

Policy Document Control Page

Title: Policy for the Identification, Management, Protection and Exploitation of Intellectual Property

Version: 2

Reference Number: CL82

Supersedes: Version 1

**Description of Amendment(s):
Updated roles and responsibilities**

Originator

Originated By: Reagan Blyth

Designation: Director of Service Modelling, Research & Innovation

Equality Impact Assessment (EIA) Process

Equality Relevance Assessment Undertaken by: Tanya Turgoose

Date ERA undertaken: 10/02/2016

ERA approved by: Stephen Stewardson

EIA approved by Policy Manager on: 18/02/2016

Approval and Ratification

Referred for approval by: Stephen Stewardson

Date of Referral: 01/02/2016

Approved by: Quality Group

Approval Date: 02/02/2016

Date Ratified by Executive Directors: 14th March 2016

Executive Director Lead: Medical Director

Issue Date: 15th March 2016

Circulated by: Performance and Information

Issued to: An e-copy of this policy is sent to all wards and departments

Policy to be uploaded to the Trust's External Website? YES

Review Date: January 2018

Responsibility of: Tanya Turgoose

Designation: Director of Service Modelling, Research & Innovation

This policy is to be disseminated to all relevant staff.

This policy must be posted on the Intranet.

Date Posted: 15th March 2016

1 Introduction

People working in the NHS continuously generate Intellectual Property. It arises from research and development and other activities. The Intellectual Property that Pennine Care NHS Foundation Trust employees generate can improve health care services provided by the NHS. In some cases it is necessary to protect this intellectual property to ensure it continues to benefit the health of our patients and the wealth of the nation.

2 Policy Statement

NHS Policy framework and guidelines impose a duty on NHS Trusts to audit, protect and exploit intellectual property.

This policy supports the effective identification, management, protection and exploitation of intellectual property, and provides employees with a procedure to follow if they have an invention/idea/innovation that may need protecting.

Protection and exploitation of Intellectual Property is intended to facilitate rather than impede the uptake of innovations and their application in improved service delivery and treatment

3 Definitions

3.1 Intellectual Property

Intellectual Property can be defined as products of intellectual or creative activity in the form of novel ideas, innovation or research and development which can be given legal recognition of ownership through Intellectual Property rights such as patents, copyright, design rights, trademarks or know-how. Innovations may also arise from the delivery or management of patient care or in education and training of employees.

4 Scope

This policy applies to:

- All staff who are full or part time employees of Pennine Care NHS Foundation Trust.
- Staff with Trust contracts of employment whose payroll costs are partially or wholly funded by another party (e.g. medical charity, a government department) unless the contract between Pennine Care NHS Foundation Trust and that party assigns ownership of any IP to that party.
- Staff who have a part-time Trust contract and who are self-employed or otherwise employed part-time. Where IP is generated during this non-Trust employment, which is within the specialist area of the Trust employment, Pennine Care NHS Foundation Trust owns the IP. (Flexibility will be

exercised where the non-Trust employment gives a greater opportunity for IP to arise)

- Trainee professionals hosted by Pennine Care NHS Foundation Trust who generate IP during the course of their Training.
- Staff who generate IP outside normal working hours and/or away from the place of work, where the IP relates to their area of employment within Pennine Care NHS Foundation Trust.
- Trust staff seconded to another organisation or employees of another organisation hosted by the Trust under contract are subject to the arrangements for the ownership of IP agreed between Pennine Care NHS Foundation Trust and that organisation.
- Staff with joint/honorary contracts with another organisation. (Where a Trust employee holds an Honorary Contract with another organisation any Intellectual Property generated will be owned by Pennine Care NHS Foundation Trust unless there is a formal written agreement to the contrary.)

5 Duties

5.1 Chief Executive

It is the responsibility of the Chief Executive to manage and protect Intellectual Property for the Trust and this responsibility has been delegated to the R&D Lead (Medical Director).

5.2 All staff

All employees have an obligation to inform the Trust, via the Innovation & Research (I&R) Department, about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement

For information and advice on any matter regarding IP and its protection staff should contact the I&R Department in the first instance.

Staff working on projects which generate IP must keep written, dated records of their activities and results (section 6.7 refers).

Staff are responsible for keeping safe any important original documents, such as confidentiality disclosure agreements, relating to IP. They should either provide copies of these to the I&R Department or provide information on the location of the documents.

5.3 I&R Department and R&D Lead

The I&R Department is the first point of contact for information and advice on any matter regarding Intellectual Property and its protection.

In accordance with relevant guidance, the Trust has appointed *TrusTECH*[®], the NHS Innovation Hub for the North West, as its advisor organisation to give advice and assistance in the protection, management and commercialisation of its Intellectual Property. *TrusTECH*[®] will keep all information confidential unless it is given consent to the contrary. The I&R Department will refer members of staff to *TrusTECH*[®] as appropriate.

