

INTELLECTUAL PROPERTY

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INTELLECTUAL PROPERTY

1. POLICY STATEMENT

Intellectual Property (IP) is the term used to describe new ideas that result in the generation of some output such as a document, a new design, or an improved way of working.

Velindre NHS Trust recognises the importance of innovation and creativity as essential elements in the process of continual improvement. The Trust also recognises its responsibility to ensure the effective utilisation, management and exploitation of the IP generated as a result of such innovation and creativity taking place within the Trust. **The guiding principle in this process will be to ensure that exploitation of IP contributes to improving patient care.**

IP created by Trust employees in the course of their duties belongs to the Trust. In determining the best way to protect and develop such IP, the Trust will work in close co-operation with the inventors and any collaborating organisations. In the cases of successful exploitation of IP the creator may be granted a personal revenue share of any income resulting from the invention and this would be determined on a case by case basis.

Where contracts or agreements are put in place with other organisations that could result in the generation of IP the Trust will ensure that appropriate terms and conditions are included to clearly indicate the assignment of intellectual property rights (IPR) and the distribution of benefits arising from the IP.

This policy together with its supporting documents provides a framework for the identification and initial development of IP. It is recognised that where significant development of IP is required advice from specialist bodies will be required.

2. INTRODUCTION

Where an idea results in a development that has significant potential it is important that this is recognised and appropriately used to:

- a) ensure the dissemination of best practice throughout the NHS;
- b) ensure that any commercial benefits arising from the development are directed back into patient care.

Intellectual Property Rights (IPR) is the term used to describe a range of rights that provide a means of protecting IP from abuse. This includes copyright, patents and trade marks. For further information see Intellectual Property Rights - What Are They? (Appendix 1)

This policy, together with its supporting documents, describes how the Trust will identify, protect and develop IP generated within the Trust.

3. SUPPORTING DOCUMENTATION

This policy is supported by the following documents:

- a) Model Divisional Procedures for Recording and Notifying IP
- b) Trust Procedure for Managing IP Development (currently in draft)
- c) Information leaflet - Intellectual Property Rights - What are they? (Appendix 1)

4 MANAGEMENT STRUCTURE

The Trust will nominate a Trust IP Co-ordinator. This individual will be responsible for overseeing all IP projects and will act as the point of liaison between the Trust and the All-Wales Intellectual Property Advisory Service.

The Trust R&D Committee will take on the role of the exploitation panel and will be responsible for assessing newly identified IP and determining which exploitation route, if any, should be pursued. Recommendations from the Exploitation Panel will be passed to the Trust Board for approval.

Each Division of the Trust will nominate a Divisional IP Co-ordinator. This individual will work with staff and managers in the division to: establish divisional IP procedures; ensure that new IP is recognised; identify the most appropriate means of protecting the IP; determine the appropriate path to take advantage of the IP; raise awareness; and liaise with the Trust-wide co-ordinator.

5. IDENTIFYING AND PROTECTING IP

Staff at all levels need to be aware of the possibility that they may generate new IP during the course of their employment. They must have clear guidance on the procedures to follow if they feel that their ideas may provide wider benefit.

One of the most critical periods for ensuring the protection of IP is the initial period from when the idea is generated until statutory IPR protection is in place.

During this period it is **essential** that staff:

- a) keep accurate records of the idea itself and any work performed to develop and prove the practical implementation of the idea;
- b) must refrain from any public disclosure of the idea or related development;
- c) recognise their duty to the Trust and to colleagues to maintain confidentiality with respect to the IP.

Procedures to be followed once IP has been identified are covered by Divisional Procedures (see model procedure)

6. OWNERSHIP OF IP

The Trust has right of ownership to all IP produced by Trust employees in the course of their normal duties. Employees have an obligation to inform the Trust about IP generated as a result of their activities and must not sell, assign or otherwise trade IP without Trust agreement. (see appendix 2 for an extract from the Trust Contract of Employment.)

The Trust recognises that in some situations other organisations will be involved. These include:
situations where staff have joint or honorary contracts;
IP has been developed as a result of direct collaboration between Trust employees and employees of other institutions;

Where the potential for new IP can be identified in advance, steps should be taken to ensure that contracts/SLAs contain appropriate terms and conditions to clearly indicate the assignment of intellectual property rights (IPR) and the distribution of benefits arising from the IP. (See model agreements)

Where such agreements are not in place, or where organisations have differing agreements, the Trust will negotiate an appropriate share of benefit in accordance with the Trust procedure.

Where staff have contributed substantially to the generation of IP of an exceptional nature which has subsequently provided revenue through exploitation, the Divisional Director will **consider** recognition of this contribution by sharing the net income with the inventor according to agreed terms. These terms will be informed by current NHS guidance which may vary from time to time. Where several staff have been involved in generating the IP this amount will be divided among them on the basis of relative inventive contribution.

