

# Intellectual Property (Management of) Policy

**April 2021**

Version:	2.0
Date ratified:	29 April 2021
Policy Number:	CO015/10/2022
Name of originator/author:	Sue Laing, Corporate Services Risk and Governance Manager
Name of Sponsor:	Chief Nurse
Name of responsible committee	Governance Sub-committee
Date issued:	October 2021
Review date:	1 October 2022
Target audience:	All staff working within or on behalf of NHS Sheffield CCG

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## Policy Audit Tool

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval. **Status of Policy: Revised**

<b>1</b>	<b>Details of Policy</b>	
1.1	Policy Number	CO015/10/2022
1.2	Title of Policy:	Intellectual Property (Management of) Policy
1.3	Sponsor	Chief Nurse
1.4	Author:	Reviewed and updated by Sue Laing, Corporate Services Risk and Governance Manager
1.5	Lead Committee	Governance Sub-committee
1.5	Reason for policy:	To protect the interests of the CCG and to provide a policy framework for innovative working within the organisation.
1.6	Who does the policy affect?	All staff working within and on behalf of the CCG.
1.7	Are the National Guidelines/Codes of Practices etc issued?	The policy is written to reflect the legislative framework.
1.8	Has an Equality Impact Assessment been carried out?	Yes.
<b>2</b>	<b>Information Collation</b>	
2.1	Where was Policy information obtained from?	The policy has been updated and is based on the policies which have been produced and agreed in 2017 by the S Yorks and Bassetlaw CCGs.
<b>3</b>	<b>Policy Management</b>	
3.1	Is there a requirement for a new or revised management structure for the implementation of the Policy?	No
3.2	If YES attach a copy to this form.	
3.3	If NO explain why.	The policy is already in place; this is a revision.
<b>4</b>	<b>Consultation Process</b>	
4.1	Was there external/internal consultation?	Yes.
4.2	List groups/persons involved	John Skinner, Sheffield (PCT policy) Jane Howcroft (Jan 2015 policy) Sue Laing, Corporate Services, Risk and Governance Manager Neighbouring CCGs in Bassetlaw, Doncaster and Rotherham Bev Rytton – Clinical Audit Manager Michelle Horspool – Research Manager (SHSC)
4.3	Have external/internal comments been included?	No specific comments received other than general guidance and information.
4.4	If external/internal comments have not been included, state why.	

<b>5</b>	<b>Implementation</b>	
5.1	How and to whom will the policy be distributed?	To all staff via Team Briefings, Weekly Round-up and the intranet
5.2	If there are implementation requirements such as training please detail.	
5.3	What is the cost of implementation and how will this be funded	No cost.
<b>6</b>	<b>Monitoring</b>	
6.2	How will this be monitored	Generation of intellectual property within the CCG has not, as yet, occurred.
6.3	Frequency of Monitoring	Suggested that it should be annual.

<b>VERSION CONTROL</b>				
<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Status</b>	<b>Comment</b>
Revised from PCT policy, produced April 2010	31 October 2014	Jane Howcroft (revision)	DRAFT for consideration	Thanks and acknowledgement are due to Rotherham, Doncaster and Bassetlaw CCGs who shared their updated policies
Revised version following discussions and further work	26 January 2015	Jane Howcroft (revision)	Approved	Paragraph 12.2 revised to address standard NHS contract, new paragraph 12.3 added.
Reviewed and updated	February 2018	Sue Laing (revision)		General review and update of procedural document in line with CCG Policy for the Development and Management of Policies and Procedural Documents 2017  Reviewed in line with staffing changes within the CCG  Further definitions added to definition section  Additional references to Intellectual property related legislation  Reference to Counter Fraud (Para 8)
Reviewed	February 2018	Bev Ryton		Included references (section 8)
Reviewed	April 2020	Sue Laing		Changes to responsibilities and weblinks  General review of policy

