Doncaster and Bassetlaw Teaching Hospitals
NHS Foundation Trust

Intellectual Property Policy

This procedural document supersedes: CORP/COMM 26 v.2 – Intellectual Property Policy



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Executive Sponsor(s):	Zoe Lintin, Chief People Officer
Author/reviewer: (this version)	Emma Adams – Research Management and Governance Manager
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Target audience:	Trust-wide

Amendment Form

Please record brief details of the changes made alongside the next version number. If the procedural document has been reviewed **without change**, this information will still need to be recorded although the version number will remain the same.

Version	Date Issued	Brief Summary of Changes	Author
Version 3	March 2023	• Addition of 'Duties and Responsibilities' section • Further details included for staff with joint contracts • Minor administrative changes and clarification details throughout	Emma Adams
Version 2	29 October 2018	• Administrative changes to Trust name and removal of Care Group references	Amy Bell
Version 1	4 December 2014	• This is a new procedural document, please read in full	Amy Bell

Contents

Page No.

1 INTRODUCTION 4
2 DEFINITIONS 4
3 PURPOSE 5
4 DUTIES AND RESPONSIBILITIES 5
5 OWNERSHIP OF INTELLECTUAL PROPERTY 6
6 EMPLOYMENT STATUS VARIATIONS - JOINT EMPLOYEES 6
7 PROTECTION OF INTELLECTUAL PROPERTY 7
8 EXPLOITATION OF INTELLECTUAL PROPERTY 7
9 MANAGEMENT OF INTELLECTUAL PROPERTY AND EQUITY DIVISION 8
10 GUIDANCE FOR STAFF 10
11 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT 11
12 DISPUTES AND POLICY BREACHES 11
13 TRAINING AND SUPPORT 11
14 FURTHER DETAILS AND TECHNICAL GUIDANCE 12
15 ASSOCIATED TRUST PROCEDURAL DOCUMENTS 12
16 DATA PROTECTION 12
17 REFERENCES 12
APPENDIX 1 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING 13

1 INTRODUCTION

Doncaster & Bassetlaw Teaching Hospitals NHS Foundation Trust encourages the creation of intellectual property (IP) in terms of service improvement and in relation to financial generation. The Trust is committed to ensuring that innovations (including improvements in working practices, devices, software, mobile apps, training materials and other materials) are shared appropriately for the benefit of both patients and members of staff. This process may include publishing the IP in the public domain or exploiting it through commercial channels to potentially acquire monetary gain.

To ensure the benefits of these innovations are maximised, this policy sets out the rules of ownership, protection and exploitation of intellectual property arising from employees' work, in the pursuit of research and innovation, or from the findings of any clinical audit, service evaluation and/or quality improvement undertaken in the Trust. Employees from time to time may make developments that have practical application and/or commercial potential. This policy 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.

This policy has the following objectives:

- To ensure that all IP is identified and appropriately protected
- To ensure all IP has ownership established
- To confirm the arrangements regarding IP, including those involving Medipex Ltd.
- To ensure that, where appropriate, IP is fully exploited in terms of patient and staff benefit
- To ensure that, where applicable, all monetary gains are divided appropriately between the Trust and the Inventor

2 DEFINITIONS

Intellectual Property (IP) - The novel or previously described tangible output of intellectual activity and includes those novel ideas or intentions arising from an Inventors work.

Intellectual Property Rights (IPR) - The legal rights that enable the owner of the IP to control or prevent unauthorised use of this IP and includes copyright, design rights (registered and unregistered), trademarks and patents. IPR can be sold or licensed like any other form of property and therefore it is important that IPR is properly managed.

The following list gives an indication of what subject matter is covered by the different types of IPR:

- Patents: New technical concepts, inventions including some computer software
- Copyright: Text, graphics, computer software, data compilations, art, music
- Design Protection: Form and appearance, decoration
- Trademarks: Brands (product or service), image and reputation

- Software and Databases: Databases

(Definition taken from Medipex Ltd. website: www.medipex.co.uk)

3 PURPOSE

This policy is applicable to all those who host, participate, undertake or are managing research regardless of their status within the Trust, including the following:

- all Trust employed staff
- independent contractors
- all learners
- all staff employed elsewhere covered by a Trust-issued Letter of Access or Honorary Research Contract

This policy is applicable to all research involving Trust premises or staff, NHS patients to whom the Trust has a duty of care, patient material, or patient data, conducted by Trust employees, independent contractors and other non- employees. This policy is of relevance to clinical research activity, but instead applies equally to all research.

