

INTELLECTUAL PROPERTY POLICY

POLICY REFERENCE NUMBER	DHS 32	
AUTHOR	Shirley Waters	
LEAD DIRECTOR	NAME Dr Stephen Ward	SIGNATURE 
CONSULTATION PROCESS – list the groups/committees that this policy been to and commented by Please provide dates	Policy Group, Management Team - Provider	
EQUALITY IMPACT ASSESSMENT	YES	NO
ENVIRONMENTAL IMPACT ASSESSMENT	YES	NO
BRIEF SUMMARY OF THE POLICY	<p>To ensure that Intellectual Property arising in the organisation is managed within 'A Framework and Guidance on the Management of Intellectual Property in the NHS'. This is in accordance with the Directions relating to additional powers under Section 5 of the Health and Social Care Act 2001, (DH, 2002).</p> <p>This will allow the NHS to develop as an organisation which has innovation at the heart of its business, generating wealth for better health.</p>	
FINANCIAL RISK If yes, please add comments	YES	NO
	Comments Place potential loss of revenue from innovations	
REPUTATIONAL RISK If yes, please add comments	YES	NO
	Comments Failure to have acknowledged innovations & copyright	
WORKFORCE IMPLICATIONS If yes, please add comments	YES	NO
	Comments Innovations generated in the course of work	

	in CLancs taken from the organisation without permissions. Income generated not shared with the organisation.
APPROVING COMMITTEE(S) AND DATE	NHS Executive Committee – 20/10/2010
RATIFICATION DATE	October 2010
REVIEW DATE	March 2013

NHS Central Lancashire is committed to ensuring that, as far as it is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on the basis of their age, disability, gender, race, religion/belief or sexual orientation.

Should a member of staff or any other person require access to this policy in another language or format (such as Braille or large print) they can do so by contacting the communications department or the relevant policy holder. NHS Central Lancashire will do its utmost to support and develop equitable access to all policies.

Managers are responsible for ensuring staff, within their area of responsibility, are aware of NHS Central Lancashire policies and that staff adhere to them.

Managers are responsible for ensuring that a system is in place for their area of responsibility that keeps staff up to date with new policy changes.

Staff are responsible for ensuring they are familiar with policies, know where to locate the documents on the NHS Central Lancashire's website, and seek out every opportunity to keep up to date with them

Independent contractors are expected to identify a lead person to be responsible for ensuring staff employed within their practice are aware of NHS Central Lancashire policies.

This policy is individual to NHS Central Lancashire. NHS Central Lancashire does not accept any liability to any third party that adopts or amends this policy.

© NHS Central Lancashire

CONTENTS

		Page
1	INTRODUCTION	5
1.1	Background	5
1.2	Scope	5
1.3	Principles	6
2	INTELLECTUAL PROPERTY POLICY	6
2.1	Overarching Policy Statement	6
2.2	Basis for this Policy	6
2.3	Patents	7
2.4	Licence/Assignment	7
2.5	Copyright	7
2.6	Design Rights	8
2.7	Unregistered Design Rights	8
2.8	Registered Design Rights	8
2.9	Trade Mark	8
2.10	Know-How	8
2.11	Joint/Honorary Appointments/Trainees	8
2.12	Externally Funded Work	8
2.13	Commissioned Work	9
2.14	Collaborative Projects	9
2.15	Independent Providers	9
2.16	Disputes of Ownership	9
3	IMPLEMENTATION	9
3.1	Policy Availability	9
3.2	Process for Monitoring Compliance	10
3.3	Policy Review	10
4	REFERENCES	10
5	GLOSSARY	10
6	APPENDICES	11
Appendix 1	Declaration	11
Appendix 2	Sharing of Intellectual Property	11

1 INTRODUCTION

1.1 Background

This policy outlines arrangements for the effective management of Intellectual Property (IP) within the organisation.

