

A consultation on strengthening the NHS Constitution



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CONSTITUTION**
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A consultation on strengthening the NHS Constitution

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Ministerial foreword

I am grateful to Professor Steve Field and the NHS Future Forum for their letter of 31 October 2012 to the Secretary of State, making recommendations for strengthening the NHS Constitution. I agree with their conclusions and can accept their recommendations in full.

This Government believes in and fully supports the NHS Constitution. The Constitution should be woven into the fabric of everything the NHS does so that the expectations of patients, staff and the public can be met first time, every time. We will safeguard the NHS Constitution now and in the future.

The Constitution is an enduring document. The threshold for making changes to it is – rightly – set high. Any changes should be clear and compelling. Politicians, of any party, should not be free to tinker with it at will. But the Constitution also needs to move with the times – to reflect changes to the law and to ensure it applies to all those involved in delivering NHS services.

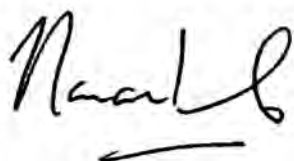
The NHS Future Forum makes a powerful case for raising awareness of the Constitution substantially, and for taking steps to give it greater traction so that people are clear what to do when their expectations are not met.

Over the coming months, the Department of Health will work closely with the NHS Commissioning Board, clinical commissioning groups and Health Education England to develop coordinated plans for promoting and raising awareness of the Constitution.

We accept the Forum's advice that more needs to be done to give the Constitution 'teeth'. We will set up an expert group, which I will chair, to develop a set of specific proposals to achieve this. It is important these proposals take account of the conclusions of the public inquiry into the events at Mid Staffordshire NHS foundation trust. That is why we will consult on these separately in the spring.

I am happy to take on the challenge set by the Future Forum of championing the NHS Constitution and holding the service as a whole to account for living by its values.

We now look forward to hearing from patients, NHS staff, the public and our partners – including the national health charities, think tanks and professional organisations – about our proposals.

A handwritten signature in black ink, appearing to read 'Norman Lamb', with a horizontal line underneath.

Norman Lamb
Minister of State for Care and Support

1. Introduction

Purpose of the consultation

1. This consultation seeks views on proposals to strengthen the NHS Constitution. There are ten key areas in which we propose to amend the Constitution:
 - Patient involvement;
 - Feedback;
 - Duty of candour
 - End of life care;
 - Integrated care;
 - Complaints;
 - Patient data;
 - Staff rights, responsibilities and commitments; and
 - Dignity, respect and compassion.
2. In addition, we propose some minor technical changes to the Constitution that are necessary to ensure it reflects legislative changes introduced since its launch in January 2009. This includes making clear that the Constitution extends to local authorities in the exercise of their public health functions as set out in the Health and Social Care Act 2012.
3. The proposed changes described in this consultation document respond to the recommendations of the NHS Future Forum working group on the NHS Constitution, which was tasked in March 2012 with advising the Secretary of State on whether there was scope for strengthening and reinforcing the Constitution¹. The Forum's letter of advice, which was sent to the Secretary of State for Health on 31 October 2012, can be found in Annex 2.
4. The NHS Constitution is designed to be an enduring document. The threshold for making changes to the Constitution should be high. Any changes should be clear and compelling. That is why the Health Act 2009² requires there to be a public

1 NHS Future Forum: Terms of reference

www.wp.dh.gov.uk/transparency/files/2012/05/Annex-B-Terms-of-Reference.pdf

2 Health Act 2009. www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_093280

consultation on all changes to the content of the Constitution, and for any changes to the principles to be laid as a Statutory Instrument before Parliament.

5. Our proposals represent a strengthening of the Constitution in a number of specific areas, reflecting those recommended by the NHS Future Forum working group on the Constitution. We agree with the Forum that a substantial rewrite is not needed. But we are clear that before the Department of Health, the NHS Commissioning Board, clinical commissioning groups and Health Education England all embark on promoting the Constitution in a coordinated way, the text needs to be accurate and up-to-date.
6. The changes set out in this consultation document build on earlier amendments to the NHS Constitution. In 2010, the Constitution was updated to include:
 - a new right for patients to start any non-emergency treatment within a maximum waiting time of 18 weeks of a GP referral and for the NHS to take all reasonable steps to offer a range of alternatives if this is not possible; and
 - a new right to be seen by a specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected.
7. In 2012, the Government enshrined whistleblowing in the NHS Constitution. These changes included:
 - an expectation that staff should raise concerns at the earliest opportunity;
 - a pledge that NHS organisations should support staff when raising concerns; and
 - clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrongdoing without suffering any detriment.
8. We are adopting a two-phased approach for consulting on how the NHS Constitution can be strengthened and reinforced. This consultation is primarily about seeking views on a limited package of content changes intended to strengthen the text of the Constitution, as well as asking for thoughts about how awareness of the Constitution can be increased. However, a key part of the credibility of the Constitution lies in people being equipped to use it to uphold their expectations of the NHS. Early next year, we will develop and consult on proposals, following the publication of the Francis inquiry report into the events at Mid Staffordshire NHS Foundation Trust, on how to give the Constitution greater traction.
9. Subject to the outcome of this consultation, the Government plans to publish an updated Constitution by 1 April 2013, when the majority of new organisations in the system take on their full functions. Alongside this, the Department will publish

a revised and updated Handbook to the NHS Constitution³ and a new Statement of NHS Accountability.

Role of the NHS Constitution

10. 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 it is intended to empower patients, staff and the public to know and exercise their rights to help drive improvements throughout the NHS.
11. The Constitution is a 'declaratory document', codifying rights contained in existing legislation, drawing them together in one place. It does not, itself, create new rights or replace existing ones. 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. Pledges in the 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.
12. 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 intention is that the Constitution, and with it the principles of the NHS, is embedded at every level within the health service and among those organisations providing NHS services.

How we reached our proposals

13. The Health and Social Care Act 2012 (the Act) strengthened the legal foundation of the NHS Constitution. The Act placed new duties on the NHS Commissioning Board and clinical commissioning groups to promote the NHS Constitution. The draft Care and Support Bill also purposes to put the current duty on Health Education England to promote the Constitution on a statutory basis. It also extended the existing duty to have regard to the NHS Constitution to the Secretary of State for Health and to the new bodies established by the Act. In addition, local authorities were required by the Act to have regard to the Constitution in the exercise of their public health functions.⁴ As a result of changes made by the Act the Constitution needs to be updated to be technically accurate.

3 The Handbook to the NHS Constitution, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132960

4 The new duty on local authorities to have regard to the NHS Constitution applies in relation to the public health functions of local authorities under section 2B of the NHS Act 2006 (inserted by the Health and Social Care Act 2012).

14. On 4 July 2012, the Secretary of State for Health published the first *Report on the Effect of the NHS Constitution* which analysed its practical impact over the three years since its launch.⁵ Drawing on the initial advice of the NHS Future Forum⁶, the report found that public awareness of the Constitution remains generally low and there is little evidence that patients or staff use it as a means of exercising their rights and expectations. That is why the Government introduced new duties on commissioners to promote the NHS Constitution. The Government plans further work with the NHS Commissioning Board, Health Education England and clinical commissioning groups to explore how to increase awareness in a coordinated way.
15. Over the summer, the NHS Future Forum engaged with stakeholders, patient groups, NHS staff, industry and the public as it developed its advice on how to strengthen and reinforce the Constitution. Professor Steve Field wrote to the Secretary of State for Health on 31 October 2012 setting out the Forum's conclusions on how to strengthen the Constitution. The Forum found that although awareness was low, there is a striking degree of support around the existing content and wording of the NHS Constitution.
16. Their letter recommended that there are three essential steps that need to be taken now if the Constitution is to make a real difference in the NHS:
 - First, awareness of the NHS Constitution needs to be increased dramatically amongst public, patients and staff (chapter 3 of this document sets out the Government response for consultation);
 - Second, the NHS Constitution must be given greater traction – especially around what happens when the NHS falls short of people's rights or expectations (this is planned to be the subject of a further consultation next spring, see chapter 4 for further detail); and
 - Third, the content of the NHS Constitution needs to be fully up-to-date and strengthened in several key areas including: patient involvement; support for staff; feedback; a duty of candour; protection and use of information; and 'making every contact count' (the Government response to this recommendation is the main subject of this consultation document – see Chapter 3 and the attached draft updated Constitution set out in Annex 4).

5 The Health Act 2009 requires the Secretary of State to report on the effect of the NHS Constitution every three years and to lay it before Parliament. The first report was published in July 2012 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132960

6 Letter from the NHS Future Forum to the Secretary of State for Health, 26 June 2012 www.wp.dh.gov.uk/publications/files/2012/07/Letter-to-the-SoS-from-Professor-Steve-Field-NHS-Future-Forum-26-June-2012.pdf

2. Strengthening the content of the NHS Constitution

Introduction

17. This section outlines our proposals for strengthening the content of the NHS Constitution. The specific changes we propose are set out as a marked-up draft Constitution in Annex 4. This incorporates a detailed commentary explaining each individual change and should be considered alongside the information in this consultation document.
18. Given the strong support for the existing text of the NHS Constitution, our approach to strengthening the document, and responding to the recommendations of the NHS Future Forum, has been to ensure that proposed changes are consistent with the Constitution's intended purpose and that they are:
 - empowering to patients and staff;
 - enduring and consensual;
 - legally accurate;
 - concise and accessible;
 - are 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.
19. Based on the recommendations from the NHS Future Forum, and the criteria above, we propose a limited set of specific content changes aimed at improving the current text, and in some cases to keep the Constitution legally up to date. Whilst these are intended to be based on insights from the NHS Future Forum's engagement, we want to give everyone the chance to have their say on our proposals. In addition, we welcome other suggestions that are aimed at making the text more accessible, raising awareness and giving the Constitution greater traction.

Patient involvement

20. The Constitution sets out that the NHS belongs to the people and that it is there to help us manage our health. However, the NHS Future Forum noted in its letter to the Secretary of State that the language of the Constitution can sometimes seem

paternalistic and read as if patients, their families and carers are passive recipients of their care and treatment. It also indicated that the Constitution does not emphasise the importance of shared decision-making. The Forum has suggested that the Constitution should reflect that patients own and manage their health and involving patients, and where appropriate their carers and family, in decisions about their care and treatment is good practice and central to delivering high quality care.

21. In addition, the Health and Social Care Act 2012 created a new duty on commissioners to promote the involvement of individuals, their carers and representatives in decisions about their own care and treatment.
22. We propose strengthening the Constitution with an amended principle that the NHS aspires to put patients at the heart of everything it does. We also propose amending several rights and pledges to reflect more clearly that the NHS supports individuals to manage their own health and involves them, their families and carers in decisions that affect them. We further propose creating a new pledge to involve patients in care planning discussions and to offer a written record of their care plan.

