

## TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

### CORPORATE POLICY AND PROCEDURE FOR THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY (IP)

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## TRUST-WIDE NON-CLINICAL/POLICY DOCUMENT

2015 – 2.3

Quality, recovery and wellbeing at the heart of everything we do

# TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

## CORPORATE POLICY AND PROCEDURE FOR THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY (IP)

### Further information about this document:

Document name	<b>CORPORATE POLICY AND PROCEDURE FOR THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY (IP) SA21</b>	
Document summary	Process for the management of Intellectual Property based on Department of Health Guidelines (The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS, 2002). It supports the DoH Report "Innovation Health and Wealth: accelerating adoption and diffusion in the NHS", published in December 2011. It gives a brief description of what IP is, information on who to contact if you have an invention/idea/ innovation that you think may need protecting, exploitation and protection of IP and Surplus sharing.	
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To be read in conjunction with	<ul style="list-style-type: none"> <li>• Corporate Policy F04: Standards of Business Conduct</li> <li>• Corporate Policy F01: Standing Orders (in relation to declarations of potential conflicts of interest)</li> <li>• Driving Innovation through External Partnerships – Version 1 (January 2015)</li> <li>• Partnering Arrangements: Governance Policy &amp; Process (Executive Committee, January 2014)</li> </ul>	
<b>This document can be made available in a range of alternative formats including various languages, large print and braille etc</b>		
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Version 2	Reviewed in consultation with the Perfect Care and Wellbeing Committee, the Trust's Legal Advisor, Perfect Care lead for Innovation and adapted following feedback.	May 2015

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**SUPPORTING STATEMENTS** – this document should be read in conjunction with the following statements:

### **SAFEGUARDING IS EVERYBODY'S BUSINESS**

All Mersey Care NHS Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

### **EQUALITY AND HUMAN RIGHTS**

Mersey Care NHS Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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## PURPOSE AND RATIONALE

### 1.1 Purpose

The NHS Plan commits the NHS to ensuring that new technologies are identified and developed in the interests of patients and society as a whole and that innovation leads to new products, improved interventions and services for health and social care. Department of Health Guidelines (The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS, 2002) sets out how NHS Trusts can contribute to the development of the NHS as an innovative organisation by capturing technologies and ensuring these inventions, which can make more income available for improving the health service, are appropriately developed and exploited. Innovation Health and Wealth: accelerating adoption and diffusion in the NHS, published in December 2011, sets out a delivery agenda for spreading innovation at pace and scale throughout the NHS. It identifies the need to reward and recognise efforts within all stages of the innovation pathway and encourage and incentivise staff to participate in an alternative innovation process by generating, sharing and evaluating new ideas. This policy sets out the rules of ownership of Intellectual Property (IP) arising from an employees' work, its protection and exploitation. It aims to maintain a balance between the legitimate needs of the Trust to protect its interests and the provision of a creative working environment for staff.

As part of its commitment to deliver the best possible care, the NHS in general, and the Trust in particular, wishes to encourage its staff to develop and exploit IP in conjunction with the Perfect Care Innovation process.

### 1.2 Rationale

Trust employees will, from time to time, develop ideas and concepts which have practical applications and commercial potential which are often generated during the normal course of their duties outside R&D. Since 1998 NHS bodies have had the power to exploit IP to make more income available for improving the health service. The 1998 Policy Framework allowed income from IP generated by R&D to be retained by the NHS body which created it. This has now been extended to IP generated outside R&D. NHS bodies are also able to share this income with those responsible – the inventors.

An innovation can be used to improve the health service in one of two ways. First, after suitable evaluation, it could be freely shared across the NHS by knowledge management processes. Second, the evaluation

may show that it is best treated as an invention and the method of doing this is the subject of this policy. It may not be clear until after evaluation which path an innovation should follow.

The exploitation of IP falls within the scope of Income Generation powers and is subsidiary to, and must not interfere with, core health services duties. The generation and exploitation of IP must be facilitated in a manner which does not negatively impact on the workload of the inventor, the Division, service or department.

## **2 SCOPE**

### **2.1 Persons covered by this policy**

- 2.1.1 All staff that are full or part time employees of Mersey Care NHS Trust.
- 2.1.2 Staff with Mersey Care NHS Trust contracts of employment whose payroll costs are partially or wholly funded by another party (e.g. medical charity, a university, a commercial sponsor, government department) unless the contract between Mersey Care NHS Trust and that party assigns ownership of any IP to that party.
- 2.1.3 Staff who generate IP outside their normal working hours and/or away from the place of work, where the IP relates to their area of employment within Mersey Care NHS Trust or uses data or expertise acquired during their working hours with Mersey Care.
- 2.1.4 Staff who have a part-time Trust contract and who are self-employed or otherwise employed part-time (e.g. private practice), where IP is generated during this non-Trust employment but which is within the specialist area of the Trust employment.
- 2.1.5 Trainee professionals hosted by Mersey Care NHS Trust who generate IP during the course of their Training.
- 2.1.6 Trust staff seconded to another organisation, or employees of another organisation hosted by Mersey Care NHS Trust under contract, are subject to the arrangements for the ownership of IP as agreed between Mersey Care NHS Trust and that organisation.
- 2.1.7 Staff with joint or honorary contracts with another organisation (e.g. University).
- 2.1.8 Service Users or Carers who undertake work on behalf of the Trust.
- 2.1.9 Contractors/self employed consultants who are contracted to undertake work on behalf of the Trust where the IP has been generated as part of this work.

