



Department
of Health

A consultation on updating the NHS Constitution: Government response

July 2015

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A consultation on updating the NHS Constitution: Government response

Prepared by the Department of Health

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Statement of consultation response

1. The NHS Constitution was published in 2009 and brought together for the first time the **principles, values, rights and responsibilities** that underpin the NHS. It sets out the enduring character of the NHS as a comprehensive and equitable health service. It is intended to empower the public, patients and staff to know and exercise their rights to help drive improvements throughout the NHS. The NHS Constitution sets out rights to which patients, public and staff are entitled, and pledges which the NHS is committed to achieve, together with responsibilities which we all owe to one another to ensure that the NHS operates fairly and effectively.

2. Between 11 February 2015 and 8 April 2015, we consulted on a package of limited content changes to update the NHS Constitution. These focused on the following key areas, building on recommendations made by Sir Robert Francis QC in his Inquiry Report into the terrible failings at Mid-Staffordshire NHS Foundation Trust:

- **Francis Recommendation 4** – creating a more patient-centred NHS, through giving the core values in the NHS Constitution, priority of place;
- **Francis Recommendation 5** – making it clear that patients have a right to safe, high quality care, and that staff will do everything in their power to protect patients from avoidable harm;
- **Francis Recommendation 5** – making it clear that staff have a duty to help

patients locate alternate sources of assistance, if they themselves are unable to provide this assistance;

- **Francis Recommendation 10** – inserting an expectation that staff will follow guidance, and comply with standards relevant to their work, subject to more specific requirements of their employers.
 - **Francis Recommendation 13** – establishing fundamental standards as patient rights, setting the line below which quality of care should never fall; and
 - **Francis Recommendation 178** – introducing a more compelling statutory duty of candour, through placing a requirement on providers to be open and transparent with patients and service users. Furthermore, we are establishing a right to be told about any safety incident which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death.
3. We also consulted on other important changes to the NHS Constitution, including;
- highlighting the importance of **transparency and accountability** within the NHS;
 - giving greater prominence to **mental health**; and
 - making reference to the **Armed Forces Covenant**.

4. The consultation showed there was broad support for each of our proposals. However it was clear that on occasion, both the wording and meaning of several additions could be made clearer. This response outlines the results of the consultation, including the amendments we have made as a result of the public's view.

5. In July 2015 we will be releasing the revised NHS Constitution which will incorporate the changes outlined in paragraphs 2 and 3, and the amendments detailed below. The changes being made to the Constitution are outlined in full in Annex 1.

6. Key amendments made since the consultation include:

- Minor edits to the principles section, to clarify who the 'Armed Forces Community' applies to, and to reflect a more patient-centred NHS;
- Removing the phrase 'psychological therapies' from the right to drugs and treatments that have been recommended by National Institute for Clinical Excellence (NICE), as the clinical guidelines around psychological therapies are not yet mandated;
- Including the phrase 'and outcomes' into the right on transparency, to reflect the content available on MyNHS;
- Including the word 'support' in the fundamental standard on planning and making decisions about your health and care, with your care provider, to reflect current legislation;
- Including the phrase 'and providers' to reflect that individuals may have more than one provider across physical and mental health;
- Adding of the phrase 'if appropriate' to the right to be given the chance to manage your own care and treatment,

to reflect that it is not always possible for patients to manage their own care and treatment in certain situations in clinical settings;

- Including the phrase 'relevant to your care' in the duty of candour right, to clarify the underlying meaning behind the right;
- Amending 'should' to 'must' in the duty of candour right, to strengthen the wording, and to reflect that it has a legal underpinning; and
- Adding the phrase '(including for those patients who are not receiving basic care to meet their needs)' to help clarify the underlying meaning behind the staff aim (helping patients find alternate sources of assistance and care).

7. Whilst we sought to reflect consultation feedback in the revised NHS Constitution where it was appropriate to do so, we were not able to incorporate all of the amendments suggested by consultation respondents.

8. The NHS Constitution is designed to be an enduring document, and the threshold for making changes to the NHS Constitution is therefore high. Where we have made changes, we have sought to ensure that they are consistent with the Constitution's intended purpose, and that any changes are:

- empowering to patients and staff;
- enduring and consensual;
- legally accurate;
- concise and accessible;
- of general concern to all patients;
- meaningful to individuals; and
- credible in that they are already well-established in NHS practice or have a legal basis.

