

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

**THE IDENTIFICATION,
MANAGEMENT AND
EXPLOITATION OF INTELLECTUAL
PROPERTY**

Policy Number:	SA21
Scope of this Document:	All Staff
Recommending Committee:	Commercial Strategy Group
Approving Committee:	Executive Committee
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Lead Executive Director:	Executive Director of Communications and Corporate Governance
Lead Author(s):	Head of Commercial Development and Head of Research

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2019 V2.4

*Striving for perfect care
and a just culture*

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THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY

Further information about this document:

Document name	THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY (IP) SA21
Document summary	Process for the management of Intellectual Property based on Department of Health Guidelines (The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property in the NHS, 2002). It supports the DoH Report "Innovation Health and Wealth: accelerating adoption and diffusion in the NHS", published in December 2011. It gives a brief description of what IP is, information on who to contact if you have an invention/idea/innovation that you think may need protecting, exploitation and protection of IP and Surplus sharing.
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Published by Copies of this document are available from the Author(s) and via the trust's website	<p>Mersey Care NHS Foundation Trust V7 Building Kings Business Park Prescot Merseyside L34 1PJ</p> <p>Trust's Website www.merseycare.nhs.uk</p>
To be read in conjunction with	<ul style="list-style-type: none"> • Corporate Policy F04: Standards of Business Conduct • Corporate Policy F02: Standing Financial Instructions: (in relation to declarations of potential conflicts of interest)
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
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Version Control:

		Version History:
Version 2.4	Reviewed in consultation with Guy's and St Thomas NHS Foundation Trust	September 2019
Version 2.3	Reviewed in consultation with the Perfect Care and Wellbeing Committee, the Trust's Legal Advisor, Perfect Care lead for Innovation and adapted following feedback.	May 2015
Version 2.2	Research Governance Committee Corporate Document Review Group	June 2012
Version 2.1	Research Governance Committee Corporate Document Review Group	April 2012
Version 2	Research Governance Committee	January 2012
Version 1	Governance Committee	February 2007

SUPPORTING STATEMENTS

this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child /adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1. PURPOSE AND RATIONALE

This policy will:

- 1.1 Support the Trust in following the Department of Health's (DoH) "A Framework and Guidance on the Management of Intellectual Property in the NHS 2002" (sections 2, 3, 4).
- 1.2 Support the Trust in following the DoH "UK Policy Framework for Health and Social Care Research (2017)".
- 1.3 Describe the means by which the Trust manages the risks and benefits arising from the creation of Intellectual Property.
- 1.4 DoH Guidelines have been operational since September 2002 and provide guidance on how the NHS can develop innovations that can lead to new products, improved interventions and better services for health and social care. It supports the delivery of the NHS Plan.
- 1.5 This policy sets out the rules of ownership of Intellectual Property (IP) arising from an employees' work, its protection and exploitation. It aims to maintain a balance between the legitimate needs of the Trust to protect its interests and the provision of a creative working environment for staff.
- 1.6 As part of its commitment to deliver the best possible care, the NHS in general, and the Trust in particular, wishes to encourage its staff to develop and exploit IP.

2 OUTCOME FOCUSED AIMS AND OBJECTIVES

The objectives of this policy are:

- 2.1 To provide information regarding the management, protection and exploitation of IP;
- 2.2 To define remuneration and rewards from commercialisation of IP;
- 2.3 To define mechanisms to enable IP to be protected and managed effectively;
- 2.4 To make all reasonable endeavours to support and develop IP and knowledge transfer in a cost effective manner;
- 2.5 To provide information and points of contact to staff for the protection and management of IP and related matters;
- 2.6 To ensure benefits from IP development including patient care, academic and commercialisation rewards, including financial and reputational benefits and/or cost savings are captured by the Trust;
- 2.7 To ensure staff are incentivised to develop IP and remunerated where IP is commercialised;
- 2.8 To provide a framework for the Trust to enable commercialisation of IP as appropriate;
- 2.9 To provide further sources of information and training for staff in Intellectual Property.

3 SCOPE

- 3.1 All staff that are full or part time employees of Mersey Care NHS Foundation Trust.
- 3.2 Staff with Mersey Care NHS Foundation Trust contracts of employment whose payroll costs are partially or wholly funded by another party (e.g. medical charity, a university, a commercial

sponsor, government department) unless the contract between Mersey Care NHS Foundation Trust and that party assigns ownership of any IP to that party.

- 3.3 Staff who generate IP outside their normal working hours and/or away from the place of work, where the IP relates to their area of employment within Mersey Care NHS Foundation Trust or uses data or expertise acquired during their working hours with Mersey Care.
- 3.4 Staff who have a part-time Trust contract and who are self-employed or otherwise employed part-time (e.g. private practice), where IP is generated during this non-Trust employment but which is within the specialist area of the Trust employment.
- 3.5 Trainee professionals hosted by Mersey Care NHS Foundation Trust who generate IP during the course of their Training.
- 3.6 Trust staff seconded to another organisation, or employees of another organisation hosted by Mersey Care NHS Foundation Trust under contract, are subject to the arrangements for the ownership of IP as agreed between Mersey Care NHS Foundation Trust and that organisation.
- 3.7 Staff with joint or honorary contracts with another organisation (e.g. University).
- 3.8 Service Users or Carers who undertake work on behalf of the Trust.
- 3.9 Contractors/self employed consultants who are contracted to undertake work on behalf of the Trust where the IP has been generated as part of this work.

