

# Intellectual Property Policy

## W3

Additionally refer to: Research Governance Policy

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## C Version Control Sheet

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## Version history

Version	Date	Author	Status	Comment – include reference to Committee presentations and dates
V1	Sept 2006	Head of HR	Final	
V2.1	May 2021	People Advisory Service & Governance Manager	Draft	Addition of paragraph for those on honorary contracts, clarification over responsibilities
V3.1	Sept 2021	People Advisory Service & Governance Manager	Draft	Minor amendments following feedback at WPPG meeting.
V3.2	May 2023	People Governance & Projects Manager	Draft	Amendments to flowchart in Appendix C and new compliance list in section 8, following discussion with Medical Director.

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## 1 Policy on a page

The purpose of this policy is to ensure that SaTH has in place the necessary arrangements for the ownership, management, protection and exploitation of Intellectual Property (IP) which may be developed or generated by (or in connection with) employees carrying out their normal duties. NHS employees continuously generate IP. It arises from both within and outside research and development activities. The Trust has the potential to generate significant valuable IP. In some cases it will be necessary to protect this IP, to ensure it benefits both the health of our patients and the financial position of the Trust.

The Medical Director has Executive responsibility for IP and for specialist advice please refer to the Medical Director's office.

The Trust's Revenue Sharing Agreement is:

Cumulative Net Income	Inventor	Division	R&D Department	Trust
First £50,000	50%	20%	10%	20%
Next £100,000	40%	25%	10%	25%
Next £100,000	30%	30%	10%	30%
Over £250,000	25%	32.5%	10%	32.5%

## **2 Document Statement**

Given its potential value, Intellectual Property (IP) has a high profile within the NHS and policies need to be instigated to facilitate its protection. The NHS has adopted a Policy Framework for the management of intellectual property within the NHS (HSC1998/106) that will ensure Research and Development ("R&D") is owned and exploited in the best interests of the NHS. The NHS Policy framework and guidelines place a duty on the Trust to audit, protect and exploit its intellectual property. The policy outlined in this document aims to fulfil those expectations by providing the arrangements and responsibilities towards IP generated in the name of Shrewsbury and Telford Hospital.

## **3 Definitions**

Intellectual Property (IP) can be defined as the product of intellectual or creative activity in the form of novel ideas, innovation or research and development. Legal recognition of ownership can be assigned through appropriate IP rights such as patents, copyright, design rights or trademarks (see Appendix A).

IP can include inventions, industrial processes, software, data, written work, designs and images. It is a commodity that can be exploited by licensing, selling or buying. Gaining legal recognition of intellectual property in the form of IP rights is an important part of protecting the exploitation process. IP Rights can be held in the form of patents, designs, copyright, trademarks, databases and confidential "know-how".

## **4 Scope**

This policy applies to all staff that are full or part time employees of the Trust. Even when off duty, the Trust retains the rights to IP if it pertains to the employee's duties for the Trust.

Staff employed by the Trust whose payroll costs are partially or wholly funded by another party (e.g. medical charity, a government department) unless the contract between the Trust and that party assigns ownership of any Intellectual Property to that party.

Trainee professionals hosted by the Trust who generate IP during their training.

Staff who generate IP outside normal working hours and/or away from the place of work, where the IP relates to their area of employment within the Trust.

Trust staff seconded to another organisation or employees of another organisation hosted by the Trust under contract are subject to the arrangements for the ownership of IP agreed between the Trust and that organisation.

Workers who are Honorary contract holders hosted by the Trust but not employed by the Trust but substantively employed by a different organisation. Typically the work may involve academics and researchers engaged on jointly funded projects who generate IP during the period of their Honorary contract.

## **5 Duties**

Ownership of all IP, in most cases, rests with the Trust. This applies to all IP produced by Trust employees in the course of their normal duties. Any activities outside the normal duties of the employee that generate IP will belong to the employee. This distinction is in accordance with the Patents Act 1977 and the Copyright, Designs and Patents Act 1988.

“Normal duties” is defined as “those duties defined by the employee’s contract of employment. Therefore “normal duties” will have to be assessed on a case-by-case basis for the purposes of this policy.

Where the Trust chooses not to exploit Intellectual Property arising from the work of Trust employees, it will, in most cases, assign the IP back to the inventor, who may wish to pursue its further development.

The Medical Director is the lead Executive for Intellectual Property for the Trust and has strategic and operational oversight of all Intellectual Property that is generated under the auspices of the Trust’s activities. Employees have an obligation to inform the Trust (via the Medical Director’s office) about identified or potential Intellectual Property resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust’s agreement (for more information see Appendix B).

Typically, the Research and Innovation (R&I) department or function within the Trust is responsible for developing and generating IP, sharing agreements with collaborating institutions. The R&I department works closely with the Medical Director’s office to ensure that robust governance is observed to ensure that projects and activities that lead to the generation of Intellectual Property are in line with the requirements of this policy. Regarding collaborative projects, if work/research is conducted by an employee in partnership with another organisation, a formal agreement stating ownership (or sharing) of generated IP is required.

## **6 Policy Detail**

### **6.1 Intellectual property management process**

It is the responsibility of the Medical Director to manage and protect IP for the Trust. For information and advice on any matter regarding IP and its protection please speak to the Medical Director’s office. The Trust has a contract with Mid TECH to support and advise on IP related issues. MidTECH should be engaged at the earliest available opportunity (see attached flowchart, appendix C).

