

Policies, Protocols, Guidelines and Procedures

**INTELLECTUAL
PROPERTY POLICY**

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Version No: 2

Page 1 of 10

POLICY AUTHORISATION FORM

1	NAME OF POLICY:	Intellectual Policy Protocol
	JOB TITLE OF AUTHOR:	Assistant Director Corporate Development
	DIRECTOR:	Director of Finance
	NAME OF GROUP: (if applicable)	
EQUALITY AND DIVERSITY		
	An Equality & Diversity assessment has been completed <i>(Please contact the Equality & Diversity Manager 01452 389496 email:Heather.Ross@glos.nhs.uk)</i>	Date Completed:
2	CONSULTATION	
	NAME OF GROUP (S) (complete where relevant)	DATE CONSIDERED
	Name of Local Committee or Specialist Group? <i>Governance and Risk Management Committee</i>	2004
	Name of Countywide Committee or Specialist Group? <i>Research and Development Consortium</i>	2004
	Other relevant Forum/Individual?	
3	APPROVED BY BOARD/AUTHORISED GROUP/DIRECTOR	
	NAME i.e. Trust Board <i>TRUST BOARD</i>	DATE APPROVED <i>18th March 2004</i>
	TO BE REVIEWED BY: (Author) <i>Assistant Director of Corporate Services</i>	DATE TO BE REVIEWED: <i>18th March 2007</i>
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	DATE PUT ONTO SPREADSHEET:	<i>11/07/06</i>
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Author: Assistant Director Corporate Development

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Issue Date:* *This is only to be used when hard copies are to be used as the cascade method*

Version No: 2

Page 2 of 10

POLICY UPDATES/CHANGES (AFTER BOARD/DESIGNATED GROUP APPROVAL)				
Date	Summary of Changes	Author/Editor	Approved by	Version No.
11/07/06	Updated in accordance with Re-use of Regulations	Gina Mann	Directors Business Mtg June 7 th 2006 Going to R&D in Sept 06	2

CONTENTS

Section	Section Heading	Page Number
1	INTRODUCTION	4
2	STATEMENT OF PROTOCOL	4
3	DEFINITION	4
4	POLICY DETAILS	5
5	COMMUNICATION	8
6	TRAINING AND GUIDANCE	8
7	COST IMPLICATIONS	9
8	REFERENCES	9
SUPPORTING DOCUMENTS		
Appendix 1	Relevant paragraphs from staff contract relating to Intellectual Property and Copyright.	

Author: Assistant Director Corporate Development

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Version No: 2

Page 3 of 10

INTELLECTUAL PROPERTY POLICY

1.0 INTRODUCTION

1.1 Scope

The NHS recognises that its staff, from any discipline or activity, can generate new ideas, innovative solutions to problems, inventions or just better ways of working which might, if given the opportunity, lead to improvements in the running of hospitals or the delivery of healthcare. To ensure that this potential is given the best chance of being recognised, the NHS has produced a new Framework and Guidance document (see refs) and supported changes to the law which now mean that NHS organisations can take appropriate steps to ensure that the service expertise and knowledge base is put to maximum use.

The Trust intends to encourage all of its employees to make these sorts of contributions by giving them the advice and support they need and to maximise the potential benefits from their 'good ideas'. This process is called Intellectual Property (IP) management and the intention is to ensure that potentially valuable IP and knowledge from any sector of the Trusts activities can 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 to embrace this concept with the expectation that real improvements to healthcare delivery will result from the experience and innovativeness present within the workforce.

This document describes the policy of the Trust for the local management of IP and includes staff involved, ownership of IP, its protection and development. The policy is presented in two sections: the intellectual property framework and implications for the Trust.

2.0 STATEMENT OF PROTOCOL

- 2.1 This paper describes how Intellectual Property and underpinning documents will be managed within West Gloucestershire Primary Care Trust. This Protocol will ensure that West Glos PCT staff have the best chance to get new ideas, inventions, innovative solutions etc recognised and protected.

3.0 DEFINITION

- 3.1 This document is a Protocol which must be followed and states responsibility and accountability.