## 2.2 **Where**

- 2.2.1 This policy covers all possible occasions when IP may have been developed by staff from Mersey Care NHS Trust as part of their role within the Trust.

## 2.3 **When**

- 2.3.1 IP needs to be protected by patents, copyrights, etc. Acquiring such rights sometimes involves costs and is only the first step. Little or no benefit will accrue from protecting IP unless it is then developed and commercialised. The NHS has set up Hubs to advise Trusts on whether or not the IP has commercial potential and how best to take it forward. Mersey Care NHS Trust has entered into an agreement with Hempsons Solicitors to undertake this service for the Trust through payment of an annual fee which covers basic advice. Some services may incur additional costs outside the remit of the contract which the Division and Innovation Panel will need to take into account when making decisions regarding potential exploitation costs.
- 2.3.2 Employees have an obligation to inform the Trust (via Divisional Management structures and the R&D Manager) about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement. All innovation projects must be recorded through the on-line Perfect Care Innovation system.
- 2.3.3 The final decision on exploitation of the Trust's IP will be the responsibility of the Divisional Management Teams and the Innovation Panel. The decision making process will be supported by relevant Corporate Services in conjunction with the R&D Manager and the Perfect Care Innovation Lead. All development of innovation/IP should be channelled via the employee's line management and Divisional management structure, the Perfect Care Innovation Lead, to the R&D Manager, through to Hempsons. Hempsons will assess the potential of any IP and advise on whether or not it is worth protecting and exploiting (see flowchart in Section 13).
- 2.3.4 Where Mersey Care NHS Trust chooses not to exploit IP arising from the work of its employees, it will, in most cases, assign the IP back to the inventor, who may wish to pursue its further development. The member of staff would then take up responsibility for protection and commercialisation. However, this is a formal process and cannot be assumed by the inventor although the inventor can initiate this discussion. The Trust reserves the right to claim a percentage of any net income the assignee receives as a result of exploitation via an Assignment Agreement. The decision to assign IP back to the inventor is the responsibility of their Divisional Management after taking into consideration the opinion of the Trust's legal advisors. Any

such decision must also be reported to the R&D Manager for recording purposes.

- 2.3.5 It is the Trust's policy to actively encourage employees to publish their work and the Trust will not normally object to an employee's right to be named as an author of copyright material. However, if intellectual property is to be exploited, all work needs to be kept confidential until it is correctly protected.

### **3 POLICY**

#### **3.1 Copyright Issues**

- 3.1.1 As soon as someone produces a report or writes a training programme or idea for an innovation, that information/idea is automatically copyrighted to the Trust as an employer.

- 3.1.2 The Trust will normally assign to the author copyright in a work intended for publication in a professional or academic journal or electronically, and waive any claim it may have to benefits arising from the publication. 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:

- (a) 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.
- (b) Any software programme generated by an employee in the normal course of their employment.
- (c) Any designs, specifications, trademarks or other works which may be necessary to protect rights in commercially exploitable IP.

- 3.1.3 The author/creator should add a copyright statement to any documents that are produced using the following statement - © Mersey Care NHS Trust (insert year). All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner. This protects your idea from being taken or claimed as an original idea by another person or party.

#### **3.2 Ownership of IP**

- 3.2.1 Ownership of IP, in most cases, rests with the Trust employing the person(s) who generated it. This includes cases where someone working

on behalf of the Trust develops a piece of IP, including professional and service user and carer consultants.

- 3.2.2 All IP produced by Trust employees in the course of their normal duties is owned by their employer, i.e. Mersey Care NHS Trust. Any activities outside the normal duties of the employee that generate IP will belong to the employee. This is in accordance with the Patents Act 1977 and the Copyright, Designs and Patents Act 1988.

### 3.3 Collaborative Projects

- 3.3.1 Employees may not undertake collaborative projects where they wholly or in part coincide with Trust projects without permission. When work/research is conducted by an employee in partnership with another organisation, a formal agreement stating ownership (or sharing) of generated IP is required. The development of IP sharing agreements with collaborating institutions will be done in liaison with the Trust's solicitors. It is essential that in all such cases clear records and documentation are kept by the member of staff as listed in 8.5.

