

## Innovation and intellectual property policy

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## **1. Introduction**

- 1.1 Queen Victoria Hospital NHS Foundation Trust (QVH) 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. QVH 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 QVH 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.
- 3.3 Additional definitions are listed in Appendix 1.

## **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.

- 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 (NHSi) or the Department of Health, from time to time, on request.
- 4.4 The Clinical Lead for R&D has the overall responsibility to ensure that IP is managed correctly within the Trust.
- 4.5 The R&D Manager is responsible for being the initial point of contact for advice. They will provide details of the support available for the correct management of IP.
- 4.6 The R&D Manager 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 QVH IP without the specific approval of the Trust's Board of Directors 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 Head of Corporate Affairs and Communications will be responsible for ensuring that formal legal advice is made available to protect and advise the Clinical Lead for R&D and R&D 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 QVH 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. The Trust will follow the legal processes for this determined by their subcontracted representative for intellectual property management services.

- 5.4 All service level agreements (SLAs) should include a clause on intellectual property rights, whether or not the agreement with QVH 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 is:
- i) 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 IP Hub or other IP management organisation, and to pump priming and/or development costs
  - ii) Shared between Trust, inventor and department according to the following scheme:

Cumulative net revenue to Trust	Inventor per invention	QVH Overheads	QVH department where innovation originated
First £50K	75.0%	12.5%	12.5%
Next £200K	50.0%	25.0%	25.0%
Over 250K	25.0%	37.5%	37.5%

- 6.2 The inventor's share of net revenue 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 QVH recognises that some of its employees may hold employment contracts funded jointly by the NHS and another party or funded entirely by another party (eg 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 eg 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 Clinical Lead for R&D or Manager at the earliest opportunity and in any event, before disclosure of the idea to any party outside QVH either orally, in writing, by e-mail or in any other disclosure.
- 8.3 When the invention is sufficiently advanced the R&D 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 eg 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.
- 8.5 A decision not to apply for IP protection and exploitation of the invention will require QVH 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.
- 8.6 At all times, legal advice will be made available to support any commercial exploit.
- ## 9. **Disputes**
- 9.1 An 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**

10.1 All staff will be made aware of this policy once approved by a notice in the Connect staff briefing. 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 QVH recognises the diversity of the local community and those in its employ. The aim is therefore, to provide a safe environment free from discrimination and a place where all individuals are treated fairly with dignity and appropriately to their need. The Trust recognises that equality impacts on all aspects of its day to day operations and has produced an Equality Policy Statement to reflect this. All policies and procedures are assessed in accordance with the Equality Impact Assessment tool, the results of which are monitored by the Equality and Diversity Group.

## 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 QVH 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 year's 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&D Department who may arrange a technology audit from time to time to identify potential innovations.

## 16. **Discipline**

16.1 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.

## Equality Impact Assessment Tool

		Yes/No	Comments
<b>1.</b>	<b>Does the policy/guidance affect one group less or more favourably than another on the basis of:</b>		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Disability	No	
	• Age	No	
<b>2.</b>	<b>Is there any evidence that some groups are affected differently?</b>	No	
<b>3.</b>	<b>If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?</b>	N/A	
<b>4.</b>	<b>Is the impact of the policy/guidance likely to be negative?</b>	No	
<b>5.</b>	<b>If so can the impact be avoided?</b>	N/A	
<b>6.</b>	<b>What alternatives are there to achieving the policy/guidance without the impact?</b>	N/A	
<b>7.</b>	<b>Can we reduce the impact by taking different action?</b>	N/A	

## 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 life 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 eg 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.