9. The Handbook to the NHS Constitution provides a more detailed guide to patients and staff on the contents of the Constitution. Each amendment to the NHS Constitution has explanatory text on the rationale behind the amendment, and where relevant, the legislation that underpins it. Where appropriate, we have also included additional explanatory text in the Handbook on a number of issues where respondents suggested that more clarity or specific detail be included in the Constitution, or otherwise raised issues that were more appropriate to be addressed in the Handbook. We plan to publish the updated Handbook alongside the NHS Constitution in July 2015.

10. The NHS Constitution is a high-level document designed for all who use and engage with the NHS. However we recognise that considerations that apply to different groups can mean different approaches are needed; for example, children and young people's needs often vary from adults in both treatment and delivery. In order for the Constitution to apply effectively to children and young people, the Handbook identifies situations where the NHS should aim to provide services in a manner that takes account of their specific needs.

11. Consultation respondents also commented on other issues, such as the practicality and delivery of rights and pledges within the NHS Constitution. Rights in the NHS Constitution must have a legal underpinning, whilst pledges must be being delivered in order to be considered for inclusion.

12. There was also a general feeling that staff aims should become duties within the NHS Constitution. However, a staff duty, like a patient right, must have a legal underpinning, and therefore be enforceable through that legal underpinning. Staff aims do not have a legal basis, and therefore cannot be considered as a duty until this legal basis is established.

13. A final theme from the comments related to limited awareness of the NHS Constitution amongst staff and patients. We recognise these concerns, and understand that promotion and raising awareness of the NHS Constitution is very important.

Impact assessments

A reference document for impact assessments is at Annex 2.

Equalities statement

An equalities statement is at Annex 3.

