



Public – To be published on the Trust external website

Intellectual Property Policy

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1 Introduction

The Framework and Guidance on the Management of Intellectual Property in the NHS¹ and the Health and Social Care Act² encourages NHS Trusts to (i) capture innovations that could lead to new or improved products, interventions and services, and (ii) develop innovative organisations.

This Policy is critical to the delivery of [Our Journey To Change OJTC](#) and our ambition to co-create safe and personalised care that improves the lives of people with mental health needs, a learning disability, or autism. It helps us to deliver our three strategic goals as follows:

- (i) This Policy supports us in the co-creation of a great experience for all patients, carers, and families from its diverse population, by ensuring outstanding and compassionate care through the development of new and innovative ideas, products and services, with the aim of continuously improving care.
- (ii) This Policy supports us in the co-creation of a great experience for our colleagues, so that we can be proud because our work is meaningful and our workplace is fit for purpose. We do this by guiding you through The Innovation Pathway, making links with The Academic Health Science Network for the North East and North Cumbria Limited, and identifying funding opportunities, to ensure that intellectual property is correctly managed.
- (iii) This Policy supports us to be a great partner by collaborating with local industry partners who may support the development of new products, and academic partners who support the evaluation of innovations and the spread and adoption of innovations with national partners. We achieve this through the development of a shared understanding of the needs and strengths of our community, and by working across organisational boundaries to innovatively improve services and provide support, as well as being widely recognised for the accomplishments we have achieved together.

2 Why we need this Policy

2.1 Purpose

This Policy provides an outline for the effective identification, protection, and management, of innovations and any associated Intellectual Property (IP).

2.2 Objectives

This Policy also includes information on who to contact if you have an innovation that you think may need protecting, or if you require general advice regarding IP arising as a result of your work at The Trust).

It also provides guidance on revenue sharing between The Trust and the originator of the innovation.

3 Scope

3.1 Who this Policy applies to

The Trust recognises that its workforce, from any discipline or activity, can generate new ideas, innovative solutions to problems, or better ways of working, all of which may lead to improvements in NHS services. This can arise from both research activities, occupational activities, and other types of work carried out by the group comprising the following (“The Workforce of The Trust”): -

- (i) Students, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- (ii) Students, both part time and full time, employed by The Trust (“Trust Employees”);
- (iii) Clinical staff, both part time and full time, employed by The Trust (“Trust Employees”);
- (iv) Clinical staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- (v) Research staff, both part time and full time, employed by The Trust (“Trust Employees”);
- (vi) Research staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”);
- (vii) Non-clinical staff, both part time and full time, employed by The Trust (“Trust Employees”);
- (viii) Non-clinical staff, both part time and full time, working within The Trust but not employed by The Trust (“Non-Trust Employees”); and
- (ix) Non-clinical individuals working within The Trust but not employed by The Trust (“Non-Trust Employees”),

This includes people who were previously, but who are no longer, in The Workforce of The Trust, as appropriate.

These types of innovations can lead to the creation of Intellectual Property (IP). IP represents a valuable asset to both The Trust and the NHS as a whole, and it is important that it is managed appropriately.

The law surrounding IP can be complicated,, and you should contact the R&D Department at The Trust, who are nominated to be responsible for IP management locally, at the earliest opportunity, if you would like to discuss IP protection in more detail. The R&D Department can be contacted at tewv.researchanddevelopment@nhs.net.



Innovators should not reveal details of their innovation in any way to any third party (e.g. friends, family, associates, colleagues or companies) before seeking advice from The Trust. Disclosure of an innovation, even by word of mouth, could seriously limit its value to patients, the innovator, and The Trust.

