

Corporate	CCG CO09 Intellectual Property Management and Revenue Sharing.
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Prepared By:	Academic Health Science Network (AHSN)
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EQUALITY IMPACT ASSESSMENT

Date	Issues
August 2020	See Appendix C.

POLICY VALIDITY STATEMENT

Policy users should ensure that they are consulting the currently valid version of the documentation. The policy will remain valid, including during its period of review. However, the policy must be reviewed at least once in every 3 year period.

ACCESSIBLE INFORMATION STANDARDS

If you require this document in an alternative format, such as easy read, large text, braille or an alternative language please contact tvccg.enquiries@nhs.net

Version Control

Version	Release Date	Author	Update comments
V1	April 2020	Senior Governance Manager, North of England Commissioning Support	New policy template.
V2	January 2021	Academic Health Science Network	Reviewed and updated by AHSN.

Approval

Role	Name	Date
Approval (1)	Combined Working Group	April 2020
Approval (2)	Executive Committee	April 2021

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1. Introduction

NHS Tees Valley Clinical Commissioning Group (the “CCG”) aspires to the highest standards of corporate behaviour and clinical competence, to ensure that safe, fair and equitable procedures are applied to all organisational transactions, including relationships with patients their carers, the public, staff, stakeholders and the use of public resources. In order to provide clear and consistent guidance, The CCG will develop documents to fulfil all statutory, organisational and best practice requirements, as well as supporting the principles of equal opportunity for all.

Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS¹ indicates that innovation must become the core business for the NHS in order to transform patient outcomes, improve quality and productivity and support economic growth.

2. Why is this intellectual property policy needed?

This Intellectual Property Policy is a corporate policy.

People working or studying for, or with, the CCG are continuously innovating, and in the process, they can often generate valuable intellectual property. This intellectual property can arise from both research activities, occupational activities and other types of work carried out by the group comprising the following (“representatives of the CCG”): -

- (i) Students, both part time and full time, working for or with the CCG but not employed by the CCG (“Non-CCG Employees”);
- (ii) Students, both part time and full time, employed by the CCG (“CCG employees”);
- (iii) Clinical staff, both part time and full time, employed by the CCG (“CCG employees”);
- (iv) Clinical staff, both part time and full time, working for or with the CCG but not employed by the CCG (“Non-CCG employees”);
- (v) Non-clinical staff, both part time and full time, employed by the CCG (“CCG employees”);
- (vi) Non-clinical staff, both part time and full time, working for or with the CCG but not employed by the CCG (“Non-CCG employees”); and
- (vii) Clinical staff, both part time and full time, managed by the CCG but not employed by the CCG (“Non-CCG employees”).

Including people who used to be representatives of the CCG at the time of innovation, but who are no longer representatives of the CCG, as appropriate.

It is to be appreciated that the term “representative” does not imply any legal connection with the CCG other than working for or with, the CCG.

This document outlines a policy for the effective management of innovation and gives a brief definition of what intellectual property is. This document also contains information regarding who to contact if: - (a) you have an invention/idea/innovation which you think may need protecting or which you think may be able to be commercialised to benefit patient care; or (b) you require general advice on intellectual property arising as a result of your work.

The CCG wishes to actively manage their processes in order to ensure that the intellectual property generated by representatives of the CCG aids the improvement of health and social care services provided by the NHS. In some cases it may be necessary to protect that intellectual property in order to ensure that it continues to benefit the health and welfare of patients throughout the NHS and beyond, as well as having a positive impact on the wealth of the nation.

3. What is Intellectual Property?

Intellectual property can arise from intellectual or creative activity in the form of new ideas or the results of research and development, which can be given legal recognition of ownership through intellectual property rights such as patents, copyright, database rights, design rights (both registered and unregistered), trademarks and know-how (see Appendix A for definitions).

4. What Is An Innovator?

An innovator is the actual deviser of the invention/idea, and is someone who has contributed to the underlying concept.

5. Ownership of intellectual property

It is sometimes the case that an innovator owns the intellectual property associated with their work. However, this situation can be changed by a number of factors, in particular intellectual property generated during the course of employment.