Intellectual Property is the novel or previously undescribed tangible output of any intellectual activity. Intellectual Property has an owner, it can be bought, sold or licensed and must be adequately protected. It can include inventions, processes, software, data, written works, designs and images (DH, 2002).

Background

NHS Central Lancashire Primary Care Trust (PCT) needs to ensure that Intellectual Property arising in the organisation is managed within 'A Framework and Guidance on the Management of Intellectual Property in the NHS'. This is in accordance with the Directions relating to additional powers under Section 5 of the Health and Social Care Act 2001, (DH, 2002).

This will allow the NHS to develop as an organisation which has innovation at the heart of its business, generating wealth for better health.

1.2 Scope

- a) All Staff that are full or part time employees of the PCT
- b) Staff with PCT contracts of employment whose payroll costs are partially or wholly funded by another party (e.g. medical charity, government department) unless the contract between the PCT and that party assigns ownership of IP to that party.
- c) Staff who have a part-time PCT contract and who are self-employed or otherwise employed part-time (e.g. private practice). Where IP is generated during this non-PCT employment which is within the specialist area of the PCT employment the PCT owns the IP. (Flexibility will be exercised where the non-PCT employment gives a greater opportunity for IP to arise).
- d) Trainee professionals hosted by the PCT who generate IP during the course of their training.
- e) Staff who generate IP outside normal working hours and/or away from their place of work, where the IP relates to their area of employment within the PCT.
- f) PCT staff seconded to another organisation or employees of another organisation hosted by the PCT under contract are subject to the arrangements for the ownership of IP agreed between the PCT and that organisation.

- g) Staff with joint or honorary contracts with another organisation (e.g. University).
- h) Independent Providers who assign their IP to their Primary Care Trust in return for a share of any income generated.

1.3 Principles

Staff are encouraged and enabled to participate in the generation of IP as part of a commitment to delivering high standards of patient care.

Ideas arising out of routine work as well as research may result in commercially valuable IP which could lead to improvements in patient care through new innovations and the possibility of significant financial benefits to the Inventor and the NHS.

This policy advocates maintaining a balance between the legitimate need of the PCT to protect its interests alongside the provision of a creative working environment.

Any revenue generated through successful exploitation of IP will be shared with the members of staff responsible for the innovation (see Appendix 1).

2 INTELLECTUAL PROPERTY POLICY

2.1 Overarching Policy Statement

Intellectual Property created by any person during the course of his/her employment with Central Lancashire PCT, or training arising out of his/her employment, belongs to NHS Central Lancashire. Where the PCT chooses not to exploit IP arising from the work of PCT employees, it will in most cases assign the IP back to the inventor.

2.2 Basis for this Policy

'A Framework and Guidance on the Management of Intellectual Property in the NHS' (DH, 2002) has the following objectives:

- To manage inventions within a national framework for supporting innovation
- To manage the framework within which NHS trusts, Primary Care Trusts and Independent Providers of NHS Services can operate.
- To give employment Guidance – which provides good practice guidance on employment conditions and arrangements.
- To provide an example of a Statement of Partnership

The Framework can be found on the DH website at the following address:
www.dh.gov.uk/assetRoot/04/07/73/07/04077307.pdf

Research out-puts and resulting IP often represent a considerable investment by the PCT and are potentially of significant value to the PCT. These should be treated as confidential and must not be disclosed to any third party without prior written approval of the PCT.

For the avoidance of doubt the requirement to obtain this approval applies to submission of papers, abstracts or theses for publication and grant proposals.

In accordance with the Framework & Guidance on Intellectual Property the PCT 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 IP. *TrusTECH*[®] will keep all confidential information confidential unless it is given consent to the contrary. The Research & Development Manager will refer members of staff to *TrusTECH*[®] as appropriate.

INTELLECTUAL PROPERTY

2.3 Patents

The decision to protect IP by patenting rests with the Board, however the responsibility is delegated to the PCT Governance Lead. The PCT is the vehicle for holding patents and other IP, but is free at its absolute discretion to engage another organisation to exploit the PCT's IP on its behalf.

