

Title	Policy for Intellectual Property Management & Revenue Sharing		
Meeting	Board of Directors		
Date	1 December 2015		
Executive Summary			
<p>The Trust is a member organisation of the Academic Health Sciences Network for the North East and North Cumbria (AHSN). The AHSN Board have reviewed and approved the Innovation Scout Scheme whereby nominated healthcare professionals will be embedded into NHS organisations with the aim of helping to support a culture for innovation as well as an increased awareness of intellectual property.</p> <p>Intellectual property can be defined as the product of intellectual or creative activity which can be given legal recognition of ownership through intellectual property rights, such as patents, copyright, design rights, trademarks and know-how. Staff in the Trust are continuously innovating and in the process can often generate valuable intellectual property.</p> <p>The purpose of the attached policy is to ensure that South Tyneside NHS Foundation Trust has a robust mechanism for the effective management of intellectual property management and revenue sharing.</p> <p><i>The Policy was considered at the Executive Board held on 19 October and is recommended to the Board of Directors for approval.</i></p>			
Recommendation			
The Board is requested to approve the Policy.			
Executive Director/ Sponsor	Dr B Brown		
Purpose of paper	Information	x	Discussion
	Decision		Assurance
	Specific action	x	
Implications	Staffing		
	Finance		
	Legal		x
	Public engagement		
	Partnership		x
	Communication		
	Equality & Diversity		
	Clinical		
	Patient Safety		

Risk assessment and mitigation (include risk register reference if appropriate)	
Link to STFT Business Plan	
Link to CQC outcome	
Link to Board Assurance Framework	
Link to Strategic Risk Register	

Policy

Intellectual Property Management and Revenue Sharing

Date Approved by	Version	Issue Date	Review Date	Executive Lead	Information Asset Owner	Author
Exec Board – 19 th October 2015	2	October 2015	October 2018	Executive Director of Nursing and Patient Safety	Service Lead – Quality, Research and Clinical Audit	Research Lead - Quality, Research and Clinical Audit
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DOCUMENT INFORMATION AND AMENDMENT RECORD

Document Number:

Document Title: Intellectual Property Management and Revenue Sharing

Executive Lead: Executive Director of Nursing and Patient Safety

Date	Amendment Details	Responsibility	Amendment No

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Intellectual Property Management and Revenue Sharing

1.0 Introduction

- 1.1 Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS indicates that innovation must become the core business for the NHS in order to transform patient outcomes, improve quality and productivity and support economic growth.
- 1.2 People working and studying within South Tyneside NHS Foundation Trust (“The Trust”) are continuously innovating, and in the process, they can often generate valuable intellectual property (“IP”). It is recognised that intellectual property is an asset of great value and should be managed in the best interests of patients, staff, and the general public as a whole.
- 1.3 Intellectual property can be defined as the product of intellectual or creative activity in the form of new ideas or the results of research and development, which can be given legal recognition of ownership through intellectual property rights such as patents, copyright, design rights (both registered and unregistered), trademarks and know-how (see Appendix A for definitions).
- 1.4 It is very important that you do not disclose any details of your invention/idea/innovation to anyone other than the Research Lead for the Trust in the first instance. This person (or their representative) is best placed to advise you regarding the intellectual property and commercialisation process in general. Please note that if you do disclose details of your invention to any third party (e.g. friends, associates, colleagues or companies) before seeking advice from the Research Lead for the Trust, it could seriously limit its value to patients and the NHS as a whole, as well as you as the inventor, by potentially destroying its novelty and thus rendering it un-patentable (see Appendix B for staff procedures).

Further information regarding intellectual property can be found on the website of The UK Intellectual Property Office

<https://www.gov.uk/government/organisations/intellectual-property-office>.

2.0 Purpose

- 2.1 The purpose of the policy is to ensure that South Tyneside NHS Foundation Trust have a robust mechanism for the effective management of intellectual property management and revenue sharing.
- 2.2 The policy contains information regarding who to contact if:

- you have an invention/idea/innovation which you think may need protecting or which you think may be able to be commercialised in order to benefit patient care; or
- you require general advice on intellectual property arising as a result of your work at The Trust.

