

# Report on the effect of the NHS Constitution



**THE NHS  
CONSTITUTION**  
the NHS belongs to us all



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<b>Policy</b> HR/Workforce Management Planning/Performance	Clinical Commissioner Development Provider Development Improvement and Efficiency	Estates IM & T Finance Social Care/Partnership Working
<b>Document purpose</b>	For information	
<b>Gateway reference</b>	17834	
<b>Title</b>	Report on the effect of the NHS Constitution	
<b>Author</b>	DH	
<b>Publication date</b>	4 July 2012	
<b>Target audience</b>	PCT Cluster CEs, NHS Trust CEs, SHA Cluster CEs, Care Trust CEs, Foundation Trust CEs , Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT Cluster Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Directors of Finance, Allied Health Professionals, GPs, Communications Leads, Emergency Care Leads, Directors of Children's SSs	
<b>Circulation list</b>		
<b>Description</b>	This report seeks to clarify the effect of the NHS Constitution on those who use NHS services and who work in the NHS. It considers whether, and to what extent, the Constitution has made a difference to patients, staff, carers and the public, and examines the degree to which it is succeeding in its aims.	
<b>Cross reference</b>	NHS Constitution for England	
<b>Superseded documents</b>	N/A	
<b>Action required</b>	N/A	
<b>Timing</b>	N/A	
<b>Contact details</b>	NHS Constitution Team Richmond House 79 Whitehall London SW1A 2NS 020 7210 5229  <a href="http://www.dh.gov.uk/nhsconstitution">www.dh.gov.uk/nhsconstitution</a>	
<b>For recipient's use</b>		

# Report on the effect of the NHS Constitution

**Presented to Parliament pursuant to Section  
6(3) of the Health Act 2009**

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# Foreword

The NHS Constitution brings together in one place the essence of what makes the NHS unique and special. Not only does it give a focal point to what the health service is all about, it reminds us of what the NHS is striving to achieve each and every day. While it was developed and drafted before I became Secretary of State, I supported, and continue to support, the principles and values it contains. Its opening paragraph is the most eloquent expression of why we all treasure the NHS and why we must safeguard its principles and values for the future.

I am grateful to the NHS Future Forum, and to its Chair, Professor Steve Field, for advising me on the effect of the NHS Constitution. Its advice has informed this report, though I am responsible for the conclusions expressed here.

As the NHS Future Forum makes clear, the Constitution is an enduring document. It transcends profession and politics, commanding respect and support from all sides. When the Constitution was launched, it was supported by MPs and Peers across both Houses of Parliament and continues to attract cross-party support.

Over the last two years there has been heated debate about how we can enable the NHS to grow and thrive, but all parties remain committed to the principles and values of the NHS as expressed in the Constitution. The reforms this Government has put in place, including The Health and Social Care Act 2012, are wholly consistent with the principles of the NHS Constitution. I also believe they will

help the NHS better to meet them. In times of change, the Constitution provides continuity, making clear that the principles and values of our NHS will always endure.

I am pleased to report that, in most cases, the NHS is broadly meeting the rights and pledges in the NHS Constitution. That is to be celebrated. However, we should not be complacent. There remains scope for improvement – and where it does, the NHS can and must do better.

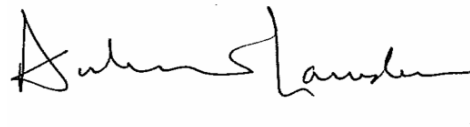
As the Future Forum makes clear in its advice, awareness of the NHS Constitution remains low and there is little evidence the Constitution is widely used as a means of helping patients and staff to uphold their rights and the pledges made to them. That is why the 2012 Act places new legal duties on the NHS Commissioning Board and on clinical commissioning groups actively to promote the NHS Constitution. I know that Sir David Nicholson, as chief executive of the NHS Commissioning Board Authority, is already exploring how the Board can fulfil those duties and help embed the principles and values of the Constitution across the NHS.

I agree with the NHS Future Forum that the NHS Constitution provides an important means of the Secretary of State holding to account all parts of the system, including all providers of NHS services, for delivering on rights and pledges in the Constitution and the principles and values at underpin the NHS. That is why Our NHS care objectives A draft mandate to the NHS Commissioning Board (the draft mandate) to

the NHS Commissioning Board, published today for consultation, sets an objective for the Board to demonstrate that patient rights and pledges in the Constitution are being met.

As Secretary of State, I am committed to the enduring principles and values the underpin our NHS, and to playing my part in improving knowledge and understanding of the Constitution. I have asked the NHS Future Forum to consider how we can strengthen and reinforce the NHS Constitution for the future, and consider how we can raise public and staff awareness. I look forward to receiving the advice of the Future Forum on potential changes to the Constitution in the autumn, after which there will be a full public consultation. It will be important that any changes to strengthen the Constitution take account of the outcomes of the Francis inquiry into the events at Mid Staffordshire NHS Foundation Trust.

As the opening words of the Constitution states, “the NHS belongs to the people”. The principles it was founded on are as important now as they were when the NHS was created: healthcare free at the point of use, based on clinical need not an individual’s ability to pay. As Secretary of State, it is a great privilege – and responsibility – to be the custodian of those principles. The NHS arouses extraordinary passions and devotion. It affects us all. And at its heart are the principles and values enshrined in the NHS Constitution.

A handwritten signature in black ink, appearing to read 'Andrew Lansley', with a stylized flourish at the end.

**Andrew Lansley CBE**  
**Secretary of State for Health**

# Executive Summary

The NHS Constitution for England 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 empowers patients, staff and the public to know and exercise their rights in order to help drive improvements in quality, efficiency and responsiveness throughout the NHS.

This is the first report by a Secretary of State on the effect of the NHS Constitution. It has been prepared not only to meet the legal duty imposed by the Health Act 2009, but to understand its practical impact over the three years since its launch. It shows us the progress we have made and the lessons that can be learned for the future.

This report seeks to clarify the effect the Constitution has had on those who use NHS services and who work in the NHS. It considers whether, and to what extent, the Constitution has made a difference to patients, staff and the public, and examines the degree to which it is succeeding in its aims.

Overwhelmingly, patients and NHS staff believe it is important that the NHS has a Constitution and the more they know about the Constitution the greater their support. As the NHS Future Forum said in its advice, it is not surprising but neither is it satisfactory that public awareness of the Constitution remains generally low and there is little evidence that patients use it as a means of exercising their rights. To some

degree, this reflects the approach adopted at the launch of the Constitution of first raising awareness among NHS staff. Staff awareness of the NHS Constitution is significantly higher than among the public but still few feel well informed about it.

This report necessarily looks at the performance of the NHS against the rights and pledges codified in the NHS Constitution. In many cases, the evidence is either limited in scope, only partially addresses the effect of the Constitution, or simply alludes to the effects of the Constitution in changing behaviour and organisational culture. What matters most to patients and staff is that the rights and pledges set out in the NHS Constitution are delivered. It is therefore important that a clear evidence base for examining this is established.

By codifying the principles and values of the NHS, the Constitution was intended to help safeguard the NHS as an efficient and equitable health system, and to empower patients, the public and staff within the NHS to challenge the NHS, and prompt improvements in NHS performance if they thought that they were not being met.

The report shows that three years on from the launch of the Constitution, the NHS remains true to its fundamental principles and values as expressed in the NHS Constitution. Those principles and values are as relevant today as they were when the NHS was founded, and continue to enjoy strong support from the

public. The NHS continues to be a universal, comprehensive service, based on clinical need not on an individual's ability to pay.

In general, patients do not use the NHS Constitution as a benchmark for challenge and this suggests that the Constitution is not yet having the effect originally intended. For the Constitution to have real effect, it will be vital to raise awareness and embed it at every level in the NHS.

The Health and Social Care Act 2012 has strengthened the legal foundation for the NHS Constitution: the NHS Commissioning Board and clinical commissioning groups will have clear duties to promote the NHS Constitution. The Department of Health will hold the NHS Commissioning Board to account for meeting its legal duty to promote the Constitution. It will also hold the Board to account for delivering on the rights and pledges contained within it.



# 1 Introduction

*“For the Constitution to succeed in its aims, it needs to become part of everyday life in the NHS for patients, the public and staff. Achieving this will require leadership, partnership and sustained commitment over months and years, to raise awareness of the Constitution and weave it into the way the NHS works at all levels.”*

## Handbook to the NHS Constitution

### Context

1. **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 empowers patients, staff and the public to know and exercise their rights in order to help drive improvements in quality, efficiency and responsiveness throughout the NHS.
2. The NHS Constitution has a framework in primary legislation, established by the Health Act 2009. NHS bodies and private 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 ethos of the NHS, is embedded at every level within the health service and among those organisations providing NHS services.
3. While an enduring document, to ensure the NHS Constitution remains up-to-date and of continuing value to patients, staff

and the public, the Secretary of State must review and republish the NHS Constitution at least once every ten years, and review and republish the Handbook to the NHS Constitution every three years.<sup>1</sup>

4. To ensure that its impact is regularly assessed and understood, the Secretary of State must also report on the effect of the NHS Constitution on patients, staff, carers and members of the public every three years. By law, the first such report must be published and laid in Parliament by 5 July 2012, the 64th birthday of the NHS.

### Purpose of the report

5. **This is the first report by a Secretary of State on the effect of the NHS Constitution.** It has been prepared not only to meet the legal duty imposed by the Health Act 2009, but to understand its real, practical impact over the three years since its launch. It shows us the progress we have made, as well as the lessons that can be learned for the future.

<sup>1</sup> The first review of the Handbook to the NHS Constitution, as required under section 5 of the Health Act 2009, is attached at Annex 2.

6. Reviewing the NHS Constitution should not be a technical or tick-box exercise. Doing so regularly and objectively can have real value, helping to ensure the Constitution does not simply sit on the shelf and gather dust, or become a document to which only lip service is paid. It makes us look critically at how together patients, staff and the public can ensure the Constitution is woven into the fabric of everything the NHS does – the underlying objective when it was launched.
7. This report seeks to clarify the effect the NHS Constitution has had on those who use NHS services and who work in the NHS. It has been developed with the advice of the NHS Future Forum, whose letter of advice to the Secretary of State is published alongside this report.
8. The report considers whether, and to what extent, the Constitution has made a difference to patients, staff and the public, and examines the degree to which it is succeeding in its aims. It focuses on two core themes:
  - **levels of awareness of the NHS Constitution**, to establish the extent to which the public and staff who work in the NHS are aware of the Constitution, feel informed about its content, and support its existence;
  - **the role of the Constitution in ensuring rights and pledges are delivered**, to explore the extent to which the Constitution has had an impact in helping patients and staff to exercise their rights and enjoy the pledges made to them.
9. What matters most to patients and staff is that the rights and pledges set out in the NHS Constitution are being delivered in practice. This is not a general report on NHS performance; other reports, not least *The Year: The NHS Chief Executive's Annual Report 2011/12* and *The Health Service in England: The Secretary of State's Annual Report 2011/2012*, offer that overview. But performance is relevant to understanding the effect of the Constitution to date and is considered in this context.
10. **The report is necessarily retrospective.** But looking back at the effect the Constitution has had to date does highlight lessons that can be drawn for the future. For example, it helps clarify the scale of the task ahead in terms of raising public and staff awareness and indicates where more needs to be done.
11. Discussion of potential changes to strengthen and reinforce the NHS Constitution, however, are beyond the scope of this report. The NHS Future Forum will be considering this over the summer and will advise the Secretary of State in the autumn. There will be a public consultation on any proposed changes later this year.