### 3.4 Confidentiality

- 3.4.1 Any IP with the potential to be exploited must not be disclosed to anyone outside the Trust (including presenting papers or posters at conferences, abstracts, chapters in books and any other verbal or written communication) until IP advice has been sought via an employee's line management structure and, if appropriate, the Trust solicitors. IP cannot normally be protected (especially in the case of filing patents) once prior disclosure has occurred, no matter how informal.
- 3.4.2 Disclosure of an invention severely compromises opportunities for protection and exploitation. If an employee develops an idea or concept, which may have commercial potential, they must report this to their line manager, Divisional Management Team and ensure that it is recorded via the on-line Perfect Care Innovation process. The R&D Manager should be informed about this at the earliest opportunity, and in any event, before disclosure of the idea to any party outside the Trust, either orally or in writing.
- 3.4.3 It is often difficult to protect IP and advice is needed at the earliest stage. If an employee thinks they have an item of IP, a few simple guidelines will help maximise the chances of being able to protect it:
- 3.4.4 Keep it secret until expert advice has been obtained via the Trust's solicitors. Public disclosure will invalidate any subsequent patent application and reduce potential commercial value. Confidentiality

Disclosure Agreements will be used to enable IP to be discussed with external parties (via Trust solicitors).

- 3.4.5 Resist pressure to announce or publish details until safe to do so.
- 3.4.6 Avoid giving away or selling samples.
- 3.4.7 Don't involve external organisations in testing or prototyping without a written agreement and in line with Partnering Arrangements: Governance Policy & Process (January 2014).
- 3.4.8 Don't sign any contracts or agreements until they have been properly scrutinised.

### 3.5 **Record Keeping**

- 3.5.1 It is important for staff working on projects which generate IP, to keep written, dated records of their activities and results. This is especially important for patent application purposes in the US, since the US has a policy of 'first to invent' rather than the 'first to file' rule in the UK. When exploiting IP it is imperative that all correspondence, including emails, telephone conversations and meetings are logged to provide a detailed account of any discussions relating to the IP. This is in accordance with service governance, research governance and good clinical practice guidelines for R&D. These records will also be required to calculate surplus sharing between inventor/s and the Trust.
- 3.5.2 Employees and Divisional line managers are responsible for informing the R&D Manager of all current and potential IP and updates on progress. It is the relevant staff member's and line manager's responsibility to keep safe any important original documents, such as confidentiality disclosure agreements, relating to IP. The R&D Dept will also retain copies of these documents if available.
- 3.5.3 Reviews may be periodically carried out by the Trust solicitors on behalf of the Trust. A review involves a member of the IP team at the Trust Solicitors meeting with a member of staff involved in current or potential IP projects, to discuss his/her work and to identify any IP that could improve health directly or indirectly and/or save the NHS money and/or generate income for the NHS. Such reviews will help ensure the correct action is taken to protect any IP that may later be exploited and to identify potential routes for exploitation such as free dissemination or commercialisation.

### 3.6 **Disputes of Ownership**

- 3.6.1 If the ownership of IP is disputed, dated written records relating to the IP in question (as per 8.5) will be assessed to establish the inventor(s) and

their proportionate contribution. If such material is not available, the Chief Executive of the Trust will make a final decision, taking professional advice if necessary. If there is a dispute of ownership between two or more organisations relevant legal advice will be sought.

### **3.7 Staff Obligations**

3.7.1 Employees have an obligation to inform the Trust (via their line management structure) about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement. Staff must also comply with the NHS Standards of Business Conduct and other Trust policies related to Declaration of Interest. All innovations and potential innovations must be recorded via the Trust's Perfect Care Innovation process managed by the Innovation Lead for Perfect Care.

3.7.2 All staff have contractual obligations in relation to IP. All staff Contracts of Employment include the following statement:

*"You may be involved in the development of new services, procedures, policies, treatments, service delivery methods, and other aspects of design and development, which may give rise to certain rights such as patents, trademarks, design rights or copyright ("intellectual property rights"). All such contributions arising out of your role whilst in the Trust's employ will be owned by the Trust, vesting in the Trust all intellectual property rights involved.*

*The Trust will interpret any unauthorised attempt to gain a financial or other tangible advantage from a third party through the applied use of special skills or knowledge, acquired through your training and employment within the Trust as gross misconduct which may result in dismissal.*

*You must discuss with your manager any invitations to present papers or write articles before responding to or soliciting such an invitation."*

### **3.8 IP Management Structure**

3.8.1 It is the responsibility of the Medical Director/R&D Manager to oversee IP for the Trust with the support and input of the Trust's Legal Advisor. For information and advice on IP and its protection, staff should initially speak to the R&D Manager following discussions at Divisional line management level. All innovation projects must be recorded via the Perfect Care Innovation process.