2.4 Licence/Assignment

The decision to license or assign IP rests with the PCT Board and is delegated to the organisation's Governance Lead. This would include patent applications, design right, copyright (including computer software) or know-how, whether to a commercial company or to an employee of the PCT or to agree contractual terms with a technological transfer company and/or other commercial partner(s).

2.5 Copyright

Copyright is owned by the PCT, however in order to encourage employees to publish freely in academic or professional journals or through an electronic medium the PCT will normally assign to the author the ownership of copyright in any work to be published and will waive any claim to financial benefits arising from the publication.

There will be some items of copyright (eg. Training material, patient information leaflets, software, design drawings) which the PCT will wish to retain and not assign.

Copyright is achieved automatically, when the work is created. It is advisable to attach a copyright statement, such as:

©2006 ABC NHS Trust. All rights reserved. Not to be reproduced in whole or in part without the permission of copyright owner.

2.6 Design Rights

Design Right protects against copying of the shape or configuration of an article. Design Right may exist in addition to other forms of protection such as Patent, Copyright or Trade Mark.

2.7 Unregistered Design Rights

Unregistered Design Rights are not directly associated with appearance. The right can protect internal and external features but only gives protection against copying of features of shape and configuration (e.g. physical design of computer chips, engineering components and architectural drawings)

2.8 Registered Design Rights

In some new products, the novelty lies not in a new idea or principle but in their appearance. Registered Design Rights usually cover commercial objects with a novel or individual appearance.

2.9 Trade Marks

A trade mark is a sign or symbol that is used to distinguish a product or service from that produced or supplied by another business. It could be the design of a label or the shape of a product's packaging (e.g. the cocoa cola bottle). The term "sign" includes logos, slogans, words, colours and 3-D shapes.

2.10 Know-How

Confidential information or "Know-How" is information which may be commercially or technically valuable and which is regarded as secret. It may for example, include information on industrial processes or be a list of clients

All business partners should be bound by a Confidential Disclosure Agreement (CDA)

Know-How and confidential information can be bought, sold and licensed like any other form of IP and persist indefinitely, as long as they remain "secret",

OWNERSHIP OF INTELLECTUAL PROPERTY

2.11 Joint/Honorary Appointments/Trainees

If staff are jointly employed by more than one organisation (e.g. PCT and University), or who have an honorary contract with another organisation, or are employed by one organisation but hosted by another, then an agreement should be in place between the two organisations stating who will own any IP generated by that person.

2.12 Externally Funded Work

If IP is generated by a PCT employee through work that is funded by an external body (e.g. a research project funded by a medical charity) then it is possible that the funding agreement includes a statement regarding IP ownership such that the funding body may own the IP instead of the PCT.

2.13 Commissioned Work

If the PCT commissions work by a third party who is not a PCT employee (e.g. development of a database by a software company), then the PCT will not necessarily own the IP generated by the work. It is therefore advisable for the contract with the supplier to include provision for the PCT to retain all IP rights in the output of the work.

2.14 Collaborative Projects

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

2.15 Independent Providers

Independent providers of NHS Services usually own the IP that they generate during the course of providing NHS Services. However, an independent Provider that generates IP from NHS funded R&D is required by HSC 1998/106 to share any benefit with the Department of Health. Independent Providers may also generate IP from their patient care activities and utilise NHS resources to develop this IP. Generally an Independent Provider does not have the resources or expertise to fully develop and exploit the IP and it will be the Primary Care Trust which is best placed to arrange this. The 2002 Framework and Guidance document encourages these Providers to transfer ownership of such IP to their PCT, which will then be responsible for its exploitation. If the Independent Provider agrees to transfer ownership to the PCT then the requirement to share benefits with the DH will be waived. Any benefits derived from the exploitation of the IP by the PCT will be shared with the Independent Provider as if they were an employee of the PCT.