For representatives of the CCG generating intellectual property as a result of their work or study, the legal position in terms of ownership of that intellectual property is to be assessed on a case by case basis and in accordance with Section 39 of the UK Patents Act 1977 (as amended), the Copyrights Designs and Patents Act 1988 and the Registered Designs Act 1949, as appropriate, according to the type of intellectual property created.

However, by means of example, it is often the case that intellectual property created by CCG employees whilst they are employed by the CCG is owned in the first instance by the CCG. In order to decide whether intellectual property generated by a CCG employee whilst they are employed by the CCG is in fact owned by the CCG, a number of criteria are taken into account, such as:

- i. whether or not the intellectual property was generated in the course of their normal everyday duties;
- ii. whether or not they had a special obligation to further the interests of the CCG; and
- iii. whether or not the creation of the intellectual property was as a result of duties specifically assigned to them.

Accordingly, representatives of the CCG should not assume that they are the first owners of the intellectual property that they create and they should instead seek advice from the Head of Governance at the CCG.

6. What is an employee?

An employee is a person who works under a contract of employment.

7. Collaborative projects with third parties

If work or research is conducted by a representative of the CCG in partnership with another organisation, a formal agreement clarifying the ownership (or sharing) of any intellectual property generated, is required to be put in place, at the very beginning of the project.

The Head of Governance at the CCG, or their deputy, will have responsibility for developing and negotiating intellectual property sharing agreements with collaborating organisations. However, it is to be appreciated that, during work or research with collaborating organisations, the interests of the CCG should be protected wherever possible.

It is very important that you do not disclose any details of your invention/idea/innovation to anyone other than the Head of Governance responsible for innovation at the CCG in the first instance. This person (or their deputy) is best placed to advise you regarding the intellectual property and commercialisation process in general. Please note that if you do disclose details of your invention to any third party (e.g. friends, associates, colleagues or companies) before seeking advice from the Head of Governance at the CCG, it could seriously limit its value to patients and the NHS as a whole, as well as you as the innovator, by potentially destroying its novelty and thus rendering it un-patentable.

Appendix B sets out the process you can expect to be considered by the CCG when you disclose your invention / idea / innovation to the Head of Governance.

8. Disputes of ownership

If the ownership of intellectual property is disputed, dated written records relating to the intellectual property in question will be assessed by the Head of Governance (taking professional advice as necessary) to establish the innovator(s) and their proportionate contribution. If such material is not available, or if a resolution cannot be reached, then assistance from an external mediation provider, such as the Centre for Effective Dispute Resolution, will be obtained if necessary.

8.1 Obligations of representatives of the CCG

Representatives of the CCG have an obligation to inform the Head of Governance for the CCG about identified or potential intellectual property resulting from their activities at or with the CCG and they must not, under any circumstances, sell, assign, license, give or otherwise trade in that intellectual property before discussing the intellectual property with the Head of Governance at the CCG.

It is important for representatives of the CCG working on projects which generate intellectual property to keep written and dated records of their activities and results.

8.2 Intellectual property management structure

The Head of Governance at the CCG is responsible for intellectual property management and works on behalf of the CCG to both protect and manage intellectual property.

The CCG is a 'member organisation' of the Academic Health Science Network for the North East and North Cumbria (AHSN), and under this arrangement, NHS Innovations North, the Innovation Hub for North East England, has been commissioned by the AHSN to provide a mechanism for its member organisations to systematically identify, protect, manage and exploit intellectual property and innovative service improvements generated as a result of research and occupational experience.

Accordingly, as part of their responsibility for intellectual property management, the Head of Governance for the CCG may consult with NHS Innovations North for advice relating to intellectual property and commercialisation.

9. Exploitation of intellectual property

9.1 Decisions on Commercialisation

It is the role of the Head of Governance at the CCG, in consultation with the innovator and other specialists such as NHS Innovations North, to make a decision regarding the potential for intellectual property owned by the CCG to be protected and commercialised. The impact on patient care, as well as the potential market and the likelihood of success of the invention in terms of the generation of royalties, are all taken into account when making a decision regarding the commercialisation of the invention. The Head of Governance at the CCG can agree on a case by case basis to give permission for other NHS organisations or third parties to have free or discounted access to the intellectual property, where the wider public interest for this is demonstrated.

