SSPM Process or asked for any specific consideration of it or the alleged effects.

32. The ARC concluded: “[t]he only medical evidence of the [Appellant’s] condition on record was submitted with her request for review. It was a letter from her doctor dated 18 May 2020, and thus obtained after her dismissal, confirming that she was diagnosed with a medical condition in November 2018. The letter did, however, not mention or explain any

consequences of the diagnosis in relation to work performance, the effects of the condition on her health and ability to carry out her duties at the relevant times, or any adjustments that could have been made by the Bank. It merely stated that the [Appellant] was having blood tests. Considering that the medical certificate was obtained subsequent to the [Appellant's] dismissal, the ARC found it reasonable to infer that its silence on the effects of the diagnosis signifies that they were probably inconsequential to her work performance. Moreover, the [Appellant] did not take any sick leave during 2018 or 2019 or request adjustments to be made either to her duties or to the SSPM Process. She also did not ask to be referred for an occupational health or stress risk assessment. There was accordingly no opportunity during the SSPM Process for any consequences of the [Appellant's] condition to have been weighed and considered. It was incumbent upon the [Appellant] to put forward a medical report dealing with the effect her condition had on her work at the relevant time. She failed to do that. It can therefore not be said that relevant factors regarding her health were ignored in a manner resulting in an unreasonable decision and the medical evidence presented for the first time in the review process also did not take the matter further.”

33. Lastly and with respect to the [Appellant's] contention that she should have received PBC for 2019, the ARC noted that she was eligible for PBC, but that eligibility for PBC does not equate to entitlement to payment: “[t]he entitlement to PBC is assessed through the performance appraisal process. The range for individual PBC for the 2019 performance year for staff members with a rating of performing below requirements was set at 0%-10% of salary. It was determined that the [Appellant] should be awarded a 0% PBC for 2019 on the basis of her performance rating for 2019 and the fact that it would have been inconsistent and irrational to pay a PBC reward for the [Appellant's] 2019 performance when such performance had led to the recommendation that her employment should be terminated for sub-standard performance. The ARC found the decision entirely reasonable in the circumstances.”

34. The ARC concluded that the contested administrative decision terminating the [Appellant's] employment was legal, reasonable and procedurally fair, and thus in accordance with the principles of international administrative law. The ARC recommended that the contested administrative decision of the MDHR terminating the employment of the [Appellant] be confirmed and that no other relief be granted.

The Administrative Review Decision (PARD)

35. On 5 October 2020 the Bank's Acting President took the Administrative Review Decision (PARD) as follows:

“1. I refer to the Report and Recommendations by the Administrative Review Committee (“ARC”) of 7 September 2020 (“**Report**”) in the matter of your Request for Review of an Administrative Decision in Case No. ARC63/2020, which was submitted to me on 29 May 2020 (“**RARD**”).

2. You requested the review of the decision to terminate your employment at the Bank on the

grounds of sub-standard performance pursuant to Section IV paragraph 7(a) of the Directive on Ending Employment (“**Administrative Decision**”).

3. I am aware that you did not receive a copy of the Report when it was issued on 7 September 2020. I am also aware that, following your RARD, you made further submissions to the ARC by emails dated 23 and 24 September 2020 (“**Further Submissions**”). I note that the Chair of the ARC has stated that the ARC is “*not in a position to receive additional evidence or alter our recommendation at this stage*”, given that the ARC’s report and recommendations had already been issued.

4. I have considered and agree with the ARC’s Report and Recommendations, which confirm that the Administrative Decision was legal, reasonable and procedurally fair. I have also considered and agree with the ARC’s subsequent position in relation to the Further Submissions. In addition, I do not consider that your due process rights have been adversely affected by the fact that you did not receive the Report from the ARC at the same time as the Bank, which was as a result of an administrative error. I have therefore taken the decision to accept the ARC’s recommendations. Consequently, I now confirm the Administrative Decision.

5. Pursuant to Section IV, paragraph 6.4.3 (b) of the Directive on the Administrative Review Process, this Decision now exhausts the Administrative Review Process.”
(emphasis in the original)

This is the impugned decision.

IV. The Appellant’s position

36. The Appellant submits that the ARC Report and the subsequent Final Decision by the Acting President are based on errors of fact and law.

37. She contends, first, that the ARC committed procedural errors: (i) it did not provide directives to the Appellant as to the opportunity and the timing to file a rejoinder or comments to the Bank’s Response in due course; and (ii) it did not inform the Appellant that the ARC Report and Recommendations were issued on 7 September 2020 and admittedly forgot “as a result of an administrative error” to inform her while it informed the Bank promptly. This constitutes a serious procedural irregularity, which cannot be excused as it adversely affects the Appellant’s due process rights.

38. She adds that in her view the ARC Report and the Final Decision are based on an incomplete consideration of the available facts as (i) they did not consider the medical evidence included in the “Further Submissions”; and (ii) they did not take into account that the decision to terminate her appointment was tainted by abuse of discretion, was arbitrary, discriminatory and improperly motivated as based on erroneous facts, lack of managerial planning and support as well as on a filtered, biased and tampered performance feedback. It follows that the Administrative Decision of termination on grounds of sub-performance (as confirmed by the ARC and the President) is unlawful, unreasonable and procedurally unfair and should be set aside by the Tribunal.

39. The Appellant submits that she is jobless since the decision of termination and

requests, also in light of the global pandemic and economic recession, that the PARD be suspended and that she is reinstated in her previous position or a comparable one with consequent reimbursement of lost salary and benefits.

40. The Appellant requests the Tribunal to assess the “Further Submissions” she had forwarded to the ARC, but which the ARC had not considered.

41. The Appellant requests that the Bank produces a number of documents:

(i) the original performance feedback for 2018 and 2019 as recorded in the Success Factor System archives as of December 2018 and December 2019 respectively;

(ii) the original list of feedback providers for the Appellant recorded in the Success Factor system archives for both years, as of December 2018 and December 2019 respectively, showing the feedback providers nominated by the Appellant and the ones nominated by her manager, as well as the names of the feedback providers who declined to give feedback; and

(iii) the feedback obtained from seven (out of nine) feedback providers by the Appellant’s manager during the SSPM Process at the end of February 2020.

The Appellant explains this request on the basis that, the feedback annexed to the Bank’s Response dated 24 July 2020 had been tampered with and had been inappropriately redacted or filtered. Some feedback was deleted, while negative feedback from a provider who did not qualify to provide such feedback was instead pasted into it. The order of inclusion in the Summary Report 2019 had also been re-arranged to maximise impact of negative views.