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## SECTION A - POLICY

### 1 Introduction

- 1.1 The NHS as an Innovative Organisation; A Framework and Guidance on the Management of Intellectual Property (IP) in the NHS <sup>1</sup> places a duty on healthcare organisations to audit, protect and exploit its Intellectual Property. The guidance sets out how NHS organisations can contribute to the development of the NHS as an innovative organisation by capturing new technologies, such as novel treatments, devices, drugs, data, software, training materials, or management systems, and by ensuring that those inventions which can contribute towards improving the health service are appropriately developed, exploited and disseminated.
- 1.2 Intellectual Property (IP) is created when an idea takes some tangible form. The legal framework within the UK then lets people own this Intellectual Property. This legal ownership (IP right), enables the value of the idea to be identified and realised, as the owner is granted exclusivity for a period of time normally in exchange for its public disclosure. This period of exclusivity rewards the inventor without restricting public access to the new idea, and thus the UK's IP framework plays an important role in the dissemination of innovation. There are various forms of legal protection for Intellectual Property including patents, copyright, design rights, and trademarks
- 1.3 Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS <sup>2</sup>, which is guidance published by the Department of Health, indicates that innovation must become the core business for the NHS in order to transform patient outcomes, improve quality and productivity and support economic growth.
- 1.4 Raising awareness of IP amongst NHS staff provides an opportunity to encourage innovations in patient care. It also brings about a need to manage the process in a way that protects the interests of the organisation and the individual employee. Four areas in particular may require management in a CCG context:
  - providing staff with advice and guidance which is appropriate for the development and protection of their ideas.
  - establishing ownership rights to a particular innovation need to be clearly defined and require legal expertise.
  - maximising the commercial potential of IP where NHS organisations and individual employees may derive financial benefit.
  - protecting the organisation from the inappropriate use of innovations developed using NHS time or resources.
- 1.5 These issues are particularly important where IP arises from partnership working with universities, commercial, statutory and voluntary organisations, or

with other NHS bodies. It will therefore be necessary to establish, at the outset, issues of ownership, management of IP, and how any derived benefit will be shared amongst partner organisations.

## 2 Aims and Objectives

- 2.1 To promote a culture within the CCG which supports innovation and recognises the importance and value of Intellectual Property (IP).
- 2.2 To provide a supportive framework which encourages CCG staff to develop and protect new ideas, where this is appropriate.
- 2.3 To establish a management process whereby innovation is appropriately protected and commercially exploited for the benefit of the CCG and its employees.

## 3 Scope

This policy applies to those members of staff that are directly employed by NHS Sheffield CCG and for whom NHS Sheffield CCG has legal responsibility. For those staff covered by a letter of authority / honorary contract or work experience this policy is also applicable whilst undertaking duties on behalf of NHS Sheffield CCG or working on NHS Sheffield CCG premises, and forms part of their arrangements with NHS Sheffield CCG. As part of good employment practice, agency workers are also required to abide by NHS Sheffield CCG policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking work for NHS Sheffield CCG.

## 4 Definitions

Intellectual Property	Intellectual Property is the tangible output of any intellectual activity that is new, or not previously documented. It has an 'owner', can be bought, sold or licensed, and commercially developed. It should be appropriately protected and until such time it should not be communicated in a way that would jeopardise its ultimate use or exploitation. IP can arise from activities such as: the development of training materials, information booklets, discoveries, inventions, software, products and services, processes, clinical materials <sup>3</sup> .
Intellectual Property Rights	the legally-protected rights which enable owners of intellectual property to retain control over the exploitation of their property, usually with commercial gain in mind. They give the right to stop others exploiting this property, sometimes for a fixed period, sometimes indefinitely <sup>3</sup> .
Forms of protecting IP	Includes patents, copyright, database rights, designs, trade marks, logos, confidential know-how, and creative commons licenses.

Innovator/inventor	The individual employee who originates the idea resulting in a need for IP. In general, the employer (rather than the innovator/inventor) will be the legal owner of the IP rights.
Employee	An employee means all staff that are full or part time employees of the CCG, staff who are on the CCG payroll as 'Paid Officers', staff with CCG contracts of employment whose payroll costs are partially or wholly funded by another party unless the contract between the CCG and that party assigns ownership of any Intellectual Property to that party, staff with honorary CCG contracts, volunteers, work experience students and temporary staff.
Registered Design Rights	In some cases, the value lies not in a new idea or a new concept, but in the appearance of the product, such as its shape and configuration. Registered design rights usually protect commercial objects with a unique appearance.
Unregistered Design Rights	Unregistered design right is an automatic right that protects how a product looks in terms of the features of its shape and configuration.
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 or be a list of clients.  In all cases, the "know-how" will only retain its value if it is managed effectively..
Trade Marks	A trade mark is used to distinguish a product or service from that produced or supplied by another business. Trade marks can be used to protect names, logos, slogans, domain names, shapes, colours and sounds.  Registering a trade mark protects the owner from competitors trying to use that image to promote <b>Know-How</b>
Patents	A patent can be used to protect an invention that embodies a new and inventive idea that is capable of industrial application (such as devices, processes or methods of operation). Exclusions from this include methods of treatment of the human/animal body by surgery or therapy, or methods of diagnosis. In order to be potentially patentable, details of an invention must not have been disclosed anywhere in the world (including in journals, on the internet, at meetings, on conference posters, etc.) prior to the filing date of the patent application.