Any intellectual property owned by the CCG must be exploited in a cost-effective way. This must be undertaken in a way which minimises speculative financial investment of public funds and which does not detract from their primary role within the NHS. In general, as much as possible of the financial risk of commercialisation should be assumed by a partner outside of the NHS.

Where the CCG chooses not to exploit intellectual property which belongs to the CCG and which arises from the work of representatives of the CCG, it will, in some cases, assign the intellectual property to the innovator, who may wish to pursue its further development and commercialisation themselves in their own time. However, in that event, the innovator should not, without the prior permission of the CCG, imply any connection of the intellectual property with the CCG, and nor should they undertake work in connection with its commercialisation during normal working hours.

9.2 Contract Negotiations

Any agreements relating to intellectual property owned by the CCG; that is, licenses or assignments to another organisation for example, will be negotiated in the best interests of the CCG, with the assistance of professional advisers where applicable.

All commercialisation partners, business partners and collaborators should be bound by conditions of confidentiality through a confidentiality agreement. This is a reciprocal agreement whereby confidential information is both disclosed and received. A suitable confidentiality agreement may be obtained from the Head of Governance at the CCG.

9.3 Revenue Sharing with Innovators

The CCG wishes to encourage the full participation of representatives of the CCG in the creation and potential commercialisation of intellectual property, whilst facilitating and ensuring the responsibility associated with their normal duties and ensuring the support of their line manager. The policy of the CCG, which is reflected in this document, will therefore be to reward CCG employees who have contributed substantially to the generation of intellectual property belonging to The CCG, at the time of their employment at the CCG, which has subsequently generated revenue as a result of commercialisation. Such revenue will be shared between the CCG and the CCG employee according to the following revenue sharing formula (see Figure 1). It is to be appreciated however, that unless the CCG has up to date contact details of the CCG employee going forward from their time at the CCG, after they leave the CCG, then the CCG will be unable to provide any revenue share as a result of commercialisation, to the CCG employee.

Cumulative Net Income	Where net income generation is up to and including £50,000	Where net income generation is up to and including £250,000	Where net income generation is over £250,000
Innovator(s)	75% of net income generation up to and including £50,000	75% of net income generation up to and including £50,000	75% of net income generation up to and including £50,000
		50% of net income between £50,001 and up to and including £250,00	50% of net income between £50,001 and up to and including £250,00
			25% of net income over £250,00
CCG	25% of net income generation up to and including £50,000	25% of net income generation up to and including £50,000	25% of net income generation up to and including £50,000
		50% of net income between £50,001 and up to and including £250,00	50% of net income between £50,001 and up to and including £250,00
			75% of net income over £250,00

Figure 1: Revenue Sharing from Successful Intellectual Property Exploitation

Please note the following:

Any cost savings arising within the CCG as a result of innovation will be reinvested into patient care.

Cumulative net income is the remaining income from commercialisation after the deduction of direct costs such as intellectual property registration costs, other legal costs, and any other costs associated with commercialisation.

In cases where several CCG employees have been involved in the creation of the intellectual property belonging to the CCG which has been successfully exploited, the proportion of income allocated to innovators will be divided between them on the basis of their relative contribution. This will be agreed between the innovators in the first instance, with guidance from the Head of Governance at the CCG if resolution cannot be reached.

The above arrangements are also exclusively reserved for inventions derived from intellectual property purely owned by the CCG and should not be taken as applicable in any way to inventions if intellectual property is jointly owned with another organisation.

10. Monitoring, Review and Archiving

10.1 Monitoring

The Governing Body will agree a method for monitoring the dissemination and implementation of this policy. Monitoring information will be recorded in the policy database.

10.2 Review

10.2.1 The Governing Body will ensure that this policy document is reviewed in accordance with the timescale specified at the time of approval.

10.2.2 Staff who become aware of any change which may affect a policy should advise their line manager as soon as possible. The Governing Body will then consider the need to review the policy or procedure outside of the agreed timescale for revision.

10.2.3 For ease of reference for reviewers or approval bodies, changes should be noted in the 'document history' table on the front page of this document.

NB: If the review consists of a change to an appendix or procedure document, approval may be given by the sponsor director and a revised document may be issued. Review to the main body of the policy must always follow the original approval process.