4 DEFINITIONS

- 4.1 'Intellectual property' (IP) as **defined** by this Policy is a term that defines a variety of internationally recognised legal entitlements that protect and control inventions, business names, databases, designs, written and recorded works. IP is broadly divided into six classes and includes:
 - 4.1.1 Patents (protects features and functions);
 - 4.1.2 Copyright (protects written or recorded, artistic, literary and dramatic works);
 - 4.1.3 Trade marks (protects words and symbols associated with goods and services);
 - 4.1.4 Registered Designs and Design Rights (protects shape and appearance);
 - 4.1.5 Database rights (protects data collections);
 - 4.1.6 Know-how (protects expertise or 'trade-secrets').
- 4.2 If staff are unsure whether IP has arisen or needs to be protected they should always seek the advice from the Commercial Development team in the first instance.

5 DUTIES

- 5.1 . **Accountable Director**
The Executive Director of Communications and Corporate Governance has overall responsibility for intellectual property within the Trust. As the accountable officer s/he is responsible for overseeing IP and ensuring appropriate mechanisms are in place to support its exploitation on behalf of the Trust.
- 5.2 **Chief Executive**
The Chief Executive will review and make a final decision on any IP disputes and have the discretion to depart from the surplus sharing formula in the interests of the wider trust.

5.3 **Head of Commercial Development**

The Head of Commercial Development is accountable to the Executive Lead for Corporate Governance and Communications for this policy. The Head of Commercial Development is responsible for overseeing IP generated in the Trust, ensuring that any potential IP is supported through providing advice and access to external experts. The Head of Commercial Development is the recognised professional lead within the Trust to advise staff on IP and refer on where appropriate and for managing the work of the Commercial Team to ensure innovations support the priorities of the Trust.

5.4 **Commercial Development Team**

The Commercial Development Team are accountable for implementing and managing this policy. The Commercial Development team is responsible for providing advice and a route to legal advice to staff on identification and generation of potential IP or infringement. They will assess potential for exploitation of ideas and maintain a record of the ideas and innovations brought to them. The team will receive requests for IP payment from inventors.

5.5 **Commercial Finance Team**

The Commercial Finance Team are responsible for maintaining records to support an audit of financial transactions relevant to IP and provide an audit trail of income and expenditure.

5.6 **Head of Research**

The Head of Research is responsible for identifying potential IP arising from trust research projects and sharing these with the Commercial Development Team.

5.7 **Commercial Strategy Group**

The Commercial Strategy Group will provide assurance and monitoring of the implementation and effectiveness of this policy.

5.8 **Local Managers**

The responsibility for discussion of, and agreement to, the generation of potential IP projects and approval of local resources to develop and exploit it, is devolved to the relevant directors and managers. Heads of Departments, other units and business functions within the Trust have overall responsibility for ensuring that any development and exploitation does not have a negative impact on the core duties of the individuals nor the Trust and that this is managed in a way which meets the aims of the Trust's IP policy.

5.9 **All staff**

All Staff have an obligation to inform the Trust (via their line management structure and recording via the Trust's innovation process) about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement. Staff must also comply with the NHS Standards of Business Conduct and other Trust policies related to Declaration of Interest. Staff must ensure that they keep appropriate records of their work in relation to IP and agree any time or resources to be used with their line manager and Division prior to developing any potential IP projects.

5 PROCESS

IP Rights

5.9 Intellectual Property rights (IPR) constitute the legally protected rights of the IP owner and allows individuals or organisations to own their creativity and inventions in the same way that they can own physical property. Like other property rights IP Rights can be bought, sold or licensed and must be adequately protected in the interests of both owners and inventors. Protecting these Intellectual Property rights permits the owners to defend the IP

from unwanted use, can encourage investment and enables time to allow for further development. Licensing the IPR can generate financial rewards (or cost savings) and ensures recognition to benefit the reputation of the inventor.

5.10 Ownership of Intellectual Property:

- 5.10.1 Ownership of IP, in most cases, rests with the Trust employing the person(s) who generated it and is applicable to all described in Scope, section 3.
- 5.10.2 All IP produced by Trust employees in the course of their normal duties is owned by Mersey Care NHS Foundation Trust. Any activities outside the normal duties of the employee that generate IP will belong to the employee. This is in accordance with the Patents Act 1977 and the Copyright, Designs and Patents Act 1988. This policy should be considered (as with other Trust policies) as binding on staff as part of their terms and conditions of employment. All staff contracts contain a statement of obligations in relation to IP.
- 5.10.3 Staff must not remove, sell, assign, license, give-away or otherwise take IP outside of the Trust without the prior written agreement of the Trust. Neither should staff take any action that would prevent Trust from protecting and benefiting from its IP e.g. disclosing confidential information.
- 5.10.4 Employees have an obligation to inform the Trust (via Divisional Management structures and the Commercial Development team) about identified or potential IP resulting from their activities and must not, under any circumstances, sell, assign, license, give or otherwise trade IP without the Trust's agreement.
- 5.10.5 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 intellectual property is to be exploited, all work needs to be kept confidential until it is correctly protected.