## 5 Legislative Framework and Guidance

The following legislation and guidance has been taken into consideration in the development of this policy:

- The NHS as an Innovative Organisation: A Framework and Guidance on the Management of Intellectual Property (IP) in the NHS (2002)
- Copyright, Designs and Patents Act 1988
- GovUk; Intellectual property and your work guidance  
<https://www.gov.uk/intellectual-property-an-overview/what-ip-is>
- Trade Mark Act 1994
- Registered Designs act 1949
- Video Recordings Act 2010
- Fraud Act 2006

## 6 Roles and Responsibilities

Overall accountability for ensuring that there are systems and processes to effectively manage Intellectual Property lies with the Accountable Officer. Responsibility is also delegated to the following individuals:

<b>Associate Director of Corporate Services</b>	In their role as lead for research and innovation, the Associate Director of Corporate Services has responsibility for: <ul style="list-style-type: none"><li>• Establishing a system for managing Intellectual Property</li><li>• Acting as the CCG Lead for Intellectual Property</li><li>• Providing / obtaining advice on the management of CCG Intellectual Property</li></ul>
<b>Corporate Services Risk and Governance Manager</b>	Has responsibility for: <ul style="list-style-type: none"><li>• Supporting the Associate Director of Corporate Services in managing the system for Intellectual Property</li><li>• Providing / obtaining advice on the management of CCG Intellectual Property</li></ul>
<b>Staff</b>	Responsibilities of Staff (including all employees, whether full/part time, agency, bank or volunteers) are: <ul style="list-style-type: none"><li>• Reporting to the CCG lead for Intellectual Property the existence of any potential or actual intellectual property</li><li>• Complying with this policy</li></ul>

## **7 Dissemination, Training and Review**

### **7.1 Dissemination**

The effective implementation of this procedural document will support openness and transparency. NHS Sheffield CCG will:

- Ensure all staff and stakeholders have access to a copy of this procedural document via the CCG's website
- Communicate to staff any relevant action to be taken in respect of complaints issues
- Ensure that relevant training programmes raise and sustain awareness of the importance of effective complaints management

7.2 This policy is available on the CCG's website. Staff are notified by Team Brief and Weekly Round-up of new or updated procedural documents.

### **7.3 Training**

All staff will be offered relevant training commensurate with their duties and responsibilities. Staff requiring support should speak to their line manager in the first instance. Support may also be obtained through the Learning and Development team.

### **7.4 Review**

The procedural document will be reviewed every three years and in accordance with the following on an as and when required basis:

- Legislative changes
- Good practice guidelines
- Case law
- Significant incidents reported
- New vulnerabilities identified
- Changes to organisational infrastructure
- Changes in practice

## **8 References and Links to other Documents**

### **8.1 References**

Intellectual Property and Your Work  
<https://www.gov.uk/intellectual-property-an-overview>

Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS. Department of Health and Social Care 2011. Available from [http://webarchive.nationalarchives.gov.uk/20130107013731/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_131299](http://webarchive.nationalarchives.gov.uk/20130107013731/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131299) (accessed 19.04.21)

Handling Inventions and other Intellectual Property: A Guide for NHS Researchers. Department of Health, NHS Executive 1998. Available from [http://webarchive.nationalarchives.gov.uk/20120503225440/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4014377.pdf](http://webarchive.nationalarchives.gov.uk/20120503225440/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4014377.pdf) (accessed 19.04.21)

The Patents Act 1977. Available from [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/647792/Consolidated\\_Patents\\_Act\\_1977\\_-\\_1\\_October\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/647792/Consolidated_Patents_Act_1977_-_1_October_2017.pdf) (accessed 19.04.21)

The Copyright, Designs and Patents Act 1988. Available from <https://www.legislation.gov.uk/ukpga/1988/48/contents> (accessed 19.04.21)

