



**Wandsworth
Clinical Commissioning Group**

INTELLECTUAL PROPERTY POLICY

Version 1.0

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Lead Director: Director of Corporate Affairs, Performance and Quality
Lead Manager: Business Manager

NOTE: This is a CONTROLLED document. Any documents appearing in paper form are not controlled and should be checked against the server file version prior to use.

Introduction

1. *'The NHS as an Innovative Organisation; A Framework and Guidance on the Management of Intellectual Property (IP) in the NHS'* (2002) places a duty on healthcare organisations to audit, protect and exploit its IP and it is the intention of the CCG to be at the forefront of initiatives. This document outlines a policy for the effective management of IP and gives a brief definition of what intellectual property is. It also has information on who to contact if staff have an invention/idea/innovation that they think may need to be protected, or if they require general advice on IP arising from their work.
2. This policy should be viewed by staff and managers as a guide to the procedures that must be followed. It should not be considered a replacement for legal advice.
3. The Department of Health describes intellectual property (IP) as the novel or previously undescribed tangible output of any intellectual activity. It has an owner, it can be bought, sold or licensed and must be adequately protected. It can include inventions, industrial processes, software, data, written work, designs and images. Examples of IP are potential new treatments, new diagnostic techniques, new pieces of equipment or new drugs, as well as training packages, management systems, and software. Most innovations are best implemented by making them freely available through normal knowledge management processes when they have demonstrated a quantifiable health gain. However, some innovations are inventions which can be realised only through commercial development, and for these the professional management of associated intellectual property (IP) is crucial. Appropriate protection of IP should facilitate, rather than impede, uptake of inventions.
4. Intellectual property rights (IPR) define the legally protected rights, which enable owners of items of intellectual property to exert monopoly control over the exploitation of these rights, usually with commercial gain in mind. They give the right to stop others exploiting this property, sometimes for a fixed period, sometimes indefinitely.
5. Inventions are normally protected by patents, literary and artistic work by copyright, design and design drawings by registered design rights, engineering components and architectural drawings by unregistered design, brand names and company logos by trademarks.
6. Less tangible items such as know-how, trade secrets and general background techniques are further types of intellectual property and these are protected by not releasing information about them; they can thus be protected indefinitely. In spite of the rather intangible nature of know-how, it can be licensed like other items of intellectual property.
7. Income can be obtained through licensing, through assignment or by sale of rights. A licence allows a licensee exclusive or non-exclusive use of the intellectual property rights for a defined period and in a defined geographical area, but the ownership remains with the provider. The licence will include some form of financial consideration to the provider such as a lump sum on signature and a royalty on sale of products based on the intellectual property rights. An assignment transfers ownership, just like any form of property, with an assignment document signed by both parties. Again there would be a financial consideration, probably a lump sum on signature plus a continuing royalty on

sales. A sale would transfer ownership for a once-and-for-all fee at the completion of the sale.

8. This policy explains the principles, procedures and processes which should be followed by Wandsworth CCG staff that have generated or think they may generate IP.
9. The policy applies to the following:
 - All staff employed by the CCG
 - Agency staff
 - Independent contractors
 - Board members
 - Clinical leads
 - Staff on honorary contracts whose payroll costs are partially or fully funded by a third party under a formal arrangement
 - Trainee professionals and students hosted by the CCG for the provision of work or vocational experience

General Principles and Procedures

10. These management arrangements are based on the model arrangements of 'A Framework and Guidance on Management of Intellectual Property in the NHS' (DH, 2002).
11. The principles of Intellectual Property (IP) development and related issues are outlined in this IP policy, which may be updated from time to time with the approval of the CCG Board or any authority that succeeds the governing body legitimately.
12. The CCG will pursue all reasonable endeavours in IP developments and knowledge transfer but cannot hold any responsibility for any unsuccessful knowledge transfer, developments, procedures or outcomes.

Ownership of IP

13. The CCG recognises that from time to time, during the normal course of employment, an employee may generate IP which may have value in the delivery of better services or patient care. IP which arises in, or could reasonably be expected to arise from, the course of the normal duties of an employee normally belongs to the CCG, unless an existing contract with either the employee or with another party (such as an external sponsor) overrules.
14. The Patents Act 1977 states that:
 - (1) An invention made by an employee shall be taken to belong to the employer if
 - (a) it was made in the course of the normal duties of the employee and the circumstances were such that an invention might reasonably be expected to result from the carrying out of his duties, or
 - (b) the invention was made in the course of the duties of the employee and because of the nature of the duties he had a

special obligation to further the interests of the employer's undertaking.

