

**Innovation and Intellectual Property Policy**

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**Contents**

|  |  |  |
| --- | --- | --- |
| 1 | Introduction | 3 |
| 2 | Scope | 3 |
| 3 | Definitions | 3 |
| 4 | Roles and Responsibilities | 3 |
| 5 | Ownership | 5 |
| 6 | Distribution of Income Generated by Intellectual Property | 5 |
| 7 | Employment Contracts | 6 |
| 8 | Commercial Exploitation | 6 |
| 9 | Disputes | 7 |
| 10 | Training and Awareness | 7 |
| 11 | Equality | 7 |
| 12 | Data Protection | 7 |
| 13 | Records Management | 7 |
| 14 | Review | 8 |
| 15 | Monitoring | 8 |
| 16 | Discipline | 8 |
|  |  |  |
| Appendix 1 | Additional Definitions | 9 |

1. **INTRODUCTION**

This document outlines this organisation’s policy for the effective management of IP

and is based on Department of Health guidance. It gives a brief definition of what IP is, with information on who to contact if you have an invention/idea/innovation that you think may need protecting or if you require general advice on IP arising from your work. Buckinghamshire Healthcare NHS Trust rust (BHT) recognises that all staff during the course of their employment, and from any discipline, may generate new ideas and innovative ways of working that if developed could lead to improved clinical services or methods of working.

1.2 This supports the Trust’s key strategic objective to provide outstanding patient care.

1.3 The Trust seeks to encourage and enable employees to participate in the generation of intellectual property (IP) as part of its commitment to encourage innovation and to deliver the best possible patient care. BHT aims to maintain a balance between the legitimate needs of the Trust to protect its interests (IP is seen as an asset), and the provision of a creative environment for employees in which to work.

1.4 In 2002, the Department of Health published a Framework and Guidance on the Management of Intellectual Property in the NHS. The Framework emphasised that all trusts are required to ensure that their own intellectual property is managed within the given Framework. The policy that follows aims to set out how BHT will manage innovation and intellectual property arising in the Trust in accordance with the Framework.

2. **Scope**

2.1 This policy applies to all employees of the Trust in all locations including Governors, Non-Executive Directors, temporary employees, locums and contracted staff.

3. **Definitions**

3.1 Intellectual property is represented by new knowledge such as in technologies, drugs, devices, diagnostics, treatments, training material, software, new applications and skills which are not in the public domain and can be protected. IP can be generated within any department of the Trust and not just within Research and Development.

3.2 Innovations which need to be developed commercially (and which should be to maximise the benefit to patients, the Trust and to the individual) are called inventions and the employee responsible for the innovation is called the inventor. The owner of the IP may, or may not be the inventor.

4. **Roles and Responsibilities**

4.1 The potential for commercial exploitation of IP is large and it is essential that staff are made aware of its importance. It is the Trust’s responsibility to undertake this and to communicate this policy and to make it available on the Trust’s intranet.

4.2 It is a responsibility of all staff that if there is IP that has potential for exploitation, then it should neither be discussed nor shown to any third party who is not under a legal obligation to keep it confidential. This means that employees and their collaborators must not make IP public via publications, abstracts, presentations at meetings etc. until such time as a patent application is filed. They must maintain absolute confidentiality. The Innovation Manager can advise.

4.3 The Trust will maintain details of all IP rights owned by the Trust 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 will be given to the independent regulator (Monitor) or the Department of Health, from time to time, on request.

4.4 The Head of R&I has the overall responsibility to ensure that IP is managed correctly within the Trust.

4.5 The Innovation Manager is responsible for being the initial point of contact for advice and provides information to doctors on the policy at induction. They will provide details of the support available for the correct management of IP.

4.6 The Innovation will keep a record of the date on which an employee reports to them that he or she is the inventor of a creative product.

4.7 Employees have the responsibility of keeping accurate and dated laboratory notebooks, or records of their work, so that in the event of similar IP being generated elsewhere, the ownership of the invention can be legally attributed. Such notebooks can be important when applying for patents and also for identifying know-how.

4.8 Employees must take no steps to exploit any BHT IP without the specific approval of the Trust’s Board of Directors on recommendations from the Research & Innovation Committee or delegated representative.

4.9 Employees are expected to co-operate with those charged by the Trust to execute its management responsibilities.

4.10 The Director of Strategy and Business Development will be responsible for ensuring that formal legal advice is made available to protect and advise the Head of R&I and Innovation Manager on all innovations and IP rights issues.

