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INTELLECTUAL PROPERTY RIGHTS POLICY

Policy Statement

To ensure the Health Board delivers its aims, objectives, responsibilities and legal requirements transparently and consistently, we provide guidance on the identification, referral and process involved in the exploitation and commercialisation of intellectual property rights generated by staff employed by the UHB, to include those on honorary contracts or contractors working on behalf of the UHB.

Policy Commitment

We are committed to ensuring that the legal framework governing Intellectual Property Rights (IPR) is available, understood and adhered to by our staff and those with honorary contracts and contractors working on behalf of the UHB. Preservation of IPR for patient and societal benefit, teaching, research and other non-commercial purposes is a cornerstone of this policy. The purpose of the policy is to protect the UHB and activities arising from activities undertaken by staff working at the UHB, to include those with an honorary contract* (please see not below for Clinical Academics working on an Service Level Agreement between Cardiff University and the UHB) or independent contractors working on behalf of the UHB, in which the UHB has a legitimate interest.

* *Clinical Academics, employed by Cardiff University and providing clinical sessions to the UHB are employed to perform research in the University, and in most instances Intellectual Property will belong to the University. However, it is acknowledged that ideas vary in origin and application to clinical practice also varies, therefore clinical innovation opportunities arising from this staff group will be reviewed on a case by case basis to best determine IPR ownership.*

Supporting Procedures and Written Control Documents

This Policy and the supporting procedures describe the following with regard to IPR

- The legal framework within which intellectual property may be protected and commercially exploited.

Other supporting documents are:

- Welsh Health Circular 2005 (010) – 'A framework and guidance on the management of intellectual property in the NHS in Wales'
- 1977 Patents Act
- 1988 Copyright, Designs and Patents Act

Scope

This policy applies to all of our staff in all locations including those with honorary contracts and contractors working on behalf of the UHB seeking to generate income from any commercial activity in their working time, and/or activity arising from their work association with the UHB, in which the UHB had a legitimate interest.	
Equality Impact Assessment	An Equality Impact Assessment (EqIA) was completed in 2016 and this found there to be no adverse impact.

Health Impact Assessment	A Health Impact Assessment (HIA) is not required for this policy.
Policy Approved by	People, Planning and Performance Committee
Group with authority to approve procedures written to explain how this policy will be implemented	Health System Management Board
Accountable Executive or Clinical Board Director	Executive Director of Planning

Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.

Summary of reviews/amendments

Version Number	Date Review Approved	Date Published	Summary of Amendments
1	Approved by the Strategic Planning and Performance Committee 23/10/2012	30/11/2012	
2	Performance Committee People, Planning and	08/11/2016	Revised document to include: • Reference to the Clinical Innovation Partnership with Cardiff University and the introduction of a multi-disciplinary

			team to support ideas development and exploitation; • Clarification of IPR for Clinical Academics with a UHB honorary contract; • Removal of reference to the Director of Innovation and Improvement and inclusion of the Executive Lead for Clinical Innovation and the Associate Medical Director for Clinical Innovation reflecting the current managerial arrangements for clinical innovation; • Removal of reference to the Commercial Advisory Panel as this panel no longer exists; • Broadening of the definition of Copyright • Explicit reference to Cardiff University • Inclusion of Case Studies to guide staff on IPR as an employee of the UHB

CONTENTS

1 INTRODUCTION

This policy gives guidance on the identification, referral and process involved in the exploitation and commercialisation of intellectual property rights. In addition, the policy provides a framework for the conduct, management and reporting of the progress with these activities and resulting income generation, which must not, in any way, interfere with the UHB's core healthcare business.

2 AIM

Preservation of IP rights for patient benefit, teaching and research and other non-commercial purposes is a cornerstone of this policy.