HSC 1998/106. Department of Health, NHS Executive 1998. Available from [http://webarchive.nationalarchives.gov.uk/20120503190340/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4011768.pdf](http://webarchive.nationalarchives.gov.uk/20120503190340/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4011768.pdf) (accessed 19.04.21)

The Management of Intellectual property and Related Matters. An Introductory Handbook for R&D Managers and Advisers in NHS Trusts and Independent Providers of NHS Services. Department of Health, NHS Executive 1998. Available from [http://webarchive.nationalarchives.gov.uk/20120503225441/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4014470.pdf](http://webarchive.nationalarchives.gov.uk/20120503225441/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4014470.pdf) (accessed on 19.04.21)

This document should be read in conjunction with the following policies:

- Standards of Business Conduct and Conflicts of Interest Policy and Procedure
- Information Governance
- Confidentiality Code of Conduct.

## **9 Equality and Diversity Statement**

NHS Sheffield CCG aims to design and implement services, policies and measures that meet the diverse needs of our service population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the Human Rights Act 1998 and promotes equal opportunities for all. This document has been assessed to ensure that no-one receives less favourable treatment on grounds of their gender, sexual orientation, marital status, race, religion, age, ethnic origin, nationality or disability. Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the person requesting has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

NHS Sheffield embraces the six staff pledges in the NHS Constitution. This policy is consistent with these pledges.

## SECTION B – PROCEDURE

### 1 Ownership of Intellectual Property

- 1.1 **Principle:** NHS Sheffield Clinical Commissioning Group (CCG) recognises that from time to time, during the normal course of employment, an employee may generate Intellectual Property which may have value in the delivery of better patient care.
- 1.2 **Legislation:** The Patents Act 1977<sup>4</sup> states that an invention made by an employee shall be taken to belong to the employer if it was made in the course of the normal duties of the employee and the circumstances were such that an invention might reasonably be expected to result from the carrying out of his/her duties, or the invention was made in the course of the duties of the employee and because of the nature of the duties he had a special obligation to further the interests of the employer's undertaking. Any other invention made by an employee shall be taken to belong to the employee. The Copyright, Designs and Patents Act 1988<sup>5</sup> adopts the same stance on ownership for all classes of Intellectual Property it covers, namely that Intellectual Property produced by employees in the course of their normal duties belongs to the employer. Such ownership remains with the CCG upon the departure of the employee.
- 1.3 **Collaborative working:** If work/ research is conducted by an employee in partnership with another organisation, a formal agreement stating ownership (or sharing) of generated Intellectual Property is required. The lead manager for the relevant area will have responsibility for developing Intellectual Property sharing agreements with collaborating institutions.
- 1.4 **Externally-funded work:** If IP is generated by a CCG employee through work that is funded by an external body (eg a research project funded by a medical charity) then it is possible that the funding agreement includes a statement regarding IP ownership such that the funding body may own the IP instead of the CCG. This should be established at the outset.
- 1.5 **Commissioned work:** If the CCG commissions work by a third party who is not a CCG employee (eg development of a database by a software company), then the CCG will not necessarily own the Intellectual Property generated by the work. It is therefore advisable for the contract with the supplier to include provision for the CCG to retain all Intellectual Property rights in the output of the work, or for shared Intellectual Property Rights to be captured within the agreement.
- 1.6 **Independent providers:** Independent providers of NHS Services usually own the Intellectual Property that they generate during the course of providing NHS Services. However, an independent provider that generates Intellectual Property from NHS funded Research and Development is required by HSC 1998/106<sup>6</sup> to share any benefit with the Department of Health. Independent providers may also generate Intellectual Property from their patient care activities and utilise NHS resources to develop this Intellectual Property. Generally an independent provider does not have the resources or expertise to fully develop and exploit the Intellectual Property and it will be the CCG which is

best placed to arrange this. The 2002 Framework and Guidance<sup>1</sup> document encourages these providers to transfer ownership of such Intellectual Property to their commissioner, which will then be responsible for its exploitation. If the independent provider agrees to transfer ownership to the CCG then the requirement to share benefits with the Department of Health will be waived. Any benefits derived from the exploitation of the Intellectual Property by the CCG will be shared with the independent provider as if they were an employee of the CCG.