Further information on *TrusTECH*[®] can be found by visiting the website: www.trustech.or.uk.

Audits of IP may periodically arranged by the R&D Office via *TrusTECH*[®] to identify potential IP arising from R&D and other activities and ensure action is taken to protect any IP that may later be exploited.

The R&D Lead, via the I&R Department, in consultation with the inventor and other specialists, will decide on the potential for an idea/invention to be exploited. Information reported should effectively demonstrate the potential market and the likelihood of success of the venture.

The I&R Department will maintain a register of all the IP owned by the Trust, including the date and time it was reported to the I&R Department.

The I&R Department will retain copies and/or a record of the location of any important original documents, such as confidentiality disclosure agreements, relating to IP.

Any IP that is licensed, sold or otherwise transferred to another organisation will be negotiated in the best interests of the Trust by professional advisers.

6 PROCEDURE

6.1 Initial Enquiries

For information and advice on any matter regarding IP and its protection staff should contact the I&R Department in the first instance (0161 716 3993 researchdevelopment.penninecare@nhs.net). The I&R Department will refer the enquiry to *TrusTECH*[®] as appropriate.

6.2 Ownership of Intellectual Property

Ownership of IP, in most cases, rests with the Trust employing the person(s) who generated it. This applies to all Intellectual Property produced by Pennine Care NHS Foundation Trust employees in the course of their normal duties. Any activities outside the normal duties of the employee that generate IP will belong to the employee. This is in accordance with the Intellectual Property Act 2014, Patents Act 1977 and the Copyright, Designs and Patents Act 1988. However, ownership may be located in collaborating organisations better placed to exploit the Intellectual Property, with rights to any benefits associated in proportion to input.

6.3 Collaborative Projects

If work/research is conducted by an employee in partnership with another organisation, a formal agreement stating ownership (or sharing) of generated Intellectual Property is required. The R&D Lead will have primary responsibility for developing Intellectual Property sharing agreements with collaborating institutions.

6.4 Particular Arrangements for Employees

Employees will sometimes be engaged in contracts for R&D, which are funded wholly or in part by external sponsors (e.g. Universities, medical charities, industry). These contracts will ensure that adequate provision is made for the ownership and the exploitation of arising Intellectual Property with the Trust retaining or obtaining ownership when appropriate. Employees should ensure that they understand their position and their obligations within these contracts, taking their own independent advice as necessary.

6.5 Publication

It is the Trust's policy actively to encourage employees to publish their work and the Trust will not normally object to an employee's right to be named as an author of copyright material. *However*, if Intellectual Property is to be exploited, all work needs to be kept confidential until it is correctly protected.

On publication, copyright is usually assigned to the journal and this can limit the use of the work (e.g. internal & external presentations, training materials) within and external to the Trust. It is therefore recommended that the limits set by the journal with regard to the use of the work are reviewed before signing any agreements.

Advice should be sought from the R&D Lead via the I&R Department before publicly disclosing any work.

6.6 Confidentiality

To maximise the potential benefits of Intellectual Property, it is often necessary to keep the details confidential in the first instance. This allows development work to be carried out without alerting competitors to its existence and increase the chance of a company being interested in investing time and resources to its development.

Any IP with the potential to be exploited must not be disclosed to anyone outside the Trust (including presenting papers or posters at conferences, abstracts, chapters in books and any other verbal or written communication) until IP advice has been sought from the I&R Department. IP cannot normally be protected (especially in the case of filing patents) once prior disclosure has occurred, no matter how informal.

If information needs to be shared with another person/organisation (e.g. to gain advice or funding), then the information can be kept confidential if the person/organisation is asked to sign a confidential disclosure agreement before the details of the Intellectual Property are disclosed to them. The R&D Lead will arrange for a confidential disclosure agreement to be created if required. The agreement will be signed on behalf of the Trust by the R&D Lead (Medical Director) who is authorised by the Chief Executive to sign such documents on behalf of the Trust.

6.7 Record keeping

It is important for staff working on projects which generate IP, to keep written, dated records of their activities and results. This is especially important for patent application purposes in the US, since the US has a policy of “first to invent” rather than the “first to file” rule in the UK. When exploiting IP it is imperative that all correspondence, including emails, telephone conversations and meetings are logged to provide a detailed account of any discussions relating to the IP. This is in accordance with clinical governance, research governance and good clinical practice guidelines for R&D.

A proforma innovation record is available from the I&R Department (0161 716 3993 researchdevelopment.penninecare@nhs.net)

The I&R Department will maintain a register of all the IP owned by the Trust, including the date and time it was reported to the I&R Department. It is also their responsibility to keep safe any important original documents, such as confidentiality disclosure agreements, relating to IP. It is advisable that key members of staff concerned should also retain copies of these documents.