In addition, in accordance with its clinical innovation strategy, Cardiff & Vale UHB aims to contribute to wealth creation through the commercialisation of the knowledge, inventions and technology generated from its innovation, service improvement and research and development programmes. This aim has been supported by the development of a Clinical Innovation Partnership with Cardiff University and an income generation strategy for the UHB as part of its Integrated Medium Term Plan, which support the exploitation of appropriate commercial opportunities stemming from or connected with the innovation, research and teaching activities of UHB staff members and those holding honorary/consultancy contracts with the UHB.

3 SCOPE

The policy applies to all Cardiff and Vale UHB employed staff, including staff on honorary contracts* (when IP develops from some of the contracted time) and contractors working on behalf of the UHB, seeking to generate income from any research, innovation or associated commercial activity in their working time, and/or activity arising from their work association with the UHB, in which the UHB has a legitimate interest.

** IPR arising from Clinical Academics holding honorary contracts with the UHB will be reviewed on a case by case basis.*

4 DEFINITIONS AND LEGAL CONTEXT

In general terms IPR can be defined as the rights given by law to ownership of intellectual property generated by mankind's creativity. More specifically, IPR has been defined as:

"the rights relating to: literary, artistic and scientific works; performances of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks; copyrights;

service marks and commercial names and designations; know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields".

Successive acts of Parliament have provided a legal framework within which intellectual property may be protected and commercially exploited. Guidance has been provided by Welsh Government in WHC 2005 (010) – 'A Framework and Guidance on the management of intellectual property in the NHS in Wales'. The UHB has formulated this Policy for Intellectual Property Rights within this legal framework with the intent of protecting and, where appropriate, commercially exploiting the results of UHB innovation and research programmes.

Both the 1977 Patents Act and the 1988 Copyright Designs and Patents Act state that, where intellectual property is generated during the normal course of an individual's employment, such intellectual property shall belong to the Employer. In addition, the 1977 Patents Act states that where intellectual property is generated following the exercise of duties assigned to staff and the creation of an invention was reasonably expected or there was an obligation to further UHB's interests, such intellectual property shall belong to the Employer.

With a view to supporting and accelerating health and wealth creation in Wales it is UHB policy to actively and collaboratively engage with its staff in identifying, developing and exploiting intellectual property to the mutual benefit of the originator of the intellectual property, the Welsh community and the UHB. The UHB has therefore taken the decision to exercise its legal right to own intellectual property and to ensure that the originator of the intellectual property is fairly compensated, as outlined in 7 below.

Any document that is produced will need to deal with the issue of the ownership of existing IPR or those rights created in the course of the commercial enterprise. As mentioned, and for the afore reasons, it is the University Health Board's position that any IPR created during the normal course of an individual's employment or following the exercise of the above mentioned duties will belong to the University Health Board.

In the instance where the UHB is unable to exploit IPR, and it is able to do so, it will offer them to the originator of the intellectual property rights for him/her to exploit. Any document entered in to by the UHB should make specific reference to these points.

5 ROLES AND RESPONSIBILITIES

The UHB's Strategic Planning and Performance Committee shall approve this policy, which incorporates:

- procedures to encourage and assist staff to maximise the commercial exploitation of inventions and processes resulting from innovation and research carried out at the UHB.
- procedures to deal with any intellectual property rights (IPR) and investments in spin out companies accruing to the UHB from inventions and discoveries made by staff in the course of their activities (including IPR generated through the funding of other organisations, e.g. NIHR, that obliges the UHB to own the IP as the term of a funding contract).

The Executive Director of Strategic Planning is the Executive Lead for Clinical Innovation. In conjunction with the Finance Director the Executive Lead for Clinical Innovation are responsible for supporting patents and other IPR on behalf of the UHB.

As part of the Clinical Innovation Partnership development with Cardiff University, a clinical innovation Multi Disciplinary Team (MDT) comprising the Assistant Medical Director of Clinical Innovation, Dean and Associate Dean of Clinical Innovation, R&D Director and other experts has been convened to aid the development of the research and clinical innovation ideas/service improvements in line with the overarching principles focussed on developing, translating and deploying evidence for patient and societal benefit. Responsibilities include:

- ensuring that appropriate commercial and professional advice is provided and/or obtained where necessary to aid the development and translation of the idea, where appropriate;
- providing independent advice on proposed commercial transactions such as patents, licenses and commercial opportunities;
- devise suitable strategies and opinions with a view to make recommendations to the Management Executives on the translation, adoption and procurement, where appropriate, of ensuing products/technologies/services.