Annex 1: Text changes to the NHS Constitution

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
Principles that guide the NHS			
<p>The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard</p>	<p>Amendment to Principle 1</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>This amendment reflects our commitment to parity of esteem between mental and physical health, and therefore mental and physical health problems. It is of vital importance that all health issues are dealt with in the same manner, appropriate to the condition.</p> <p>Some respondents were sceptical about what this would mean in practice, particularly as access to mental health services is not widely available everywhere. We recognise these concerns and are striving to ensure that any discrepancies between mental and physical health provision, are dealt with appropriately by NHS staff.</p> <p>The principles in the NHS Constitution guide the NHS in all that it does. So whilst we understand the above concerns, we feel it is of vital importance to make it absolutely clear as a principle, that the NHS treats mental health problems and physical health problems with equal regard.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>Patients will be at the heart of everything the NHS does</p>	<p>Amendment to the Principle 4</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording to read:</p> <p><i>'The patient will be at the heart of everything the NHS does'</i></p>	<p>This amendment reaffirms and strengthens the intention of the NHS to put patients first. While it is acknowledged that this will not always be delivered, this principle should be at the forefront of everything the NHS does. It is intended to be a statement that applies to all patients, without reference to a specific group or a given individual.</p> <p>Many respondents felt that carers, family and healthcare staff were important to be explicitly included in this wording. We recognise how important all three of these groups are in delivering patient-centred care and therefore make reference to them in the NHS Handbook on the Constitution. Staff rights are outlined in the Handbook; and the central role of families and carers is also highlighted.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>As part of this the NHS will ensure that in line with the Armed Forces Covenant, those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside</p>	<p>Amendment to the Principle 4</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording to read:</p> <p><i>'As part of this, the NHS will ensure that in line with the Armed Forces Covenant, those in the armed forces, reservists, their families and veterans are not disadvantaged in accessing health services in the area they reside'</i></p>	<p>This amendment is intended to provide further support to the health commitments of the Armed Forces Covenant. To ensure consistency, we have been guided by the wording of the Covenant in our drafting of this addition. The Armed Forces Covenant recognises that the whole nation has a moral obligation to members of the Armed Forces, their families and veterans, and it establishes how they should expect to be treated. Health is one of the key components of the Covenant with an underlying commitment to ensure that those that are part of the Armed Forces Community (including serving personnel, reservists, their families and veterans) are not disadvantaged in accessing health services. This change to the NHS Constitution aims to ensure that those in the Armed Forces Community accessing NHS services and those in the NHS providing services recognise the benefits and intent of the Armed Forces Covenant. While the NHS aspires to the ideal that no individual should ever be disadvantaged when accessing healthcare, this may not always be the case. As an example to help for clarification, families of serving personnel who are deployed elsewhere, may find themselves having to move to another part of the country at relatively short notice which might result in them losing their place on a waiting list for NHS services in their new area. It is disadvantages such as these which this change aims to address. However, all care will continue to remain relative to the clinical need of others as determined by medical professionals.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
Patients and the public – your rights and NHS pledges to you			
<p>You have the right to receive care and treatment that is appropriate to you, meets your needs and reflects your preferences</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>Following the consultation, we have decided to keep the proposed wording of the right.</p> <p>The response to this right was overwhelmingly positive, with only a few respondents querying the wording. These queries concerned the use of the term ‘appropriate’ and focused in particular on who determines what ‘appropriate’ treatment constitutes.</p> <p>Appropriate treatment is determined by the healthcare professional that provides the care. Healthcare professionals make a judgement on what the appropriate treatment is relevant to the patient’s condition. NHS staff are provided with training to help them in making this judgement.</p> <p>However, appropriate treatment is not just for the jurisdiction of the healthcare professional. One of the NHS values is to ‘<i>seek to understand their (the patient’s) priorities, needs, abilities and limits. We take what others have to say seriously. We are honest and open about our point of view and what we can and cannot do.</i>’. A further patient right reads ‘<i>You have the right to accept or refuse treatment that is offered to you.</i>’. NHS staff should always take into account the views of patients on what the appropriate treatment is, and give patients the chance to manage their own care and treatment. This is why we have included the wording “and reflect your preferences” in the final line of this right.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to be cared for in a clean, safe, secure and suitable environment</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>Following the consultation, we have decided to keep the proposed wording of the right.</p> <p>The response to this right was overwhelmingly positive, with respondents' only particular concern being how the right will be measured. Any right must have a legal underpinning, which in this case are the requirements for registration with the Care Quality Commission (CQC). CQC undertakes regular inspections of hospitals to ensure that fundamental standards are being met. Failure to meet these minimum standards, results in decisive action to protect patients. As part of our monitoring of the effect of the NHS Constitution, CQC alert the Department of Health to instances where the hospitals inspected are not meeting the required fundamental standards.</p>
<p>You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>The decision was taken to keep the proposed wording of the right. There were no particular concerns regarding this right, and therefore no amendments were considered.</p> <p>Some respondents wanted further information on what this right would encompass. The nutrition and hydration fundamental standard requires providers registered with CQC to ensure that the patient's needs for food and drink are met, that they are given suitable and nutritious food (or other sources of nutrition where needed) and are given any support they may need to eat or drink. The standard also requires providers to meet any reasonable requirements for food and drink arising from their preferences or religious or cultural background. We include further information in the Handbook to the NHS Constitution.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to drugs, treatments and psychological therapies that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you</p>	<p>Amendment of an existing right, with the inclusion of 'psychological therapies'.</p>	<p>After analysing the results of the consultation, it was agreed to remove the proposed wording from any update to the NHS Constitution.</p>	<p>The decision was taken to remove the proposed wording from an update to the NHS Constitution, and to keep the existing right as it currently reads.</p> <p>NICE have produced clinical guidelines on certain psychological therapies, such as Interpersonal Psychotherapy, Cognitive Behavioural Therapy, and Therapy for Depression. However, these clinical guidelines are not mandated.</p> <p>The NHS Constitution right to drugs and treatments reflects the legal funding requirement that applies to interventions recommended by NICE technology appraisal guidance, but NICE has not been asked to undertake a technical appraisal of psychological talking therapies. There may be a point in the future where psychological therapies will be recommended by NICE at which point, we could consider once again consulting on this right. However, we believe that it is sensible to withdraw this from this update of the NHS Constitution in order to avoid any unnecessary confusion.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to be protected from abuse, neglect, and care that is degrading</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording.</p> <p><i>'You have the right to be protected from abuse and neglect, and care and treatment that is degrading.'</i></p>	<p>Following the consultation, we have decided to amend the proposed wording of the right.</p> <p>The response to this right again was extremely positive. Respondents felt particularly strongly about the need for such a right in the light of the terrible failings found at Mid-Staffordshire NHS Foundation Trust.</p> <p>The overriding concern for respondents was how this right is to be 'policed'. Any right must have a legal underpinning, which in this case are the requirements for registration with the Care Quality Commission (CQC). CQC undertakes regular inspections on hospitals to ensure that fundamental standards are being met. Failure to meet these minimum standards, results in decisive action to protect patients.</p> <p>The wording 'and treatment' has since been included in the right. Whilst treatment is part of wider care, we thought it appropriate to clearly show that all patients have the right to be protected from treatment that is degrading.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording:</p> <p><i>'You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, and on outcomes, as compared to others nationally'</i></p>	<p>Following the consultation, we have decided to add in the phrase 'and on outcomes' to the right.</p> <p>Whilst outcomes could be deemed part of 'comparable data', we feel that as outcomes are such an important part of MyNHS, it is helpful to express this explicitly within the right.</p> <p>Within the Handbook to the NHS Constitution, we explain the right in further detail, and refer to the frameworks below for definitions of the types of outcomes we are referring to:</p> <ul style="list-style-type: none"> • NHS Outcomes Framework • Public Health Outcomes Framework • Adult Social Care Outcomes Framework <p>Overall, respondents were very supportive of the inclusion of this right. We recognise that improved transparency can drive better health and care and better performance, as well as changing behaviour, increasing accountability, and encouraging growth.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to be involved in planning and making decisions about your health and care with your care provider, including your end of life care, and to be given information to enable you to do this. Where appropriate this right includes your family and carers. This includes being given the chance to manage your own care and treatment</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording:</p> <p><i>'You have the right to be involved in planning and making decisions about your health and care with your care provider or providers, including your end of life care, and to be given information and support to enable you to do this. Where appropriate this right includes your family and carers. This includes being given the chance to manage your own care and treatment, if appropriate'</i></p>	<p>Following the consultation, it was agreed to amend this right in a number of ways.</p> <p>Some respondents noted that often people have multiple providers. This is particularly likely where the individual is being treated for a mental health condition, in conjunction with a physical health condition. It was therefore decided to incorporate the phrase 'or providers', to make it clear that this right applies to any care provider used within the NHS.</p> <p>Respondents were also keen to include the phrase 'and support' within this right. It was commonly felt that providers should support patients in planning and making decisions about their health and care. We agree with this view, although we also believe that the concept of support from providers and NHS staff is already represented throughout the NHS Constitution. However for the purpose of clarity, and to reflect the commissioner's duties in the Health and Social Care Act 2012, we have decided to include this phrase.</p> <p>The final change we have made to this right is to add the line 'if appropriate'. Respondents felt that in certain clinical settings and situations, it would not be possible to be offered the chance to manage your own care and treatment at all times for example, if the patient was unconscious and in need of urgent care and treatment. The wording 'if appropriate' reflects this.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need</p>	<p>Inclusion of a new right, proposed as part of the consultation document.</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording:</p> <p><i>'You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident relating to your care which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You must be given the facts, an apology, and any reasonable support you need.'</i></p>	<p>Whilst people agreed with the inclusion of this right in the NHS Constitution, the decision was taken to slightly amend the wording as a result of the consultation.</p> <p>Some respondents felt that further clarification was needed around safety incidents. In particular, some respondents felt that the original wording of this right meant that patients would be told about any safety incident at all, which was not the intention. As a patient, we believe that you must be told about any safety incident that could impact upon your health and care, and therefore have added the phrase 'relating to your care', to help clarify this.</p> <p>Some respondents also felt that the wording could be strengthened, given that this is a right and therefore has a legal underpinning. The word 'should' was deemed as too weak, with many respondents instead believing that the word 'must' should be used. We agree with this, and have amended the wording appropriately.</p> <p>The final concern respondents had was around the term 'significant harm', particularly what this meant in relation to 'any safety incident'. 'Significant harm' is defined within CQC regulations, in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20. We provide various definitions of harm in the Handbook to the Constitution.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
Staff – your responsibilities			
<p>You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm</p>	<p>Insertion of staff aim</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>The consultation response was largely supportive of this new staff aim. However some respondents suggested strengthening this staff aim to a duty or to a patient right.</p> <p>Organisations have a legal obligation to provide safe care. Whilst we understand the wish to make this staff aim legally enforceable, any duty or right must have an existing legal basis before inclusion in the NHS Constitution.</p> <p>Some respondents also queried the term ‘avoidable harm’, questioning what this actually meant in practice. ‘Avoidable harm’ will be defined in Section 20 of the Health and Social Care Act 2008. We will also provide definitions within the Handbook to the NHS Constitution when we update it in July 2015.</p> <p>Finally, some respondents suggested including whistleblowing within this staff aim. Whilst we agree on the importance of staff raising concerns on any actions that may cause patients avoidable harm, there is already a staff ‘aim’ around whistleblowing within the NHS Constitution:</p> <p><i>‘You should aim to raise any genuine concern you may have about a risk, malpractice or wrongdoing at work (such as a risk to patient safety, fraud or breaches of patient confidentiality), which may affect patients, the public, other staff or the organisation itself, at the earliest reasonable opportunity’.</i></p> <p>We therefore do not think it is necessary to refer to whistleblowing within this new staff aim. However we take whistleblowing extremely seriously, and we therefore provide additional wording linking the two aims within the Handbook to the NHS Constitution when we update it in July 2015.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers</p>	<p>Insertion of staff aim</p>	<p>After analysing the results of the consultation, it was agreed to keep the proposed wording.</p>	<p>Following the consultation, it was agreed to keep the proposed wording within the NHS Constitution.</p> <p>The consultation response was largely positive for this staff aim. Some respondents suggested amending this from a staff aim, to a patient right. Whilst we understand the wish to make this staff aim legally enforceable, any duty or right must have an existing legal basis before inclusion in the NHS Constitution.</p> <p>Respondents also queried whether a staff member's professional code would take precedence over any further specific requirements of their employer. There should never be an instance where NHS staff go against their professional code, and therefore, in this respect, the professional code does take precedence. However, this aim is not intended to challenge the professional code. The phrase 'subject to any more specific requirements' refers to any additional guidance, standard or codes provided by your employer, and should always be seen as such. We reflect this explicitly within the Handbook to the NHS Constitution, which will be updated alongside the NHS Constitution in July 2015.</p> <p>This aim is applicable to all NHS staff, be it front-line or not.</p>