3.8.2 The Trust has appointed Hempsons Solicitors as its advisor organisation to give advice and assistance in the protection, management and commercialisation of its IP. The solicitors will keep all information

confidential unless it is given consent to the contrary. The R&D Manager will refer employees and Divisions to the solicitors as appropriate to protect the interests of the Trust.

- 3.8.3 In cases where patenting or licensing may be the most appropriate option, the Trust Solicitors will be involved on behalf of the inventor and the Trust. In some cases the IP may be a case of “best practice” which could be shared with other Trusts. The network of IP Hubs may be used to disseminate these innovations, either through their own networks or via other NHS bodies such as the Modernisation Agency.

### 3.9 Audits

- 3.9.1 When IP is identified, the Division Business Analyst will maintain appropriate records to support the financial transactions relevant to the IP work being undertaken. This will then provide an audit trail of income and expenditure and allow accurate and relevant surplus sharing at the completion of the project. Please refer also to 8.12 Surplus Sharing with Inventor.
- 3.9.2 “A Framework and Guidance on the Management of Intellectual Property in the NHS” places a duty on the Trust to audit and protect IP belonging to the Trust.

### 3.10 Decisions on Exploitation

In accordance with DoH guidelines, it is the role of the R&D Department, Divisional management and the Perfect Care Innovation Lead, in consultation with the inventor and other specialists (e.g. Solicitors), to decide on the potential for an idea/invention to be exploited and the best route of exploitation. Often this will be through disseminating the idea throughout the NHS either freely or with a nominal charge to cover costs. Other cases will benefit the NHS more effectively and/or be easier to adopt into widespread use by developing the idea as a commercial product. In strong cases, the information reported should effectively demonstrate the potential market and the likelihood of success of the venture. In these instances, the Trust will explore commercialisation of the IP such as by licensing the IP to a company in return for a royalty or by assignment of the IP to a spin-out company in return for a stake in the company. Any decision will be made following consultation with the employee and only with Division support. Divisions will be responsible for paying for exploitation costs which are not covered by the standard annual agreement with the Hempsons.

### **3.11 Contract Negotiations**

Any IP that is licensed, sold or otherwise transferred to another organisation or individual will be negotiated in the best interests of the Trust by professional advisers (e.g. Trust solicitors). The contract will ensure that the Trust retains the right to use the IP for its own R&D and training purposes.

### **3.12 Surplus Sharing with Inventors**

- 3.12.1 There is generally no legal requirement for an NHS body to share the income with an employee (the inventor) who created the IP in the course of employment or normal duties. However, to give an incentive to the inventor to support the exploitation process, a reasonable share of the income should be offered. The Trust wishes to encourage full participation of employees in the creation and commercial exploitation of IP. The policy will therefore be to reward the staff who have contributed substantially to the generation of IP from the design or development of a product, which has subsequently provided a surplus through exploitation. Such surplus will be shared between the Trust and the inventor according to the Surplus sharing formula (see below). The Trust will not normally share income generated from the design and delivery of training courses and/or materials. In cases where several staff have been involved in generating the IP, the proportion of income allocated to inventors will be divided between them on the basis of relative inventive contributions. In all cases the shared surplus will be the net of any protection and exploitation costs (eg legal costs, staff time used in development, overhead costs, etc). An annual report of income received will be given to the inventor to ensure they are aware of the total figure received and to enable them to request the relevant reward due to them.
- 3.12.2 Any resources an employee is given to develop a project, which has potential IP benefit, must be agreed through agreement with line managers and via their Division senior management. All innovations must be recorded via the Trust's on-line Perfect Care innovation process. Agreement and discussions to support innovation should as a minimum include time, resources, timescales and reporting mechanism. Discussion on resources should consider such issues as: hours of development time, Trust materials, administration costs, travel, marketing, venue, catering, etc. All such development costs related to resources and payments to protect IP will be deducted from gross profit prior to the sharing of net gain. The Division must also agree to accept the financial risk of supporting a potential IP project which may ultimately not result in any significant profit or in a loss.

- 3.12.3 Inventorship must be determined at the outset and inventors will warrant that they, and only they, have contributed to the generation of the IP in question. The distribution of any income or capital gain arising from the exploitation of the IP between inventors will be agreed by mutual agreement and in writing. If required, the Trust's solicitors will be called upon to provide an opinion on inventorship and to arbitrate in any disputes relating to assignment of inventorship.
- 3.12.4 If IP arises from research funded by an external, non-NHS or University agency, whose policy on the commercialisation of IP was different from that of the Trust and which formed part of the research contract, then the distribution of financial benefit would be negotiated by the Trust Solicitor on behalf of the Trust with the funding body. See also Policy and Procedure for the Receipt, Management and Use of Payments Received by Trust Staff for Their Involvement In Commercially Funded Research Projects (SA04).
- 3.12.5 Hempsons will only undertake work on behalf of the Trust. If a Trust employee wishes Hempsons to advise or undertake commercialisation of IP for which they are the inventor, it is done on the understanding that Hempsons is acting on behalf of the Trust, in line with the Trust's policy, and any benefits accrued from such work will belong to the Trust which will share them with the inventor as outlined in this policy. Employees should only approach Hempsons via their line management structure within their Division and then through the R&D Manager. The Division will be expected to fund the cost of any advice outside the remit of the contract with the Trust's solicitors.