3.2 Roles and responsibilities

Role	Responsibility
The Workforce of The Trust	<ul style="list-style-type: none"> Have an obligation to inform the R&D Department at The Trust about identified or potential IP resulting from their clinical, and/or non-clinical, and/or study related, and/or research activities. They should not, under any circumstances, publish or disclose, assign, licence, give, or otherwise trade in, this IP, without the agreement of The Trust.
R&D Department	<ul style="list-style-type: none"> Facilitate the setting up of appropriate Collaborative Research Agreements with research partners Provide advice in relation to, and facilitate, Confidentiality Agreements Manage the strategy for the identification, protection, and commercialisation, of new innovations Facilitate discussions regarding revenue sharing between The Trust and the originator of the innovation, on a project by project basis, where appropriate Obtain input from advisors such as The Academic Health Science Network for the North East and North Cumbria Limited, patent attorneys, and the Trust Board, as required

4 Intellectual property (IP)

IP can be defined as the product of intellectual or creative activity, in the form of novel ideas, innovation, or the results of research and development, which can be given legal recognition of ownership through IP rights such as patents, copyright, design rights, trademarks or know-how (see Definitions below).

By means of example, the following categories of IP can be relevant to the NHS: -

Category	Protection	Examples
Functional innovations	Patents	New medical devices, software systems
Written work	Copyright	Computer software, patient leaflets, training booklets, journal articles
Products having a specific shape and configuration	Registered and unregistered design rights	New medical devices
Brand names	Trade marks	Trust logo, product names
Occupational knowledge	Know-how and trade secrets	Surgical techniques

5 Ownership of intellectual property (IP)

It is common for an innovator / author / creator to own the IP associated with their work. However, this position can be changed by a number of factors, in particular IP generated during employment.

For The Workforce of The Trust generating IP as a result of their work or study whilst working at The Trust, the legal position in terms of ownership of that IP is to be decided 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 IP generated.

However, by means of example, it is often the case that IP created by Trust Employees whilst they are employed by The Trust is owned in the first instance by The Trust. In order to decide whether IP generated by a Trust Employee whilst they are employed by The Trust is owned by The Trust, a number of criteria are taken into consideration, such as, whether or not the IP was generated in the course of their normal duties, whether or not they had a special obligation to further the interests of The Trust, and whether the IP was as a result of duties specifically assigned to them.

There is legal case law for helping to decide who owns IP created by Trust Employees in their 'spare time' where it relates to the work for which that person is employed. Accordingly, The Workforce of The Trust should not assume that they are the first owners of any IP created and they should instead seek advice from the R&D Department.

Although it is common for IP generated by Trust Employees to be owned by The Trust, this is not always the case. For example, where work, such as research, is carried out on behalf of a sponsor, the contract with the sponsor may provide that the IP associated with the results of the research will be owned by the sponsor. It is the policy of The Trust that, wherever possible, contracts undertaken by The Trust should clarify that first ownership of IP generated by Trust Employees in the course of their employment should in the first instance subsist with The Trust. Trust Employees must take account of this when discussing proposals with sponsors, and should take advice from the R&D Department before concluding any negotiations.

Non-Trust Employees are not employees of The Trust for the purposes of IP and therefore in many cases, unless there is an agreement to the contrary, The Trust is unlikely to be the first owner of any IP generated as a result of their work or study at The Trust. However, the general rule is that, to be considered as the rightful first owner of the IP generated as a result of their work or study at The Trust, the Non-Trust Employee will need to have demonstrated some independent thought and inventive input leading to the creation of the idea, innovation etc.. It is to be appreciated that if the IP generated resulted from the inventive input of the Non-Trust Employee's work colleagues, whom themselves are Trust Employees for example, The Trust may in that case, be the first owner of the IP.

In the event that The Trust decides not to exploit the IP owned by them and generated by a Trust Employee, the Trust Employee may then be provided with the opportunity to exploit the IP themselves by means of the execution of an assignment of the IP from The Trust to the Trust Employee.

It is to be appreciated that, should a Trust Employee leave The Trust, then the rights associated with any IP belonging to The Trust that was created when the Trust Employee was still employed by The Trust, shall remain with The Trust, unless there is an agreement to the contrary.