- (2) Any other invention made by an employee shall be taken to belong to the employee.
15. CCG employment contracts state: 'All copyright, works, designs, text, records, administrative and financial material and systems made, written or designed or originated by you during the course of your employment with NHS Wandsworth CCG and in connection with your appointment with NHS Wandsworth CCG shall vest in NHS Wandsworth CCG. For the avoidance of doubt, copyright, as created by you outside working hours, on a private basis and not exclusively relating to NHS Wandsworth CCG shall remain your own property with the agreement of the Chief Officer'.
16. By undertaking ownership, the CCG will be able to provide support, expertise and resources to exploiting and protecting IP. Benefits could include:
- a. Supporting the legal costs and other fees associated with gaining protection
 - b. Covering costs of product development
 - c. Accessing NHS Innovations for expert support and guidance
 - d. Undertaking to protect IP in cases where it has been breached
17. For employees with employment contracts which are funded jointly by the NHS and another party or funded entirely by another party, the CCG will agree and thereafter formalise with the other party how IP generated during the employment is to be managed to the maximum benefit of the CCG and the employee.
18. A CCG employee may have a part-time NHS contract and be employed part-time elsewhere (for example in private practice). If IP arises during this period of NHS employment it will normally be owned by the CCG if it is construed to relate to that employment. If there are circumstances which make it more likely for the IP to arise within the self-employment, then the CCG may agree with the employee alternative terms for the sharing of benefit and will set these out in an agreement.
19. A CCG employee may have an honorary contract with another organisation e.g. a university, which recognises the research status of an employee. IP generated by such an employee will normally be owned by the CCG.
20. If the ownership of IP is disputed, dated written records relating to the IP in question will be assessed to establish the inventor(s) and their proportionate contribution. If such material is not available, the Chief Officer will make a final decision, taking professional advice if necessary.
21. IP generated by an employee acting outside the normal course of their NHS duties will be owned by the employee subject to the terms of employment.

Sharing of Rewards/ Income

22. Sometimes an improvement to patient care or service delivery can only come about by the protection of the IP rather than by immediate widespread dissemination. Guidance from the DH states that Where a Trust has achieved a surplus in its income and expenditure account for the year, all or part of the

element of surplus arising from IP activities (as evidenced by a memorandum trading account) may be retained in the Trust for future developments which it determines. It is intended that such sums may be spent in the following year, where necessary, at its discretion.

23. It has been agreed that a Trust is able to retain and use for its own purposes in improving health care any surplus on its revenue account arising from IP activity. The limit for such retentions for any one year is the larger of £100k or 0.2% of turnover (c.800k for WCCG). This surplus is after deduction of costs and distribution to inventors.
24. The CCG wishes to maintain a balance between its legitimate need to protect its interests and the provision of a creative environment for employees in which to work. Therefore any income generated by successful exploitation of IP can be shared with the employees responsible for the innovation. The basis of sharing the net income with CCG staff for their contribution to a successful exploitation is as shown below.
25. For projects which have been successfully exploited profits will be shared on a sliding scale to incentivise innovation:

	Percentage value to originator	Percentage value to directorate	Percentage value to CCG
For a cumulative value of £0-£10k	80%	10%	10%
For a cumulative value of £10-£50k	70%	15%	15%
For a cumulative value of £50-£250k	50%	25%	25%
For a cumulative value of £250k and over	33.3%	33.3%	33.3%

26. Net income means income received by the CCG after the deduction of any reasonable expenses incurred by the CCG in achieving the income (including patent and legal expenses and any fees charged by NHS Innovations).
27. All payments to individuals would be made through payroll and would be subject to tax and National Insurance.
28. Where a project has been successfully exploited both within and outside of the NHS, the CCG will agree with the originator(s) how to apply the income sharing model.
29. The CCG and department/ service/ directorate shares of income will be:
 - Administered by the Finance Department;
 - Used as agreed by the CCG Board following recommendations by the Business Intelligence Group;
 - Reviewed on an annual basis by the Integrated Governance Committee.

30. The profit-sharing arrangement is not normally dependent upon continuing employment with the CCG. Any share of any profits due to the inventor, exploited by the CCG, will continue to be paid following retirement, change of employer or redundancy. Should the employee leave the CCG, it is the responsibility of the individual to keep the CCG informed of their contact details.
31. In cases where several employees 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 or intellectual effort.
32. It is at the discretion of the inventor to agree to share their own proportion of the income with others if appropriate.

