
Intellectual Property Policy

Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.

Purpose of Agreement	To ensure the organisation has a fair and transparent policy for managing intellectual property arising from within the organisation.
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Solent NHS Trust policies can only be considered to be valid and up-to-date if viewed on the intranet. Please visit the intranet for the latest version.

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Intellectual Property Policy

1. INTRODUCTION

- 1.1 The NHS is an organisation that has innovation at the heart of its services. In the NHS, innovation occurs in the delivery of patient care, in education and training of employees and in R&D programmes. Innovation occurs naturally in the normal course of employment.
- 1.2 In September 2002 the Department of Health (DH) published new guidance (1) on the management of Intellectual Property in the NHS which superseded the previous policy framework published in 1998. The 2002 guidance sets out how NHS organisations can contribute to the development of the NHS as an innovative organisation by capturing new technologies, such as novel treatments, devices, drugs, data, software, training materials, or management systems, and by ensuring that those inventions which can contribute towards improving the health service are appropriately developed, exploited and disseminated.
- 1.3 There are various forms of legal protection for Intellectual Property (IP), including patents, copyright, design rights and trademarks.
- 1.4 The Trust is required to ensure that IP arising in the organisation is managed within the 2002 Framework and Guidance. The Guidance contains model management arrangements and employment condition which will contribute towards developing the Trust's arrangements for managing IP for the benefit of the NHS employees and patients.

2. SCOPE & DEFINITIONS

- 2.1 "Intellectual property" can be defined as the product of intellectual or creative activity in the form of novel ideas, innovation or research and development. Rights in intellectual property include patents, copyright, trade marks, design rights and knowhow. Intellectual property rights (IPR) have potential commercial value and can be bought or sold.

Below are examples of IPR.

Category	Protection Method	Examples
Inventions	Patents	New medical device.
Literary works	Copyright	Computer software. Course or training materials.
Designs. Drawings	Design rights	Medical illustration
Brand Names	Trade Marks	Trust Logo
Trade Secrets	Knowhow	Surgical technique

- 2.2 The policy is written in accordance with the Health and Social Care Act 2001 and the document “The NHS as an Innovative Organisation. A Framework and Guidance on the Management of Intellectual Property in the NHS.” (Department of Health 2002).
- 2.3 This policy applies to all Trust employees and to Non-Executive Directors.
- 2.4 A central element of the NHS national guidance is that when an invention generates income, the Trust **may** choose to share this income with inventors, in return for assignment of IP to the Trust (when necessary). In general, intellectual property created by an employee in the course of his/her duties is owned by the relevant employer.
- 2.5 Where employees have joint contracts with other organisations, a partnership agreement on intellectual property issues will need to be developed with each such organisation. Partnership agreements will be appended to this policy as and when they are developed and will be deemed to form part of this policy.

3. GENERAL PRINCIPLES

- 3.1 The Trust sees the purpose of intellectual property development and knowledge transfer as to improve patient care, to benefit national and local economies and to bring financial gains to the Trust and the nation.
- 3.2 Income can be obtained from IPR through licensing or assignment.
- 3.3 A licence allows a licensee exclusive or non-exclusive use of the intellectual property rights for a defined period and in a defined geographical area, but the ownership remains with the provider. The licence may include some form of financial consideration to the provider such as a lump sum on signature and/or a royalty on sale of any products or services which incorporate the intellectual property rights.
- 3.4 An assignment transfers ownership, just like any form of property, with an assignment document signed by both parties. Again there would usually be a financial consideration, such as a lump sum on signature and/or a continuing royalty.

4. OWNERSHIP OF INTELLECTUAL PROPERTY

- 4.1 UK law provides that (unless otherwise agreed) IP produced by employees in the course of their employment or normal duties belongs to the employer.
- 4.2 The Trust, on behalf of the NHS, asserts its right to ownership and use of all intellectual property generated by staff during the course of their employment, and it likewise asserts its right to ownership and use of all intellectual property generated by staff outside the course of their employment where substantial Trust resources have been used.

- 4.3 The Trust is however committed to sharing with the staff concerned the rewards derived from successful commercial exploitation of intellectual property which they have generated (see section 8: Sharing of rewards).
- 4.4 There may be circumstances in which the Trust chooses not to take up its rights to the intellectual property, in which case the Trust may decide at its discretion assign the relevant intellectual property rights to the employee.
- 4.5 It is recognised that some intellectual property rights may be generated on research or other third-party contracts, the terms of which may give the third party (usually the funding body in question) rights over some or all of the intellectual property. Such rights are negotiated between the Trust and the funding body before the research contract in question is signed.