In view of the above, it is therefore important that The Workforce of The Trust discloses all IP that they think may have been generated as a result of their work or study whilst working or studying at The Trust and seeks advice as appropriate from the R&D Department.

6 Collaborative projects

It is to be appreciated that IP can belong to more than one legal entity (for example, The Trust and a Non Trust Employee, or an industrial partner, jointly) if the IP was generated as a result of collaborative effort between parties.

Accordingly, if work or research is conducted by a Trust Employee in partnership with another organisation, a formal agreement clarifying the ownership of any generated IP, is required. The R&D Department has overall responsibility within The Trust for developing IP sharing agreements and collaboration agreements with collaborating institutions.

7 Disputes of ownership

If the ownership of IP is disputed, dated written records relating to the IP in question will be assessed to establish the innovator(s) and their proportionate contribution. If such material is not available, the R&D Department will make a final assessment, taking advice from third party advisors such as The Academic Health Science Network for the North East and North Cumbria Limited, as required.

8 Infringements of IP

The Workforce of The Trust should take appropriate steps to avoid infringement of third party IP and should notify the R&D Department if they do become aware of any potential infringements.

9 Decisions of commercialisation

The R&D Department, in consultation with the innovator and other specialists where necessary, will assess the potential for an innovation to be commercialised. Criteria such as the potential market, the likelihood of success, and the scope for protection of the innovation, will be taken into consideration.

The R&D Department can agree on a case-by-case basis to grant permission to other NHS partners or collaborators to have free or discounted access to the IP, where the wider public interest for this is demonstrated.

10 Contract negotiations

Any IP that is licensed, assigned, or otherwise transferred to another organisation, will be negotiated in the best interests of The Trust, with the assistance of professional advisers, where required.

11 Revenue sharing with innovators

The Trust encourages full participation of The Workforce of The Trust in the creation and potential commercialisation of IP. The policy of The Trust is to reward Trust Employees who have contributed substantially to the generation of IP which subsequently provides revenue through commercialisation. The sharing of revenue will be determined by The Trust at its discretion. Where more than one originator of the innovation is involved, the distribution of revenue will be decided based upon principles of percentage of creative contribution.

12 Publications

It is the policy of The Trust to actively encourage Trust Employees to publish their work and The Trust will not normally object to an individual's right to be named as an author of copyright material. *However*, if IP is to be commercialised, all potential IP needs to be kept confidential until a decision has been made regarding whether to protect it.

Advice should be sought from the R&D Department before publicly disclosing any potential IP, for example, by means of scientific papers, posters at conferences, publication of abstracts, chapters in books, and any other verbal or written communication.

13 Record keeping

It is important to keep written and dated records of activities and results, for projects which can generate IP.



It is also 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 clinical governance, research governance, and good clinical practice guidelines for R&D.

The Trust nominated person responsible for IP management is also responsible for maintaining a register of all the IP owned by The Trust and which is notified to them; including the date and time it was reported to the R&D Department. It is also their responsibility to keep safe any important original documents relating to IP, such as Confidentiality Agreements.

14 Definitions

This section is a list of the terms used in this Policy and what they mean

Term	Definition
R&D	Research and Development
Innovation	The creation and implementation of new processes, products, services and methods of delivery which result in significant improvements in outcomes, efficiency, effectiveness or quality The creation and implementation of new processes, products, services and methods of delivery which result in significant improvements in outcomes, efficiency, effectiveness or quality.
IP	Intellectual Property - The product of intellectual or creative activity in the form of novel ideas, innovation, or the results of research and development, which can be given legal recognition of ownership through IP rights such as patents, copyright, design rights, trademarks, or know-how.
Copyright	Copyright covers for example, written information (such as leaflets, articles, assessment tools and training packs), databases, computer software, and films/videos. Copyright in the UK is achieved automatically when the work is created. However, it is advisable to attach a statement to the work, in order to discourage infringement, such as: <i>© [Owner] [Year of Creation]. All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.</i>
Patents	Patents can be used to protect inventions that embody a new idea that is capable of being made or used by industry; such as devices, processes or methods. Exclusions from this include methods of treatment of the human/animal body by surgery or therapy, or methods of diagnosis. An invention must not have been published anywhere in the world prior to the filing date of the patent application. Publication can include journals, the internet, discussion at meetings, and poster presentations.
Unregistered Design Rights	Unregistered Design Rights are IP rights that are directly associated with appearance. The rights can protect external features but they only provide protection against <i>copying</i> of features of the shape and configuration.