## The development of the NHS Constitution

12. The NHS Constitution was first published on 21 January 2009 and given legal effect later that year by the Health Act 2009. It was the product of extensive discussions with patients, staff and the public about what mattered most to them about the NHS and followed a public consultation, overseen by a Constitutional Advisory Forum comprising leading experts and stakeholders.
13. Through this engagement, the Constitution was intended to have enduring meaning and value to patients, staff and the public who would feel a sense of ownership of it. From the outset, it has enjoyed widespread, cross-party support.

## Legal duties to promote and have regard to the NHS Constitution

14. The Health Act 2009 places a duty on bodies providing and commissioning NHS services to have regard to the NHS Constitution.<sup>2</sup> Looking ahead, though beyond the scope of this report, the Health and Social Care Act 2012 applies this duty to the new bodies set up by the Act, as well as to local authorities,<sup>3</sup> so that in place of Primary Care Trusts and Strategic Health Authorities, it will apply to clinical commissioning groups and the NHS Commissioning Board and, for example, the Health and Social Care Information Centre.
15. There is also a duty that requires anyone who provides NHS services under a contract, agreement or arrangements made by the Secretary of State, the NHS Commissioning Board, clinical commissioning groups or local authorities to have regard to the NHS Constitution. This is set out in the Health Act 2009, as amended by the Health and Social Care Act 2012.
16. The 2012 Act also introduces new duties on clinical commissioning groups and the NHS Commissioning Board to:
  - act with a view to securing that health services are provided in a way which promotes the NHS Constitution; and
  - promote awareness of the NHS Constitution among patients, staff and members of the public.
17. The 2012 Act also places a duty on the Secretary of State to have regard to the NHS Constitution. The new duty on the Secretary of State will ensure that he has to bear in mind the principles of the Constitution when he is exercising his functions in relation to the health service.

<sup>2</sup> Health Act 2009, Section 2. <http://www.legislation.gov.uk/ukpga/2009/21/contents>. (Accessed June 22 2012)

<sup>3</sup> 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).

## Intended effect of the NHS Constitution

18. The Constitution was intended to achieve two core objectives: to safeguard the NHS as an efficient and equitable health system, and to empower patients, the public and staff within the NHS.
19. To achieve these aims, the NHS Constitution sets out:
  - the underlying principles and values of the NHS;
  - the rights to which patients, public and staff are entitled;
  - the pledges which the NHS is committed to achieve; and
  - the responsibilities which the public, patients and staff owe to one another to ensure the NHS operates fairly and effectively.
20. Understanding how these are intended to work is fundamental to assessing the effect of the Constitution.
21. As the original Impact Assessment of the NHS Constitution made clear: “by clarifying the fundamentals that will not change – through establishing a consensus and articulating in an enduring way the **NHS’s purpose, principles and values** – progress in meeting 21st century challenges will be easier”.<sup>4</sup> According to the impact assessment, not only would this help the NHS deal with emerging challenges of rising expectations, technological advances and shifts in the way services were delivered, it also “becomes easier for third sector and independent organisations providing NHS care to know what behaviour is expected of them: it binds all organisations providing NHS care to a common purpose”.<sup>5</sup> A key test for the Constitution was, therefore, its ability to ensure that the values and principles of the NHS were fully embedded as an enduring part of the fabric of the health service.
22. By setting out the **legal rights of patients and staff**, the NHS Constitution was intended to empower patients, public and staff through helping them to understand what they could expect from the NHS. Likewise, by articulating everyone’s **responsibilities** to each other, and explaining how patients and the public can play their part and see the NHS as a partner, the Constitution was intended to help effect a change in behaviour; provoking challenge and mutual responsibility.
23. For patients, the intention was that this would help equip them to challenge NHS services, thereby encouraging improvements in quality, efficiency and responsiveness throughout the service

4 Impact Assessment of the NHS Constitution, 30 June 2008 (published alongside consultation documents). [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_085852.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_085852.pdf) (Accessed 22 June 2012)

5 Impact Assessment of the NHS Constitution, 21 January 2009. [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_093416.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_093416.pdf). (Accessed 22 June 2012)

and applying pressure on commissioners to reduce unjustified variations in NHS services. For staff, the Constitution was intended to support fuller engagement with their employers and to empower them to develop better services for patients on the basis that fully engaged staff are likely to be more committed to their work and their employer, and to “go the extra mile” in improving services.

24. According to the report of the Constitutional Advisory Forum, which helped advise the Department of Health on the original NHS Constitution, the Constitution was meant to achieve its objectives through the following means:
- **Local leadership:** The Constitutional Advisory Forum were clear that “local leadership and champions at all levels of the system will be critical in the translation of words into deeds”. It found that there needed to be sustained commitment by local leaders – both among commissioners and NHS providers – over months and years to promote and embed the Constitution.
  - **Involvement of staff:** Again, the Constitutional Advisory Forum found that “the involvement of staff in the development and embedding of the Constitution is critical both in itself and as a basis for engaging patients and the public.” It suggested that non-executive

directors of NHS bodies were well-placed to become “local ambassadors for the Constitution.”

- **Effective communication:** The Constitutional Advisory Forum concluded that “a critical success factor for ensuring the Constitution takes effect will clearly be the approach taken at local and national levels to communicating its contents and their meaning.” The Forum emphasised the importance of the Constitution being accessible to all and of using a range of formats and communications channels to raise awareness.<sup>6</sup>
25. This report first considers the extent to which the public and NHS staff are aware of the NHS Constitution. This is the subject of Chapter 2. Chapter 3 considers the role of the Constitution in ensuring that rights and pledges are delivered in practice. Chapter 4 offers conclusions about the effect of the Constitution three years on from its launch in 2009. The final chapter draws together the key conclusions of the report and sets out next steps for strengthening and reinforcing the Constitution for the future. Annex 2 provides a review of the Handbook to the NHS Constitution as required under section 5 of the Health Act 2009.

<sup>6</sup> Report of the Constitutional Advisory Forum to the Secretary of State for Health, December 2008, pp 27-28. [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_091761.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_091761.pdf) (Accessed 22 June 2012)

## 2 Awareness and understanding of the NHS Constitution

### Summary

- Public awareness of the NHS Constitution is relatively low (27%) and patients are not yet using the Constitution as a means of exercising their rights. However, in the East of England, where there have been considerable efforts to embed the NHS Constitution into the organisation, public awareness is significantly higher than average (41%).
- Staff awareness of the NHS Constitution is significantly higher than among the public but few feel well informed about it.
- Overwhelmingly, NHS Staff believe that it is important that the NHS has a Constitution and this rises from 72% to 90% for those who feel most knowledgeable about it.
- For the NHS Constitution to have real impact and be truly valued, supported and used by patients, staff, carers and the public, it will be vital to raise awareness and embed it at every level in the NHS.

### Context

26. The NHS Constitution was intended to empower patients, public and staff by helping each group to understand what they could expect from the NHS. For patients, the idea was that this would provoke challenge (the rights) and shared responsibilities for NHS services. For staff, the rights and responsibilities were intended to improve engagement with their employers and to empower them to develop better services for patients.
27. The national approach to communicating the NHS Constitution, and to achieving the intended goal of patient and staff empowerment, adopted by the previous Government was to first promote its values and key messages to NHS staff before promoting it to the public. By first making staff aware, the intention was to enable them to understand and apply the principles and values of the NHS Constitution, while also feeling confident to discuss it with the public and their patients. The Government agrees that this strategy of first raising awareness of the Constitution among staff was the correct approach.
28. An identity for the NHS Constitution was created to give a sense of cohesion around all communications, and this was tested thoroughly with staff and public facing focus groups.
29. This identity was applied to NHS facing materials to support local engagement as part of a communications toolkit including artwork files, documents, films and an e-learning tool. Public facing communication activity followed and this



included a short film for the Life Channel (run in GP surgeries), a digital media campaign, a PR and media campaign and communicating through partnerships with stakeholders.

30. Some organisations went further than the national approach and the case study for the East of England (pages 14 and 15) shows the efforts made to integrate the NHS Constitution into its organisational culture through leadership and assertive action. The East of England Strategic Health Authority approached its duty to have regard to the Constitution by ensuring that it was a focus for everything the organisation did. The effect of this has been not only to make staff more aware of the NHS Constitution but consequently, members of the public too.

## Public awareness of the NHS Constitution

*'If the NHS Constitution is to be a living document with real power and ability to improve care then patients and the public must first be aware of it'*

Patients Association, 15 June 2012

31. There are several facets to the awareness of the NHS Constitution among patients, staff, carers and the public:
- awareness that there is a NHS Constitution;

- understanding what the NHS Constitution means for them;
  - knowing how to use the NHS Constitution so they feel empowered; and
  - valuing the NHS Constitution so it becomes fully embedded within every level of the NHS.
32. In order to gauge awareness and attitudes of NHS staff and members of the public to the NHS Constitution, the Department of Health commissioned independent research. Three waves of research were carried out in 2009, 2010 and 2012 using the same approach and methodology, which has allowed us to track any changes over time. As such, NHS staff in this report refers to medical/professional staff and administrative assistants. However, on the advice of the NHS Future Forum working group on the NHS Constitution, the Department commissioned additional research of NHS paybands 1-4, focusing on nursing auxiliaries and healthcare assistants who have a significant amount of patient contact. As this research was conducted in 2012 only, any comparisons made between nursing auxiliaries and healthcare assistants are only made between other professional groups for 2012 rather than the NHS staff figure or previous years.