- 1.6 *Inventors:*** Whilst the CCG owns such IP, the CCG will recognise the contribution of individuals (the “inventor”) to the creation or development of the Intellectual Property in accordance with the terms of this procedural document.
- 1.7 *Outside work:*** Any IP generated by an employee acting outside the normal course of their NHS duties and not directly related to the work of the CCG will be owned by the employee subject to the terms of their employment.
- 1.9 *Disputes:*** Where there is a dispute about the identity of inventor(s) of IP, dated written records associated with the generation of Intellectual Property will be used to establish the inventor(s) of the IP and to determine their level of contribution / remuneration. The Accountable Officer will decide, taking such professional advice as appropriate, and this decision will be final. In the event of any dispute arising from the interpretation of this policy, CCG employees have recourse to the CCG Grievance Policy to resolve the dispute.

## **2 Types of Intellectual Property (IP)**

- 2.1** Appendix 1 details the types of Intellectual Property alongside typical protection methods and examples of Intellectual Property in practice.
- 2.2** Copyright is achieved automatically, when the work is created. It is, however, advisable to attach a copyright statement, such as:
- ©[Year of creation] [Owner of Copyright] All rights reserved. Not to be reproduced in whole or in part without the permission of copyright owner.
- 2.4** Statute provides that copyright in any work produced for the CCG by an employee in the normal course of employment belongs to the employer. The CCG 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. However, the CCG reserves the right to itself at no cost to reproduce and use these publications for its own non-commercial purposes, including teaching and research.

The CCG does not assign any of its other copyright to the author including, without limit:

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

- Any software programme generated by an employee in the normal course of their employment
- Any designs, specifications or other works which may be necessary to protect rights in commercially exploitable Intellectual Property.

### **3 Intellectual Property Notification**

- 3.1 Any employee wishing to discuss the protection of any idea or other form of Intellectual Property should discuss the matter with the CCG lead for Intellectual Property (Chief Nurse) at the earliest opportunity and, in any event, before disclosure of the idea to any party outside the CCG either orally or in writing. Inventors are obliged to maintain confidentiality until such time as the CCG has made a decision on whether to exploit their idea or technology or up to the point at which protection is in place. Prior public disclosure (other than under explicit terms of confidentiality or to another employee of the CCG) may invalidate any subsequent application for legal protection (e.g. patent) and diminish both potential commercial value and benefits accruing to the CCG and the inventor.
- 3.2 Written consent must be obtained from the CCG lead for Intellectual Property and any third party external organisation prior to publication of any aspect of the innovative idea or technology in question.
- 3.3 All employees should be aware of the importance of avoiding improper disclosure of their inventions. Public disclosure could, for example, include any of the following: written article, poster presentation, oral presentation, an abstract, conversations / correspondence without a confidential agreement, or publication in any form on the internet.
- 3.4 Employees should take no steps to exploit any CCG Intellectual Property without the specific approval in writing of the Accountable Officer. Employees should maintain clear and dated documentation, or a research log, during the development of an idea or technology as this may be required as supporting evidence for any patent application.
- 3.5 Employees should maintain clear and dated documentation, or a research log, during the development of an idea or technology as this may be required as supporting evidence for any patent application.

### **4 Recording and assessment of Intellectual Property**

- 4.1 The Associate Director of Corporate Services, will keep a record of the date on which an employee reports a new creative product. Once the Intellectual Property has been registered with the CCG, the CCG lead for Intellectual Property will discuss next steps with the inventor.
- 4.2 The CCG may consult, on a confidential basis, with appropriate experts in the field of the IP in question, in order to assist with assessment of the innovation and its commercial potential. The CCG undertakes to make decisions on which form of Intellectual Property Rights protection to take, eg registration of a design, copyright, trademark or domain name, or filing of a patent, on the basis

of appropriateness/fitness for purpose as well as with regard to the implications for financial return to the CCG and inventor.

- 4.3 The CCG undertakes to make decisions on which form of Intellectual Property Rights protection to take eg registration of a design, copyright, trademark or domain name, or filing of a patent, on the basis of appropriateness/fitness for purpose as well as with regard to the implications for financial return to the CCG and inventor.
- 4.4 It is important for staff working on projects that generate IP to keep dated records of their activities and results in written or other appropriate form. This is especially important for patent application purposes in the US, since the US has a policy of 'first to invent' rather than the 'first to file' rule in the UK. When exploiting IP it is imperative that all correspondence, including e-mails, telephone conversations and meetings are logged to provide a detailed account of any discussions relating to the IP. This is in accordance with clinical governance, research governance and good clinical practice guidelines for research and development.
- 4.5 Periodically, audits may be carried out to identify potential Intellectual Property arising from CCG activities. Auditing is essential to ensure the correct action is taken to protect any Intellectual Property that may later be exploited.