Wording consulted on	Principle/ Value/Right/ Pledge/ Responsibility	Proposed wording post consultation	Explanation
<p>You should aim to help patients find alternate sources of assistance when you are unable to provide the care or assistance a patient needs.</p>	<p>Insertion of staff aim</p>	<p>After analysing the results of the consultation, it was agreed to amend the proposed wording:</p> <p><i>'You should aim to find alternate sources of care or assistance for patients when you are unable to provide this (including for those patients who are not receiving basic care to meet their needs)'</i></p>	<p>Broadly, there was a great deal of support for this staff aim. In particular, many felt that this addition was particularly pertinent in light of the terrible failings at Mid Staffordshire NHS Foundation Trust.</p> <p>However, upon carrying out our analysis of the responses received, it became evident that it would be beneficial to amend the wording in order to make the expectation clearer and more meaningful.</p> <p>To help clarify this staff aim, we have amended the wording to include a reference to 'basic care'. Making sure that a patient's basic needs are met (e.g. nutrition, hydration, comfort, hygiene) is a vital part of good-quality, personalised and attentive care. This aim places a clear expectation on staff to help patients find alternate sources of assistance or care – either when the patient is not, or will not be, receiving the care and assistance required to meet their needs, or where they prefer a reasonable alternative to the treatment being offered.</p> <p>We provide a detailed explanation of this expectation in the Handbook.</p>