33. Research carried out in 2012 reveals that **public awareness of the NHS Constitution remains relatively low**. Given the decision to focus first on increasing awareness among staff, this is not surprising and it is important that the headline awareness figures are seen in this context. There has been a small rise in the awareness of the Constitution among the public since its launch however, in 2012 less than a fifth of people have heard of the Constitution by name and a quarter were aware of it by its description.<sup>7</sup>
34. More than the headline awareness figures, however, a key test of the effect of the NHS Constitution is the extent to which people are using it as a means of upholding their rights and the pledges made to them. The survey demonstrated that less than 1% of patients cited the NHS Constitution as a source for finding out information about what they could expect from the NHS, their rights as patients, or what to do if they did not get what they expected. Patients are most likely to ask a GP/Health professional<sup>8</sup> or go to the NHS Choices website<sup>9</sup> for information and around 5% of the public mentioned Google as a source for information.
35. Among staff, only 1% reported that a patient had asked them about the NHS Constitution, and just 3% had encountered a patient exercising their rights through the Constitution. This is consistent with the low level of knowledge about the NHS Constitution among the public.
36. There is regional variation in the level of public awareness ranging from 16% in the South Central region to **41% in the East of England SHA region where public awareness is significantly higher than average**. There has also been a significant increase in awareness over time within the East of England region; in 2009, 24% were aware. It is noteworthy that in 2010, NHS staff in the East of England were more aware of the NHS Constitution (61%) than average (50%). This reflected greater efforts to raise staff awareness (see pages 16 and 17) with the awareness research showing that staff were more likely than average to have encountered the NHS Constitution in some way, particularly through internal communications e.g. a staff meeting (21% compared with 13% on average).

7 The description provided about the NHS Constitution was "In 2009, for the first time in the history of the NHS, an NHS Constitution was created. This document reflects what matters to staff, patients and the public. It sets out what staff and patients can expect from the NHS. It also describes the responsibilities which the public, patients and staff have towards each other to ensure that the NHS operates fairly and effectively".

8 The public are most likely go to a GP/health professional to look for different types of information about the NHS (44%); what they can expect from the NHS (44%); about what their responsibilities are as a patient (35%); and what you can do if you don't get what you want from the NHS (28%).

9 The NHS choices website is also frequently mention as a source of information about the NHS (36%); what they can expect from the NHS (36%); about what their responsibilities are as a patient (29%); and what you can do if you don't get what you want from the NHS (26%).



## East of England case study

Research shows that awareness of the NHS Constitution in the East of England is significantly higher among NHS staff and the public than in the rest of England – 41 per cent of the public were aware of the NHS Constitution in the East of England compared with 27 per cent nationally. We asked the East of England Strategic Health Authority what approaches it took to build on the national communications approach to promote and embed the NHS Constitution among its staff and population.

‘The NHS Constitution took hold in the East of England because it was promoted from the very top of our organisations. The leadership from our Chairs and Non-Executives was passionate because they understood the NHS Constitution to be core business – improving the quality of services for patients by supporting our staff to do the best job possible. This passion was supported and brought alive by the communications and engagement teams who were ambitious and innovative in their approach and aligned the Constitution to existing campaigns and messages. The NHS Constitution also very quickly became the tapestry hanging behind Board discussions so its visibility and relevance was real.’

**Dr Ed Garratt , former head of communications for NHS East of England.**

### Engaging the Public

From the start, the aim was to bring the Constitution to life, helping members of the public and all NHS staff to understand what the Constitution meant to them.

NHS organisations across the East of England made tremendous efforts to engage their local populations and wherever possible referred to the NHS Constitution as part of this engagement process. For example, when mixed sex accommodation was eliminated in the region, patients and the public were reminded of the right within the Constitution to be treated with dignity and respect. Also, guidance given to GPs to help them commission specialised services for patients with eating disorders made clear that patients had a right under the Constitution to be seen within 18 weeks of referral.

In Hertfordshire, all NHS organisations worked jointly on the NHS Constitution, actively engaging 17 ‘seldom heard’ groups including black minority ethnic (BME) communities, prisoners and carers about it. In addition, NHS Mid Essex distributed copies of the Constitution document throughout the PCT area, such as in libraries, council offices, and GP surgeries.

Public engagement events were used as opportunities to discuss and promote the NHS Constitution. NHS South West Essex, for example, targeted their local university/college freshers' week in Basildon. NHS Great Yarmouth and Waveney included the Constitution in a staying healthy competition for all schools in Great Yarmouth Borough Council and Waveney District Council Areas. In addition, PCTs such as NHS Great Yarmouth and Waveney, NHS Norfolk and Luton PCT engaged with their local communities about the Constitution.\* Trust Chairs also spoke at Youth Councils and Pensioners Associations around the region.

\* The Waveney Community Cohesion Partnership; Norfolk Physical and Sensory Impairment Strategy Working Group, Suffolk Disability Action Group; Great Yarmouth Disability Forum the Norfolk Coalition for Disabled People; Norfolk Older Peoples Forum; Broadland Disability Forum; and the Norwich and District Carers Forum.

## Engaging Staff

The NHS Constitution was placed at the heart of all NHS organisations in East of England. Senior leaders in the region used every opportunity to act as champions of the NHS Constitution and staff at all levels were encouraged to read and digest the document and think about what it meant for them when making decisions and in their day to day work. This in turn gave them the confidence to talk to patients about it to help raise awareness.

At board level, all discussions and decisions took account of the NHS Constitution. Details of how the Constitution was taken into account were in every board paper and its principles, rights, pledges and responsibilities were used to help review ongoing existing work. The SHA Chair (Sir Keith Pearson) held PCT Chairs to account via their performance appraisals for promoting the NHS Constitution within their organisations. Senior leaders also took opportunities to be ambassadors for the NHS Constitution, promoting it when talking with external organisations.

At Hinchingsbrooke Hospital, senior managers recognised the value of the NHS Constitution for staff engagement in the core values of the organisation. It used the Constitution's rights, pledges, responsibilities, and expectations as the framework for its staff engagement project and the refresh of its staff charter. Examples included more director visibility and running a programme of director involvement in departmental team briefings, with a director / chief executive "buddying" a department. The hospital launched some of the ideas with a refreshed staff charter using the Constitution to make it more meaningful."

Innovative approaches to communication were also used to help increase the visibility of the NHS Constitution and raise awareness. For example, they developed a dedicated East of England NHS Constitution website, (audio) blogs, Facebook pages, and members of staff incorporated links to the Constitution in their email signatures. Instead of the traditional approach to consultation – for example, through public meetings – NHS Mid Essex created an audio blog to make the feedback 'real life' and 'meaningful', and widely available [www.midessex.nhs.uk](http://www.midessex.nhs.uk).

## Staff awareness of the NHS Constitution

37. **Among NHS staff, awareness of the NHS Constitution is significantly higher than among the public.** This reflects the original communications strategy of raising awareness among staff before doing so among patients. NHS staff are now significantly more aware of the NHS Constitution when prompted with its name. This has increased from 31% in 2009 to 45% in 2012. When provided with a description of the Constitution, NHS staff awareness rose to around half (54%); this has increased only slightly from 47% in 2009. These results show that whilst the combined awareness of the NHS Constitution remains similar to 2009, the NHS Constitution name is becoming more familiar with staff.
38. **Awareness differs between different staff groups.** Administrative staff having the lowest awareness (34%), just over half of nursing auxiliary/nursing assistants (52%) and hospital nurses (58%) are aware and managers have the highest awareness at 87%. **There have been however, significant increases in awareness amongst a number of different occupations** including GPs (78% aware in 2012), practice nurses, hospital nurses, dentists and managers. Throughout all the surveys on awareness, managers were consistently more likely than other occupations to be aware of the NHS Constitution (87% of managers compared with 54% of all NHS staff). However, this does not prove that the NHS Constitution is being used by these groups and raises questions about whether, and to what extent, the NHS Constitution is used by organisations in conducting their business, for example in staff inductions, education and training.
39. In 2012, the sources from which NHS staff heard about the NHS Constitution had not changed significantly. Staff primarily gained information through the mainstream and medical press – this was particularly true for GPs. In contrast, managers were more likely to have heard from emails and bulletins (20%) and the DH website (13%).
40. It is one thing to know that the NHS Constitution exists or to have heard of it but another to be knowledgeable about its contents, how to use it, and what to do – and who to speak to – if rights and pledges are not being delivered. This is key if staff are to be able to use the Constitution effectively as a means of upholding their rights and the pledges made to them.
41. The research also looked at how informed staff felt about the NHS Constitution and its key elements. In 2012, three years after the NHS Constitution was launched, only around one in ten staff said they felt very or fairly well informed about the NHS Constitution. As in previous waves of research, managers were more likely to say that they were well informed (36% of managers compared with 11% of hospital doctors and 8% of nursing auxiliary and healthcare assistants and practice nurses in 2012).

42. The research shows that emails and bulletins, conversations with colleagues, a network or team meeting, or the DH website are the most effective method of communication. In 2010, staff that were surveyed in the East of England were more likely to have encountered the NHS Constitution through one of the information streams above and also more likely than average to feel informed about the NHS Constitution (26%, compared with 14% on average).
43. **Whilst few staff feel they are well informed about the NHS Constitution a greater proportion are aware of its main elements.** When prompted with a description, nearly two fifths of staff were able to recall all the main elements of the NHS Constitution, with a significant increase in each of these elements (except patients/staff rights) compared with previous years. Awareness of GPs, practice nurses, hospital nurses, hospital doctors (for most elements) and managers all increased significantly. Notably, since 2009 awareness of the main elements has not increased in dentists, pharmacists and administrative staff. The proportion of staff who are aware of the key messages of the NHS Constitution has also increased slightly since 2009, with a significant increase in the proportion of NHS staff aware that the NHS Constitution secures the founding principles of the NHS (from 23% in 2009 to 32% in 2012), which was driven mainly by managers.

