

Consultation on strengthening the NHS Constitution: Government response

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Consultation on strengthening the NHS Constitution: Government response

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Statement of consultation response

1. The NHS Constitution was published in 2009 and brought together for the first time the principles, values, rights and responsibilities that underpin the NHS. It sets out the enduring character of the NHS as a comprehensive and equitable health service. It is intended to empower the public, patients and staff to know and exercise their rights to help drive improvements throughout the NHS. The Constitution sets out **rights** to which patients, public and staff are entitled, and **pledges** which the NHS is committed to achieve, together with **responsibilities** which we all owe to one another to ensure that the NHS operates fairly and effectively.
2. Between 5 November 2012 and 28 January 2013, we consulted on a package of limited content changes to strengthen the NHS Constitution. These focused on the following key areas, building on recommendations made by the Future Forum working group to the Secretary of State in 2012:

- patient involvement;
- feedback;
- duty of candour;
- end of life care;
- integrated care;
- complaints;
- patient information;
- staff rights, responsibilities and commitments; and
- dignity, respect and compassion.

We also proposed some minor technical changes to the Constitution to ensure it reflects 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 Act 2009 as amended by the Health and Social Care Act 2012.

3. Following the consultation, we released a report that provided an overview of stakeholders' responses and outlined changes being made to the guiding principles of the NHS Constitution. In that report, we noted that the intent of our proposals was broadly supported, but that respondents provided feedback on how the proposed

wording on several issues could be made clearer, including integrated care, complaints, safeguarding of personal information and the role of local authorities.

4. Since the consultation period ended, the Mid Staffordshire Foundation Trust Public Inquiry ('Francis Inquiry') has reported. The Francis Inquiry examined the commissioning, supervisory and regulatory bodies in the monitoring of Mid Staffordshire hospital between January 2005 and March 2009.
5. We are now releasing the revised NHS Constitution, to ensure that it is up-to-date before the commencement of new NHS arrangements on 1 April 2013. It incorporates most of the changes proposed in the consultation document issued in November and where possible, we have also included further amendments to reflect feedback received during the consultation period. The amendments being made to the Constitution are outlined in Annex 1.
6. Key amendments made since the consultation include:
 - minor edits to the Principles section, as set out in our earlier report summarising responses to the consultation;
 - including the words 'except where appropriate' in the proposed same-sex accommodation pledge, which reflects strong concerns expressed by a number of consultation respondents that it is important to clarify that same-sex accommodation may not be appropriate in all situations, such as where specialised care is required;
 - replacing the term 'data' with 'information';
 - amending 'you have the right of access to your own health records' to state 'you have the right of access to your own health records and to have any factual inaccuracies corrected';
 - technical amendments, including to make clearer where the Constitution is not applicable to local authorities;
 - inserting additional wording to the pledge about providing easily accessible, reliable and relevant information, to make clear that the information provided to patients should be appropriate to their level of understanding;
 - amending the proposed wording of the patient responsibility to treat NHS staff and other patients with respect, in response to comments heard through consultation about violent behaviour and access to NHS services;
 - strengthening the content on the patient responsibility to provide feedback;
 - amending the proposed wording of the patient right to be involved in discussions and decisions about their health and care, to reflect the concern that it may not

be practically feasible for patients to be fully involved in all discussions and decisions; and

- recognising that families and carers, along with patients and staff, should be treated with respect and dignity.

7. The Francis Inquiry report emphasises the potential role of the NHS Constitution in creating a positive, caring culture within the NHS. Of the 290 recommendations made in the report, nine of them relate specifically to the Constitution. Recommendation four of the report states:

“The core values expressed in the NHS Constitution should be given priority of place and the overriding value should be that patients are put first...”¹

In response to this recommendation, we have brought forward the values section so that it appears at the start of the document, directly following the guiding principles. In line with the Francis Inquiry’s recommendation that the values should make clear that ‘patients are put first’, we have also re-ordered the values so that they now start with the value ‘Working together for patients’.

8. While we sought to reflect consultation feedback in the revised NHS Constitution where it was appropriate to do so, we were not able to incorporate all of the amendments suggested by consultation respondents.
9. The NHS Constitution is designed to be an enduring document, and the threshold for making changes to the Constitution is therefore high. Where we have made changes, we have sought to ensure that they are consistent with the Constitution’s intended purpose, and that these are:
- empowering to patients and staff;
 - enduring and consensual;
 - legally accurate;
 - concise and accessible;
 - of general concern to all patients;
 - meaningful to individuals; and
 - credible in that they are already well-established in NHS practice or have a legal basis.

¹ Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, 2013.