### 3.13 Surplus Sharing Formula

Cumulative Net Income	Inventor/s	DIVISION	R&D
Up to £100,000	25%	55%	20%
Over £100,000	20%	60%	20%

### 3.14 Receipt of Income by the Inventor

Any surplus or remuneration received by the Trust will be allocated to a specific budget code held by the relevant Division and by the R&D Department (as shown in Surplus sharing formula in 8.12). Upon completion of the project the member of staff will then need to submit a payment request form authorised by their relevant senior Division line

manager for the appropriate percentage of any net surplus income received. The payment request should be forwarded to the R&D Manager for counter signature and authorisation prior to being sent to the Payroll Department for processing. The Divisional line manager will ensure that the relevant budget code is identified on the payment request form. All staff should be aware that the receipt of monies in respect of IP is tax deductible.

### **3.15 Use of IP for Private Work**

In circumstances where the Trust owns the IP, the member of staff who is the official inventor of a piece of IP will need to negotiate a licence to use the IP for private work. This will be done with their Division and with the support, where necessary, of the R&D Manager and the Trust's Legal Advisor. This work must not impact on their day to day duties in any way and must not be done in Trust time or using Trust materials. The Trust holds the right to receive a percentage of any income received from private work carried out by a member of staff using IP owned by the Trust. This will be in line with the Surplus sharing formula and costs detailed above in 8.12.

### **3.16 Inventors who leave the employment of the Trust**

#### **3.16.1 Surplus Sharing**

Although the Trust continues to be the owner of the IP, the inventor will still be entitled to the relevant percentage of any income received as per the Surplus Sharing Formula in 8.12. The Trust will also continue to be entitled to the relevant percentage for exploitation by the inventor of the IP beyond their Trust employment. These arrangements will continue for up to 5 years following the employee leaving the employment of the Trust.

#### **3.16.2 IP Use**

When a member of staff leaves the employment of the Trust, as author of a piece of IP they can negotiate with the Trust, via their Divisional Management Team, about their ability to use any IP that they created in their new role away from the Trust. Staff can seek permission of the Division to be granted a licence to use the IP in their new role or the staff member's new organisation. A cost may be charged to purchase a licence from the Trust and the Division will decide upon the amount. In any event the Trust will retain ownership and can reserve the right to refuse the use a piece of IP beyond employment in the Trust. Such requests as these will be assessed on a case by case basis and will, where appropriate, be in line with the Surplus sharing formula and arrangements above in 8.12.

### **3.17 Trust Use of Surplus from IP**

The Trust reserves the right to depart from the Surplus sharing formula in paragraph 8.12 at the discretion of the Chief Executive and in the interests of the wider Trust.

## **4 DUTIES**

### **4.1 Accountable Director**

The Medical Director has overall responsibility for intellectual property within the Trust. As the accountable officer he is responsible for overseeing IP and ensuring appropriate mechanisms are in place to support its exploitation on behalf of the Trust.

### **4.2 R&D Manager**

The R&D Manager is responsible for overseeing IP generated in the Trust, ensuring that any potential IP is supported through providing advice and access to external experts including the Trust's legal advisor and the Trust Solicitors where appropriate. The R&D Manager is the recognised professional lead within the Trust to advise staff on IP and refer on where appropriate.

### **4.3 Perfect Care Innovation Lead**

The Innovation lead is responsible for maintaining an oversight of innovation originating in the Trust and for managing the work of the Innovation Committee to ensure innovations support the priorities of the Trust.