## Support and value of the NHS Constitution among staff

44. **Overwhelmingly, NHS staff believe that it is important that the NHS has a Constitution and this rises from 72% to 90% for those who feel most knowledgeable about it.** Support among NHS staff for the NHS Constitution has fallen since 2009, from 63% to 55% in 2012 but this is a result of staff responding more neutrally that they neither support nor oppose it.
45. **Over 70% of NHS staff agree that it is important that the NHS has a Constitution compared with 90% of staff who consider themselves very or fairly knowledgeable about it.** Just over half (52%) of all NHS staff felt that the NHS Constitution would have a positive impact on patient experience of the NHS compared with 78% of NHS staff who felt knowledgeable about it. Since 2009, NHS staff have been more likely to say that the NHS Constitution would have a positive impact on patients (52%) compared with the impact on them (41%). In 2012, nursing auxiliary and healthcare assistants were the most likely staff group to say the NHS Constitution would have a positive impact on patient experience (65%) compared with GPs who were the lowest at 30%. Again, **staff who felt knowledgeable about the NHS Constitution were more likely than average to say that it would have a positive impact on them (68%).**

46. The decline in support for the NHS Constitution was driven by an increase in the proportion of NHS staff who answered neutrally that they neither support nor oppose it (from 25% in 2009 to 34% in 2012). Hospital nurses were the main profession that contributed to this change. As in 2009, they were more likely than average (77% of hospital nurses compared with 56% of all NHS staff) to say they supported the NHS Constitution, but by 2010 were no more likely than all NHS staff to support it (54% of hospital nurses compared with 56% of all NHS staff).
47. The evidence suggests that a greater awareness of the NHS Constitution and its contents can increase overall support. For example, in 2012 GPs and hospital doctors were significantly more likely to be aware of the Constitution. They were also more likely to be supportive of it.
49. It is perhaps not surprising that awareness among the public is low given the approach to first raise awareness among staff. However, where higher levels of staff awareness has been achieved (e.g. East of England), the NHS Constitution is supported and valued by staff with the added effect of increasing awareness amongst the public.
50. Whilst it is encouraging that awareness among patients and staff is increasing year on year, there needs to be more focus on raising awareness among all staff whatever their occupation and in continuing to focus efforts to raise patient and public awareness of the NHS Constitution.
51. Awareness among NHS staff and the public is important but this is only one factor – patients and staff also need to be able to use the Constitution as a means of upholding their rights and the pledges made to them. What comes through from this research is that although awareness levels are rising among NHS staff and the public, there is little evidence that patients and staff are using the NHS Constitution in discussions about the patients care or the staff members employment. This also echoes the advice of the NHS Future Forum.

## Conclusions

48. Three years on from its launch, the drive to raise awareness of the NHS Constitution among staff and the public needs to continue. Whilst it is encouraging that certain staff groups such as managers are very aware of the NHS Constitution, it is unsatisfactory that there are large variations between different occupations with lower awareness in some groups that have the greatest patient contact.
52. All NHS organisations, as they carry out their duties to have regard to the NHS Constitution, have a great opportunity to take advantage of the lessons learned from this research. In particular, there are clear benefits of integrating the Constitution



throughout the NHS and using it to focus its work with the public and patients and their staff at every level, as the work carried out in the East of England demonstrates.

53. The Health and Social Care Act 2012 places clear duties on the NHS Commissioning Board, and on clinical commissioning groups, to promote the NHS Constitution. This means promoting awareness of the Constitution among patients, staff and the public. It also means that the Board must exercise its own functions in a way that promotes the Constitution. Rightly, it will be for the NHS Commissioning Board to determine precisely how it will fulfil these legal duties.
54. As the NHS Future Forum makes clear in its advice, the NHS Constitution provides the Secretary of State with a means of holding to account all bodies involved in the commissioning and provision of NHS services for delivering on both the rights and pledges in the Constitution and the principles and values to which the NHS adheres. The Department of Health will hold the NHS Commissioning Board to account for meeting its legal duty to promote the NHS Constitution. It will also hold the Board to account for delivering on the rights and pledges contained within it.
55. This will be achieved through the Government's draft mandate to the NHS Commissioning Board (the draft mandate), which sets out the Government's objectives for the Board. The draft mandate, on which a public consultation has now been launched, sets an objective for the Board to demonstrate that the rights and pledges in the NHS Constitution are being met.
56. In line with the duties in the 2012 Act, the Department expects the NHS Commissioning Board to make clear in its business plan how it will achieve the objectives in the draft mandate, including in relation to the NHS Constitution. Likewise, it expects the Board to make clear in its annual report how it has fulfilled those objectives. At the same time, the Department will look to the NHS Commissioning Board to hold clinical commissioning groups to account for fulfilling their legal duties to promote the NHS Constitution.
57. But it is not only the NHS Commissioning Board that has responsibilities in relation to the NHS Constitution. It is also important that clinical commissioning groups fulfil their duties in relation to promoting the Constitution. It is also vital that all providers of NHS services, including NHS Foundation Trusts, NHS Trusts and independent sector providers, and regulators including Monitor and CQC take account of the NHS Constitution in carrying out their functions, as required by law. All bodies involved in commissioning and providing NHS services have a role to play in embedding the Constitution at every level of their organisations.

## 3 Rights and pledges in the NHS Constitution

### Context

58. **Rights in the Constitution are legal entitlements, protected by law.** As a 'declaratory document', the Constitution codifies existing rights contained in existing legislation, drawing them together in one place. It does not, itself, create new rights or replace existing ones. These include rights conferred explicitly by law and rights derived from legal obligations imposed on NHS bodies and other healthcare providers. The Handbook to the NHS Constitution describes the legal basis of each right, helping patients, staff and the public to understand how to challenge if their rights are not being delivered.
59. For patients, these rights include, for example, the right to receive NHS services free of charge, apart from certain limited exceptions sanctioned by Parliament, and the right to be treated in a timely manner, with a professional standard of care, by appropriately qualified and experienced staff. They also include others such as the right to be treated with dignity and respect, the right to be involved in decisions about their care, and the right to have any complaint made about NHS services dealt with efficiently and properly investigated. For staff, these rights include, among others, the right to have a good working environment, to have a fair pay and contract framework, to be involved and represented in the workplace, to have healthy and safe working conditions, and to be treated fairly, equally and free from discrimination.
60. **Pledges in the Constitution are aims which the NHS is committed to achieve.** Unlike rights, pledges are not legally binding, and do not have a legal underpinning. Their enforcement method instead rests on regulatory or contractual performance management of organisations. They go beyond the legal rights established in legislation, but there is a clear expectation that they can, and should, be delivered.
61. For patients, the pledges in the Constitution include, for example, commitments by the NHS to make decisions in a clear and transparent way, to continuous improvement in the quality of services, and to make the transition as smooth as possible when patients are referred between services. For staff, the pledges include, among others, commitments by the NHS to provide all staff with clear roles and responsibilities and rewarding jobs, to provide all staff with personal development and access to appropriate training, and to support all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice or wrongdoing.

## Patient rights and pledges in practice

62. This report was never intended to provide a detailed examination of the “state of the NHS” – but it is relevant to examine the extent to which the rights and pledges in the NHS Constitution are being delivered in practice. The Department of Health has also published a number of documents in parallel with this report, including the *National Health Service and Public Health Service in England: The Secretary of State’s annual report 2011/12*, and *The Year: The NHS Chief Executive’s Annual Report 2011/12*, which examine the performance of the NHS in more detail than this report intends to do.
63. Rather than replicate these documents, this report examines the evidence through the framework of the seven domains in public and patient rights section of the NHS Constitution. While we have not examined in detail how every right and pledge has been delivered, the report does examine how the NHS is addressing each domain, and offers a high level perspective on where the NHS is doing well, and where it could be improved.

## The sources of information available

64. When focusing on how the NHS is performing against the patient rights and pledges codified in the NHS Constitution, there is a range of different sources of

information available. These include, among others:

- National survey results and data that reveal how patients feel about the care they receive and their involvement in decisions that affect them, such as the inpatient and outpatient surveys by the Care Quality Commission, the GP patient survey, and the national Cancer Patient Experience Survey;
- Patient Reported Outcome Measures (PROMs), which assess patients’ perspectives on the effectiveness of their care and treatment;
- The NHS Atlases of Variation, which are intended to highlight variation between localities, and show both where localities are performing well, and where there is scope for improvement;
- Annual reports about written complaints to the NHS published by the NHS Information Centre for Health and Social Care;
- Reports of the Health Service Ombudsman in relation to patient complaints;
- Reports published by the Care Quality Commission on the state of health care and adult social care services; and
- Reports and research published by a wide range of charities, patient groups, think tanks and other stakeholders on NHS performance and patient experience.



65. However, in some areas the evidence is often either limited in scope, only partially addresses the effect of the Constitution, or simply alludes to the effects of the Constitution in changing behaviour and organisational culture. As a result, establishing a clear evidence base for examining the effect of the Constitution in helping to deliver the rights and pledges is challenging, and any conclusions should be read in that light. In many cases the evidence of how well the NHS is delivering is also mixed, and it is currently impossible to draw a general conclusion on the effectiveness of the NHS constitution due to a lack of indicators. As we might expect, different organisations are fulfilling patients' expectations, as set out in the Constitution, in different ways and to a greater or lesser extent.

## Access to health services

*"Across both health and social care, most action has been taken to address race equality, followed by disability and religion and belief...a higher percentage of NHS trusts have taken action on all equality strands, except religion and belief, compared to adult social care services."*

**The Health Service Ombudsman,  
February 2011**

66. The rights around access to health services enshrined in the NHS Constitution go to the very heart of what our NHS is all about: a comprehensive service available to all, based on clinical need not an individual's ability to pay. Access in the Constitution is defined both in terms of the ability to gain access to services, but also the timeliness of care. Delivering these commitments should be deeply embedded into the culture of the NHS, with the Constitution reflecting existing commitments and practice.

67. The NHS has continued to maintain its good performance on access at a time of significant financial pressure. It has met the QIPP (Quality, Innovation, Productivity and Prevention) performance measures for 2011/12, without undermining access. Waiting times in the NHS remain low and stable.
68. The NHS is consistently meeting the 18 week maximum wait between referral and treatment, with over 90% of patients admitted to hospital, and 95% of non-admitted patients starting consultant-led treatment within 18 weeks. The number of patients waiting longer than 18 weeks to start their treatment is also down to its lowest ever level.<sup>10</sup>
69. Access to emergency services also remains above the national standard, with 95.8% of patients spending less than four hours in Accident and Emergency departments.<sup>11</sup> This continues to exceed the national operational standard at 95%.
70. The NHS is also meeting the aim of patients waiting no longer than two weeks to see a cancer specialist, compared with the operational standard of 93%. In the last quarter of 2011-2, 96.3% of patients waited a maximum of two weeks for a first outpatient appointment when referred urgently with suspected cancer by a GP.<sup>10</sup>

This is an increase from 96.0% of patients in the same quarter of 2010-11.<sup>10</sup>

71. However, while the NHS does well as a whole, there is some evidence of variation, and areas where the NHS could improve. The “two years on” data following the *Fair Society, Healthy Lives* review suggested that there are still significant health inequalities across England.<sup>12</sup> There is scope for further improvement in this area, and reducing inequalities and promoting equalities will be a central priority for the NHS Commissioning Board, reflected in the draft mandate.

## Quality of care and environment

*“Many of the hospitals we visited showed a genuine commitment to delivering person-centred care, with registered nurses, doctors, other care professionals and healthcare staff pulling together to treat people they cared for with passion and respect....leaders in hospitals must create a culture in which good care can flourish.”*

**Care Quality Commission, October 2011**

72. Quality of care is one of the most critical aspects in providing a successful and dependable health service to the public, and it should be at the heart of everything

<sup>10</sup> National Health Service and Public Health Service in England: The Secretary of State's annual report 2011/12.