Q1. What are your views on the proposed changes to strengthen patient involvement in the NHS Constitution?

Feedback

23. The NHS Future Forum noted in its letter to the Secretary of State that asking for and acting on feedback from the public, patients and staff is essential. This enables all organisations involved in the delivery of NHS services to learn and continuously drive improvements in patient care. The Forum noted that there should be an emphasis on informing patients, inviting feedback – positive or negative – and addressing concerns, which differs from the procedure for handling complaints. Asking for and acting on feedback supports the Prime Minister’s commitment to introduce a ‘Friends & Family Test’, a simple question asked of patients requesting their feedback on the care they received. This question, along with other feedback provided by patients and staff can be used to drive cultural change and continuous improvements in the quality of the care received by patients.
24. At present, the Constitution only sets out responsibilities on patients and staff to provide feedback. We propose clarifying that NHS organisations should welcome and act on feedback in the principles and values of the Constitution and adding it as a new pledge to the constitution.

Q2. What do you think about our proposal to set out in the NHS Constitution the importance of patient and staff feedback towards improving NHS services?

Duty of Candour

25. The Government has made clear that hospitals need to be open about mistakes and always tell patients if something has gone wrong. During the passage of the Health and Social Care Act 2012 through Parliament, we confirmed our intention to create a duty of candour in the NHS, requiring (through contracted mechanisms) disclosure of patient safety incidents to those who have been harmed or their families and representatives. We made a commitment to introduce a requirement for the NHS Commissioning Board to include a standard condition in the NHS Standard Contract relating to the duty of candour, through the standing rules regulations.
26. The current drafting of the Constitution contains a pledge to acknowledge mistakes, apologise, explain what went wrong and put things right quickly and effectively. In light of the intention to create a specific duty of candour, it makes sense to revisit the wording of this pledge. We are therefore proposing to add to this pledge, reflecting in more detail what people can expect to receive from the NHS in terms of openness about patient safety. In bringing the pledge into line with our proposal for a contractual requirement, the terms of the pledge are being made more specific, while at the same time placing greater force behind them. As such, views are sought on the proposal to amend the pledge in the way suggested.
27. We are aware that the report of the Mid-Staffordshire Inquiry will need to be considered very carefully as it may comment on the Government's proposals for a contractual duty of candour. We are committed to giving full consideration to the findings of the enquiry and therefore, there may be an opportunity, or indeed a need, to amend this pledge further in the near future. In addition, the precise wording of this pledge will need to mirror the wording inserted into the NHS Standard Contract.

Q3. Do you agree with, or have any concerns about, amending this pledge to make it more specific as suggested?

Making every contact count

28. The NHS Future Forum's January 2012 report on public health⁷ sets out a clear case for changing the culture of the NHS so that healthcare professionals take every

⁷ The NHS's Role in the Public's Health: A report from the NHS Future Forum
www.dh.gov.uk/pnod_consum_dh/groups/dh_digitalassets/documents/digitalassets/dh_132114.pdf

opportunity to talk to patients and carers about how to improve their health – making ‘every contact count’.

29. The Government agreed in its response to the Forum’s report ‘that it should be the role of all healthcare workers in the NHS to make use of those contacts wherever appropriate, with the aim of improving the public’s health and wellbeing and reducing health inequalities’.
30. We propose that the Constitution should set out a responsibility for staff that where appropriate, they should encourage and support patients and colleagues to improve their health and wellbeing.

Q4. What are your views on including in the NHS Constitution a new responsibility for staff to make ‘every contact count’ with the aim of improving health and wellbeing of patients?

Integrated care

31. The *Caring for Our Future*⁸ engagement on integrated care, undertaken jointly with the NHS Future Forum, heard that, whilst the quality of health and care is generally of a high standard, services were often fragmented, uncoordinated, difficult to access and not personalised. For patients and service users this means having to provide basic information and their case history to every new professional or service they encounter; not getting the information they need to manage their care; unnecessary layers of bureaucracy leading to delays in accessing the treatment and care and unnecessary hospital admissions when they have not received the care they need.
32. Following recommendations of the NHS Future Forum in June 2011, the Government changed the Health and Social Care Act 2012 to create stronger duties on the NHS Commissioning Board, clinical commissioning groups, health and wellbeing boards and Monitor to encourage integrated working at all levels. In response to the Future Forum’s second report, on integrated care, we agreed with the Forum that the entire health and social care system should share a clear and common understanding of integrated care as a means of putting patients at the centre of their care. Work is underway to develop a framework for integrated care as we made clear in the commitment set out the *Care and Support White Paper*⁹.
33. We believe that there are ways to strengthen the NHS Constitution that capture the essence of integrated care. Whilst the Constitution highlights how organisations should work in partnership with one another, there is less focus on what integrated care means

⁸ Caring for our Future, www.caringforourfuture.dh.gov.uk/better-care/integrated-care

⁹ Care and Support Paper 2012, www.dh.gov.uk/health/2012/07/careandsupportwhitepaper

for patients, their families and carers. We believe that the Constitution should articulate that care should be coordinated and tailored around the needs and preferences of patients. Integrated care will improve the experience and outcomes of those using health and care services, particularly the frail, elderly and those with long-term or multiple conditions, who rely on seamless and coordinated care the most.

34. The Constitution also needs to acknowledge that patients should be at the heart of everything the NHS does and that patients play a key role in managing their own care. It should emphasise the importance of encouraging and supporting patients by putting them, their families and carers at the centre of decisions that affect them. These small but important changes to the Constitution will make clear the principle that people should experience integrated care – care that is coordinated and tailored around their needs and preferences.

Q5. Do the proposed changes to the NHS Constitution make it sufficiently clear to patients, their families and carers how the NHS supports them through care that is coordinated and tailored around their needs and preferences?

Complaints

35. In its letter of 31 October 2012, the NHS Future Forum concluded that patients and staff are not clear what they should do when the service falls short of expectations set out in the NHS Constitution. The Forum recommended that the Constitution should make clear what patients should expect when they make a complaint, who is responsible for dealing with it and what actions might follow.
36. The complaints regulations came into effect on 1 April 2009¹⁰, after the publication of the NHS Constitution. There is now an opportunity to reflect these regulations more fully in the updated Constitution, which strengthens and adds to existing rights in the area of complaints, reflecting the reformed NHS complaints arrangements. These changes are intended to make it clearer to patients, their carers and the public about what they should expect when a complaint is made. The new rights make clear that patients should be offered the opportunity to discuss how the complaint will be handled, the manner in which the complaint is to be handled, the period within which the investigation should be completed and when they are likely to receive a response. The response should include confirmation of any actions that may follow as a result of the complaint. These changes are simply set out in regulation and do not impose new burdens on the NHS.

¹⁰ The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 [SI 2009, No 309]

37. However, while we believe that making the Constitution clearer about the complaints process is an important first step in helping people to understand what to do when their expectations are not met, more needs to be done to give the Constitution greater traction. Chapter 4 of this consultation document sets out our proposals for further work in this area, building on the recommendations of the NHS Future Forum.

Q6. Do you think it is helpful for the NHS Constitution to set out these additional rights on making a complaint and seeking redress?

Q7. Do the additional new rights make the complaints process easier to understand and make clear to patients what they should expect when they make a complaint?

Patient data

38. Information about patients is routinely collected by the NHS to support people's individual care and to deliver and improve health and care services. Technological advances allow greater volumes of data to be used to check the safety and quality of care, improve services, identify risk factors of disease, research new approaches to care and treatment and inform government policy.
39. Increasingly, patients are taking greater control of their own health, supported by, and in partnership with, clinicians. As part of this, patients want greater control over how their information is used and their privacy protected.
40. Too often patients do not know their confidential data is used and the circumstances in which they can object to its use. A succession of situations have come to light where harm has been caused by failure to share information appropriately. In many of these cases, information has not been shared when it should have been, for example in the case of Baby Peter. In others, information has been shared inappropriately or the information has not been kept securely as in the case of Brighton and Sussex University Hospital trust was fined £325,000 in June 2012 for inappropriate disposal of computer equipment.
41. Very often, the objective can be achieved using anonymised data but sometimes identifiable data has to be used. This requires the NHS to be able to protect individuals' personal information effectively.
42. Privacy and confidentiality remain core to maintaining trust between patients and the staff caring for them. The confidentiality of patient data is protected in law by common law, the Data Protection Act 1998 and the Human Rights Act 1998. Personal, or identifiable data can only be used and shared where there is a legitimate legal basis to do so, such as:

- **consent** – in many cases implied consent is enough – that you have not expressed dissent (for example, that your data should be shared with other clinicians involved in your further care and treatment); in some circumstances this needs to be explicit consent (for example, agreeing to participate in a drugs trial);
- **being mandated under statute** – for example, Health Protection (notification) regulations for notifiable diseases, or children's databases under the Children's Act 2004, for the purposes of safeguarding children;
- **being permitted under statute** – reporting serious crime or disclosing relevant information to other agencies under the Civil Contingencies Act to ensure that the needs of people are met in event of an emergency; and
- **research** – research is normally based on consent or on anonymised data, but where this is not practical, for example, because the research is historical or researchers need to identify people in order to ask them to participate in a study, the law offers other ways to achieve this, subject to safeguards.

43. The current text of the NHS Constitution contains two main references to the use of patient data. For patients, the Constitution says that *'you have the right to privacy and confidentiality and to keep your confidential data safe and secure.'* For staff, it states that *'you have a duty to protect the confidentiality of personal information that you hold unless to do so would put anyone at risk of significant harm'.*
44. The Government has heard that the existing wording of the Constitution does not adequately reflect the balance of rights in this area and that the Constitution should better reflect how the NHS uses people's information beyond their own care and treatment and the assurances and legal rights that patients have. The existing text risks implying that the best way to protect patient data is, almost always, to refuse to share it, even potentially between those experts involved in your care and treatment.
45. This has come through in particular from Dame Fiona Caldicott's current review of Information Governance in the NHS. In addition, in an earlier report, published in January 2012, the NHS Future Forum said the Constitution should clarify how patient data is used and protected. The Government's information strategy for health and social care, published in May 2012, also set out the importance of information flowing safely but effectively across health and care to bring about more joined up, safer and better care.
46. This consultation does not propose any changes to the law in relation to confidential patient data. Instead, the changes to the NHS Constitution proposed here aim to offer patients a fuller explanation of their rights under existing law and the NHS commitments with respect to data. The revised text, including the proposed new pledge *'to ensure those involved in your care and treatment have access to your*

health data so they can care for you safely and effectively (pledge)' aims to improve the balance.

Q8. Do the proposed changes to the NHS Constitution make clear how the NHS will safeguard and use patient data?