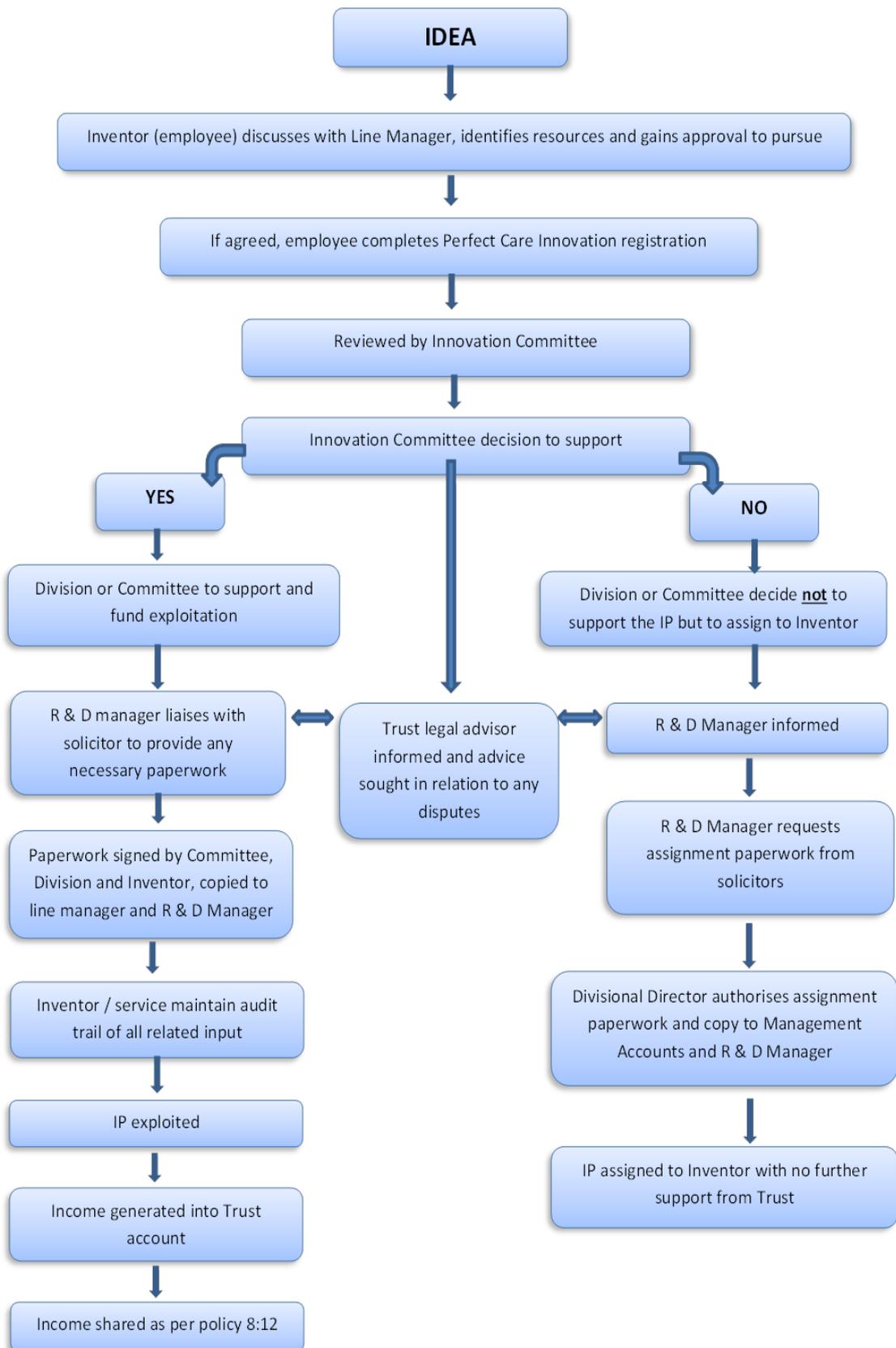
### **4.4 Local Managers**

The responsibility for discussion of, and agreement to, the generation of potential IP projects and approval of local resources to develop and exploit it, is devolved to the relevant directors and managers. Heads of Departments, other units and business functions within the Trust have overall responsibility for ensuring that any development and exploitation does not have a negative impact on the core duties of the individuals nor the Trust and that this is managed in a way which meets the aims of the Trust's IP policy.

### **4.5 All staff**

All Staff have an obligation to inform the Trust (via their line management structure and recording via the Trust's innovation process) about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement. Staff must also comply with the NHS Standards of Business Conduct and other Trust policies related to Declaration of Interest. Staff must ensure that they keep appropriate records of their work in relation to IP and agree any time or resources to be used with their line manager and Division prior to developing any potential IP projects.

## 5. PROCESS / PROCEDURE



## 6. CONSULTATION

The following staff / groups were consulted with in the development of this policy document:

This policy has been reviewed and developed by the Trust's Research Manager in consultation with the Medical Director, the Perfect Care and Wellbeing Committee, the Trust's Legal Advisor, the Perfect Care lead for Innovation, Hempson's Solicitors and adapted following feedback.