5. **Ownership**

5.1 The Trust legally owns all IP (Copyright, Designs and Patent Act 1988) arising from the delivery of patient care, the education and training of employees and research and development programmes undertaken by its employees in the course of work for BHT unless such IP is subject to a separate written agreement with an external funding organisation, or agreed otherwise.

5.2 The ownership of IP arising from activities undertaken jointly with another organisation will be assigned to either of the employing organisations by agreement unless subject to prior agreement with a third party external organisation. The proportion of IP contributed by each party will be agreed by discussion between the parties as early in the process as possible.

5.3 In exceptional circumstances the Trust may without prejudice to its legal rights decide not to maintain its intellectual property rights (IPR) and may assign ownership of the IP to the relevant inventors (assignees) with their agreement, the costs of such assignment to be borne by the assignee. In such cases, the assignees may pursue and exploit the relevant IP in their own time and without utilising Trust facilities and resources.

5.4 All service level agreements (SLAs) should include a clause on intellectual property rights, whether or not the agreement with BHT is for the provision or commission of services. All SLAs should protect the ownership of IP generated within the Trust and by its employees, with or without partner organisations. For instance, in some cases there will be contractual arrangements under which the arising intellectual property belongs to a third party. Normally unless a third party in the private sector meets the full cost of any research or development, the Trust will expect to retain an interest in IP.

5.5 Staff should ensure they are familiar with any relevant SLA so as to meet any requirements in relation to reporting and protection of IP.

6. **Distribution of Income Generated from Intellectual Property**

6.1 The revenue from successful licensing, whether a lump sum or royalties, from option, licence or assignment agreements are:

1. First subject to repayment of external patenting (filing, searching etc. and legal costs and execution of the legal obligations (or financial obligations) to the funding body, and to management charges incurred by the Buckinghamshire Life Science Innovation Centre (BLIC) other IP management organisation
2. Shared between Trust, inventor and department according to the following scheme:

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| **Cumulative net income** | **Inventor** | **Research funds** | **Inventor’s Dept.** |
| First £50,000 | 50% | 30% | 20% |
| Next £100,000 | 40% | 35% | 25% |
| Next £100,000 | 30% | 40% | 30% |
| Over £250,000 | 25% | 42.5% | 32.5% |

6.2 The inventor’s share of net revenue may be treated as a discretionary gift by the Trust which is intended to continue until the death of the inventor or the expiry of the license agreement, whichever event occurs sooner.

6.3 Whether the inventor wishes to agree to share their part of the income with others, is at the discretion of the inventor.

7. **Employment Contracts**

7.1 BHT recognises that some of its employees may hold employment contracts funded jointly by the NHS and another party or funded entirely by another party (e.g. university, medical charity, a commercial sponsor). The Trust 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 Trust and the employee.

7.2 A Trust employee may have a part time NHS contract and be employed part time for example in private practice. If IP arises during this period of NHS employment, it will be owned by the Trust if it is construed to relate to that employment. If there are circumstances which makes it clear that IP arises within the self-employment, then the Trust may agree with the employee alternative terms for the sharing of benefit and will set these out in a legal agreement.

7.3 A Trust 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 be owned by the Trust. Ownership of IP in other honorary contracts will need to be agreed as described above.

7.4 IP generated by an employee acting outside the course of their NHS duties will be owned by the employee provided that neither NHS premises, resources nor equipment were used in such generation.

8. **Commercial Exploitation**

8.1 The Trust is the vehicle for holding patents and other IP, but is free at its absolute discretion to engage another party (eg an independent company) to exploit its IP on its behalf. If the Trust owns a shareholding, then the employee responsible for the IP may also own a shareholding. Details of the procedures to be followed are set out in the Framework guidance at [www.innovations.nhs.uk](http://www.innovations.nhs.uk) .

8.2 Employees who believe that their work will generate a patentable (or protectable) invention should notify the Head of R&I or Innovation Manager at the earliest opportunity and in any event, before disclosure of the idea to any party outside BHT either orally, in writing, by e-mail or in any other disclosure.

* 1. When the invention is sufficiently advanced the R&I Department will arrange for a consultation with a project manager from the relevant South East NHS IP Hub (or other IP management organisation) to assess its patentability and commercial potential.

8.4 A decision to apply for IP protection e.g. a patent will signal the need to contract the services of a patent agent and to start seeking a commercial partner. Such discussions may only take place after a confidentiality agreement is signed with a prospective commercial partner.