Staff rights, responsibilities and commitments

47. The NHS Constitution is a powerful mechanism for bringing together the key rights, responsibilities and values that are important to staff.
48. The NHS Future Forum – which includes representatives from trade unions, professional bodies, and NHS employers – recommended that the Constitution should make clear that NHS staff should feel supported in their jobs and that patient care is improved when staff feel valued, supported and empowered.
49. We have reflected carefully on the advice of the Forum and have sought to reflect its commitment to ensuring that all NHS staff are supported in their jobs. It is crucial that staff are recognised for their active role in providing high quality service and better health outcomes for the public. To this end, we propose changes to enhance what staff can expect from the NHS and strengthen their responsibilities and the commitments made to them.
50. We have proposed changes around the NHS' commitments to ensure that staff feel valued and supported in an open and positive working environment. Equally, the role of staff has been strengthened by the additional responsibilities proposed around patient involvement, contributing to the reduction of health inequalities and supporting patients and colleagues to improve their health and wellbeing. Our changes also recognise that training and development, and provision of constructive feedback, should contribute to individuals' wider and long-term personal development so that all staff are supported to achieve their potential.

Q9. Do you agree with the proposed changes to the wording of the staff duties and the aims surrounding the rights and responsibilities of staff? What do you think about the changes to make clear to staff around what they can expect from the NHS to ensure a positive working environment?

Parity of esteem between mental and physical health

51. The commitment to parity of esteem between mental and physical health services was made clear in the Government's mental health strategy published in February 2011. Our mental health strategy, *No Health without Mental Health*, has been

instrumental in emphasising the need for mental health to be treated on a par with physical health and wellbeing. The Health and Social Care Act 2012 was amended to make clear that mental and physical health are both covered by the NHS.

52. The opening paragraph of the Constitution already highlights the parity of mental health with physical health. In the proposed additions to principle 1 we seek to accentuate that mental health must be considered on a par with physical health. We do not, however, believe that it is appropriate to insert “mental and physical” before every reference to “health” – the Constitution as a whole, is intended to apply to both with any necessary exceptions explained in the Handbook to the NHS Constitution.

Q10. Do you agree with the wording used to emphasise the parity of mental and physical health? Are there any further changes that you think should be made that are feasible to include in the NHS Constitution?

Dignity, respect and compassion

53. Compassionate care should be at the centre of the care and treatment the NHS provides. The NHS Future Forum considers it a core principle that the NHS needs to continue to uphold in all aspects of service delivery. A culture of compassion, dignity and respect is best achieved when the concerns and interests of individuals are prioritised and their basic human rights are safeguarded. To better reflect this we have strengthened the wording in the values’ section of the Constitution. We have also incorporated dignity, respect and compassion into the aims for staff.
54. We believe that patients should not have to share sleeping accommodation with patients of the opposite sex. The NHS should always strive to treat patients with privacy and dignity and where possible accommodate patients in same sex surroundings. The NHS has made significant progress towards eliminating mixed sex accommodation with breaches reported in only few cases. Given this is now widespread practice in the NHS, we believe the Constitution should be updated to empower patients of their entitlement.
55. We therefore propose adding a new pledge to the NHS Constitution that patients will not have to share hospital sleeping accommodation with patients of the opposite sex.

Q11. What are your views on the wording used to highlight the importance of ensuring that the tenets of dignity, respect and compassion are sufficiently represented in the NHS Constitution?

Q12. Do you agree with the suggestion of including a new pledge for same sex accommodation?

Local authorities' role

56. From April 2013 local authorities across England (except district councils in areas where there is also a county council) will have new duties to provide public health services for the people in their area. This means that each local authority must take appropriate action for improving the health of the people in its area. Improving health can include a wide range of activity – for example, sexual health services, drug and alcohol misuse services, smoking cessation, or weight loss services.
57. Local government already has extensive experience in providing services that influence health – social care, planning, housing, community safety and many others. Returning lead responsibility for public health to local authorities gives them an opportunity to take a more strategic role. They can now promote public health through the full range of their business and become an influential source of trusted advice for their communities, the local NHS and everyone whose activity might affect, or be affected by, the health of the people in their area.
58. While this does not mean that local authorities will become NHS bodies, the Health and Social Care Act 2012 ensures that they must have regard to the NHS Constitution when carrying out their public health functions and take proper account of it in making decisions. We are proposing a technical update to the Constitution in order to make it clear that patients can expect the same standards and protection to apply to public health services commissioned by local authorities. Where there are differences of detail for elements of the Constitution (for example, local authorities and the NHS have separate complaints procedures) these will be explained in the updated Handbook to the NHS Constitution.

Q13. Do the proposed changes to the NHS Constitution make it clear what patients, staff and the public can expect from local authorities and that local authorities must take account of the Constitution in their decisions and actions?

3. Raising awareness and embedding the NHS Constitution

Current levels of awareness

59. The purpose of the NHS Constitution is to empower patients, public and staff by helping them to understand what they should expect from the NHS and what their responsibilities are in turn. This can only work if people are aware of, and understand the content of the NHS Constitution.
60. However, public awareness stood at 27% and staff awareness at 54% in 2012. Whilst it is encouraging that certain staff groups such as managers have higher awareness of the NHS Constitution, there are large variations between different occupations with lower awareness in some of the groups with the greatest patient contact.
61. The NHS Future Forum's letter of 31 October 2012 states that awareness of the *"NHS Constitution is unacceptably low and needs to be increased. Few people know about it. Fewer still use it to uphold their expectations of the NHS. This must change."*
62. The Government agrees with the Forum's proposed approach to raising awareness. Their letter advocates adapting the successful approach taken by the East of England SHA to raising awareness.
63. Awareness of the Constitution in the East of England SHA is significantly higher than elsewhere (41% public awareness compared with a 27% national average). Here, a concerted effort was made to improve awareness of the Constitution, starting with NHS staff and then patients. The East of England included it in board papers, annual appraisals and sought to weave it into every tier of each organisation. Among the public, it did so by engaging the local population, referring to the Constitution in letters to patients, local campaigns (for example, to eradicate mixed sex accommodation) and public engagement events.
64. The Forum recommends to the Secretary of State that he holds the NHS Commissioning Board to account for its new duty to promote the Constitution, especially for staff awareness.

Actions to raise awareness

65. The new duties on the NHS Commissioning Board, clinical commissioning groups and Health Education England to promote the Constitution will be important in driving-up awareness. The Department itself, working in partnership with these bodies, has a role to play in increasing awareness. During this consultation period, we will work collaboratively with these organisations to develop detailed plans for communicating the Constitution more effectively, for developing awareness among patients, staff and the public, and for fully embedding it throughout the NHS.
66. The intention is that these plans will broadly follow the East of England model adapted to the new system. Staff awareness needs to be increased first in order that they can respond to queries about the Constitution, but the follow-through to public and patients must be rapid. This is not about a mass advertising campaign, but it is about using available opportunities, for example patient appointment letters, to flag the link to the NHS Constitution.
67. The intention is to produce the NHS Constitution in different versions including an easy read version and a one page summary version.

Q14. Have you seen further examples of good practice in raising awareness and embedding the NHS Constitution that should be taken into account in these plans?

Q15. Do you have further recommendations for re-launching, rolling out and embedding the Constitution from next spring?

4. Giving the NHS Constitution greater traction

68. We accept the NHS Future Forum's analysis that patients are not clear about what to do when they do not get what they should, according to the NHS Constitution. On an individual level, patients do not know where to go to for help resolving their problem, or to whom they should complain. Too often they may be referred to an organisation's complaints arrangements rather than being listened and responded to when they initially try to provide feedback or to seek less formal resolution of their concerns.
69. We welcome the Forum's recommendations in this area. The Constitution plays an important role in capturing what patients should expect of the NHS but its purpose extends beyond that. It is something that patients should be able to turn to when they do not receive what they should and that empowers and encourages them to seek redress when the NHS falls short of delivering upon its commitments.
70. However, as the Forum acknowledges, addressing the issue of how to give the Constitution greater traction is a complex task and there are a number of possible responses to consider beyond updating the content of the Constitution. These range from encouraging a culture of feedback amongst patients and staff that can lead to improvements in care, to providing patients with access to advice and support so they are confident about their rights and how they should respond when they do not feel they are being upheld. The complaints system remains the final stop when all else fails, but more can be done to make this and intermediate processes clearer.
71. As a first step, the content of the Constitution has been updated to be clear about the importance attached to feedback and to provide greater clarity on service users' rights when using the NHS complaints procedures.
72. However, beyond strengthening the content of the Constitution, we agree that more needs to be done to help patients understand what the rights and the pledges in the Constitution mean. More also needs to be done to provide support and advice when rights are not upheld, and to put in place more effective mechanisms for the gathering of feedback and putting things right.
73. We therefore plan to do further work in the coming months to consider what may be most effective in assisting patients in this area. For example, the Forum has suggested we consider whether putting Patient Advisory Liaison Services (PALS) on a statutory basis would help and to do further work on exploring options here.

We plan to launch a second public consultation in the spring on proposals to give the Constitution greater traction so that patients have appropriate redress where Constitution rights are not delivered.

74. This approach will also ensure there is an opportunity to consider any recommendations made in the final report from the Mid-Staffordshire NHS Foundation Trust Public Inquiry.

Q16. To help shape our future consultation, do you have views on how the NHS Constitution can be given greater traction to help people know what they should do when their expectations of the NHS are not met?

5. Statement on impact and equalities

Impact

75. The NHS Constitution is a declaratory document summarising existing principles, legal rights and duties rather than creating them in law. The Constitution is not a policy document, rather it conveys what is already offered by the NHS and thereby empowers patients, staff and the public to know what to expect. The Constitution is chiefly a means for alerting patients to what they should already expect to receive. Therefore, the proposals for strengthening the Constitution do not create any new burdens for the NHS, businesses or individuals. For example, we propose to strengthen patients' rights in relation to involvement in their health and care, drawing on existing legislation and the new duties imposed on commissioners to this effect in the Health and Social Care Act 2012. Likewise, we propose setting out additional details of the NHS complaints process, but this just sets out existing provisions contained in regulations.
76. Impact assessments analysing the potential costs and benefits of publishing the NHS Constitution were published in June 2008 and January 2009¹¹. A key part of strengthening the Constitution is delivering on what was initially envisaged – by raising awareness and embedding it throughout the NHS. To support this, the Health and Social Care Act 2012 created a duty on the NHS Commissioning Board and clinical commissioning groups to promote the Constitution, as well extending the duty on all organisations involved in the delivery of NHS care to local authorities in the exercise of their public health functions and to the Secretary of State for Health. Costs and impact were considered through the development of the legislation and further analyses here would be duplicative¹².

Equalities

77. One of the key purposes of this refresh was to ensure that the NHS Constitution – its content, implications for staff, patients and the public and its intended impact on positive health outcomes – is in line with the provisions of the Equalities Act 2010 as well as with the new duties on commissioners as to reducing inequalities set out in the Health and Social Care Act 2012.