Ultimate decision-making responsibility rests with the Chief Executive of the UHB.

All commercial exploitation activity is managed by the Executive Director for Strategic Planning in accordance with the Business Case approval system. The formal procedures for approving the establishment of any new enterprises that are related to the UHB and its activities will be in accordance with the general principles set out in section 6 below.

6 PRINCIPLES

The UHB must have prior knowledge of and be given full opportunity to consider and, if appropriate, approve any plans to establish a new company/form links with an established company in whose proposed activities the UHB has a legitimate interest. In many instances, this interest will exist by virtue of the UHB's ownership of existing intellectual property, including know-how and IPR arising from innovation, service improvement and research and development activities. In others, the interest may result by virtue of the fact that the proposed activity requires use of UHB facilities or other resources or is otherwise closely related to activities of the UHB itself.

It is essential for the UHB to establish at the outset whether any proposed activity requires access rights to intellectual property generated from externally-sponsored research at the UHB. In order to retain the confidence and support of the sponsors of its research, it is imperative that the UHB complies with the terms and conditions under which such funding is made available. It is the responsibility of UHB individual staff members who intend to set up a company to inform the Executive Lead for Clinical Innovation and Director of Finance of their plans before incorporation of the company. Where the proposal is one in which the UHB has a legitimate interest the relevant Clinical Board will assume responsibility for working with the member(s) of staff in developing the business proposal. Any proposal cannot be taken forward until it has been considered by and given the necessary UHB approvals, obtained through the Management Executive.

The same guiding principles will apply in any situation where a new member of staff of the UHB is connected with a company prior to being appointed to the UHB. In this context, "connected with a company" includes:

- where the member of staff has a significant shareholding in, or is a Director of the company; or
- where the company has, or intends to establish, an arrangement to commercialise outputs arising from or directly related to his/her UHB innovation, work and research activities.

If a new member of staff has a pre-existing connection with a company or business, then the new member of staff should inform their Clinical Board Director and the Assistant Medical Director of Clinical Innovation of the existence of and nature of the interest in the company as soon as practicable. The UHB's Standards of Behaviour policy sets out the UHB's requirements in connection with employees' commercial interests and registration of a Declaration of Interest with Corporate Compliance is a pre-requisite. Where a member of staff is a Director of a Company which owns IPR for which permission has been granted to the UHB to utilise, a formal licence agreement should be put in place between the UHB and such Company to document the terms under which the UHB can use the relevant Intellectual Property.

A number of parties are likely to have a legitimate expectation to obtain a shareholding in any new company including the academic inventors and/or other founders of the proposed business, the UHB and external investors. The UHB supports the general principle that its staff may hold equity in such companies, subject to compliance with the UHB's policy on Declarations of Interest. The apportionment of the initial shareholdings will be determined on a case by case basis, based on discussions and negotiations between the relevant parties.

Holders of significant equity in the company, or contributors of other forms of finance (such as loans) to the company, including the UHB, will normally require a seat on the Board of Directors. In certain circumstances, such as when the UHB has an insignificant equity stake, the UHB may determine not to nominate a director to the Board but may retain the right to elect an observer to Board meetings together with the right to receive the same information as the Board of Directors but will not otherwise play any direct part in the management of the business.

Any member of staff of the UHB who proposes to become a director (whether executive or non-executive) on the Board of a company must obtain the prior written consent of the Assistant Medical Director of Clinical Innovation and Clinical Board Director and register a Declaration of Interest.

