

NATIONAL WAITING TIMES CENTRE BOARD

Policy for Management of Intellectual Property

Definition of Intellectual Property

Intellectual Property can be defined as products of creativity, innovation or research and development (R&D) which can be given legal recognition of ownership as Intellectual Property Rights through patents, copyright, design rights, trademarks or know-how. All forms of Intellectual Property are important in adding value to the outputs from R&D and the business of the National Waiting Times Centre Board.

Staff Covered by Policy

- ◆ *All staff with substantive National Waiting Times Centre Board contracts of employment.*
- ◆ *Staff with National Waiting Times Centre Board contracts of employment whose payroll costs are partially or wholly funded by another party (e.g. a medical charity, a government department, a commercial sponsor), unless the contract between the Board and that party assigns ownership of all Intellectual Property to that party.*
- ◆ *Staff who have a part-time National Waiting Times Centre Board contract and who are self-employed or otherwise employed part-time. Trainees hosted by the Board for training purposes are, unless otherwise agreed, subject to the management arrangements for Intellectual Property of Board staff.*
- ◆ *Staff who generate Intellectual Property outside normal working hours and/or away from the place of work, where the Intellectual Property relates to their normal course of duties.*
- ◆ *National Waiting Times Centre Board staff seconded to another organisation or employees of another organisation hosted by the Board under contract, subject to the arrangements for the ownership of Intellectual Property agreed between the Board and that organisation.*
- ◆ *Students are not classed as employees and as such are not covered by the relevant acts governing Intellectual Property. An agreement must be signed by the student assigning to the provider the rights in any Intellectual property arising from research. The student will subsequently be regarded as an employee in respect of sharing income earned from exploitation of the Intellectual Property generated.*

1. The National Waiting Times Centre Board recognises that, from time to time during the normal course of employment, a member of staff may generate Intellectual Property which may have commercial value. Intellectual Property which arises in, or could reasonably be expected to arise from, the course of the duties of a member of staff belongs to the Board, unless an existing contract with an external sponsor overrules. The legal interpretation of what is considered to be “in the normal course of employment” is quite wide and may include work carried out at home or in spare time. If staff are in any doubt about whether or not an idea falls within the remit of this policy the Board’s R&D Manager will carry out an initial assessment of the idea on a confidential basis.
2. The National Waiting Times Centre Board’s policy is to encourage and enable staff to participate in the generation of Intellectual Property as part of its commitment to delivering the best possible patient care. The policy is to maintain a balance between the legitimate needs of the Board to protect its interests, and the provision of a creative working environment for staff. The Board has agreed that revenue generated by

successful exploitation of Intellectual Property can be shared with the originators, that is, the members of staff responsible for the innovation.

3. The R&D Manager has management responsibility for Intellectual Property generated by National Waiting Times Centre Board staff.
4. Staff are required to notify the R&D Office of any idea or other form of Intellectual Property that they have developed and which falls within the remit of this policy at the earliest opportunity, and, in any event, before disclosure of the idea to any party outside the National Waiting Times Centre Board, either orally or in writing. Prior public disclosure (other than under explicit terms of confidentiality) will invalidate any subsequent patent application and diminish both potential commercial value and benefits accruing to the Board and the originator. (The R&D Manager can provide *Confidentiality Disclosure Agreements* to enable staff to discuss their Intellectual Property with external parties. Disclosure without entering into undertaking of confidentiality may prejudice negotiations of commercial arrangements with a company.)
5. The R&D Manager will, from time to time, arrange for an audit of the National Waiting Times Centre Board's R&D activity to identify Intellectual Property of potential commercial value. This will involve a formal meeting with researchers to explain the technology transfer process and to undertake a preliminary assessment of whether there are projects and innovations for exploitation with commercial potential or not. Staff are required to co-operate fully with this activity.
6. The R&D Manager will maintain a register of all Intellectual Property owned by the National Waiting Times Centre Board or where a member of Board staff is a named inventor or originator. A record will be kept of the date and time on which a member of staff reports to the R&D Directorate that s/he is the inventor of a creative product. Records will also be kept of arrangements entered into by the Board for the protection and subsequent use of the Intellectual Property.
7. To protect and to establish ownership and copyright for each item of intellectual property, employees are requested to attach to the relevant documents '**National Waiting Times Centre Board 2008. All rights reserved**'.
8. The decision to protect Intellectual Property by patenting rests with the National Waiting Times Centre Board but is delegated to the Medical Director. The Board is the vehicle for holding patents and other Intellectual Property, but is free at its absolute discretion to engage another organisation to exploit its Intellectual Property on its behalf.
9. All commercial exploitation activity is coordinated by the National Waiting Times Centre Board R&D Manager. Members of staff who are the originators of Intellectual Property are expected to co-operate fully with those responsible for its exploitation so that maximum possible benefit is obtained.
10. The decision to license or assign Intellectual Property including patents/patent applications, design rights, copyright (including computer software) or know-how, whether to a commercial company or to an employee of National Waiting Times Centre Board or to agree contractual terms with a technology transfer company and/or other commercial partner(s), rests with the Board but is delegated to the Medical Director.
11. Staff are reminded that no steps should be taken, including the establishment of companies, to exploit any Intellectual Property belonging to the Board without the

specific approval of the National Waiting Times Centre Board and that they are required to cooperate with the R&D Manager in carrying out its management responsibilities for Intellectual Property.