11 Impact Assessment of the NHS Constitution – 17 December 2008.

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_093416.pdf

12 Coordinating document for Impact Assessments and Equality Analysis for the Health and Social Care Bill.

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129916.pdf

78. The original NHS Constitution, published in January 2009, set out in Principle 1 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, however, 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. On that basis, we propose to update Principle 1 to include references to gender reassignment and marital or civil partnership status.
79. We have proposed that patient involvement should be strengthened in the Constitution, making clear that patients should be involved fully in discussions and decisions about their health and care and that services should be coordinated around their particular needs. We have also strengthened the Constitution by making clear that patients should be treated with compassion, dignity and respect that covers, but also goes beyond, the entitlements to dignity and respect set out in the Human Rights Act 1998. In addition, we have proposed that there should be a new responsibility whereby staff work “towards providing fair and equitable services for all... and helping to reduce inequalities in experience, access or outcomes of differing groups or sections of society...”. Our intention has been to make clear that services should be tailored to the needs of individuals, in the way they access services and receive treatment.
80. From the outset, we have had regard to our public sector equality duty. We have done this by examining each proposed amendment to ensure that there was no adverse impact on individuals with protected characteristics¹³. We believe that the changes proposed here do not adversely affect individuals with protected characteristics and that, in fact, they improve and strengthen people’s rights and entitlements, promote equality and help tackle inequalities. Our changes have taken into account the diverse needs, characteristics and circumstances of patients, staff and members of the public.
81. Through the work of the NHS Future Forum, there has been engagement with a wide range of stakeholders, exploring the effect of the NHS Constitution since its launch and in seeking views on how the Constitution could be strengthened. The groups that the Forum engaged included staff and patient organisations, charities and voluntary sector organisations, clinicians, professional bodies, trade unions, users of mental health services, and children. This engagement informed the Forum’s recommendations to the Secretary of State and the proposals set out in this consultation.

¹³ Protected characteristics include age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

82. The proposed changes to the NHS Constitution empower patients, staff and the public, their rights are strengthened, and entitlements enhanced. We have ensured that all changes to the text of the NHS Constitution strongly reflect the document's continued intention to reduce inequalities – social and in health – throughout, and the last section of the Constitution clearly states that we will “make sure that nobody is excluded, discriminated against or left behind”.
83. The following questions are asked as part of the consultation exercise, to ensure that we know as much as possible about the equality impact of the proposals.

Q17. How can we ensure the NHS Constitution is accessible and useable to individuals from different backgrounds and to different sections of society?

Q18. Are there any ways in which the proposed changes set out in this consultation could have an adverse impact, directly or indirectly, on groups with protected characteristics? If so, how?

6. Summary of consultation questions

Patient involvement

- Q1. What are your views on the proposed changes to strengthen patient involvement in the NHS Constitution?

Feedback

- Q2. What do you think about our proposal to set out in the NHS Constitution the importance of patient and staff feedback towards improving NHS services?

Duty of Candour

- Q3. Do you agree with, or have any concerns about, amending this pledge to make it more specific as suggested?

Making every contact count

- Q4. What are your views on including in the NHS Constitution a new responsibility for staff to make 'every contact count' with the aim of improving health and wellbeing of patients?

Integrated care

- Q5. Do the proposed changes to the NHS Constitution make it sufficiently clear to patients, their families and carers how the NHS supports them through care that is coordinated and tailored around their needs and preferences?

Complaints

- Q6. Do you think it is helpful for the NHS Constitution to set out these additional rights on making a complaint and seeking redress?
- Q7. Do the additional new rights make the complaints process easier to understand and make clear to patients what they should expect when they make a complaint?

Patient data

- Q8. Do the proposed changes to the NHS Constitution make clear how the NHS will safeguard and use patient data?

Staff rights, responsibilities and commitments

- Q9. Do you agree with the proposed changes to the wording of the staff duties and the aims surrounding the rights and responsibilities of staff? What do you think about the changes to make clear to staff around what they can expect from the NHS to ensure a positive working environment?

Parity of esteem between mental and physical health

- Q10. Do you agree with the wording used to emphasise the parity of mental and physical health? Are there any further changes that you think should be made that are feasible to include in the NHS Constitution?

Dignity, respect and compassion

- Q11. What are your views on the wording used to highlight the importance of ensuring that the tenets of dignity, respect and compassion are sufficiently represented in the NHS Constitution?
- Q12. Do you agree with the suggestion of including a new pledge for same sex accommodation?

Local authorities role

- Q13. Do the proposed changes to the NHS Constitution make it clear what patients, staff and the public can expect from local authorities and that local authorities must take account of the Constitution in their decisions and actions?

Raising awareness and embedding the Constitution

- Q14. Have you seen further examples of good practice in raising awareness and embedding the NHS Constitution that should be taken into account in these plans?
- Q15. Do you have further recommendations for re-launching, rolling out and embedding the Constitution from next spring?

Giving the Constitution greater traction

- Q16. To help shape our future consultation, do you have views on how the NHS Constitution can be given greater traction to help people know what they should do when their expectations of the NHS are not met?

Equalities

- Q17. How can we ensure the NHS Constitution is accessible and useable to individuals of different backgrounds and to different sections of society?

Q18. Are there any ways in which the proposed changes set out in this consultation could have an adverse impact, directly or indirectly, on groups with protected characteristics? If so, how?

General

Q19. Do you have any further comments about our proposals for strengthening the NHS Constitution?

7. The consultation process

- 84. This consultation will run from 5th November 2012 to 28th January 2013.
- 85. You can find out more and respond to this consultation at:
www.dh.gov.uk/nhsconstitution.
- 86. You can contact us via: NHSConstitution@dh.gsi.gov.uk
- 87. The consultation principles can be found on the Cabinet Office's website at:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>
- 88. The principles inform Government departments of the considerations that should be made during consultation. These include consideration of the subjects of consultation, the timing of consultation, making information useful and accessible, and transparency and feedback.

Comments on the consultation process itself

- 89. If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact:

Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE
e-mail: consultations.co-ordinator@dh.gsi.gov.uk

- 90. Please do not send consultation responses to this address.

Confidentiality of information

- 91. We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.
- 92. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

93. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
94. The Department will process your personal data in accordance with the DPA and, in most circumstances, this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation

95. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at <http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

Annex 1: Glossary

The NHS Constitution for England is a 'declaratory document', articulating existing rights and responsibilities in one place. The NHS Constitution is made up of five main elements:

- **Principles** – described as “enduring high level ‘rules’ that govern the way that the NHS operates, and define how it seeks to achieve its purpose”.
- **Values** – which underpin the principles and are intended to “provide the common ground for co-operation to achieve shared aspirations”.
- **Rights** – an “entitlement protected by law”. These include rights conferred explicitly by law and rights derived from legal obligations imposed on NHS bodies and healthcare providers. The Constitution brings together all of these rights in one place but does not create or replace them.
- **Pledges** – aims that the NHS is committed to achieve. Pledges are not legally binding and express an ambition to improve going beyond legal rights. Pledges, though, are more than aspirations; there is an expectation that pledges will be delivered whether through performance management, regulation, choice or accountability frameworks.
- **Responsibilities** – “expectations of how patients, the public and staff can help the NHS work effectively and ensure that finite resources are used fairly.”

The Constitution is also supported by two additional documents that provide further information, including information that would be subject to frequent changes, allowing the NHS Constitution itself to be a more high-level and enduring document:

- **The Handbook to the NHS Constitution** – which provides additional, detailed information on the rights, pledges and responsibilities set out in the Constitution, as well as explaining what underpins them.
- **The Statement of NHS Accountability** – a description of the system of responsibility and accountability for taking decisions in the NHS. The Constitution commits the Government to providing a clear and up-to-date Statement of NHS Accountability.

Annex 2: Letter from NHS Future Forum

LETTER TO THE SECRETARY OF STATE FOR HEALTH FROM THE NHS FUTURE FORUM WORKING GROUP ON THE NHS CONSTITUTION

31 October 2011

Dear Secretary of State

Andrew Lansley asked the NHS Future Forum in March 2012 to make recommendations on how to strengthen the NHS Constitution. This letter represents our response.

Now more than ever, the NHS Constitution has a vital role to play. It unites staff around the common purpose that binds the NHS together. It expresses the enduring principles and values that underpin the NHS. It sets out the offer for patients in terms of access, quality, equality, fairness, dignity and redress and conveys the parity of esteem for mental health. The power of the Constitution lies in the fact that it is enduring, enjoys widespread support from patients, staff and the public, and transcends party politics. At a time of increasing demand, reorganisation and financial pressure, its importance should not be underestimated.

The NHS Constitution offers you a powerful way of holding the NHS to account for its values, principles and behaviours, alongside the mandate to the NHS Commissioning Board. The Constitution can be an inspiring force for change and a key tool for improving the culture of all organisations involved in the delivery of NHS services.

Over the last few months, the NHS Future Forum has met many organisations, patient and staff groups. We have met children and young people, homeless charities, voluntary patient organisations, and mental health service users and staff. Social media have opened the discussion to thousands more. We found a striking degree of consensus around the existing content and wording of the NHS Constitution: people believe that the principles are largely right; the values resonate; the document is seen as helpful in explicitly laying out rights, responsibilities and pledges for patients, the public and staff.

Yet, despite the importance and potential of the NHS Constitution, its effect so far has been patchy, low key and inconsistent. It has failed to have the impact required to influence the quality of the service, the level of patient experience and give appropriate support to hard-working staff.

We believe that there is a real opportunity to remedy this, to embed the Constitution in everything the NHS does and put it at the heart of every organisation involved in the delivery of NHS services.

There are three essential steps that need to be taken now if the Constitution is to make a real difference in the NHS:

- **First, awareness of the NHS Constitution needs to be increased dramatically amongst public, patients and staff. For staff especially, this is not just about headline awareness, but about real understanding of the Constitution and what it means for their every day work;**
- **Second, the NHS Constitution must be given greater traction – especially around what happens when the NHS falls short of people’s rights or expectations;**
- **Third, the content of the NHS Constitution needs to be fully up-to-date and strengthened in several key areas including: patient involvement; support for staff; feedback; a duty of candour; protection and use of information; and ‘making every contact count’.**

Raising awareness and embedding the NHS Constitution

Awareness of the Constitution is unacceptably low and needs to be increased. Few people know about it. Fewer still use it to uphold their expectations of the NHS. This must change. There are several areas which need concerted effort to drive up awareness.

The Constitution needs to be embedded into the culture of all organisations involved in the delivery of NHS services. The East of England SHA tried – with some success – to do this by having champions for the NHS Constitution in all NHS organisations and incorporating the NHS Constitution into staff appraisals; having it as a standing item on all board and staff meeting agendas; and feeding it into all communications with patients and staff. As a result, awareness among staff and patients was the highest in England. This needs to happen everywhere. All organisations commissioning and delivering NHS services must be able to demonstrate clearly how they have taken account of the Constitution and they should be held publicly accountable for doing so in a meaningful way.

