

Managing Innovation & Intellectual Property Rights

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1. Introduction

The NHS recognises that staff, from any discipline or activity, can generate new ideas, innovative solutions to problems, inventions or better ways of working which may lead to improvements in the delivery of healthcare.

To ensure that this potential is recognised, published [Framework and Guidance](#) on the management of Intellectual Property in the NHS, supported by changes to the law, enable NHS organisations to take appropriate steps to ensure that the services, expertise and knowledge base are put to maximum use. The [Framework and Guidance](#) extends the requirement of NHS Trusts to identify and exploit innovation arising from the full spectrum of NHS activity i.e. patient care, education and training, administrative and support functions, as well as Research and Development.

The Trust recognises that innovation must become integral to the daily work of every member of staff, in providing high quality and compassionate care. The Trust commits to ensuring that innovations are identified and developed in the interests of patients and society as a whole. New technologies should lead to new products, improved interventions and services for health and social care.

2. Purpose

Avon and Wiltshire Mental Health Partnership NHS Trust is committed to ensuring that innovative ideas and intellectual property (IP) arising from the full range of Trust activities is appropriately protected and exploited for the purposes of income generation and the benefit of NHS patients and employees.

The Trust policy is to encourage and enable staff to participate in the generation of Intellectual Property as part of its commitment to deliver the highest quality mental health care that promotes recovery and hope through innovation and improvement.

The policy is to provide a balance between the Trust's legitimate needs to protect its interests, and the provision of a creative working environment for staff.

3. Legislative Framework

The DOH published '[A Framework and Guidance on the Management of Intellectual Property in the NHS](#)' and it became operational with [Section 5 of the Health and Social Care Act 2001](#) in September 2002.

With 'generating wealth for better health' as its theme, the Framework and Guidance encourages the NHS to develop innovations that can lead to new products, improved interventions and better services for health and social care.

It is intended principally for NHS Trusts and their employees, but also provides advice for independent providers of NHS services, such as doctors, dentists and pharmacists whose IP could generate income for the NHS through commercial development.

Section 5 of the Health and Social Care Act 2001 allows NHS Trusts to be innovative. Subject to the approval of a business case, it also empowers NHS bodies, through the Secretary of State, to become shareholders in spin-out companies set up to exploit IP. NHS employees who contribute to an invention exploited through a spin-out company may also hold shares if their employer is already a shareholder.

4. Scope

Avon and Wiltshire Mental Health Partnership NHS Trust intends to encourage its employees to participate in innovative activity by providing the necessary advice and support to maximise the benefits from their innovative ideas. This process is called innovation management and with effective management of innovation, potentially valuable intellectual property (IP) can result.

4.1 Staff covered by the Managing Innovation & Intellectual Property Rights Policy

- All staff with Trust contracts of employment, whether employed in clinical, Research and Development, Education and Training, managerial, administrative or support roles.
- Staff with Trust contracts of employment whose payroll costs are wholly or partially funded by another party (including, but not limited to: a commercial sponsor, government department, or medical charity); unless the contract of employment between the Trust and that party assigns ownership of intellectual property to that party.
- Staff who have a part-time Trust contract or who are employed part-time elsewhere. Where Intellectual Property is generated during this non-Trust employment, but which is within the specialist area of the Trust employment, the Trust has rights of ownership to all or part of the Intellectual Property. Flexibility will be exercised where the non-Trust employment gives a greater opportunity for Intellectual Property to arise.
- Trainees and students hosted by the Trust for training purposes are subject to the management arrangements for Intellectual Property of Trust staff.
- Staff who generate Intellectual Property outside normal working hours and/or away from their place of work where the Intellectual Property relates to their normal course of duties. Where Intellectual Property is generated outside normal working hours, but which is within the specialist area of the Trust employment, the Trust has rights of ownership to all or part of the Intellectual Property.
- Where Trust staff are seconded to another organisation or are working in partnership with other organisations, the Trust will agree an arrangement for sharing Intellectual Property and revenue.
- Independent Providers of NHS Services
- Trainees and students. Students who are not employees of the Trust are not subject to the provisions of the 1977 Patent Act. However, students can assign rights to inventions to the Trust, in which case they will be treated on a par with Trust employees, other researchers at the Trust who are neither staff nor students e.g. Senior Research Fellows and other emeritus staff will normally be brought within the scope of this agreement.

5. Definitions

Intellectual Property' (IP) is the tangible output of any intellectual activity that is new or previously un-described. It has an owner, can be bought, sold or licensed, and must be adequately protected (restricted in its availability or dissemination) in order to ensure its appropriate development and ultimate use or exploitation.

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Intellectual property rights (IPR) refers to the general term for the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.

