



briefing

Health, Risk and Regulatory - June 2009

Innovation in the provision of Health services

Improvement of the services provided by the NHS

In a push to implement recommendations set out in his report on the future of the NHS, “High quality of care for all: next stage review”, health minister Lord Darzi announced that a £220m ‘innovation fund’ will be made available to Strategic Health Authorities (SHAs), to encourage NHS staff to think of innovative ways to improve the services provided by the NHS.

The ten SHAs will share the fund between them over a period of five years; £2million each for this year, and £5million each for each of the four following years, and ‘innovation challenge prizes’ will be specifically awarded to those who find new ways of meeting important health challenges.

For the purposes of the innovation fund ‘innovation’ will include not only ‘inventions’, but also innovative ideas in ‘management, service design, and culture change’. Implementation of the fund may therefore give rise not only to potentially patentable inventions the ownership of which will need to be clarified, but a whole raft of other intellectual property rights. SHAs may draw inspiration from Intellectual Property guidance currently available to the National Institute for Innovation and Improvement (NII).

The NII is a special health authority designed to deal with innovation and ideas. It is supported by the National Innovation Centre (NIC) which aims, through use of a network of regional Innovation Hubs, to speed up the development of pre-commercial technologies likely to benefit the NHS. It is anticipated that the NII and NIC will work to encourage the implementation of the innovation fund. In serving their purposes, NII and NIC adopt guidance published by the Department of Health on the management of intellectual property in the NHS.

As the guidance indicates, it is crucial to make provision both for where intellectual property ownership may lie, and also as to who should actually be deriving any benefit from exploitation of those rights. In some cases, it is particularly important to acknowledge the efforts of an employee who has created valuable intellectual property, although that employee has had to forfeit ownership over that property. This is particularly the case where a patent is concerned and which patent has provided outstanding benefit. It is notable that the guidance reflects that it is unusual for compensation to be made available to inventors under statute, but as recent case law shows, although it is unusual, it is certainly not impossible. In [Kelly v GE Healthcare Limited \[2009\] EWHC 181](#), under which two research scientists were awarded the accumulative sum of £1.5million for their contribution towards a diagnostic instrument called the ‘Myoview’, the patent of which was considered to have encouraged the immense commercial success of the product.

Employees should therefore be awarded just recompense for their work not only to avoid the cost and expense of reviewing a claim for compensation, but in the spirit of the innovative fund, to also engender goodwill to acknowledge achievement, and encourage employees to be innovative.

More information

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