5. Role and Responsibilities

- 5.1 The Chief Executive has ultimate accountability for the strategic and operational management of the organisation, including ensuring adherence to all policies.
- 5.2 The Assurance Committee is responsible for approving this policy and ensuring that it represents best practice.
- 5.3 Directors, Associate Directors and Line Managers are responsible for ensuring the requirements of this policy are met.
- 5.4 The HR Department will support this policy to ensure that all terms and conditions of employment clearly explain the requirements of individual employees in relation to Intellectual Property.
- 5.5 The Document Sponsor (Executive Lead) is responsible for ensuring that:
- A Document Manager (Author) has been identified to carry out regular review and revision of the Policy
- 5.6 The Document Manager is responsible for ensuring the following:
- That the policy is appropriately reviewed and maintained
 - That the policy and associated forms are uploaded to and accessible on the intranet
 - This policy is formally approved following the correct procedures.
 - That the implementation of the policy is monitored and evidenced
 - That the effectiveness of the document is monitored and evidenced

6. Training

- 6.1 Whilst there is no specific training identified in relation to this policy, the Trust recognises the importance of appropriate training for staff. For training requirements and refresher frequencies, please refer to the Training Needs Analysis (TNA) on the intranet.

7. INTELLECTUAL PROPERTY MANAGEMENT PROCEDURES

7.1 Introduction

- 7.1.1 The Trust will follow government guidelines, in particular, “The NHS as an Innovative Organisation. A Framework and Guidance on the Management of

Intellectual Property in the NHS.” (Department of Health 2002) (as updated from time to time) to develop intellectual property in a cost-effective way.

- 7.1.2 Exploitation of intellectual property involves both costs and risks. Consequently, it will by no means always be appropriate or cost effective to seek to protect and exploit potential intellectual property.
- 7.1.3 Exploitation of the Trust’s intellectual property rights is the responsibility of the Trust Board, with management responsibility for intellectual property generated by Trust staff delegated to the Associate Director Contracts.
- 7.1.4 All employees have an obligation to report to the Associate Director Contracts the existence of any intellectual property as defined in section 2 of this policy. The Associate Director Contracts will then assist the inventor in obtaining sufficient information for the Trust to make a commercial assessment.
- 7.1.5 Section 7.2 below explains the processes that should be followed when an employee has generated or thinks they may generate intellectual property.

7.2 General procedures

- 7.2.1 Any employee wishing to discuss the protection of any idea or other form of intellectual property should discuss the matter with the Associate Director Contracts at the earliest opportunity and, in any event, before disclosure of the idea to any party outside the Trust either orally or in writing. Prior public disclosure (other than under explicit terms of confidentiality or to another employee of the Trust) may invalidate any subsequent patent application and diminish both potential commercial value and benefits accruing to the Trust and the inventor. It is essential therefore that ideas and inventions are not generally discussed and are reported instead through the correct channels. All employees should be aware of the importance of avoiding improper disclosure of their inventions.
- 7.2.2 A record will be kept of the date and time on which an employee reports to the Associate Director Contracts that he or she is the inventor of a creative product. Employees must keep accurate and dated records so that, in the event of similar intellectual being generated elsewhere, the ownership of the invention can be legally attributed. Such records can be important when applying for patents and also for identifying know-how.
- 7.2.3 The Associate Director Contracts will be the initial contact point for advice, and can provide details of the support available for the management of intellectual property. The potential for development will be discussed by the Trust’s Audit Committee, who will consider the views of the employee and the line manager and will make a recommendation to the Trust Board on whether and how to proceed.
- 7.2.4 The Trust will maintain a register of all intellectual property 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 intellectual

property rights and the income they generate will be given to the Department of Health from time to time on request.

7.2.5 The Trust is free at its absolute discretion to engage another party to exploit its intellectual property on its behalf.

7.2.6 NHS resources will not be available to employees to exploit Trust intellectual property. Employees should take no steps to exploit any Trust intellectual property without the specific approval of the Trust Board. Employees are expected to co-operate with those charged by the Trust to execute its management responsibilities.

7.3. Particular arrangements for employees engaged in R&D

7.3.1 The Trust may from time to time arrange for an audit of Trust R&D activity to satisfy Department of Health requirements for identifying potential intellectual property of value. Employees are required to co-operate fully with this activity.

7.3.2 Employees will sometimes be engaged in contracts for R&D which are funded wholly or in part by external sponsors (e.g. universities, medical charities, industry). Employees should ensure that they understand their position and their obligations within these contracts, taking their own independent advice as necessary.

7.3.3 Employees engaged in R&D will sometimes engage in discussions with external sponsors on funding R&D. Employees are reminded that it is the Trust's responsibility to agree a price for carrying out this R&D, and in fixing this price the Trust will pay due regard to the intellectual property which is likely to result from the contract.