5.11 Use of IP owned by others

- 5.11.1 'Infringement' is the use of another organisation's or persons IP rights without formal permission. Trust staff should immediately contact the Commercial Development team to minimise the impact and extent of the infringement if they suspect or become aware of an infringement of IP rights being either:

Infringement of IP rights owned by the Trust by another person or organisation;

or

The Trust's infringement of IP rights owned by another person or organisation.

5.12 Collaborative Projects and external contractors and consultants

- 5.12.1 Employees may not undertake collaborative projects where they wholly or in part coincide with Trust projects without permission. When work/research is conducted by an employee in partnership with another organisation, a formal agreement stating ownership (or sharing) of generated IP is required. The development of IP sharing agreements with collaborating institutions will be done in liaison with the Commercial Development Team, who will seek appropriate legal advice and

support. It is essential that in all such cases clear records and documentation are kept by the member of staff.

5.12.2 Should IP arise outside of any prior written agreement then the Trust will negotiate with the collaborator to establish its share of the ownership of the invention.

5.12.3 In addition, where IP or an invention arises from non-Trust staff but the Trust's resources or facilities have been used such as staff time, data or equipment, or will be used, which have or will contribute significantly to the generation of that IP, then the Trust will put in place an agreement to establish its rights to a share in any potential proceeds of the exploitation, or other benefit of that IP (such as free licences) and ensure acknowledgement of the Trust as appropriate.

5.12.4 Agreements with service providers, such as contractors, external third-party consultants or other non-staff instructed to deliver and/or develop services on behalf of the Trust must include contract provisions for confidentiality and IP ownership to ensure the Trust owns any rights resulting from the consultant's work. In this way the Trust can still protect and own its ideas that have been contracted out and thus prevent the third-party from abusing such rights against the Trust and/or exploiting those ideas without the consent of the Trust.

5.13 Disputes of Ownership

5.13.1 If the ownership of IP is disputed, dated written records relating to the IP in question will be assessed to establish the inventor(s) and their proportionate contribution. If such material is not available, the Chief Executive of the Trust will make a final decision, taking professional advice if necessary. If there is a dispute of ownership between two or more organisations relevant legal advice will be sought.

5.14 Copyright

5.14.1 As soon as someone produces a report or writes a training programme or idea for an innovation, that information/idea is automatically copyrighted to the Trust as an employer.

5.14.2 The Trust will normally assign to the author copyright in a work intended for publication in a professional or academic journal or electronically, and waive any claim it may have to benefits arising from the publication. The Trust however reserves the right to itself, at no cost, to reproduce and use these publications for its own non-commercial purposes, including for research and training. The Trust does not assign any of its other copyright to the author including:

5.14.2.1 Course or training materials or patient information leaflets produced by an employee in the course of employment for the Trust and which are produced, used or disseminated within or outside the Trust.

5.14.2.2 Any software programme generated by an employee in the normal course of their employment.

5.14.2.3 Any designs, specifications, trademarks or other works which may be necessary to protect rights in commercially exploitable IP.

5.14.3 The author/creator should add a copyright statement to any documents that are produced using the following statement - © Mersey Care NHS Foundation Trust (insert year). All rights reserved. Not to be reproduced in whole or in part without the permission of the copyright owner. This protects your idea from being taken or claimed as an original idea by another person or party.

5.15 Confidentiality

- 5.15.1 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 Commercial Development team, who will then seek appropriate legal advice if required. IP cannot normally be protected (especially in the case of filing patents) once prior disclosure has occurred, no matter how informal.
- 5.15.2 Disclosure of an invention severely compromises opportunities for protection and exploitation. If an employee develops an idea or concept, which may have commercial potential, they must report this to their line manager, Divisional Management Team and ensure that it is recorded via the Commercial Development team. The Commercial Development team should be informed about this at the earliest opportunity, and in any event, before disclosure of the idea to any party outside the Trust, either orally or in writing.
- 5.15.3 Public disclosure will invalidate any subsequent patent application and reduce potential commercial value. Confidentiality Disclosure Agreements will be used to enable IP to be discussed with external parties (via Commercial Development Team).
- 5.15.4 Resist pressure to announce or publish details until safe to do so.
- 5.15.5 Avoid giving away or selling samples.
- 5.15.6 Don't involve external organisations in testing or prototyping without a written agreement and don't sign any contracts or agreements until they have been properly scrutinised.
- 5.15.7 It is often difficult to protect IP and advice is needed at the earliest stage. If an employee thinks they have an item of IP, a few simple guidelines will help maximise the chances of being able to protect it: Easy to read guidelines are available on the Commercial Development SharePoint site and at Appendix 1.

5.16 Audits

- 5.16.1 When IP is identified, the Commercial Finance Team will maintain appropriate records to support the financial transactions relevant to the IP work being undertaken. This will then provide an audit trail of income and expenditure and allow accurate and relevant surplus sharing at the completion of the project. (Please refer also to Surplus Sharing with Inventor.)
- 5.16.2 "A Framework and Guidance on the Management of Intellectual Property in the NHS" places a duty on the Trust to audit and protect IP belonging to the Trust.

