

Intellectual Property Policy

Category:	Policy
Summary:	The Policy sets out the procedures that the Trust has adopted to ensure that Intellectual Property (IP) generated using the Trust's facilities or resources or by the Trust's staff, is identified and managed effectively and in accordance with guidance from the Department of Health and Social Care. It also provides guidance on the measures necessary to avoid unauthorised use of IP which could lead to infringement action being taken against the Trust.
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Distribution:	Trust wide Via Trust distribution network to: • Divisional Management Teams • HR intranet site • Procurement intranet site The Policy will also be publicised as part of a process of raising awareness of intellectual property among staff within the Trust.
Related Documents:	NA.
Author(s):	Head of IP and Research Contracts (IP Lead)
Further Information:	Head of IP and Research Contracts (IP Lead)
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Lead Director: Chief Medical Officer

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This document is uncontrolled once printed.

It is the responsibility of all users of this document to ensure that the correct and most current version is being used.

This document contains many hyperlinks to other related documents.
All users must check these documents are in date and have been ratified appropriately prior to use.

Document History

Date of revision	Version number	Author	Reason for review or update
2003	3.0	IP Lead	
2012	4.4	IP Lead	Review and replacement of "Management of Intellectual Property v3 March 2003" to reflect guidance from DoH and best practice.
2023	5.0	IP Lead	Review required. Changes respond to recent case law and updates legislation, reflects current Trust strategy and aligns with research partner.

Consultation Schedule

Who? Individuals or Committees	Rationale and/or Method of Involvement
IP Lead	Author of Policy and responsible for monitoring and implementing
Commercial Team	Supports IP Lead on commercial aspects of the Policy

Endorsement

Endorsee Job Title

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1. Who should read this document?

The IP Policy applies to the following person:

- 1.1. All Trust Staff with full or part time contracts of employment, whether employed in research & development, clinical, managerial, administrative or support roles;
- 1.2. Trust Staff with contracts of employment whose payroll costs are wholly or partially funded by another party (including, but not limited to a commercial sponsor, government department, or medical charity) although specific arrangements may apply in respect of the ownership of IP created by such employees;
- 1.3. Any Trust Staff employed at the Trust by an honorary contract of employment, whose substantive employer, if any, is not the Trust, in the course of their duties for the Trust;
- 1.4. Trainees and Students hosted by the Trust subject to any specific arrangements agreed with their academic institutions;
- 1.5. Trust Staff who are seconded to the Trust from another organisation unless the secondment agreement provides that this IP Policy does not apply;
- 1.6. Contractors working for the Trust under a contract for services who create IP as part of their work for the Trust unless agreed otherwise in writing and in advance; and
- 1.7. Contractors, bank staff and employees of Independent Providers of NHS Services working on behalf of the Trust to whom Section 8 of this IP Policy applies.

2. Policy Statement.

- 2.1. It is the policy of the Trust that:
 - 2.1.1. Innovation by all Trust Staff is encouraged.
 - 2.1.2. The Trust is the first owner of IP created by Trust Staff.
 - 2.1.3. The Trust expects recognition and a share of commercial revenue arising from the exploitation of IP:
 - 2.1.3.1. That the Trust owns either (i) as employer of the staff who created the IP or (ii) under the terms of engagement of the staff who created the IP; or
 - 2.1.3.2. That the Trust has supported by contributing resources that have led to the creation of the IP.
 - 2.1.4. Processes and systems are developed as described in this Policy to ensure that Trust staff have access to the advice and support that they need in order to maximise the benefits derived from their innovative ideas whilst ensuring that the legitimate needs and interests of the Trust are protected.
 - 2.1.5. IP identification and management processes should be recorded in an IP Policy.

2.2. The Trust regards patient data as one of the most important resources that the Trust can contribute to support Innovation. Any contribution of patient data by or on behalf of the Trust that is made to third parties must take place only after an agreement is put in place with the recipient that obliges the recipient to acknowledge and recognise the Trust's contribution of patient data. Such agreement must be put in place either by the IP Lead or the Commercial Team in liaison with R&D Governance and Information Governance as required.

2.3. Trust Staff and service providers working on behalf of the Trust must recognise and respect IP that is owned or controlled by third parties and only use such IP where they have permission to do so. Trust Staff and service providers working on behalf of the Trust should act in a way that does not put the Trust in breach of third-party IP rights.

2.4. The Trust's Head of IP and Research Contracts (also referred to as IP Lead) is responsible for overseeing the management of Trust IP.

2.5. The Trust's position and rights as detailed in this Policy or elsewhere may be waived or modified by agreement in writing with the individual(s) concerned.

2.6. This Policy represents the Trust's preferred position. However, the Trust acknowledges that it may be appropriate to agree a different position on certain matters if circumstances require it.