## 7. MONITORING

System for the Monitoring Policy	
Monitoring of compliance with this policy will be undertaken by:	R&D Manager and Divisional Finance Business Analyst
Monitoring will be performed:	After any IP income is generated.
Monitoring will be undertaken by means of:	<ul style="list-style-type: none"> <li>Review of audit trail of any income and expenditure and relevant surplus sharing upon the completion of projects.</li> <li>Review of advice given by Trust Solicitors.</li> </ul>
Should shortfalls be identified the following actions will be taken:	The R&D Manager or Division Finance Business Analyst will consider the outcomes of the review and make recommendations for change to the Perfect Care and Wellbeing Committee and/or the Director of Finance as required.
The results of monitoring will be reported to:	The Perfect Care and Wellbeing Committee
Resultant actions plans will be progressed and monitored through:	The Perfect Care and Wellbeing Committee

## 8. SUPPORTING DOCUMENTS

### List of Supporting Documents

Purpose
Staff Contracts of Employment
Corporate Policy F04: Standards of Business Conduct
Corporate Policy F01: Standing Orders (in relation to declarations of potential conflicts of interest)
Driving Innovation through External Partnerships – Version 1 (January 2015)
Partnering Arrangements: Governance Policy & Process (Executive Committee, January 2014)
The NHS Plan: a plan for investment, a plan for reform (2000).
The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS (2002).
Innovation Health and Wealth: accelerating adoption and diffusion in the NHS" (December 2011).

## 9. GLOSSARY OF TERMS

### **INTELLECTUAL PROPERTY PROTECTION**

This glossary includes a very brief overview on some aspects of IP protection. It must be noted that the law is complicated and members of staff are advised to contact their R&D Manager at the earliest opportunity to discuss more detailed information on IP protection.

### **INTELLECTUAL PROPERTY – A DEFINITION**

IP can be defined as products of innovative, intellectual or creative activity and can include inventions, industrial processes, designs and images. These innovations could be derived through the delivery, or the management of, patient care, in the education or training of employees or through an R&D programme. Innovation may, for example, be a novel treatment, a new diagnostic, a device, a new drug or a new use of an existing drug, use of data, software, training material, a treatment protocol or a new management system. See also Policy and Procedure for the Receipt, Management and Use of Payments Received by Trust Staff for Their Involvement in Commercially Funded Research Projects (SA04).

IP can be given legal recognition of ownership through intellectual property rights (IPR) such as patents, copyright, design rights, trade marks or know-how (see Glossary – Section 9). Protection of IP by IPR facilitates rather than hinders the uptake of innovation. IP has an owner and can be bought, sold or licensed and should be adequately protected.

### **COPYRIGHT**

Copyright covers written information (such as leaflets, articles, assessment tools and training packs), databases, computer software and films/videos, which can all be protected by copyright. Copyright is achieved automatically, when the IP is created. However, it is advisable to attach a statement for additional protection, such as:

### **PATENTS**

Patents can be used to protect inventions that embody a new idea and are capable of being made or used by industry (such as devices, processes or methods of operation). Exclusions from this includes methods of treatment of the human/animal body by surgery or therapy, or methods of diagnosis. An invention must not have been made public anywhere in the world prior to the patent filing date (including journals, the internet, meetings, posters, etc.) and must not be obvious, compared to what is already known to someone who is experienced in the relevant field.

### **DESIGN RIGHTS**

Design Right protects against deliberate copying of the shape or configuration of an article. Design Right may exist in addition to other forms of protection such as Patent, Copyright or Registered Design.

## **REGISTERED DESIGN RIGHTS**

In some new products, the novelty lies not in a new idea or principle but in their appearance. Registered Design Rights usually cover commercial objects with a unique or aesthetic appearance.

## **UNREGISTERED DESIGN RIGHTS**

Unregistered Design Rights are not directly associated with appearance. The right can protect internal and external features but only gives protection against copying of features of shape and configuration (e.g. physical design of computer chips and engineering components).

## **TRADEMARKS**

A trademark is a sign or symbol that is used to distinguish a product or service from that produced or supplied by another business. It could be the design of a label or the shape of a product's packaging (for example, the Coca-Cola bottle). The term "sign" includes logos, slogans, words, colours and 3-D shapes.

Registering a trademark protects the owner from competitors also trying to use that image to promote their own products. Trademarks can be very valuable in keeping that product as a market leader.

## **KNOW-HOW**

Confidential information or "Know-how" is information which may be commercially or technically valuable and which is regarded as secret. It may, for example, include information on industrial processes or be a list of clients.

In all cases, the "know-how" will only retain its value if it is managed effectively. All exploitation partners, business partners and collaborators should be bound by conditions of confidentiality through a Confidential Disclosure Agreement (CDA). This may be a reciprocal agreement whereby confidential information is both disclosed and received.