10. The Handbook to the NHS Constitution provides a more detailed guide to patients and staff on the contents of the Constitution. Where possible and appropriate, we have included additional explanatory text in the Handbook on a number of issues where respondents suggested that more clarity or specific detail be included in the Constitution, or otherwise raised issues that were more appropriate to be addressed in the Handbook.
11. Consultation respondents also made comments on other issues, on which we will be undertaking further work. These particularly relate to:
 - complaints (beyond the changes proposed in the consultation document) – in particular, respondents sought clarification of the complaints process; and
 - the need to ensure that the commitments in the NHS Constitution are properly implemented.

We recognise these concerns. We recently announced a review of the NHS complaints system, and will feed the concerns we heard about complaints through the recent consultation on the Constitution into the complaints review process. We will also be doing further work on the impact of the Constitution.

12. Later this year, we will consult on further changes to the NHS Constitution, with the aim of:
 - incorporating additional recommendations made by the Francis Inquiry in relation to the Constitution;
 - reflecting the findings of the complaints review where these are relevant to the Constitution; and
 - ensuring patients and staff are clear about how to turn the commitments set out in the Constitution into genuine action in their own care or work setting.

Impact statement

A reference document for impact assessments is at Annex 2.

Equalities statement

An equalities statement is at Annex 3.

Annex 1: Text changes to the NHS Constitution

Reference in draft Constitution	Change	Explanation
Introduction		
Introduction – third paragraph	<p>Technical changes – insertion of wording to state who is required to take account of the NHS Constitution.</p> <p>Replacement of term 'private and third sector' with 'private and voluntary sector'.</p>	<p>The changes 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 Constitution in the exercise of his functions. The Act also gave local authorities new responsibilities in relation to the provision of public health services and a duty to take account of the Constitution when doing so. We want it to be clear to local authorities that the Constitution applies to them. Since the consultation we have included the additional wording 'but references to NHS bodies do not include local authorities' to provide further clarity about the applicability of the Constitution to local authorities.</p> <p>The change from 'private and third sector' to 'private and voluntary sector' is a minor drafting change to use a clearer and more accessible term. The consultation document also proposed that the word 'independent' be inserted. However, this is considered superfluous.</p>
Principles that guide the NHS		
Principle 1	<p>Updating the list of protected characteristics.</p> <p>Inclusion of words 'The service is designed to diagnose, treat and improve both physical and mental health'.</p>	<p>The first change brings this principle into line with the protected characteristics set out in the Equalities Act 2010. The NHS Constitution was launched in January 2009 before that Act was passed. We have made a further change since the consultation to include pregnancy and maternity, which now fully reflects the list of protected characteristics in the Equality Act 2010 and the importance of providing a comprehensive service, available to all.</p> <p>The second change clarifies that the NHS addresses both mental and physical health.</p>

Reference in draft Constitution	Change	Explanation
Principle 3	<p>Re-drafting of principle, to state:</p> <p>‘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 people it employs, and in the support, education, training and development they receive; in the leadership and management of its organisations; and through its commitment to innovation and to the promotion, conduct and use of research to improve the current and future health and care of the population. 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, empowered and supported.’</p>	<p>This principle has been re-drafted 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).</p> <p>A further change reduces the emphasis on planning and delivery. As this is just one of many elements of delivering excellent patient care, we removed 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.</p> <p>A further amendment makes clear that the NHS not only conducts research but uses it to improve services for patients.</p>

Reference in draft Constitution	Change	Explanation
Principle 4	<p>Re-drafting of principle, to state:</p> <p>‘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 should be coordinated around and tailored to, 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.’</p>	<p>The amendments are intended to emphasise the centrality of patients managing their own health. The NHS Future Forum concluded that the existing language of the NHS 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.</p> <p>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.</p> <p>The consultation document proposed adding the words ‘be coordinated around’. However, since the consultation we have revised this to ‘should be coordinated around and tailored to’, to reflect the many consultation responses we received requesting further clarity regarding integrated care and support for patient involvement.</p> <p>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.</p> <p>The NHS Commissioning Board is currently working on strengthening the mechanisms for the NHS to receive feedback.</p>

Reference in draft Constitution	Change	Explanation
Principle 5	<p>Technical amendments – inclusion of references to local authority services and updating of references to other organisations.</p> <p>Changed use of ‘third sector’ to ‘voluntary sector’.</p>	<p>Under the Health and Social Care Act 2012, local authorities are taking on new functions in relation to public health services. References in the NHS 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.</p> <p>Again, ‘third sector’ has been changed to ‘voluntary sector’ for clarity.</p>
Values		
NHS Values	<p>Re-positioning of the values section to follow the Principles.</p> <p>Re-positioning of the value about ‘working together for patients’ to be the first listed value.</p>	<p>Since the consultation, we have re-positioned the values to reflect recommendation 4 of the Francis Inquiry that the values should be given ‘priority of place’ in the NHS Constitution and that ‘the overriding value should be that patients are put first, and everything done by the NHS and everyone associated with it should be informed by this ethos’.²</p>
First paragraph	<p>Replacement of the words ‘should guide it in the 21st century’ with ‘that should underpin everything it does’.</p> <p>Replacement of the words ‘refresh their own’ with ‘build upon these’.</p> <p>Replacement of ‘tailored’ with ‘tailoring them’.</p> <p>Insertion of words ‘at all levels of the NHS’ at the end of the first paragraph.</p>	<p>These changes have been made to reflect the importance of ensuring that the NHS values are mainstreamed into the culture of all NHS bodies to make the commitments and responsibilities more powerful.</p> <p>Based on consultation feedback, we have added wording to emphasise that staff at all levels of the NHS should be guided by these values.</p>

² Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, 2013.