4 DUTIES AND RESPONSIBILITIES

Executive Sponsor Responsibilities

The Executive Sponsor for Research and Innovation (R&I) in the Trust is the Chief People Officer. The Chief People Officer has delegated the following roles and responsibilities to the Director of Education and Research and the Deputy Director of Research and Innovation:

With relation to the management of the Policy:

- Drafting the policy and retaining the master copy
- Monitoring compliance with the policy
- Ensuring the appropriate policy review arrangements take place
- Ensuring that appropriate archiving of obsolete policies takes place
- Ensuring that obsolete policies are managed in line with Approved Procedural Document (APD) Policy requirements

With relation to the exploitation of Intellectual Property (IP):

- To advise Trust staff on the management of IP and related matters
- To work in partnership with Medipex Ltd. to support Trust staff who require advice and support to manage the IP they have generated through their work / research conducted in the Trust
- To develop any standards, procedures, guidance documents, educational materials which may be necessary to support the effective implementation of the policy across the Trust

Director of Education and Research and Deputy Director of Research and Innovation Responsibilities

It is the responsibility of the Director of Education and Research and Deputy Director of Research and Innovation to disseminate this policy to the required audience and to facilitate any training required as necessary. The Director of Education and Research and Deputy Director of Research and Innovation will undertake the roles and responsibilities delegated to them, to ensure that all Trust staff receive the necessary support to effectively manage the IP they generate during their work / research.

All Staff

It is the responsibility of all staff to whom this policy applies to ensure they have read and comply with the policy.

5 OWNERSHIP OF INTELLECTUAL PROPERTY

Doncaster & Bassetlaw Teaching Hospitals NHS Foundation Trust is committed to ensuring a balance between the legitimate needs of the Trust to protect its interests and the provision of a creative working environment for staff members. To maintain this balance, and in line with the NHS strategy for exploitation and commercialisation of IP, the Trust employs the services of Medipex Ltd. (the local NHS Innovation Hub) to exploit IP in conjunction with, and on behalf of, the Trust. Through this contract, if a Trust employee wishes Medipex Ltd. to advise or undertake commercialisation of IP for which they are the Inventor, it is done on the understanding that Medipex Ltd. is acting on behalf of Trust and in line with the Trust policy.

As a rule, IP created by an individual during his/her employment, or training arising out of his/her employment, belongs to their employer (the Trust) and any benefits accrued from such work will belong to the Trust, who will split them with the Inventor as outlined in Section 8 of this policy: 'Management of Intellectual Property and Equity Division'. In these cases, Medipex Ltd. will provide advice to the Inventor.

In certain circumstances, however, the Trust may decide not to take up its rights to the IP, in which case the IP rights of ownership may be assigned to the employee; in these cases, Medipex Ltd. may, exceptionally and with the explicit agreement of the Trust, continue to advise the Inventor.

6 EMPLOYMENT STATUS VARIATIONS - JOINT EMPLOYEES

Where an employee has a second employment contract with another organisation, for example a university or private practice, or a joint employment contract with another organisation, or where a member of staff's Trust employment is funded wholly or partly by another party (for example a university or charity), a formal agreement on IP issues will need to be developed with between both organisations in relation to relevant projects at the earliest possible convenience.

The organisation with the main contract will be responsible for protecting the IP rights and for any commercialisation of the product being developed, except, where agreed mutually in writing by all organisations involved. Agreement will need to be reached as to the way the costs and benefits will be apportioned between the organisations. These working arrangements may differ with each organisation and project.

A Trust employee may have an honorary contract with another organisation; in the absence of any agreement to the contrary, IP generated by such an employee will be owned by the Trust.

