

UoB 'DUE DILIGENCE PROCESS' (RESEARCH) Escalation Tree

Background

Discussion at Council highlighted the need for the University to ensure it has appropriate due diligence processes in place for reviewing and, if necessary, approving relationships with external partners in order to help manage financial, ethical or reputational risks of engaging with partners.

This paper sets out the process for identifying financial, ethical or reputational high risk partnerships which relate to research (as opposed to philanthropic giving) such as, fellowships, industrial placements and/or industrial/commercial research contracts. The majority of relationships should not be a concern but we need to be aware of potential issues.

Aim

This document outlines the process for research related due diligence.

'Due Diligence Process' (Research)

The assessment process is based on the following risk management procedures:

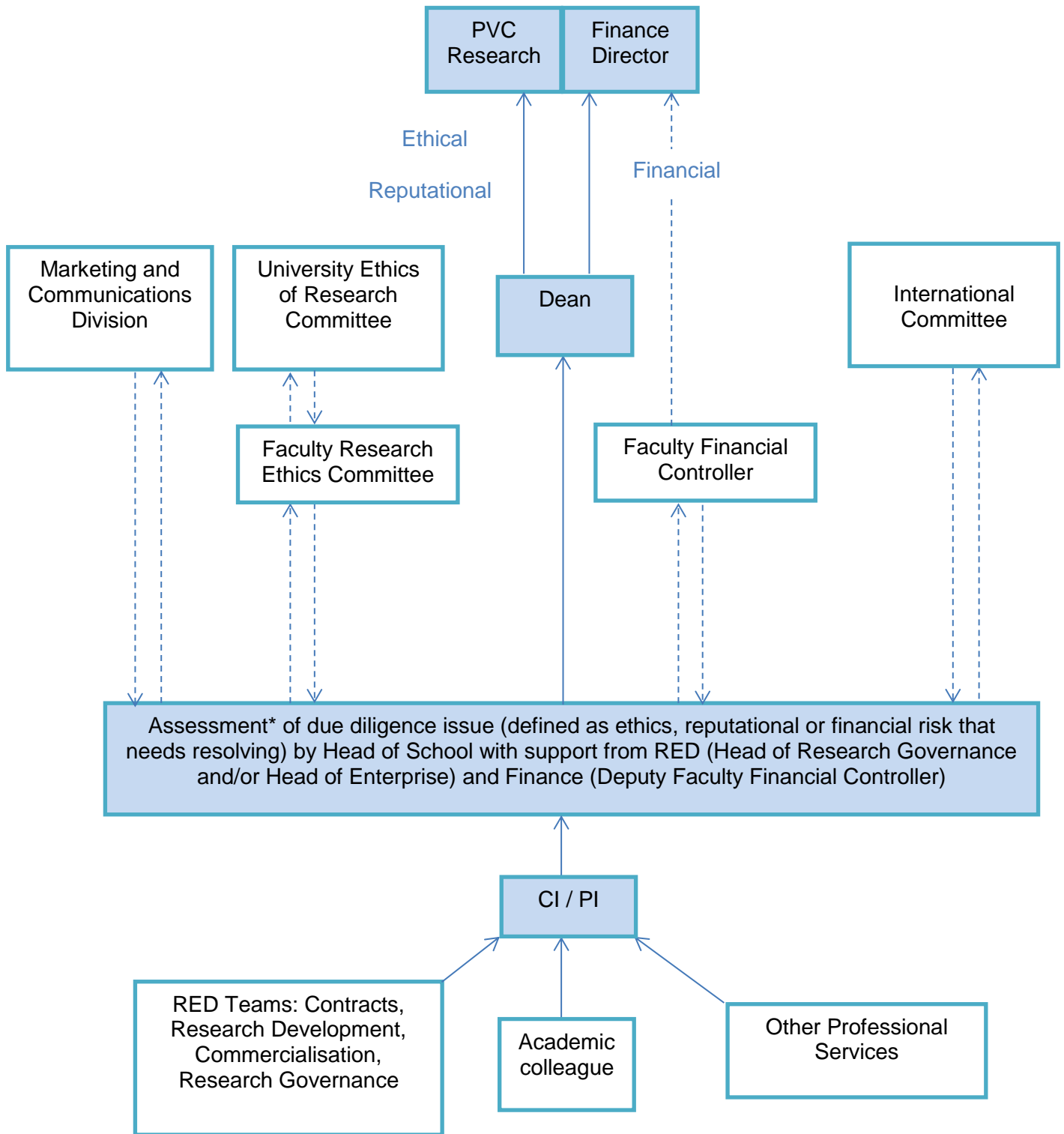
All members of staff involved in research activities or administration (academics and professional services) should have awareness about due diligence issues. There are two specific UoB policies:

- [*Ethics of Research Policy and Procedure*](#)
- [*Research Governance and Integrity Policy \(RG&I\)*](#)

During the early stage of potential collaborations, these policies need to be considered by members of staff and any concerns highlighted as follows: A potential issue may be identified by the investigator, academic colleagues or professional services staff, particularly members of the RED Contracts Team who undertake due diligence for all research contracts in line with the 'Due diligence on funders/collaborators' process (Appendix 1), the Research Development, Project Management, Research Governance and Research Commercialisation Teams as well as other professional services teams.