5.17 Commercialisation

- 5.17.1 The Commercial Development Team will assess potential for an idea/invention to be exploited and the best route of exploitation. Any decision will be made following consultation with the employee and with Division support. The opportunity will be assessed using the Commercial Opportunity Assessment Tool
- 5.17.2 The four principles of the commercialisation approach are:
 - 5.17.2.1 To raise money for the Trust which supports the development of clinical services via clear and transparent financial flows

5.17.2.2 To utilise capacity that is not required for the delivery of contracted NHS activity

5.17.2.3 To enhance the reputation, name and brand of the Trust

5.17.2.4 To enable the Trust to operate more efficiently or at lower cost

5.17.3 In some instances, the Trust will explore commercialisation of the IP such as by licensing the IP to a company in return for a royalty or by assignment of the IP to a spin-out company in return for a stake in the company.

5.17.4 Any IP that is licensed, sold or otherwise transferred to another organisation or individual will be negotiated in the best interests of the Trust by professional advisers (e.g. Trust solicitors). The contract will ensure that the Trust retains the right to use the IP for its own training purposes.

5.18 **Surplus Sharing with Inventors**

5.18.1 There is generally no legal requirement for an NHS body to share the income with an employee (the inventor) who created the IP in the course of employment or normal duties. However, to give an incentive to the inventor to support the exploitation process, a reasonable share of the income should be offered. The Trust wishes to encourage full participation of employees in the creation and commercial exploitation of IP. The policy will therefore be to reward staff who have contributed substantially to the generation of IP from the design or development of a product, which has subsequently provided a surplus through exploitation. Such surplus will be shared between the Trust and the inventor according to the Surplus sharing formula (see below). The Trust will not normally share income generated from the design and delivery of training courses and/or materials. In cases where several staff have been involved in generating the IP, the proportion of income allocated to inventors will be divided between them on the basis of relative inventive contributions. In all cases the shared surplus will be the net of any development, protection and exploitation costs (eg legal costs, staff time used in development, overhead costs, etc). An annual report of income received will be given to the inventor to ensure they are aware of the total figure received and to enable them to request the relevant reward due to them.

5.18.2 Any resources an employee is given to develop a project, which has potential IP benefit, must be agreed through agreement with line managers and via their Division senior management. All innovations must be recorded via the Commercial Development Team.. Agreement and discussions to support innovation should as a minimum include time, resources, timescales and reporting mechanism. Discussion on resources should consider such issues as: hours of development time, Trust materials, administration costs, travel, marketing, venue, catering, etc. All such development costs related to resources and payments to protect IP will be deducted from gross profit prior to the sharing of net gain. The Division must also agree to accept the financial risk of supporting a potential IP project which may ultimately not result in any significant profit or in a loss.

5.18.3 Inventorship must be determined at the outset and inventors will warrant that they, and only they, have contributed to the generation of the IP in question. The distribution of any income or capital gain arising from the exploitation of the IP between inventors will be agreed by mutual agreement and in writing. If required, legal advice will be sought to provide advice on inventorship and to arbitrate in any disputes relating to assignment of inventorship.

5.18.4 If IP arises from research funded by an external, non-NHS or University agency, whose policy on the commercialisation of IP was different from that of the Trust and

which formed part of the research contract, then the distribution of financial benefit would be negotiated by the Trust Solicitor on behalf of the Trust with the funding body. (See also Policy and Procedure for the Receipt, Management and Use of Payments Received by Trust Staff for Their Involvement In Commercially Funded Research Projects SA04)

5.18.5 Hempsons and Guy's and St Thomas' NHS Foundation Trust will only undertake work on behalf of the Trust. If a Trust employee wishes Hempsons or Guy's and St Thomas' NHS Foundation Trust to advise or undertake commercialisation of IP for which they are the inventor, it is done on the understanding that they are acting on behalf of the Trust, in line with the Trust's policy, and any benefits accrued from such work will belong to the Trust which will share them with the inventor as outlined in this policy.

5.18.6 Employees should only approach Hempsons or Guy's and St Thomas' NHS Foundation Trust via their line management structure within their Division and then through the Commercial Development team or Head of Research. The Division will be expected to fund the cost of any advice outside the remit of the contract with the Trust's solicitors or Guy's and St Thomas' NHS Foundation Trust.

5.19 **Surplus Sharing Formula**

Cumulative Net Income	Inventor	Service	Commercial
Up to £100,000	20%	60%	20%
Over £100,000	20%	60%	20%

5.20 **Receipt of Income by the Inventor**

5.20.1 Any surplus or remuneration received by the Trust will be allocated to a specific budget code held by the relevant Division (as shown in Surplus sharing formula). Upon completion of the project the member of staff will then need to submit a payment request form authorised by their relevant senior Division line manager for the appropriate percentage of any net surplus income received. The payment request should be forwarded to the Commercial Development team at commercialteam@merseycare.nhs.uk. The Divisional line manager will ensure that the relevant budget code is identified on the payment request form. All staff should be aware that the receipt of monies in respect of IP is tax deductible.