Reference in draft Constitution	Change	Explanation
The value about 'working together for patients'	<p>Amending the wording 'We put patients first' to 'Patients come first'.</p> <p>Replacement of words 'by reaching out to' with 'We fully involve'.</p> <p>Inclusion of statement 'We speak up when things go wrong'.</p>	<p>We made a minor change to use the less paternalistic wording 'Patients come first'.</p> <p>The insertions are intended to strengthen the need for a culture of involvement.</p> <p>We have made some changes to the text 'by speaking up when things go wrong, by valuing and supporting staff and fully involving' proposed in the consultation document. In particular, we have re-positioned the statement about 'speaking up when things go wrong' and deleted proposed wording 'by valuing and supporting staff' which is addressed in the 'respect and dignity' value.</p>
The value about 'respect and dignity'	<p>Amendment of the phrase 'We value each person...' to 'We value every person – whether patient, their families or carers, or staff'.</p> <p>Inclusion of the words 'and open' after 'We are honest'.</p>	<p>We sought to strengthen the wording in this value to continue the reference to building an inclusive and open culture in the NHS.</p> <p>In relation to the first change, we had proposed amending the original wording with 'We value every person – whether patient or staff' in the consultation document. We have further amended this statement to reflect feedback we heard through the consultation, to make clear the importance of also treating other people involved in the NHS, such as families and carers, with respect and dignity.</p>

Reference in draft Constitution	Change	Explanation
<p>The value about 'commitment to quality of care'</p>	<p>Replacement of 'We earn the trust placed in us by insisting on quality and striving to get the basics right every time: safety, confidentiality, professional and managerial integrity, accountability, dependable service and good communication' with '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'.</p> <p>Replacement of 'We welcome feedback, learn from our mistakes and build on our successes' with 'We encourage and welcome feedback from patients, families, carers, staff and the public. We use this to improve the care we provide and build on our successes'.</p>	<p>We amended the wording to make the text of this value more concise and aligned with Lord Darzi's definition of quality in the NHS.³</p> <p>We also sought to reinforce the value of having a culture of, and mechanisms for, feedback to drive service improvements and enhance patient experience. Since the consultation we have included families and carers in the list of people from whom feedback is encouraged, for consistency with other parts of the NHS Constitution.</p>
<p>The value about 'compassion'</p>	<p>Insertion of words 'ensure that compassion is central to the care we provide and'.</p> <p>Replacement of 'those we serve and' with 'patients, their families and carers, as well as those we'.</p>	<p>We seek to further embed the importance of compassionate care with these additional lines.</p>
<p>The value about 'improving lives'</p>	<p>Replacement of word 'value' with 'cherish'.</p> <p>Insertion of additional sentence 'We recognise that all have a part to play in making ourselves, patients and our communities healthier'.</p>	<p>The additional sentence is moved from the 'Everyone counts' value to give it greater impact.</p>

³ High Quality Care for All: NHS Next Stage Review Final Report (2008)

Reference in draft Constitution	Change	Explanation
The commitment about 'everyone counts'	<p>Replacement of word 'use' with 'maximise'.</p> <p>Insertion of words 'discriminated against' in the statement phrase 'make sure nobody is excluded or left behind'.</p> <p>Replacement of 'others' opportunities' with 'opportunities for others'.</p>	We believe that every patient, member of staff and user of NHS services should benefit from the NHS. This change seeks to emphasise the importance of maximising use of resources and ensuring no-one is discriminated against.
Patient rights and pledges		
First and second paragraphs	Technical amendments – deletion of words 'the content of' and inclusion of word 'comprehensive'.	We wanted to make explicit that a person's legal rights are absolutely not affected by the way in which they are summarised in the NHS Constitution, and to clarify that the NHS pledges cover a wide range of services.
The right to expect your local NHS to assess the health requirements of the local community	<p>Technical amendment – deletion of the word 'local' and in one case, replacing it with 'your'.</p> <p>Insertion of extra words – '... and, in the case of public health services commissioned by local authorities, to take steps to improve the health of the local community'.</p>	<p>The 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).</p> <p>The additional words are to reflect the different nature of the duty on local authorities to take steps to improve public health.</p>
The right to not be discriminated against in the provision of NHS services	Technical amendments – update of list of protected characteristics and deletion of a related footnote.	<p>The list of protected characteristics in this right has been updated for consistency with the Equality Act 2010, which was passed after the NHS Constitution was originally launched.</p> <p>In addition, the Constitution contained 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.</p>