12. In dealing with an external organisation, it is important 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 discussions relating to any Intellectual Property. All records and notes must show the relevant date(s) and action(s) agreed.
13. Wherever possible, commercially funded research contracts should provide for the National Waiting Times Centre Board retaining ownership of any resulting Intellectual Property to enable it to manage its proper exploitation.
14. In pricing commercially funded research contracts, regard must always be given to the value of the resulting Intellectual Property and the rights to the Intellectual Property which are granted to the sponsor, as well as the value of existing background Intellectual Property (especially software or patented inventions) which may be used in furtherance of the research project.
15. The current basis of sharing with the National Waiting Times Centre Board staff the revenue from the successful exploitation of Intellectual Property is given in the following Table.

The Cumulative Net Income received by the Board will be shared as follows:

Cumulative Net Income	Inventor	National Times Board	Waiting Centre	National Times Board	Waiting Centre R&D Endowment Fund
Any amount	50%	25%		25%	

Notes

- *Net income refers to the income remaining after recovery of patenting and other out of pocket costs incurred by the National Waiting Times Centre Board in identifying, protecting, developing and exploiting the Intellectual Property. (Board costs include: the costs incurred by the researcher, the clinical directorate within which the researcher works, the R&D Office and/or any Board departments directly contributing resources to the development process.)*
- *Where there is a contractual agreement with a funding sponsor to share the revenue from successful exploitation of Intellectual Property arising from research funded by that sponsor, the Cumulative Net Income to the Board is the income from exploitation remaining after deduction of the sponsor's share.*

16. Despite the statutory provision whereby the copyright in any work produced by an employee in the course of employment belongs to the employer, the National Waiting Times Centre Board normally grants a free licence to the copyright in any work to be published in a recognised scientific, technical, professional or management journal or book to the author. The Board will not grant such licence to the copyright in materials created by a member of staff during the course of and related to their employment, comprising:
 - a. Course or training materials.

- b. Software programs.
 - c. Any designs, specification or other works which may be necessary to protect rights in commercially exploitable Intellectual Property.
17. The National Waiting Times Centre Board will not normally take any action to diminish or remove the Moral Rights¹ of Board employees in respect of copyright material (i.e. the right to be named as author).
18. Where Intellectual Property arises from a research group containing both University and National Waiting Times Centre Board employees, management and revenue-sharing arrangements will be determined on a case-by-case basis with the University.
19. Where there is dispute about the inventor(s) of Intellectual Property, dated written records associated with the generation of the Intellectual Property will be used to establish the inventor(s) of the Intellectual Property and to determine their level of contribution/remuneration. In the absence of documentary evidence, the National Waiting Times Centre Board Medical Director shall decide, taking such professional advice as appropriate, and this decision will be final.
20. Intellectual Property generated by an employee, in his or her own time and which is unconnected with their normal course of NHS duties, will normally be owned by the employee.
21. In the event of any dispute about the interpretation of this policy, the National Waiting Times Centre Board employees have recourse to the Board's grievance procedure to resolve the dispute.

This policy will be reviewed and updated on a regular basis.

¹ Moral Rights give the creator of some copyright works, including literary works, artistic works and films, three rights:

- The right of the author of a work to be acknowledged as the author or creator.
- The right to object to his or her name being attributed to something he or she did not create.
- The right not to have his or her work subjected to "derogatory" treatment, i.e. to some amendment that impugns his or her integrity or reputation.

It is important to note that authors or creators must choose to assert their Moral Rights (they are not automatic as copyright is), but at the same time, Moral Rights can never be assigned - they remain with the author even if he or she assigned the copyright to a publisher or some other organisation.

Date of Policy Commencement

16th June 2008

Date of Policy Review

June 2009

Contact details for the National Waiting Times Centre Board Research & Development Manager:

Dr Catherine Sinclair

Research Manager

0141 951 5440

catherine.sinclair@ginh.scot.nhs.uk

Address: Level 4, Room B4053, Golden Jubilee National Hospital, Beardmore Street, Clydebank, G81 4HX.