Registered Design Rights	<p>In some new products, the novelty lies not in the functionality or the general concept of a new idea, but in its appearance. Registered design rights usually cover commercial objects with a unique aesthetic appearance.</p>
Trade Mark	<p>A trade mark is a sign or symbol that is used to distinguish a product or service from that produced or supplied by another business. It could include 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.</p> <p>Registering a trade mark allows the owner to prevent competitors from also using that trade mark to promote their own products. Trade marks can be very valuable in keeping a product as a market leader.</p>
Know-How	<p>Know how is information which may be commercially or technically valuable, and which is regarded as secret. It may, for example, include occupational knowledge, information on industrial processes, or a list of clients.</p> <p>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 Confidentiality Agreement.</p>
Confidentiality Agreement	<p>This is a reciprocal agreement whereby confidential information is both disclosed and received. It may be obtained from the R&D Department at The Trust.</p>

15 Related documents

n/a

16 How this policy will be implemented

- This policy will be published on the intranet and external website of The Trust.

16.1 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
ALL	Individual	Bespoke per training need	As required

17 How the implementation of this policy will be monitored

Number	Auditable Standard/Key Performance Indicators	Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	10% of research projects will be audited to ensure that intellectual property has been discussed and actioned as appropriate	10% of research projects are audited on an ongoing cycle throughout the calendar year and	Research Governance Group
2	10% of innovation projects will be audited to ensure that intellectual property has been discussed and actioned as appropriate	10% of innovation projects will be audited quarterly on the innovation tracker by the innovations coordinator	Executive Clinical Leaders Group

18 References

1. Department of Health (2002) *The NHS as an Innovative Organisation. A Framework and Guidance on the Management of Intellectual Property in the NHS*. Accessed from:

<http://www.nic.nhs.uk/Pages/NHSIPGuidance.aspx>

2. Department of Health (2001) *The Health and Social Care Act*. Accessed from:

<http://www.legislation.gov.uk/ukpga/2001/15/contents>

19 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval	20 September 2023
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Next review date	20 September 2026
This document replaces	CORP-0058-v4 Intellectual Property Policy
This document was approved by	Research Governance Group
This document was approved	07 September 2023
This document was ratified by	Management Group
This document was ratified	20 September 2023
An equality analysis was completed on this policy on	10 August 2023
Document type	Public
FOI Clause (Private documents only)	n/a

Change record

Version	Date	Amendment details	Status
v3	Nov 2017	Removed reference to Research Governance Framework	Withdrawn
v4	June 2019	<p>Purpose section updated to incorporate innovations pathway</p> <p>Who this applies to section expanded to describe innovation activity and include new groups of Trust and non-Trust employees. Informs to contact R&D on individual case by case basis as law can be complicated</p> <p>Intellectual property Definitions and categories with examples provided</p> <p>Roles and responsibilities Section updated to include wording from the innovation pathway i.e. identification and commercialisation.</p> <p>New section included Ownership, collaborative projects and disputes of ownership</p>	Withdrawn
v4.1	20 Sept 2023	<p>Full review with minor amendments:</p> <p>Updated to new template, Update to job title and structures</p>	Ratified

Appendix 1 - Equality Analysis Screening Form

Please note: [The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet](#)