Reference in draft Constitution	Change	Explanation
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	Technical amendments: <ul style="list-style-type: none"> • insertion of the words 'certain services commissioned by NHS bodies'; and • insertion of 'suitable' before 'alternative providers'. 	These are technical amendments to better reflect the legal basis of this right, including that it does not apply to services commissioned or provided by local authorities.
The pledge to make the transition as smooth as possible when patients are referred between services	Replacement of words 'include you in relevant discussions' with 'put you, your family and carers at the centre of decisions that affect you or them'.	The changes to this pledge put patients, their carers and families at the centre of decision-making about their care.
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	Deletion of footnote 'Subject to Parliamentary approval, the new registration system will apply to NHS providers from April 2010, and independent sector providers from October 2010'.	This footnote has been deleted, as it is now out of date.
The right to expect NHS organisations to monitor, and make efforts to improve the quality of healthcare they commission or provide The pledge to continuous improvement in the quality of services, identifying and sharing best practices in quality of care and treatments	In the right, addition of the word 'continuously' after 'improve', along with an additional sentence stating 'This includes improvements to the safety, effectiveness and experience of services'. Technical amendment to the right – replacing the word "organisation" with "bodies". In the pledge, deletion of words 'continuous improvement in the quality of services you receive'.	These amendments emphasise the definition of quality set out by Lord Darzi. ⁴ 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. We also seek to make clear that the right applies to NHS bodies. As we have strengthened the right to refer to 'continuous improvement', we have amended the pledge so as not to duplicate or confuse as to its legal status. We have retained the part of the pledge that refers to identifying and sharing best practice.

4 High Quality Care for All: NHS Next Stage Review Final Report (2008)

Reference in draft Constitution	Change	Explanation
<p>The pledge that patients admitted to hospital will not have to share sleeping accommodation with patients of the opposite sex, in line with details set out in the Handbook</p>	<p>Inclusion of a new pledge, proposed as part of the consultation document.</p> <p>Since the consultation, insertion of the words 'except where appropriate' before 'in line with details set out in the Handbook'.</p>	<p>We have added an extra pledge to make explicit the NHS' commitment that patients can expect to sleep in same-sex accommodation to protect their dignity.</p> <p>Since the consultation, we have inserted the words 'except where appropriate' into this pledge. This reflects the strong concern expressed by a significant number of consultation respondents that we clarify that there may be some situations in which a commitment to same-sex accommodation is not appropriate or feasible (such as where clinical conditions exist that require specialised care), to avoid any misunderstanding. This change is consistent with details outlined in the Handbook.</p>
<p>The right to expect drugs that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you</p>	<p>Re-wording of associated footnote.</p>	<p>Technical amendments.</p>
<p>The right to be given information about treatment</p>	<p>Clarification of wording.</p>	<p>The amendment seeks to make it clearer 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. This amendment is not based on any changes to the law.</p>
<p>The right of access to own health records</p>	<p>Deletion of words 'These will always be used to manage your treatment in your best interests'.</p> <p>Addition of words 'and to have any factual inaccuracies corrected'.</p>	<p>The deletion is a minor drafting amendment for clarity and concision. We also considered that the deleted wording could sound paternalistic.</p> <p>Since the consultation we have added the words 'and to have any factual inaccuracies corrected' to reflect the law and Department of Health guidance that requires factual inaccuracies to be corrected. This does not extend to clinical opinion and will be explained in the Handbook to the NHS Constitution.</p>

Reference in draft Constitution	Change	Explanation
<p>The rights and pledges about patient information</p>	<p>Insertion of additional rights and pledges about patient information.</p> <p>Replacement of word 'data' with 'information'.</p>	<p>The additional rights are included to better advertise existing legal rights, rather than to create new ones. The Data Protection Act 1998 safeguards require those who hold personal data to inform you at your request about the specific processing of your identifiable information.</p> <p>A right to have any objections to use of your personal information beyond your care considered is set out, including that if it cannot be followed then the reasons will be given.</p> <p>We also included new pledges, reflecting the parallel information governance review, led 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 information safely across health and care services and protect confidentiality.</p> <p>We are using the word 'information' rather than 'data' to be consistent throughout the NHS Constitution, which reflects the consultation feedback that the use of both 'data' and 'information' is confusing.</p>
<p>The pledge to share with patients any letters sent between clinicians about their care</p>	<p>Replacement of the word 'letters' with 'correspondence'.</p>	<p>We amended this pledge to reflect that emails and other electronic communications, as well as letters, are increasingly used to convey information between clinicians.</p>