Procedures

33. It is the role of the Director for Corporate Affairs, Performance and Quality, in consultation with the inventor and other specialists, to decide on the potential for all ideas/inventions to be exploited. The Director may consult with the Chief Officer, Chair, Chief Finance Officer or any other relevant member of staff for advice where necessary.
34. Where it appears that there may be some potential to exploit IP, the Director will take advice from NHS Innovations to fully explore the feasibility and benefits (both financial or quality) to protect and exploit IP.
35. NHS Innovations will also be able to provide support to the process of drafting and negotiating commercial agreement, coordinating registration and protection of IP, negotiation licencing agreements, assisting with the procurement of suitable funding such as proof of concept funding and assisting with the protection and validation of business cases.
36. The Director for Corporate Affairs, Performance and Quality can agree on a case-by-case basis to give permission for other NHS partners or collaborators to have free or discounted access to the IP protected materials, where the wider public interest for this is demonstrated. As a general principle, it is expected that protected materials will be shared with NHS organisations unless there is a strong case not to do so.
37. Any employee wishing to discuss the protection of any idea or other form of IP should discuss the matter with the Director of Corporate Affairs, Performance and Quality at the earliest opportunity and, in any event, before disclosure of the idea to any party outside of the CCG either orally or in writing. Prior public disclosure (other than under explicit terms of confidentiality) may invalidate any subsequent patent application and diminish both potential commercial value and benefits. All employees should be aware of the importance of avoiding improper disclosure of their inventions.
38. A record will be kept of the date and time on which an employee reports to the Director of Corporate Affairs, Performance and Quality that he or she is the inventor of a creative product. Employees are reminded of the importance of keeping accurate and dated records so that, in the event of similar IP being generated elsewhere, the ownership of the invention can be legally attributed.

Such records can be important when applying for patents in the USA and also for identifying know-how.

39. Where non-CCG staff are involved in any IP generation and development, the CCG employees must inform management and confidentiality/ non-disclosure agreements with non- CCG personnel must be in place where applicable and possible, as soon as possible.
40. Staff must ensure that they do not disclose, sell, assign, license or trade in organisational IP without prior written permission from the CCG.
41. Any member of staff entering into a collaboration or specific development with external parties, e.g. universities, must ensure that a written agreement is produced to address any actual or potential IP rights. This could take the form of a formal contract or Memorandum of Agreement drawn up and signed by all parties.
42. If a situation arises where members of staff do not agree with decisions made relating to IP, and these are unable to be resolved informally, then the situation will be managed in line with the Dispute Process described in the Managing Grievance Policy
43. A register will be maintained of all IP rights owned by the CCG which have been licensed or assigned to a third party where an employee is a named inventor or originator. Details of these IP rights and the income they generate may be given to NHS England from time to time on request.
44. The CCG may at its absolute discretion decide that the IP is best exploited through a spin-out company. If the CCG owns a shareholding then the employee responsible for the IP may also own a shareholding. This is a complex procedure which will require the full co-operation of the employee with the CCG and with those responsible for setting up the company. Legal advice will be sought to support this process.

How to protect IP

45. External registration is essential in the case of patents. All patents are published and give full details of the invention. Patent rights are protected for 20 years. This must be arranged via the Director of Corporate Affairs, Performance and Quality who will see advice from NHS Innovations.
46. Know-how protection is achieved by its owner by keeping the information secret. The owner can share its secret with others if it chooses to do so.
47. For unregistered design rights a wise precaution is to mark all drawings of an object over which rights are claimed with the date and the name of the owner of those rights. Protection can last for between 5 and 15 years and may be renewable.
48. Copyright, including that on computer software, requires no external registration and comes automatically. It is however as well to establish ownership of each item by attaching a statement such as:

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Such rights normally last for 50 years or 70 years after the author's death.

49. Statute provides that copyright in any work produced for the CCG by an employee in the normal course of employment belongs to the employer. Wandsworth CCG will normally assign to the author copyright in a work intended for publication in a professional or academic journal or electronically, and waive any claim it may have to benefits arising from the publication. The CCG however reserves the right to reproduce and use these publications at no-cost for its own non-commercial purposes, including for research and training. The CCG does not assign any of its other copyright to the author including, without limit:
- course or training materials or patient information leaflets produced by an employee in the course of employment for the CCG and which are produced, used or disseminated within or outside the CCG
 - any software programme or algorithm generated by an employee in the normal course of their employment
 - any designs, specification or other works which may be necessary to protect rights in commercially exploitable IP

Implementation

50. It is the duty of all CCG employees to inform their line manager at the earliest possible opportunity of their acquiring the knowledge of any IP development in which any CCG resources are involved.
51. All Directors must ensure that their staff are aware and familiar with this policy.
52. It is the responsibility of the employee who is involved in the generation of the IP or appointed to participate in the IP generation, to ensure the scientific, academic and professional development and progress of the IP. It is also their responsibility to provide updates and reports on progress or outcome as requested by the IGC.

Relevant guidance and legislation

- Cabinet Office (1988) *Copyright, Designs and Patents Act 1988*. London. HMSO
- Cabinet Office (1977) *Patents Act 1977*. London. HMSO
- Department of Health (2009) *Records Management: NHS Code of Practice Part 2*. London. Department of Health
- Department of Health (2002) *The NHS as an Innovative Organisation; A Framework and Guidance on the Management of Intellectual Property in the NHS (2002)*. London. Department of Health.
- NHS Executive (1998) *Handling Inventions and other Intellectual Property. A Guide for NHS Researchers*. London. Department of Health.
- NHS Executive (1998) *The Management of Intellectual property and Related Matters*. London. Department of Health