3.0 Scope

Intellectual property can arise from both research activities, occupational activities and other types of work carried out by the group comprising the following (“Members of The Trust”): -

- Students, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- Students, both part time and full time, employed by The Trust (“Trust Employees”);
- Clinical staff, both part time and full time, employed by The Trust (“Trust Employees”);
- Clinical staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- Research staff, both part time and full time, employed by The Trust (“Trust Employees”);
- Research staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- Non-clinical staff, both part time and full time, employed by The Trust (“Trust Employees”); and
- Non-clinical staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”).

including people who used to be Members of The Trust, but are no longer Members of The Trust, as appropriate.

4.0 Aim

- 4.1 The Trust wishes to actively manage processes in order to ensure that the intellectual property generated by Members of The Trust aids the improvement of health and social care services provided by the NHS. In some cases it may be necessary to protect that intellectual property in order to ensure that it continues to benefit the health and welfare of patients throughout the NHS and beyond, as well as having a positive impact on the wealth of the nation.

5.0 Equality and Diversity Statement and Human Rights Statement

5.1 The Trust is committed to promoting human rights and providing equality of opportunity, not only in our employment practices but also in the way we provide services. The Trust also values and respects the diversity of our employees and the communities we serve. In applying this policy, the Trust will have due regard for the need to:

- Promote human rights
- Eliminate unlawful discrimination
- Promote equality of opportunity
- Provide good relations between people of diverse groups
- Consider providing more favourable treatment for people with disabilities

5.2 This policy will aim to be accessible to everyone regardless of age, disability (physical, mental health or learning disability), gender (including transgender), race, sexual orientation, religion or belief or any other factor which may result in unfair treatment or inequalities in health or employment.

6.0 Duties/Responsibilities

6.1 **Research Lead** - is responsible for the implementation, dissemination and monitoring of this Intellectual Property Policy, but it is the responsibility of all Members of the Trust to read and align themselves with this Intellectual Property Policy. Details of the Research Lead for the Trust can be found in the Research and Development section of the Trust intranet.

6.2 **Members of the Trust** - have an obligation to inform the Research Lead for the Trust about identified or potential intellectual property resulting from their activities at The Trust and they must not, under any circumstances, sell, assign, license, give or otherwise trade in that intellectual property before discussing the intellectual property with the Research Lead for the Trust (see Appendix B for staff procedures).

Ownership of Intellectual Property

6.3 It is common for the inventor to own the intellectual property associated with their work. However, this situation can be changed by a number of factors, in particular intellectual property generated during the course of employment.

6.4 For Members of The Trust generating intellectual property as a result of their work or study whilst working at The Trust, the legal position in terms of ownership of that intellectual property is to be decided on a case by case basis and in accordance with Section 39 of the UK Patents Act 1977 (as amended), the

Copyrights Designs and Patents Act 1988 and the Registered Designs Act 1949, as appropriate, according to the type of intellectual property created.

- 6.5 However, by means of example, it is often the case that intellectual property created by Trust Employees whilst they are employed by The Trust is owned in the first instance by The Trust. In order to decide whether intellectual property generated by a Trust Employee whilst they are employed by The Trust is in fact owned by The Trust, a number of criteria are taken into account, such as, whether or not the intellectual property was generated in the course of their normal everyday duties, whether or not they had a special obligation to further the interests of The Trust, and whether or not the creation of the intellectual property was as a result of duties specifically assigned to them.
- 6.6 There is legal case law for helping to decide who owns intellectual property created by Trust Employees in their “spare time” where it relates to the work for which that person is employed.
- 6.7 Accordingly, Members of the Trust should not assume that they are the first owners of the intellectual property that they create and they should instead seek advice from the Research lead for the Trust.

Collaborative Projects With Third Parties

- 6.8 If work or research is conducted by a Member of The Trust in partnership with another organisation, a formal agreement clarifying the ownership (or sharing) of any intellectual property generated, is required to be put in place, at the very beginning of the project.
- 6.9 The Research Lead for the Trust will have responsibility for developing and negotiating intellectual property sharing agreements with collaborating organisations. However, it is to be appreciated that, during work or research with collaborating organisations, the interests of The Trust should be protected wherever possible.

