

# Public health supplement to the **NHS Constitution**

for local authorities and  
Public Health England

This publication was jointly produced by the Department of Health,  
Local Government Association and Public Health England

# The NHS Constitution: what does it mean for the public health system?

## Introduction

The Health and Social Care Act 2012 (2012 Act) paved the way for a new, stronger public health system in England.

From 1 April 2013, Local Government will lead the public health system at local level. At a national level, Public Health England (PHE – an executive agency of the Department of Health), will provide an authoritative national voice and source of expert advice and services.

The National Health Service (NHS) (i.e. the part of the health service under the NHS Act 2006 provided and administered by NHS bodies, such as the NHS Commissioning Board and clinical commissioning groups) also continues to have a big part to play in improving and protecting public health.

The changes under the 2012 Act mean that many local authorities in England have a statutory duty to take steps to improve the health of the people in their area,<sup>1</sup> as well as other public health functions. The relevant local authorities are:

- county councils;
- unitary authorities, including metropolitan district councils;
- London boroughs and the Common Council of the City of London; and
- the Council of the Isles of Scilly.

With these new functions comes the responsibility for a range of services that were previously commissioned and provided by NHS bodies.<sup>2</sup> This does not mean that local authorities are now NHS bodies, but it does mean that when they are undertaking their public health functions they are an important part of the comprehensive health service,<sup>3</sup> and like NHS bodies must have regard to the NHS Constitution.

The Secretary of State for Health also has a duty to have regard to the NHS Constitution. As an executive agency of the Department of Health, PHE must also have regard to the NHS Constitution when exercising its functions in relation to the health service in England. This is particularly applicable when it is exercising the Secretary of State's duty to protect public health.

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1 Section 2B of the NHS Act 2006 (as inserted by section 12 of the Health and Social Care Act 2012).

2 Examples of the services that local authorities can be expected to arrange are listed in the annex to this document.

3 i.e. the comprehensive health service established in 1948 which the Secretary of State has a duty to continue to promote under section 1 of the NHS Act 2006.

These changes mean that local authority staff commissioning or providing public health services and staff in PHE need to be aware of the NHS Constitution and what it means for them. This supplement to the Constitution aims to inform shared understanding and is produced jointly by the Department of Health, PHE and the Local Government Association (LGA).

### What is the NHS Constitution?

The Constitution sets out the principles and values of the NHS in England (which involves public health), and while it does not impose new duties or confer new rights it brings together in one place information on what staff, patients and the public can expect. This information falls into four categories:

- **Principles** – seven principles that guide the NHS in all that it does;
- **Values** – six values that should underpin everything NHS service providers do;
- **Rights and responsibilities** – some required by law; and
- **Pledges** made by the NHS about the way it will work with patients, the public and its staff.

The NHS Constitution was first published in 2009. Since then, there have been three public consultations that have proposed changes to the new patient and staff rights and staff duties. In light of these consultations and changes the NHS Constitution and the Handbook to the NHS Constitution have been revised three times in 2010, 2012 and 2013.

The March 2013<sup>4</sup> update reflects the new structure of the health service – including the role of local government. As of 1 April 2013, the health service under the NHS Act 2006 includes public health, as well as the functions and services which are the responsibility of NHS bodies. Rather than refer throughout to ‘the NHS and local authorities exercising public health functions’, the Constitution and its Handbook use to the term ‘the NHS’ to include local authority public health functions. It should also be noted that references to ‘the Secretary of State’ automatically include executive agencies of the Department, including PHE.

However, local authorities are not NHS bodies and the Constitution may have different applications to local authority public health services, where the legal framework and local government context is quite different from other parts of the health service.

### How does the NHS Constitution apply to public health services and interventions?

Local authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In particular, this means that when making a decision relating to public health functions, a local authority must properly consider the Constitution and how it can be applied, in so far as it is relevant to the issue in question. This does not mean that local authorities must apply the Constitution in the same way as NHS bodies do – they can consider the particular context in which they are operating. However,

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4 [www.gov.uk/government/publications/the-nhs-constitution-for-england](http://www.gov.uk/government/publications/the-nhs-constitution-for-england)

having due regard to the Constitution in decisions about the public health system offers an opportunity to local government and PHE, as well as benefits to the public. The principles, values, rights, responsibilities and pledges, alongside other sources of information, evidence and advice, all provide a helpful perspective that can, for example, be focused through the work of local health and wellbeing boards on joint strategic needs assessments and joint health and wellbeing strategies.

### Principles

All seven of the key principles in the NHS Constitution are as relevant to public health services as they are to any other health service. Local authorities and PHE must have regard to them and users of services should expect to see them put into practice.

### Values

The six values that are intended to underpin the culture of the NHS are all also relevant to local authorities when carrying out their public health responsibilities and are already in practice. The values are intended to become integral to the culture of all NHS bodies, as well as local authorities delivering public health services and PHE.

### Rights

The rights that the NHS Constitution describes are all based in law. Some of these rights apply to everybody across the comprehensive health service, regardless of whether the organisation dealing with the patient is a NHS body or a local authority (for example, the right not to be unlawfully discriminated against and the right to receive services free of charge). However, there are other rights that do not apply to local authorities, and where this is the case, the Constitution and the Handbook to the NHS Constitution makes this clear.

