

## **Expert Advisory Group to the NHS Constitution Roundtable to Launch ‘Next steps for the NHS Constitution’**

**Date:** 13 March 2014

**Time:** 10.45 – 12:30

**Location:** Department of Health, Richmond House, 79 Whitehall

### **Attendees**

#### **Chair**

Norman Lamb MP – Minister of State for Care and Support (MS(CS))

#### **Department of Health (DH) officials**

Peter Howitt – Deputy Director, Legislation, NHS Constitution and Policy Improvement

Helen McKenna – Senior Policy Advisor, NHS Constitution

Alexander Wallace – Assistant Private Secretary, Minister of State for Care and Support

Kylie Stephen – NHS Constitution

Caron Connolly - NHS Constitution

Liz Dyer – NHS Constitution

Guy Cohen – NHS Constitution

Jade Harford – NHS Constitution

#### **Expert Advisory Group (Expert Group) members**

Dr Vinod Diwaker – Medical Director, Birmingham Children's Hospital

Brenda Hennessy – Former Director of Patient Experience & Public Engagement, Cambridge University Hospitals NHS Foundation Trust

Professor Steve Field – Chief Inspector of General Practice, Care Quality Commission

Ciarán Devane – Chief Executive, Macmillan Cancer Support

Jeremy Taylor – Chief Executive, National Voices

Ash Soni – Vice Chair, English Pharmacy Board; Clinical Network Lead, NHS Lambeth Clinical Commissioning Group

Howard Catton – Head of Policy and International, Royal College of Nursing

Dr Jocelyn Cornwell – Director, The Point of Care Foundation

#### **Health system representatives**

Paul Corrigan – Non-Executive Director, Care Quality Commission (CQC)

Kingsley Manning – Chair, Health and Social Care Information Centre

Dr Katherine Rake – Chief Executive, Healthwatch England (also an Expert Group member)

Baroness Joan Hanham – Chair, Monitor

Sue Meeson – Executive Director of Strategic Communications, Monitor

Karen Charman – Director of Engagement, NHS Employers

Neil Churchill – Director of Patient Experience, NHS England

Keith Holden – Deputy Director of System Policy, NHS England

Kevin Holton – Deputy Director of Patient Experience, NHS England

Nina Wrightson – Acting Chair, NHS Litigation Authority

Sir Peter Carr – Chair, NHS Trust Development Authority (NHS TDA)

Professor David Haslam – Chair, National Institute for Health and Care Excellence (NICE)

Gill Bull – Director of Strategy, Parliamentary and Health Service Ombudsman (PHSO)

Jonathan Marron – Director of Strategy, Public Health England

Karen Didovich – Senior Employment Relations Adviser, Royal College of Nursing,

**Apologies:**

Jo Lenaghan – Director of Strategy and Planning, Health Education England (Expert Group member)

	Notes
<b>Introduction</b>	<ul style="list-style-type: none"><li>• Peter Howitt, thanked the Expert Group members for producing their recommendations paper and thanked partners in the health and care sector for attending.</li><li>• Peter Howitt invited Professor Steve Field to provide the history of the NHS Constitution to date.</li></ul>
<b>Background to Expert Group’s recommendations</b>	<ul style="list-style-type: none"><li>• Professor Steve Field outlined the history of the Constitution to date:<ul style="list-style-type: none"><li>- In 2007 it was decided that a Constitution should be developed for the benefit of patients and staff.</li><li>- The first edition of the NHS Constitution was published in 2009.</li><li>- Ministers have been supportive of the Constitution since the idea was first proposed.</li><li>- In 2012, during the passage of the Health and Social Care Act 2012 through Parliament, the NHS Future Forum working group was set up to consider how to strengthen the Constitution.</li><li>- The working group found that, although there were some examples of the Constitution being well used (namely, Manchester Medical School’s inclusion of the Constitution in its training curriculum, and widespread use across the East of England) on the whole the NHS was not sufficiently visible and needed to be given greater traction.</li><li>- The NHS Future Forum made recommendations to the Secretary of State including further awareness raising with patients and staff.</li><li>- The Expert Advisory Group was set up to advise Minister of State for Care and Support, Norman Lamb on how best to deliver these recommendations</li></ul></li><li>• Peter Howitt thanked Professor Steve Field and invited Jeremy Taylor to present the Expert Group’s recommendations.</li></ul>
<b>Presentation of the Expert Group’s recommendations</b>	<ul style="list-style-type: none"><li>• Jeremy Taylor outlined the task given to the Expert Group and the context of their work:<ul style="list-style-type: none"><li>- The Expert Group was invited by MS(CS) to support him in responding to the NHS Future Forum work group’s recommendations aimed at giving the Constitution more ‘teeth’.</li><li>- Recognised that the text of the Constitution has already been updated three times since it was first published in 2009 and that the</li></ul></li></ul>

