



Kernow Clinical Commissioning Group

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Policy Ratification

Name of Executive Director ratifying Policy

Signature.....

Date.....

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1 Purpose

2 Responsibility and relevance

3 Definitions

4 This Policy is cross referenced to:
Equality and Diversity Impact Assessment Guidance

5 Equality and Diversity Impact Assessment taken place: yes/no

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1. Introduction

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 delivery of healthcare. To ensure that this potential is given the best chance of being recognised, the NHS has produced new guidance and supported changes to the law which now mean that NHS organisations can take appropriate steps to ensure that their services, expertise and knowledge base are put to maximum use.

NHS Kernow Clinical Commissioning Group intends to encourage all of its employees to make these sorts of contributions by giving them the advice and support they need to maximise the benefits from their 'good ideas'. This process is called innovation management and with appropriate good management of innovation, potentially valuable Intellectual Property (IP) can arise. It is intended that innovations and IP from any sector of the [KCCG's](#) activities should be appropriately exploited which can mean anything from dissemination throughout the KCCG, or the NHS, to commercial exploitation in order to access wider markets and other healthcare systems. Because of the potential for generating income, an Intellectual Property Policy is required to ensure rules are followed and legal obligations are met.

This document describes the policy of the Cornwall & Isles of Scilly Primary Care KCCG (the "KCCG") for the local management of Intellectual Property and includes; staff involved, ownership of IP, its protection, management and development.

2. 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 ([registered where appropriate and in some cases](#) restricted in its availability or dissemination) in order to ensure its appropriate development and ultimate use or exploitation.

[Reference to the terms 'Intellectual Property' or 'IP' in this policy document mean all patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information \(including know-how and trade secrets\) and any other "intellectual property rights" that may subsist in any part of the world:](#)

The following Intellectual Property categories are [particularly](#) relevant to the NHS - further information on each is available at Appendix 1:

| Category | Protection | Examples |
|--|---------------------|---|
| Inventions | Patents | New medical device |
| Literary works, drawings | Copyright | Computer software, patient leaflet, journal article |
| Designs | Design rights | Medical illustration |
| Brand names | Trade marks | KCCG logo |
| Trade secrets | Know-how, knowledge | Surgical technique |

3. Intellectual Property Rights and Ownership

The KCCG 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 during, or could reasonably be expected to arise from, the course of the normal contracted duties of a member of staff, belongs to the KCCG, unless an existing contract with an external sponsor overrules this.

The KCCG 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 [objective of the](#) policy is to provide a balance between the KCCG's legitimate needs to protect its interests, and the provision of a creative working environment for staff.

4. Staff Covered by the Intellectual Property Policy

The following categories are included:

4.1 All staff with KCCG contracts of employment, whether employed in Research and Development, clinical, managerial, administrative or support roles.

4.2 Staff with KCCG contracts of employment whose payroll costs are wholly or partially [funded](#) by another party (including, but not limited to: a commercial sponsor, government department, or medical charity); unless the contract of employment between the KCCG and that party assigns ownership of intellectual property to that party.

4.3 Staff who have a part-time KCCG contract or who are employed part-time elsewhere. Where Intellectual Property is generated during this non-KCCG employment, but which is within the specialist area of the KCCG employment, the KCCG has rights of ownership to all of the Intellectual Property.

4.4 Staff who generate Intellectual Property outside normal working hours and/or away from their place of work where the Intellectual Property relates to their normal course of duties.

4.5 Where KCCG staff are seconded to another organisation or are working in partnership with other organisations the KCCG will agree an arrangement for sharing [all resulting](#) Intellectual Property.

4.6 Independent Providers of NHS Services (usually, but not exclusively, contracted to Primary Care KCCGs)

4.7 Staff who are principally employed by the KCCG and who hold an honorary contract with another organisation. [Ownership](#) of any IP arising from their work [will vest](#) in the KCCG unless otherwise negotiated.

4.8 Staff with an honorary university contract recognising the research status of a NHS employee. Such a contract [will](#) not affect the ownership of IP.