* 1. A decision not to apply for IP protection and exploitation of the invention will require BHT to determine whether it wishes to retain ownership of the IP. If not, the inventor(s) will be invited to meet the cost of legal transfer of ownership to the inventor(s) after which they can pursue the IP at their own expense and in their own time.
  2. At all times, legal advice will be made available to support any commercial exploit.

9. **Disputes**

9.1An employee who believes the Trust has wrongfully claimed ownership of IP shall seek resolution by means of the Trust’s grievance procedure. Advice will be available to transfer the IP to the Trust when this is agreed to be necessary. Without transfer of the IP, NHS resources will not be available to the employee to exploit the IP.

9.2 Where external organisations are involved formal legal advice will be sought by the Trust.

10. **Training and Awareness**

10.1All staff will be made aware of this policy once approved by a notice on the Swan Live. Copies will be available on the intranet.

10.2 Staff will receive a copy upon joining the Trust where it is felt particularly appropriate.

11. **Equality**

11.1 This policy and protocol will be equality impact analysed in accordance with the Trust Procedural Documents Policy, the results of which are published on our public website and monitored by the Equality and Diversity team.

12. **Data Protection**

12.1 The Data Protection Act 1998 protects personal data which includes information about staff, patients and carers. The NHS relies on maintaining the confidentiality and integrity of its data to maintain the trust of the community. Unlawful or unfair processing of personal data may result in the Trust being in breach of its data protection obligations.

13. **Records Management**

13.1 Records are created or received in the conduct of the business activities of BHT and provide evidence and information about these activities. All records are also corporate assets as they hold the corporate knowledge about the Trust. This is particularly relevant and important for intellectual property rights, see clause 4.7. The Trust has a Records Management Policy for dealing with records management. Compliance with and the application of this policy, will ensure that the Trust’s records are complete, accurate and provide evidence of and information about, the Trust’s activities for as long as is required.

14. **Review**

14.1 This policy will be reviewed in 3 years’ time. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

15. **Monitoring**

15.1 All staff will be made aware of this policy. It will be monitored by the R&I Department who may arrange a technology audit from time to time to identify potential innovations.

16. **Discipline**

16.1 This policy will be managed through the trust Research and Innovation Committee.

16.2 Breaches of this policy will be investigated and may result in the matter being treated as a disciplinary offence under the Trust’s disciplinary procedure, and/or referred to the Trust’s Local Counter Fraud Specialist.

**Appendix 1**

**ADDITIONAL DEFINITIONS**

**Copyright**

This arises automatically in original literary, dramatic, musical and artistic works. It

will largely be applicable to software in the NHS context. No registration is required

and rights exist for the lift of the originator plus fifty years.

**Goodwill or know-how**

Intangible assets of an organisation which may not be able to be protected by one or

other of the above means but which, nonetheless, may also be of value to a third

party.

**Intellectual Property (IP)**

Represented by new knowledge such as in technologies, drugs, devices,

diagnostics, treatments, training materials, software, new applications and skills

which are not in the public domain and can be protected.

**Licensing agreement**

An agreement whereby ownership of IP is retained whilst a third party is given rights

by the IP owner for development and marketing. Such an agreement sometimes

Involves payment of an initial lump sum to the owner of the IP, dependent on the

commercial potential of the IP, plus royalties as products from the inventions are

sold.

**Ownership**

IP generated by an employee in the normal course of duties belongs legally to the

employer. The employer may decide on some kind of income sharing arrangement

with the inventor(s) and their department upon successful exploitation of the IP. The

employer may decide to waive rights in some cases e.g. copyright on books. In the

event of the departure of the inventor(s) from the employing organisation, all IP rights

remain with the employing organisation and cannot be transferred with the employee

to the new organisation unless by prior agreement.

**Patent**

This is a form of IP protection which describes an invention which is new, involves an

inventive step and is capable of commercial application. It confers a monopoly right

to the inventor(s) for twenty years from the date of patent filing.

**Registered design and Design rights**

The outward shape or configuration of products of all kinds can be protected by

either a registered design, giving stronger protection, or by the (unregistered) design

right which gives weaker but automatic protection within the need for registration.

**Technology transfer**

This covers the transfer of ownership of IP or allows a third party to develop and

exploit the IP whilst ownership is retained. It is often more broadly defined as the

management arrangements under which IP is identified, protected and exploited.

**Trademark**

Trademarks are signs, such as a distinctive name, emblem or logo which

distinguishes the goods and services of one organisation from those of another. It

provides protection for the goodwill and reputation of an organisation in its products

and services. Registration confers greater protection and there is no time limit.