	<p>time had come to focus more on getting it used than on amending the wording.</p> <ul style="list-style-type: none"> <li>• Outlined the Expert Group’s recommendations on what should be done to achieve the Constitution’s potential: <ul style="list-style-type: none"> <li>- <b>Recommendation 1</b> – Content changes should be kept to a minimum and content changes should not be made now.</li> <li>- <b>Recommendation 2 &amp; 3</b> – There is a need to hold people and organisations to account, measure and monitor the implementation of the Constitution.</li> <li>- <b>Recommendation 4</b> – To date there has not been a public-facing campaign to raise awareness of the Constitution. This campaign must happen and should build on what is already out there so awareness can also be raised from the bottom-up, working with staff and patient champions.</li> <li>- <b>Recommendation 5</b> – There need to be shorter versions of the Constitution to make it more accessible for the public to read and use.</li> <li>- <b>Recommendation 6</b> – The Constitution is also there to help patients when things go wrong. It should be used to help patients challenge the system. As a minimum a guide to the complaints should be produced as a supplement to the Constitution to make clear to patients what to do and where to go to when things go wrong.</li> <li>- <b>Recommendations 7 – 9</b> – The focus of these three recommendations is to get the Constitution out into the system and to help patients and staff to use it.</li> <li>- <b>Recommendation 10</b> – The Expert Group’s conversations often came back to the question of ‘teeth’ and whether the Constitution should have a stronger legal position as the Constitution itself is not a route of enforcement. The final recommendation is that at the next review, this question should be considered to see if it is possible for the Constitution to have more legal force.</li> </ul> </li> <li>• Concluded that the role of implementing these recommendations falls not only to DH and the national NHS bodies but also to local organisations: all organisations share the responsibility for embedding the NHS Constitution.</li> </ul>
<p><b>Arrival of Norman Lamb, Minister of State for Care and Support</b></p>	<p>Norman Lamb, Minister of State for Care and Support (MS(CS))</p> <ul style="list-style-type: none"> <li>• Thanked everyone for attending and thanked the Expert Group for producing a set of valuable recommendations of which he is supportive.</li> <li>• Emphasised the Department’s commitment to increasing the impact of the NHS Constitution.</li> </ul>
<p><b>Discussion of individual recommendations</b></p>	<ul style="list-style-type: none"> <li>• MS(CS) invited the group to discuss the recommendations in turn.</li> </ul> <p><b>Recommendation 1</b>  <i>We recommend that the Department, working with other organisations, focuses now on embedding the NHS Constitution and leaves content changes till later.</i></p> <ul style="list-style-type: none"> <li>• Jeremy Taylor explained the recommendation: <ul style="list-style-type: none"> <li>- There is a backlog of amendments (including those resulting from the Mid Staffordshire NHS Foundation Trust Public Inquiry) – to be made</li> </ul> </li> </ul>