2.7. This Policy replaces the Trust's Policy on the Management of Intellectual Property v5 (issued November 2012).

3. **Background and Scope**

3.1. Intellectual Property (referred to in this Policy as "IP") is the term used to describe certain types of information, new inventions and the physical expressions of ideas which are protected by a range of legal rights, including copyright and patent rights. In an innovative organisation like the NHS, staff from any discipline or engaged in any activity can generate new ideas, innovative solutions to problems or better ways of working and these ideas and solutions (referred to in this Policy as "Innovation") will invariably include IP in one form or another. Likewise, most NHS staff will make use of IP belonging to third parties whilst undertaking their day-to-day duties.

3.2. This Policy deals with the way in which IP is handled by the Trust and is presented in three sections:

3.2.1. The Intellectual Property Framework

3.2.2. Management of Intellectual Property created by Trust Staff and/or using Trust resources

3.2.3. Use of Intellectual Property owned or controlled by a third party.

3.3. This Policy applies to all IP which:

3.3.1. Is used by the Trust; or,

3.3.2. Is created by the Trust Staff in the course of their duties; or,

3.3.3. Is created using the Trust's facilities or resources, unless there is written agreement with the Trust that the IP is subject to a different arrangement.

3.4. All Trust Staff are required to comply with this Policy in order to:

3.4.1. Ensure that innovation within the Trust is managed effectively;

3.4.2. Protect IP belonging to the Trust so that it can be used for the benefit of the Trust and the wider NHS; and also,

3.4.3. To avoid exposing the Trust to the risk of infringement claims made by the owners of IP used by the Trust. The Trust also expects any party under contract with the Trust including Trust Staff and suppliers of services to the Trust to abide by the principles set out in Section [8] regarding use of IP owned or controlled by a third party.

4. **Key Updates**

4.1. The Policy has been reviewed to ensure all references are current and up to date. The review also accounts for recent case law to ensure that OUH is protected with an IP Policy that is legally robust.

4.2. The Policy also reflects OUH strategy with respect to clinical data and alignment with its key research partner.

5. **Aim**

5.1. The purpose of this Policy is to ensure that:

5.1.1. IP generated by Trust Staff or using the Trust's facilities or resources is identified and managed effectively;

5.1.2. Trust Staff respect the IP of third parties and do not make any unauthorised use of IP as this could lead to infringement action being taken against the Trust.

6. **Content of the Policy**

The Intellectual Property Framework

6.1. Nature of Intellectual Property rights

6.1.1. IP rights protect the product of intellectual activity. Some IP rights arise automatically on creation of a new innovation, whilst others are only obtained through registration at official bodies such as the UK Intellectual Property Office. Once secured, IP rights can be a valuable asset as they give their owner the right to control the way in which the innovation they protect is used. IP rights can also be bought, sold or licensed in order to generate revenue.

6.1.2. The principal types of IP which are relevant to the NHS are patents, copyright, database rights, trade marks, design rights and rights in confidential information. The following are examples of how such IP may be used or created within the Trust:

Nature of IP	Relevant IP right	Examples
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New invention	Patent	A new medicinal substance devised as a result of a research project could be protectable by patent.
Literary works	Copyright	The source code for computer software, the text from a patient leaflet and research papers produced for medical journals will all be protected by copyright provided that they are original.
Artistic works	Copyright	Photographs and other images appearing on the internet will be protected by copyright.
Databases	Database rights	A database is a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible so this could cover a searchable library of images or scans.
Designs	Design rights	The design for a new medical device.
Brand names	Trade marks	The NHS logo or the brand name of a particular drug.
Know-how	Confidentiality	New surgical techniques or methods of working which are not patentable but which have been kept confidential and are not generally known.

6.2. Ownership of IP

6.2.1. English law in general provides that IP created by employees in the course of their employment belongs to the employer. Accordingly, the Trust will normally be the first owner of any IP that is created by Trust employees in the course of carrying out their normal duties or the duties that are assigned to them irrespective of whether they are employed in research and development, clinical, managerial, administrative or support roles. While the Trust owns such IP, the Trust will recognise the contribution of individuals to the creation or development of the IP in accordance with the terms of this Policy. In particular, this means that individuals may be entitled to share in any net revenue received by the Trust from the commercialisation of IP that the individual has contributed to. However, commercialisation can take many forms and is not always successful. There is no guarantee that any individual will receive any payment.

6.2.2. The Trust also claims ownership of the IP created by Students and Trainees hosted by the Trust for training and/or research purposes within the Trust, or who are working on projects funded by a third-party funder of the Trust, except where it has agreed otherwise with that Student or Trainee's academic institution.

Although such individual Students and Trainees may not be employees of the Trust, they are required by the terms of their agreement with the Trust to transfer any IP rights that they create to the Trust. In consideration of such transfer, the Trust shall treat such Students and Trainees in the same way as Trust employees in that they shall also be entitled to share in any net revenue that may be received by the Trust from the commercialisation of any IP that they create in accordance with this Policy.