Disputes Of Ownership

- 6.10 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 Executive Director for Nursing and Patient Safety will make a final decision, with professional advice being sought if necessary.

7.0 Intellectual Property Management Structure

The Research lead for the Trust is responsible for intellectual property management and works on behalf of The Trust to both protect and manage intellectual property. The Trust is a 'member organisation' of the Academic Health Science Network for the North East and North Cumbria (AHSN), and NHS Innovations North, the Innovation Hub for North East England, has been commissioned by the AHSN to provide a mechanism for its member organisations to systematically identify, protect, manage and exploit intellectual property and innovative service improvement generated as a result of research and occupational experience.

- 7.1 Accordingly, as part of their responsibility for intellectual property management, the Research Lead for the Trust may consult with NHS Innovations North for advice relating to intellectual property and commercialisation.

Exploitations of Intellectual Property

- 7.2 **Decisions on Commercialisation** - it is the role of the Research Lead for the Trust, in consultation with the inventor and other specialists such as NHS Innovations North, to make a decision regarding the potential for intellectual property owned by The Trust to be protected and commercialised. The impact on patient care, as well as the potential market and the likelihood of success of the invention in terms of the generation of royalties, are all taken into account when making a decision regarding the commercialisation of the invention.

Where The Trust chooses not to exploit intellectual property which belongs to The Trust and which arises from the work of Members of The Trust, it will, in some cases, assign the intellectual property to the inventor, who may wish to pursue its further development and commercialisation.

- 7.3 **Contract Negotiations** - any agreements relating to intellectual property owned by The Trust; that is, licenses or assignments to another organisation, will be negotiated in the best interests of The Trust, with the assistance of professional advisers where applicable.

All commercialisation partners, business partners and collaborators should be bound by conditions of confidentiality through a Confidentiality Agreement. This is a reciprocal agreement whereby confidential information is both disclosed and received. A suitable Confidentiality Agreement may be obtained from the Research Lead for the Trust.

- 7.4 **Revenue Sharing with Inventors** - The Trust wishes to encourage the full participation of Members of The Trust in the creation and potential commercialisation of intellectual property. The policy of The Trust, which is reflected in this document, will therefore be to reward Trust Employees who have

contributed substantially to the generation of intellectual property belonging to The Trust, which has subsequently generated revenue as a result of commercialisation. Such revenue will be shared between The Trust and the Trust Employee according to the following revenue sharing formula (see Figure 1). In all cases the revenue will be the net of any direct costs such as intellectual property protection costs.

Figure 1 - Revenue Sharing from Successful Intellectual Property Exploitation

Cumulative Net Revenue	Inventor(s)	Inventor's Department	The Trust
First £20,000	50%	15%	35%
Up to £100,000	40%	15%	45%
Between £100,000 and £250,000 ¹	40%	10%	50%

Please note the following: -

In cases where several Trust Employees have been involved in the creation of the intellectual property belonging to The Trust which has been successfully exploited, the proportion of income allocated to inventors will be divided between them on the basis of their relative contribution. This will be agreed by the Executive Director of Nursing and Patient Safety

For inventions generating in excess of £250,000 in revenue, The Trust reserves the right to negotiate in good faith as to what would be a fair and reasonable alternative arrangement based upon the circumstances of the inventor and the appropriate market intelligence.

The above arrangements are also exclusively reserved for inventions derived from intellectual property purely owned by The Trust and should not be taken as applicable in any way to inventions where intellectual property is jointly owned with another organisation such as a University, for example.

8.0 Monitoring

- 8.1 This policy will be reviewed every 3 years, and may be subject to additional amendment or variation from time to time, in line with emerging Trust policy.

9.0 References

Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS, 5th December 2011

Appendix A INTELLECTUAL PROPERTY PROTECTION

This Appendix includes a very brief overview of intellectual property. However, it must be noted that the law is complicated and Members of The Trust who believe they may have generated intellectual property are advised to contact the Research lead for the Trust at the earliest opportunity, in order to discuss intellectual property protection of their idea in more detail.