7.4. Protection of intellectual property

7.4.1 External registration is essential in the case of patents. All patents are published and give full details of the invention. Patent rights are protected for 20 years. This must be arranged via the Associate Director of Contracts.

7.4.2 Know-how protection is achieved by its owner by keeping the information secret and only disclosing the know-how under an obligation of confidence.

7.4.3 Unregistered design rights give rights against copying. The Trust policy is to mark all drawings of an object over which rights are claimed, with the date and the name of the owner of those rights, as a precaution. Protection can last for between 5 and 15 years and may be renewable.

7.4.4 Trade marks (signs, symbols, logos, brand names etc) can be protected by registration, in the UK and/or in Europe, which would give protection for 10 years, renewable for two further 10-year periods. Unregistered trade marks can be protected by an action in 'passing off'. However, if an employee identifies a registrable trade mark in use by the Trust, this should be drawn to

the attention of the Associate Director Contracts, for a decision on registration.

- 7.4.5 Copyright, including that on computer software, requires no external registration and comes automatically. Protection continues for 70 years after the author's death (in the case of artistic musical, literary or dramatic works), or 50 years after the author's death (in the case of sound recordings or broadcasts). A sensible precaution however is to advertise the fact of ownership to third parties, and the Trust policy, with which employees should comply, is to insert the following wording on copyrightable items, updated with the appropriate year:

© Solent NHS Trust 2013. All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.

7.5. Special conditions concerning copyright

- 7.5.1 Statute provides that copyright in any work produced for the Trust by an employee in the normal course of employment belongs to the employer.
- 7.5.2 If any of its employees produce copyright work, the Trust may choose at the Associate Director of Contracts discretion, to assign to such employee copyright in the work if intended for publication in a professional or academic journal, and waive any claim it may have to benefits arising from the publication.
- 7.5.3 The Trust however reserves the right to itself at no cost to reproduce and use these publications for its own non-commercial purposes, including for research and training. The Trust does not assign any of its other copyright to the author including, without limit:
- course or training materials or patient information leaflets produced by an employee in the course of employment for the Trust and which are produced, used or disseminated within or outside the Trust
 - any software programme generated by an employee in the normal course of their employment
 - any designs, specification or other works which may be necessary to protect rights in commercially exploitable intellectual property.

8. SHARING OF REWARDS

- 8.1 If the Trust chooses to exploit its intellectual property rights for profit then the Trust considers it appropriate that members of staff who have developed the intellectual property (the 'inventors') should have a share in any income received from such IP by the Trust, after deduction of any reasonable expenses incurred by the Trust in achieving the income (including patent and legal expenses).
- 8.2 Inventorship will be determined at the outset and inventors will warrant that they, and only they, have contributed to the generation of the intellectual property in question. The distribution of any income or capital gain arising

from the exploitation of the intellectual property between the inventors will be reached by mutual agreement.

- 8.3 Financial benefits from the exploitation of intellectual property will not accrue to members of staff who are employed by the Trust for the specific purpose of writing software, data, written work, designs and images. Consideration will be given, on a case by case basis, where a member of staff is deemed to have made a contribution to the inventive step beyond that of software, data, written work, designs and images development.
- 8.4 Unless otherwise agreed at the outset, profit will be shared on commercialised patents, registered designs and copyright material.
- 8.4.1 The Inventor will receive 20% of the profits (as determined reasonably by the Trust)
- 8.5 If the Trust does not wish to own a certain piece of intellectual property then the Trust may choose to assign it to its employee(s). The member(s) of staff would then take up responsibility for protection and commercialisation. In such cases, the Trust would retain a residual share of the financial benefits (20% of the net revenue), after deduction of any reasonable expenses incurred by the staff member in achieving the income (including patent and legal expenses).
- 8.6 The Trust and Departmental shares of income will be:
- Administered by the Finance Department;
 - Used as agreed by the Trust Board following recommendations. For that related to research this should be in accordance with the Commercial Income Policy.
 - Reviewed on an annual basis by the Finance Audit Committee.
- 8.7 Any profit-sharing arrangement will not normally be dependent upon continuing employment with the Trust. Any share of any profits due to the inventor in relation to intellectual property exploited by the Trust, will unless otherwise agreed continue to be paid following retirement, change of employer or redundancy.
- 8.8 The Trust will pay sums due under this policy within a reasonable time. Should the individual leave the Trust before payment is due, it is the responsibility of the individual to keep the Trust informed of their contact details.
- 8.9 It is at the discretion of the inventor to agree to share their own proportion of the income with others if appropriate.
- 8.10 In circumstances, where an employee (inventor) is dismissed from the Trust and where the nature of the offence is likely to bring the Trust into disrepute, then entitlement to any future income will be ceased.
- 8.11 The payment of any profit share to inventors cannot be seen as part of the inventor's estate and thus payments will stop on the death of the inventor.