10.3 Archiving

10.3.1 The Governing Body will ensure that archived copies of superseded policy documents are retained in accordance with Records Management Code of Practice for Health and Social Care 2016.

OVERVIEW OF INTELLECTUAL PROPERTY

This Appendix includes a very brief overview of intellectual property. However, it must be noted that the law is complicated and Representative of the CCG who believe they may have generated intellectual property are advised to contact the Head of Governance at the CCG at the earliest opportunity, in order to discuss intellectual property protection of their idea in more detail.

Copyright

Copyright covers written information (such as leaflets, articles, assessment tools and training packs), databases, computer software and films/videos. Copyright is achieved automatically when the written information is created. However, it is advisable to attach a statement to discourage infringement, such as the following: -

© [The Year of Creation] [Owner of the Copyright] All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.

Patents

A patent can be used to protect an invention and an inventor that embodies a new and inventive idea that is capable of industrial application (such as devices, processes or methods of operation). Exclusions from this include methods of treatment of the human/animal body by surgery or therapy, or methods of diagnosis. In order to be potentially patentable, details of invention and inventor must not have been disclosed anywhere in the world (including in journals, on the internet, at meetings, on conference posters, etc.) prior to the filing date of the patent application.

Registered Design Rights

In some cases, the value lies not in a new idea or a new concept, but in the appearance of the product, such as its shape and configuration. Registered design rights usually protect commercial objects with a unique appearance.

Unregistered Design Rights

Unregistered design right is an automatic right that protects how a product looks in terms of the features of its shape and configuration.

Trade Marks

A trade mark is used to distinguish a product or service from that produced or supplied by another business. Trade marks can be used to protect names, logos, slogans, domain names, shapes, colours and sounds.

Registering a trade mark protects the owner from competitors trying to use that image to promote their own products.

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.

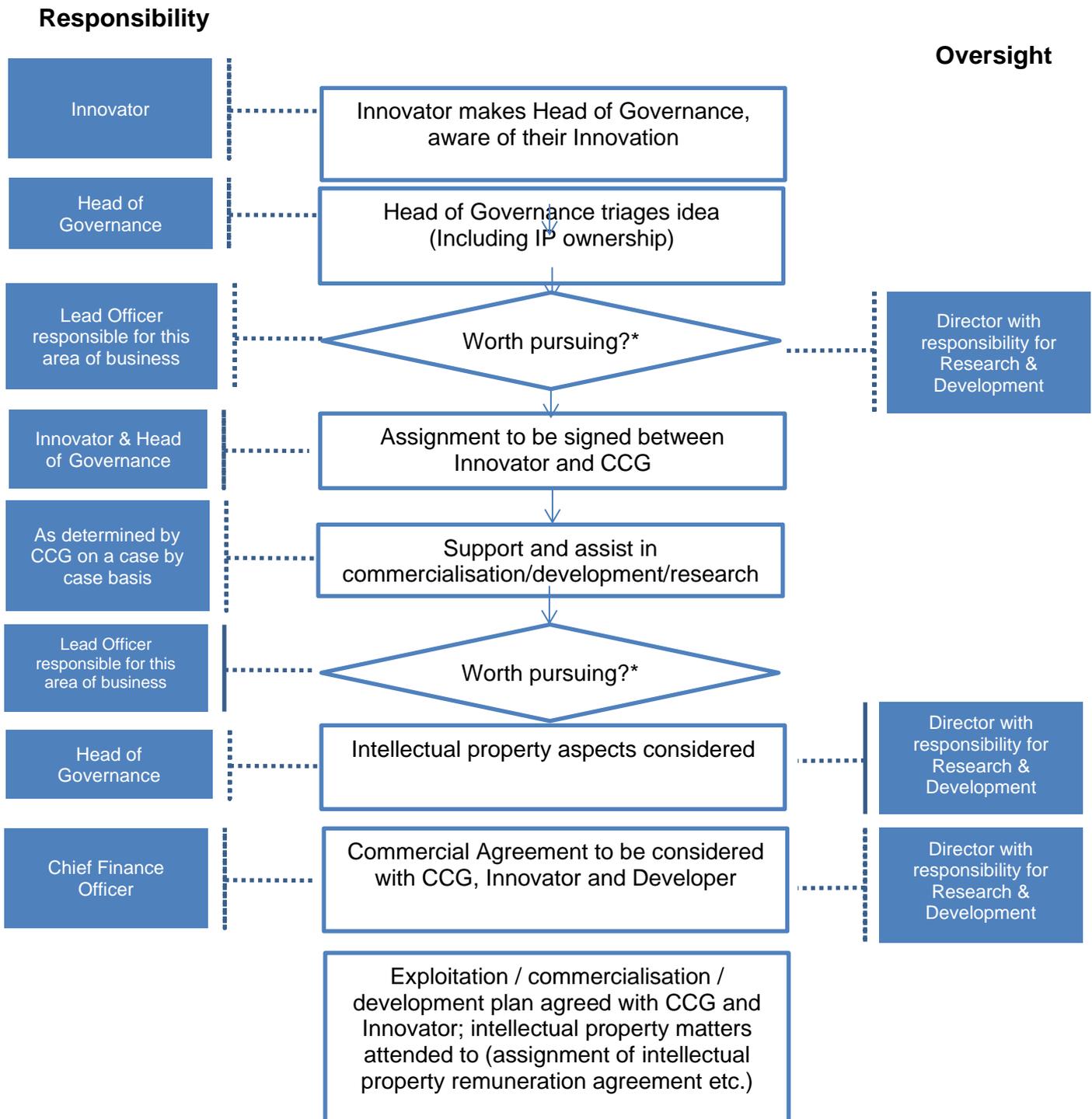
In all cases, the "know-how" will only retain its value if it is managed effectively.