Linked to the above, the Appellant also asks that the Bank clarify:

(iv) the maximum authorized number of characters allowed in a feedback box in the Success Factor System.

Finally, the Appellant requests as well:

(v) a witness statement of [E] (currently an employee of the Bank) regarding the feedback she provided in December 2018 on the Appellant’s performance; in particular whether [E] provided feedback and the contents of such feedback.

42. The Appellant submits that in November 2018 she was diagnosed with a medical condition, for which she started treatment in October 2019. She adds that already from March 2018 onwards she suffered from fatigue, slowness of mental processes, low mood, and reduced resistance to stress. After extensive research to identify the right therapy and repeated adjustments to the medicine’s dosage, her health began to improve only in November 2019. Her performance had been negatively impacted by her health condition and by the professional challenges as outlined in her RARD. The professional challenges worsened the Appellant’s condition, since a high stress level negatively influences health in general, but stress especially over a prolonged period constitutes a contributing factor to the development of the specific medical condition and the related symptoms. She had provided details in her “Further

Comments,” which the ARC had not considered and she asks the Tribunal to make an assessment thereof.

43. The Appellant furthermore contends that the ARC Report and the subsequent PARD are based on errors of fact and law since they did not consider that the decision to terminate her employment was tainted by abuse of discretion, was arbitrary, discriminatory and improperly motivated as based on erroneous facts, lack of managerial planning and support and tainted with tampered performance feedback. The Appellant submits that the ARC, when assessing her performance, seemed to focus on her lack of “soft skills” like the ability to work in a team, strategic management etc. However, this biased assessment of the Appellant’s performance is based on redacted performance reports in which the positive feedback received by the Appellant has been disregarded or filtered in order to prioritize negative feedback and thereby justify the Appellant’s unlawful dismissal (*cf.* paragraph 41 *supra*). She further contends that her manager had not given her adequate input and support and had failed to develop an improvement plan.

44. Regarding her alleged lack of planning and support on the part of the Bank in the structuring of [...], she asks the Tribunal to note that, after only two years, [...] was reorganised again. In her view, this shows that the 2018 reorganisation and, in particular, the creation of the [...], which strengthened the [...]’s focus on [...] that the Appellant was heading, was problematic. She refers in this respect to an article on the Banks’ intranet. She adds that this is precisely what she highlighted in the RARD: the 2018 reorganisation was ill thought through and had put the Appellant in charge of a team with huge overlaps with other [...] Units and other internal departments. In the same article, [...] new management also quoted [...]’s recent major achievements and on-going key initiatives, half of which were delivered or originated by the Appellant’s team. She concludes that it is therefore incorrect for the Bank to maintain that the Appellant underperformed as the Appellant’s long-term strategy and achievements proved to be successful.

45. The Appellant requests:

- Finding that the Final Decision and the ARC Report are affected by manifest errors of fact and law and therefore rescinding the Final Decision of the then Acting President, taken on the basis of the ARC Report;
- Reinstatement of the Appellant (plus reimbursement of lost salary and benefits, including 2019 Performance-Based Compensation (PBC), from the date of termination until reinstatement) and appropriate compensation for the procedural irregularities, breaches of contract, loss of career opportunity, and the overall discriminatory treatment (*inter alia* on medical grounds) of the Appellant, which have caused material, physical and psychological damage to her; alternatively, compensation for the material and moral damages suffered equivalent to three years’ salary and benefits;
- Damages in the amount that the Administrative Tribunal deems appropriate for the medical condition of depression and anxiety caused by the Bank’s conduct; and

- Reasonable legal costs incurred in the ARC process and in the submission of the present Appeal.

V. The Respondent's position

46. The Respondent contends regarding the alleged procedural errors that the ARC acted in accordance with the ARP Directive in its approach, *i.e.* (i) not to request further submissions from the parties following its receipt of the Request for Review and the Reply; and (ii) not to consider the Appellant's Further Submissions and alter its recommendation following the issuance of the ARC Report. It further denies that the Appellant suffered any prejudice as a result of not being provided with the ARC Report at the same time as the Bank.

47. The Respondent observes in relation to the substantive allegations made by the Appellant, first, that the PARD was legal, reasonable and procedurally fair and taken in accordance with the Bank's internal law and principles of international administrative law. The PARD was supported by clear evidence that: (i) the Appellant's performance, as documented formally through the 2018 and 2019 annual performance reviews and the SSPM Process, was sub-standard and not to the level required for the role of Associate Director; and (ii) despite being adequately notified of identified deficiencies in her performance in clear and specific terms and given an opportunity to improve, the Appellant had failed to improve to the required standards.

48. In addition, the ARC carried out a full and fair assessment of the respective positions of the parties, in accordance with the ARP Directive, with the ARC Report not containing any manifest error or being perverse in the conclusions that it reached based on the findings of fact as set out in detail in the ARC Report.

49. The Respondent submits that the "Further Submissions" made by the Appellant do not add any material facts or considerations over and above the extensive submissions already made in her Request for Review, such submissions having already been considered and addressed by the ARC in the ARC Report. As such, had the "Further Submissions" been considered by the ARC as part of the Administrative Review Process, they would not have altered the ARC Report or the PARD in any material respect. Further, it is clear from the evidence that the Line Manager followed the SSPM Process fully and gave the Appellant ample support and opportunity to improve her performance, which she failed to do. He also took on board both positive and negative feedback, extracted themes from that feedback and balanced it against his own observations of the Appellant's performance, in accordance with the relevant provisions of the Bank's internal law and general principles of international administrative law.

50. The Respondent contends that it complied with all applicable directives and procedures in respect of actions regarding the Appellant's health and that it was not the case that relevant factors regarding her health were ignored in a manner resulting in an arbitrary, discriminatory or unreasonable decision. Lastly, and regarding the allegation that feedback

documents were tampered with, the Respondent observes that an investigation was carried out in accordance with the CDRPs, and that the Office of the Chief Compliance Officer (OCCO) concluded that there was no evidence to support the allegations and that the information provided by the Appellant was speculative and wholly unreliable and unsupported.

51. The Bank submits that the Appeal should be dismissed in its entirety by the Tribunal, without any remedy for the Appellant.

VI. The Tribunal's evaluation

a. The Appellant's Additional Comments on the Respondent's Response

52. In accordance with paragraph 4 of the Directive on the Appeals Process (DIR/2019/14) the written procedure consists of an Appeal and a Response.