	<p>to the Constitution. The Constitution does need to evolve, but for now, changes should be held back and the focus should be on embedding it.</p> <ul style="list-style-type: none"> <li>• MS(CS) agreed with the recommendation and advised that in response, amendments would be held back until the end of 2015 when the next report on the effect of the Constitution is carried out.</li> </ul> <p><b>Recommendations 2 and 3</b></p> <p><b><i>We recommend that the Department, NHS England, the NHS Trust Development Authority (NHS TDA), Monitor, the Care Quality Commission (CQC), and CCGs hold the relevant national and local organisations in the health system to account for fulfilling their duties in relation to the Constitution.</i></b></p> <p><b><i>and</i></b></p> <p><b><i>We recommend that a system is developed to effectively monitor the extent to which the rights and pledges in the Constitution are being met, tapping into existing measures where possible.</i></b></p> <ul style="list-style-type: none"> <li>• Jeremy Taylor explained the recommendations: <ul style="list-style-type: none"> <li>- The Constitution provides an opportunity for a more unified approach to accountability in the new system.</li> <li>- In recommendation 3 the Expert Group were conscious that monitoring should be done in a way that is meaningful but that does not place additional burdens on the NHS. Existing metrics and methods of performance management, such as the CQC fundamental standards and the Mandate to NHS England should be used.</li> <li>- Further consideration needs to be given to outlining what the consequences are for not upholding responsibilities with regards to the Constitution and the rights and commitments it sets out.</li> </ul> </li> <li>• MS(CS) invited views from relevant organisations on how they can use their levers to deliver this responsibility.</li> <li>• Keith Holden (NHS England) explained that NHS England is very supportive of recommendations 2 and 3 and that there are three main levers available to NHS England: the Standard Contract, the Outcomes Framework, and CCG Assurance Framework.</li> <li>• Helen McKenna highlighted that the levers used at the moment are largely only related to access and waiting times. She emphasised that these levers need to go far further and to cover the other rights.</li> <li>• Keith Holden (NHS England) agreed.</li> <li>• Neil Churchill (NHS England) added that NHS England will also be using its direct commissioning role to look at local ownership of the Constitution, with patients and staff working together to agree what the rights and pledges should look like in practice.</li> <li>• Jeremy Taylor emphasised that it is very important that NHS England sets a good example through its own commissioning role.</li> <li>• Karen Charman (NHS Employers) explained that NHS Employers are very supportive of local ownership of values and that NHS Employers had published an online tool for NHS Trusts to use to map their local values to the Constitution.</li> <li>• Sir Peter Carr (NHS TDA) outlined that the NHS TDA has built the</li> </ul>
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	<p>Constitution into their work in 3 main areas: the accountability framework, the planning process and by aligning NHS TDA metrics with the CQC inspections framework.</p> <ul style="list-style-type: none"> <li>• Baroness Joan Hanham (Monitor) explained that there are two main areas where Monitor can hold organisations to account with regards to the Constitution. Firstly under their licensing system for NHS Foundation Trusts there is a requirement to make sure the Constitution is considered. Secondly, there is Monitor’s risk assessment framework. Monitor can use these to highlight that the Constitution is a really important part of Trusts’ responsibilities.</li> <li>• Sue Meeson (Monitor) added that Monitor can look at whether there is a need to make the Constitution more explicit in their licencing system.</li> <li>• Howard Catton asked if there are ways to strengthen what happens when organisations are not complying with the Constitution. He proposed that one option could be to remove the licence of those organisations that do not comply.</li> <li>• Jeremy Taylor explained that there the system needs to work together to decide how the information that is already collected can be used e.g. the Staff Survey and the Friends and Family Test. He reiterated that it is not necessary to create a whole new accountability system but instead to focus on how existing metrics in relation to the NHS Constitution can be used and made transparent.</li> <li>• MS(CS) agreed that making the metrics visible will help to hold organisations to account. He suggested that information should be captured periodically and made visible to the public.</li> <li>• Gill Bull (PHSO) added that metrics around complaints are another key source of information about whether patients’ rights and expectations are being met. PHSO confirmed that they would be happy to work together with other organisations to make this information available.</li> <li>• Professor David Haslam (NICE) added that NICE are also very willing to be involved. NICE has an Implementation Collaborative to look at the uptake of NICE approved drugs and treatments. They are developing an audit tool so that Trusts can demonstrate where they are using NICE approved drugs and treatments – this is a useful metric in relation to the Constitution.</li> <li>• Paul Corrigan (CQC) noted that there needs to be a distinction between enforcing the Constitution and enforcing the rights and responsibilities set out in it. CQC inspects for the rights and responsibilities set out in the NHS Constitution but not for the document itself. Most of the rights and responsibilities set out in the Constitution will be in CQC’s inspection framework so this can be used as a lever.</li> <li>• MS(CS) added that if providers know that CQC takes the rights set out in the Constitution seriously, this will have an effect on their behaviour.</li> <li>• Professor Steve Field confirmed that the Constitution rights are prevalent throughout CQC’s emerging inspections framework.</li> <li>• Jocelyn Cornwall added that it is important to remember that measurement is not the same as behaviour change. It is a very good thing that regulators align themselves to the same frameworks and that measurement draws attention to what is not being delivered. However it is vital that regulators also bring solutions or they risk de-motivating staff.</li> <li>• Professor Steve Field agreed, saying it is important to shine a spotlight on what is wrong, and also to share and highlight what is good and</li> </ul>
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outstanding. The public are entitled to receive the rights and pledges set out in the NHS Constitution, so when these are not met there is a need to focus on what is not good.