IP generated by an employee acting outside the normal course of his or her Trust duties will usually be owned by the employee. However, in determining ownership of IP in these circumstances, account will be taken of the extent to which the employee has used the Trust's resources (e.g., equipment, facilities, expertise, or information).

If a Trust inventor leaves employment of the Trust for any reason and wishes to continue with the development of any IP that was originally developed in the course of their normal duties at the Trust (either alone or in conjunction with others), then that inventor will need to obtain written approval from the Trust to secure such rights to the Trust IP and to agree fair and reasonable terms where appropriate (for example the Trust may request to continue to be involved in such development or may request a share of any commercial proceeds if Trust equipment, facilities, expertise or information have been used in the development of such IP prior to the date of such agreement).

7 PROTECTION OF INTELLECTUAL PROPERTY

IP can be protected by legal rights such as Patents, Copyright, Design Right etc, however acquiring such rights can occasionally be costly and is only the initial step. Little or no benefit will accrue from protecting the IP unless they are then developed and commercialised.

The Department of Health has set up Innovation Hubs to advise Trusts on whether the IP generated by the work of their staff has any commercial potential and if it has, how best to take this forward. Medipex Ltd. is the NHS Innovation Hub for the Yorkshire and Humber region.

8 EXPLOITATION OF INTELLECTUAL PROPERTY

Exploitation of IP involves both costs and risks. Consequently, it will by no means always be appropriate or cost effective to seek to protect and exploit potential IP. In cases where patenting or licensing may be the most appropriate option, Medipex Ltd. will undertake the negotiations on behalf of the Inventor and the Trust.

In some instances, the IP may be a case of "best practice" which could be shared with other NHS Trusts, professional bodies and the network of IP Innovation Hubs may be used to

disseminate these innovations, either through their own network or via other NHS bodies such as the NHS Institute for Innovation and Improvement, Academic health Science Networks and Integrated Care systems of publications / presentations at conferences or professional journals.

Exploitation of the Trust IP will be the responsibility of the relevant Division and Corporate Functions, in conjunction with the Research and Innovation (R&I) Department, who will retain management responsibility for IP generated by Trust staff.

The Trust is a member of Medipex Ltd. who will manage the Trusts IP on its behalf. Responsibility for liaison between the Trust employees and Medipex Ltd. lies with the R&I Department, through which all referrals will be made.

All developments of IP should be channelled through Medipex Ltd. who have a contract to manage the Trust IP rights. They will assess the potential of the IP and decide whether it is worth protecting and exploiting.

In general, if legal action needs to be taken against an individual/organisation illegally using IP which the Trust has protected, this will be the responsibility of the Trust, but assistance will be provided by Medipex Ltd. if required.

9 MANAGEMENT OF INTELLECTUAL PROPERTY AND EQUITY DIVISION

If the Trust chooses to protect IP rights, then it is considered appropriate that members of staff who have developed the IP should have a share in any benefits, for example through a royalty income. Inventorship will be determined at the origination of the IP 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 the inventors will be agreed by mutual agreement. If required, Medipex will be called upon to provide an opinion on inventorship and to arbitrate in any disputes relating to assignment of inventorship.

Inventors may include clinical, nursing and allied health professionals and related staff and postgraduate and other students. Financial benefits from the exploitation of IP will not accrue to members of staff who are employed by Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust for the specific purpose of writing software although consideration will be given, on a case-by-case basis, where a member of staff is deemed to have contributed to the inventive step beyond that of software development.

The net benefits to the Trust (after deductions of the costs due to Medipex Ltd. associated with protection and commercialisation) will be split as follows:

Net Income	**Percentage**
First £50 000	**%**
Inventor	50.0
Directorate	25.0
R&I Department	20.0
Corporate Services	5.0
Next £200 000	**%**
Inventor	33.3
Directorate	33.3
R&I Department	26.7
Corporate Services	6.7
Next £250 000	**%**
Inventor	25.0
Directorate	37.5
R&I Department	30.0
Corporate Services	7.5

Where more than one member of staff from the Trust is recognised as an inventor, it is at the discretion of inventors to mutually agree the appropriate proportioning of the total sum due to inventors under the above paragraph.

Inventors will continue to receive their share of any agreed benefit when they retire or are otherwise no longer employees of the Trust.