6.8 Revenue-sharing with inventors

The Trust wishes to encourage full participation of employees in the creation and commercial exploitation of IP. The policy will therefore be to reward staff that have contributed substantially to the generation of IP, which has subsequently provided revenue through exploitation. Such revenue will be shared between the Trust and the inventor according to the revenue sharing formula. In cases where several staff have been involved in generating the IP, the proportion of income allocated to inventors will be divided between them on the basis of relative inventive contributions. In all cases the shared revenue will be the net of any protection and exploitation costs (e.g. patent costs).

Cumulative net income	Inventor	Research Team / Department	R&D Directorate	Trust
First £50,000	50%	10%	20%	20%
Next £100,000	40%	10%	25%	25%
Next £100,000	30%	10%	30%	30%
Over £250,000	25%	10%	32.5%	32.5%

The above table is to be used as a guide only. The Trust will consider the revenue sharing of associated Universities as the basis for our own on a project-by-project basis. By doing so, the potential for conflicts within inter NHS/University groups is reduced.

6.9 Decisions on Exploitation

It is the role of the R&D Lead (Medical Director) in consultation with the inventor and other specialists, to decide on the potential for an idea/invention to be exploited. In strong cases, the information reported should effectively demonstrate the potential market and the likelihood of success

Where the Trust chooses not to exploit IP arising from the work of Trust employees, it will, in most cases, assign the IP back to the inventor, who may wish to pursue its further development.

6.10 Routes of Exploitation

Intellectual Property generated by Trust staff will be protected accordingly (e.g. by copyright) and then shared freely with other NHS organisations. However, in some instances, the Intellectual Property can only be adopted if a commercial product/service is available. In these instances, the Trust will explore commercialisation of the Intellectual Property such as by licensing the Intellectual Property to a company in return for a royalty or by assignment of the Intellectual Property to a spin-out company in return for a stake in the company.

6.11 Contract Negotiations

Any Intellectual Property that is licensed, sold or otherwise transferred to another organisation will be negotiated in the best interests of Pennine Care NHS Foundation Trust by professional advisers.

6.12 Disputes of Ownership

If the ownership of Intellectual Property is disputed, dated written records relating to the Intellectual Property in question will be assessed to establish the inventor(s) and their proportionate contribution. If such material is not available, the Chief Executive of Pennine Care NHS Foundation Trust will make a final decision, taking professional advice if necessary.

6.13 Inventors who leave the employment of the Trust

Although the Trust continues to be the owner of the IP, the inventor will still be entitled to the relevant percentage of any income received.

When a member of staff leaves employment of the Trust, as author of a piece of IP they can negotiate with the Trust about their ability to use any IP that they created in their new role away from the Trust. Staff can seek to be given a licence to use the IP in their future role or the staff members new organisation may need to purchase a licence from the Trust. In any case the Trust will retain ownership and can reserve the right to refuse the use of a piece of IP. Such requests as these will be assessed on a case by case basis.

6.14 Resource Issues

The Trust's basic arrangement with *TrusTECH*[®] makes initial advice and training available.

The Trust will fund initial protection (e.g. patent) and development of Intellectual Property if the Intellectual Property appears to have real potential to benefit healthcare, improve services and/or save the NHS money.

Funding for protecting Intellectual Property, developing and trialling prototypes may also be gained from applying to external funding bodies (e.g. Department of Trade and Industry, Department of Health) and/or by working with commercial partners.

7 Complaints

Service users who feel that their information has been breached may use the Trust's complaints procedures. They may also complain to the Information Commissioner. Advice on this can be obtained from the Information Governance Manager.

8 Dissemination/Circulation of the Policy

8.1 The policy will be sent out via electronic mail to all policy pack holders.

8.2 It will also be placed on the Trust's intranet and internet sites.

9 Staff Training and Awareness

Training and awareness sessions will be made available to all staff via the Clinical Governance training programme.

10 Policy Review

The policy will be reviewed in two years by the Research & Development Manager.

11 Associated Policies

- Policy on the Electronic Recording of PID
- Records Management policy
- Electronic Mail policy
- Information Security policy
- Access to Health Records policy
- Data Protection policy
- Information Sharing policy
- Information Governance policy
- Press protocol
- Conduct and Disciplinary policy

12 Designated Accountability

The persons accountable for overseeing the implementation of this policy are the Senior Information Risk Owner and the Caldicott Guardian.

13 Designated Responsible Office

The person responsible for the operation, monitoring and review of this policy is the Research & Development Manager.

14 Reference Documents

The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS”: Department of Health, 2002.