### Responsibilities

The Constitution sets out some of the things that patients and the public can do to help services work well, and these apply equally to public health services. Some are already focused directly on people and public health – participation in health improvement and protection initiatives, for example, or taking some personal responsibility for your own and your family's health.

### Pledges

The pledges in the NHS Constitution go above and beyond the legal requirements. They set out aspirations for health and public health services, and local authorities and PHE must have regard to them. The pledges do, however, represent things which the health service is committed to working towards achieving. Although not legally binding, local authorities should work towards delivering on those commitments and strive to ensure that the pledges are achieved. Among other things, the pledges cover the need to ensure smooth transitions between services and to make decisions in a clear and transparent way about the public's health.

## Staff

While NHS organisations, local authorities and PHE are different employers with different terms and conditions of service, staff working on health and public health activity have similar roles. This makes the rights, responsibilities and pledges set out in the NHS Constitution equally relevant to all three workforces.

### Does everything in the NHS Constitution apply to the public health system?

Not everything – in some cases, the NHS Constitution does not apply to local authorities or PHE. These include:

- maximum waiting times – there are no nationally-imposed waiting times for public health services arranged by local authorities, but the need to avoid unnecessarily long waits is strongly implicit across the rest of the Constitution and
- choosing a GP practice and seeing a particular doctor there – this is not something that local authorities are responsible for.

Of course, much of what local authorities and PHE do under their public health duties will be focused on communities and populations rather than services to individuals. The Constitution applies to both sorts of activity – for example, it is clear on the need for population-level activity, such as assessing local needs for services, in which local authorities should engage.

### Which services and staff does the NHS Constitution cover?

The requirement to have regard to the NHS Constitution applies to a local authority's exercise of its public health functions. With the growing emphasis on integration of services it might not always be obvious to either staff or the users of a service whether or not a service is 'public health'.

It is worth noting, that the Constitution contains a combination of legal rights that apply across the board and good practice that is relevant across the entirety of local authority service delivery, and which authorities are unlikely to find unduly burdensome in any context.

In some cases, it will be clear that the local authority is exercising a specific public health function under the NHS Act 2006, such as the weighing and measuring of school children, providing contraceptive and other sexual health services or providing NHS health checks. In other cases, the question will be whether the provision of that service is a step which the local authority is taking under its duty in section 2B of the NHS Act 2006 – i.e. its duty to take such steps as it considers appropriate for the purpose of improving the health of the people in its area. The key issue therefore will be the purpose for which local authority provides the services in question.

There will be other factors which in practice indicate whether a public health service is delivered under these new functions – for example, whether it is funded or part-funded by the local

authority's ring-fenced public health grant, whether it is one of those listed in the annex to this document, or whether the authority's director of public health is accountable for it.

The Constitution applies to the whole of PHE's activity, but it is directly relevant to functions such as specialist health protection services or specialist advice on health improvement and population healthcare.

### **What should local authorities do?**

Local authorities have a statutory duty to have regard to the NHS Constitution, and so need to be sure that staff who may be involved in providing or commissioning public health services are aware of the Constitution and its content.

Consideration of the Constitution should be incorporated in decision-making about public health, and such consideration should be properly recorded.

Local authorities should also consider how to make sure that the people who use those services (and the wider population of those who might) know that the Constitution exists as a clear guide to the standard of service they should expect.

### **What should Public Health England do?**

The PHE National Executive and its Advisory Board have committed to have regard to the NHS Constitution in their advice and decision-making.

# Annex: Local authority public health services

## Functions required by regulations<sup>5</sup>

- weighing and measuring children (the National Child Measurement Programme);
- health check assessments (NHS Healthcheck);
- open access sexual health services (including contraception, but excluding abortion, sterilisation and HIV treatment);
- providing public health expertise and advice to Clinical Commissioning Groups; and
- working with local partners to protect the health of the local population.

## Discretionary services<sup>6</sup>

- tobacco control and smoking cessation services;
- alcohol and drug misuse services;
- public health services for children and young people aged 5-19 (including Healthy Child Programme 5-19), and from 2015/16 all public health services for children and young people;
- interventions to tackle obesity, such as community lifestyle and weight management services;
- locally-led nutrition initiatives;
- increasing levels of physical activity in the local population;
- public mental health services;
- dental public health services;
- accidental injury prevention;
- population level interventions to reduce and prevent birth defects;
- behavioural and lifestyle campaigns to prevent cancer and long-term conditions;
- local initiatives on workplace health;

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5 The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013.

6 Services that local authorities are funded for, but that they deliver as they believe appropriate after taking into account local need and other factors. Local authorities may also decide to arrange services other than these. Although 'discretionary' in the sense that it is for an individual authority to decide whether a service is appropriate, if an authority does conclude that a service is appropriate to improve public health, then it has a statutory duty to provide that service under section 2B of the NHS Act 2006.

- supporting, reviewing and challenging delivery of key public health funded and NHS delivered services, such as immunisation and screening programmes;
- local initiatives to reduce excess deaths as a result of seasonal mortality;
- the local authority role in dealing with health protection incidents, outbreaks and emergencies;
- public health aspects of promotion of community safety, violence prevention and response;
- public health aspects of local initiatives to tackle social exclusion; and
- local initiatives that reduce public health impacts of environmental risks.

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