Members of The Trust are advised not to reveal their invention in any way to any third party (e.g. friends, family, associates, colleagues or companies) before seeking advice from the Research lead for the Trust. Disclosure of an idea, even by word of mouth, could seriously limit its value to patients, The Trust, and the inventor themselves.

Copyright

Copyright covers written information (such as leaflets, articles, assessment tools and training packs), databases, computer software and films/videos. Copyright is achieved automatically when the written information is created. However, it is advisable to attach a statement to discourage infringement, such as the following: -

© [Owner of the Copyright] [The Year of Creation] All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.

Patents

Patents can be used to protect inventions that embody a new and inventive idea that is capable of industrial application (such as devices, processes or methods of operation). Exclusions from this include methods of treatment of the human/animal body by surgery or therapy, or methods of diagnosis. In order to be potentially patentable, details of an invention must not have been disclosed anywhere in the world (including in journals, on the internet, at meetings, on posters, etc.) prior to the filing date of the patent application.

Unregistered Design Rights

Unregistered design right is an automatic right that protects how a product looks in terms of the features of its shape and configuration.

Registered Design Rights

In some cases, the value lies not in a new idea or a new concept, but in the appearance of the product, such as its shape and configuration. Registered design rights usually protect commercial objects with a unique appearance.

Trade Marks

A trade mark is used to distinguish a product or service from that produced or supplied by another business. Trade marks can be used to protect names, logos, slogans, domain names, shapes, colours and sounds.

Registering a trade mark protects the owner from competitors trying to use that image to promote their own products.

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.

In all cases, the "know-how" will only retain its value if it is managed effectively..

Know-how and confidential information can be bought and sold like any other form of intellectual property and can persist indefinitely, as long as it remains secret.

Appendix B

STAFF PROCEDURES

Publications and Confidentiality

It is the policy of The Trust to actively encourage Members of The Trust to publish their work, and The Trust will not normally object to the right of a Member of The Trust to be named as an author of copyright material. However, if intellectual property is created, and it has the potential to be commercialised, all work needs to be kept confidential at least until a decision is made regarding whether or not the intellectual property associated with it should be protected.

Accordingly, advice should be sought from the Research Lead for the Trust before publicly disclosing any work in any way, including the presentation of papers or posters at conferences, the publication of abstracts or chapters in books and any other verbal or written communication. It is to be appreciated that intellectual property cannot normally be protected once prior disclosure has occurred, no matter how informal.

Record Keeping

It is important for Members of The Trust working on projects which generate intellectual property to keep written and dated records of their activities and results. When exploiting intellectual property, it is imperative that all correspondence, including emails, telephone conversations and meetings are logged in order to provide a detailed account of any discussions relating to the intellectual property. This is in accordance with clinical governance, research governance and good clinical practice guidelines for research and development.

The Research Lead for the Trust is responsible for maintaining a register of all the intellectual property disclosed to them and owned by The Trust, including the date and time it was reported to them. It is also their responsibility to keep safe any important original documents relating to intellectual property, such as Confidentiality Agreements. It is advisable that the inventors themselves should also retain copies of these documents.

[The questions below may be good options for inclusion on an Idea Disclosure Form and could be placed in the preferred format of the Trust]

- (i) Are you aware of any companies or organisations who offer similar products or services?**
- (ii) Is there any evidence to demonstrate the effectiveness of the idea?**
- (iii) Describe the unmet need or problem your idea addresses?**
- (iv) Are other people affected by this problem?**
- (v) Describe your solution and how it works?**
- (vi) How does/will your idea impact on targets, outcomes or clinical priorities?**
- (vii) What is the current status of the idea? i.e. is there a prototype?**
- (viii) What is the benefit of the idea over current methods or products used?**
- (ix) Describe any challenges that may need to be overcome to further develop and/or implement your idea?**
- (x) Have any applications to register the intellectual property been filed yet?**
- (xi) Has your idea been discussed or shared with others?**
- (xii) Have any other people or organisations been involved with your idea?**