<sup>11</sup> The quarter 4 2011-12.

<sup>12</sup> 'Two Years On' Data, UCL Institute of Health Equity. <http://www.instituteofhealthequity.org/Content/FileManager/pdf/2-year-on-press-release-final.pdf> (Accessed 22 June 2012)

the NHS does. Providing a high quality service to patients is the responsibility of everyone working in the NHS, and requires a consistent and relentless focus on improving both the standards of care, and the manner in which it is delivered. As with the rights around access, delivering the commitments around quality should be fundamental to how the NHS operates as an organisation. In order to ensure this is the case, the draft mandate sets objectives aimed at improving quality.

73. As a result, the rights and pledges in the NHS Constitution should reflect existing commitments and best practice, which high performing NHS organisations are already meeting. The 2011 staff survey suggested 87% of staff in the 2011 survey felt satisfied with the quality of care they provide to patients, while CQC reported that many hospitals showed a genuine commitment to delivering person-centred care, treating patients with passion and respect.<sup>13</sup> In the 2011 patient survey, 92% of adult inpatients rated their care as excellent, very good or good; although it is disappointing that the majority of patients (87%) were not asked to give their views during their hospital stay.<sup>12</sup>
74. An especially important aspect of providing a high quality service is providing a clean, safe environment for patients and staff.

There has been consistent improvement in this area, with growing numbers of patients describing hospitals as very clean, and very substantial reductions in MRSA and C.difficile infections (25% reduction of MRSA bloodstream infections in 2011/12 compared with 2010/11).<sup>14</sup>

75. However, the *NHS Atlas of Variation* shows that there is still a wide degree of variation in quality between services. There are also some unacceptable examples of poor service. The Francis inquiry into care at Mid Staffordshire NHS Foundation Trust, and the inquiry into care at Winterbourne View care home are both examining examples of unacceptably poor quality care, and the Government will consider their recommendations to minimise the risk of similar events happening again.
76. As we go forward, as Lord Darzi has said, quality must be one of the key organising principles for the NHS. All NHS organisations must ensure that they constantly provide a clean, high quality services that respect human dignity to all their patients. The NHS Commissioning Board will have a continuing duty in legislation to improve the quality of care, and the draft mandate (and within it, the NHS Outcomes Framework) includes objectives aimed at improving the quality of services.

<sup>13</sup> Care Quality Commission Inpatient Survey 2011- <http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys/inpatient-survey-2011> (Accessed 22 June 2012)

<sup>14</sup> The Year: The NHS Chief Executive's Annual Report 2011/12.

## Nationally approved treatments, drugs and programmes

77. The NHS Constitution contains a number of rights to ensure that patients are able to access a range of nationally approved treatments, drugs and services, as well as vaccination and screening services.
78. The evidence suggests the NHS is delivering its commitments to provide access to NICE approved drugs and treatments. For a majority of medicines that have been studied, usage across the NHS met or exceeded the level predicted by NICE, suggesting that patients are generally able to access the right to nationally approved drugs to meet their needs.<sup>15</sup>
79. However, it is not possible to determine the relationship between the rights in the NHS Constitution and individual treatment decisions, as the data is somewhat limited. While the NHS as a whole is meeting its responsibilities, the Government is committed to ensuring that every patient has access to nationally approved treatments, drugs and programmes where clinically appropriate. The draft mandate includes an objective to “uphold and where possible improve performance on the rights and pledges for patients in the NHS Constitution”, and contains a specific reference to delivering the right to drugs and treatments that have been recommended by NICE.
80. Furthermore, in future both the NHS Commissioning Board and clinical commissioning groups will continue to have duties in relation to nationally approved drugs and treatments that reflect those duties currently on Primary Care Trusts. This will ensure that the progress the NHS has made in this area will not be lost.
81. The NHS is also ensuring access to vaccinations and delivering on its pledge to provide national screening programmes. Access to, and uptake of, screening programmes has steadily increased, alongside increasing distribution of training and best practice. Where recommended by the JCVI, the Department of Health has provided detailed guidance to commissioners to support specific vaccination programmes.

15 Use of NICE appraised medicines in the NHS in England – Experimental Statistics (2009) *The Information Centre for Health and Social Care*. <http://www.ic.nhs.uk/pubs/niceappmed> (Accessed 22 June 2012)

Use of NICE appraised medicines in the NHS in England – 2009, Experimental statistics (2011) *The Information Centre for Health and Social Care*. <http://www.ic.nhs.uk/statistics-and-data-collections/primary-care/prescriptions/use-of-nice-appraised-medicines-in-the-nhs-in-england--2009-experimental-statistics> (Accessed 22 June 2012)

## Respect, consent and confidentiality

*"I have yet to see convincing evidence of a widespread shift in attitude towards older people across the NHS that will turn the commitments in the NHS Constitution into tangible reality...The NHS must close the gap between the promise of care and compassion outlined in its Constitution and the injustice that many older people experience."*

**The Health Service Ombudsman,  
February 2011**

82. The NHS should always treat everyone with respect and compassion. The NHS Constitution contains a number of robust rights to ensure that patients are always treated with respect and dignity. While the NHS is often good at providing compassionate care, there is still variation and scope to improve, even within the same organisation or the same service.
83. A substantial majority of patients report that the NHS has treated them with respect. For example, 98% of patients using community mental health services felt they were treated with dignity.<sup>16</sup> This is encouraging. However, it is clearly unacceptable for a minority, however small, to feel like individual NHS organisations or staff have not met their basic right to be treated with dignity and respect set out in the NHS Constitution.
84. Treating patients with dignity and respect will be a vital part of achieving improvements against the outcomes in the NHS Outcomes Framework, which is at the core of the draft mandate, and the Government will be holding the NHS Commissioning Board to account for how the NHS performs against these.
85. It is especially troubling that, on rare occasions, the care of vulnerable groups such as older people has fallen short of the vision set out in the NHS Constitution. The Health Service Ombudsman's report, *Care and Compassion*, revealed a number of examples of where staff have not treated older people with respect and compassion, and that is clearly unacceptable.
86. As treating all patients with compassion should be hardwired into every organisation and individual member of staff's behaviour, it is exceptionally difficult to make general conclusions about how the NHS Constitution has altered behaviours. It remains important, however, that all organisations and members of staff strive as far as possible to "bridge the gap between the principles and rights set out in the Constitution and the reality of being ... in care", and the Government will be holding the NHS to account to ensure this is delivered.

<sup>16</sup> Community mental health survey 2011. *Care Quality Commission*. <http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys/community-mental-health-survey-2011> (Accessed 22 June 2012)

87. The NHS Constitution also contains a pledge to share with patients any letters sent between clinicians about their care. This is an area where there is clear scope for improvement, with only 59% of inpatients saying they receive copies of some or all of the letters sent between clinicians about them.<sup>17</sup> While this percentage is slowly increasing, the Government is expecting the NHS to do more to improve this area, and will hold commissioners to account for how they are meeting their Constitutional pledges.
- Informed choice**
88. This Government, like the previous Government, is clear that giving patients more choice and control will make the NHS more responsive, and will drive up quality. As a result, the NHS Constitution contains rights for people to make choices about their NHS care and to be given information to enable them to do this. It also contains rights for patients to choose their GP practice, and to express a preference for using a specific doctor within that practice. These rights are related to the right to be involved in decisions, discussed in the following section.
89. A key element of the right for patients to make choices about their care is the ability for patients to choose their provider, when referred for a first consultant-led outpatient appointment for most elective services (when this is clinically appropriate). This is closely linked to the rights in the NHS Constitution for patients to be involved in decisions about their care.
90. While DH no longer collects information about whether patients are offered a choice of provider, there is some evidence that suggests that there is scope for improvement. The latest evidence, provided by the King's Fund, reported that 75% of patients felt that choice was either "very important" or "important" to them. This showed that 45% were already aware that they had a right to choose a provider. However, only 49% of patients recalled being offered a choice of provider.<sup>18</sup> This is consistent with data collected by the Department of Health for the same period.
91. That around half of patients do not recall being offered a choice of provider in line with their rights in the NHS Constitution is unacceptable. The Department expects the NHS to improve in this area, and will be holding commissioners to account to ensure that patients are offered choice, where appropriate. The Government's draft mandate to the NHS Commissioning Board contains objectives relating to choice, intended to turn this commitment into the norm across the NHS.

<sup>17</sup> Inpatient survey 2011. *Care Quality Commission*. <http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys/inpatient-survey-2011> (Accessed 22 June 2012)

<sup>18</sup> Patient Choice: how patients choose and how providers respond (2010) The Kings Fund. [http://www.kingsfund.org.uk/publications/patient\\_choice.html](http://www.kingsfund.org.uk/publications/patient_choice.html) (Accessed 22 June 2012)



92. While we do not have comprehensive evidence on the impact of the right to make choices for all patient groups, there is evidence to suggest that some patients still felt reluctant to exercise their rights around choice, even when they were aware of them. For example, the Race Equality Foundation found that many women from black or ethnic communities would not wish to “challenge” healthcare professionals by expressing a preference to be treated by a female GP or consultant even when made aware the Constitution gives them the right to do so.<sup>19</sup> This is unacceptable, and reducing such inequalities will be a central priority for the NHS Commissioning Board.
93. The NHS Constitution also includes a right for patients to choose their GP practice. Of those patients who do express a preference there has been a small decline over time in those who are able to see their preferred GP always/almost always or a lot of the time.
94. In a very small minority of cases (13), the health service ombudsman accepted complaints for investigation where patients had been removed from GP lists against their wishes without the correct procedures being followed.<sup>20</sup> All 10 of the cases which had been completed at the time of the report were upheld.