- MS(CS) emphasised that if the system is working together to monitor performance, it should be pulling this information together and highlighting it.

MS(CS) suggested that key organisations in the system work together to explore the idea of producing an annual report showing how the system is implementing the Constitution, noting that consideration needs to be given to whether this is a viable proposition.

- There was general support for this suggestion to have a regular report that pulls together, and makes publicly visible, information on the Constitution, how it is being upheld as well as how the rights and pledges are being met.

#### **Recommendation 4**

***Recommendation 4: We recommend that the Department, in partnership with NHS England, HEE, CCGs and other bodies drive and fund such a campaign.***

- Jeremy Taylor explained the recommendation:
  - There needs to be a proper conversation with patients and the public about the Constitution and how they can use it. This awareness raising conversation needs to take place not just in the government but across the whole NHS leadership and would require everyone to play their part.
- MS(CS) agreed, responding that the Department of Health (DH) supports this and plans for the awareness campaign to take place in 2014/15 and 2015/16.

#### **Recommendation 5**

***Recommendation 5: We recommend that the Department works with others, including voluntary sector organisations, to produce a range of easy-read and much shorter summary versions.***

- Jeremy Taylor outlined the recommendation, linking it to recommendation 4:
  - There need to be versions of the Constitution that are helpful and meaningful. This must be done so the Constitution does not seem complicated to the public.
- Peter Howitt (DH) noted that DH is currently working on an easy read version, and that work is also occurring independently through NCB and Health Education England. Part of responding to recommendation five will be sharing and publicising what is already occurring.

#### **Recommendation 6**

***We recommend that a guide to complaints and feedback is developed as a supplement to the NHS Constitution to provide greater clarification for people on how to use the complaints process.***

- Jeremy Taylor outlined the recommendation:
  - The Constitution is fine when things are going well, but people often get stuck when things are not going well.
  - It helps to know where to go to and what the rights are, but lack of confidence and lack of help can create barriers for patients.
  - At a minimum, a guide needs to be developed to help people work through the complaints process and understand how to raise concerns and challenge the system when it isn't delivering.
- Gill Bull (PHSO) explained that PHSO is pleased that work has already begun on the guide, but suggested that as a system we should raise our aspirations in terms of what the guide is for. She emphasised the need to be clear about what patients can expect from the complaints handling system.
- Dr Katherine Rake (Healthwatch England) explained that there needs to be a focus on supporting people in making complaints. If people think that complaining will affect the quality of their care, there will be no progress in terms of complaints. She added that the system should remain open-minded about there being an equivalent Constitution in social care.
- Brenda Hennessy explained that as someone with a background in complaints handling, the most important thing is not the process but that complaints are taken seriously by NHS leadership. There needs to be sufficient resourcing for Patient Advice and Liaison Services and complaints services to ensure they can do their job properly.
- Howard Catton suggested that in terms of complaints the bar should be set higher for 'having regard' so that complaints can be used to drive improvements. He suggested that organisations should be required to have looked, learnt and made improvements on the basis of complaints. The next review of the Constitution should use complaints information to see how effective the Constitution is proving to be.

#### **Recommendation 7**

***We recommend that the specific behaviours associated with NHS Constitution rights are clearly defined to enable staff and patients to better understand what to expect from, and how to improve, their experience of NHS care, in particular through the work NHS England is undertaking to embed patient rights.***

- Jeremy Taylor explained the recommendation:
  - This recommendation is about defining what the rights and values look like, and translating these into defined behaviours.
  - Jeremy thanked Neil Churchill for contributing this suggestion.
- Neil Churchill (NHS England) explained that the rights and values may mean different things in different settings. In line with Macmillan's work to develop values based standards, NHS England plan to involve patients and service users to help define what the delivery of their rights should look like.

