

Ways of working (Unique to Universities)

SOUL Conference
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MinterEllison.

Presenter

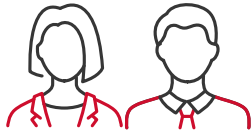
Kate Pennicott
Special Counsel
Education Industry Specialist
MinterEllison

Kate.Pennicott@minterellison.com
+61 421 283 533

Agenda



Unique employment arrangements at Universities



Issues that arise

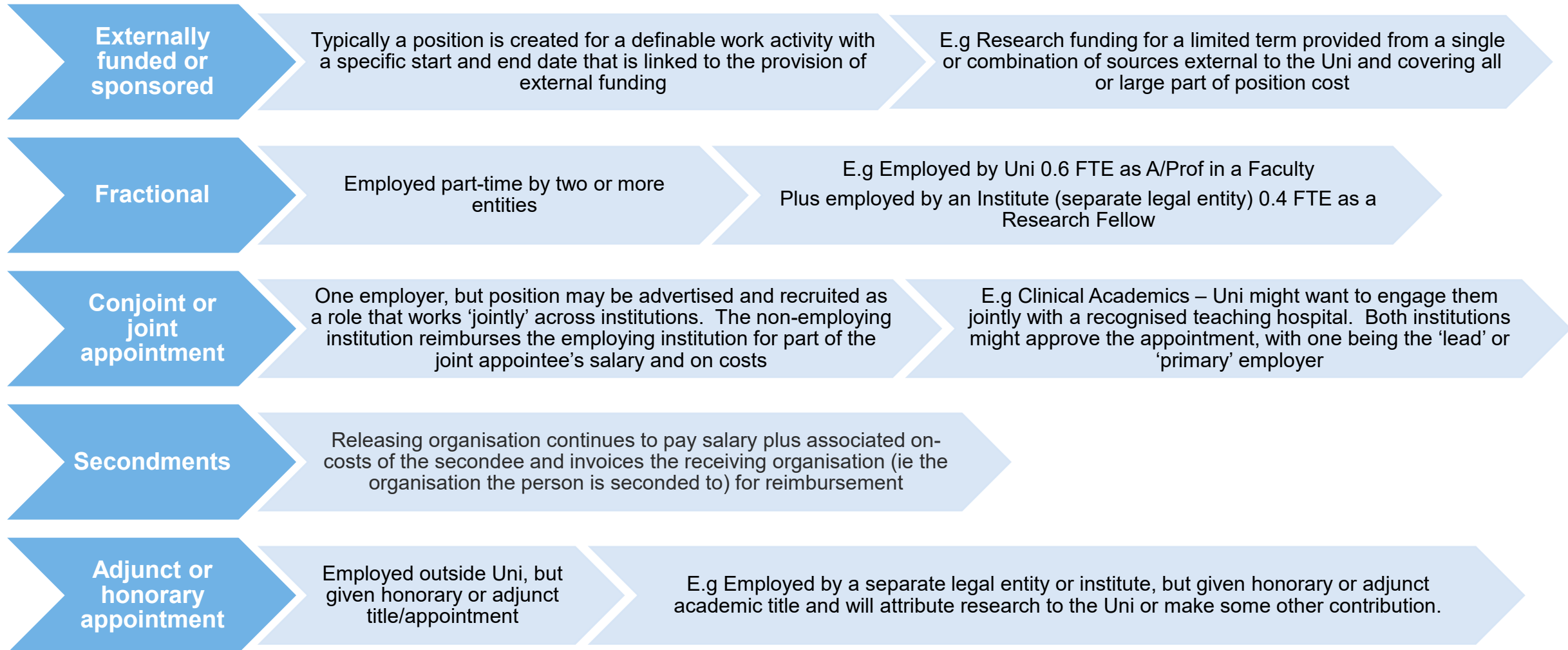


Scenario workshop

Unique employment arrangements at Universities



A snapshot of types of appointments unique to Universities



Externally funded or sponsored

- External funders might request a that a delegate be present on the assessment panel when recruiting for a position
- Need to ensure Uni policy and procedure is followed in selection and recruitment
- Once employed, external funders will not have performance management responsibilities or powers, but may take an interest
- External funders generally have no power to give employees directions (excluding to any extent there are conditions on the provision of funding that relate to research performed)
- Ensure appropriate documentation in place as between external funder and Uni
- Beware of conflicts of interest
- Beware of restrictions on fixed term contract appointments