4.9 Staff with a joint employment contract with another organisation. The ownership of any [IP developed](#) by the individual will be held jointly between the employing organisations.

5. Students and Trainees Covered by the Intellectual Property Policy

5.1 Students and trainees hosted by the KCCG for training purposes are subject to the management arrangements for Intellectual Property of KCCG staff [and are deemed to be 'staff' for this purpose only](#) (see below).

5.2 Students engaging in research for the KCCG and who are not PMS students will sign a confidentiality agreement that will require them to disclose details of the invention and assign the rights to the KCCG on request.

5.3 Students who are not employees of the KCCG [but are engaged](#) in research for the KCCG will sign a confidentiality agreement that will require the student to disclose details of the invention and assign the rights to the KCCG on request. In consideration of all issues relating to IP the student is treated on a par with KCCG staff. Other researchers at the KCCG who are neither [only](#) staff nor students e.g. Senior Research Fellows and other emeritus staff will normally be brought within the scope of this [policy](#).

6. Intellectual Property Management Arrangements

The KCCG has established a system for providing 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.

6.1 Staff [should](#) notify the KCCG 'Intellectual Property Lead' of any idea or other form of potential Intellectual Property that they have developed at the earliest opportunity, and before disclosure to any party outside the KCCG either orally or in writing. (Prior public disclosure, other than under explicit terms of confidentiality [agreements](#), will invalidate any patent application, and reduce the potential gain from Intellectual Property [agreements](#) development to the benefit of the KCCG and the inventor.)

6.2 The decision to pursue a commercial development [of IP assigned to, transferred or otherwise owned by the KCCG](#) will seek further advice as required from, the KCCG Intellectual Property Lead and other relevant parties.

6.3 If the KCCG decides not to pursue a commercial development or own a certain piece of Intellectual Property then it may be assigned to the inventor/[creator](#). The [assignee](#) would then take up responsibility for protection and commercialisation. The KCCG may require a share of any resulting revenue in return for the assignment.

7. Development & Exploitation of Intellectual Property

7.1 The KCCG may seek the assistance from appropriately qualified external organisations (NHS IP Hubs, Biotechnology Exploitation Platforms, BEPs, Innovation/Enterprise Hubs etc) to help maximise the potential of IP which is commercially exploitable

7.2 The [KCCG will exploit IP for the](#) purpose of [making](#) more income available for the health service. However the KCCG will take into account other considerations including maximising improved health for patients and savings in the cost of service delivery.

8. Intellectual Property Protection

8.1. The KCCG has a duty to adequately protect its IP. Ensuring that effective protection is maintained can only be guaranteed with the co-operation of the KCCG's staff.

8.2 It is the duty of all staff, independent providers, students and trainees and other parties subject to this policy 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 and discussions relating to Intellectual Property. All records and notes must show the relevant dates and action agreed.

8.3 Before discussions can begin with potential external sponsors, a confidentiality undertaking will be concluded between the KCCG and the external organisation and signed on behalf of the KCCG by the Director of Finance and the employee.

9. Identification Audit of Latent Technology

The KCCG will assist staff with the identification of IP by increasing awareness about what IP is, how it originates and how to bring it to the attention of the lead contact. In some circumstances the KCCG will arrange for technology audits (opportunity surveys) to work with staff to probe thoroughly into specific areas.

10. Monitoring and Review

10.1 The KCCG will establish a process for review and monitoring of Intellectual Property. Annual reports will be presented to the KCCG Governing Body.

10.2 This Policy will be reviewed every two years, but may be amended by the KCCG at any time. Amendments will be presented to the KCCG Governing Body.

11. Contracts of Employment

The KCCG will include a statement about Intellectual Property in the contract of employment for all new staff, independent providers, students, trainees and other parties subject to this policy. For existing staff, independent providers, students, trainees and other parties subject to this policy the policy will be incorporated into the terms and conditions of employment. A copy of the policy will be provided for staff, 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.