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

Database Rights

A database right exists to recognise the time, effort, and skill, that is involved in order to compile a database of information, even when this compilation does not involve the "creative" aspect that is normally involved in and required, by copyright.

IP Disclosure Process



*An Idea being judged not worth pursuing does not preclude reassessment in changed circumstances.

Equality Analysis Initial Impact Assessment

As a public body organisation we need to ensure that all our strategies, policies, services and functions, both current and proposed have given proper consideration to equality and diversity, do not aid barriers to access or generate discrimination against any protected groups under the Equality Act 2010 (Age, Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion/Belief, Sex, Sexual Orientation, Marriage and Civil Partnership, Carers and Health Inequalities).

A screening process can help judge relevance and provides a record of both the process and decisions made.

This screening determines relevance for all new and revised strategies, policies, projects, service reviews and functions.

Completed at the earliest opportunity it will help to determine:

- The relevance of proposals and decisions to equality, diversity, cohesion and integration.
- Whether or not equality and diversity is being/has already been considered for due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED).
- Whether or not it is necessary to carry out a full Equality Impact Assessment.

Name(s) and role(s) of person completing this assessment:

Role: Governance and Assurance Manager, NECS

Title of the service/project or policy:

Intellectual Property Policy

Is this a:

Strategy / Policy

Service Review

Project

If other, please specify:

What are the aim(s) and objectives of the service, project or policy:

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Who will the project/service /policy / decision impact?

Consider the actual and potential impacts:

- Staff
- service users/patients
- other public sector organisations
- voluntary / community groups / trade unions
- others, please specify:

Questions	Yes	No
Could there be an existing or potential impact on any of the protected characteristic groups?		X
Has there been or likely to be any staff/patient/public concerns?		X
Could this piece of work affect how our services, commissioning or procurement activities are organised, provided, located and by whom?		X
Could this piece of work affect the workforce or employment practices?		X
Does the piece of work involve or have an impact on: <ul style="list-style-type: none"> • Eliminating unlawful discrimination, victimisation and harassment • Advancing equality of opportunity • Fostering good relations 		X

If you have answered no to the above and conclude that there will not be a detrimental impact on any equality group caused by the proposed policy/project/service change, please state how you have reached that conclusion below:

N/A

If you have answered yes to any of the above, please now complete the 'STEP 2 Equality Impact Assessment' document.

Not required.

Governance, ownership and approval

Please state here who has approved the actions and outcomes of the screening		
Name	Job title	Date
Executive Committee	Approval	April 2021

Publishing

This screening document will act as evidence that due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED) has been given.