- 6.2.3. IP created by secondees, Contractors or their employees, or by bank staff will not automatically be owned by the Trust unless this has been specifically agreed. Where this IP is owned by the Trust, such persons shall not automatically benefit from the revenue sharing arrangement set out in this Policy, but the Trust may in its absolute discretion elect to extend such arrangements to include that person.
- 6.2.4. The Trust does not claim ownership of any IP that is created by a member of Trust Staff which is unconnected with his or her normal employment activities, and that doesn't use Trust resources, unless these staff have been specifically commissioned to create such IP by the Trust, in which case the Trust will retain ownership.
- 6.2.5. The default position at law is that the copyright in any work produced by an employee in the normal course of their employment belongs to their employer. Where a Trust employee has created copyright material intended for publication in a professional or academic journal (including an electronic journal), the Trust will normally transfer the copyright in that work to the author and waive any claim that the Trust may have to benefits arising from the publication of that work. However, the Trust will retain the non-exclusive right to reproduce and use this copyright material at no cost for the Trust's own non-commercial purposes, including for patient care, research and training.
- 6.2.6. The position set out at 6.2.5 only relates to copyright material intended for publication in a professional or academic journal (including an electronic journal). The Trust will not transfer any of its other copyright to the author including, without limit, copyright in:
- 6.2.6.1. course or training materials or patient information leaflets which are produced, used or disseminated within or outside the Trust;
 - 6.2.6.2. any software program generated by a Trust employee in the normal course of their employment;
 - 6.2.6.3. any other works which may be necessary to support or protect rights in commercially exploitable IP.
- 6.2.7. Where IP arises from activities funded by another organisation, the Trust may be required to assign or grant rights to such IP to the funding organisation under the terms of the relevant funding agreement.
- 6.2.8. Similarly, where IP arises from activities undertaken jointly with another organisation, for example the University of Oxford, the Trust may have agreed to assign IP arising from such collaboration to the other organisation under the terms of the collaboration agreement. In such circumstances the Trust would normally expect to receive a share of any revenue derived from exploitation of co-created IP. That share will be applied in accordance with this Policy.

Management of Intellectual Property created by Trust staff or using Trust resources

6.3. Innovation within the NHS

- 6.3.1. The NHS is a naturally innovative organisation that generates IP which, if managed properly, can lead to significant improvements in patient benefit and in

the provision of healthcare. To ensure that innovation within the NHS is managed effectively, the Department of Health and Social Care published a Framework and Guidance on the Management of Intellectual Property in 2002 and supported changes to the law, which together empower NHS organisations to take appropriate steps to ensure that new ideas are identified, IP rights are protected, and avenues are opened for exploitation and dissemination.

6.4. Procedures for Trust Staff

- 6.4.1. The Trust has appointed the IP Lead to act as the first point of contact for information and advice on any matters regarding the IP which is used within the Trust or created utilising Trust resources.
- 6.4.2. The Trust aims to raise awareness amongst Trust Staff of the importance of IP and has developed a range of approaches aimed at helping employees to bring their ideas, in confidence, to the attention of the IP Lead through such means as opportunity assessments, training seminars and competitions.
- 6.4.3. Trust Staff should notify the Trust's IP Lead of any Innovation that arises from, or in the course of, their Trust duties, including research and clinical practice, as soon as possible. Doing so will ensure the best possible support and advice for its development and protection. The IP Lead should be notified of any Innovation that Trust Staff have contributed to and/or that has been created with the use of Trust resources, including patient data. The Trust needs to be notified even where the Trust is not the first owner of the IP in the Innovation. The Trust expects that Trust Staff and the Trust itself should receive recognition for the contribution made by Trust Staff or by other Trust resources and prompt notification helps the Trust to achieve this.
- 6.4.4. It is essential that this is done before the Innovation is made public, disclosed, or discussed with any party outside the Trust that has not signed a confidentiality agreement as this may prejudice the ability of the Trust to obtain legal protection for the innovation and its commercial potential. This is particularly critical in the case of Innovation that could lead to a patent.
- 6.4.5. Once Innovation has been identified, it is important to keep full records, including copies of all correspondence and notes of telephone conversations and meetings and progress of development should be reported to the IP Lead regularly.
- 6.4.6. Trust Staff must not make any attempt to sell, license or otherwise commercially exploit Innovation or any IP owned by the Trust without the approval of the IP Lead.