Reference in draft Constitution	Change	Explanation
The right to make choices about NHS care and to information to support these choices	Insertion of the text 'the services commissioned by NHS bodies' following 'choices about'.	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.
The pledge to offer easily accessible, reliable and relevant information	Inclusion of additional words about: <ul style="list-style-type: none"> • providing information 'in a form you can understand'; • supporting patients to use information; and • providing information on the <i>range</i> of services. 	We made 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. We also wanted to make clear that the information provided to patients should be appropriate to their level of understanding. These amendments are important for patient choice and patient involvement.
The right to be involved in discussions and decisions	Inclusion of additional text about involvement of patients, their family and carers in decision-making about health and care, including end of life care.	We made changes 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. In the consultation document, the words 'all' and 'fully' were included in the proposed wording of this right (i.e. 'You have the right to be fully involved in all discussions and decisions...'). However, during the consultation we heard that this may not be practically feasible because of how these may occur (for example, a telephone conversation between practitioners). Accordingly, we have removed the words 'all' and 'fully' from this statement.
The right to be involved, directly or through representatives, in the planning of healthcare services	Technical amendment – insertion of words 'commissioned by NHS bodies'.	As this right is based on the National Health Service Act 2006, local authorities are not covered by this so we have made the reference specific to NHS bodies.
The pledge to provide the information you need to influence and scrutinise the planning and delivery of NHS services	Insertion of words 'and support' after 'information'.	This change is intended to clarify that patients should not only be given information but should also be supported to understand it so that they can make meaningful decisions.

Reference in draft Constitution	Change	Explanation
Pledges regarding feedback and involvement in discussions about care planning	Insertion of additional pledges to: <ul style="list-style-type: none"> ● 'involve you in discussions about planning your care and to offer you a written record of what is agreed if you want one'; and ● 'encourage and welcome feedback on your health and care experiences and use this to improve services'. 	The new pledge about involvement in discussions about care planning seeks to make clear that patients with long term conditions or requiring end of life care may be offered a written care plan, if they want one. Details of this are set out in the Handbook. The new pledge about feedback 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 inclusion of feedback in principle 4.
The right about any complaint you make about the NHS services dealt with efficiently and properly investigated	Replaced 'dealt with efficiently' with 'acknowledged within three working days'.	This change is intended to ensure that people are aware of how soon they should expect acknowledgement of their complaint.
The right to know the outcome of any investigation into your complaint	Deletion of right 'You have the right to know the outcome of any investigation into your complaint'.	The content of this right is duplicative of the new right to be kept informed of progress and know the outcome of any investigation into your complaint. This standalone right has therefore been deleted.
The rights about complaints and redress	Insertion of rights to: <ul style="list-style-type: none"> ● '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'; and ● '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'. 	We included a description of these rights to ensure that, in the spirit of other changes, patients are at the centre of anything that involves them. We also aim to make explicit here the fact that people making a complaint must be offered the opportunity to be included in all decision-making about their complaint. 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. These rights are set out in further detail in the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and Part 5 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

Reference in draft Constitution	Change	Explanation
The right to take your complaint to the independent Health Service Ombudsman	Technical amendment – insertion of reference to the Local Government Ombudsman and replacement of ‘Health Service Ombudsman’ with ‘Parliamentary and Health Service Ombudsman’.	<p>This insertion references the complaints and ombudsman systems used by local authorities. Local authorities will have a separate complaints mechanism for concerns relating to public health services, and complaints about those services will be referable to the local authority rather than the Parliamentary and Health Service Ombudsman.</p> <p>In addition, we have corrected the title of the Parliamentary and Health Service Ombudsman.</p>
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	Technical amendment – insertion of words ‘or local authority’ after ‘NHS body’.	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.
The pledge about courteous treatment and appropriate support during the handling of a complaint	Insertion of word ‘that’ in two places.	Minor drafting changes.
The pledge that when mistakes happen, to acknowledge them, apologise, explain what went wrong and put things right quickly and effectively	<p>Deleted and replaced with the following pledge:</p> <p>‘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’.</p>	<p>A new pledge has been added to this section to reflect the contractual duty of candour.</p> <p>The inclusion of this pledge is more specific in relation to acknowledging mistakes, so we propose removing the existing pledge.</p>
Patient responsibilities		
All patient responsibilities	Replacement of ‘You should’ with ‘Please’.	Minor drafting change to use less paternalistic wording.

Reference in draft Constitution	Change	Explanation
The responsibility for patients to 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.	Deletion of word 'some'.	Minor drafting change.
The responsibility to register with a GP practice – the main point of access to NHS care.	Insertion of the words 'as commissioned by NHS bodies' after 'NHS care'.	This amendment reflects that people can access healthcare in other ways in addition to through their GP (for example, certain public health services).
The responsibility to treat NHS staff and other patients with respect	Amendment of previous wording, to state: 'Please treat NHS staff and other patients with respect and recognise that violence, or the causing of nuisance or disturbance on NHS premises, could result in prosecution. You should recognise that abusive and violent behaviour could result in you being refused access to NHS services.'	This change 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. This statement has been changed slightly since the wording included in the consultation document, to reflect comments raised during the consultation process. Further guidance about this issue is provided in the Handbook.