If IP arose from research which was funded by an external, non-NHS or University agency, whose policy on the commercialisation of IP was different from the Trust and which formed part of the research contract, then the distribution of financial benefit would be negotiated by Medipex Ltd. on behalf of the Trust with the funding body.

If the Trust does not wish to own a certain piece of IP, then it may be assigned to the member of staff who would then assume ownership. The member of staff would then take up responsibility for protection and commercialisation. In this case, the Trust may wish to retain a residual share of the financial benefits, for example 20%, with the actual figure to be decided on a case-by-case basis.

If the Trust does not wish to own a certain piece of IP, then it may be assigned to the member of staff who would then assume ownership, subject to the agreement of fair and reasonable terms (for example the Trust may request a share of any commercial proceeds if Trust equipment, facilities, expertise, or information have been used in the development of such IP prior to the date of assignment). The member of staff would then take up responsibility for protection and commercialisation.

Medipex Ltd. will only undertake work on behalf of the Trust. If a Trust employee wishes Medipex Ltd. to advise or undertake commercialisation of IP for which they are the inventor, it is done on the understanding that Medipex Ltd. is acting on behalf of Trust and in line with this policy and procedure and that any benefits accrued from such work will belong to the Trust who will split them with the inventor as outlined above.

Under the terms of which the Trust has engaged Medipex Ltd. to lead or assist with the exploitation of IP, an annual membership will be levied on the Trust, and a proportion of any income generated will be retained by Medipex Ltd.

10 GUIDANCE FOR STAFF

If an employee is considering research, clinical audit, service evaluation, quality improvement or other project which has the potential to generate IP, this should be identified as soon as possible at the point the project is registered with either the Research and Innovation Department, Clinical Audit Department, Quality Improvement Department or their Director or Manager.

If an employee develops an idea or concept, which may have commercial potential, they must report this to their director or manager, who should contact the R&I Department at the earliest opportunity and, in any event, before disclosure of the idea to any party outside the Trust, either orally or in writing. Examples include the development of new techniques, devices, software, pharmaceutical products, formulae and written materials. Employees must inform the Research and Innovation Department when utilising the services of Medipex Ltd.

It is often difficult to protect IP and advice is needed at the earliest stages. If an employee thinks they have an item of IP there are a few simple guidelines which will help maximise the chances of being able to protect it:

- Keep it secret and resist pressure to announce or publish details until the matter has been discussed with either the R&I Department or Medipex Ltd. Public disclosure (other than under explicit terms of confidentiality) will invalidate any subsequent patent application and severely diminish both potential commercial value and benefits accruing to the Trust and the originator. Disclosure without entering an undertaking of confidentiality may prejudice negotiations of commercial arrangements with a company.
- Notify the relevant director or manager and the Director of Education and Research or the Deputy Director of Research and Innovation in order to discuss how to take the IP forward.
- Confidentiality Agreements must be used whenever information that is considered to have commercial potential and is not already in the public domain is shared with another party. A confidentiality agreement is a legal document, binding the signed parties to hold in confidence any information pertaining to the field described within the agreement. The rights of the Trust (and by extension the interest of the Inventor) are thus protected.

- Confidentiality Agreements/non-disclosure agreements must be used when discussing IP with external parties. Template agreements can be obtained from the Research and Innovation Department or Medipex Ltd.
- Avoid giving away or selling samples or selling samples to bodies outside the NHS without a written agreement in place. Any agreements must be reviewed by the Research and Innovation Department prior to signature.
- Do not involve external organisations or companies in testing or prototyping without a written agreement together with confidentiality agreement being in place. These agreements must be reviewed by the Research and Innovation Department with input from Medipex Ltd. prior to signature.
- Do not sign any contracts or agreements until you have contacted the Research and Innovation Department and they have reviewed and confirmed the appropriateness of the contract/agreement being entered into.

11 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT

What is being Monitored	Who will carry out the Monitoring	How often	How Reviewed/ Where Reported to
Appropriate logging and progression of all workstreams with the potential for generating Intellectual Property	Clinical Research Development Manager	As identified	Research & Innovation Committee

12 DISPUTES AND POLICY BREACHES

In the event of any dispute about the interpretation of this policy, Trust employees have recourse to the Trust grievance procedure to resolve the dispute.

