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[the Applicant's] workload and she is stepping up to the mark. As she is a recent staff member, I recognise that she has potential for further professional growth. I am confident that she will pay attention to areas of improvement relating to refinement of communication skills, respect for reporting lines and wider team work, as noted by colleagues, which would enhance an already

the Applicant was rated 7 for the core competency of “communication”, 8 for the managerial competency of “empowering and building trust” and 7 for the cross-functional competency of “negotiation and conflict resolution”. The mid-point review for this period states *inter alia*, “Some improvement in communication seen, but [Applicant] encouraged to work closely with protection colleagues and encourage team work”. Under additional comments (Performance summary), her Manager stressed:

[the Applicant] is a member and acting chair of the Staff Council in Pakistan, and has had to juggle this role with the growing pressure at the work front. The Pakistan operation is heavily staffed both at the international and national level. This subsequently comes with a range of staffing and personal issues needing the attention of the staff association. Her role in this is highly commended. [the Applicant's] command of the Urdu language widely used in Pakistan is an asset to navigate several important channels to achieve professional results.

14. In her 2012 e-PAD acknowledgement, the Applicant stated that adequate managerial support is crucial for any capable staff member and the team overall to succeed.

15. The Manager, the Applicant and Ms. Ameratunga signed the 2012 e-PAD between 8 and 28 February 2013.

16. In evidence, Ms. Ameratunga said that although she signed off on the Manager's evaluation, she still had concerns while accepting that the Applicant was performing at a satisfactory level for the most part.

17. In December 2012, the Applicant sought guidance from Human Resources (“HR”) on extending her SAL beyond 31 December 2013 on personal grounds; on 8 January 2013, she spoke to Mr. Wright about this. He told her that as it was her second extension, and because it was based on personal grounds, he was not convinced Headquarters (“HQ”) would approve it. Although he believed she would benefit professionally from a new assignment, he encouraged her to consult HQ about the SAL extension.



24. On 15 January 2013, Mr. Wright requested a SAL extension for the Applicant until 31 December 2014. In his requesting memorandum, he made a passing reference to the Applicant's personal reasons for the extension but the memorandum focused on the operational requirements of the resettlement unit. It stated *inter alia*,

As a well performing countrywide head of the resettlement unit, [the Applicant] is central to coordination of these critical strategic initiatives. Continuity of assignment by the head of the resettlement unit is essential in this critical period of 2013-2014.

25. The request was endorsed by the Joint Review Board and the High Commissioner and announced in the Summary of Decisions of the High Commissioner on Assignments on 22 March 2013.

26. During the e-PAD cycle of 1 January to 31 December 2013, Ms. Zuefle joined UNHCR Pakistan, on 15 February 2013, as the new Assistant







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38. Mr. Wright told the Applicant that Ms. Zuefle had shared with him her email of 29 May 2013, in which she had expressed concerns about the Applicant's

42. On 25 June 2013, Ms. Zuefle informed the Applicant by email that she had finalized her e-PAD objectives and asked her to nominate multi-raters. Following home leave in July and August, on 20 September 2013 the Applicant informed Ms Zuefle of the 10 multi-raters she had nominated. Ms. Zuefle advised the Applicant



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informed about the meeting only seven minutes before it was going to take place, without being informed in advance about its purpose. Hence, she had no opportunity to raise a number of issues. She referred to an increase in her team's



59. Also in November 2013, the Applicant and Ms. Zuefle had continuing exchanges about the low output of the Applicant's team as compared to the 2013 benchmarks. In an email of 8 November 2013 addressed to the Applicant, Ms. Zuefle expressed the view that "it [was] in the best interest of [the Applicant] as Head of RST Unit and [her] staff to ensure that the 5 cases [she had] now agreed as target [were] in fact achieved".