Reference in draft Constitution	Change	Explanation
<p>The responsibility to give feedback</p>	<p>Inclusion of the words 'your experiences and', along with the following additional statement:</p> <p>'You can often provide feedback anonymously and giving feedback will not affect adversely your care or how you are treated. If a family member or someone you are a carer for is a patient and unable to provide feedback, you are encouraged to give feedback about their experiences on their behalf. Feedback will help to improve NHS services for all.'</p>	<p>These amendments have been made to reflect feedback we received during the consultation.</p> <p>In relation to the inclusion of the words 'your experiences and', it was suggested that this would make it clear that feedback can be given not only about matters directly related to treatment, but also about people's broader experiences with the NHS.</p> <p>Several respondents to the consultation suggested that wording be included in the NHS Constitution about anonymous feedback. When patients feel assured feedback cannot be traced back to them they are likely to be more honest, and many feedback mechanisms including the friends and family test are conducted anonymously. In addition, it was suggested that reference should be made to the importance of family members and carers giving feedback where patients are not able to do so.</p> <p>We have included the final sentence to recognise the importance of giving feedback.</p>
<p>Staff rights and pledges</p>		
<p>Second paragraph</p>	<p>Insertion of additional text:</p> <ul style="list-style-type: none"> • 'and provided with meaningful feedback'; • 'compassionate'; and • 'Care professionals should be supported to maximise the time they spend directly contributing to the care of patients'. 	<p>The amendments seek to clarify that staff should be supported through the provision of constructive feedback to aid their personal development.</p> <p>The final point is to further emphasise that patients come first.</p>

Reference in draft Constitution	Change	Explanation
Third paragraph	<p>Technical amendment – insertion of words ‘including public health’.</p> <p>Replacement of term ‘third sector’ with ‘voluntary sector’.</p>	<p>The insertion of ‘including public health’ is a technical amendment intended to clarify that the NHS Constitution also applies to staff in local authorities involved in the exercise by local authorities of their public health functions.</p> <p>We have also made a minor drafting change to replace ‘third sector’ with ‘voluntary sector’, for consistency with other references in the Constitution. We believe that this is a clearer term.</p>
The right about raising an internal grievance	<p>Previous wording has been replaced with ‘can in certain circumstances take a complaint about their employer to an Employment Tribunal’.</p> <p>A new pledge has been added: ‘to have a process for staff to raise an internal grievance’.</p>	<p>This amendment is needed because the law on this right has changed since the introduction of the NHS Constitution. It is recognised that employers should have a process in place for staff to raise an internal grievance.</p>
The pledge about staff working environment	<p>Insertion of a new pledge ‘to provide a positive working environment for staff and to promote supportive, open cultures that help staff do their job to the best of their ability’.</p>	<p>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.</p>
The pledge to provide all staff with personal development	<p>Insertion of additional words ‘education and’ and replacement of ‘succeed’ with ‘fulfil their potential’.</p>	<p>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.</p>

Reference in draft Constitution	Change	Explanation
The pledge to support all staff to raise concerns	Insertion of words 'encourage and' before 'support'.	The insertion of the words 'encouraged and' seeks to emphasise that staff should be encouraged to raise concerns as well as being supported to do so.
Staff responsibilities		
The duty about protecting the confidentiality of personal information	Deletion of words 'unless to do so would put anyone at risk of significant harm'.	The original wording of this duty implies that information can only be kept confidential if it is not shared. In fact, information should be shared in a safe way between clinicians, for example in the interests of joined up care.
The responsibility to maintain the highest standards of care and service	Insertion of words 'treating every individual with compassion, dignity and respect'.	We included some extra wording here to reflect the importance of dignity and respect in high quality service provision.
The responsibility to raise any genuine concern about a risk, malpractice or wrongdoing at work	Removal of words 'students on training placements' from associated footnote.	This change has been made to reflect the fact that the definition of worker in section 43K of the Employment Rights Act 1996 means that student nurses are not covered by the whistleblowing protections in that legislation. The current legal protections offered to whistleblowers will be reviewed shortly by the Department for Business, Innovation and Skills (BIS). As part of its review of the legislation, BIS will consider whether students more generally should be included in the scope of the legislation.
The responsibility to involve patients, their families, carers or representatives fully in decisions about prevention, diagnosis and their individual care and treatment	Insertion of new responsibility.	This new staff responsibility seeks to emphasise that staff should aim to involve patients fully in decisions that affect them. 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.