The UHB seeks to avoid any conflict of interest between a staff member's duties to the UHB as an employee and his/her obligations to the company. In particular, in a situation where the member of staff intends to undertake research or other work sponsored by a company in which he/she also has a significant interest and/or is a member of the Board of Directors, the UHB will normally require the work to be overseen by their Clinical Board Director, who will otherwise have neither direct nor indirect interest in the company, and may also be required to act as the grant, or, contract holder. In order to manage such potential conflicts of interest all relevant issues will be discussed between the Assistant Medical Director of Clinical Innovation and the staff member at the outset. The time contribution of the staff member to the work of the company, as well as any other duties relating to the activities of the company, will be agreed in writing.

In order to minimise the potential for any conflicts of interest between a new company and obligations towards the UHB (and the obligations of the UHB itself towards its public funders), any arrangements for research, services-rendered or consultancy work and/or the use of equipment or other facilities will be on an ‘'arms length" basis. These arrangements will be documented in a formal agreement between the relevant parties and will normally be on terms no more favourable to the company than other similar arrangements with independent third parties.

In arriving at its recommendations concerning the establishment of a company relating to UHB or health service activities, the Management Executive will take

into account the views expressed by the Multi-Disciplinary Panel. It will also be a matter for the Management Executive to determine whether or not such new company will be granted access to UHB intellectual property and the terms on which such access will be granted.

In the longer term, the UHB, the staff (shareholders), and the investors may, subject to the terms of the shareholders agreement, wish to realise their investments in the company. A number of options exist for the sale of the shareholding in the company, which include a flotation on the stock market or alternative investment markets, a management buy-out, a trade sale and/or acquisition by another company. Any decision to realise the investment held by the UHB will be recommended by the Management Executive to the Strategic Planning and Performance Committee and approved by the UHB Board.

Any member of staff wishing to discuss the protection of any idea or other form of intellectual property must discuss the matter with the Assistant Medical Director of Clinical Innovation at the earliest opportunity and, in any event, before disclosing the idea to any party outside terms of confidentiality or the UHB, either orally or in writing and are advise to complete a Non Disclosure Agreement (See Appendix 1). For example, 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 UHB and the inventor(s).

A record will be kept of the date and time on which a member of staff reports to Executive Director for Strategic Planning that he or she is the inventor of a creative product. The Executive Director for Strategic Planning is responsible for keeping a register of all patents owned by the UHB and of those patents assigned to third parties where a member of UHB staff is a named inventor.

Sponsored research contracts, with the exception of those that are 100% funded, will generally allow the UHB to retain ownership of the arising intellectual property rights in order to enable the UHB to control its commercial exploitation. Care must be taken in such contracts to ensure that adequate provision is made for the proper exploitation of arising intellectual property rights.

In pricing sponsored research contracts, the UHB will give due consideration to the potential value of resulting intellectual property rights as well as the value of any pre-existing, background intellectual property rights, software or patented inventions which may be used in furtherance of the research project.

Copyright in any work produced by an employee in the course of employment belongs to the employer.

The negotiations to license or assign UHB owned IPR will be conducted on its behalf by the Directors of Governance and Executive Director for Strategic

Planning and the legal documents to implement agreements will, in appropriate cases, be drafted and or scrutinised by the UHB Solicitors who advise the UHB on intellectual property matters. The Chief Executive will authorise all documents/agreements.

In the case of the licence of UHB owned IPR, any such licences would contain restrictions to preserve the UHB's IPR, for example, by limiting the scope of the licensee's right to such IPR, any right to sub-licence being on prescriptive terms. When a licence agreement has been entered into, the Executive Lead for Clinical Innovation and Finance Director shall be responsible for ensuring that its terms are complied with, that the proper royalties are received by the UHB, and that all income arising is properly distributed in accordance with the revenue-sharing arrangement.

The Multi-Disciplinary Panel will provide advice and support on external IPR that that may be relevant to or impact on the exploitation of internal IPR.

All activity must be conducted in accordance with the UHB's Income Generation Governance and Ethical Framework.