Know-how and confidential information can be bought, sold and licensed like any other form of IP and persist indefinitely, as long as it remains "secret"

## 10. IMPLEMENTATION PLAN

	<b>Issues identified/Action to be taken</b>	<b>Time-Scale</b>
<p><b>Co-ordination of implementation</b></p> <ul style="list-style-type: none"> <li>How will the implementation plan be co-ordinated and by whom?</li> </ul> <p>Clear co-ordination is essential to monitor and sustain progress against the implementation plan and resolve any further issues that may arise.</p>	<p>The policy is a revision of the previous policy and will continue to be implemented across the decision making bodies who will be assessing areas of possible Intellectual Property. The R&amp;D Manager as Trust contact for IP will ensure awareness raising of this revised policy through its identification inclusion in the Trust's innovation process</p>	<p>When innovation process is uploaded to intranet.</p>
<p><b>Engaging staff</b></p> <ul style="list-style-type: none"> <li>Who is affected directly or indirectly by the policy?</li> <li>Are the most influential staff involved in the implementation?</li> </ul> <p><i>Engaging staff and developing strong working relationships will provide a solid foundation for changes to be made.</i></p>	<p>All staff will be affected by this policy if/when they develop any IP. The Innovation Panel will be utilised to engage with staff in their Division. It has been reviewed by the Perfect Care and Wellbeing Committee.</p>	<p>Ongoing.</p>
<p><b>Involving service users and carers</b></p> <ul style="list-style-type: none"> <li>Is there a need to provide information to service users and carers regarding this policy?</li> <li>Are there service users, carers, representatives or local organisations who could contribute to the implementation?</li> </ul> <p><i>Involving service users and carers will ensure that any actions taken are in the best interest of services users and carers and that they are better informed about their care.</i></p>	<p>Service users and carers working on innovation projects within the Trust will need to be made aware of this policy when necessary. This will be via the People Participation Team and staff members involved in the projects.</p>	<p>Ongoing</p>

<p><b>Communicating</b></p> <ul style="list-style-type: none"> <li>• What are the key messages to communicate to the different stakeholders?</li> <li>• How will these messages be communicated?</li> </ul> <p><i>Effective communication will ensure that all those affected by the policy are kept informed thus smoothing the way for any changes. Promoting achievements can also provide encouragement to those involved.</i></p>	<p>The main issues concerning the ownership and protection of IP created by staff and others working on behalf of the Trust will be shared through Trust wide promotion of the policy through the current system for sharing new or revised policies. It has already been shared with the Perfect Care and Wellbeing Committee and will be linked into the process for managing innovation via Perfect Care.</p>	<p>Ongoing.</p>
<p><b>Training</b></p> <ul style="list-style-type: none"> <li>• What are the training needs related to this policy?</li> <li>• Are people available with the skills to deliver the training?</li> </ul> <p><i>All stakeholders need time to reflect on what the policy means to their current practice and key groups may need specific training to be able to deliver the policy.</i></p>	<p>There are no training issues related to the implementation of this policy however all those to whom the document is applicable will be made aware of its revision through uploading to the website and via the on-line process for managing innovation.</p>	
<p><b>Resources</b></p> <ul style="list-style-type: none"> <li>• Have the financial impacts of any changes been established?</li> <li>• Is it possible to set up processes to re-invest any savings?</li> <li>• Are other resources required to enable the implementation of the policy eg. increased staffing, new documentation?</li> </ul> <p><i>Identification of resource impacts is essential at the start of the process to ensure action can be taken to address issues which may arise at a later stage.</i></p>	<p>The financial implication of this policy will be the management of any income received by the Trust and managing the process by which staff will claim any income they are entitled to receive. This process will be managed via the Finance Department in liaison with the Division and the R&amp;D Manager.</p> <p>Provision of specific advice and issuing of standard paperwork will be managed through the Trust's contract with the Trust's solicitors.</p> <p>Although an IP policy has been in place since 2007, the launch of a revised policy may generate retrospective claims for surplus sharing which Divisions may need to plan for.</p>	<p>Ongoing.</p>

<p><b>Securing and sustaining change</b></p> <ul style="list-style-type: none"> <li>• Have the likely barriers to change and realistic ways to overcome them been identified?</li> <li>• Who needs to change and how do you plan to approach them?</li> <li>• Have arrangements been made with service managers to enable staff to attend briefing and training sessions?</li> <li>• Are arrangements in place to ensure the induction of new staff reflects the policy?</li> </ul>	<p>This is a revised policy concerning the management of Intellectual Property. There may be some concerns raised by staff when they become aware that IP they develop that relates to their role in the Trust is owned by the Trust. This issue is governed by guidance and employment contract. The challenge will be to ensure that staff are aware and this will be done through sharing of the policy and one to one discussions with staff when required.</p>	<p>Ongoing.</p>
<p><b>Evaluating</b></p> <ul style="list-style-type: none"> <li>• What are the main changes in practice that should be seen from the policy?</li> <li>• How might these changes be evaluated?</li> <li>• How will lessons learnt from the implementation of this policy be fed back into the organisation?</li> </ul>	<p>The number of identified pieces of IP and the level of income received by the Trust as a result of the exploitation of IP will be monitored.</p> <p>Discussions prior to any development of IP at Divisional level should be enhanced through the introduction of a template for recording all innovation on the Trust intranet and via the Perfect Care Lead for Innovation. Recording of these issues will assist the development of IP and assist in managing any future dispute about ownership and surplus sharing.</p> <p>More IP could potentially be identified and registered by the Divisions.</p>	