The following Intellectual Property categories are relevant to the NHS:

Category	Protection	Examples
Inventions	Patents	New medical device, software system
Literary works	Copyright	Computer software, patient leaflet, journal article
Designs, drawings	Design rights	Medical illustration
Brand names	Trade marks	Trust logo
Trade secrets	Know-how, knowledge	Surgical technique

6. Objectives and Outcomes

The Trust recognises that, from time to time, during the normal course of employment, a member of staff may generate Intellectual Property, which may have development potential. Intellectual Property that arises during, or could reasonably be expected to arise from the course of the normal contracted duties of a member of staff, belongs to the Trust, unless an existing contract with an external sponsor takes precedent.

The policy is to encourage and enable staff to participate in the generation of Intellectual Property as part of its commitment to deliver the best possible patient care. The policy is to provide a balance between the Trust's legitimate needs to protect its interests, and the provision of a creative working environment for staff.

The Trust intends to encourage all of its employees to make these sorts of contributions by giving them the advice and support they need to maximise the benefits from their 'good ideas'. This process is called innovation management and with appropriate 'good management' of innovation, potentially valuable intellectual property (IP) can arise. It is intended that innovations and IP from any sector of the Trusts activities should be appropriately 'exploited' which can mean anything from dissemination throughout the Trust, or the NHS, to commercial exploitation in order to access wider markets and other healthcare systems.

All NHS organisations are being encouraged (and some have a legal duty) to foster and embrace innovation with the expectation that real improvements to healthcare delivery will result from the experience and expertise present within the workforce. Clearly this capturing of innovation is closely linked to modernisation and as such needs to become central to the working practice of all NHS employees. Where IP is concerned, because of the potential for generating income, a separate policy is required to ensure rules are followed and legal obligations are met.

7. Roles and Responsibilities

This policy has been produced by the Trust's Corporate Affairs Directorate and ratified by the Finance and Planning Committee. The Corporate Affairs Directorate is responsible for maintaining this policy.

7.1 Trust Officer for IPR Responsibilities

The Director of Corporate Affairs and Company Secretary for the Trust has designated responsibility to manage all classes of intellectual property. In particular, they are responsible for all business and related legal negotiations concerning assignment or licensing of rights, and development through other mechanisms or forms of agreement.

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The Director of Corporate Affairs and Company Secretary shall be responsible for the commercial assessment of intellectual property (with external advice where appropriate) and will report on that assessment and make recommendations for action to the property originators and to the Chief Executive.

7.2 Trust Advisor for IPR maximisation

The Director of Research and Development will play a key role in identifying commercial opportunities for the trust with intellectual property potential and working to maximise these through research and development activity.

7.3 Trust Legal Advisor for IPR Responsibilities

The Trust Paralegal is responsible for providing Trust staff with advice in relation to IP. All questions on IP should be addressed to the Trust Paralegal. The Trust Paralegal will advise the Director of Corporate Affairs and Company Secretary on business and related legal negotiations concerning the assignment or licensing or of rights and other forms of agreement.

7.4 Trust Staff Responsibilities

A member of staff should not enter into negotiations for the development, management, sale, licensing, assign, or otherwise trade intellectual property, other than through the Director of Corporate Affairs and Company Secretary, without the prior approval of the Trust's Chief Executive.

7.5 Staff Awareness

The Trust publicises the importance of IPR and its protection, and how this can lead to benefits to service users, the Trust and the wider NHS, and will provide information to staff as required or when applicable to the job role (i.e. Trust staff working in Research & Development).

7.6 Contracts of Employment

The Trust will include a statement about Intellectual Property in the contract of employment for all new staff. For existing staff, the policy will be incorporated into the terms and conditions of employment.

Temporary staff supplied via external Employment Agencies will be covered by an agreement drawn up between the Trust and External Employment Agencies.

7.7 Support and advice

The Trust will assist staff with the identification of IP by increasing awareness about what IP is, how it originates and how to bring it to the attention of the lead contact. In some circumstances the Trust will arrange for technology audits (opportunity surveys) to work with staff to probe thoroughly into specific areas.

Staff will also be encouraged to report all activities which might generate Intellectual Property to determine opportunities for additional Intellectual Property monitoring.

The Trust will encourage and assist all staff to identify activities which might generate IP from their particular duties in the Trust.

The Trust will seek advice where required, to enable the intellectual property process to be established, managed and reviewed. The decision to manage innovation or to exploit IP will be at the discretion of the Executive Committee.

8. Ownership and Rights

8.1 Copyright and Moral Rights

Although copyright of any work produced by an employee in the course of employment belongs to the Trust, the Trust will normally grant to the author a free licence to the copyright of any work published in a recognised scientific, technical, professional or management journal or book.

The Trust will not grant such a licence for materials created by a member of staff during the course of and related to their employment, including but not limited to:

- Course or training materials
- Patient information
- Software programmes
- Designs, specification or other works which may be necessary to protect rights in commercially exploitable Intellectual Property.

The Trust will respect the moral rights of its employees to be named as authors in copyright materials.