Author: Assistant Director Corporate Development

Approval Date: March 2004

Issue Date:* *This is only to be used when hard copies are to be used as the cascade method*

Version No: 2

Page 4 of 10

4.0 POLICY DETAILS

4.1 What is Intellectual Property?

Intellectual Property 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. 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, medical illustration, photographs
Designs, drawings	Design rights	Usually relate to 3D items, "designer" devices
Brand names	Trade marks	Trust logo
Know-how, knowledge	Contracts and confidentiality agreements	Surgical technique

4.2 Intellectual Property Rights and Ownership

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 which arises in, 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 overrules.

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 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.

Intellectual Property generated by an employee, in his or her own time and which is unconnected with their normal contracted course of duties, and uses none of the Trust's resources, will be owned by the employee.

Although this "default" ownership position is set out by statute (Copyright, Designs and Patent Act 1988) this position may be modified by contract (including employment contracts, consultancy contracts and confidentiality agreements).

4.3 Protection Process

Patents, trade marks and registered designs are protected through external registration

Author: Assistant Director Corporate Development

Approval Date: March 2004

Issue Date:* *This is only to be used when hard copies are to be used as the cascade method*

Version No: 2

Page 5 of 10

with the Patent Office. Copyright is automatic, and does not need registration, but ownership can be asserted by attaching a copyright statement. Know-how is protected by keeping it secret and not disclosing it to a third party or through confidentiality agreements of non disclosure agreements with third parties.

Once a "new" invention is in the public arena or has been widely disclosed then it becomes "state of the art" and loses its novelty.

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. Development potential can be lost through prior disclosure.

West Glos PCT will have a standard notice on their website stating that the majority of routine material can be 're-used' free of charge provided copyright is acknowledged and the source of information identified. Some material will need re-use approval and charges may apply. There may also need to be a written agreement in the form of a licence which states how the information can be re-used. These items which require re-use approval will be included within the Freedom of Information Publication Scheme.

4.4 **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.

4.5 **Re-use of Intellectual Property**

Any requests for re-use of intellectual property will need to go through the Corporate Services Directorate who will then reply within 20 working days and will notify the applicant of any charges and conditions (which could be in the form of a licence).

Exclusive arrangements are prohibited as this prevents potential re-users from being able to re-use the information. However, there maybe occasions when it is necessary for the provision of a service in the public interest. Any such arrangements will be made

Author: Assistant Director Corporate Development

Approval Date: March 2004

Issue Date:* *This is only to be used when hard copies are to be used as the cascade method*

Version No: 2

Page 6 of 10

available and published on the PCTs website and are subject to review at least every three years.

If the PCT refuses to allow the re-use of an item, for example because the copyright in the material rests with a third party, there is an obligation to notify the applicant of the reasons for refusal. This could include providing details of who owns the copyright in the case of third party copyright material.

If an applicant complains about the process for re-use they should go through the normal internal complaints process which is detailed on the PCTs website.

4.6 Profit Sharing

The Trust will agree arrangements for profit sharing with the inventor that encourages the development of new ideas and inventions, and shares revenue on a consistent basis.

The Trust will draw up an agreement with any external organisations or partners, an arrangement for sharing Intellectual Property Rights (this will set out exactly how the IP Rights are to be distributed).

At the start of each IP activity, in most circumstances the Trust will work on an equal sharing basis with each partner for every invention where Intellectual Property has been identified, e.g.

Partners	Trust	Employee/Department	External partner
Split	50%	50%	No involvement
Split	33.3%	33.3%	33.3%

Notional values are net after deduction to cover patent and legal expenditure incurred

The split between partners may be changed dependent on the level of involvement of each partner, and will be agreed between each of them as the Intellectual Property develops.

4.7 Charges for re-use

Regulation 15 of the Re-use of Public Sector Information Regulations (SI2005 No1515) states that where charges are made the total income should not exceed the cost of collection, production, reproduction and dissemination of documents and a reasonable return on investment. Charges should be based on applicable accounting principles.

4.8 Identification of latent Technology (opportunity surveys)

The Trust will assist staff with the identification of IP by increasing awareness about what IP is, how it originates 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.

Author: Assistant Director Corporate Development

Approval Date: March 2004

Issue Date:* *This is only to be used when hard copies are to be used as the cascade method*

Version No: 2

Page 7 of 10

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.