The new legal duties on the NHS Commissioning Board, clinical commissioning groups and Health Education England present an important opportunity to drive up awareness and embed the Constitution more fully. You should hold the NHS Commissioning Board to account for its new duty to promote the Constitution, defining in particular, what you expect them to achieve in terms of informed staff awareness. You should set out in your annual report on the health service how you have done this. You should also make clear how you, as Secretary of State, have taken account of the Constitution, setting an example for all organisations that are required by law to take account of it in their actions.

Raising awareness, of course, is not cost-free. While we do not advocate launching an expensive advertising campaign, resources – carefully targeted – do need to be committed to ensure that, this time, the message gets through to staff, patients and the public. Furthermore, the Constitution needs to be more accessible and relevant for different groups and communities, particularly for the most vulnerable and marginalised groups. Alternative versions are needed – for example, a one-side summary and an improved easy-read version. We look to you to develop these, and publish and disseminate them widely alongside the revised NHS Constitution.

Giving the NHS Constitution greater traction

In June, we reported the view that the Constitution amounts to fine words but no teeth. This has come through strongly in our engagement events. Many staff delivering NHS services are not clear about what they should do when the service falls short of the expectations set out in the Constitution. Patients and carers do not know where to go for help resolving their problem, or to whom to complain; staff can feel they are poorly supported when they raise concerns or suffer abuse. When people just want help sorting out an immediate problem, they find themselves pushed down a regulated and imperfect complaints system. The potential role of HealthWatch organisations remains unclear. Unless people have a clear and effective answer on what to do when things go wrong, then the credibility of the NHS Constitution is lost. One organisation we spoke to gave a striking account of how initial enthusiasm for the Constitution among its members gave way to disillusionment when they could not get a clear answer about how they could use it where they didn't get their rights.

We do not believe that there need to be additional legal powers to give the Constitution 'more teeth' – that could create a lawyers' charter, putting them rather than patients and clinicians at the heart of the system. The system for seeking redress under the Constitution should remain one and the same as that for seeking redress from the NHS. Separate systems would cause confusion and make the current process still harder to navigate than it already is.

We recommend that you conduct further work to explore how the NHS Constitution can be given much greater traction. This should include making sure that the processes for feedback, complaints, redress, and advocacy are fit for purpose in the new system and have the NHS Constitution at their heart. The Parliamentary and Health Service Ombudsman should be consulted on this. One solution might be to strengthen Patient Liaison Services (PALS), putting them on a statutory footing, though we recommend that consideration should be given to a wide range of options.

Content – strengthening the content of the NHS Constitution

We believe a substantial rewrite of the NHS Constitution is not desirable. Part of its power lies in its enduring nature; continual tinkering with its content would be counterproductive. There should be a high threshold for making changes but, before embarking on a new push to raise awareness, the text needs to be accurate and up-to-date. Almost four years after the Constitution was launched, this is an appropriate moment to make a single set of coherent changes around which there is a clear and compelling case. In light of what we have heard in our engagement events, we have identified six opportunities to strengthen the text to ensure that the NHS Constitution fully resonates with the public, patients and staff.

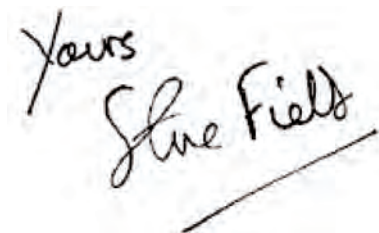
1. **The principles should recognise that valued, engaged, motivated and supported staff provide better patient care.** Principle 3 of the Constitution should be rewritten to the effect that *'The NHS aspires to the highest standards of excellence and professionalism – in the provision of high quality care that is safe effective and focused on patient experience. The NHS is its patients and staff and they are mutually interdependent. Respect, dignity, compassion and care should be at the core of how patients and staff are treated not only because that is the right thing to do but because patient safety, experience and outcomes are all improved when staff are valued and supported. The performance of the NHS is directly related to the health and wellbeing of its staff.'*
2. **The need for organisations to ask for and act on feedback should be reflected in a new principle** that *"The NHS will actively encourage feedback from the public patients and staff, welcome it and use it to improve its services."* This should be reflected in relevant pledges to patients and staff.
3. **Patient and carer involvement and shared decision-making should be better reflected in the NHS Constitution.** The Constitution can seem paternalistic and read as if patients and their carers are passive recipients of their care and treatment. Principle 4 should make clear that patients own and manage their own health and care and that the NHS needs to support them to do this. The principle should also emphasise the concept of shared decision-making, encouraging and supporting patients, their families and carers to become active and equal partners with their clinicians in the decisions about their care. This should be reflected in relevant pledges to patients and staff.
4. **The Constitution should reflect the fact that all NHS organisations will have a duty of candour** and should operate a more open culture, where staff are encouraged to raise concerns and are supported in doing this.

5. **The Constitution needs to clarify how the NHS protects and uses patient information.** Considerable confusion exists about the use of patient data and patients' rights and responsibilities in connection with this. Patients must have absolute clarity about how their information might be used and staff need similar clarity about their responsibilities.
6. The Constitution should set out a new responsibility for healthcare professionals to take every appropriate opportunity to talk to patients and carers about how to improve their health – making 'every contact count'.

The NHS is going through a period of great change and massive financial challenge. After the debates about structures and systems over the past two years, we believe that the focus should be on what matters most to patients, staff and the public – protecting and improving the quality of the service.

The Constitution encapsulates what makes the NHS so special. Its opening paragraph is a wonderful, emotive description of what the NHS is all about – it is a really powerful statement, while its principles and values provide the basis for driving real cultural change on the ground throughout our health service. This opportunity to embed the Constitution must not be lost. All organisations must play their part. But we also look to you, as Secretary of State, to champion the NHS Constitution and challenge the service to live by it in everything it does.

Given that we have found huge support for the Constitution from NHS staff and patient organisations, we believe that concerted action on increasing awareness and giving the Constitution greater traction offers you an excellent opportunity to turn a widely supported idea into a powerful reality that can bring major benefit to the NHS and the people it serves. It is an opportunity that the NHS cannot afford to miss.

A handwritten signature in black ink that reads "Yours Steve Field". The word "Yours" is written above "Steve Field". There is a horizontal line drawn under the signature.

Professor Steve Field CBE, FRCP, FFPH, FRCGP

Annex 3: Amended waiting times in the Handbook

The Government wants to ensure that the NHS maintains its current high levels of performance, particularly while the new commissioning system is still being implemented. Patients and the public expect high quality treatment from the NHS, but they also want to access services quickly, and to be treated with dignity and respect. The Constitution sets out commitments around waiting times and the Handbook to the Constitution provides details on these. We propose to add new waiting times pledges to the Constitution, and to revise those which are no longer a priority and their delivery is no longer monitored or measured. This Annex sets out the revisions to the waiting times that will be reflected in the updated Handbook which will be published alongside the revised Constitution in April 2013.

“The NHS commits to provide convenient, easy access to services within the waiting times set out in this Handbook to the NHS Constitution.”

(Section 2a of the NHS Constitution)

There are a number of **government pledges on waiting times**, including:

- maximum two-week wait to see a specialist for all patients referred for investigation of breast symptoms, where cancer is not initially suspected;
- maximum 31-day wait for subsequent treatment where the treatment is an anti-cancer drug regimen;
- maximum two month (62-day) wait from urgent GP referral for suspected cancer to first treatment for all cancers;
- maximum 31-day wait for subsequent treatment where the treatment is surgery;
- maximum four-hour wait in A&E from arrival to admission, transfer or discharge;
- all patients who have operations cancelled, on or after the day of admission (including the day of surgery), for non-clinical reasons to be offered another binding date within 28 days, or the patient’s treatment to be funded at the time and hospital of the patient’s choice; and
- all ambulance trusts to respond to 75 per cent of Red 1 Category A and 75 per cent of Red 2 Category A calls within eight minutes. Furthermore to respond to 95 per cent of all Category A calls within 19 minutes of a request being made for a fully equipped ambulance vehicle (car or ambulance) able to transport the patient in a clinically safe manner.

New waiting time pledges proposed for the NHS Constitution Handbook:

- maximum 31-day wait for subsequent treatment where the treatment is a course of radiotherapy;
- maximum one month (31-day) wait from diagnosis to first definitive treatment for all cancers;
- maximum 62-day wait from referral from an NHS cancer screening service to first definitive treatment for cancer;
- maximum 62-day wait for first definitive treatment following a consultant's decision to upgrade the priority of the patient (all cancers);
- patients waiting for a diagnostic test should have been waiting less than 6 weeks from referral; and
- maximum 7 day wait for follow-up after discharge from psychiatric in-patient care for people under adult mental illness specialties on Care Programme Approach.

Proposed waiting time pledges removed from the NHS Constitution Handbook as these are no longer a priority and their delivery is not monitored or measured separately:

- access to a primary care professional within 24 hours or a primary care doctor within 48 hours: now measured through GP Surveys and the focus is on overall access rather than specific access within these time periods;
- maximum three-month wait for patients who need a revascularisation: this pledge is removed because it is overtaken by the right that patients have to be seen for non-urgent conditions within 18 weeks;
- maximum two-week wait for Rapid Access Chest Pain Clinics: this pledge is removed because it is overtaken by the right that patients have to be seen for non-urgent conditions within 18 weeks;
- access to a genito-urinary medicine clinic within 48 hours of contacting a service; and
- all ambulance trusts to respond to 95 per cent of Category B calls within 19 minutes: the standard was abolished from April 2011 due to there being no clinical justification for its retention.

Annex 4: The NHS Constitution: proposed changes and explanatory notes

This annex sets out how the NHS Constitution would look with the inclusion of the amendments we propose. To make this as accessible as possible, we have highlighted areas where we propose to remove or add text and accompany this with detailed explanatory notes for each proposed change. It is important that this Annex is read in conjunction with the main body of this consultation document.



THE NHS CONSTITUTION

the NHS belongs to us all

The NHS belongs to the people.

It is there to improve our health and well-being, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can to the end of our lives. It works at the limits of science – bringing the highest levels of human knowledge and skill to save lives and improve health. It touches our lives at times of basic human need, when care and compassion are what matter most.

The NHS is founded on a common set of principles and values that bind together the communities and people it serves – patients and public – and the staff who work for it.