Annex 2: Impact assessment and relevant legislation

The purpose of this Annex is to summarise the effects of the new inclusions and the changes made to the NHS Constitution. As the Constitution brings together existing rights rather than introducing new rights itself, this Annex therefore collates the existing Impact Assessments (IAs) for rights, pledges and responsibilities for patients, public and NHS staff set out in the Constitution, which have either been added to, or significantly altered from, the previously published version in 2013.

This accompanies, and should be read in conjunction with, the NHS Constitution consultation document published in February 2015.

Introduction

The NHS Constitution was first published in 2009, alongside an Impact Assessment assessing the economic, social, and environmental effects of the policy. The NHS Constitution brought together for the first time, the **principles, values, rights** and **responsibilities** that underpin the NHS. It sets out the enduring character of the NHS as a comprehensive and equitable health service and is intended to empower patients, staff and the public to know and exercise their rights to help drive improvements throughout the NHS.

The NHS Constitution is a 'declaratory document', codifying rights contained in

existing legislation and drawing them together in one place. It does not, itself, create new rights or replace existing ones.

Pledges in the NHS Constitution are aims, which the NHS is committed to achieve. Unlike rights, pledges do not have a legal underpinning, but there is a clear expectation that they can, and should, be delivered.

The Handbook to the NHS Constitution describes the legal basis of each right, helping patients, staff and the public to understand how to enforce their rights.

The NHS Constitution has a framework in primary legislation, established by the Health Act 2009. NHS bodies and private, independent and voluntary sector providers supplying NHS services are required by law to take account of the NHS Constitution in their decisions and actions.

The updates to the content of the NHS Constitution and the Handbook to the NHS Constitution do not create new burdens on the NHS or on local authorities in the exercise of their public health functions. Rather, they bring the Constitution into line with new statutory duties, powers and responsibilities.

This table collates existing Impact Assessments supporting rights, pledges and responsibilities for patients, public and NHS staff within the NHS Constitution, which have been added to or significantly altered from the previously published version.

¹ A consultation on updating the NHS Constitution (2015), Department of Health, <https://www.gov.uk/government/consultations/updating-the-nhs-constitution>

Subject	Wording of addition/ amendment	Impact assessment
Mental Health	The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard.	Section 1 of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, makes clear that the health service should secure improvement in both physical and mental health, and in the prevention, diagnosis and treatment of both physical and mental health problems. <i>No Health Without Mental Health</i> , ² the Government's mental health strategy published in February 2011 sets out this commitment to parity of esteem. Further detail on how parity of esteem can be achieved is set out in <i>Closing the Gap</i> , ³ published in February 2014 and <i>Achieving Better Access to Mental Health Services by 2020</i> ⁴ published in October 2014.
Francis recommendations		
Francis Recommendation 4	The patient will be at the heart of everything the NHS does.	Putting patients at the heart of everything the NHS does, was a recommendation made by Sir Robert Francis QC. This was set out in Sir Robert Francis QC's Mid Staffordshire NHS Foundation Trust public inquiry of 2013, and committed to by the Government in <i>Patients First and Foremost</i> . ⁵
Francis Recommendation 5	<p>You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm.</p> <p>You should aim to find alternate sources of care or assistance for patients when you are unable to provide this (including for those patients who are not receiving basic care to meet their needs).</p>	<p>Both staff aims were recommended in Sir Robert Francis QC's Mid Staffordshire NHS Foundation Trust public inquiry of 2013. The Government committed to consult on both aims for addition to the NHS Constitution.</p> <p>Regulations 12 and 22 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 place a duty on providers to provide care in a safe way, which would include protecting patients from avoidable harm. Both aims were publically committed to by the Government in <i>Patients First and Foremost</i>.</p>

² *No Health Without Mental Health*, (2011), HMG/DH.

³ *Closing the Gap*, (2014), DH.

⁴ *Achieving Better Access to Mental Health Services by 2020*, (2014), DH.

⁵ *Patients First and Foremost*, (2013), Department of Health.

Subject	Wording of addition/ amendment	Impact assessment
<p>Francis Recommendation 10</p>	<p>You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers.</p>	<p>The importance of staff following guidance, standards and codes relevant to their role, subject to any more specific requirements of their employers, was set out in Sir Robert Francis QC's Mid Staffordshire NHS Foundation Trust public inquiry of 2013. This was then publically committed to by the Government in <i>Patients First and Foremost</i>.</p>
<p>Francis Recommendation 13 (fundamental standards)</p>	<p>You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.</p> <p>You have the right to be cared for in a clean, safe, secure and suitable environment.</p> <p>You have the right to be protected from abuse and neglect, and care and treatment that is degrading.</p> <p>You have the right to be involved in planning and making decisions about your health and care with your care provider or providers, including your end of life care, and to be given information and support to enable you to do this. Where appropriate this right includes your family and carers. This includes being given the chance to manage your own care, support and treatment, if appropriate.</p> <p>You have the right to receive care and treatment that is appropriate to you, meets your needs and reflects your preferences.</p>	<p>In his Public Inquiry report, Sir Robert Francis QC recommended a number of specific changes to the NHS Constitution, based around fundamental standards of minimum safety and quality. In its response to the Inquiry, the Government committed to consider how best to reflect these in the NHS Constitution when it is next updated. These fundamental standards are set out in the Impact Assessment 2014 No.328, of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.</p>