Fractional, conjoint or joint appointment

- Pitfalls of fractional appointments
- No doctrine of joint employment in Australian employment law
- The primary employer may be responsible for advertising the position, processing applications, making the appointment, and paying the staff member according to the primary employer's established employment practices.
- There might be an arrangement for the primary employer to consult with the secondary employer (not really the employer) during selection and for the secondary employer to approve the final appointment.
- The employee will be a member of staff of the primary employer and subject to the salary scales, superannuation, leave, and other conditions of the primary employer.
- The employee's duties may, however, include a significant commitment to the activities of the secondary employer.
- Lots of other variations on this and issues to tackle in relation to these arrangements.

Secondments

- Secondments out:
 - Staff member seconded out of the University continues to be paid by Uni
 - Uni invoices the host organisation for reimbursement
 - Where a host organisation proposes to pay all costs directly to the employee a secondment is **not** necessary – instead Uni might allow a period of leave without pay
- Secondments in:
 - The releasing organisation continues to pay salary plus associated on-costs and invoices Uni for reimbursement.
 - Need to ensure staff seconded into the Uni have no expectation of further employment once the secondment has ended.
- Seconded employee will be subject to the staff policies and procedures of the host organisation, but host organisation needs to tread carefully with performing managing or taking disciplinary action – needs to be agreed mechanism to 'send back'.
- Documentation should record position re confidential information and intellectual property.