Reference in draft Constitution	Change	Explanation
<p>The responsibility to be open with patients, their families, carers or representatives, and to welcome and listen to feedback</p>	<p>The words ‘You should contribute to a climate where the truth can be heard and the reporting of, and learning from, errors is encouraged’ have been deleted from this responsibility.</p> <p>They are replaced by a new responsibility ‘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’.</p>	<p>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.</p>
<p>The responsibility ‘to take every appropriate opportunity to encourage and support patients and colleagues to improve their health and wellbeing’</p>	<p>Insertion of a new responsibility.</p>	<p>We have added 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 NHS Constitution should include the notion of making every contact count. Details of what this would mean are set out in the Handbook.</p>
<p>The responsibility ‘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’</p>	<p>Insertion of a new responsibility.</p>	<p>A further responsibility is added here to make clear that staff play an important role in reducing health inequalities in everything they do, where possible.</p>

Reference in draft Constitution	Change	Explanation
Responsibilities about use of and access to patient information	<p>Inclusion of two new responsibilities:</p> <ul style="list-style-type: none"> ● 'to inform patients about the use of their confidential information and to record their objections, consent or dissent'; and ● 'to provide access to a patient's information to other relevant professionals, always doing so securely, and only where there is a legal and appropriate basis to do so'. 	<p>These changes have been made to provide further clarity about staff responsibilities in relation to the use of patient information. The responsibility to record a patient's views on use of their confidential information goes further than the relevant patient right and pledge, which only refer to patient objection.</p>

Annex 2: Reference document for impact assessments

The NHS Constitution

Reference Document for Policy Impact Assessments

About this document

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

This document accompanies, and should be read in conjunction with, the NHS Constitution published in March 2013.

Introduction

The NHS Constitution was first published in 2009 along with an Impact Assessment.⁵ The Constitution brought together for the first time, the principles, values, rights and responsibilities that underpin the NHS. It sets out the enduring character of the NHS as a comprehensive and equitable health service and is intended to empower patients, staff and the public to know and exercise their rights to help drive improvements throughout the NHS.

The NHS Constitution is a 'declaratory document', codifying rights contained in existing legislation and drawing them together in one place. It does not, itself, create new rights or replace existing ones.

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

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

⁵ Department of Health, December 2008

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

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 Constitution in their decisions and actions.

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

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

Quality of Care and Environment

Right

'You have the right to expect NHS bodies 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 word 'continuously' has been added after 'improve' along with an additional sentence stating 'This includes improvements to the safety, effectiveness and experience of services'.

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 combined Impact Assessment.⁶

Pledge

'The NHS also commits: that if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite sex, except where appropriate, in line with details set out in the Handbook to the NHS Constitution.'

This new pledge has been included to make explicit the NHS' commitment that patients can expect to sleep in same-sex accommodation to protect their dignity as set out in the Impact Assessment on delivering same sex accommodation.⁷

⁶ Department of Health, September 2011

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129917.pdf

⁷ Department of Health, September 2009 http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_116494.pdf

Respect, Consent and Confidentiality

Rights

'You have the right to be informed about how your information is used and to have any factual inaccuracies corrected.'

'You have the right to request that your confidential information 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.'

These rights have been included in the NHS Constitution to better advertise existing legal rights. The Data Protection Act 1998 safeguards require those who hold personal data to inform you at your request about the specific processing of your identifiable information. A right to have any objections to use of your personal information beyond your care considered is set out, including that if your wishes cannot be followed then the reasons will be given.

Pledges

The NHS also commits:

'to ensure those involved in your care and treatment have access to your health information so they can care for you safely and effectively.'

'to anonymise the information collected during the course of your treatment and use it to support research and improve care for others.'

'where identifiable information has to be used, to give you the chance to object wherever possible to inform you of research studies in which you may be eligible to participate.'

The new pledges here have been included to reflect the parallel information governance review, led by Dame Fiona Caldicott.

Expectation – how staff should play their part in ensuring the success of the NHS

You should aim:

'to inform patients about the use of their confidential information and to record their objections, consent or dissent; and

'to provide access to a patient's information to other relevant professionals, always doing so securely, and only where there is a legal and appropriate basis to do so.'

Similar staff responsibilities in this area have also been added for consistency.

A Privacy Impact Assessment compiled by the National Institute for Health Research deals with the use of patient data for research.⁸

Involvement in your healthcare and in the NHS

Right

'You have the right to be involved in discussions and decisions about your health and care, including your end of life care, and to be given information to enable you to do this. Where appropriate this right includes your family and carers.'

Expectation – how staff should play their part in ensuring the success of the NHS

'You should aim: to involve patients, their families, carers or representatives fully in decisions about prevention, diagnosis, and their individual care and treatment.'