6.5. Protection and Exploitation of Innovation

Process

- 6.5.1. The protection and commercial exploitation of Innovations or IP can involve significant costs and legal risks and must always be ancillary to the Trust's primary activity of providing healthcare services. Staff should be aware that it will not always be appropriate for the Trust to protect and commercially exploit IP generated by Trust Staff.
- 6.5.2. When Innovation is sufficiently advanced, the Trust's IP Lead will, after consultation with the Trust Staff responsible for creating such Innovation, determine the best method of protecting and exploiting the Innovation in a way which ensures that NHS patients benefit. In some cases, this may be achieved by disseminating the Innovation throughout the NHS either without charge or at a nominal charge designed only to ensure that the Trust covers its costs. In other

cases, where the Innovation has potential for commercial exploitation, it may be preferable to register and protect any IP arising in the Innovation in order for it to be developed into a commercial product.

6.5.3. As part of this process, the IP Lead shall undertake due diligence in order to:

6.5.3.1. Identify what resources (including patient data) or other support the Trust has contributed to the creation or development of the Innovation;

6.5.3.2. Confirm whether the Trust owns any of the IP in the Innovation; and

6.5.3.3. Identify any third parties with an interest in such innovation (for example, funders or other contributors).

6.5.4. In cases where the Innovation has been developed in conjunction with a university or other partner, such partner may be involved in the due diligence process. The Trust has an agreement with the University of Oxford and Oxford University Innovation Limited ("OUI"), (the University of Oxford's technology transfer company) to manage Innovation arising collaboratively between the Trust and the University of Oxford, The Trust Staff responsible for creating the Innovation will be required to complete forms developed by the Trust and its partners in order to assist with this process. All Trust Staff are required to provide the IP Lead with such information as may be reasonably required as part of this process.

6.5.5. The Trust shall ensure that Trust Staff do not become personally liable for product liability claims arising from the Trust's exploitation activities.

Exploitation by the Trust

6.5.6. The Trust works principally with OUI who provides advice to the Trust on whether or not there is any potential to commercially exploit IP that was: (i) created or developed by Trust Staff; or, (ii) that benefitted from a contribution of Trust resources (including patient data) or other support. Where the IP Lead considers that commercial exploitation is appropriate, the Trust will either exploit the IP directly or engage an appropriate organisation, such as OUI, to exploit the IP on behalf of the Trust and may transfer the IP to such organisation for such purposes. Commercialisation will normally be achieved by selling the IP, by granting licences to use the IP or by forming a spin-out company to develop and market the IP. There may however be occasions where, despite having commercial potential, the Trust considers that patient benefit is best served by freely disseminating such IP. The Trust will consider requests from individual Trust staff either for the individual to lead the commercialisation themselves or for the commercialisation to follow a particular route. In considering these requests, the Trust may take into account (amongst other things): the Trust's own interests; the Trust's contribution to the relevant IP; and, the most appropriate way of achieving patient benefit. As a condition of agreeing to any request, the Trust may require that a revenue sharing agreement is put in place.

Exploitation by OUI

6.5.7. In the case of innovations which are created or developed by Trust staff in collaboration with the University of Oxford, the Trust recognises the University's experience and expertise in this field and has agreed that the University will take the lead on any commercial exploitation through its technology transfer company, OUI. In such circumstances, the Trust will normally receive a share of any revenue received through commercialisation and that revenue will be shared in accordance with this Policy.

Exploitation not pursued by Trust

- 6.5.8. Where the Trust elects not to pursue the exploitation of a particular innovation, the Trust Staff responsible for creating such innovation will be informed of the rationale behind the decision.
- 6.5.9. The Trust may, if requested to do so by the relevant Trust Staff, agree to offer the individual(s) the opportunity to exploit the Innovation themselves in their own time and without the use of Trust resources. The Trust will not refuse such a request unless it has reasonable grounds to do so.
- 6.5.10. If the Trust agrees to such a request to exploit, the Trust shall, if it is legally able to do so, transfer the Trust's ownership of the IP to the individual(s) at the individual(s)' cost. Any such transfer will be subject to:
- 6.5.10.1. Any third-party rights or interests in the IP.
 - 6.5.10.2. A non-exclusive licence back to the Trust permitting the use of the IP for further research use and for the provision of healthcare services to NHS patients.
 - 6.5.10.3. An obligation to pay the Trust a reasonable share of any revenue arising from the exploitation of the IP.

6.6. Sharing the benefits of exploitation

- 6.6.1. The Trust wishes to encourage innovation by rewarding Trust Staff with a share of any net revenue that is received by the Trust from the commercial exploitation of the IP that they have created during their employment.
- 6.6.2. This section describes how net revenue will be shared. In recognition of the fact that much of the research and development activity of the Trust is undertaken in collaboration with the University of Oxford, the Trust has adopted a revenue sharing arrangement with its staff which is comparable with the revenue sharing arrangements within the University. It is intended that this will ensure that there will be no material advantage or disadvantage resulting from the employment status of those working on collaborative research projects undertaken by the Trust and the University.
- 6.6.3. The Trust shares any net revenue derived from the exploitation of IP in accordance with the version of this Policy that was in force on the date that such IP is created irrespective of when it is actually exploited. Accordingly, any IP which has been created before the implementation of this Policy will continue to be exploited in the accordance with the Trust's earlier policies for the management of IP.