## Involvement in your health and the NHS

*“Despite widespread support for involving patients in decisions about their care, including a commitment in the NHS Constitution shared decision making is not yet the norm. National patient surveys suggest that at least half of those who experienced a hospital episode would have liked more involvement in decisions about their care and the trend shows no improvement over the last 10 years or so.”*

**The King’s Fund, July 2011**

95. Patients and carers should be at the heart of the NHS, through shared decision making about their care. Shared decision making needs to become the norm and not the exception. The new duties on commissioners to involve patients and carers in decisions in their care set out in the Health and Social Care Act 2012 will help make a reality of the principle of ‘no decision about me, without me’. Patient decision aids are examples of tools which have been developed to support shared decision making between patients and clinicians. In the context of a collaborative discussion about treatment options, these evidence-based tools will

<sup>19</sup> Islam-Barrett Farah (2011) The NHS Constitution: Perception, use and value in black and minority ethnic communities. *Race Equality Foundation*. [http://www.raceequalityfoundation.org.uk/sites/default/files/publications/downloads/REF%20%20NHS%20Constitution%20Report%202011%20\(2\)%20\(2\).pdf](http://www.raceequalityfoundation.org.uk/sites/default/files/publications/downloads/REF%20%20NHS%20Constitution%20Report%202011%20(2)%20(2).pdf) (Accessed 22 June 2012)

<sup>20</sup> Listening and Learning: the Ombudsman’s review of complaint handling by the NHS in England 2010-11. *Parliamentary and Health Service Ombudsman*. [http://www.ombudsman.org.uk/\\_\\_data/assets/pdf\\_file/0019/12286/Listening-and-Learning-Screen.pdf](http://www.ombudsman.org.uk/__data/assets/pdf_file/0019/12286/Listening-and-Learning-Screen.pdf) (Accessed 22 June 2012)

help ensure patients to participate fully in decisions about their care and to have the information and support they need to enable them to do so.<sup>21</sup>

96. The Constitution enshrines patients' rights to be involved in decisions about their care and treatment, with further rights and pledges to ensure patients have the information they need to make such decisions. There are also rights and pledges that ensure people have the opportunity to be involved, directly or through representatives, in the planning of care services they receive and the method by which such services are provided.
97. The evidence suggests that the extent to which the NHS meets the commitments set out in this section of the Constitution is mixed. While the 2011 NHS inpatient survey found that 52% of respondents replied "definitely" when asked if they felt involved as much as they wanted to be in decisions about their healthcare and treatment, 37% felt involved only to some extent rather than fully.<sup>22</sup>
98. However, research by the Kings Fund also suggests that, even when patients do feel involved in decisions about their care, at least half of patients involved in a hospital episode wanted more involvement.<sup>23</sup> That
- the trend shows no improvement over the last 10 years is especially troubling.
99. This suggests that while the NHS involves patients to some extent, shared decision-making is not yet the norm.
100. To make genuine involvement of patients in their care a reality for all, the Health and Social Care Act 2012 includes new duties on the NHS Commissioning Board, and the draft mandate contains a number of objectives to promote the involvement of patients and carers in decisions about their care. The Government will hold the Board to account for improving patient involvement in decisions about their care.

## Complaints and redress

*"There remains some way to go before a culture is created throughout the NHS that is open to complaints, sees these in the light of systemic weaknesses and supports staff."*

**The Health Service Ombudsman,  
October 2011**

101. One of the key aspirations for the NHS Constitution was that it would be a means for patients to know and exercise their rights. In some cases, this may require formal challenge through the complaints

21 Information about patient decision aids are available through NHS Direct and the National Prescribing Centre: <http://www.nhsdirect.nhs.uk/decisionaids>; [http://www.npc.nhs.uk/patient\\_decision\\_aids/pda.php](http://www.npc.nhs.uk/patient_decision_aids/pda.php). Accessed 25 June 2012.

22 Inpatient survey 2011. *Care Quality Commission*. <http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys/inpatient-survey-2011> (Accessed 22 June 2012)

23 Angela Coulter and Alf Collins (2011) Making Shared Decision Making a Reality: No decision about me, without me. *The Kings Fund*. [http://www.kingsfund.org.uk/publications/nhs\\_decisionmaking.html](http://www.kingsfund.org.uk/publications/nhs_decisionmaking.html) (Accessed 22 June 2012)



process. As a result, the Constitution contains a number of rights and pledges to ensure that complaints, once received, are acted upon and resolved.

102. The evidence suggests that while there has been improvement in these areas, not every NHS organisation follows best practice.<sup>24</sup> Across the country, there are areas where the new complaints system is beginning to demonstrate its potential, with the Ombudsman reporting that “complaints about the NHS now receive faster consideration locally, and are referred to us [the Ombudsman] more quickly.”<sup>25</sup> This is clearly a positive direction of travel, as without an effective complaints process, the NHS will not be able to meet the aspirations laid out in the Constitution.
103. However, there remain significant regional variations. In her annual report, the Health Service Ombudsman also suggested that “at a local level, the NHS is still not adequately dealing with the most straightforward matters”, with examples of poor handling of complaints, unnecessary escalation, and failures to explain or acknowledge mistakes.<sup>25</sup> This concern was also echoed by the Health Select Committee report into complaints. As a result, a number of complaints were

unnecessarily escalated to the Ombudsman, rather than being resolved locally. However, it remains the case that the Ombudsman role generally is to step in only after the NHS has been unable to resolve the issue locally, and she continues to deal with only a minority of complaints.

104. There is clearly scope for improvement in ensuring that patients are aware of how to complain when things go wrong. The National Inpatient Survey 2011 suggests that only 42% of patients saw leaflets or posters explaining how they could complain. This clearly falls short of our aspirations, especially as listening to complaints, resolving them, and improving practice as a result is a vital means for the NHS to improve the service it offers the public.<sup>26</sup>
105. There is also scope for the NHS to improve how it acknowledges its mistakes, apologises, and learns the lessons. Whilst there is limited data on how effective the NHS is at providing these outcomes locally, the two most common reasons complainants gave to the Ombudsman for dissatisfaction with the process were “poor explanations and no acknowledgement of mistakes”.

24 Health Committee - Sixth Report- Complaints and Litigation (2011) Recommendation 1. <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhealth/786/78602.htm> (Accessed 22 June 2012)

25 Listening and Learning: the Ombudsman's review of complaint handling by the NHS in England 2010-11. Parliamentary and Health Service Ombudsman. [http://www.ombudsman.org.uk/\\_data/assets/pdf\\_file/0019/12286/Listening-and-Learning-Screen.pdf](http://www.ombudsman.org.uk/_data/assets/pdf_file/0019/12286/Listening-and-Learning-Screen.pdf) (Accessed 22 June 2012)

26 Inpatient survey 2011. *Care Quality Commission*. <http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys/inpatient-survey-2011> (Accessed 22 June 2012)

106. In some areas, the NHS is not consistently meeting the rights set out in the Constitution. This is clearly a cause of concern, and the NHS will be expected to work over the coming years to improve. In its response to the Health Select Committee, the Government acknowledged that more needs to be done in this area, and has committed that engagement with patients and the public will be one of the core processes of the NHS Commissioning Board, putting patient voices at the heart of the Board's work from an early stage.<sup>27</sup> The Secretary of State will hold the NHS Commissioning Board to account for delivering this, and we expect the Board to ensure other NHS organisations also deliver on their commitments.

107. We also anticipate that the Francis Inquiry will raise further lessons from the care provided by the Mid Staffordshire NHS Foundation Trust. We will consider these further when the Inquiry publishes its report.

## Staff rights and pledges

*"The NHS Constitution contains important commitments about the rights and responsibilities of staff. As the NHS enters a new phase, with the prospect of increasingly diverse healthcare organisations delivering NHS services, it will be even more important that providers, patients, staff and commissioners are all clear about the shared values and standards that everybody expects from our NHS. Increased awareness of the Constitution can only help staff deliver effectively for patients and be assured of their rights in the workplace."*

**Unison, June 2012**

108. The dedication of the workforce of the NHS in England makes it one of the best healthcare systems in the world. The NHS Constitution sets out a vision that all staff commissioning and providing NHS services should have rewarding jobs. Staff will be able to provide quality care because jobs will have been designed around patients with the input of staff. The inclusion in the NHS Constitution of rights and pledges to staff, as well as staff responsibilities and expectations as to their behaviour, reflects the fact that improving the

<sup>27</sup> Government Response to the House of Commons Health Select Committee Sixth Report of Session 2010-11: Complaints and Litigation. <http://www.official-documents.gov.uk/document/cm81/8180/8180.pdf> (Accessed 22 June 2012)

patient experience requires the continued improvement of the working lives of staff.

109. To achieve this, it is important that NHS organisations continually monitor, assess and act on the views of staff to help drive improvements for both staff and consequently patients. Where staff in NHS organisations have a better experience at work, a range of outcomes are better within the organisation. For example, where staff engagement, health, and well-being are high, we see better quality of care for patients, better use of resources, better financial management and lower standardised mortality rates.<sup>28</sup>
110. The importance of measuring staff experience has been further acknowledged since the inception of the NHS Constitution through the inclusion of specific staff related measures in the NHS Operating Framework, in CQC quality risk profiles and in the Prime Minister's Transparency Commitments. The views of staff are now seen as an important barometer of the quality of care NHS organisations can deliver.
111. As the primary source of information about staff experiences in the NHS, the annual NHS staff survey provides NHS organisations with invaluable information to help them review and improve staff experience so that, in turn, staff can provide better patient care. The results from the NHS staff survey are aligned with four pledges in the NHS Constitution, allowing NHS organisations to assess how they are progressing.
112. A selection of key findings from the 2011 NHS staff survey are provided below, although the national results do hide variation. Each organisation is encouraged to review its own results and to focus improvements to address local concerns. This report does not try to cover all the information in the NHS staff survey for 2011 but to reflect on some core elements and explore the extent to which there has been progress. A fuller analysis is provided in the briefing note to the NHS staff survey.<sup>29</sup>
113. The NHS staff survey from 2011 shows that overall, the majority of NHS staff find their jobs satisfying with more than three quarters feeling well-supported by their colleagues, demonstrating the collegiate nature of the NHS. NHS staff believe that they make a difference with nine in ten staff believing their job makes a difference to patients and 87%, satisfied with the quality of care they provide. Given the current financial context and the need for public sector reform, it is encouraging

28 Aston Business School (2011) NHS Staff Management and Health Service Quality. [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_129643](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_129643) (Accessed 22 June 2012)

29 NHS Staff Survey (2011). <http://www.nhsstaffsurveys.com/cms/> (Accessed 22 June 2012)

that NHS staff continue to report positive experiences of their organisations, as seen year on year in results from the NHS staff survey. However, the survey results also show that only 64% of staff would be happy for a friend or relative to be treated by their trust and 11% would not be happy.