53. Paragraph 7.01 of the Directive on the Appeals Process provides as follows regarding the reliance on findings of fact:

(a) In the ordinary course, the Tribunal shall decide the Appeal on the basis of the Appeal Documents which shall include the Statement of Appeal, Response, Findings of Fact of the Administrative Review Committee and a transcript of the proceedings before the Administrative Review Committee and any other documents and evidence submitted to the Tribunal.

(b) The Tribunal shall take full account of the Findings of Fact made by the Administrative Review Committee in the Administrative Review Committee's Report and Recommendation unless, on application of either party, the Tribunal determines that the Findings of Fact contain a manifest error on the face of the written materials before it (including the Findings of Fact and the transcript) or are perverse or are reached in breach of applicable law or the Tribunal grants a request of either party to present new evidence not available to that party before the Administrative Review Committee.

54. On 3 February 2021, the Appellant requested the Tribunal to be allowed to submit a short pleading in reply to the Bank's Response, which in her opinion contained a number of points which she contests (for being incorrect or inaccurate). On 5 February 2021, the Tribunal, recalling that the Appeals Process does not provide for a second exchange of written submissions, exceptionally granted the Appellant's request to submit a brief document outlining which points were, in her view, incorrect or inaccurate. It was emphasized that she should therefore limit herself to the facts and abstain from submitting further arguments. On 17 February 2021, the Appellant submitted an eleven page document with "Additional Comments to the Bank's Response" plus two Exhibits, one 35 pages and the other nine pages long.

55. The Tribunal notes that, contrary to the clear instructions it had given to the Appellant to limit herself - in a brief document - to the facts and to abstain from submitting further arguments, she did not do so but instead commented extensively on the Respondent's

Response. Moreover, the Appellant produced new documents, consisting of e-mail exchanges between her and OCCO in October and November 2020, which were already in her possession when she lodged the Appeal.

56. Under these circumstances the Tribunal holds that the “Additional Comments to the Bank’s Response” do not establish any manifest error in the Finding of Facts and do not provide new evidence that was not in the Appellant’s possession when the Appeal was lodged. They can therefore not constitute part of the case file. As a consequence, they will not be considered by the Tribunal in its assessment.

b. Oral Hearing

57. The Appellant requests an oral proceeding as the facts at stake could be properly analysed through the direct testimony of herself and of the other individuals involved.

58. The Bank does not consider an oral hearing to be necessary in this case. It avers that the Statement of Appeal does not constitute an exceptional case as required under the Directive on the Appeals Process, as the matters contained therein can be adjudicated on the basis of written submissions through which both the Appellant and the Bank have articulated their arguments before both the ARC and the Tribunal.

59. The Appeal does not convincingly establish the exceptional case warranting an oral hearing, as required by paragraph 7.02 of the Directive on the Appeals Process. The Tribunal further notes the detailed description of the facts laid down in the ARC report. It also takes note of the “Further Comments” produced by the Appellant on 23 September 2020.

60. On the basis of the foregoing, the Tribunal does not deem it appropriate to hold an oral hearing.

c. Production of Documents

61. The Appellant requests that the Bank produce a number of documents regarding her performance feedback (*cf.* paragraph 41 *supra*). She alleges that the performance file was incomplete and that some documents were tampered with. She also requests a witness statement of one staff member regarding the feedback the latter provided.

62. The Bank does not make a request for the production of documents. It makes, however, a number of observations on the Appellant’s requests. First, it notes that a number of requests relate to the allegation that documents were tampered with. This matter was dealt with by the OCCO and the case was closed. The other requests relate to the feedback obtained by the Line Manager (at the request of the Appellant) from seven of the Appellant’s colleagues during the SSPM Process at the end of February 2020. One example email containing feedback was provided to the ARC. This email was from a staff member whom the Line Manager contacted for feedback in addition to the list of colleagues provided to him by the Appellant. Further to

the Appellant's request, the feedback emails from three of the seven listed feedback providers were supplied on an anonymised basis. The remaining four feedback providers gave verbal feedback to the Line Manager, with three of these giving negative comments regarding certain of the key performance concerns previously identified by the Line Manager.

63. The Tribunal notes that the allegations that documents regarding her performance feedback were tampered with were for the first time raised by the Appellant on 23 September 2020 in her "Further Comments." This matter has thus not been before the ARC, but the Tribunal considers it appropriate to dispose of the matter here and now since it constitutes one of the Appellant's main arguments throughout the present Appeal. When this matter was raised by her it was without delay referred to the OCCO, which immediately undertook an initial investigation. Its conclusions are in the case file. It noted that, although the conduct described by the Appellant was grave, the information that was given by her was speculative and wholly unreliable and that without evidence of any misconduct a person responsible for the alleged misconduct could not be identified and a formal investigation could not be initiated. It decided that no further action should be undertaken and that the case should be closed. The Appellant was informed thereof on 11 December 2020, i.e. before lodging the present Appeal. In the Appeal the Appellant does not bring forward any new evidence in support of her allegations. The Tribunal recalls that when allegations are made in an appeals process convincing and concrete evidence must be submitted in support thereof, which is not the case here.

64. The Tribunal further notes that the Bank has submitted feedback emails from a number of feedback providers.

65. With respect to the request of a statement by one staff member regarding the latter's feedback given during the 2018 performance review, the Tribunal notes that the Appellant has failed to challenge the 2018 performance review under the Bank's internal processes (*cf.* paragraph 8 of the ARC Report reproduced in paragraph 22 *supra*). She is excluded from doing so now.

66. In view of the above, the Tribunal considers that no further action is required and that the request for additional documents is either met with or has become moot.

d. Anonymity

67. The Appellant requests to remain anonymous and hence that the final judgment is redacted accordingly.

68. The Respondent makes a request for the names of staff members of the Bank, including the Line Manager, the Inquiry Officer and the HRBP not to be made public by the Tribunal on the basis that these individuals are not parties in these proceedings and their involvement in them is a result of them carrying out the duties of their respective roles. The Bank does not make any submissions with regard to the Appellant's request for anonymity, save to add that

such request may extend to the redaction of any identified medical condition and its symptoms to preserve her “*essential anonymity*”.

69. The Tribunal recalls that it is inherent to an appeal process that certain facts and opinions become known, both inside and outside the Bank. This being said, it is the Tribunal’s established approach to limit to the maximum extent possible the exposure of names of staff members concerned or of facts or descriptions that may identify them. An absolute guarantee can, however, not be given.