2.16 Disputes of Ownership

Where there is a dispute about the identity of inventor(s) of IP, dated written records associated with the generation of IP will be used to establish the inventor(s) of the IP and to determine their level of contribution/remuneration. The Chairman of the PCT will decide, taking such professional advice as appropriate, and this decision will be final.

In the event of any dispute arising from the interpretation of this policy, PCT employees have recourse to the PCT grievance procedure to resolve the dispute.

3 IMPLEMENTATION

3.1 Policy Availability

This policy will be disseminated to staff through the PCT's communication channels, i.e. Team Brief, Best of Health and the Intranet. Staff awareness of the policy and its content will further be supported by:

- Inclusion in contract of employment with NHS Central Lancashire
- IP Policy posted on the PCT Intranet
- Information provided in Research Information Pack

3.2 Process for Monitoring Compliance

Compliance will be monitored through records of registered intellectual property held by the R&D Manager and referrals to TrustTECH[®]

Audit of PCT innovation activity against registration of IP with the R&D Manager

3.3 Policy Review

The Audit and Research and Development Manager will review the policy annually and submit any recommendations for change to the responsible director. It is the responsibility of the Director to identify the most appropriate ratifying Committee/Sub-committee to formally approve any changes to procedures/policies and authorise their implementation.

4 REFERENCES

Department of Health (2002). *The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS*. London, DH Publications. Available from: www.dh.gov.uk/assetRoot/04/07/73/07/04077307.pdf [Accessed 13th November 2010]

Department of Health, (1998). *The Management of Intellectual Property and Related Matters: An Introductory Handbook for R&D Managers and Advisors in NHS Trusts and Independent Providers of NHS Services*. London, DH

Department of Health, (1998). *Policy Framework for the Management of Intellectual Property within the NHS arising from Research & Development*. Health Service Circular 1998/106, London

Health and Social Care Act 2001, HMSO

Leeds Teaching Hospitals NHS Trust, (2004). *Policy on Intellectual Property (IP)*.

NHS Innovations, (2003). *IP Framework and Guidance*. Available from: <http://www.nic.nhs.uk/Pages/NHSIPGuidance.aspx> [Accessed 13th November 2010]

United Bristol Healthcare NHS Trust, (2002). *Essential Information for Researchers: Intellectual Property*.

Lancashire Teaching Hospitals NHS Trust in Consultation with TrustTECH[®], (2005) *Intellectual Property Policy*.

4 GLOSSARY

None

APPENDIX 1

Most of this policy has been adopted and reproduced from the *TrusTECH*[®] Example Policy for the Management of Intellectual Property, 2008.

'*TrusTECH*[®] Accepts no responsibility for the use that may be made of any advice or information set out...' within their document.

APPENDIX 2

The cumulative net income received by the PCT will be shared as follows:

Cumulative Net Income	Inventor	Central Lancashire PCT
First £5,000	50%	50%
Next £10,000	50%	50%
Next £10,000	60%	40%
Over £25,000	70%	30%

Anything income rising to more than the above is to be negotiated with the PCT

Notes

- ◆ Net income refers to the income remaining after recovery of patenting and other out of pocket costs incurred by the PCT in identifying, protecting, developing and exploiting the IP. PCT costs include the costs incurred by the researcher; the clinical directorate within which the researcher works; the R&D Department and other PCT departments directly contributing resources to the development process.
- ◆ Where the employee produces more than one item of IP, the income generated by subsequent IP (unless the subsequent IP is unrelated) will be aggregated with income from the first IP for the purpose of determining the employee's share according to the sliding scale of net income.
- ◆ Where there is a contractual agreement with a funding sponsor to share the revenue from successful exploitation of IP arising from research funded by that sponsor, the Cumulative Net Income to the PCT is the income from exploitation remaining after deduction of the sponsor's share.