1 **This Constitution** establishes the **principles** and values of the NHS in England. It sets out **rights** to which patients, public and staff are entitled, and **pledges** which the NHS is committed to achieve, together with **responsibilities**, which the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. [The Secretary of State for Health](#), ~~All~~ NHS bodies, ~~and private and third~~ [independent and voluntary](#) sector providers supplying NHS services, [and local authorities in the exercise of their public health functions](#) are required by law to take account of this Constitution in their decisions and actions. [References in this document to the NHS and NHS services include local authority public health services. Where there are differences of detail these are explained in the Handbook to the Constitution.](#)

The Constitution will be renewed every 10 years, with the involvement of the public, patients and staff. It is accompanied by the Handbook to the NHS Constitution, to be renewed at least every three years, setting out current guidance on the rights, pledges, duties and responsibilities established by the Constitution. These requirements for renewal are legally binding. They guarantee that the principles and values which underpin the NHS are subject to regular review and recommitment; and that any government which seeks to alter the principles or values of the NHS, or the rights, pledges, duties and responsibilities set out in this Constitution, will have to engage in a full and transparent debate with the public, patients and staff.

Explanatory notes

PAGE 2

1 **Technical amendments:** The changes to this paragraph reflect the fact that the Health and Social Care Act 2012 introduced a new legal duty on the Secretary of State for Health to take account of the NHS Constitution in the exercise of his functions. The Act gave local authorities new responsibilities in relation to the commissioning and provision of public health services and a duty to take account of the NHS Constitution when doing so. We want it to be clear to local authorities that the Constitution applies to them.

There is also a minor drafting change, which replaces the term 'third sector' with 'independent and voluntary sector'. We believe this is a clearer and more accessible term.

1. Principles that guide the NHS

Seven key principles guide the NHS in all it does. They are underpinned by core NHS values which have been derived from extensive discussions with staff, patients and the public. These values are set out at the back of this document.

Explanatory notes

PAGE 3

- 1 **Equalities, parity of esteem:** The first change proposed here brings this principle into line with the protected characteristics set out in the Equalities Act 2010. The Constitution was launched in January 2009 before that Act was passed.

This second change proposed to this principle is intended to reflect the parity of esteem between mental and physical health which was inserted into the Health and Social Care Act 2012. It clarifies that the NHS addresses both mental and physical health.
- 2 **Valued and supported staff, research:** This principle has been redrafted in response to the NHS Future Forum's recommendation that there should be a principle pointing out that it is only when staff are valued and supported that patients receive excellent care. This goes beyond education, training and development. For instance, being listened to and treated with respect and understanding. A further change reduces the emphasis on planning and delivery. As this is just one of many elements of delivering excellent patient care, we propose to remove the undue prominence it was given in the original wording. The change also focuses this principle on the value the NHS places on its staff.

A further amendment makes clear that the NHS not only conducts research but uses it to improve services for patients.
- 3 **Patient involvement, feedback, integration:** These amendments are intended to emphasise the centrality of patients managing their own health. The NHS Future Forum concluded that the existing language of the Constitution sounded paternalistic in places, implying that patients are passive recipients of care rather than being actively involved. The importance of individuals being involved in their own care and treatment was set out in the Health and Social Care Act 2012, which places new duties on commissioners to do this.

The amendments also highlight the need for care to be integrated around the needs and preferences of patients. Again, the Health and Social Care Act 2012 places new duties on commissioners to promote integration.

Reflecting the recommendation from the Future Forum, the amendments also add a new aspect to this principle that the NHS will encourage feedback and use it to improve services.

The NHS Commissioning Board is currently working on strengthening the practical mechanisms for the NHS to receive feedback.

- 1 **1. The NHS provides a comprehensive service, available to all** irrespective of gender, race, disability, age, sexual orientation, religion, ~~or belief~~, gender reassignment or marital or civil partnership status. The service is designed to diagnose, treat and improve both physical and mental health. It has a duty to each and every individual that it serves and must respect their human rights. At the same time, it has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population.
- 2 **2. Access to NHS services is based on clinical need, not an individual's ability to pay.** NHS services are free of charge, except in limited circumstances sanctioned by Parliament.
- 2 **3. The NHS aspires to the highest standards of excellence and professionalism** – in the provision of high quality care that is safe, effective and focused on patient experience; ~~in the planning and delivery of the clinical and other services it provides;~~
- 2 **4. The NHS aspires to put patients at the heart of everything it does.** It should support individuals to promote and manage their own health. NHS services must reflect, and be coordinated around, the needs and preferences of patients, their families and their carers. Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment. The NHS will actively encourage feedback from the public, patients and staff, welcome it and use it to improve its services.
- 2 **5. The NHS is committed to the highest standards of leadership, governance and management.** The NHS will ensure that its leadership, governance and management are of the highest quality and that it is able to attract and retain the best people for the job.
- 2 **6. The NHS is committed to the highest standards of financial probity.** The NHS will ensure that it is able to attract and retain the best people for the job.
- 2 **7. The NHS is committed to the highest standards of transparency and accountability.** The NHS will ensure that it is able to attract and retain the best people for the job.

1 5. The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population. The NHS is an integrated system of organisations and services bound together by the principles and values reflected in the Constitution. The NHS is committed to working jointly with other local ~~authorities~~ authority services, other public sector organisations and a wide range of ~~other private, public and third~~ independent and voluntary sector organisations to provide and deliver improvements in health and well-being.

6. The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources. Public funds for healthcare will be devoted solely to the benefit of the people that the NHS serves.

7. The NHS is accountable to the public, communities and patients that it serves. The NHS is a national service funded through national taxation, and it is the Government which sets the framework for the NHS and which is accountable to Parliament for its operation. However, most decisions in the NHS, especially those about the treatment of individuals and the detailed organisation of services, are rightly taken by the local NHS and by patients with their clinicians. The system of responsibility and accountability for taking decisions in the NHS should be transparent and clear to the public, patients and staff. The Government will ensure that there is always a clear and up-to-date statement of NHS accountability for this purpose.

Explanatory notes

PAGE 4

1 **Technical amendments:** Under the Health and Social Care Act 2012, local authorities are taking on new functions in relation to public health services. References in the Constitution to "NHS" and "NHS services" include local authority public health services. However, principle 5 is about the NHS working with organisations beyond the health service. Accordingly, this amendment seeks to clarify that the NHS should work not only with local authority public health services but the full range of local authority services, for example social care services, children's services and education services. It also emphasises that the NHS works in partnership with other public sector organisations. This includes, for example, the police and criminal justice agencies and the armed forces.

Again, we believe that the term "independent and voluntary sector" is clearer and more accessible than "third sector".

2a. Patients and the public – your rights and NHS pledges to you

1 Everyone who uses the NHS should understand what legal rights they have. For this reason, important legal rights are summarised in this Constitution and explained in more detail in the Handbook to the NHS Constitution, which also explains what you can do if you think you have not received what is rightfully yours. This summary does not alter the content of your legal rights.

The Constitution also contains pledges that the NHS is committed to achieve. Pledges go above and beyond legal rights. This means that pledges are not legally binding but represent a commitment by the NHS to provide **comprehensive** high quality services.

Access to health services:

You have the right to receive NHS services free of charge, apart from certain limited exceptions sanctioned by Parliament.

You have the right to access NHS services. You will not be refused access on unreasonable grounds.

2 **You have the right** to expect your local NHS to assess the health requirements of ~~the local~~ **your** community and to commission and put in place the services to meet those needs as considered necessary.

You have the right, in certain circumstances, to go to other European Economic Area countries or Switzerland for treatment which would be available to you through your NHS commissioner.

You have the right not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, race, religion or belief, sexual orientation, disability (including learning disability or mental illness) or age.¹

You have the right to access services within maximum waiting times, or for the NHS to take all reasonable steps to offer you a range of alternative providers if this is not possible. The waiting times are described in the Handbook to the NHS Constitution.

The NHS also commits:

- to provide convenient, easy access to services within the waiting times set out in the Handbook to the NHS Constitution (pledge);

¹ ~~The Government intends to use the Equality Bill to make unjustifiable age discrimination against adults unlawful in the provision of services and exercise of public functions. Subject to Parliamentary approval, this right not to be discriminated against will extend to age when the relevant provisions are brought into force for the health sector.~~

Explanatory notes

PAGE 5

1 Technical amendments: We wanted to make explicit that a person's legal rights are absolutely not affected by the fact that the Constitution summarises these rights.

We wanted to clarify that the NHS pledges covers a wide range of services.

2 Technical amendments: The proposed changes here reflect the fact that commissioning in the new system will be at both local level (through clinical commissioning groups) and national level (through the NHS Commissioning Board).

3 Technical amendment: The Constitution currently contains a footnote at the end of this right referencing the Equality Bill. This footnote is no longer required as the Handbook to the Constitution will describe how the Equality Act 2010 applies.

4 Patient involvement: Proposed changes to the pledge here puts patients, their carers and families at the centre of decision-making about their care.

1

- to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered (pledge); and
- to make the transition as smooth as possible when you are referred between services, and to ~~include you in relevant discussions~~ put you, your family and carers at the centre of decisions that affect you or them (pledge).

Quality of care and environment:

You have the right to be treated with a professional standard of care, by appropriately qualified and experienced staff, in a properly approved or registered organisation that meets required levels of safety and quality.²

2

You have the right to expect NHS organisations to monitor, and make efforts to improve continuously, the quality of healthcare they commission or provide. This includes improvements to the safety, effectiveness and experience of services.

The NHS also commits:

- to ensure that services are provided in a clean and safe environment that is fit for purpose, based on national best practice (pledge); and
- to ~~continuous improvement in the quality of services you receive,~~ identifying and sharing best practice in quality of care and treatments (pledge); and

3

- that if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite sex, in line with details set out in the Handbook to the NHS Constitution (pledge).

Nationally approved treatments, drugs and programmes:

You have the right to drugs and treatments that have been recommended by NICE³ for use in the NHS, if your doctor says they are clinically appropriate for you.

You have the right to expect local decisions on funding of other drugs and treatments to be made rationally following a proper consideration of the evidence. If the local NHS decides not to fund a drug or treatment you and your doctor feel would be right for you, they will explain that decision to you.

You have the right to receive the vaccinations that the Joint Committee on Vaccination and Immunisation recommends that you should receive under an NHS-provided national immunisation programme.

The NHS also commits:

- to provide screening programmes as recommended by the UK National Screening Committee (pledge).

Respect, consent and confidentiality:

You have the right to be treated with dignity and respect, in accordance with your human rights.

Explanatory notes

PAGE 6

- 1 Patient involvement:** Proposed changes to the pledge here puts patients, their carers and families at the centre of decision-making about their care.
- 2 Quality:** These amendments emphasise the definition of quality set out by Lord Darzi. The reference to continuous improvement reflects the new duties on the Secretary of State for Health, the NHS Commissioning Board and clinical commissioning groups to secure continuous improvements in the quality of services. These new duties are set out in the Health and Social Care Act 2012.

As we have strengthened the right to refer to “continuous improvement”, so we have amended the pledge so not to duplicate or confuse as to its legal status. But we do feel it is important to retain the part of the pledge that refers to identifying and sharing best practice.
- 3 Dignity and respect:** We have added an extra pledge here to make explicit the NHS’ commitment that patients can expect to sleep in same-sex wards to protect their dignity.