Breaches of this policy and misuse of IP will be investigated and may result in the matter being treated as a disciplinary offence under the Trust's disciplinary procedure and/or for referral to the Local Counter Fraud Specialist (LCFS).

13 TRAINING AND SUPPORT

Bespoke training may be identified and coordinated by the Research & Innovation Department.

Training will be delivered as per individual need by Medipex.

14 FURTHER DETAILS AND TECHNICAL GUIDANCE

The details for Medipex Ltd. can be found on the Research and Innovation intranet page, or by contacting the R&I Department.

15 ASSOCIATED TRUST PROCEDURAL DOCUMENTS

CORP/EMP 2 Disciplinary Procedure (including employee copy and Managers Guide)
CORP/EMP 4 – Fair Treatment for All Policy
CORP/EMP 27 – Equality Analysis Policy
CORP/FIN 1 (D) Fraud, Bribery and Corruption Policy & Response Plan
CORP/FIN 4 Standards of Business Conduct and Employee Declarations of Interest Policy

16 DATA PROTECTION

Any personal data processing associated with this policy will be carried out under 'Current data protection legislation' as in the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR) 2021.

For further information on data processing carried out by the trust, please refer to our Privacy Notices and other information which you can find on the trust website: https://www.dbth.nhs.uk/about-us/our-publications/information-governance/

17 REFERENCES

- Copyright, Designs and Patents Act 1988
- Trade Marks Act 1994
- The Fraud Act 2006
- The Bribery Act 2010

APPENDIX 1 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING

Service/Function/Policy/Project/ Strategy	Division	Assessor (s)	New or Existing Service or Policy?	Date of Assessment
Intellectual Property Policy	Education & Research	Emma Adams, Research Management & Governance Manager	Existing Policy	24 March 2023

1) Who is responsible for this policy? Name of Division/Directorate: Research and Innovation (R&I) part of Education and Research Directorate

2) Describe the purpose of the service / function / policy / project/ strategy? Who is it intended to benefit? What are the intended outcomes? The policy is being introduced to ensure there is clarity on the arrangements for intellectual property (IP) ownership arising from innovations developed by staff, during their employment with the Trust.

3) Are there any associated objectives? Legislation, targets national expectation, standards:

This policy has the following objectives:

- To ensure that all IP is identified and appropriately protected
- To ensure all IP has ownership established
- To confirm the arrangements regarding IP, including those involving Medipex Ltd.
- To ensure that, where appropriate, IP is fully exploited in terms of patient and staff benefit
- To ensure that, where applicable, all monetary gains are divided appropriately between the Trust and the Inventor

4) What factors contribute or detract from achieving intended outcomes? – R&I Strategy and Trust commitment in respect to encouraging innovative thought and practice, contribute to achieving outcomes detailed in policy.

5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief? Details: [see Equality Impact Assessment Guidance] - No

- **If yes, please describe current or planned activities to address the impact** [e.g. Monitoring, consultation] – N/A

6) Is there any scope for new measures which would promote equality? [any actions to be taken] Trust wide policy with no specific impact on particular groups, and applies across the board to all staff equally

7) Are any of the following groups adversely affected by the policy?

Protected Characteristics	Affected?	Impact
a) Age	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally
b) Disability	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally
c) Gender	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally
d) Gender Reassignment	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally

e) Marriage/Civil Partnership	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally	
f) Maternity/Pregnancy	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally	
g) Race	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally	
h) Religion/Belief	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally	
i) Sexual Orientation	No	This policy has no specific impact on any particular group, and applies across the board to all staff equally	

8) Provide the Equality Rating of the service / function /policy / project / strategy – tick (✓) outcome box

Outcome 1 ✓	**Outcome 2**	**Outcome 3**	**Outcome 4**

If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a* **Detailed Equality Analysis form – see CORP/EMP 27.

Date for next review: **March 2026**

Checked by: **Emma Adams** **Date:** **24 March 2023**