Net revenue

- 6.6.4. For the purposes of this Policy, the term "*net revenue*" means the revenue actually received by the Trust from the successful exploitation of IP from options, licences or assignment agreements after the deduction of:
- 6.6.4.1. Professional fees and expenses and other outgoings incurred in:
 - 6.6.4.1.1. Managing and protecting the intellectual property (including the deduction of a 30% technology transfer charge to cover the overheads of the Trust or any third-party technology transfer offices engaged by the Trust to assist with the commercialisation of the IP);
 - 6.6.4.1.2. Procuring any necessary clearances, rights and approvals; and making arrangements for exploitation

- 6.6.4.2. payments made to third parties contributing to the development of the IP.

Net revenue does not include any revenue generated by the Trust from the provision of healthcare services which utilise the IP or any payments which are received by the Trust for performing research in a particular area or for conducting clinical trials.

Shareholdings

- 6.6.5. Section 5 of the Health and Social Care Act 2001 enables NHS organisations to participate in the formation of companies for the purposes of generating income from IP. Where IP owned by the Trust is to be exploited by means of forming a spin-out company, Trust Inventor(s) who have made a significant contribution to the IP shall be invited to participate in the formation of the proposed spin-out company in recognition of their contribution or where they may play an important role in the success of the proposed spin-out company.
- 6.6.6. The respective shareholdings of the Trust and the Inventor(s) shall be negotiated at the time of formation of the company. However, the starting assumption is that the Inventors between them will hold 80% of the shares in the new company and that the Trust will hold 20% of the shares in the new company. The expectation is that these percentages may change to accommodate the interests of, or match the position of, other parties and/or to reflect the particular circumstances of the development of the IP and the formation of the proposed spin-out company.
- 6.6.7. Revenue received by the shareholders (such as dividends or proceeds of sale) is retained by the shareholder. It is not considered as “net revenue” for the purposes of this Policy and so is not part of the amounts distributed to Inventors under 0 below.

Inventors

- 6.6.8. Where a single individual is responsible for the creation of IP exploited by the Trust, that individual must sign a declaration confirming that he or she is the sole inventor in order to participate in the Trust’s revenue sharing scheme.
- 6.6.9. Where multiple Inventors contributed to the creation of the IP, it is the responsibility of those Inventors (whether or not employed by the Trust) to agree upon their respective contributions and to express these as a percentage.
- 6.6.10. The Inventors’ share of net revenue shall be divided between the Inventors in such proportions as they have agreed (subject to 6.6.12). Inventors employed by the Trust will then be required to sign a declaration confirming their respective contributions.
- 6.6.11. The relevant forms will be made available by the Trust’s IP Lead (or in the case of IP created in collaboration with the University of Oxford, by OUI) as part of the due diligence process.
- 6.6.12. In the event of any dispute between Inventors as to their respective contributions, the provisions of 7 below shall apply.

Distribution of net revenue

- 6.6.13. Net revenue will be distributed by the Trust in accordance with the following table:

Total Net Revenue received	Share paid to Inventor(s)	Share retained by the Trust for general use	Share retained by the Trust for use by the CU/Directorate of the inventor(s)
Up to £50K	85.7%	14.3%*	0%
From £50k to £500k	45%	30%	25%
Over £500k	22.5%	40%	37.5%

*The percentage marked an asterisk above is intended to represent the employer's National Insurance contributions payable by the Trust in respect of payments made to the Inventor(s). The Trust's share will be increased (and accordingly the Inventor(s) share reduced) in the event of any increases in the rates of National Insurance contributions payable by the Trust.

6.6.14. The inventor's share of net income can be distributed as personal income (which is subject to income tax), or it can be placed (untaxed) in a ring-fenced Trust account for sole use by the inventor for R&D and related purposes approved by the Trust.

6.6.15. The Trust will normally continue to pay the appropriate share of net revenue to the inventor should he or she leave the employment of the Trust and in the event of death the inventor's share of net revenue will be paid to his or her estate. The Trust shall use its reasonable endeavours to maintain up to date contact details for Inventors, but it is the responsibility of the Inventor (or in death the administrator of the Inventor's estate) to notify the Trust of changes in contact details. In the event that the Trust is unable to contact an Inventor or a beneficiary of the Inventor's entitlement for six consecutive months such entitlement shall cease and the Inventor's share of net income shall be re-allocated to the other Inventors entitled to participate in the same revenue stream (pro rata to their respective entitlements) or, if there are no other Inventors so entitled, it shall be retained by the Trust.