7 OWNERSHIP

Patents, copyright, design rights and possibly know-how created in the normal course of employment belong to the UHB or inventions created following the exercise of duties assigned to staff where creation of an invention was reasonably expected or there was an obligation to further UHB's interests, belong in law to the UHB.

As per 3 above, UHB has taken the decision to own and engage with its staff in exploiting its IPR, as a consequence, Employees as part of their contracts of employment undertake (or should be asked to undertake if this is not the case) not to disclose information which has arisen as a result of their duties of employment without approval of the UHB. This approval will not be unreasonably withheld but may be deferred whilst valuable IPR are applied for or registered. External organisations involved in projects will be required to sign Non Disclosure Agreements (NDAs).

Copyright is likely to be the most common area of IPR (which arises from research/innovation activities, for example the creation of manuals, reports, software development etc.). When contractors (people other than staff) develop material on behalf of the UHB they will be required to assign the IPR to the

UHB, to avoid the UHB having to subsequently pay the right to utilise materials for which it has funded the development.

8 ROYALTY INCOME

The UHB share of royalty income is utilised to offset the annual costs of maintaining patents and licences and any under-recovery is found from the annual funding allocation made by the UHB to Executive Director for Strategic Planning.

Income from the successful commercial exploitation of IPR, through the transfer of IPR by assignment or licensing, receipt of dividends or profit shares or ownership of shares will normally be received by the UHB. As an incentive to employees, the UHB will grant its employees and respective departments an interest in revenues from the successful exploitation of IPR. The Multi-Disciplinary Panel comprising the Executive Director for Clinical Innovation; the Dean for Clinical Innovation, Assistant Medical Director for Clinical Innovation and Finance/Deputy Finance Director, after taking commercial advice, are responsible for recommending income sharing arrangements on each project to the Chief Executive.

Where Cardiff University or other Higher Education Institutes lead on the project then, unless there are special circumstances, the UHB will adopt the same cumulative net revenue sharing(after taking into account patent, legal and external marketing costs) as used by Cardiff University, which for IP are currently:

	Inventor(s)	Directorate(s)	UHB
Net Revenues	**%**	**%**	**%**
First £2,000	100	0	0
Next £40,000	60	20	20

£42,000 – 200,000	50	25	25
Over £200,000	30	35	35

Many projects will involve collaboration between clinicians of the UHB and academics from Cardiff University.

Where the UHB leads on a project then independent commercial advice should be obtained for all major projects (potential income in excess of £100,000). The allocation of royalty income will depend upon the complexity and size of the project. The table above, adopted by Cardiff University also, can be used as a starting point. Where shares are to be issued or outside investors involved then the allocation is more complex and should be determined using professional advice.

9 ASSUMPTION OF LIABILITIES/INDEMNITIES

The basis of assumption of liabilities/indemnities will be set out in each project and adequate indemnity/insurance cover provided for where necessary. In certain instances the UHB may seek legal advice to confirm the UHB's liabilities to include financial, Intellectual Property (IP) warranties or breach of 3rd party IP infringement for example.

10 RESOURCES

This policy largely reflects existing practice. In instances wherein patent/legal advice is required, resources will need to be considered on a case by case basis by the Executive Director of Strategic Planning; Clinical Board and Finance Director.

11 TRAINING

It is not envisaged that any formal training will be required as a result of the development of this policy. However, whilst training is not formally required the provision of training to foster a culture of innovation and staff engagement will be orchestrated through the Clinical Innovation Partnership.

12 IMPLEMENTATION

This policy reflects existing practice and therefore can be implemented immediately. The UHB wants to encourage staff to innovate and to benefit the UHB from IPR that is generated through the multiplex activities of the UHB. The Assistant Medical Director of Clinical Innovation will work with innovators to seek out appropriate routes for application of IPR and assist in protection where appropriate.

13 EQUALITY STATEMENT

All public bodies have a statutory public sector duty under the Equality Act 2010 to set out arrangements to assess and consult on how their policies, services and functions impact on equality.