Temporary staff supplied via external Employment Agencies will be covered by an agreement drawn up between the KCCG and External Employment Agencies. In addition these individuals will be asked to sign a non disclosure agreement.

12. Revenue Sharing

12.1 The KCCG will develop from time to time a system for revenue sharing with inventors that encourages the development of new ideas and inventions, and shares revenue on a consistent basis. The KCCG will publish such revenue sharing arrangements from time to time.

12.2 The KCCG will agree with any external organisations or partners, which contribute to generation of IP, as to how revenue will be shared between the eligible parties.

12.3 At the start of each activity, or as innovative steps are identified, the KCCG will establish a revenue sharing framework. This will vary for each opportunity, but a starting point may be:

| Net Income | Inventor % | KCCG % |
|-------------|------------|--------|
| Up to £20K | 70 | 30 |
| £20 – 250K | 60 | 40 |
| £250 – 500K | 45 | 55 |
| £500K+ | 30 | 70 |

Values are net after deduction to cover registration and other legal expenditure incurred for the purposes of registering (where applicable), securing, defending and otherwise protecting the applicable IP.

13. Severance.

If any provision of this policy is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this policy and be rendered ineffective without modifying as far as possible the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

14. Confidentiality

All staff, trainees, students, independent providers and other parties that are subject to this policy (together the 'Parties') agree not to divulge or communicate to any person except to their professional representatives or advisers or as may be required by law (including the Freedom of Information Act 2000 and the Data Protection Act 1998) or any legal or regulatory authority any information related to any Intellectual Property or potential Intellectual Property which may have or may in future come to the Parties' knowledge as a result of their engagement with the KCCG. Each of such Parties shall use their best endeavours to prevent the publication or disclosure of any such Confidential Information.

15. Legal Advice

This policy aims to clearly state the legal relationship between staff, students, trainees, independent providers and the KCCG regarding ownership of intellectual property rights. However, the KCCG cannot provide legal advice to employees on this issue.

Appendix One – Further Information on Types of Intellectual Property

What is Intellectual Property?

Intellectual Property is the name given to new ideas or concepts with practical application that the law recognises has value by providing legal protection. IP can generate revenue for the KCCG or NHS and the originator/researcher, if protected and harnessed properly.

There are five main categories of IP:

- Patents
- Copyright
- Design Rights - both registered and unregistered
- Trade Marks - both registered and unregistered
- Confidential Know-how or information

1. Patents

A patent is a monopoly right in return for complete disclosure to the State that officially publishes the invention. Patents protect new devices, new processes, new products and even in some cases new applications for existing materials and products. It is a common misconception that patents are only available for 'hi-tech' inventions and innovations. This is not the case as patent protection may be available for small improvements and incremental steps to existing technology. The owner of a patent - here, the KCCG - is granted the right to stop others from exploiting the same idea and therefore it is only the owner of the patent who is allowed to manufacture or sell the technology, or license third parties to manufacture or sell the technology. The usual maximum term of protection for a patent in the UK is 20 years.

For an invention to be patentable it must

- Be novel, i.e. different and not previously disclosed in any form
- Involve an inventive step
- Be capable of commercial application.

2. Copyright

Copyright protects original artistic, literary and musical works, computer programs, written materials, drawings, sound recordings, videos, CD-ROMs and broadcasts. Copyright prevents any third party from reproducing work without the copyright owner's consent. Unlike patent protection it is not necessary to register copyright within the UK. Nevertheless it is vital that you have documentary evidence to prove the date of first production. This is especially useful when sending computer programs to others or exhibiting work at conferences. Copyright in most works lasts for the lifetime of the author plus 70 years.

3. Design Rights

There are 2 types of design rights, namely registered and unregistered, both protecting the appearance of the object. For registered design the aesthetic appeal of the relevant object is of prime importance, whereas for unregistered design this aspect is not required. Registered design provides exclusive protection for 5 years extendable to 25 years.