70. In view of this, the Tribunal grants the Appellant full anonymity to the extent that confidential private medical information as well as the Appellant’s name will not be made public. On the other hand, the Tribunal cannot grant full anonymity on other information, facts or dates without sacrificing essential clarity. The Respondent’s request for the names of staff members of the Bank, including the Line Manager, the Inquiry Officer and the HRBP not to be made public by the Tribunal, is granted.

e. Request for Suspension of the Relevant Administrative Decision

71. The Appellant requests that, although the Administrative Decision of termination is dated 7 April 2020, in consideration of the fact that the Appellant is jobless since then, in light of the global pandemic and economic recession, and as an interim measure, the Administrative Decision be suspended and that she is reinstated in her previous position or a comparable one with consequent reimbursement of lost salary and benefits from the date of termination until reinstatement, as requested in the RARD.

72. The Bank makes no observations regarding this request.

73. Paragraph 4.05 of the Directive on the Appeals Process stipulates:

The submission of appellant’s Statement of Appeal shall not, of itself, have the effect of suspending the Administrative Decision or any actions taken as a result of it. However, at the request of the appellant, the Tribunal may decide to suspend the Administrative Decision on such conditions as the Tribunal thinks appropriate pending completion of the Appeal.

74. While acknowledging the prevailing public health situation and the effects thereof, the Tribunal notes that in accordance with Rule 4.05 (d) of the Tribunal’s Appeals Procedures the Tribunal shall exercise its discretion to suspend an Administrative Decision only in those cases where the Administrative Decision lends itself to such suspension. This has not been established in the present case and the request is denied.

f. The Merits

75. It is useful to emphasize at the outset that an international administrative tribunal makes its assessment in law on the basis of established facts and evidence. It is also appropriate to recall in this respect that paragraph 7 of the Directive on the Appeals Process

(*cf.* paragraph 53 *supra*) stipulates that the Tribunal shall take full account of the Findings of Fact made by the ARC, unless the Tribunal determines, on application of either party, that the Findings of Fact contain a manifest error on the face of the written materials before it or the Tribunal grants a request of either party to present new evidence not available to that party before the ARC. The Tribunal understands that the ARC did not conduct an evidentiary hearing and that the Appellant was not given the opportunity to present her case in person. This is regrettable as the case concerns the termination of the Appellant’s employment. The Tribunal, however, concludes that the ARC’s Finding of Facts, together with the Appellant’s “Further Submissions”, form a sufficient basis to make an assessment in law.

76. The Appellant contends, first, that the ARC findings are manifestly erroneous as they are based on an incomplete consideration of the facts and rely exclusively on the Bank’s accounts of events. She submits that they cannot be considered as a basis for the Tribunal to decide upon her case. She argues that the ARC failed in respecting due process as it issued the Report without informing the Appellant and refusing to consider her “Further Submissions.” The Appellant therefore requests that the Tribunal considers the facts anew, including her “Further Submissions” which have not been included in the ARC review, despite the Appellant’s request and despite the fact that the “Further Submissions” are necessary for a proper assessment of the case.

77. The Tribunal recalls that it is incumbent on the Appellant to bring forward detailed supporting evidence in support of her claims. She has not done so. The Tribunal finds that the ARC Findings of Facts are thorough and balanced and that no manifest error on the face of the written material has been identified. As a consequence, the request that the Tribunal considers the facts anew is denied. The Tribunal has dealt with part of the “Further Submissions” (*i.e.*, the allegation that the feedback in her performance management was tampered with) *supra* in paragraph 63 and will deal with issues relating to her medical condition below in paragraphs 92 *ff.*

78. Before assessing the substance of the Appellant’s submissions, the Tribunal deems it appropriate to recall that it is according to paragraph 3.03(b) of the Directive on the Appeals Process guided by the following principles:

...

(b) When the Administrative Decision complained of is a decision of a Discretionary Nature, the Tribunal shall uphold the Appeal only if it finds that the decision was arbitrary, or discriminated in an improper manner against the Staff Member or the class of staff members to which the Staff Member belongs, or was carried out in violation of the applicable procedure.

...

79. The Appellant contends that the ARC committed procedural errors. The first error allegedly is that the ARC committed a procedural error when it did not provide directives to the Appellant as to the opportunity and the timing to file a rejoinder or comments to the Bank’s Response.

80. The Administrative Review Process is laid down in DIR/2019/16 of the Staff Handbook. Paragraph 6.4.2 deals with the consideration by the ARC. It stipulates amongst other things:

(b) The Administrative Review Committee shall seek a response from the Bank to the Staff Member's request, providing the Bank with no less than 25 days to submit such response and shall provide the Bank's response to the Staff Member.

(c) Subject to paragraph 10.4 below, the Administrative Review Committee may also: (i) ask the Staff Member and/or the Bank to provide additional documentation and other relevant information and material, which it considers critical to the matter under consideration, as well as to identify the applicable rules of the Bank bearing on the Administrative Decision under review; and (ii) meet separately with the Staff Member and/or any other Staff Member of the Bank who may have relevant information, except for the Staff Legal Adviser, lawyers in the Office of the General Counsel and the Ombudsperson.

...

(e) Any documentation or other material provided by the Staff Member or by the Bank shall be made available to the other at the same time it is provided to the Administrative Review Committee. If this has not happened, the Administrative Review Committee Secretariat shall, upon its receipt, promptly make it available to the Staff Member or the Bank, as the case may be. If the Administrative Review Committee meets separately with the Staff Member, a staff member representing the Bank and/or any other staff member within the Bank, a verbatim transcript of the meeting shall be prepared and provided to the Staff Member and to the Bank.

(f) Both the Staff Member and the Bank shall be given a reasonable opportunity to submit written comments to the Administrative Review Committee on any documentation, information or other material provided to it under paragraph 6.4.2(e) above.

81. The Tribunal first observes that the review process provides for a request for review and a response only. No further written exchanges are foreseen. The Tribunal further holds that the text in paragraphs (e) and (f) can only be read in conjunction with paragraph (c), in other words they only apply to documentation requested by the ARC and not to documentation that was provided without so being requested, which the Appellant did on 23 September 2020, allegedly in accordance with paragraph 6.4.2 (f).

82. The Tribunal moreover notes that the Directive does not give a staff member a right to submit a reply to the Bank's Response. And the Directive *a fortiori* does not instruct the ARC to give "directives to the Appellant as to the opportunity and the timing to file a rejoinder or Comments to the Bank's Reply." The argument that the ARC committed a procedural error in this respect therefore fails.