### **6.2 Exploitation of Intellectual property - IP audit**

Audits will be periodically carried out by the Trust. This process is essential to identify potential IP arising from R&D and ensure the correct action is taken to protect any IP that may later be exploited. It is the role of the Medical Director (or nominee), in consultation with the inventor and other specialists, to decide on the potential for an idea/invention to be exploited. Any IP that is licensed, sold or otherwise transferred to another organisation will be negotiated in the best interests of the Trust by professional advisers, usually Mid TECH.

### **6.3 Revenue-sharing with inventors**

The Trust wishes to encourage full participation of employees in the creation and commercial exploitation of IP. The policy will reward staff who have contributed substantially to the generation of IP which has subsequently provided exploitation revenue. Such revenue will be shared between the Trust and the inventor according to the revenue sharing formula. In cases where several staff have been involved in generating the IP, the proportion of income allocated to inventors will be divided between them based on relative inventive contributions. **In all cases the shared revenue will be the net of any protection and exploitation costs (e.g. patent costs).**

## Revenue Sharing Agreement

Cumulative Income	Net	Inventor	Division	R&D Department	Trust
First £50,000		50%	20%	10%	20%
Next £100,000		40%	25%	10%	25%
Next £100,000		30%	30%	10%	30%
Over £250,000		25%	32.5%	10%	32.5%

### 7 Review process

The Human Resources Department in conjunction with the Medical Director is responsible for the monitoring of compliance with this policy and will raise any significant issues with Senior Management and with the JNCC and LNC, as necessary.

### 8 Process for monitoring compliance

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
Intellectual Property Audit	Details of all IP matters and agreements to be added to the R&I Annual Report	R&I Team	Annual	Quality Operational Committee

### 9 Equality Impact Assessment (EQIA)

This applies to all employees and does not discriminate positively or negatively between protected characteristics.

### 10 References

NHS Policy Framework for the management of intellectual property within the NHS (HSC1998/106).

## Appendix A: Intellectual Property Protection

This appendix includes a very brief overview on some aspects of IP protection. It must be noted that the law is complex, and members of staff are advised to contact the Medical Director's office to discuss more detailed information on IP protection.

- **Copyright**

Copyright covers written information (such as leaflets, articles, assessment tools and training packs), databases, computer software and films/videos, which can all be protected by copyright. Copyright is achieved automatically when the IP is created. However, it is advisable to attach a statement for additional protection, such as:

*Copyright Shrewsbury and Telford Hospital NHS Trust 2021. All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.*

- **Patents**

Patents can be used to protect inventions that embody a new idea and are capable of being manufactured or used by industry (such as devices, processes or methods of operation). Examples of exclusions would be methods of treatment of the human/animal body by surgery or therapy, or diagnostic methods. An invention must not have been made public anywhere in the world prior to the patent filing date (journals, internet, meetings, posters, etc.) and must not be an obvious development, regarding what is already common knowledge to someone who is experienced in the relevant field.

- **Design rights (if applicable)**

Design Rights protect against deliberate copying of the shape or configuration of an article. Design Right may exist in addition to other forms of protection such as Patent, Copyright or Registered Design. **Unregistered Design Rights** are not directly associated with appearance. The right can protect internal and external features but only gives protection against copying of features of shape and configuration (e.g. physical design of computer chips, engineering components and architectural drawings). **Registered design rights** in some new products, the novelty lies not in a new idea or principle but in their appearance. Registered Design Rights usually cover commercial objects with a unique or aesthetic appearance.

- **Trademarks**

A trademark is a sign or symbol that is used to distinguish a product or service from that produced or supplied by another business. It could be 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.

Registering a trademark protects the owner from competitors also trying to use that image to promote their own products. Trademarks can be valuable in keeping that product as a market leader.

- **Know-how**

Confidential information or "Know-how" is information which may be commercially or technically valuable and which is regarded as secret. It may, for example, include information on industrial processes. 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 Confidential Disclosure Agreement (CDA). This may be a reciprocal agreement whereby confidential information is both disclosed and received. A Confidential Disclosure Agreement may be obtained from the Medical Director's office. Know-how and confidential information can be bought, sold and licensed like any other form of IP and persist indefinitely, as long as they remain "secret".



## **Appendix B Staff obligations**

- **Publications**

It is the Trust's policy to actively encourage employees to publish their work and the Trust will not normally object to an employee's right to be named as an author of copyright material. However, if IP is to be exploited, all work needs to be kept confidential until it is correctly protected. Advice should be sought from the Medical Director's office before publicly disclosing any work.

- **Confidentiality**

Any IP with the potential to be exploited must not be disclosed to anyone outside the Trust (including presenting papers or posters at conferences, abstracts, chapters in books and any other verbal or written communication) until IP advice has been sought from the Medical Director's office. IP cannot normally be protected (especially in the case of filing patents) once prior informal disclosure has occurred.

- **Record keeping**

It is essential that staff working on projects that generate IP keep written, dated records of their activities and results. This is especially significant for patent applications in the U.S, since precedence is awarded to the first to invent, rather than the first to file the patent. It is imperative that all correspondence, including emails, telephone conversations and meetings are logged to provide a detailed account of any discussions relating to the IP. Besides maintaining optimum clinical practice, this diligence is in accordance with clinical and research governance guidelines.

The Medical Director is responsible for maintaining a register of all the IP owned by the Trust, including the date and time it was reported to the Medical Director's (or nominee's) office. It is also their responsibility to keep safe any important original documents, such as confidentiality disclosure agreements relating to IP. It is advisable that the key members of staff associated with the IP should also retain copies of these documents.

## Intellectual Property Management process: Appendix C