If there are financial, ethical or reputational implications that cannot be resolved during the initial due diligence assessment, the case will be referred to the Head of School who will undertake a due diligence assessment with support from RED (the Head of Research Governance, the Director of Enterprise) and / or the appropriate Deputy Faculty Financial Controller / Faculty Financial Controller depending on the nature of the issue. The Development and Alumni Relations Division has expertise in this area and is able to provide advice based on their experience. Assessment would be in line with the University's relevant policies depending on the nature of the due diligence issue. Advice on University policies is available from the University Secretary's Office. There is access to guidance from the Faculty Research Ethics Committee and the University Ethics of Research Committee for ethical issues, advice from the Marketing and Communications Division for potential reputational issues and support from the Faculty Financial Controller for financial queries. Issue can be resolved at this level if assessment against University policies results in a clear, transparent and unambiguous decision to proceed or cease the activity.

If a decision cannot be made at this level the issue is referred to the Dean with feed-back about the due diligence issues identified. A formal assessment will be undertaken and issues can be resolved with input from the Dean and the Head of School as required at this level or may be referred to the Financial Director and / or the PVC Research who will make a decision. Appeals against any decision can be escalated up the flow diagram for final resolution.



* Assessment would be in line with the University relevant policies depending on the nature of the due diligence issue: RG&I, Ethics, Purchasing and the Financial Regulations. Advice on University policies is available from the University Secretary's Office.

Issue can be resolved at this level if assessment against University policies results in a clear, transparent and unambiguous decision to proceed or cease activity. If not, escalate to next level. Appeals against any decision can be escalated up the flow diagram for final resolution.

Due Diligence – RED Contracts Team Actions:

Background:

In undertaking its function of reviewing, drafting and negotiating all research-related contracts for the University, a Contracts Specialist in the Research and Enterprise Development Contracts Team (REDCT) must ensure the legitimacy of all aspects of the proposed agreement, before advising a recommendation for signature by the University delegated authority for that particular agreement.

The review and negotiation will determine the clarity of the benefit to risk position for the subject matter of the agreement, and the Contracts Specialist will offer their opinion as to whether this is an adequate outcome for the particular circumstances. The agreement will state the mutual obligations of the parties in their actions and the mechanisms and rights each has to resolve disputes and defaults during the term of the agreement.

A critical aspect of the Contracts Specialist's task in delivering this function is to undertake 'due diligence' on a number of necessary key facts and principles that will protect the University's interests when entering into legal contracts with other parties.

Due Diligence:

This term is mainly used in the following ways in the scope of contract negotiations:

- It can have specific operating aspect in that an obligation must be undertaken to a reasonable extent and within a reasonable timeframe – as determined by a comparable but independent observer with understanding and competence to offer an opinion, (i.e. 'with due diligence');
- To undertake a review of the appertaining facts and principles in support of executing an agreement ('undertake due diligence').

This guidance identifies those aspects of 'undertaking due diligence' that are important for REDCT to deliver its mission. This aim is to achieve factual and/or clear understanding of the supporting information and premise for the agreement in question.

The following Table identifies the specific aspects of 'Due Diligence' required for every agreement. It outlines the preferred sources of verification:

Condition	Requirement	Verification Source	Responsibility
Capacity	The other Party(ies) are separate legal entities and have sufficient understanding of the obligations set out in the Agreement.	Company's House registration; Dun and Bradstreet (or similar); Web search; Precedent Agreements.	Contracts Specialist
Creditworthiness	Will the funder have sufficient resources to meet the agreed payments over the stated payment period?	D&B or similar; Precedent; Web search;	Faculty Finance/ Financial credit Control
Unsettled claims	Outstanding invoice queries	Ledger	Faculty Finance/Credit Control
Within Remit	Will REDCT manage this Case?	Project/Service s proposal	Contracts Specialist
Escalation	Notification for Information/Guidance	REDCT escalation procedure	Contracts Specialist
Contract or Deed	Determine mechanisms for execution. UoB preference is to avoid Deeds where possible	Draft Agreement	Contracts Specialist
Signature Authority	Determine authorised person	Ordances and derogated authorities	Contracts Specialist
Research Governance	Activity has been registered and authorised in accordance with UoB procedures and policies	Ethics and Governance Policy	PI/Finance (through fEC tool)/RED Governance team (Contracts Specialist acts as back up via ORCA).
Contract Exists	The minimum aspects to create a contract in law are established	Skill and Knowledge	Contracts Specialist
'Allowed' area	The contracting Parties are not on the University embargo list, nor is the planned programme of work	University Policy and Governance team	Contracts Specialist/Escalation
'Controlled' information	No obligation for UoB to disclose or allow use of controlled/commercially sensitive/personal/confidential information contained in the agreement without suitable safeguards	Secretary's Office/ Faculty Finance/ Policy and Governance	Contracts Specialist

Insurance	The University Insurance policies will cover the planned activity	Secretary's Office	PI/Contracts Specialist/Finance
Division of obligations	Obligations in the agreement are clearly attributable to the relevant Party or Parties (noting some individuals can be acting for more than one Party under a contract).	Draft Agreement inc Description of Work	Contracts Specialist