83. The Appellant further contends that the ARC committed a procedural error when it did not inform the Appellant that the ARC Report and Recommendations were issued on 7 September 2020 and admittedly forgot "as a result of an administrative error" to inform her while it informed the Bank promptly. This constitutes in her opinion a serious procedural irregularity, which cannot be excused as it adversely affects the Appellant's due process rights.

84. Paragraph 6.4.2 (j) of the Administrative Review Process provides:

The Administrative Review Committee shall take all necessary steps to provide its Report and Recommendation to the President and to the Staff Member as expeditiously as possible, but no later than 90 days after the request for review was referred to the Chair of the Administrative Review Committee by the President, unless the Administrative Review Committee determines that additional time is required and justified in exceptional circumstances beyond its control...

85. It is not in dispute that the ARC report was sent to the President on 7 September 2020 and, due to an administrative error, to the Appellant only on 23 September 2020, most likely subsequent to the submission of the Appellant's "Further Submissions" that day. This is a regrettable error that should not recur, but the Tribunal concludes that the Appellant has not convincingly established to what extent this adversely affected her due process rights as she alleges. She was, for example, not expected to comment on the report before the President took the PARD and she was able to timely lodge the present Appeal. It is not for the Respondent to provide evidence to the contrary. Also this argument fails.

86. The Appellant also submits that the ARC underestimated the impact of her medical condition on her case. The Tribunal disagrees for the following reasons.

87. It is recalled that on 28 February 2020 the Appellant's manager sent her minutes of the meeting confirming the conclusion of the sub-standard performance management process. He asked for her comments by 6 March 2020 at the latest. Instead, the Appellant wrote an e-mail to MDHR on 6 March. She said the following regarding her medical condition:

I was diagnosed with [...] on 27 November 2018 within the framework of the EBRD annual health check. The condition builds up progressively and sometimes resolves or remains unchanged but as blood tests showed a worsening of the situation at the end of August 2019, I started treatment from October 2019 and am still under treatment. During the period starting March 2018 I suffered from symptoms sporadically then more frequently, including high levels of fatigue, slowness of my mental processes, low mood, and reduced resistance to stress. I received treatment in the form of support for [...]. By November I was starting to feel better, and once I was able to take a proper three week break over Christmas I made a lot of progress in my recovery. It is fair to say that the stress of the last few months has been making the calibration of the correct dosage of the treatment I need to take for my condition difficult.

EBRD have been aware of my health challenges since 16 December 2019. EBRD is legally obliged to take my long term health condition into account when evaluating my performance and making any decision as to the possible termination of my employment. My health condition is clearly a 'disability' pursuant to the Equality Act 2010. I am happy to supply supporting medical evidence of this condition, should you wish to see it. I do not believe that [X] (the line manager) has taken these health issues into account in his assessment of my performance or my year-end review.

88. It is to be noted that at that time, *i.e.* 6 March 2020, the Appellant still had not submitted any medical evidence in support of her claim. It is to be added that she had not made her line-manager aware of her medical condition.

89. The Appellant contends in the RARD of 29 May 2020 that she started in March 2018 suffering symptoms from a medical condition, but that she was actually diagnosed with it on

27 November 2018 during an EBRD annual health check. In October 2019, *i.e.* eleven months later, she started taking medication and felt already better the following month. It is true that she informed the Bank on 16 December 2019 thereof orally. It is to be noted, however, that this was the first time that she informed the Bank and that she did not hand over any medical evidence. It was only in the RARD of 29 May 2020 that she provided, for the very first time, a very short statement from a medical practitioner dated 18 May 2020, which reads as follows:

The above mentioned has requested documentation that she was diagnosed with [...] in November 2018 following routine blood tests at a medical screen. Since then she has been attending for regular [...] blood tests, the last of these were done in February 2020 and she is due to have further [...] blood tests in the next few weeks.

90. This was the limited medical information and evidence that the Appellant made available to the ARC. The ARC did consider the medical question and observed:

68. The [Appellant] informed the HRBP of her condition for the first time in December 2019, after the line manager had decided to commence Step 2 of the SSPM Process. However, the [Appellant] provides no evidence that she made any submissions regarding her health during the SSPM Process or asked for any specific consideration of it or the alleged effects.

69. The only medical evidence of the [Appellant's] condition on record was submitted with her request. It is a letter from her doctor dated 18 May 2020, and thus obtained after her dismissal, confirming that she was diagnosed with [...] in November 2018. The letter does not mention or explain any consequences of the diagnosis in relation to work performance, the effects of the condition on her health and ability to carry out her duties at the relevant times, or any adjustments that could have been made by the Bank. It merely states that the [Appellant] was having blood tests. Considering that the medical certificate was obtained subsequent to the [Appellant's] dismissal, it is reasonable to infer that its silence on the effects of the diagnosis signifies that they were probably inconsequential to her work performance.

70. Moreover, the [Appellant] did not take any sick leave during 2018 or 2019 or request adjustments to be made either to her duties or to the SSPM Process. She also did not ask to be referred for an occupational health or stress risk assessment.

71. There was accordingly no opportunity during the SSPM Process for any consequences of the [Appellant's] condition to have been weighed and considered. It was incumbent upon the [Appellant] to put forward a medical report dealing with the effect her condition had on her work at the relevant time. She failed to do that and hence it cannot be said that relevant factors regarding her health were ignored in a manner resulting in an unreasonable decision. The medical evidence presented for the first time in the review process also does not take the matter further. As mentioned, it merely states that the [Appellant] was diagnosed with [...] and that she was having blood tests.

91. The Tribunal finds that the ARC correctly and regularly considered the medical issue in light of the evidence before it.

92. The Appellant further submits that she provided the ARC with more detailed medical documentation during the review process, but that the ARC failed to consider it. This is not correct. The Appellant obtained a statement from the same medical practitioner dated 18 September 2020. She forwarded this in an unsolicited communication to the ARC on 23

September 2020, i.e. after the proceedings before the ARC were closed. She carries the sole responsibility for this. This statement is now part of the case file and the Tribunal will make an assessment of it.