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 so. The above right has been strengthened to make clear that patients, and where appropriate their family and carers, should make decisions about their health and care including end of life care, rather than decisions being made for them. These new duties are set out in the Health and Social Care Act 2012 combined Impact Assessment.⁹

A corresponding staff responsibility has also been added, which is set out in the Impact Assessment for 'Liberating the NHS: No Decision About Me, Without Me'.¹⁰

Complaint and Redress

'You have the right to have any complaint you make about NHS services acknowledged within three working days and to have it properly investigated.'

This pledge has been amended to ensure that people are aware that they should expect acknowledgement of their complaint within three working days. The Impact Assessment on the three working day acknowledgement can be found in section seven of the explanatory memorandum to the Local Authority Social Services and National Health Service Complaints (England) Regulations.¹¹

8 National Institute for Health Research, February 2011 http://www.nihr.ac.uk/systems/Documents/RCP_Programme_Documents/RCP_PIA_Recommendations_Report_0.9_110202.doc

9 Department of Health, September 2011

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129917.pdf

10 Department of Health, February 2012 http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_134220.pdf

11 Department of Health, 2009 http://www.legislation.gov.uk/ukxi/2009/309/pdfs/ukxiem_20090309_en.pdf

'The NHS also commits: 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.'

This pledge has been included to reflect the contractual duty of candour, for which there is a separate Impact Assessment.¹²

¹² Department of Health, 2012

<https://www.wp.dh.gov.uk/publications/files/2012/12/Duty-of-Candour-Impact-Assessment.pdf>

Annex 3: Equalities Statement

1. One of the key purposes of the update was to ensure that the NHS Constitution – including its content, implications for staff, patients and public, and intended impact on positive health outcomes – is consistent with the provisions of the Equality Act 2010 as well as the new duties as to reducing health inequalities set out in the Health and Social Care Act 2012.
2. The original NHS Constitution, published in January 2009, set out in the first principle that ‘The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, sexual orientation, religion or belief’. This reflected the anti-discrimination laws at the time. The Equality Act 2010, 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 have updated the first principle to include references to gender reassignment, pregnancy and maternity, and marital or civil partnership status.
3. We have also strengthened the patient involvement content in the NHS Constitution, making clear that patients should be involved in discussions and decisions about their health and care and that services should be coordinated around their particular needs. Furthermore, we have set out in the Constitution that patients, along with their carers and families, 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 included a 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 is to make clear that services should be tailored to the needs of individuals, in the way they access services and receive treatment.
4. In compiling the original consultation document we sought to ensure that our proposals would not have a negative impact on individuals with protected characteristics. From the outset, we had regard to our Public Sector Equality Duty and examined each proposed amendment to ensure that there was no adverse impact on individuals with protected characteristics. We believed that the changes originally proposed would not adversely affect individuals with protected characteristics and that, in fact, they would improve and strengthen people’s awareness of their rights and entitlements, promote equality and help tackle inequalities. As the NHS Constitution sets out existing rights and policy rather than creating new policy, this position has not changed since the consultation.

5. The changes to the NHS Constitution empower patients, staff and the public, and make their rights and entitlements more explicit. We have ensured that all changes to the text of the NHS Constitution strongly reflect the document's continued intention to reduce inequalities – social and in health – throughout, and the values of the Constitution clearly state that we will 'make sure nobody is excluded, discriminated against or left behind'.
6. As outlined in our report on the consultation, during the consultation process a number of stakeholders suggested that some of the proposed changes outlined in the consultation document may have an impact on particular groups. For example, we heard concerns about: how the pledge on same-sex accommodation would apply to transgender patients; the possibility that the proposed statement 'abusive or violent behaviour could result in you being refused access to the NHS' may impact on particular patient groups; that the staff responsibility to 'make every contact count' might impact on some patients with protected characteristics where they have different lifestyles to staff; and how accessible and applicable the NHS Constitution is to young people. We have noted these concerns and in response, we have:
 - modified the statement about NHS access for violent and abusive patients, and included guidance in the Handbook to the Constitution to ensure that clinical exceptions apply;
 - included guidance in the Handbook about the staff responsibility to 'make every contact count'; and
 - ensured that the Handbook to the Constitution provides guidance on the accommodation of transgender patients; and
 - included additional wording to the pledge about providing easily accessible, reliable and relevant information, to make clear that the information provided to patients should be appropriate to their level of understanding.

We also intend to make the Constitution available in alternative versions.

7. Consultation respondents also suggested a range of options to ensure that the NHS Constitution is accessible and useable to individuals from different backgrounds and to different sections of society. We have noted these suggestions, and intend to undertake measures to ensure that the Constitution is accessible to individuals from different backgrounds such as by making it available in various formats, as noted above.
8. We will further consider equalities issues when we report on the effect of the NHS Constitution on patients, staff and the public. We will also ensure that we work to advance equality of access across NHS provision, focusing on the characteristics of people protected by the Public Sector Equality Duty.



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