7. Dispute Resolution

7.1. Disputes between Inventors of the IP and the Trust

7.1.1. In the event of any dispute between the Trust and an Inventor regarding the ownership of IP that is covered by this Policy, the party concerned may request a meeting with the IP Lead in a good faith attempt to resolve the dispute.

7.1.2. If the matter remains unresolved after that meeting, then either the Trust or the Inventor(s) concerned may require by giving notice to the other in writing within 10 days of the meeting that the matter be referred to an independent legal expert who shall finally determine ownership. The choice of independent legal expert must be agreed by both parties.

7.1.3. In the event that the parties cannot agree on the identity of the independent legal expert within thirty days of such written notice, the expert shall be a barrister specialising in intellectual property law who is nominated by the Chief Executive of the Trust or, where the University of Oxford has an interest in the relevant IP, by the independent chair of PIPAC.

7.1.4. The independent legal expert's fee shall be paid by Trust but shall constitute a first charge on any profits which may accrue, whether to the Inventor or to the

Trust, whichever party or parties is or are held by the expert to be the owner of the IP.

7.2. Disputes between Inventors of the IP where the Inventors are Trust Staff

7.2.1. In the event of any dispute between Inventors who are Trust Staff relating to any IP that is covered by this Policy regarding the ownership of or contribution to the relevant IP, any individual Inventor may request a meeting with the IP Lead in a good faith attempt to resolve the dispute.

7.2.2. If the matter remains unresolved after that meeting, then any individual Inventor concerned may request in writing that the matter be referred to the Chief Executive of the Trust in a good faith attempt to resolve the dispute.

7.2.3. If the matter remains unresolved after that meeting, then any individual Inventor concerned may require by giving notice to the other in writing within 10 days of the meeting that the matter be referred to an independent legal expert who shall finally determine ownership. The choice of independent legal expert must be agreed by both parties.

7.2.4. The independent legal expert's fee shall be paid by Trust, but shall constitute a first charge on any profits which may accrue, whether to the Inventor or to the Trust, whichever party or parties is or are held by the expert to be the owner of the IP.

7.3. Disputes between Inventors of the IP where the Inventors included individuals from the University of Oxford

7.3.1. In the event of any dispute between Inventors including individuals employed by the University of Oxford relating to any IP that is covered by this Policy regarding the ownership of or contribution to the relevant IP, the dispute will be handled in accordance with the terms of the IP arrangements in place between the Trust and the University of Oxford.

8. Use of IP owned or controlled by a third party

8.1. Role of the IP Lead

8.1.1. The Trust's IP Lead is available to provide advice and guidance to Trust staff on the use of IP belonging to third parties. All staff members are encouraged to contact the IP Lead when procuring goods or services which are likely to result in the creation of IP or which necessarily involve the use of IP belonging to a third party (for example, software licences).

8.1.2. The IP Lead is also responsible for identifying third-party IP that has been relied upon during the creation of any Innovation. If this is in the course of clinical research the IP Lead will endeavour to put in place adequate agreements with the owners of relevant third-party IP before the research commences.

8.2. NHS owned IP

8.2.1. Trust Staff should be aware that there is no such thing as "NHS owned IP". Trust employees are not entitled to use IP belonging to another NHS organisation without the permission of that organisation. Permission may be expressly provided, or it may be implied when IP is made available to the Trust by another NHS organisation for a particular purpose. In such circumstances, the IP made available to the Trust must only be used for that specific purpose. In the event of any doubt, the NHS organisation owning the IP should be contacted.

8.3. Procuring goods and services involving the creation or use of IP

8.3.1. Trust Staff must be aware that the IP created by Contractors and other persons not directly employed by the Trust will not belong to the Trust unless the contract expressly provides for the Trust to own it, or the IP is assigned to the Trust in writing. This applies even where such persons are engaged specifically for the purpose of creating the IP in question. For this reason, it is the Trust's policy that all agreements for procuring goods or services which are likely to result in the creation of IP (including consultancy appointments) must be documented by a written contract which includes a clause dealing with the ownership of IP.

8.3.2. It is also important that any arrangement or agreement which enables the Trust to use IP belonging to a third party is recorded in writing in order to enable the Trust to monitor compliance with the agreed terms of use.

8.4. Unauthorised use of third-party IP

8.4.1. Trust Staff are reminded that the use or copying of any IP that is owned or controlled by a third party without the permission of that third party is an infringement of that third party's right. The unauthorised use of IP creates a risk that legal action will be taken against the Trust and exposes the Trust to the risk of having to pay damages. It risks the withdrawal of the Trust's access to resources and will cause damage to the Trust's reputation.

8.4.2. If any member of Trust Staff becomes aware of any infringement or alleged infringement of any IP owned or controlled by a third party or of any use of IP owned or controlled by a third party without permission or outside the terms of the relevant licence granted to the Trust, then they must immediately report it to the Trust's IP Lead. Trust Staff must not respond to any notice or allegations that they receive themselves and should direct all enquires to the Trust's Head of Legal Services.