93. The 18 September 2020 statement was a letter to the Appellant's counsel. It reads in relevant part:

1. Ms [...] is suffering from [...]. This is a clinical syndrome resulting from [...]. Onset can be insidious and symptoms include lethargy, fatigue, physical and cognitive hypoactivity or slowness.
 2. The condition was diagnosed at a personalised health screen supported by her work health insurance on 27/11/2018. Her [...] function tests at this medical showed [...]. Ms [...] was advised to see her GP about this. Ms [...] was seen at [...] by a GP on 13.8.2019... Her blood tests were repeated and the results confirmed [...]. She was telephoned by a GP about these results on 28th August and the doctor recommended she commenced [...] therapy. She was texted links to information on her condition. She was seen at a follow-up appointment at [...] on 10th September where she mentioned she had been under stress recently and attributed her symptoms to this. She declined commencing [...]... Ms [...] has informed me that she was concerned about the potential side effects [...]...
 3. I cannot comment on whether Ms [...] suffered from symptoms of her condition during all of 2018 prior to her diagnosis in November 2018 as there was no contact with this Surgery during that period. As mentioned in 1, the onset of [...] can be extremely insidious and symptoms can be present for several months or even years prior to a diagnosis and it is probable that Ms [...] would have suffered symptoms prior to her diagnosis.
 4. ...
 5. Ms [...] had not been at this Surgery since 2014 prior to her diagnosis of [...] in 2019 and was not seen for 9 months after her diagnosis so I cannot comment on the symptoms she may have experienced at the time of diagnosis however she could potentially have been suffering from any of the symptoms relating to [...] mentioned in 1. She informs me that she did not seek medical help for 9 months following her diagnosis as she states she was very busy at work during this period and also she did not attribute her symptoms to [...]...
 6. The effect of [...] on Ms [...]’s ability to carry out her normal day activities could have been a reduction in mental alertness, increased fatigue and a slowing of her cognitive function.
 7. Ms [...] has chosen to take an alternative treatment... She is taking a product called... The dose of these fluctuates as she self-manages her condition depending on symptoms. The recommended licenced treatment for [...] is [...] therapy in the form of [...]...
 8. I cannot comment on the impact of stress on Ms. [...]’s condition from her medical records however for most people with a medical condition stress can have an adverse effect on their ability to manage or treat the condition.
 9. I cannot comment on what adjustments or accommodations I consider EBRD should have made in the light of Ms [...]’s condition as I only have a summary of what she was expected to do. I would anticipate that her condition would have made complex projects and long hours difficult to manage.
 10. I am sure that it would have been helpful to delay or slow down the performance management process Ms [...] was subject to in order to give her a better chance of showing that her performance was improving however I am not familiar with the treatment she is taking and have no time frame as to how long this may take to have an adequate response.
- Ms [...] has provided a very detailed written report about the effects her condition has had on her physical, cognitive and mental health. This has been provided to me today and is not from her medical records. I have her consent to add this to my report.

The attachment to this letter contains, in the Appellant's own words, an analysis of the medical condition and the treatment chosen by her.

94. The Tribunal observes that with this additional information the medical evidence in support of the Appellant's claims has not changed in a major or convincing way. A medical condition was diagnosed and a treatment proposed, which the Appellant refused. The practitioner highlights that the Appellant was not seen by her for nine months after the diagnosis and that she cannot comment on the symptoms the Appellant may have experienced at the time of the diagnosis. The practitioner had only limited access to medical data and could only speculate on the Appellant's condition and on the impact on her work at the Bank. The statement is *de facto* limited to rather general observations regarding the most common symptoms of this medical condition, but it does not shed any light on, for example, the particular level or degree of the condition of this particular patient or the possible impact the condition may have on the Appellant's ability to perform in her work for the Bank. The Tribunal cannot but conclude that the medical evidence before it, including that submitted on 23 September 2020, is not convincing enough to arrive at a different conclusion than the ARC did.

95. It should be added that in her Appeal the Appellant admits that after a three-week leave period in December 2019/January 2020 she felt better. The Tribunal also notes, as did the ARC, that the Appellant was not on sick leave during the period under consideration.

96. Moreover, the Appellant did not duly inform the Bank of her medical condition. Although having received a diagnosis as early as 27 November 2018 with a confirmation of it in the middle of August 2019, she only informed the Bank orally thereof on 16 December 2019. She did not, on that occasion, submit a medical certificate. She did not inform her line-manager. The Tribunal thus fails to see how the Bank could or should have taken her health situation into account when assessing her ability to perform. The Tribunal also notes that the Appellant was fully able to participate in the SSPM process and to react and comment on statements made by her line-manager in this context.

97. The Tribunal finds that it is not in a position to evaluate the medical facts and the related evidence. Taking, however, all elements before it into account, the Tribunal cannot but hold that the medical evidence provided is insufficient to establish a resilient link between the medical condition and the sub-standard performance.

98. The Appellant furthermore contends that the ARC Report and the subsequent PARD are based on errors of fact and law since they did not consider that the decision to terminate her employment was tainted by abuse of discretion, was arbitrary, discriminatory and improperly motivated as based on erroneous facts, lack of managerial planning and support, and tampered performance feedback.

99. The Appellant submits in this respect that the ARC when assessing her performance seemed to focus on her lack of "soft skills" like the ability to work in a team, strategic management etc. However, this biased assessment of the Appellant's performance was based on redacted performance reports whereby the positive feedback received by the Appellant has

been disregarded or filtered in order to prioritize negative feedback and thereby justify the Appellant's unlawful dismissal (*cf.* paragraphs 41 and 63 *supra*). She further contends that her manager had not given her adequate input and support and had failed to develop an improvement plan.

100. Regarding her alleged lack of planning and support on the part of the Bank in the structuring of [...], the Appellant notes that, after only two years, [...] was reorganised again. This shows in her view that the 2018 reorganisation and in particular the creation of the Local Currency Unit, which the Appellant was heading, was problematic. She refers in this respect to an article on the Banks' intranet, which in her view confirms that the 2018 reorganisation was ill thought through and had put the Appellant in charge of a team with huge overlaps with other [...] Units and other internal departments. In the same article [...] new management also quoted [...]s recent major achievements and on-going key initiatives, half of which were delivered or originated by the Appellant's team. She concludes that it is therefore incorrect for the Bank to maintain that the Appellant underperformed as the Appellant's long-term strategy and achievements proved to be successful.

101. The Tribunal, first, observes that the arguments put forward in the "Further Submissions" are essentially the same as those presented in the RARD.