2 Subject to Parliamentary approval, the new registration system will apply to NHS providers from April 2010, and independent sector providers from October 2010.

3 NICE (the National Institute for Health and Clinical Excellence) is an independent NHS organisation producing guidance on drugs and treatments. ‘Recommended’ means recommended by a NICE technology appraisal. Primary care trusts are normally obliged to fund NICE technology appraisals from a date no later than three months from the publication of the appraisal.

You have the right to accept or refuse treatment that is offered to you, and not to be given any physical examination or treatment unless you have given valid consent. If you do not have the capacity to do so, consent must be obtained from a person legally able to act on your behalf, or the treatment must be in your best interests.⁴

1 **You have the right** to be given information about your proposed the test and treatment ~~in advance, including any significant risks and any alternative treatments which may be options~~ available to you, what they involve and their risks and benefits. ~~involved in doing nothing.~~

2 **You have the right** of access to your own health records. ~~These will always be used to manage your treatment in your best interests.~~

You have the right to privacy and confidentiality and to expect the NHS to keep your confidential information safe and secure.

3 **You have the right** to be informed about how your information is used.

You have the right to request that your confidential data is not used beyond your own care and treatment and to have your objections considered, and where your wishes cannot be followed, to be told the reasons including the legal basis.

The NHS also commits:

- to ensure those involved in your care and treatment have access to your health data so they can care for you safely and effectively (pledge);
- to anonymise the data collected during the course of your treatment and use it to support research and improve care for others (pledge);
- where identifiable data has to be used, to give you the chance to object wherever possible (pledge);
- to inform you of research studies in which you may be eligible to participate (pledge); and
- to share with you any correspondence sent between clinicians about your care (pledge).

Informed choice:

You have the right to choose your GP practice, and to be accepted by that practice unless there are reasonable grounds to refuse, in which case you will be informed of those reasons.

You have the right to express a preference for using a particular doctor within your GP practice, and for the practice to try to comply.

⁴ If you are detained in hospital or on supervised community treatment under the Mental Health Act 1983 different rules may apply to treatment for your mental disorder. These rules will be explained to you at the time. They may mean that you can be given treatment for your mental disorder even though you do not consent.

Explanatory notes

PAGE 7

- 1 Patient involvement:** The proposed amendment seeks to make clear that doctors should do more than propose a single treatment and set out the risks. Instead, they should set out a wider range of possible treatments and discuss with patients what may be the most appropriate for them. It also clarifies that this applies to diagnostic tests as well as to treatments. The amendment is not based on any changes to the law.
- 2 Technical amendment:** This is a minor drafting amendment for clarity and concision. We also considered the wording that we propose to delete could sound paternalistic.
- 3 Patient data:** These new rights are included to better advertise an existing legal right, not to create a new one. The Data Protection Act safeguards include requiring those who hold personal data to inform you at your request about the specific processing of your identifiable information. Under the Data Protection Act data controllers will consider the request and must respond by saying whether they think the request is justified and whether they will comply with it. This is subject to court review.

We propose to include new pledges, reflecting the parallel information governance review by Dame Fiona Caldicott. Privacy and confidentiality are core to maintaining public trust so that people are willing to give, what may be highly sensitive, personal information to the professionals and organisations responsible for their care. Evidence suggests that people rarely know how their information is used and this can lead to issues where there is a mismatch between people’s expectations and what the law allows NHS and social care organisations to do with data. It is also important that people understand how the law supports the use of information, what rights individuals have in relation to how their information is used and how to exercise those rights. Both patients and staff need to be aware of the duties of NHS staff to use and share that data safely across the health and care services and for protecting confidentiality.

- 4 Patient data:** We propose amending this pledge to reflect that emails and other electronic communications, as well as letters are increasingly used to convey information between clinicians.

1 **You have the right** to make choices about your NHS funded care and to information to support these choices. The options available to you will develop over time and depend on your individual needs. Details are set out in the Handbook to the NHS Constitution.

2 **The NHS also commits:**

- to inform you about the healthcare services available to you, locally and nationally (pledge); and
- to offer you easily accessible, reliable and relevant information ~~to~~ and support to use it. This will enable you to participate fully in your own healthcare decisions and to support you in making choices. This will include information on the range and quality of clinical services where there is robust and accurate information available (pledge).

Involvement in your healthcare and in the NHS:

3 **"You have the right** to be involved fully in all discussions and decisions about your ~~healthcare~~ health and care, including in 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."

Explanatory notes

PAGE 7 (CONTINUED)

- 1 **Technical amendment:** This amendment clarifies that the right to make choices about your care applies to NHS services but not to local authority public health services. This is because local authorities are not covered by NHS choice legislation.
- 2 **Patient involvement:** We propose additions to this pledge to make it clear that patients will be supported to understand information so that they are equipped to use that information in a meaningful way. This is important for patient choice and patient involvement.
- 3 **Patient involvement:** The NHS Future Forum concluded that the existing language of the Constitution sounded paternalistic in places, implying that patients are passive recipients of care rather than being actively involved. The importance of individuals being involved in their own care and treatment was set out in the Health and Social Care Act 2012, which places new duties on commissioners to do this. The amendment seeks to make clear that patients make decisions rather than decisions being made for them.

We also propose to make clear that this right also applies to involvement in discussions and decisions about a patient's end of life care, and that their families and carers should be involved too, where appropriate.

1 You have the right to be involved, directly or through representatives, in the planning of healthcare services commissioned by NHS bodies, the development and consideration of proposals for changes in the way those services are provided, and in decisions to be made affecting the operation of those services.

The NHS also commits:

- 2
- to provide you with the information and support you need to influence and scrutinise the planning and delivery of NHS services (pledge);
 - to work in partnership with you, your family, carers and representatives (pledge); and
 - to involve you in discussions about planning your care and to offer you a written record of what is agreed if you want one (pledge); and
 - to encourage and welcome feedback on your health and care experiences and use this to improve services (pledge).

Complaint and redress:

3 You have the right to have any complaint you make about NHS services acknowledged within three working days, dealt with efficiently and to have it properly investigated.

You have the right to know the outcome of any investigation into your complaint.

You have the right to discuss the manner in which the complaint is to be handled, and to know the period within which the investigation is likely to be completed and the response sent;

You have the right to be kept informed of progress and to know the outcome of any investigation into your complaint, including an explanation of the conclusions and confirmation that any action needed in consequence of the complaint has been taken or is proposed to be taken.

You have the right to take your complaint to the independent Health Service or Local Government Ombudsman, if you are not satisfied with the way your complaint has been dealt with by the NHS.

You have the right to make a claim for judicial review if you think you have been directly affected by an unlawful act or decision of an NHS body or local authority.

You have the right to compensation where you have been harmed by negligent treatment.

The NHS also commits:

- 7
- to ensure that you are treated with courtesy and you receive appropriate support throughout the handling of a complaint; and that the fact that you have complained will not adversely affect your future treatment (pledge);

Explanatory notes

PAGE 8

- 1 **Technical amendment:** As this right is based on the Health Act 2006, local authorities are not covered by this so we have made the reference specific to NHS bodies.
- 2 **Patient involvement, feedback:** Again, this change is intended to clarify that patients should not only be given information but should be supported to understand it so that they can make meaningful decisions.
- This proposed new pledge seeks to make clear that patients with long term conditions or for end of life care may ask for a care plan. Details of this would be set out in the Handbook.
- The final change here is intended to make explicit that the NHS should continuously improve in response to feedback, not just complaints, and put patient experience at the core of decision-making. It builds on the proposed inclusion of feedback in principle 4 (above).
- 3 **Complaints and redress:** This change is intended to ensure that people are aware of how soon they should expect resolutions.
- 4 **Complaints and redress, patient involvement:** We propose two extra pledges to ensure that, in the spirit of other changes proposed in this consultation document, patients are at the centre of anything that involves them. We also aim to make explicit here that patients must be included in all decision-making about them.
- Changes to this section around complaints seek to ensure that patients know when they should expect a response, how their complaints are being handled and what action has been taken as a result of the complaint.
- 5 **Technical amendment:** Local authorities have a different complaints system for public health services, which is important to clarify given the new role for local authorities in relation to public health services.
- 6 **Technical amendment:** We have made a small addition here to reflect the new role for local authorities in relation to public health services set out in the Health and Social Care Act 2012.
- 7 **Technical amendments:** Minor drafting changes.

- 1
- to ensure that when mistakes happen or if you are harmed while receiving health care you receive an appropriate explanation and apology, delivered with sensitivity and recognition of the trauma you have experienced, and know that lessons will be learned to help avoid a similar incident occurring again; and
 - ~~when mistakes happen, to acknowledge them, apologise, explain what went wrong and put things right quickly and effectively (pledge); and~~
 - to ensure that the organisation learns lessons from complaints and claims and uses these to improve NHS services (pledge).

Explanatory notes

PAGE 8 (CONTINUED)

- 1
- Duty of candour:** A new pledge has been added to this section to reflect the proposed contractual duty of candour. Further detail is set out in the consultation document. The inclusion of this new pledge is more specific than the existing pledge in relation to acknowledging mistakes, so we propose removing the existing pledge.

2b. Patients and the public – your responsibilities

The NHS belongs to all of us. There are things that we can all do for ourselves and for one another to help it work effectively, and to ensure resources are used responsibly:

1 **You should recognise** that you can make a significant contribution to your own, and your family's, good health and wellbeing, and take ~~some~~ personal responsibility for it.

You should register with a GP practice – the main point of access to NHS care.

2 **You should treat NHS staff and other patients with respect** and recognise that [violence](#), causing a nuisance or disturbance ~~on NHS-~~
~~premises~~ could result in prosecution [and that abusive or violent behaviour could result in you being refused access to the NHS.](#)

You should provide accurate information about your health, condition and status.

You should keep appointments, or cancel within reasonable time. Receiving treatment within the maximum waiting times may be compromised unless you do.

You should follow the course of treatment which you have agreed and talk to your clinician if you find this difficult.

You should participate in important public health programmes such as vaccination.

You should ensure that those closest to you are aware of your wishes about organ donation.

You should give feedback – both positive and negative – about the treatment and care you have received, including any adverse reactions you may have had.

Explanatory notes

PAGE 9

1 **Technical amendment:** Minor drafting change.

2 **Dignity and respect:** This change to the Constitution is intended to send a strong public signal that patients can reasonably be denied access to NHS services if they abuse or behave violently towards NHS staff. There is existing guidance that sets out what is reasonable grounds to deny access and it says that violent or abusive behaviour are grounds for being denied access.

3a. Staff – your rights and NHS pledges to you

It is the commitment, professionalism and dedication of staff working for the benefit of the people the NHS serves which really make the difference. High quality care requires high quality workplaces, with commissioners and providers aiming to be employers of choice.