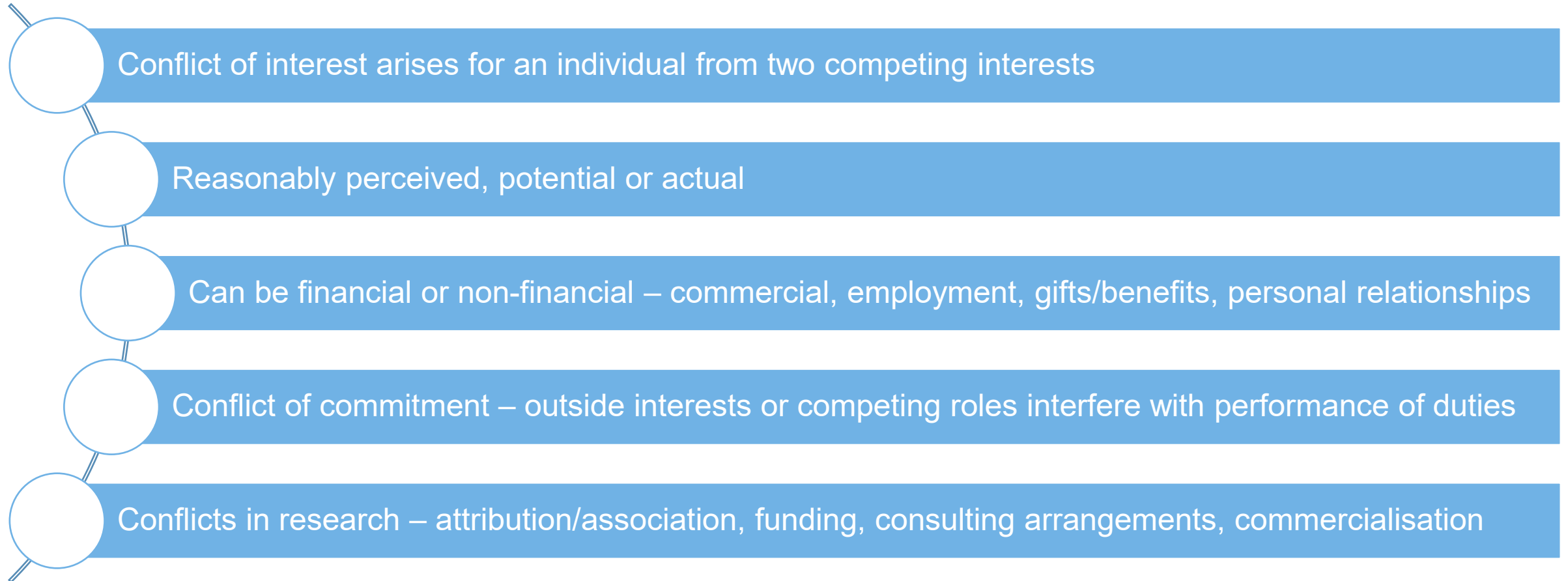
Adjunct or honorary appointments

- Volunteer appointment
- Not an employee and should not hold any key roles in University structure
- No remuneration, but may be reimbursed for some expenses
- Access to University information and facilities
- Might have a separate employment relationship with a partner organisation or institute or hospital
- Acknowledges University in publications and grant applications arising from research involving University collaboration
- Required to comply with University policies and procedures, including in relation to conduct and research integrity
- Usually an application process to be awarded title
- Documentation is key – eg Do you have any privacy consents required from an honorary? How will IP ownership be managed?