9. CONFIDENTIALITY

- 9.1 All employees must comply with confidentiality requirements of the Trust in relation to intellectual property.
- 9.2 Where non-Trust staff are involved in any intellectual property generation and development of the Trust, Trust employees must inform the management, and confidentiality agreements with non-Trust personnel must be in place where applicable and possible, and as soon as possible.
- 9.3 It is the responsibility of the employee who is involved in the generation of the intellectual property or appointed to participate in the intellectual property generation, to ensure the scientific, academic and professional development and progress of the intellectual property.

10. IMPLEMENTATION

- 10.1 It is the duty of Trust employees to inform the management of the Trust at the earliest possible opportunity of their acquiring the knowledge of any intellectual property development in which any Trust resource(s) is/are involved.
- 10.2 All heads of department must ensure that their staff are aware and familiar with this policy and all induction training will make explicit reference to this policy.

11. DISPUTES

- 11.1 In the event of any dispute about the interpretation of this policy, Trust employees have recourse to the Trust grievance procedure to resolve the dispute.

12. EQUALITY IMPACT ASSESSMENT AND MENTAL CAPACITY.

- 12.1 An Equality Impact Assessment has been carried out assessing this policy (please see Appendix 1) and no adverse impacts have been found.
- 12.2 The policy has been assessed and meets the requirements of the Mental Capacity Act 2005.

13. MONITORING EFFECTIVENESS.

- 13.1 The department of research and clinical audit, with the assistance of the contracts team, will from time to time, arrange an audit of the Trust activity to identify Intellectual Property of potential commercial value. Staff will be expected to co operate fully with this activity.
- 13.2 A register of Intellectual Property will be maintained centrally and this will be made available to auditors as required. All staff are reminded of the need to

comply with the NHS Standards of Business Conduct and Trust policies related to Declaration of Interest.

Monitoring tool for IPR policy

Standard	Process for Monitoring compliance	Evidence to support compliance	Frequency	Responsibility of	Committee
Joint contract with other organisations, including research, will need to develop partnership agreement clearly stating the ownership of any IP.	Contracts and research and clinical audit will review contracts related to their areas as required for IP potential.	Contractual agreements involving IP will be held centrally by the AD for contracts and procurement	6 monthly update provided to finance committee	AD for Contracts and Procurement	Finance Committee. Audit committee.
Employment Terms and Conditions contain specific section related to IP	Will be part of standard contract template	HR to confirm change to contract template.	Annual update as required.	AD for HR	HR and workforce committee.
Trust maintains a register of all IP owned by the Trust	Form part of contract review process internally	Register to maintained	Yearly	AD for Contracts and Procurement	Finance Committee. Audit committee

14. REVIEW

14.1 This document may be reviewed at any time at the request of either at staff side or management, but will automatically be reviewed two years from initial approval and thereafter on a biennial basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

15. REFERENCES.

The NHS as an Innovative Organisation- ' A Framework and guidance on the management of intellectual Property in the NHS'. Department of Health 2002.
Appendix 1

Equality Impact Assessment

<u>Step 1 – Scoping; identify the policies aims</u>	Answer		
1. What are the main aims and objectives of the document?	To ensure a consistent and fair system for handling Intellectual Property within the organisation.		
2. Who will be affected by it?	Policy relates to all staff, who may in the course of their work within the Trust, develop Intellectual Property		
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	To establish overarching policy for the management of IP within the organisation. To ensure that the Associated Director for Contracts is notified of all potential IP within the organisation.		
4. What information do you already have on the equality impact of this document?	None this is a new policy		
5. Are there demographic changes or trends locally to be considered?	None		
6. What other information do you need?	None		
<u>Step 2 – Assessing the Impact; consider the data and research</u>	Yes	No	Answer (Evidence)
1. Could the document unlawfully against any group?		No	Inclusive approach to handling all IP.
2. Can any group benefit or be excluded?		No	Those who are ‘inventors’ of IP within the organisation. All staff will be informed of this policy as part of their T&C of employment/
3. Can any group be denied fair & equal access to or treatment as a result of this document?		No	This policy is aimed at all employees within the organisation.

4. Can this actively promote good relations with and between different groups?			n/a
5. Have you carried out any consultation internally/externally with relevant individual groups?	Yes		Legal advice sought
6. Have you used a variety of different methods of consultation/involvement		No	Policy to be presented to Policy Steering group.
Mental Capacity Act implications			
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)			No