The UHB is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff, patients and others reflects their individual needs and does not discriminate, harass or victimise individuals or groups. These principles run throughout our work and are reflected in our core values, our staff employment policies, our service standards and our Strategic Equality Plan and Equality Objectives. The responsibility for implementing the Plan and Objectives falls to all employees and UHB Board members, volunteers, agents or contractors delivering services or undertaking work on behalf of the UHB. They are expected to deliver services and provide care in a manner which respects the individuality of each service user and their carers and treat users of UHB services and their carers fairly and members of the workforce with dignity and respect, regardless of gender, maternity and pregnancy, carer status, marriage or civil partnership issues, race, disability, sexual orientation, Welsh language, religion or belief, transgender and age. This obligation also includes issues to do with human rights.

13.1 Equality Impact Assessment

In order to meet these requirements, an Equality Impact Assessment toolkit is used to assess all UHB policies, services and functions procedures. Each staff member seeking to undertake a commercial project will have the responsibility to consider the equality considerations for them as part of the business plan. The responsibility for undertaking any necessary Equality Impact Assessment will lie with the IPR developer and compliance will be monitored by the Assistant Director of Innovation and Improvement and Assistant Medical Director of Clinical Innovation.

14 REPORTING

The Multi-Disciplinary Panel will prepare a bi-annual report on its activity for the Management Executive.

15 DISTRIBUTION

This Policy will be available via the UHB Clinical Portal, Intranet and Internet Sites. Where staff do not have access to these resources the line manager must ensure that they are aware of the contents where appropriate.

16 REVIEW

The Policy will be reviewed to reflect any changes in guidance or legislation. As a minimum it will be reviewed 3 years after the date of approval.

Appendix A

Case Studies – Employee Ownership and Invention

Introduction

Under UK law, inventions made by employees who are employed to invent are owned by their employer. This is provided by statute (Patents Act 1977) which overrides contract law and specifically any terms in contracts of employment. In the UK, contract law is therefore generally only relevant in determining ownership of inventions made by inventors who are not employed in an inventive/creative capacity or outside of employment.

UK Law Relating to Employee Inventions – Section 39 UKPA77

In summary, an invention by default belongs to the inventor. However, in the case of employment, an invention made by an employee belongs to his employer **(1)**, if:

(1a) it was made in the course of his/her normal duties, or in the course of additional specifically assigned duties, **and** an invention might be reasonably expected to arise from them, or

(1b) it was made in the course of the employee's duties and implicit in these duties is a special obligation to further the interests of the employer.

Any other invention belongs to the employee **(2)**.

Notably, duties is not specifically defined and is often regarded as a role of employment rather than specific tasks that he or she may undertake as part of that employment. As a result, typically duties are stipulated in contracts of employment, and unless careful consideration of same is given, these are often by default quite vague and broadly defined.

To exemplify how this statutory provision may be applied, please consider the following theoretical case scenarios and how ownership may be determined in such cases.

Case Study 1: Dr X, Clinical Oncologist and Researcher

Dr X is a medical oncologist involved in assessment and treatment of certain types of cancer in the oncology department.

Normal Duties: Dr X is primarily employed to clinically assess and directly treat certain cancer subtypes in the oncology department. He also undertakes research including cancer clinical trials, the development of new drugs and studies about the fundamental mechanisms of specific cancer subgroups.

Assigned Duties: No specific contracted duties.

Invention: Through undertaking a clinical trial, in collaboration with other health and academic institutes, Dr X has elucidated certain markers in urine samples that can be used as early diagnostic markers indicative of certain forms of renal cancers. Many of the clinical samples utilised in the trial were provided by Dr X with clinical records pertaining to same (including patient outcome, treatment path and survival).

Ownership: Dr X as part of his employment undertakes research into the clinical treatment of cancer and is regularly involved in, and undertakes, clinical trials into new treatments and therapeutics. As part of a collaboration an improved diagnostic test for the determination of cancer has been devised, a significant part of which has arisen from data generated from patient records forming part of his day to day tasks. Although his contract of employment is not specifically drawn towards this particular aspect of research, the invention has arisen as a consequence of same.