60. On 11 November 2013, the Representative wrote to the Director, DHRM, requesting that the Applicant's SAL be reduced until the end of March 2014. He said that "the request [was based on the Applicant's poor performance, interpersonal and managerial problems, and seriously deteriorating working relationships, which meant that it [was] no longer in the operation's interest ... for her to continue as head of the country's Resettlement Unit". He stated that "he had discussed these issues in a series of meetings with [th





**Parties' submissions**

**68. The Applicant's principal contentions are:**

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**a.**

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h. The Applicant's managers were not aware of the requirement under UNHCR rules on performance management that the e-PAD has to be finalized before a decision of non-renewal on the basis of bad performance can be taken;

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poor performance of the Applicant, the Administration cannot be held responsible for the non-completion of the e-PAD in question;



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71. The Respondent accepts that it did not finalise the Applicant's 2013 e-PAD

Performance evaluation

76. The Respondent submitted that the Applicant’s performance was evaluated in an objective, fair, and well based manner that gave her sufficient notice of performance concerns and the opportunity to provide written comments.

77. Section 55 of the PAMS<sup>5</sup> states:

The final appraisal takes place in most cases during the last two months of the annual performance appraisal cycle. Notwithstanding the normal cycle, the completion of [an] e-PAD is required in the following circumstances:

...

81. Section 58 of the PAMS states that an annual appraisal is completed:

a) When there is agreement, the staff member accepts the e-PAD and checks the box indicating that they agree with the appraisal. The Reviewing Officer signs off the e-PAD and submits to PMU;

b)



86. For these reasons, the Tribunal rejects the Respondent's contentions that the Applicant was responsible for not finalising the 2013 e-PAD, and that this justified the Respondent in not renewing her contract on the grounds of performance contrary to sec. 55 of the PAMS.

87. Both the Representative and the Applicant's manager admitted during the hearing that they were not aware that a finalized e-PAD was a precondition to taking a decision not to renew a fixed-term appointment on the basis of unsatisfactory performance, even though the Applicant referred to this at the meeting on 28 November 2013.

Performance Management

88. The PAMS provides for a detailed process for the management of performance issues. If a staff member and manager disagree on performance, the e-PAD is only finalized after the completion of mediation and rebuttal protocols have been completed.

89. Section 1.1 of Annex 5 to the IOM/FOM *Dispute Resolution Process* states that:

conciliation and mediation efforts should be emphasized in the performance management process when there are disagreements in order to address the issues and develop a plan of action to prevent similar issues from arising.

90. The Reviewing Officer is required to take specific steps to ensure that the e-PAD is finalized only after the completion of mediation and rebuttal protocols have been completed.

of Phase 2 of the process, the Reviewing Officer should be involved to mediate the discussion.

92. At the annual appraisal stage, sec. 29 mandates that in cases of disagreement

had tried to mediate the issues between them. However, the Reviewing Officer said that she trusted that the Representative was acting as a mediator, and that he took on that role at the Applicant's request, so she was not at all involved in any mediation process in her capacity as Reviewing Officer.

98. The Tribunal finds that the mediation protocols were not followed. The Reviewing Officer was aware of the performance and interpersonal problems between the Applicant and her manager, but she did not take specific steps to mediate their disagreements and to document their recommendations within a defined timeframe.

99. Although the Representative described the meetings he held on 3 June and 17 September 2013 as attempts to mediate, he did not have the authority to mediate disagreements between the Applicant and her manager, since this role lay exclusively with the Reviewing Officer.

100. The first meeting, on 3 June 2013, was convened only with the Applicant. The Representative had separate discussions with her manager, had asked both the Applicant and the manager to take action to improve their relationship, and had advised that he would review the matter within three months.

101. The second impromptu meeting, which took place on 17 September 2013, was held with both parties, and in the presence of the Reviewing Officer. The Representative told them

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confidence that the relationship between the two would improve. For this reason, he seriously considered reducing the Applicant's SAL to avoid having them working together any longer.

104. The Representative asked the parties for their comments during and after the

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108. As noted above, despite some critical comments, the Applicant's performance evaluation for the e-PADs for 2011 and for 2012 were positive. Further, the memo supporting her SAL extension was also a positive endorsement of the Applicant's value to the Organisation.

109. On the account of witnesses for the Respondent given at the hearing, neither these assessments nor the SAL memo fully reflected the true performance of the Applicant as they understated the extent of problems she was responsible for.

110. These attempts to resile from the 2011 and 2012 e-PADs do the Respondent no credit. If the later criticisms of the Applicants performance are correct, the only conclusion to be drawn is that the assessments in the e-PADs were a sham as they did not reflect the reality of her performance for two years. The Tribunal further notes that in contrast to the Reporting Officer, the Representative believed that the Applicant's performance in 2011 and 2012 had been satisfactory.