114. The NHS Constitution contains a commitment to provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed. Appraisals are an important tool to help staff understand their role, feel valued and continually develop. It is encouraging that appraisal rates continue to increase with 80% of staff receiving an appraisal in 2011. The survey shows that staff do value their appraisals but often feel that the quality of their appraisal is poor. Participation in training also remains high with 78% of staff receiving job-relevant training, learning or development in the last 12 months.
115. The survey shows that NHS organisations need to make staff feel more valued and to support them in striking a good work-life balance – Only 45% felt good work was recognised, 32% felt their Trust valued their work and just over half regularly work overtime. Embedding the NHS Constitution into the organisational culture and practices, and in some cases appraisals, has been shown to be not only effective in raising awareness among staff but also to provide staff with a greater understanding of the importance and value of their work and how it relates to the principles and values of the NHS (see East of England case study in Chapter 2).
116. The NHS Constitution makes clear that NHS staff should be provided with support and opportunities to maintain their health, well-being and safety. The NHS Constitution states that patients have a responsibility to treat NHS staff and other patients with respect. The staff survey shows that 8% of NHS staff reported experiencing physical violence from patients, their relatives and other members of the public. In a separate report for 2010-11 by NHS Protect, a total of 57,830 reported physical assaults against NHS staff, compared with 56,718 in 2009-10. Although this represents a minority of the millions of patients treated by the NHS, it is concerning to see this reported level of violence towards staff. The NHS staff survey shows that of the 8% of staff who experienced violence from patients, their relatives or other members of the public, around three quarters say that they have reported it and just over half said their organisation would take action. Staff should feel that they can report every incident and expect their organisation to take action.
117. In terms of supporting health and well being, NHS organisations have succeeded in reducing yearly average sickness absence rates from 4.48% to 4.1%. It is disappointing however that only 63% of staff report not having any difficulties

in completing their work because of ill health in the last three months. There has been a concerted effort to support work around providing staff with support and opportunities to maintain their health, well-being and safety.<sup>30</sup>

118. The survey also gives data on witnessing and reporting potentially harmful errors, near misses and incidents: this is a vital component in making sure staff are safe at work. It is encouraging to see that staff reporting of errors, near misses and incidents is high with 96% of these errors reported either by the person making the error or a colleague. The majority of staff (83%) surveyed felt encouraged to do so by their organisation. However, it is concerning that 12% were concerned that reporting would lead to punishment or blame. In 2012, following public consultation, the NHS Constitution was strengthened to include 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 wrong doing without suffering any detriment.
119. The NHS Constitution staff pledges reflect the fact that improving the patient experience requires the continued improvement of the working lives of staff,

including engaging them in decisions and in making improvements. It is encouraging that just over two thirds of staff felt able to suggest improvements to their team or department and a similar proportion had frequent opportunities to show initiative. However, most staff feel that senior managers do not involve them in decisions or act on staff feedback – only 26% of staff felt any involvement in decision making and 30% thought senior managers acted on feedback. The national picture does hide local variation. NHS organisations that bring the Constitution to the forefront of everything they do have a great opportunity to align their staff policies and feedback to the NHS Constitution as a way of driving improvements.

### **Patient and staff responsibilities**

120. As the preamble to the Constitution declares, the NHS belongs to the people. As a result, patients, staff and the public owe certain responsibilities to one another to ensure the NHS operates fairly and effectively. By making significant contributions to their own and their family's good health and well-being, using NHS services appropriately, and treating NHS staff and other patients with respect, patients and the public can make significant contributions to the effective and safe operation of the NHS.

<sup>30</sup> NHS Employers (2012) Health and well-being five high impact changes. <http://www.nhsemployers.org/HealthyWorkplaces/ReducingSicknessAbsence/Pages/FiveHighImpactChanges.aspx> (Accessed 22 June 2012)

### Examples of how patients and the public are meeting their responsibilities

- The public are participating in important public health programmes such as vaccination. The most recent information shows that not since 1995, when UK data were first reported, has the coverage of all primary immunisations met or exceeded the World Health Organization target of 95% – that target has now been achieved;
- With the public offered various ways to sign up to the organ donation register, it is encouraging to see that donor rates have increased by around 35% since 2007/08;
- Patients are also helping to improve the NHS by taking part in programmes such as Patient Reported Outcome Measures – providing accurate information about their health to enable the NHS to improve outcomes and use resources more effectively.

121. While there is some evidence that patients and the public are meeting their responsibilities, the evidence is, by its nature, mixed and limited, and few generalisations can be drawn. It is also impossible to determine whether this is as a result of the NHS Constitution, separate from the complex set of social relationships that exist between the NHS and the people it serves.

122. There are also a number of ways in which the NHS is helping the public and patients to live up to their responsibilities. For example, when patients and the public make appointments, they have a responsibility to keep that appointment or cancel it within a reasonable time. Whilst patients have their part to play in keeping their appointments there are

tools that the NHS is using (for example Choose and Book)<sup>31</sup> as well as innovative social influencing approaches to booking procedures<sup>32</sup> that help patients meet their responsibilities, which in turn significantly reduces missed appointments and allows the NHS to plough the money into better patient care.

123. The depth of feeling and passion that people have for the NHS continues to be a remarkable and enduring source of strength and support for the NHS as an organisation. However, to maximise the effectiveness of the NHS, work needs to continue to focus and channel that commitment into also supporting the practical work of the NHS, and fully upholding the responsibilities of the public set out in the NHS Constitution.

31 <http://www.drfoosterhealth.co.uk/features/outpatient-appointment-no-shows.aspx>

32 Martin SJ, Bassi S, and Dunbar-Rees R (2012) Commitments, norms and custard creams – a social influence approach to reducing did not attends (DNAs). *J R Soc Med.* 105(3):101-4. <http://jrsm.rsmjournals.com/content/105/3/101.full.pdf+html> (Accessed 22 June 2012)



## 4 Effect of the NHS Constitution

124. The delivery by the NHS of the rights and pledges contained in the Constitution provides important context for understanding the effect the Constitution has had to date. But it is not the key test of the difference it has made to patients, staff, carers and the public.
125. Codifying the enduring principles, values, rights and pledges in a single declaratory document was never intended to have a direct causal effect on NHS performance. Instead, the effect of the Constitution was meant to be longer term. It meant to help safeguard the NHS as an equitable and efficient health service, and to empower patients, the public and staff within the NHS so they are equipped to challenge and encourage improvements in NHS services.
126. Three years after the Constitution was launched, it is possible to offer initial conclusions about its effect. But definitive conclusions are not possible at this early stage. The requirement on the Secretary of State for Health to report on the effect of the Constitution every three years is an important one. It means that the effect of the Constitution will be kept under review and that, over time, this will help to establish a clearer understanding of how it has made a difference.
127. This chapter examines the extent to which the NHS Constitution is meeting the objectives it was intended to achieve.
- Protecting the principles and values of the NHS**
128. By codifying the principles and values of the NHS, the Constitution is supposed to help reinforce and safeguard the NHS for the future. As the original impact assessment to the Constitution made clear, the foundations of the NHS as a comprehensive, tax-payer funded service for all, based on clinical need and regardless of the patient's ability to pay, continue to have the strong support of the public.
129. A potential threat to the future of the NHS identified in the impact assessment was the emergence of a two-tier health service, in which people who use the NHS receive worse care than those who could afford to pay for their treatment. Such a threat would lead to widening inequalities and to the possibility of the NHS being downgraded to a "safety net service".<sup>33</sup> At the same time, the impact assessment made clear that the NHS would need to change to meet 21st Century challenges – rising patient expectations, changes in the way services are delivered, improved technology, and continuously improving medical practice.
130. By creating a settlement on the enduring principles and values of the NHS, the Constitution was intended to help protect the fundamentals of the NHS during periods of change and to ensure that the

<sup>33</sup> Impact assessment to the NHS Constitution, 30 June 2008, p.4  
[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_085852.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_085852.pdf) (Accessed 22 June 2012)

threat of a two-tier service did not come to pass. The impact assessment stated:

“The Constitution aims to equip the service with the capability it needs to work with all these changes and preserve its unique nature, safeguarding efficiency and equity. The Constitution aims to secure the foundations of the NHS and to ensure that the enduring principles and values of the NHS will not be undermined, preventing threats of an inequitable health system within the NHS materialising.”<sup>34</sup>

131. These aims were not short term; they were about protecting the fundamentals of the NHS as an equitable and efficient health care system for both current and future generations. A key test of the Constitution is, therefore, its longevity – how it helps to maintain and embed the core principles and values that make the NHS unique and special. This can only be measured meaningfully over the long term.
132. What is apparent, however, is that three years on from the launch of the Constitution, the NHS remains true to its fundamental principles and values as expressed in the Constitution. Those principles and values are as relevant today as they were when the NHS was founded, and continue to enjoy strong support from the public. The Constitution remains a focal

point to what the health service is all about and continues to remind us of what the NHS is striving to achieve every day.

133. The NHS continues to be a universal, comprehensive service, based on clinical need rather than on an individual's ability to pay. The modernisation of the NHS is grounded in these principles:
- The continuing comprehensive nature of the NHS is enshrined in the Health and Social Care Act 2012. The Act makes clear that the Secretary of State for Health retains his duty to promote a comprehensive health service.<sup>35</sup> His accountability to Parliament for the health service in England is made explicit in the Act. The Act sets the framework for empowering frontline clinicians and encouraging local innovation within the context of a clear national offer to patients and staff, and makes clear that the NHS remains a consistent national health service. It does so in a framework of encouraging local decision-making and enabling greater scope for determining priorities locally.
  - In line with the wording of the Constitution, the Health and Social Care Act 2012 makes clear that NHS services must remain free of charge except in certain circumstances explicitly sanctioned by Parliament.<sup>33</sup>

<sup>34</sup> Impact Assessment of the NHS Constitution, 21 January 2009.

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_093416.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_093416.pdf) (Accessed 22 June 2012)

<sup>35</sup> Section 1 of the Health and Social Care Act 2012



## Empowering patients and staff

134. The NHS Constitution was also meant to empower patients and staff by helping them to understand what they could expect from the NHS and by helping to effect a change in behaviour. As the impact assessment to the Constitution made clear:

“Greater patient, public and staff understanding of what they can expect would be a step towards greater empowerment; it could provoke challenge and mutual respect for NHS services, and force up standards [...] By bringing together all the rights and pledges in one place, more people will understand what to expect from the NHS, and will be provided with a firmer basis to challenge when the NHS deals with them in ways which are not in accordance with their rights and the NHS pledges made to them.”

135. The effect of the NHS Constitution in ensuring this depends, in part, on the extent to which patients and staff find the Constitution to be a clear and accessible articulation of what they can expect from the NHS, and whether patients and staff challenge where their rights and pledges to them are not delivered.

136. The articulation of rights and pledges in the NHS Constitution remains the clearest and most concise statement of what characterises the NHS and what we all can expect from it. During the development of

the Constitution, the independent forum advising the Department noted that:

“The reaction of patients, the public, staff and major stakeholders to the Constitution was overwhelmingly positive [...] Even where there were parts of the Constitution that people wished to change, they agreed with the need for it and supported the basic shape and balance of it. The Department should keep in mind the broad consensus in favour of the Constitution in addressing the issues raised in the consultation [...] A large majority of respondents [to the consultation] thought the articulation of the purpose, principles and values of the NHS was broadly right.”