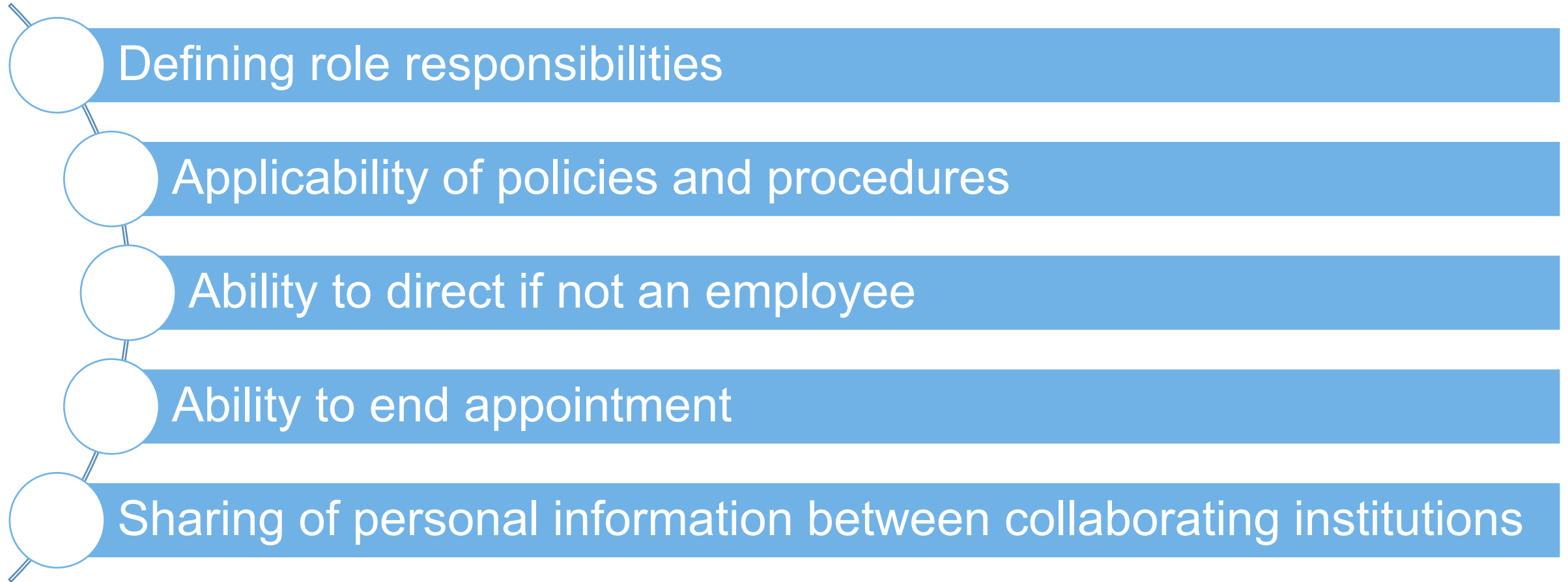
Common issues



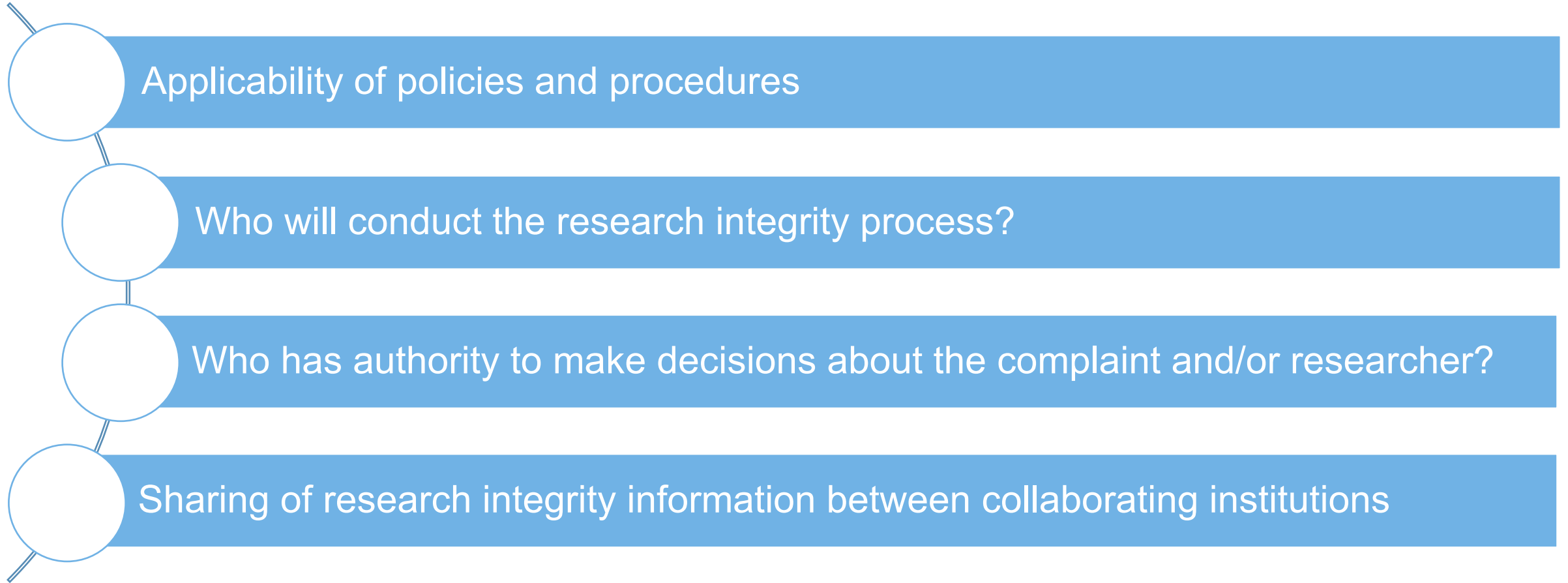
Issue 1: Conflicts of interest/commitment



Issue 2: Supervision, misconduct and discipline



Issue 3: Research integrity



The background of the slide features a close-up, slightly blurred photograph of several dark-stained wooden blocks or boxes arranged in a stepped, geometric pattern. On the left side, there is a large, solid red rectangular area. At the bottom left, there are overlapping geometric shapes: a light gray square, a dark gray square, and a black square. The text "Scenario time!" is written in white on the red background, followed by a white chevron symbol pointing to the right.

Scenario time!