#### **Recommendation 8**

***We recommend that NHS England, working with the voluntary sector and CCGs, develops ways to engage and support patients in understanding their responsibilities as well as their rights, and address barriers that may prevent***

	<p><b>patients exercising responsibility for their health.</b></p> <ul style="list-style-type: none"> <li>• Jeremy Taylor outlined the recommendations as being about having a conversation with the public about how they can exercise their responsibilities.</li> </ul> <p><b>Recommendation 9</b></p> <p><b><i>We see the Healthwatch network as a key player in bringing the content of the NHS Constitution to life in order to help patients and citizens, and we recommend that they formulate detailed plans for doing this, building on Healthwatch England’s work to develop a consumer rights based framework that sets out the public’s expectations of health and social care services.</i></b></p> <ul style="list-style-type: none"> <li>• Jeremy Taylor explained the background to the recommendation: <ul style="list-style-type: none"> <li>- Healthwatch was set up to support and inform patients.</li> <li>- They have an important role to play in supporting people to know and use their rights.</li> <li>- There was much debate in the Expert Group as to whether Healthwatch’s work on consumer rights framework is a barrier to work on the Constitution or if it can be used to reinforce it. It was concluded that it must be used to reinforce the Constitution.</li> </ul> </li> <li>• Dr Katherine Rake (Healthwatch England) agreed, highlighting that the challenge for Healthwatch is that it was set up across both health and social care so must work in both, whereas the Constitution is only for health. Healthwatch will promote understanding of the Constitution amongst its network of local Healthwatch organisations.</li> </ul> <p>MS(CS) had to leave the meeting at this time. He thanked the group for attending and the Expert Group for producing a set of recommendations that goes a long way to answering the question of how to give the Constitution greater impact. He welcomed the final recommendation about reviewing the legal strength of the Constitution at the next report of the effect of the Constitution at the end of 2015.</p> <p><b>Recommendation 10</b></p> <p><b><i>We recommend that the Department considers and brings forward recommendations for strengthening the enforceability of the NHS Constitution.</i></b></p> <ul style="list-style-type: none"> <li>• Jeremy Taylor outlined the recommendation: <ul style="list-style-type: none"> <li>- The contents of the Constitution might have more traction if it was a legally enforceable document.</li> <li>- At present, the measure for ‘having regard’ to the Constitution is not clear and the bar needs to be set higher for policy in practice.</li> <li>- Another challenge for the Constitution is that it only looks at the NHS. In the future the system is likely to need a Constitution that can be a statement of rights across both health and social care.</li> </ul> </li> <li>• Peter Howitt (DH) explained that legal enforceability would be considered when the NHS Constitution is next reviewed.</li> </ul>
<p><b>Further discussion</b></p>	<ul style="list-style-type: none"> <li>• Jeremy Taylor asked how the system would respond to the Expert</li> </ul>

	<p>Advisory Group's recommendations.</p> <ul style="list-style-type: none"> <li>• Peter Howitt (DH) explained that NHS England's system-wide strategy on embedding and promoting the NHS Constitution will go some way to providing the system's response and invited NHS England to update attendees on how the strategy was progressing.</li> <li>• Keith Holden (NHS England) explained that NHS England have begun setting out a strategy document that brings coherence to the system's actions on embedding the Constitution. NHS England will work with the other organisations in the system over the next few months to incorporate the levers and actions they can offer into the strategy.</li> <li>• Professor Steve Field expressed the importance of DH holding others in the system to account for embedding the NHS Constitution.</li> <li>• Helen McKenna (DH) explained that the strategy being led by NHS England is an opportunity for all organisations here to contribute and commit to specific actions. DH will review progress on these recommendations in 2015 and assess if the legal duties are sufficient. As such, now is the time for all organisations to take action to ensure the NHS Constitution is made meaningful for patients and staff.</li> <li>• Professor David Haslam (NICE) pointed out that health issues are one of the most searched items on the internet but the Constitution is not visible in the most visited sites. David suggested that it needs to be put on relevant websites soon and this would be a useful indicator of its visibility.</li> <li>• Kevin Holton (NHS England) asked about DH's plans in relation to the NHS Constitution.</li> <li>• Peter Howitt (DH) explained that DH has specific legal duties in relation to the NHS Constitution. In addition, DH has accepted the Expert Advisory Group's recommendations and will now implement those it is responsible for – in particular, as system steward, holding health bodies to account for fulfilling their legal duties. A forthcoming priority for DH would be the joint working with NHS England to drive and fund a campaign to raise the awareness of the NHS Constitution.</li> </ul>
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