9. Review

9.1. This policy will be reviewed every 3 years, as set out in the [Policy for the Development and Implementation of Procedural Documents](#).

9.2. *N.B. Policies may need to be revised before this date, particularly if national guidance or local arrangements change, where implementation is unsuccessful or where audits necessitate a policy review.*

References

- 1.1. Health and Social Care Act 2001 (Section 5)
- 1.2. The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS
- 1.3. 2012/2013 NHS Standard Contract for Acute, Ambulance, Community and Mental Health and Learning Disability Services (Multilateral)
- 1.4. NIHR programme standard contracts
- 1.5. University of Oxford: Regulations for the Administration of the University's Intellectual Property Policy

Appendix 1: Responsibilities

- 1.1. The **Trust Board** is responsible for approving this Policy.
- 1.2. The **Trust Management Executive** will approve and recommend this Policy to the Trust Board.
- 1.3. The **Chief Executive** has overall responsibility and final accountability for ensuring that IP generated by the Trust is managed appropriately for the purpose of income generation and patient benefit. Ownership of this Policy is delegated to the Medical Director.
- 1.4. The **Medical Director** has delegated authority and is responsible for ensuring that this Policy is developed by the IP Lead and other relevant individuals, approved, reviewed and generally followed.
- 1.5. The **R&D Director** has delegated authority and is responsible for ensuring that this Policy is generally followed.
- 1.6. The **Commercial Director** has delegated authority and is responsible for ensuring the commercial elements of this Policy are followed. Commercial decisions under the Policy will be made in consultation with and with the support and agreement of the **Commercial Team**.
- 1.7. The **IP Lead** (with support from the Clinical Innovation and Research Contracts Manager) is responsible for:
 - 1.7.1. Developing this Policy in accordance with guidance from the Department of Health and Social Care, including guidance from the NIHR;
 - 1.7.2. Advising the Trust on issues arising from this Policy;
 - 1.7.3. Ensuring that systems are in place to audit or monitor compliance with this Policy;
 - 1.7.4. Undertaking monitoring of this Policy;
 - 1.7.5. Reviewing and updating this Policy in line with review timescales set at the time of approval or as a result of changes to best practice or organisational changes.
- 1.8. **All Managers** are responsible for ensuring the document is brought to the attention of Trust Staff, visiting Students, Trainees and secondees and that staff attend all training developed to implement this Policy.
- 1.9. **Individual Staff** are responsible for:
 - 1.9.1. Reading and complying with this Policy as relevant to their job and as required by their conditions of employment. Failure to follow a Trust Policy could result in disciplinary action being taken, up to and including dismissal;
 - 1.9.2. Attending training where required to familiarise themselves with, and comply with this Policy as relevant to their jobs and responsibilities;
 - 1.9.3. Reporting the creation or development of new IP to the IP Lead as and when appropriate;
 - 1.9.4. Raising with their line manager any queries about the implementation of this Policy.

Appendix 2: Definitions

1. The terms in use in this document are defined as follows:
 - 1.1. **Clinical Innovation and Research Contracts Manager:** Trust representative who reports to the IP Lead and is responsible for working with OUI, or such other technology transfer company that the relevant Inventor(s) and the Trust may agree on, and the Commercial Team, in order to promote the development, dissemination and, where appropriate, commercialisation of IP owned by the Trust;
 - 1.2. **Contractor(s):** any person or entity providing services to the Trust under a contract for service or otherwise;
 - 1.3. **Inventors:** the person or persons responsible for creating the relevant IP as a matter of law whatever the nature of the IP right. An Inventor may be any member of Trust Staff.
 - 1.4. **IP Lead:** the individual within the Trust responsible for the effective management of IP in the Trust. This individual is also known as the Head of IP and Research Contracts;
 - 1.5. **NIHR:** The National Institute of Health and Care Research;
 - 1.6. **PIPAC:** the Partnership Intellectual Property Advisory Committee (or any successor body) consisting of representatives of the Trust and University of Oxford and whose remit is to address joint IP issues arising between the Trust and the University of Oxford.
 - 1.7. **Student:** an individual affiliated to a higher education institution who is performing part of their course of study under the supervision of the Trust or using the Trust's resources;
 - 1.8. **Trainee:** an individual who is: (i) employed by the Trust whether under a temporary contract or otherwise; and, (ii) receiving instruction under the supervision of the Trust or using the Trust's resources as part of a development programme that is intended to lead to a certification or professional qualification;
 - 1.9. **Trust Staff:** any individual employed by the Trust and any Trainee or Student as listed in sections 1.1 to 1.5 of "Who should read this document?".