5.21 **Use of IP for Private Work**

5.21.1 In circumstances where the Trust owns the IP, the member of staff who is the official inventor of a piece of IP will need to negotiate a licence to use the IP for private work. This will be done with their Division and with the support, where necessary, of the Commercial Development team and the Trust's Legal Advisors. This work must not impact on their day to day duties in any way and must not be done in Trust time or using Trust materials. The Trust holds the right to receive a percentage of any income received from private work carried out by a member of staff using IP owned by the Trust. This will be in line with the Surplus sharing formula (6.9) and costs detailed above.

5.22 Inventors who leave the employment of the Trust

5.22.1 Surplus Sharing

5.22.2 Although the Trust continues to be the owner of the IP, the inventor will still be entitled to the relevant percentage of any income received as per the Surplus Sharing Formula. The Trust will also continue to be entitled to the relevant percentage for exploitation by the inventor of the IP beyond their Trust employment. These arrangements will continue for up to 5 years following the employee leaving the employment of the Trust.

5.22.3 IP Use

When a member of staff leaves the employment of the Trust, as author of a piece of IP they can negotiate with the Trust, via their Divisional Management Team, about their ability to use any IP that they created in their new role away from the Trust. Staff can seek permission of the Division to be granted a licence to use the IP in their new role or the staff member's new organisation. A cost may be charged to purchase a licence from the Trust and the Division will decide upon the amount. In any event the Trust will retain ownership and can reserve the right to refuse the use a piece of IP beyond employment in the Trust. Such requests as these will be assessed on a case by case basis and will, where appropriate, be in line with the Surplus sharing formula (6.9) and arrangements above.

5.23 Trust Use of Surplus from IP

5.23.1 The Trust reserves the right to depart from the Surplus sharing formula in paragraph at the discretion of the Chief Executive and in the interests of the wider Trust.

6 CONSULTATION

The following staff/groups were consulted with in the development of this policy document:

- Head of Research, Mersey Care NHS Foundation Trust
- Commercial Development Lead, Mersey Care NHS Foundation Trust
- Medical Director, Mersey Care NHS Foundation Trust
- Guy's and St Thomas' NHS Foundation Trust, ,
- Hempson's Solicitors and adapted following feedback.

8. TRAINING AND SUPPORT

There are no training issues related to the implementation of this policy however all those to those to whom the document is applicable will be made aware of its revision through uploading to the website and through the Commercial Strategy Group.

9. MONITORING

System for the Monitoring Policy	
Monitoring of compliance with this policy will be undertaken by:	Head of Commercial Development Commercial Financial team
Monitoring will be performed:	After any IP income is generated.
Monitoring will be	Review of audit trail of any income and expenditure and

undertaken by means of:	relevant surplus sharing upon the completion of projects. Review of advice given by Trust Solicitors.
Should shortfalls be identified the following actions will be taken:	The Head of Commercial Development or the Commercial Finance Team will consider the outcomes of the review and make recommendations for change to the Commercial Strategy Group and/or the Director of Finance as required.
The results of monitoring will be reported to:	The Commercial Strategy Group and/or the Director of Finance as required.
Resultant actions plans will be progressed and monitored through:	The Commercial Strategy Group and/or the Director of Finance as required.

EQUALITY AND HUMAN RIGHTS ANALYSIS

Title: SA21 THE IDENTIFICATION, MANAGEMENT AND EXPLOITATION OF INTELLECTUAL PROPERTY
Area covered: Trust Wide

What are the intended outcomes of this work? <i>Include outline of objectives and function aims</i> To set out the rules of ownership of Intellectual Property (IP) arising from an employees' work, its protection and exploitation. It aims to maintain a balance between the legitimate needs of the Trust to protect its interests and the provision of a creative working environment for staff.
Who will be affected? <i>e.g. staff, patients, service users etc</i> All staff in the Trust.

Evidence
What evidence have you considered? This policy and the advice from Guy's and St Thomas NHS Foundation Trust.
Disability (including learning disability) No issues to note
Sex No issues to note
Race <i>Consider and detail (including the source of any evidence) on difference ethnic groups, nationalities, Roma gypsies, Irish travellers, language barriers.</i> No issues to note.
Age <i>Consider and detail (including the source of any evidence) across age ranges on old and younger people. This can include safeguarding, consent and child welfare.</i> No issues to note
Gender reassignment (including transgender) <i>Consider and detail (including the source of any evidence) on transgender and transsexual people. This can include issues such as privacy of data and harassment.</i> No issues to note

<p>Sexual orientation Consider and detail (including the source of any evidence) on heterosexual people as well as lesbian, gay and bi-sexual people.</p> <p>No issues to note</p>
<p>Religion or belief Consider and detail (including the source of any evidence) on people with different religions, beliefs or no belief.</p> <p>No issues to note</p>
<p>Pregnancy and maternity Consider and detail (including the source of any evidence) on working arrangements, part-time working, infant caring responsibilities.</p> <p>No issues to note</p>
<p>Carers Consider and detail (including the source of any evidence) on part-time working, shift-patterns, general caring responsibilities.</p> <p>No issues to note</p>
<p>Other identified groups Consider and detail and include the source of any evidence on different socio-economic groups, area inequality, income, resident status (migrants) and other groups experiencing disadvantage and barriers to access.</p> <p>No issues to note</p>
<p>Cross Cutting implications to more than 1 protected characteristic</p> <p>No issues to note.</p>