8.2 Protection process

Patents, trademarks and designs are protected through external registration with the Patent Office. Copyright is automatic, and does not need registration, but ownership can be established by attaching a copyright statement. Know-how is protected by keeping it secret and not disclosing it to a third party.

If an invention has been disclosed, it cannot be patented. Disclosure means that the invention or any part of it has been published, given in a seminar or conference paper, or discussed with a potential collaborator prior to a patent application. Development potential can be lost through prior disclosure.

Originators of intellectual property should seek advice from the Trust Advisor on IPR at the earliest possible stage of its development and before public disclosure in order to establish whether measures for protection are necessary.

8.3 Decisions on exploitation

It is the role of the Director or Corporate Affairs and Company Secretary (or nominee), in consultation with the inventor and other professionals, 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 of the venture.

8.4 Infringement of IPR and Disputes

Infringement is the use of works protected by IP law without permission, infringing certain exclusive rights granted to the IP owner, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works.

The Trust and its staff will ensure works not owned by the Trust are not being infringed. Should it be found that the Trust, or its staff, have infringed IPR it should be reported to the Trust Advisor for IP for the issue to be resolved as soon as possible. Staff should not take it upon themselves to respond to any claim of IP infringements.

Should the Trust or its staff find Trust IPR has been infringed or there is belief this has occurred, the Trust Advisor for IP should be informed immediately, or as soon as possible, so that the issue can be resolved at the earliest opportunity.

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The Trust will make clear the process for resolving intellectual property disputes between individual staff, other organisations and the Trust. The Trust Advisor for IP should be contacted when a dispute arises or is likely to arise.

8.5 Disputes of ownership

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 Director of Corporate Affairs and Company Secretary of the Trust will make a final decision, taking professional advice if necessary.

Where a dispute is with an external organisation and the Trust, professional advice and negotiation may be necessary. The Director of Corporate Affairs and Company Secretary will lead on any dispute with external organisations.

9. Revenue sharing

The Trust wants to encourage full participation of employees in the creation and commercial exploitation of IP. The Trust will reward staff members who have contributed substantially to the generation of IP which has provided exploitation revenue.

Such revenue will be shared between the Trust and the inventor according to the revenue sharing table below. 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).

9.1 Revenue Sharing Table

Cumulative Net Income	Share paid to Inventor(s)	Share retained by Trust R&D Department	Share retained by the Trust (healthcare provision)
Up to £50k	50%	10%	40%
£50k to £100k	40%	10%	52%
£100k to £250k	30%	10%	60%
Over £250k	25%	10%	65%

10. Management and Record keeping

The Trust Head of Procurement and Contracts, will keep a register of any intellectual property that is protected together with records of any income generated.

The Trust Paralegal will establish a system for providing guidance to staff about Intellectual Property management at the earliest possible stage in the invention process, to maximise the potential for the appropriate development of the IP opportunity which may include commercial exploitation.

The Trust will assist staff with procedures for recording Intellectual Property activity to meet internal needs, and to satisfy the requirements of external organisations.

The Trust will guide staff to IP management tools (advice leaflets, IP registration, evaluation, confidentiality forms) to ensure the effective management of IP. The Trust will have access to the skills of the regional NHS Innovation Hub.

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It is important to keep full records, including copies of all correspondence and notes of telephone conversations and meetings, in order to provide detailed accounts of the progress of discussions relating to Intellectual Property. All records and notes must show the relevant dates and action agreed.

The Trust will seek, at the earliest possible stage, the assistance from appropriately qualified external organisations (including the regional NHS Innovation Hub) to help staff maximise the potential of IP which is commercially exploitable.

Staff are encouraged to notify the Trust Advisor for IPR of any idea or other form of Intellectual Property that they have developed at the earliest opportunity and before disclosure to any party outside the Trust either orally or in writing. Prior public disclosure other than under explicit terms of confidentiality, will invalidate any patent application, and reduce the potential for Intellectual Property development for the benefit of the Trust and the inventor.

11. Funding Agreements and Service Level Agreements

All funding agreements and service level agreements, including those for research and development, entered into by the Trust should be scrutinised for appropriate references to IPR and where appropriate agreements of ownership, prior to signing. This will allow for any intellectual property rights to be identified and properly catered for in funding agreements and service level agreements with funders and customers.

All research agreements and research contracts should be approved by the Trust's Director of Corporate Affairs and Company Secretary.

All Service level Agreements within the Trust will be approved by the Trust's Head of Procurements and Contracts.

12. External Liaison

Where necessary, the Trust will work with external organisations such as the AHSN to ensure the effective management and exploitation of intellectual property for the purposes of income generation and benefit of NHS patients and employees.

13. Standards

- [Department of Health Research Governance Framework 2nd Editions 2005](#)

14. References

- A [Framework and Guidance on the Management of Intellectual Property in the NHS. 2002.](#)
- [Section 5 of the Health and Social Care Act 2001](#)

Version History				
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