137. Subsequent awareness surveys conducted by the Department have not sought to test the extent to which the public and staff remain content with the way in which the values, principles, rights and pledges are expressed in the Constitution. Informal engagement with stakeholders, however, suggests that, on balance, most people continue to find the Constitution an effective articulation of these principles, values, rights and pledges. While some have commented that the Constitution could be shorter, and have cautioned against it becoming an ever expanding document with each revision, most people appear to welcome the fact that it brings these essentials together in one place.

138. Awareness of the Constitution, however, is generally low (as set out in Chapter 2) and this significantly compromises the ability of the Constitution to have a real and meaningful effect. The awareness research strongly indicates that people are not turning to the Constitution as a way of finding out information about the NHS, what they can expect from it, or what to do if their expectations are not met.
139. Where patients find that their rights, and the pledges made to them, are not being delivered, the Constitution was intended to empower them to challenge the NHS, and prompt improvements in NHS performance.
140. The fact that patients, in general, do not use the Constitution as a benchmark against which to complain suggests that the NHS Constitution is not yet having the effect originally intended. Put simply, people are not using the Constitution as a way of upholding their expectations of the NHS. The complaints system, while showing some signs of improvement, has not led to a change of culture in which complaints are encouraged as a means of driving improvements in the quality of care. At the same time, while managers on the whole are most aware of the Constitution, it is important that staff at all levels throughout the NHS are well informed about the Constitution and that they know how to use it, both to improve services for patients and to empower them to ensure their own rights, and the pledges made to them, are delivered by their employers.

## 5 Conclusions and next steps

141. The NHS Constitution is a remarkable and important document. It brings together in one place the essence of what makes the NHS unique and special. Not only does it give a focal point to what the health service is all about, it reminds everyone what the NHS is striving to achieve each and every day.
142. Three years on from its launch, the NHS Constitution continues to have the power to inspire and enthuse. As the first report on the effect of the Constitution, this report can offer an interim assessment of where the Constitution stands today. But the real test of the Constitution lies in its longevity – the way in which it represents an articulation of the principles and values of the NHS.

### **Awareness and use of the NHS Constitution**

143. People who know about the NHS Constitution support and value it. Overwhelmingly, patients and staff think a Constitution for the NHS is a great idea. It is particularly striking that those who know about the Constitution are more likely to support and value it, and that the more they know about it the greater their support. It is clear that people remain enthusiastic for, and supportive of, the NHS Constitution. This can be built on in the years ahead by the Department of Health, the NHS Commissioning Board, clinical commissioning groups, regulators and all providers of NHS services.
144. It is also clear, however, that awareness of the Constitution is generally low. Greater awareness of the Constitution is an essential starting point for helping patients and staff understand what they can expect from the NHS and, in turn, the responsibilities they owe to the health service and each other. But awareness alone is not sufficient to empower people – neither patients nor staff. Awareness simply means knowing the Constitution exists. Real empowerment means more than this. It means understanding what is in the Constitution and, crucially, how to use the Constitution to ensure patients and staff receive what they are entitled to expect. People need to know what they can expect from the NHS. They also need to know what to do, and who to turn to, when they do not get what they can expect.
145. Everyone involved in the health service at every level has a role to play in both raising awareness of the Constitution and in helping patients and staff to understand how to use it. The role of the NHS Commissioning Board in promoting the Constitution in the new system will be particularly important.
146. The Health and Social Care Act 2012 places clear duties on the NHS Commissioning Board, and on clinical commissioning groups, to promote the NHS Constitution.

This means promoting awareness of the Constitution among patients, staff and the public. It also means that the Board must exercise its own functions in a way that promotes the NHS Constitution. Rightly, it will be for the NHS Commissioning Board to determine precisely how it will fulfil these legal duties.

147. The Department of Health will hold the NHS Commissioning Board to account for meeting its legal duty to promote the NHS Constitution. It will also hold the Board to account for delivering on the rights and pledges contained within it.
148. This will be achieved through the draft mandate, which sets out the Government's objectives for the Board, and which will be the main accountability mechanism for this. The draft mandate, on which a public consultation has now been launched, sets an objective for the Board to demonstrate that the rights and pledges in the NHS Constitution are being met.
149. In line with the duties in the 2012 Act, the Department expects the NHS Commissioning Board to make clear in its business plan how it will achieve the objectives in the draft mandate, including in relation to the NHS Constitution. Likewise, it expects the Board to make clear in its annual report how it has fulfilled those objectives. At the same time, the Department will look to the NHS Commissioning Board to hold clinical

commissioning groups to account for fulfilling their legal duties to promote the NHS Constitution.

### **Subsequent reports on the effect of the NHS Constitution**

150. The Health Act 2009 requires the Secretary of State to report on the effect of the NHS Constitution every three years. This is the first such report. The next report must be laid before Parliament by 5 July 2015.
151. The purpose of these reports is to explore the effect of the NHS Constitution on patients, staff, carers and the public. This is about examining the extent to which the Constitution has made a difference – in particular, whether codifying the principles, values, rights and pledges in one place has made a difference in empowering patients and staff. They are not reports on general NHS performance. The true test of the Constitution is not whether rights and pledges are being delivered in full, but whether codifying them has helped empower patients and staff. Nevertheless, performance is relevant context for understanding the effect of the Constitution.
152. The chapter on rights and pledges highlighted the challenges involved in measuring the extent to which these are being delivered. It noted that the performance data collected does not necessarily map easily against the rights

and pledges in the Constitution. Evidence is often limited in scope, only partially addresses the effect of the Constitution, or simply alludes to the effects of the Constitution.

153. Future reports on the effect of the NHS Constitution would benefit from richer sources of evidence that address more directly the extent to which rights and pledges are being delivered in practice. The Department will look to the Board to identify the best way to collect the information required to demonstrate that it is delivering on the objective in relation to the Constitution, as set out in the draft mandate.

## Next steps

154. The work of the NHS Future Forum has been important in informing this first report on the effect of the NHS Constitution. Its findings about the need to raise awareness, to promote real understanding about, and use of, the Constitution underpin the conclusions of this report.
155. The Government has asked the NHS Future Forum, in the second phase of its work on the Constitution, to consider how the Constitution can be strengthened and reinforced for the future – in terms of both content and awareness. The Secretary of State will write to the NHS Future Forum shortly setting out specific areas on which

he would be particularly grateful for the Forum's advice.

156. The NHS Future Forum will present its advice to the Government in the autumn. Following this, the Government plans to launch a public consultation on any changes to strengthen the Constitution so that patients, staff and the public have the chance to have their say. The consultation will be launched later this year.

# Annex 1: Advice from the NHS Future Forum

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

26 June 2012

*Dear Secretary of State*

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

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

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

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

We welcome the fact that you recognise this and that you listened to the NHS Future Forum by encouraging Parliament to strengthen the duties relating to the NHS Constitution in the Health and Social Care Act 2012. The Government's mandate to the NHS Commissioning



Board provides an opportunity to hold the Board to account for ensuring that patients' rights and pledges set out in the Constitution are delivered.

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

The NHS Constitution is for everyone. We recognise that the report you must lay before Parliament is about the effect of the Constitution since its launch in 2009, rather than a report on the state of the NHS itself. We have felt frustration that the evidence has been so patchy. Where there is evidence of the effect of the Constitution this indicates that even where rights and pledges to patients and staff are delivered well, they are not consistently delivered for everyone. This is particularly the case for those who are most marginalised and most out of sight. This must change. Inequalities need to be tackled and the Constitution has a role to play in this. Both the way that NHS services are delivered, and the way we measure how the NHS delivers against the rights and pledges in the Constitution must improve.

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

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

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

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

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

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

Yours  
Steve Field

Professor Steve Field CBE, FRCP, FFPH, FRCGP

## Annex 2: Review of the Handbook to the NHS Constitution

1. This review of the Handbook to the NHS Constitution (the Handbook) fulfils Secretary of State's duty under Section 5 of the Health Act 2009 to at least in any period of three years carry out a review of the Handbook to the NHS Constitution and that this first review must be completed not later than 5 July 2012.
2. The Handbook is designed to provide staff and patients with all the information they need about the NHS Constitution for England. It provides a guide to the rights and responsibilities of patients and NHS staff as well as setting the principles and values of the NHS.
3. The first part of the Handbook is a guide to the patients' rights and pledges contained in the Constitution, and can be used for reference to explain what the Constitution means for patients. It also sets out the responsibilities of patients and the public in working with NHS staff.
4. The second part of the Handbook is for staff involved in providing NHS services and covers the pledges the NHS has made to staff to help them deliver better quality care and to make the NHS a better place to work. It is clear about the expectations the NHS has of its staff and their rights as employees.
5. The Handbook also contains an appendix outlining the legal sources of both the patient and staff rights in the NHS Constitution.
6. Two versions of the Handbook are published online. One version is a single PDF of the Handbook published on the Department of Health website. An interactive PDF version of the Handbook is published on the NHS Choices website. The interactive version contains the suite of NHS Constitution documents (The NHS Constitution for England, the Handbook and the Statement of NHS Accountability) and allows users to move between the rights and pledges in the NHS Constitution and the explanation of those rights and pledges in the Handbook.
7. Since its publication in 2009, the Handbook has been revised twice, once in 2010 and once in 2012. In accordance with section 5 of the Health Act 2009, the Handbook was republished after each revision.
8. In 2010, the NHS Constitution was updated to include:
  - a new right for patients to start any non-emergency treatment within a maximum 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.

9. In 2012, the NHS Constitution was updated to include:
  - 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 wrong doing without suffering any detriment.
10. In April 2013, the Handbook will require revision. The Health and Social Care Act 2012 introduces changes to the organisations that will commission and provide NHS services and the majority of these organisations will take on their functions in April 2013.
11. The Handbook will need to remove references to Primary Care Trusts (PCTs) and Strategic Health Authorities (SHAs) and instead refer to the organisations that will commission and provide NHS services. The Statement of NHS Accountability, which describes the system of responsibility and accountability for taking decisions in the NHS, will also require revision by April 2013.
12. The Handbook will also need to explain how the existing rights in the NHS Constitution, and their legal force, will continue when the new organisations take on their functions in April 2013. To that end, the appendix outlining the legal sources of both the patient and staff rights in the NHS Constitution will need to be updated as necessary.
13. The NHS Future Forum will be considering potential changes to strengthen and reinforce the NHS Constitution and will advise the Secretary of State in the autumn of 2012. As part of the engagement process, the NHS Future Forum will also consider the accessibility of the Handbook and ease of use for patients, staff and members of the public and whether these different groups are aware that the Handbook exists. A public consultation will be held on any proposed changes, including how to raise awareness of the Handbook as well as the NHS Constitution. Following the public consultation, if changes are made to the NHS Constitution, the Handbook will need to be updated to reflect any changes.

## Annex 3: 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.