Human Rights	Is there an impact? How this right could be protected?
Right to life (Article 2)	This article is not engaged
Right of freedom from inhuman and degrading treatment (Article 3)	This article is not engaged
Right to liberty (Article 5)	This article is not engaged
Right to a fair trial (Article 6)	This article is not engaged
Right to private and family life (Article 8)	This article is not engaged
Right of freedom of religion or belief (Article 9)	This article is not engaged
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	This article is not engaged

Right freedom from discrimination (Article 14)	This article is not engaged
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Engagement and Involvement <i>detail any engagement and involvement that was completed inputting this together.</i>
Guy's and St Thomas NHS Foundation Trust

Summary of Analysis <i>This highlights specific areas which indicate whether the whole of the document supports the trust to meet general duties of the Equality Act 2010</i>
Eliminate discrimination, harassment and victimisation No negative impact identified
Advance equality of opportunity No negative impact identified
Promote good relations between groups No negative impact identified

What is the overall impact? Impact not intended to be discriminatory
--

Addressing the impact on equalities <i>There needs to be greater consideration re health inequalities and the impact of each</i>
--

individual development /change in relation to the protected characteristics and vulnerable groups

Action planning for improvement

Detail in the action plan below the challenges and opportunities you have identified.

Include here any or all of the following, based on your assessment

- *Plans already under way or in development to address the **challenges** and **priorities** identified.*
- *Arrangements for continued engagement of stakeholders.*
- *Arrangements for continued monitoring and evaluating the policy for its impact on different groups as the policy is implemented (or pilot activity progresses)*
- *Arrangements for embedding findings of the assessment within the wider system, OGDs, other agencies, local service providers and regulatory bodies*
- *Arrangements for publishing the assessment and ensuring relevant colleagues are informed of the results*
- *Arrangements for making information accessible to staff, patients, service users and the public*
- *Arrangements to make sure the assessment contributes to reviews of DH strategic equality objectives.*

For the record

Name of persons who carried out this assessment:

Pauline Parker and Ann Hanlon

Date assessment completed:

16 August 2019

Name of responsible Director:

Elaine Derbyshire

Date assessment was signed:



Mersey Care
NHS Foundation Trust

Community and Mental Health Services

Intellectual Property

What is Intellectual Property?

IP is defined as the novel or previously un-described tangible output of intellectual activity (i.e. a new idea or invention). It could arise from research or routine work and can include industrial processes, inventions, software, data, written work, e.g. training, materials, designs or images.

IP has an owner and can be bought, sold or licensed. It is important to adequately protect your IP. Ways of doing this are detailed below.

Types of IP protection

There are 4 main types of IP rights that can be used to protect ideas. Which to use will depend on what you have created and what it will be used for. These are legally protected rights which allow owners to benefit from their own work.

Categories	Protected By
Inventions (New Technologies)	Patent
Literary, artistic work, films, computer software	Copyright
Designs and design drawings	Registered design rights
Engineering components, architectural drawings	Unregistered design rights
Product brand names, logos	Trade marks
Trade secret	Know-how

Patents – these protect the methods and processes that make things work and give you exclusive rights over your invention. To be patentable it must be new, inventive and be capable of industrial application.

Patents are registered through the Intellectual Property Office and last for 20 years.

Trade Marks – these are signs (words/logos) that distinguish goods and services in the marketplace. Trade marks can only be registered by applying to The Intellectual Property Office.

Registered Designs – these protect the overall visual appearance of a product, to be registered the design must be new and have individual character. Designs can be registered with The Intellectual Property Office.

Copyright – this is an automatic right for original work that is fixed in nature (written or recorded somehow). It applies to literary and artistic work, recordings (film, music), broadcasts etc. You do not need to apply for copyright but it is advisable to mark it with the © symbol, the name of the copyright owner and the year it was created.

Why is IP important?

Who owns IP rights in the NHS?

The Patents Act 1977 and the Copyright, Designs and Patents Act 1988 both state that IP produced by employees in the course of their normal duties will belong to the employer i.e. the employing Trust.

What does this mean for individuals? The legal recognition of the Trust as the owner of IP rights does not affect an individual researcher's legal right as inventor or creator of the IP. The Trust will take every step to ensure the researcher's contribution is recognised.

What to do if you think you have generated IP

The Trust has a responsibility to ensure that employees identify and protect IP. If you think you have done so, through everyday work or research you should **contact the Commercial Team** as soon as possible.

Keeping good records throughout the process will help provide supporting evidence of the originality of the work.

During the process of protecting IP. You should:

- Have a confidentiality agreement to protect your work during discussions.
- Not involve external organisations, collaborators or colleagues.
- Not submit a paper to journals or conferences (wait until IP is in place!)

Remember!

- Keep it confidential
- Don't publish without IP protection
- Keep good records
- Ask for advice—contact the commercial Team on the details below

Contact Details:

Commercial Team

Commercialfinance@merseycare.nhs.uk

Tel: 0151 471 2676

Intellectual Property (IP) - Appendix 2

What is IP?