102. The process that was followed and culminated in the Appellant's dismissal for sub-standard performance is laid down in detail in paragraphs 5-43 of the ARC report (*cf.* paragraph 22 *supra*). The ARC's analysis of the process and evaluation of the Appellant's claims reads as follows:

"49. When reviewing a decision to terminate a staff member's employment on grounds of incapacity, the ARC is limited to considering whether the decision was taken in violation of the principles of administrative law. There must be a reasonable or rational basis for the decision, but the ARC may not substitute its own evaluation of the staff member's performance or workload with its own. The termination of a staff member's appointment should only be interfered with or set aside if it appears that the evaluation has not been reached by a fair procedure, is arbitrary, discriminatory or improperly motivated or could not reasonably have been taken on the basis of facts accurately gathered and properly weighed. It is not the role of the ARC to undertake a so-called "microscopic review" of a staff member's performance or to substitute its own judgment about that performance for the judgment of the line manager.

50. While it is permissible to consider peer feedback when assessing performance of a staff member, it is nonetheless ultimately the decision of the manager to balance positive and negative factors and to assess a staff member's performance. The 360 review process used by the Bank is therefore "a support, and not a substitute for the managerial exercise of discretion".

51. In her request the [Appellant] reiterated and elaborated upon the submissions and contentions in her email of 6 March 2020. She again objected to combining the SSPM Process and the year-end review, but conceded there were problems with her performance. She justified her poor performance on two essential grounds. First, she contended that the new [...] unit and its requirements were not properly thought through; and secondly, she maintained that her ill-health contributed significantly to her poor performance. The Bank disputes the validity of both justifications.

52. The [Appellant's] objection to combining the SSPM process with the year-end review is technical and formalistic. The processes were both aimed at a substantive determination of her performance. The convenience of combining them outweighed any formal requirement. The [Appellant] has not shown that she suffered any undue prejudice in doing the assessments simultaneously.

53. The [Appellant] claims that she was not adequately informed of the duties, responsibilities and requirements of the position she agreed to assume with the reorganization of the [...]. Nor, she says, was she provided with appropriate guidance and advice. She described the re-organisation as "ill thought out", with the result that she was put into an impossible position, aggravated by the fact that the [...] was allocated new inexperienced and unqualified staff members, to whom she could not delegate, and inadequate resources. This caused her workload to increase exponentially and become unmanageable. She complained that the line manager consistently failed to support her and did not listen to her explanations for the identified failings and relied instead upon negative reports by colleagues who were biased against her.

54. The [Appellant's] request is accompanied by detailed schedules setting out several grievances mostly directed at the line manager. The allegations contained in them range widely and criticise the line manager for being absent, failing to provide frank, constructive feedback and a "firm managerial direction", prematurely launching the SSPM Process, refusing to listen, rushing the process, failing to set priorities for the [...], constantly changing his criticisms of her and double standards. In other schedules, the [Appellant] sets out positive aspects of her performance in detail.

55. In essence, the [Appellant] seeks a microscopic review of her performance. The request, however, fails adequately to get to grips with the key criticisms of her performance, namely, her apparent inability to: i) provide appropriate leadership and manage stakeholder relationships; ii) focus on priorities; iii) problem-solve; and iv) offer strategic planning. In fact, for the most part, the [Appellant] concedes her weaknesses in these areas. Her failure to focus on and address these criticisms meaningfully in the request to some extent confirms their validity.

56. The [Appellant's] objections to the process of evaluating her performance are unsustainable. Her disparagement of the line manager does not accord with the documentary evidence which establishes indisputably that he provided frank, constructive feedback and direction. Moreover, the SSPM Process was engaged as a last resort and was not premature or rushed. The problems of performance endured over a reasonable period of time (from early 2018 until November 2019) before the SSPM Process was initiated. The [Appellant] was given proper notice of the identified shortcomings in performance, afforded a full opportunity to improve and made extensive representations before the recommendation for dismissal was effected. Consideration appears also to have been given to alternative positions but nothing came to fruition. The [Appellant] did not identify any alternative posts to which she could or should have been transferred or demoted. There is accordingly no basis for a claim of procedural irregularity or any submission that dismissal was an inappropriate sanction on account of feasible alternatives.

57. The [Appellant's] complaint that she was set up to fail, by not receiving adequate guidance, support and resources, is unconvincing. In terms of the Directive on Organisation and Personnel Management, Section IV paragraph 1(b), the Bank may change the duties and responsibilities within any job description as necessary to meet the operational needs of the Bank. The line manager consulted with the [Appellant] before assigning her a new role. The [...] team had grown significantly and the line manager proposed the re-organisation into three units, each led by an Associate Director. The [Appellant] was chosen to lead the [...] unit in

light of her previous responsibilities and her experience. She did not object and accepted the position. Her role then changed to include a formal line management responsibility, planning the strategies of the [...] and day to day engagement for her unit. After a process of consultation involving the [Appellant] and other personnel, the re-organisation was effected and the [Appellant's] job description was updated to include line management.

58. Both the Bank and the [Appellant] acknowledge that her performance deteriorated after assuming responsibility as the head of the [...] unit. However, the Bank denies that this can be justified along the lines suggested by the [Appellant]. It maintains that the [Appellant] was not able to perform to a satisfactory standard in her role and was failing to carry out key parts of her job description, primarily because she was unsuited to the tasks of leadership, collaborative management and strategic planning.

59. It cannot be disputed that the role of an Associate Director within the [...] team, a senior position, requires the formation of productive and collaborative relationships with other teams within the Bank and responsibility for formulating and leading projects complementing those of other teams. This is evident from the following relevant clauses of the [Appellant's] job description:

- a. Section 2 - Purpose of Job: "The role requires close interaction with many of the departments of the Bank including [...] as well as external engagement with a wide range of market participants".
- b. Section 3 – Background: The role is "to provide leadership on the [...] work, including providing technical advice to different business units across the EBRD and to external counterparts".
- c. Section 4 – Facts/Scale: "The Associate Director will: Have specific country, regional and subject specialisation responsibilities assigned to him/her".
- d. Section 5 – Accountabilities & Responsibilities: "Directly accountable for the engagement and effective overall management of staff including recruitment, compensation (as agreed with the Head of Department, if applicable), performance management, coaching and development."

60. The [Appellant's] deficient performance in collaboration was flagged as an area of concern early on by the line manager in her 2018 performance review as follows:

"We should recognise that the area of both [...] and perhaps even more so the [...] have a wide range of stakeholders making specific actions more complex and sensitive than we would like. This makes communicating and stakeholder management absolutely crucial. There is a widespread feeling that [C] needs to do better at this. Deciding something on her own and putting things in motion before there is an understanding is causing unnecessary clashes, and ultimately, disappointment."