Scenario 1 – Multiple fractional appointments

- A/Prof Kim Berg is a clinical researcher who holds three concurrent fractional appointments with the University, a medical research institute, and a hospital (ie she is employed by all three).
- A/Prof Berg was awarded two research grants (one State and one Commonwealth) to undertake a project. She is the lead researcher on the project.
- The project requires collaboration of the three organisations who employ A/Prof Berg and various legal issues will arise in the course of the project.
- What is the Uni legal team's role/interest in advising regarding this project?
- Can the legal team take instructions from A/Prof Berg in relation to formalising a collaboration arrangement between the three organisations?
- Can the Uni take instructions from A/Prof Berg in relation to legal issues that arise at the outset of the project?
- What arrangements can be set up to avoid conflicts of interest arising?

Scenario 2 – Conjoint appointment

- Dr James Xanthe is employed by a private hospital and works as a surgeon at the hospital.
- Dr Xanthe has a conjoint appointment with the Uni that is held in conjunction with his clinical role at the hospital – he does research with the Uni and attends and works on campus one day per week. The Uni reimburses the hospital for this time.
- Other hospital clinical staff who work with Dr Xanthe at the hospital also have conjoint appointments at the Uni and some have fractional appointments (ie employed by both the hospital and the Uni).
- One of those fractional employees of the Uni has advised her supervisor at the Uni that she is aware that the hospital has received complaints from multiple surgical support staff at the hospital. The complaints allege sexual harassment by Dr Xanthe against many surgical staff at the hospital over a number of years.
- The supervisor contacts the hospital. They advise that they cannot provide any details to the Uni about the matter due to privacy concerns.
- As a conjoint appointee (and non-employee of the Uni), what are Dr Xanthe's obligations to the Uni under the Uni's policies and procedures?
- What obligations does the Uni have in respect of acting on the information provided by its employee?
- Does it matter that there are no allegations that have arisen in connection with Dr Xanthe's work at the Uni?
- Is it correct that the hospital is not able to give the Uni any information about the complaints and/or any investigation?
- What can/should the Uni do in relation to Dr Xanthe's conjoint appointment at the Uni given the complaint?

Scenario 3 – Conjoint appointment

- Dr Judy Lamond is a researcher who holds a joint appointment at the Uni and at a public hospital.
- The Uni is Dr Lamond's employer, but she works jointly across the Uni and the hospital. The hospital reimburses 40% of Dr Lamond's salary and on costs.
- Dr Lamond wishes to instruct the Uni's legal office in relation to a contract between the Uni and the hospital. Is this acceptable?
- What if Dr Lamond is an authorised signatory of the University and seeks to execute an agreement with a division of the hospital on the University's behalf?
- Would the position differ if Dr Lamond was an employee of the hospital rather than the Uni? (ie made available to the University under the joint appointee arrangement)
- Would the position differ if Dr Lamond held fractional appointments (0.5 FTE each) with both the University and the hospital?

Scenario 4 – Adjunct/honorary appointment

- Professor Simon Macsen was previously employed at the Uni for a number of years in a teaching and research role in the Medical School
- Upon retirement, Professor Macsen is offered and accepts part-time employment with a small, locally based medical research institute that regularly collaborates with the Uni.
- The Uni awards Professor Macsen an Honorary Professor appointment and he continues his academic association with the university while he works at the MRI.
- Professor Macsen continues some of the research he conducted while a Professor at the Uni over at the MRI. There is a collaboration agreement in place for this research and papers are published that reference both institutions.
- A complaint is made to the Uni alleging that a number of papers published by Professor Macsen while he was at the Uni contained fabricated data.
- One week later, a separate complaint is received alleging falsification of data in more recent papers published while Professor Macsen has been at the MRI.
- How should these research integrity issues be addressed?
- Can the Uni and MRI share information with each other about the research integrity issues?
- If the allegations proceed to a panel investigation, which institution should oversee the investigation?

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Guide explores

- Workplace reforms,
- Impact of privacy reforms,
- Research integrity,
- Changes in student accommodation requirements,
- Foreign bribery laws, and
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