Unlike the products they protect, IP assets cannot be seen or touched. So, it can be difficult for businesses to appreciate their true value. Like other forms of property, you can buy, sell and license IP. IP Rights can enable their owner to take action under civil law to try and stop others from replicating, using, importing or selling their creation.

The different types of intellectual property:

- Patents
- Trade marks
- Designs
- Copyright

Trade secrets might also be an important part of your business and there are laws of confidentiality to protect these. To keep trade secrets protected, you must establish that the information is confidential, and ensure that anyone you tell about it signs a non-disclosure agreement (NDA). If they then tell anyone about it, this is a breach of confidence and you can take legal action against them.

IP in Business Planning

Your business builds goodwill and recognition through your brand, product or service. This value builds up over time and becomes integral linked to your business's IP assets. If used well, IP can offer a solid platform for any business to grow. How you plan, manage and protect your ideas should be a crucial feature in your business planning. What seems unimportant today could be worth millions of pounds in the future, if protected.

Licensing IP

You might consider licensing your own IP, or acquiring the right to license others' IP, for some of the following reasons:

➤ Sharing Risk

Where a licensor provides the right to manufacture and sell products, it receives revenues but does not take the risk of manufacturing, promoting or selling the products. The licensee then has the right to use the IP without the expense of developing the product.

- Revenue generation - An IP owner can both commercialise the IP themselves and raise income by licensing the IP to someone else.
- Increasing market penetration - IP holders can license another business to trade in territories that the owner cannot cover.
- Reducing costs - A business may 'buy-in' innovation to reduce its research and development costs.

- Saving time - A business may get its products or services to market more quickly by acquiring a licence to use existing IP, instead of re-inventing the wheel (sometimes called an 'engineering workaround').
- Accessing expertise - By taking a licence, a business may tap into expertise that it does not have in-house.
- Competitive advantage - By acquiring a licence to use IP, a business may obtain an advantage over its competitors
- Collaboration agreements - Businesses may want to work together to develop new products and services.

The specific terms and conditions on which IP is licensed are usually negotiated by the licensor and licensee.

➤ **Franchising**

When a successful business wants to expand, one option is to license IP to franchisees. In addition to the actual product or service, the various forms of IP such as trade marks, promotional materials, business and marketing systems, shop fit-outs and confidential information can all be licensed to the franchisee to use.

Franchising is a way of sharing IP with others to distribute goods or services - the franchisor owns the IP rights and the franchisee pays a fee or regular royalties to use them.

A major benefit of the franchise system is the ability to trade under a well-known trade mark. Usually, the franchisor grants a trade mark licence to the franchisee in return for a percentage of the gross turnover.

One example of a successful franchise is Costa® coffee. They give the franchisee permission to use their brand and a business template to use. This sets out how the premises must look, the service levels and training required. The franchisee then gives Costa® a percentage of their earnings.

Patents

A patent protects your invention and lets you take legal action against anyone who makes, uses, sells or imports your invention without your permission.

A patent doesn't keep your invention secret. In return for the legal protection you get, you share how to create or replicate your invention with the public. When your patent expires, other people can then make and sell your invention.

You can only apply for a patent if you have created something that is inventive, new and useful. A patent can protect innovations like machines, industrial processes, pharmaceuticals and their production methods, computer hardware, electrical appliances and biological products and processes.

You can't patent, for example, literary, dramatic, musical or artistic works, anything that's an idea, a way of thinking, a scientific or mathematical discovery.

You have to pay the Intellectual Property Office to apply for a UK patent and the process can take several years before you receive a granted patent.

Many applications never result in a granted patent because they don't satisfy the legal requirements. Patents can give protection for 20 years provided renewal fees are paid each year.

It's generally your responsibility to enforce your patent and ensure it is properly protected, meaning that any legal action against another party will be started, and funded, by you.

So, you need to make sure that the potential benefit of a patent will outweigh the time, effort and money it takes to get and maintain one.

Trade Marks

Many people refer to their trade mark as their brand, although a brand is more than just a company logo. A brand is a 'promise of an experience' and offers consumers assurance about the nature of the product or service they will receive. The various IP rights covered in this guide combine to provide legal protection for some of the most important aspects of a brand.

A trade mark is a crucial component of a brand; it distinguishes the goods and services from one trader to another. It can be a word, phrase or logo, and can even be a shape, colour, sound, aspect of packaging or any combination of these. You can use your trade mark as a marketing tool so that customers can more easily recognise your products or services.

Registration at Companies House gives you no rights to prevent others using your trade mark - neither does owning the domain name for your website!

Registered Trade Marks

- may put people off using your trade mark without your permission
- make it much easier for you to take legal action against anyone who uses your trade mark without your permission
- allows Trading Standards Officers or Police to bring criminal charges against counterfeiters if they use your trademark
- means you can sell it, franchise it or let other people have a licence that allows them to use it.
- trade marks are registered for a fee by the Intellectual Property Office in the UK and other bodies worldwide.

They must be renewed every ten years, but can be renewed indefinitely. Registered trade marks can be identified by the ® symbol.

