

Letter to the Secretary of State for Health from the NHS Future Forum working group on the NHS Constitution

26 June 2012

Dear Secretary of State,

Having been involved in the development of the NHS Constitution four years ago, it was a privilege to be asked to advise you on the effect it has had on patients, staff and the public. Over recent months, the NHS Future Forum has considered the extent to which people are aware about the Constitution and its effect to date. This letter sets our conclusions, which I hope informs the report you must lay before Parliament.

The NHS Constitution is really important. It expresses the principles and values that underpin the unique character of our health service. Its powerful opening words resonate with patients, staff and the public. When I talk about the Constitution to patients and the public, their support for the Constitution is immediately apparent. Among NHS staff, while 54% are aware of the Constitution, 72% believe it is important the NHS has a Constitution, and the more they know about it the greater their support – 90% of staff who feel well informed about the Constitution think such a document is valuable.

In a time of reorganisation and financial pressure, the NHS Constitution has assumed greater importance, perhaps more than its founders realised. It is a statement of the enduring principles and values that the NHS stands for and what it is meant to deliver, regardless of structure and organisation. It sets out a national offer that patients and staff across England can expect, no matter where they live.

The NHS Constitution is an expression of enduring principles and values of the NHS around which people can unite regardless of their views on current changes in the health service. It offers the Secretary of State a powerful way of holding the new parts of the system to account for delivering not only the rights and pledges, but also the values, principles and behaviours to which we all want the NHS to adhere.

We welcome the fact that you recognise this and that you listened to the NHS Future Forum by encouraging Parliament to strengthen the duties relating to the NHS Constitution in the Health and Social Care Act 2012. The Government's mandate to the NHS Commissioning Board provides an opportunity to hold the Board to account for ensuring that patients' rights and pledges set out in the Constitution are delivered.

It is not surprising but neither is it satisfactory that the Constitution is so little known – and rarely used – by staff and even less so by patients and the public. Just 3% of NHS staff say they have encountered a patient using the Constitution in this way. Plans to raise awareness of the Constitution among NHS staff were not consistently carried out, and plans to raise awareness among the general public were not implemented as intended. There is a big task ahead not only to raise awareness, but also to help people understand how to use the Constitution. Far from being the 'lawyer's charter' that some feared, the Constitution so far seems to have been very little used as a means of securing particular rights and pledges for people or of challenging poor service.

The NHS Constitution is for everyone. We recognise that the report you must lay before Parliament is about the effect of the Constitution since its launch in 2009, rather than a report on the state of the NHS itself. We have felt frustration that the evidence has been so patchy. Where there is

evidence of the effect of the Constitution this indicates that even where rights and pledges to patients and staff are delivered well, they are not consistently delivered for everyone. This is particularly the case for those who are most marginalised and most out of sight. This must change. Inequalities need to be tackled and the Constitution has a role to play in this. Both the way that NHS services are delivered, and the way we measure how the NHS delivers against the rights and pledges in the Constitution must improve.

We take heart from the fact that staff who are most informed about the NHS Constitution are also the most likely to value and champion it; and from the extent to which people in the East of England have become aware of the Constitution, showing the effectiveness of efforts made there. It is also clear that, when shared with different groups, the Constitution has the power to enthuse and galvanise people. For example, children are not well informed about the Constitution but when children read it together, they saw it could make a difference to their lives.

The NHS Constitution must not simply be referred to when things go wrong but something which becomes so embedded in the minds and lives of everyone connected with the provision of NHS services – patients, staff and the public – that it infuses and underpins every action and interaction that take place.

In our second phase we will take soundings and advise you on how the Constitution can be strengthened and reinforced, building on the enduring values and principles of the NHS it already expresses. Without doubt, this will include prompting a bigger role for patients in managing their own care and sharing in decisions about their care. It should also include the need for patient care to be more integrated. This work takes place in a context very different from that in which the Constitution was originally developed. We have already begun to discuss many ideas and proposals for updating and extending the Constitution. We will consider these with an open mind, but seek to avoid becoming tangled in an arid drafting exercise.

The power of the Constitution lies at least in part in being short and simple. If anything, it could be simpler still. Fundamentally, this means being clear about rights, responsibilities and redress. Patients need to know: what do I have a *right* to expect; what are my *responsibilities*; and what is the *redress* if I do not get something to which I am entitled?

More than any other view expressed, it has been put to us forcibly that the Constitution amounts to “fine words but no teeth”. It needs to be a living document, a guiding light for staff in the NHS and a point of reference and reassurance for patients and citizens. Where the rights it contains are not lived up to, there must be an understandable, accessible and effective means of challenge and redress. We will therefore be looking especially hard at how the Constitution can be strengthened not only in its content but also in its application.

Finally, the power of the NHS Constitution lies in the fact that it enjoys widespread support from patients, staff and the public, and that it transcends party politics. The cross party support it received at its launch was, I believe, crucial to its support, and I would hope that politicians of all parties build on this as a way of strengthening the role of the Constitution as we go forward.

Yours
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