## **5 Protection and Exploitation of Intellectual Property**

- 5.1 It is the role of the Accountable Officer, in consultation with the inventor and other specialist staff, to decide on the potential for an idea/invention to be exploited. In strong cases, the information reported should effectively demonstrate the potential market and the likelihood of success in the venture.
- 5.2 Where it is decided to seek exploitation of CCG intellectual property, discussions between interested parties will be held to determine the appropriate action to be taken. This may include one or more of the following:
  - the retention of confidentiality and strict avoidance of prior disclosure
  - the filing of a patent application in the name of the CCG, with the inventor named
  - the filing of an application to register for copyright in the name of the CCG where necessary eg USA (not required in UK where copyright is automatic)
  - the identification of potential licensees
  - the assignment of rights to the CCG or to a third party
- 5.3 The CCG undertakes to involve the inventor throughout the protection / exploitation process as part of a project team and to take on board his/her ideas and wishes as far as possible. The inventor shall provide reasonable assistance in the exploitation process by, for example, providing information promptly upon request, attending meetings with potential licensees and advising on further development.

- 5.4 All arrangements and commitments involving the CCG with regard to the potential exploitation of an innovative idea or technology must be made via the CCG lead for IP.
- 5.5 Further support can be obtained from the NHS Innovation Hub for the Yorkshire and Humber region - Medipex. <http://www.medipex.co.uk/> They should be considered the main channel for all IP developments and can provide support and advice on issues relating to the development of IP such as (but not limited to):
- Public / private sector partnerships
  - Negotiation of patent / licensing on behalf of the NHS employee / Trust
  - Clinical trials of medical devices and technologies
  - Where innovations are examples of 'best practice' rather than IP Medipex may be able to advise on appropriate methods of dissemination.
- 5.6 It is the CCG's policy to actively encourage employees to publish their work and 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 Research Governance Lead before publicly disclosing any work.

## **6 Non-exploitation of Intellectual Property by the CCG**

- 6.1 If the CCG decides not to apply for patent or other legal protection in respect of any invention which belongs to the institution by virtue of section 39 of the Patents Act<sup>4</sup>, the employee concerned will be notified in writing of that decision as soon as is reasonably practicable. Ownership of Intellectual Property Rights will then be ceded to the inventor. In this case the CCG has no obligation to meet costs associated with Intellectual Property Rights protection or exploitation. The CCG may decide to waive its right to own its intellectual property and assign ownership to the employee, with the full costs of this being borne by the assignee (including all patent costs, legal assignment costs and management costs).
- 6.2 If, following such a decision by the CCG, the employee concerned wishes to apply for patent or other protection or otherwise exploit the relevant IP, he/she must first inform the CCG lead for IP. The relevant employee will be notified of any objection to his/her proposed action. The sole ground for such objection being that the exploitation of the invention would involve or result in the disclosure to third parties of trade secrets or other confidential information belonging to the CCG and/or its patients and that such disclosure might damage the interests of the CCG.
- 6.3 Where the CCG does object, the employee must undertake, in consideration of the payment of compensation, not to proceed to apply for patent of the invention concerned nor to assist any other person to do so nor to otherwise

exploit the IP. The calculation of compensation will have regard to the factors set out in section 41 of the Patents Act<sup>4</sup>.

- 6.4 The CCG will maintain a register of all Intellectual Property rights owned by the CCG which have been licensed or assigned to a third party where an employee is a named inventor or originator. Details of these IP rights and the income they generate will be given to the Department of Health from time to time on request.

## 7 Revenue sharing with Inventors

- 7.1 The CCG wishes to encourage full participation of employees in the creation and commercial exploitation of Intellectual Property. The policy will therefore be to reward employees who have contributed substantially to the generation of Intellectual Property, which has subsequently provided revenue through exploitation. Such revenue will be shared between the CCG and the inventor according to the revenue sharing formula taken from *The Management of Intellectual property and Related Matters. An Introductory Handbook for R&D Managers and Advisers in NHS Trusts and Independent Providers of NHS Services*<sup>7</sup>.
- 7.2 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. The Accountable Officer will agree this and will also agree sharing between providers and commissioning organisations. In all cases the shared revenue will be the net of any organisational costs and expenditure and protection and exploitation costs (eg patent costs). Expert advice from external companies will result in a proportion of the revenue generated being retained by them.