Explanatory notes

PAGE 10

- 1 **Feedback:** The amendments here seek to clarify that staff should be supported through the provision of constructive feedback to aid their personal development.
- 2 **Technical amendment:** This technical amendment is intended to clarify that the Constitution also applies to staff in local authorities involved in the exercise by local authorities of their public health functions.
- 3 **Valued and supported staff:** We have added an extra pledge here to emphasise the NHS' commitment to ensuring staff feel supported. It builds on the NHS Future Forum's conclusions that valued and supported staff deliver better patient care.

1 All staff should have rewarding and worthwhile jobs, with the freedom and confidence to act in the interest of patients. To do this, they need to be trusted, and actively listened to and provided with meaningful feedback. They must be treated with respect at work, have the tools, training and support to deliver compassionate care, and opportunities to develop and progress. Care professionals should be supported to maximise the time they spend directly contributing to the care of patients.

2 The Constitution applies to all staff, doing clinical or non-clinical NHS work – including public health – and their employers. It covers staff wherever they are working, whether in public, private or third sector organisations.

Staff have extensive legal rights, embodied in general employment and discrimination law. These are summarised in the Handbook to the NHS Constitution. In addition, individual contracts of employment contain terms and conditions giving staff further rights.

The rights are there to help ensure that staff:

- have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives;

- have a fair pay and contract framework;
- can be involved and represented in the workplace;
- have healthy and safe working conditions and an environment free from harassment, bullying or violence;
- are treated fairly, equally and free from discrimination;
- can raise an internal grievance and if necessary seek redress, where it is felt that a right has not been upheld; and
- can raise any concern with their employer, whether it is about safety, malpractice or other risk, in the public interest.

In addition to these legal rights, there are a number of pledges, which the NHS is committed to achieve. Pledges go above and beyond your legal rights. This means that they are not legally binding but represent a commitment by the NHS to provide high-quality working environments for staff.

The NHS commits:

- to provide a positive working environment for staff and a supportive open culture that helps staff do their job to the best of their ability (pledge)

3

- to provide all staff with clear roles and responsibilities and rewarding jobs for teams and individuals that make a difference to patients, their families and carers and communities (pledge);
- 1 • to provide all staff with personal development, access to appropriate [education and](#) training for their jobs and line management support to ~~succeed~~ [fulfil their potential](#) (pledge);
- to provide support and opportunities for staff to maintain their health, well-being and safety (pledge);
- 2 • to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements. All staff will be ~~empowered~~ [encouraged](#) to put forward ways to deliver better and safer services for patients and their families (pledge); and
- to [encourage and](#) support all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice or wrongdoing at work, responding to and, where necessary, investigating the concerns raised and acting consistently with the Public Interest Disclosure Act 1998 (pledge).

Explanatory notes

PAGE 11

- 1 **Education and training:** The Health and Social Care Act 2012 placed new duties on the NHS Commissioning Board and on clinical commissioning groups to take account of the need to promote education and training. The Act also imposed a duty on the Secretary of State for Health to ensure there is an effective system for the planning and delivery of education and training. The change proposed here seeks to reflect the new duties on commissioners under the 2012 Act. A further change to this section also clarifies that training should not be restricted to basic and current roles of staff, or to statutory minimum training, and that it should instead aid personal development and growth. We believe it is important to signal this so that it is clear that staff across all paybands have access to and receive training and development.
- 2 **Feedback:** The insertion of the word “encouraged” seeks to emphasise the need for these pledges to be proactive – that staff are not just empowered to suggest new ideas to improve care but actively encouraged to do so. Likewise, staff should be encouraged to raise concerns as well as being supported to do so.

3b. Staff – your responsibilities

All staff have responsibilities to the public, their patients and colleagues.

Important legal duties are summarised below.

You have a duty to accept professional accountability and maintain the standards of professional practice as set by the appropriate regulatory body applicable to your profession or role.

You have a duty to take reasonable care of health and safety at work for you, your team and others, and to co-operate with employers to ensure compliance with health and safety requirements.

You have a duty to act in accordance with the express and implied terms of your contract of employment.

You have a duty not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation.

1 **You have a duty** to protect the confidentiality of personal information that you hold ~~unless to do so would put anyone at risk of significant harm.~~

You have a duty to be honest and truthful in applying for a job and in carrying out that job.

The Constitution also includes **expectations** that reflect how staff should play their part in ensuring the success of the NHS and delivering high-quality care.

You should aim:

- to maintain the highest standards of care and service, treating every individual with compassion, dignity and respect, taking responsibility not only for the care you personally provide, but also for your wider contribution to the aims of your team and the NHS as a whole;
- to take up training and development opportunities provided over and above those legally required of your post;
- to play your part in sustainably improving services by working in partnership with patients, the public and communities;
- 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 staff⁵ or the organisation itself, at the earliest reasonable opportunity;

⁵ The term ‘staff’ is used to include employees, workers, students on training placements, and, for the purposes of the Public Interest Disclosure Act (PIDA), agency workers and general practitioners who meet the wider PIDA definition of being a ‘worker’ (e.g. those performing general medical services under General Medical Services Contracts). Whilst volunteers are not covered by the provisions of PIDA, guidance to employers makes clear that it is good practice to include volunteers within the scope of organisations’ local whistleblowing policies.

Explanatory notes

PAGE 12

- 1 Patient data:** The original wording of this duty implies that data can only be kept confidential if it is not shared. In fact data should be shared in a safe way between clinicians, for example in the interests of joined up care.
- 2 Dignity and respect:** We propose some extra wording here to reflect the importance of dignity and respect in high quality service provision.

Explanatory notes

PAGE 13

- 1 **Patient involvement:** This new staff responsibility seeks to emphasise that staff should involve patients fully in decisions that affect them. This is intended to reflect the wording of the amended patient right in relation to involvement set out above. The basis for making this change are the new duties on patient involvement imposed on the NHS Commissioning Board and clinical commissioning groups set out in the Health and Social Care Act 2012.
- 2 **Valued and supported staff:** We are proposing to move the latter part of this section into a new staff responsibility that makes clear that staff should be supported where mistakes have been made. An extra responsibility is added on patient safety to better reflect the need for staff to be supported where they have made errors.
- 3 **'Making Every Contact Count':** We propose an extra responsibility for staff to support patients to improve their health as they are in a strong position to carry out this role reflecting the idea that every contact with a health professional should count. It reflects the recommendation from the NHS Future Forum that the Constitution should include the notion of making every contact count. Details of what this would mean will be set out in the Handbook.
- 4 **Health inequalities:** A further responsibility is proposed here to make clear that staff play an important role in reducing health inequalities in everything they do, where possible.
- 5 **Patient data:** These changes reflect those on patient data set out in the patient rights section of this document.

- 1 to involve patients, their families, carers or representatives fully in decisions about prevention, diagnosis, and their individual care and treatment;
- 2
 - to be open with patients, their families, carers or representatives, including if anything goes wrong; welcoming and listening to feedback and addressing concerns promptly and in a spirit of co-operation.
 - ~~You should contribute to a climate where the truth can be heard and the reporting of, and learning from, errors is encouraged; and~~
 - to contribute to a climate where the truth can be heard the reporting of, and learning from, errors is encouraged and colleagues are supported where errors are made;
 - to view the services you provide from the standpoint of a patient, and involve patients, their families and carers in the services you provide, working with them, their communities and other organisations, and making it clear who is responsible for their care;
 - 3 to take every appropriate opportunity to encourage and support patients and colleagues to improve their health and wellbeing;
 - 4 to contribute towards providing fair and equitable services for all and play your part, wherever possible, in helping to reduce inequalities in experience, access or outcomes between differing groups or sections of society requiring health care;
 - 5
 - to inform patients about the use of their confidential data and to record their objections, consent or dissent; and
 - to provide access to a patient's data to other relevant professionals, always doing so securely, and only where there is a legal and appropriate basis to do so.

NHS values

1 Patients, public and staff have helped develop this expression of values that inspire passion in the NHS and should guide it in the 21st century ~~that should underpin everything it does~~. Individual organisations will develop and refresh their own build upon these values, tailored ing them to their local needs. These NHS values provide common ground for cooperation to achieve shared aspirations.

2 **Respect and dignity.** We value ~~each~~ every person – whether patient or staff – as an individual, respect their aspirations and commitments in life, and seek to understand their 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.

3 **Commitment to quality of care.** We earn the trust placed in us by insisting on quality and striving to get the basics of quality of care – safety, effectiveness and patient experience – right every time: ~~safety, confidentiality, professional and managerial integrity, accountability, dependable service and good communication~~. We encourage and welcome feedback from patients, staff and the public. We use this to improve the care we provide and build on our successes.

4 **Compassion.** We ensure that compassion is central to the care we provide and respond with humanity and kindness to each person’s pain, distress, anxiety or need. We search for the things we can do, however small, to give comfort and relieve suffering. We find time for individuals we care for, their relatives and carers, as well as for those we work alongside. We do not wait to be asked, because we care.

Improving lives. We strive to improve health and well-being and people’s experiences of the NHS. We ~~value~~ cherish excellence and professionalism wherever we find it – in the everyday things that make people’s lives better as much as in clinical practice, service improvements and innovation. We recognise that all have a part to play in making ourselves, patients and our communities healthier.

Working together for patients. We put patients first in everything we do, by ~~reaching out to~~ speaking up when things go wrong, by valuing and supporting staff and fully involving staff, patients, carers, families, communities, and professionals inside and outside the NHS. We put the needs of patients and communities before organisational boundaries.

Everyone counts. We ~~use~~ maximise our resources for the benefit of the whole community, and make sure nobody is excluded, discriminated against or left behind. We accept that some people need more help, that difficult decisions have to be taken – and that when we waste resources we waste ~~others’~~ opportunities for others. ~~We recognise that we all have a part to play in making ourselves and our communities healthier.~~

Explanatory notes

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- 1 It is important to ensure that the NHS values are mainstreamed into the culture of all NHS bodies to make the commitments and responsibilities more powerful.
- 2 To continue reference to building an inclusive and open culture in the NHS, we have sought to strengthen the wording in this value.
- 3 We have amended the wording to make the text of this value more concise and reflective of Lord Darzi’s definition of quality in the NHS. We also sought to reinforce the value of having a culture of, and mechanisms for, feedback to drive service improvements and enhance patient experience.
- 4 We seek to further embed the importance of compassionate care with the proposed additional lines.
- 5 The additional sentence is moved up from the ‘Everyone counts’ value as it fits here to make this value more impactful.
- 6 The insertions here are intended strengthen the need for a culture of support and encouragement.
- 7 We believe that every patient, member of staff and user of NHS services all should benefit from the NHS. This change seeks to emphasise the importance of maximising use of resources and ensuring no-one is discriminated against.



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