4.9 Disputes

The Trust will make clear the process for resolving intellectual property disputes between individual staff, other organisations and the Trust. The Trust may take legal advice, and advice from the NHS IP Co-ordinator, when this is appropriate.

5.0 COMMUNICATION

5.1 Contracts of Employment

The Trust will include a statement about Intellectual Property in the contract of employment for all new staff. The relevant paragraphs from the contract are attached as Appendix 1.

For existing staff, the policy will be incorporated into the terms and conditions of employment. A copy of the policy will be provided for staff groups most affected by the policy, and they will be asked to confirm in writing their acceptance of the policy. A statement will be included in the Licence to Operate agreement for those working on a Licence to Operate basis.

5.2 Temporary staff supplied via external Employment Agencies will be covered by the agreements drawn up between the Trust and External Employment Agencies

6.0 TRAINING AND GUIDANCE

6.1 The Trust will provide 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. This will include the recording of Intellectual Property on the Freedom of Information Publication Scheme.

The Trust will guide staff to IP management tools (advice leaflets, IP registration, evaluation, confidentiality forms) to ensure the effective management of IP (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

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Version No: 2

Page 8 of 10

the relevant dates and action agreed).

The Trust will seek, at the earliest possible stage, the assistance from appropriately qualified external organisations (NHS IP Hubs, Biotechnology Exploitation Platforms, BEBs, Innovation/Enterprise Hubs etc.) to help staff maximise the potential of IP.

- 6.2 Staff are encouraged to notify the *Corporate Development Department* (who will liaise with the Trust Research and Development Lead or the Countywide IP Lead as necessary) of any idea or other form of Intellectual Property that they have developed at the earliest opportunity. A decision will need to be made as to if the item of Intellectual Property incurs a charge for re-use and this amount will need to be agreed 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).

7.0 COST IMPLICATIONS

- 7.1 The Trust will seek external funding where possible to enable the intellectual property process to be established, managed and reviewed. The Trust will work closely with regional and national Intellectual Property contacts and networks to develop proposals for funding work potentially leading to intellectual property development and its appropriate exploitation. The decision to manage IP or to exploit IP will be at the discretion of the Trust Board and in any event will be based on a business case.

8.0 REFERENCES

- www.innovations.nhs.uk.
- www.intellectual-property.gov.uk.
- www.patent.gov.uk.
- The management of Intellectual Property and related matters: an introductory handbook for R & D managers and advisers in NHS Trusts and independent providers of NHS services. NHS Executive. 1998.
- Handling inventions and other Intellectual Property: a guide for researchers. NHS Executive. 1998.
- Policy framework for the management of Intellectual Property within the NHS arising from research and development (HSC 1998/106). NHS Executive 1998.
- The NHS as an innovative organisation: a framework and guidance on the management of Intellectual Property in the NHS. 2002. (full text on innovations website.).

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Version No: 2

Page 9 of 10

APPENDIX 1

Relevant paragraphs from staff contract relating to Intellectual Property and Copyright.

Intellectual Property

If at any time as a part of your employment, whether during or outside of normal working hours, but in connection with your work with the PCT, you develop, discover or participate in the development or discovery of any Intellectual Property relating to your work with the PCT, the full details of the Intellectual Property shall be immediately communicated to the PCT and shall be the absolute property of the PCT. At the request and expense of the PCT you agree to provide all such information, data, drawings and assistance as may be required to exploit the Intellectual Property to best advantage and to execute all documents and do all things which may be necessary or desirable for obtaining a patent or other protection in such parts of the world as specified by the PCT and for vesting the same in the PCT or as it may direct.

All rights and obligations under this agreement shall continue in force after termination of employment in respect of Intellectual Property developed or discovered during the period of employment.

Copyright

In accordance with Copyright, Designs and Patents Act 1988 if at any time as a part of your employment or arising from your employment you develop an original literary, dramatical or artistic work, written down or otherwise recorded such work shall remain the copyright of the PCT. The full details of the works shall be immediately communicated to the PCT and shall be the absolute property of the PCT. At the request and expense of the PCT you agree to provide all such information and assistance as may be required to exploit the works to best advantage and shall execute all documents and do all things which may be necessary or desirable for obtaining copyright or other protection in such parts of the world as specified by the PCT.

All rights and obligations under this agreement shall continue in force after termination of employment in respect of works or copyright developed during the period of employment