Appendix 3: Education and Training

1. There is no mandatory training associated with this policy. Ad hoc training sessions based on an individual's training needs will be defined within their annual appraisal or job plan

Appendix 4: Monitoring Compliance

1. Compliance with the document will be monitored in the following ways.

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
The process for identifying and managing Trust IP and this Policy include: Number of IP disclosure files reported to the Trust IP Lead Number of revenue sharing letter completed with University of Oxford or another party Number of Assignment agreements completed with Isis Innovations and/or another relevant party	Audit of number of IP disclosure case files, revenue letters and Assignment agreements completed	IP Lead and Clinical Innovation and Research Contracts Manager	Annual	PIPAC, Chief Medical Officer and Director of Research & Development via the Research & Development Committee

2. Compliance with the document will be monitored in the following ways.

Appendix 5: Equality Impact Assessment (This is a mandatory heading)**Equality Impact Assessment Template****1. Information about the policy, service or function**

What is being assessed	Existing Policy (Updated)
Job title of staff member completing assessment	Head of IP and Research Contracts
Name of policy / service / function:	IP Policy
Details about the policy / service / function	Relates to the ownership, management, exploitation and sharing of proceeds therefrom, of intellectual property created by OUH staff or using OUYH resources.
Is this document compliant with the Web Content Accessibility Guidelines?	Yes
Review Date	July 24
Date assessment completed	04/07/24
Signature of staff member completing assessment	
Signature of staff member approving assessment	

2. Screening Stage**Who benefits from this policy, service or function? Who is the target audience?***Delete as appropriate*

- Staff

Does the policy, service or function involve direct engagement with the target audience?*Yes - continue with full equality impact assessment*

3. Research Stage

Notes:

- If there is a neutral impact for a particular group or characteristic, mention this in the 'Reasoning' column and refer to evidence where applicable.
- Where there may be more than one impact for a characteristic (e.g. both positive and negative impact), identify this in the relevant columns and explain why in the 'Reasoning' column.
- The Characteristics include a wide range of groupings and the breakdown within characteristics is not exhaustive, but is used to give an indication of groups that should be considered. Where applicable please detail in the 'Reasoning' column where specific groups within categories are affected, for example, under Race the impact may only be upon certain ethnic groups.

Impact Assessment

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
Sex and Gender Re-assignment – men (including trans men), women (including trans women) and non-binary people.			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Race - Asian or Asian British; Black or Black British; Mixed Race; White British; White Other; and Other			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Disability - disabled people and carers			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Age			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Sexual Orientation			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Religion or Belief			X		The policy is intended to treat members of staff equally with respect to use and creation of IP.
Pregnancy and Maternity	X				The Policy allows inventors to report the period of intellectual contribution during the inventive period whether a member of staff is on maternity leave or not.
Marriage or Civil Partnership			X		Not relevant

Characteristic	Positive Impact	Negative Impact	Neutral Impact	Not enough information	Reasoning
Other Groups / Characteristics - for example, homeless people, sex workers, rural isolation.			X		Not relevant

Sources of information

- List any sources of information used

Consultation with protected groups

List any protected groups you will target during the consultation process, and give a summary of those consultations

Group	Summary of consultation

Consultation with others

List any other individuals / groups that have been or will be consulted on this policy, service or function.

4. Summary stage

Outcome Measures

List the key benefits that are intended to be achieved through implementation of this policy, service or function and state whether or not you are assured that these will be equitably and fairly achieved for all protected groups. If not, state actions that will be taken to ensure this.
Enter details here

The IP Policy is intended to protect the Trust's interest in IP generated by members of staff or by using its resources. This is so the Trust can benefit from the exploitation of that IP for the benefit of patients.

It is intended to ensure fairness amongst its staff members and protects the Trust from action that might have led from unfair treatment.

Finally it protects the Trust from third party claims relating to the use of IP.

Positive Impact

List any positive impacts that this policy, service or function may have on protected groups as well as any actions to be taken that would increase positive impact.
Enter details here

All protected groups are treated in the same way as other members of staff. The policy of equal treatment affirms processes which are designed to ensure this. A concern raised at TME relating to possible under reporting by female inventors of their contribution. The policy stresses fairness and has a clear escalation route should any grievances arise.

Unjustifiable Adverse Effects

List any identified unjustifiable adverse effects on protected groups along with actions that will be taken to rectify or mitigate them.
Enter details here

None

Justifiable Adverse Effects

List any identified unjustifiable adverse effects on protected groups along with justifications and any actions that will be taken to mitigate them.
Enter details here

None

Equality Impact Assessment Action Plan

Complete this action plan template with actions identified during the Research and Summary Stages

Identified risk	Recommended actions	Lead	Resource implications	Review date	Completion date
Under reporting of contributions by female members of staff.	Collection of inventor information is confirmed directly and an escalation route is identified to deal with disputes..	Head of IP and Research Contracts	None	July 2025	