Where the Trust chooses not to exploit IP arising from Trust employees it may assign IPR to the inventor.

7. EXTERNAL ADVICE

The Trust recognises that development of significant IP requires specialist knowledge. Where necessary the Trust IP Co-ordinator will take external advice from the All Wales Intellectual Property Advisory Service for NHS Wales.

Appendix 1

Intellectual Property Rights - What Are They?

This appendix provides some background information on intellectual property rights (IPR). Further information can be obtained from the Government's IPR site (www.intellectual-property.gov.uk) and the UK Patent Office (www.patent.gov.uk)

What are Intellectual Property Rights?

IPR is the collective name given to the rights that can be granted to protect intellectual property from exploitation. IPR includes:

- copyright : grants rights to the creator of literature, arts and music, films, recordings etc. enabling them to control use of their material in a number of ways, such as by making copies, issuing copies to the public, performing in public, broadcasting and use on-line.
- design right : applies to original, non-commonplace designs of the shape or configuration of articles and prevents deliberate copying.
- trade mark : any sign which can distinguish the goods and services of one trader from those of another. A sign includes words, logos, colours, slogans, three-dimensional shapes and sometimes sounds and gestures.
- patent : gives an inventor the right for a limited period to stop others from making, using or selling an invention without the permission of the inventor. Patents are generally interested in functional and technical aspects of products and processes, and must fulfil specific conditions to be granted.

Some of these rights, such as copyright and design right are automatic, there is no need to register the item in order to benefit from them. Others such as trade marks and patents have to be applied for via a registration process.

Why do I need to know about IPR?

There are two main reasons for being aware of IPR.

- To avoid infringing other peoples rights which could lead to prosecution or a compensation claim.
- To protect the Trust and the individuals IPR and prevent IP belonging to the Trust and the individual being exploited by others.

Who has Ownership ?

It is important to be clear on who has ownership of IPR. Intellectual property created by a person during the course of their employment belongs to the employer. The Trust Terms and Conditions of Employment contains a section covering IPR (see Appendix 2).

However in some circumstances the Trust, at its absolute discretion, may deem it to be appropriate for the creator of the work to be granted a personal share of any income resulting from the invention.

Where third party organisations are involved the situation becomes more complex. It is important that where IPR issues are likely to be involved, contracts with third parties are negotiated in advance and clearly specify the ownership arrangements.

If an invention is sufficiently novel and significant to warrant patent application, such application will normally be made in the name of the Trust, and will include the name(s) of the inventor(s). If the Trust decides not to progress with the commercial development of the invention it may assign its rights to the inventor(s).

Declaring Copyright

Copyright is an automatic right in the UK. However, it is necessary to be able to establish the date on which the document was created. Where material produced within the Trust is being distributed externally a copyright statement should be included. The usual format would be:

© Velindre NHS Trust *date*.

A statement on permitted use of the material may also be included.

Patents

A patent is a monopoly granted by the Crown, usually for 20 years. It provides absolute protection on an idea, however the technology must be made public. Conditions that must be met to register a patent are: there is an invention; it is new; it is inventive (not just the next step); it is capable of industrial application; it must not be an excluded category (discovery, scientific theory or mathematical method).

It can be difficult to establish the novelty of an invention, and if international patent rights are likely to be required, rigorous laboratory record keeping is essential in order to prove 'date of invention'.

Appendix 2

Extract from Velindre NHS Trust Contract of Employment

26. DISCOVERIES AND INVENTIONS

If at any time during your employment you alone or with others make or discover any invention, discovery, improvement or modification which relates to or which may relate to any products, site process, equipment, system or activity of the Trust or which are actually or partially useful to the activities of the Trust ("Invention") you shall forthwith disclose full particulars of the same including drawings and models to the Trust.

You hereby agree and acknowledge that all Inventions made in connection with the business of the Trust and all rights therein made in the course of your duties shall accordingly belong to the Trust.

You shall at the request and expense of the Trust execute on demand all such documents as the Trust may require and do all such other things as the Trust may consider to be necessary to enable the Trust to obtain the full benefit in such manner as the Trust may require of any Invention and the rights therein to which the Trust is entitled, to vest the rights arising there from fully in the name of the Trust or as it may direct and to secure such patent, utility, model, copyright or design registration or other similar protections for such Inventions in any part of the world as the Trust may consider appropriate.

You hereby irrevocably appoint the Trust to be your attorney in your name and on your behalf to execute all such documents and to do all such acts as may be necessary or desirable to give *effect* to the provisions of this Clause.