The invention thus resides with Dr X's employer and possibly the other health and academic institutes.

Case Study 2: Mr Y, Consultant Wound Care Specialist and Surgeon

Mr Y is a wound care specialist and surgeon with extensive experience in the sector.

Normal Duties: Mr Y has experience in reconstructive foot and ankle surgery, orthopaedic/general trauma, paediatric orthopaedics, diabetic limb salvage, and wound care. He is primarily employed to clinically assess all cases of wound care and treatment thereof including use of advanced treatment techniques such as wound vacs, skin substitutes and use of new ultrasonic debridement techniques as part of conventional treatment plans. His contract does not stipulate limits upon techniques to be employed or the development of alternative methods, but he is also employed to contribute to treatment pathways in this clinical area at the hospital.

Assigned Duties: No specific contracted duties.

Invention: Mr Y has determined that during the course of treating certain chronic wounds a particular dose of a specific and already known wound therapeutic has unexpected and preferential wound healing effects, far superior to that already experienced during conventional clinical treatment. Further, it has been determined that treatment is most effective during a certain clinical wound 'time-window'. The proposed invention is therefore use of a specific dosage regimen when using a known therapeutic for treating of wounds.

Ownership: Mr Y is not employed to invent or research, although he does so as part of his personal career progression. However, he is employed as a wound care specialist with a view to undertaking and devising treatment plans for patients, including performing treatment using existing or new treatment options.

Although not employed to innovate *per se,* the invention has arisen as a consequence of his regular day to day tasks, inherent problems faced when undertaking same and devising a solution that can be used as an alternative.

The invention thus resides with the employer.

Case Study 3: Mrs Z, Clinical Nurse Specialist

Mrs Z is a nurse currently employed in the department of Geriatric Medicine.

Normal Duties: Mrs Z provides clinical leadership and education for the Staff Nurses working in her department, and has specialist skills and knowledge upon which ward nurses can. Her role is to act with other nurses to advance nursing practices, improve outcomes, and provide clinical expertise to effect system-wide changes to improve programs of care. She has a role in directing clinical practice including expertise in advanced assessment, implementing nursing care, and evaluating outcomes. Her research involves interpreting and using research, evaluating practice, and collaborating in research.

Assigned Duties: No specific contracted duties.

Invention: Mrs Z, a keen gardener in her spare time, has devised a new and improved water butt that can be implemented into existing household water drainage systems. The system comprises a unique setup that allows retention of water flow from downpipes for use in the garden but importantly does not lead

to reduced flow during heavy rainfall that can lead to overflow and flooding as with existing systems.

Ownership: Mrs Z is employed in the clinical sector. The proposed invention clearly is separate from her employment and normal course of duties and has no relevance or significance thereto. Devising the invention has arisen as a consequence of personal interest in a sector outside and separate from her employment.

The invention resides with the individual.

Summary

An employee who has developed an invention during the execution of duties pertaining to his/her employment contract i.e. usually, but not exclusively, during his/her working time within the institution/work environment using knowledge employed during his/her working day will belong to the employer.

To avoid confusion and possible disputes, employers often specify ownership of intellectual property in employment contracts. However, in many circumstances, the employee's duties can be referred to quite vaguely, and so it is prudent to consider carefully an employee's duties when reviewing and agreeing contracts of employment.

Regardless, depending on the merits of each case, the employee may have a right to equitable remuneration in accordance with legislative provisions or the employment contract. The Patents Act 1977 provides a statutory regime whereby an employee may become entitled to financial reward, or compensation, where the employer has obtained outstanding benefit from a patented invention made by an employee. The relative amount of remuneration will vary from case by case, and will ultimately depend upon the success of the invention (having regard to the size and nature of the employer's undertaking) and the extent of the contribution made by the employee to the patent.

In any case, the employee will always retain the right to be mentioned as the inventor, unless he/she expressly renounces this right.