4. Trade Marks

Trade marks can be both registered and unregistered. A trade mark is defined as a 'mark capable of graphic representation that distinguishes the goods and services of one party from those of another'. A trade mark is registered for 10 years and can be renewed every 10 years.

5. Confidential Know-How

In some instances the KCCG or Health Board may not wish to patent a product or process but may decide to keep the relevant information confidential. It is also essential that information is kept confidential before a patent application is filed. To ensure confidentiality Confidentiality or Non-Disclosure Agreement forms are normally used. Part of this obligation of confidentiality extends to the keeping of proper records of research, time dated and verified, with proper security systems for laboratory books, research wallets and the like.

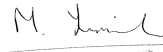
| | | | | | |
|---|------------------------------|--|------------------------|---------------------------------------|--|
| EIA SCREENING FORM EIA SCREENING FORM Section | | Officer responsible for the assessment | | | |
| Name of Policy to be assessed | Intellectual Property Policy | Date of Assessment | 13 th March | Is this a new or existing policy? New | |
| 1. Briefly describe the aims, objectives and purpose of the policy. | | 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 new guidance and supported changes to the law which now mean that NHS organisations can take appropriate steps to ensure that their services, expertise and knowledge base are put to maximum use. | | | |
| 2. Are there any associated objectives of the policy? Please explain. | | The KCCG 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 objective of the policy is to provide a balance between the KCCG's legitimate needs to protect its interests, and the provision of a creative working environment for staff | | | |
| 3. Who is intended to benefit from this policy, and in what way? | | KCCG, Staff and other bodies | | | |
| 4. What outcomes are wanted from this policy? | | Clear guidance for Intellectual Policy rights | | | |
| 5. What factors/forces could contribute/detract from the outcomes? | | None | | | |
| 6. Who are the main stakeholders in relation to the policy? | KCCG and Staff | 7. Who implements the policy, and who is responsible for the policy? | | KCCG | |
| 8. Are there concerns that the policy could have a differential impact on RACIAL groups? | Y | N ✓ | Please explain | | |

| | | | |
|--|------|--------|--|
| What existing evidence (either presumed or otherwise) do you have for this? | None | | |
| 9. Are there concerns that the policy could have a differential impact due to GENDER (including TRANSGENDER)? | Y | N ✓ | |
| What existing evidence (either presumed or otherwise) do you have for this? | None | | |
| 10. Are there concerns that the policy could have a differential impact due to DISABILITY? | Y | N ✓ | |
| What existing evidence (either presumed or otherwise) do you have for this? | None | | |
| 11. Are there concerns that the policy could have a differential impact due to SEXUAL ORIENTATION? | Y | N ✓ | |
| What existing evidence (either presumed or otherwise) do you have for this? | None | | |
| 12. Are there concerns that the policy could have a differential impact due to their AGE? | Y | N ✓ | |
| What existing evidence (either presumed or otherwise) do you have for this? | None | | |
| 13. Are there concerns that the policy could have a differential impact due to their RELIGIOUS BELIEF? | Y | N ✓ | |

| | | | |
|--|---|--------|--|
| What existing evidence (either presumed or otherwise) do you have for this? | | None | |
| 14. Could the differential impact identified in 8 – 13 amount to there being the potential for adverse impact in this policy? | Y | N ✓ | Please explain |
| 15. Can this adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or any other reason? | Y | N ✓ | Please explain for each equality heading (questions 8 –13) on a separate piece of paper. |
| 16. Should the policy proceed to a full equality impact assessment? | Y | N ✓ | 17. If Yes, describe why, then proceed to a full EIA. |
| | | | 18. If No, are there any minor further amendments that should take place? |
| | | | 19. If a need for minor amendments is identified, what date were these completed and what actions were undertaken. |

Signed (completing officer) ...Kate Proctor\ Jane Koch

Date 28th February 2008

Signed (Head of Section) ... 

Date 28th February 2008

Please ensure that a signed copy of this form is sent to both the Policies Officer and the Equality and Diversity lead to be placed on the KCCG website.