61. There is no doubt that the [Appellant] was obliged to provide leadership on the [...]’s contribution and to build collaborative relationships with internal and external stakeholders. Her weakness on this front, the correspondence shows, was raised with her repeatedly and remained a problem that she appeared unable to redress. The Bank highlights the particular example of the [...] unit strategy paper prepared by the [Appellant] in March 2019 as an illustration of the [Appellant's] tendency to work unreceptively in a silo. In the request she complained that the line manager had failed to comment on the strategy paper. This she saw as an indication of his lack of leadership. He, however, was of the view that the paper was unfit for purpose because she had not spoken to any internal stakeholders in other teams about it and did not take account of the overall [...] strategy that had been Board approved in late 2018. What the line manager interpreted as a lack of strategic nous and collaboration, the [Appellant] construed as a lack of managerial direction. As the line manager pointed out, one would not expect a senior manager in the position of the [Appellant] to require micro-management of this order.

62. At the start of the SSPM Process, the line manager identified specific objectives on which he expected the [Appellant] to focus, namely: (i) better stakeholder management and more collegial work with internal counterparts; (ii) leadership and joint ownership of [...] affairs; and (iii) better strategic planning of actions. These objectives related to her suitability for the role and how she was carrying it out, rather than to her competence with regard to specific technical tasks. The feedback and examples given to her during the process confirm that her performance in relation to these competencies remained sub-standard at the end of Step 2.

63. On the evidence overall, the line manager reasonably concluded that the [Appellant's] stakeholder management and collegiality had not improved in that she seemed unable to act as a team player, did not collaborate effectively and demonstrated a lack of strategic vision in pursuing projects that did not fit in with [...] strategy. The documentary evidence confirms that the line manager considered both positive and negative feedback and evaluated that information against his own assessment of the [Appellant's] performance. He determined that she was not performing to the standard required despite required areas of improvement having been clearly identified and communicated and her being given the time and opportunity to improve.

64. The [Appellant's] approach and performance were incompatible with her seniority and level of responsibility and provided a rational basis to conclude that by disposition she was unsuitable for the role. Her candid acknowledgement of her poor leadership skills and confirmation that she was seeking alternative employment are indications that she understood that to be the case. In addition, there was clear incompatibility between her and other members of the team. It is apparent from the 2018 and 2019 360 Reports and the feedback obtained during the SSPM Process, that some of the [Appellant's] colleagues had justifiable concerns about her leadership style, managerial abilities and non-collaborative way of working. These were the primary topics of concern before and during the SSPM Process. The situation had become unsustainable to the extent that the operational requirements of the Bank merited the termination of her employment in this role. While the [Appellant] deserves credit for her positive accomplishments at the Bank, they do not compensate for, or exonerate, the deficit in her performance.”

103. The ARC noted that the Appellant's line manager had provided frank, constructive feedback and direction. The SSPM Process was engaged as a last resort and was not premature or rushed. The problems of performance endured over a reasonable period of time (from early 2018 until November 2019) before the SSPM Process was initiated. The Appellant was given proper notice of the identified shortcomings in performance and was afforded a full opportunity to improve. The Tribunal cannot but conclude that the ARC made a complete and balanced assessment of the matter before it and that the Appellant has not successfully established that the ARC report was flawed or biased. The Tribunal considers, as did the ARC, that the SSPM process was thorough, transparent, detailed and documented enough, fair, and balanced. The same must be said of the ARC report. The Appellant's "Further Submissions" do not alter this conclusion.

104. The Appellant also seeks payment of her performance-based compensation for 2019 (PBC). The ARC (*cf.* paragraph 33 *supra*) concluded in this respect that the Appellant was eligible for PBC, but that eligibility for PBC does not equate to entitlement to payment. The entitlement to PBC is assessed through the performance appraisal process. The range for individual PBC for the 2019 performance year for staff members with a rating of performing

below requirements was set at 0%-10% of salary. It was determined that the Appellant should be awarded a 0% PBC for 2019 on the basis of her performance rating for 2019 and the fact that it would have been inconsistent and irrational to pay a PBC reward for the Appellant's 2019 performance when such performance had led to the recommendation that her employment should be terminated for sub-standard performance. The ARC found the decision entirely reasonable in the circumstances.

105. The Appellant not bringing forward in the Appeal any elements where the ARC might have erred in fact or in law on this point, the Tribunal confirms the conclusions of the ARC and the request to order payment of the PBC is consequently denied.

106. The Tribunal concludes that the Appeal must be rejected in its entirety.

VII. Costs

107. The Appellant requests reimbursement of reasonable legal costs incurred in the ARC process and in the submission of the present Appeal.

108. Paragraph 6.4.2 (i) of the Administrative Review Process provides that the Report of the ARC:

... shall also include a recommendation in respect of award, if any, of reasonable legal costs incurred by the Staff Member for the preparation of the request for review of an Administrative Decision...

109. The ARC concluded its report as follows:

In the premises, the ARC recommends that the contested administrative decision of the MDHR terminating the employment of the [Appellant] be confirmed and no other relief be granted.

110. The Tribunal sees no reason to overrule the ARC in this matter and no arguments were presented by the Appellant to convince the Tribunal to do so.

111. Regarding the costs related to the proceedings before the Tribunal itself, paragraph 8.06 (a) of the Directive on the Appeals Process provides:

If it upholds an Appeal, in whole or in part, the Tribunal may order that the respondent reimburse the appellant for such reasonable expenses, including reasonable legal costs, the appellant has incurred in presenting the Appeal. Exceptionally, the Tribunal may order that the respondent pay all or some part of the appellant's legal costs where the Appeal has not succeeded.

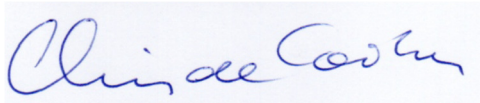
112. The Tribunal does not uphold the Appeal. The Tribunal further sees no reason to order that the Respondent pay exceptionally all or some part of the Appellant's legal costs where the Appeal has not succeeded.

VIII. Decision

113. The Tribunal rejects the Appeal in its entirety. No remedy is awarded.

13 April 2021

For the Administrative Tribunal

A handwritten signature in blue ink, reading "Chris de Cooker", is displayed on a light blue rectangular background.

Chris de Cooker

Chair of the Panel