Not everything can be registered as a trade mark. Trade marks which can be difficult to register include those which:

- describe the products you sell or the services you offer, for example 'mature cheese';
- are not clearly of commercial origin for customers, for example, the phrase 'Putting Customers First'
- have become customary in your line of trade, for example 'Four by Four' or '4 x 4' for vehicles
- include a specially protected emblem, for example, the 'Red Cross' or the 'Olympic Rings'
- are offensive to the public, for example, trade marks which contain taboo words or pornographic images;
- deceive the consumer
- are three dimensional shapes which are typical of the goods you are interested in, for example, the shape of a simple plastic bottle for your drink product

If your trade mark does not fall into any of these categories, there is a good chance that it will be considered acceptable for registration. If after being published, your trade mark does not then attract any objections from other trade mark holders, it will be registered.

You should receive a formal report explaining the outcome of the examination within 10 days of applying. If your application is acceptable, it can be registered in as little as 3 months from the date of filing. It can obviously take longer if you have objections which you need to overcome.

Unregistered Trade Marks

If a business doesn't register its trade mark, it may still be able to take some action if someone uses the mark without permission. It would need to use the common law action of 'passing off'. However, passing off can be very difficult and expensive to prove.

Broadly, to be successful in a passing off action the trade mark owner must prove that:

1. There is protectable goodwill in the mark;
2. There is a misrepresentation of the mark, and
3. That misrepresentation caused damage.

Designs

Design for appearance

Design refers to the appearance or 'look' of products and there are two types of protection in law:

- a registered design is where your designs are examined and registered by the IPO or other international bodies
- an unregistered design right is automatic but offers significantly less protection

Registered Design

Design registration protects the appearance or 'look' of a product, providing it is new and has individual character. The design must have a special shape, configuration, pattern or ornamentation to be registered.

Some people confuse patent protection and design protection. Designs protect the visual appearance of a product whereas a patent protects a technical product and how it functions.

Registering your design allows you to gain a marketing edge by preventing others from using it without your permission.

You cannot obtain a registered design right for an idea or concept, it's a 'what you see is what you get' right. So, it's vitally important that your application contains images of the product or the packaging you wish to protect. This must be identical to those you intend to actually place on the market.

Some products can't be registered because they don't fit the criteria to be considered a design. In general terms, these are products shaped in a particular way to achieve a technical function, or solely to fit to something else.

You can't register designs which are immoral or illegal, or contain a protected emblem such as the Royal crown.

There are fees for registering a design, and the process takes around four weeks providing your design meets the above criteria.

Unregistered Design

Automatic design rights do exist in the UK (UK Unregistered Design Right) and in Europe (Unregistered Community Designs). However, they offer limited protection and can be difficult to enforce. They also have a much shorter duration.

You should carefully consider the potential effect on your business if relying solely on unregistered design right. Where disputes arise, you may have to prove the existence of your rights. Unlike registered designs, it will be your responsibility to prove intentional copying.

Copyright

Copyright gives its owner the right to exclusively control and exploit their creative works.

It protects literature, art, music, dramatic works, sound recordings, photographs, software, databases, films and radio and television broadcasts. Copyright protects the expression of, not the idea behind a work. For example, the text and illustrations in a manual are protected, but not the ideas expressed in it.

In the UK copyright is an automatic right which comes into being as soon as a qualifying work is created. As such, there is no formal registration and no fees to pay.

Generally, the duration of copyright is usually for the life of the creator, plus 70 years from the end of the calendar year in which they died.

However, different terms of duration apply for some types of copyright work, and certain older works may be subject to different rules.

Copyright grants the copyright owner exclusive rights to authorise or prohibit certain uses of their works. This includes;

- copying the work
- distributing copies to the public
- adapting the work
- communicating the work to the public (for example, by broadcasting it or putting it on the internet)
- renting/lending copies to the public, and
- performing the work in public

Copyright and your Business

Businesses create and use copyright works all the time often without even realising it. It is important for businesses to understand how to commercialise and protect copyright works and how to lawfully use of copyright works belonging to others.

If you commission third parties to create copyright works for your business, it is really important that you agree on who will own the copyright before the work is created. Some businesses commission work only to later find out that the creator still owns the copyright, meaning the business is limited in how it can use it.

You should always check the terms and conditions, and if you are unsure you should check with the business providing the work.

Your IP Abroad

If you plan to do business or are already trading abroad, you must know how to use, guard and enforce your rights.

IP rights tend to be territorial they only give protection in the countries where they are granted or registered. This means that if you only have UK protection, others may be allowed to use your IP abroad without infringing your rights. If you are thinking about trading abroad then you should consider registering your IP rights abroad.

For copyright, however, the UK is a member of several international conventions. This means that UK works are protected in most countries automatically.

Some countries may allow you to extend your UK protection, and will accept it as protected in that country after completing certain local formalities.

The IPO has produced country guides which will help you apply these principles in the markets throughout the world. They describe the issues you may face with infringement, how you can effectively tackle this.

Useful Links

[British Library Business and IP Centre](#)

[IP Health Check](#)

[Chartered Institute of Trade Mark Attorneys](#)

[Franchising](#)

[Licensing](#)

[Trade Marks](#)

[Copyright](#)

[Patent](#)

[Design](#)