111. Given that the assessments were written and official, signed off by all the appropriate officials, accepted by the Applicant, and put on the official record, the Tribunal accepts them at face value and finds that the Applicant was entitled to rely on them. They gave no notice that her contract renewal was in jeopardy.

112. The Respondent also relied on a series of meetings to establish that the Applicant was given sufficient notice of performance issues that put the extension of her appointment at risk.

113. The Tribunal does not accept that the meeting of 8 May 2013 between the Applicant and her manager can be considered as a performance evaluation of the Applicant. It was held outside office premises, at the Applicant's sole initiative, and to discuss her concerns about her manager's approach to issues relating to staff under the Applicant's supervision.

114. Even if it had been a performance evaluation meeting, the evidence does not support the contention that the Applicant failed to meet the performance standards set by her manager at that meeting and reiterated in her email of 29 May 2013.

The Manager said that during the meeting she expressed her expectation that the Applicant copy her on (important) communications; however, in her evidence to the Tribunal, the Manager expressed her discomfort with the fact that after that meeting, the Applicant copied her on each and every email.

115. The Manager also asked the Applicant that one way to improve communication between her and the Applicant's team would be to invite her to the unit meetings. The evidence established that the Applicant invited the manager to at least one team meeting soon after the meeting of 8 May 2013.

116. There is one instance where the Applicant did not comply with a directive by the Manager. In her email of 29 May 2013, Ms. Zuefle asked the Applicant to "present a plan to her on how they could jointly address the perception by many other staff that the staff in her unit, including herself, were deliberately isolating themselves from the rest of the protection team and show an attitude of superiority". There is no evidence that the Applicant presented such a plan of action. However, there is no evidence of any formal follow up by Ms. Zuefle on this issue between her 29 May 2013 email and the mid-year development review.

117. The Tribunal finds that to the extent they had been formulated in concrete

Applicant's performance at the 17 September 2013 meeting and in subsequent communications, these could not replace a formal performance evaluation, with properly recorded and measurable improvement objectives, subject to subsequent monitoring.

120. The Tribunal observes that at the 17 September 2013 meeting, the Representative found it necessary to request the Manager to fully substantiate and document her serious concerns about the Applicant's performance and attitude. This appears to be the first time this had been done since May 2013 when the Manager started to voice her concerns.

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121. While the 2013 mid-term assessment was conducted in the framework of the PAMS on 30 September 2013, it was significantly different from the performance

124. The recommendation to reduce the Applicant's SAL was foreshadowed by the Representative on 17 September 2013 and taken on 28 October 2013, on the basis of alleged bad performance. The subsequent recommendation not to extend the Applicant's appointment on the same grounds was merely an extension of that earlier decision. In these circumstances, the Applicant had no realistic chance of making the improvements referred to in the mid-term assessment. This is a breach of the implied requirement of fair dealing ( s UNDT/2009/025).

125. Having found that the Administration did not comply with the statutory requirements provided for under the PAMS (cf. above), the Tribunal further



evidence that it had become unconditional and the Tribunal must infer that its contents were written in good faith and represented a true assessment of the Applicant's worth to the Organisation.

129. The Tribunal agrees with the Respondent's position that the SAL and the term of the fixed term contract are theoretically separate; however, it finds that the SAL memorandum legitimately gave the Applicant an expectation that her contract would be renewed until the expiry of her SAL on 31 December 2014.

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130. In his reply, the Respondent raised new justifications for the decision, *post Do*. He alleges that the non-renewal was because of a mutual loss of trust and that the PAMS policy was therefore not applicable.

131. The reason for the non-renewal decision provided to the Applicant was her bad performance. The Respondent is bound by the reasons given at the time of the decision. It is inappropriate for different reasons to be raised at such a late stage of the proceedings.

132. In any event, the Tribunal observes that the PAMS policy states at sec. 1.3 of the *D s r nt n r tt proDss*

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least from her point of view this was not a situation that had reached a final impasse. As a matter of fact, the loss of trust, if any, was not mutual.

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- c. The Respondent shall pay to the Applicant six months' net base salary for moral damages;
- d.