<b>Cumulative Net Income</b>	<b>Inventor</b>	<b>CCG</b>
First £50,000	75%	25%
Next £100,000	50%	50%
Over £250,000	25%	75%

- 7.3 Staff are advised to seek advice on any tax implications of receiving personal benefit. Where staff in receipt of IP payments leave the employment of the CCG, one-off settlement arrangements will be considered by the CCG on a case by case basis.

## 8 Counter Fraud

Any abuse of the policy / scheme may constitute fraud and any suspicions of fraud will be referred to the CCG's Counter Fraud Specialist for further investigation.

### Guide to types of Intellectual Property which the CCG may create

Type	Protection method	Example
<b>Inventions</b> , each embodying a new idea capable of being made or used by industry and involving a non-obvious inventive step.	Patent	New medical device
<b>Literary and artistic works</b> , films, videos, records, broadcasts and typographical arrangements, including computer software	Copyright	Computer software, article, leaflet
<b>Designs and design drawings</b> , mainly of aesthetic objects	Registered Design Rights	Illustrations
Product <b>brand names</b> , company logos, etc.	Trade Marks	CCG Logo
<b>Know-how</b> , Trade secrets, background techniques	Keeping it secret; non-disclosure	Internal knowledge held within the CCG; 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 or be a list of clients

## NHS Sheffield CCG Equality Impact Assessment 2018

<b>Title of policy or service</b>	Management of Intellectual Property Policy	
<b>Name and role of officers completing the assessment</b>	Sue Laing, Corporate Services Risk and Governance Manager	
<b>Date assessment started/completed</b>	April 2021	

<b>1. Outline</b>	
<p><b>Give a brief summary of your policy or service</b></p> <ul style="list-style-type: none"> <li>• Aims</li> <li>• Objectives</li> <li>• Links to other policies, including partners, national or regional</li> </ul>	<p>The policy aims to maximise the benefits of creation of intellectual property within the organisation and to ensure that employees are aware of the legal position and best practice</p> <p>To provide a framework for the management of intellectual property, thereby promoting the CCG's interests. To clarify processes around legal issues such as copyright, and to set out how any financial gain from inventions / innovations should be handled.</p> <p>For links to other policies see Section A – paragraph 8</p>

## 2. Gathering of Information

This is the core of the analysis; what information do you have that indicates the policy or service might *impact on protected groups, with consideration of the General Equality Duty.*

	What key impact have you identified?			What action do you need to take to address these issues?	What difference will this make?
	Positive Impact	Neutral impact	Negative impact		
<b>Human rights</b>		✓			
<b>Age</b>		✓			
<b>Carers</b>		✓			
<b>Disability</b>		✓			
<b>Sex</b>		✓			
<b>Race</b>		✓			
<b>Religion or belief</b>		✓			
<b>Sexual orientation</b>		✓			
<b>Gender reassignment</b>		✓			
<b>Pregnancy and maternity</b>		✓			
<b>Marriage and civil partnership (only eliminating discrimination)</b>		✓			
<b>Other relevant group</b>					

Please provide details on the actions you need to take below.

<b>3. Action plan</b>				
<b>Issues identified</b>	<b>Actions required</b>	<b>How will you measure impact/progress</b>	<b>Timescale</b>	<b>Officer responsible</b>
<p>No issues have been identified with regard to this policy; it applies equally to all staff in the organisation.</p> <p>Any innovation or invention produced by the CCG which can be classified as intellectual property may itself need to be subject to an EIA before full development of the product (eg, if training materials are produced, this should be done with due regard to diversity issues and accessibility).</p>	No action required.	N/A	N/A	N/A

<b>4. Monitoring, Review and Publication</b>			
<b>When will the proposal be reviewed and by whom?</b>	Sue Laing		
<b>Lead Officer</b>	Julia Newton	<b>Review date:</b>	February 2021

Once complete please forward to your Equality & Diversity lead via email [SHECCG.Comms@nhs.net](mailto:SHECCG.Comms@nhs.net)