Section 1	Scope
Name of service area/directorate/department	Research and Development, Medical Directorate
Title	Intellectual Property
Type	Policy
Geographical area covered	Trustwide
Aims and objectives	<p>The Intellectual Property (IP) Policy provides an outline for the effective management of IP. It Includes information regarding who to contact if any staff member has an invention that may need protecting, or if they require general advice on IP arising as a result of their work.</p> <p>The aims are to:</p> <ul style="list-style-type: none"> • Identify and protect innovations and IP created as a result of activities within The Trust; • Set a framework and programme for the management of IP, including the assertion of any IP rights owned by The Trust; • Provide guidance on revenue sharing between The Trust and the innovator.
Start date of Equality Analysis Screening	March 2023
End date of Equality Analysis Screening	10 August 2023

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	<p>The Policy will benefit any staff member who has an innovation they would like to develop by providing support and guidance for taking that idea forward. Service users and carers may benefit from any innovation that is developed to improve their care, health, or well-being. Some innovations may have a beneficial impact on staff groups e.g. new ways of working, development of technologies or devices that positively impact on staff workload. The Trust and individual staff members may benefit financially if the innovation is able to be successfully commercialised.</p>

<p>Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups?</p>	<ul style="list-style-type: none"> • Race (including Gypsy and Traveller) NO • Disability (includes physical, learning, mental health, sensory and medical disabilities) NO • Sex (Men, women and gender neutral etc.) NO • Gender reassignment (Transgender and gender identity) NO • Sexual Orientation (Lesbian, Gay, Bisexual and Heterosexual etc.) NO • Age (includes, young people, older people – people of all ages) NO • Religion or Belief (includes faith groups, atheism and philosophical beliefs) NO • Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave) NO • Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners) NO • Armed Forces (includes serving armed forces personnel, reservists, veterans and their families) NO
<p>Describe any negative impacts</p>	<p>n/a</p>
<p>Describe any positive impacts</p>	<p>The Policy has been developed to ensure that IP is managed effectively, as many innovations have the potential to make a positive impact on the lives of service users, carers, and staff, regardless of the protected groups individuals may identify with.</p>

Section 3	Research and involvement
<p>What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)</p>	<p>See references section</p>
<p>Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?</p>	<p>Yes</p>

If you answered Yes above, describe the engagement and involvement that has taken place	Previous versions have included discussions with Research involved PPI members and approval at Research Governance group included service users. This version only has minor changes but will be discussed at Research Governance Group which includes PPI representation.
If you answered No above, describe future plans that you may have to engage and involve people from different groups	

Section 4	Training needs
As part of this equality analysis have any training needs/service needs been identified?	No
Describe any training needs for Trust staff	No
Describe any training needs for patients	No
Describe any training needs for contractors or other outside agencies	No

Check the information you have provided and ensure additional evidence can be provided if asked

Appendix 2 – Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes / No / Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Y	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Y	
2.	Rationale		
	Are reasons for development of the document stated?	Y	
3.	Development Process		
	Are people involved in the development identified?	Y	
	Has relevant expertise has been sought/used?	Y	
	Is there evidence of consultation with stakeholders and users?	Y	
	Have any related documents or documents that are impacted by this change been identified and updated?	n/a	
4.	Content		
	Is the objective of the document clear?	Y	
	Is the target population clear and unambiguous?	Y	
	Are the intended outcomes described?	Y	
	Are the statements clear and unambiguous?	Y	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Y	
	Are key references cited?	Y	
	Are supporting documents referenced?	Y	
6.	Training		
	Have training needs been considered?	Y	
	Are training needs included in the document?	n/a	
7.	Implementation and monitoring		

	Title of document being reviewed:	Yes / No / Not applicable	Comments
	Does the document identify how it will be implemented and monitored?	Y	
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Y	
	Have Equality and Diversity reviewed and approved the equality analysis?	y	Approved 10 Aug 2023
9.	Approval		
	Does the document identify which committee/group will approve it?	Y	Research Governance Group
10.	Publication		
	Has the policy been reviewed for harm?	Y	No harm
	Does the document identify whether it is private or public?	Y	public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	n/a	