Subject	Wording of addition/ amendment	Impact assessment
Francis Recommendation 178 (duty of candour)	You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident relating to your care which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You must be given the facts, an apology, and any reasonable support you need.	Francis Recommendation 178 reflects a duty of openness, transparency and candour. In its response to the Inquiry, the Government committed to consider how best to reflect these in the NHS Constitution when it is next updated. These fundamental standards are set out in regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
Transparency	You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, and outcomes, as compared to others nationally.	All providers registered with CQC are now legally required to display the quality rating awarded by CQC since April 2015. This is set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20A.
Armed Forces	As part of this, the NHS will ensure that in line with the Armed Forces Covenant, those in the armed forces, reservists, their families and veterans are not disadvantaged in accessing health services in the area they reside.	The Armed Forces Act 2006 (Section 343A, as inserted by section 2 of the Armed Forces Act 2011) created the requirement for an annual Armed Forces Covenant report to be laid before Parliament. This report aims to ensure that those who serve in the Armed Forces, regular or reserve, their families and veterans should face no disadvantage in accessing healthcare services in the area they reside.

Annex 3: Equalities statement

1. One of the key purposes of the NHS Constitution – including its content, implications for staff, patients and public, and intended impact on positive health outcomes – is to ensure that it is consistent with the provisions of the Equality Act 2010 as well as the new duties as to reducing health inequalities set out in the Health and Social Care Act 2012.
2. The original NHS Constitution, published in January 2009, set out in the first principle that *'The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief'*. This reflected the anti-discrimination laws at the time. The Equality Act 2010, further updated the law in this area, outlawing a number of forms of discrimination and extending protection from unlawful discrimination to additional groups with protected characteristics. This led to an update of the first principle to include references to gender reassignment, pregnancy and maternity, and marital or civil partnership status.
3. The 2015 update to the NHS Constitution identified the importance of achieving a parity of esteem between mental and physical health problems. This update set out in Principle 1 that *'the service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard'*, as pertinent to the Equalities Act 2010. Principle 4 of the NHS Constitution reaffirms that each individual patient is central to the NHS, through including the wording *'patient will be at the heart of everything the NHS does'*. We want to make it clear within the NHS Constitution that anyone within the Armed Forces Community should not be disadvantaged as a result of their role, in accessing health services in the area they reside.
4. Sir Robert Francis QC's report, *Culture Change in the NHS*, provides key information on the action taken to address each of the 290 recommendations he previously made in his Inquiry Report. This report is accompanied by an equality analysis, which provides an update on the concerns previously raised around people sharing protected characteristics. It also identifies what organisations have done, and are doing, to ensure any negative impacts identified in the *Hard Truths* Equality Analysis are being minimised or eradicated a year on.
5. Furthermore we have also strengthened patients rights to involvement in their health and care, within the updated version of the NHS Constitution which will be published in July 2015. We want all patients to have access to transparent and comparable data on the quality of local healthcare providers, and on outcomes, as compared to others nationally. This allows each individual access to the same information, which can help to inform their individual choice. We also want all patients, if appropriate, to be involved in planning and making decisions about their health and care.
6. In compiling the original consultation document we sought to ensure that our proposals would not have a negative impact

on individuals with protected characteristics. From the outset, we had regard to our Public Sector Equality Duty and examined each proposed amendment to ensure that there was no adverse impact on individuals with protected characteristics. We believed that the changes originally proposed would not adversely affect individuals with protected characteristics and that, in fact, they would improve and strengthen people's awareness of their rights and entitlements, promote equality and help tackle inequalities. As the NHS Constitution sets out existing rights and policy rather than creating new policy, this position has not changed since the consultation.

7. The changes to the NHS Constitution empower patients, staff and the public, and make their rights and entitlements more explicit. We have ensured that all changes to the text of the NHS Constitution strongly reflect the document's continued intention to reduce inequalities reduce social and health inequalities throughout, and the values of the Constitution clearly state that we will *'make sure nobody is excluded, discriminated against or left behind'*.

8. Consultation respondents also suggested a range of options to ensure that the NHS Constitution is accessible and useable to individuals from different backgrounds and to different sections of society. We have noted these suggestions, and intend to undertake measures to ensure that the Constitution is accessible to individuals from different backgrounds such as by making it available in various formats.

9. We will also ensure that we work to advance equality of access across NHS provision, focusing on the characteristics of people protected by the Public Sector Equality Duty.

