

Updating the NHS Constitution

Consultation response

Ref: 0615

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The NHS Constitution sets out rights to which patients, public and staff are entitled. It also outlines the responsibilities that the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. This consultation proposes to amend the NHS Constitution to reflect recommendations made by Sir Robert Francis QC in his Inquiry Report following the terrible failings at Mid-Staffordshire NHS Foundation Trust. It notably seeks to give greater prominence to mental health, highlight the importance of access to transparent and comparable data and reflect the new fundamental standards which will come in to force for all health and care providers in April 2015.

Consultation questions¹

Question 1: Mental Health

We would like to rephrase principle one of the NHS to read: '*The service is designed to improve and prevent, diagnose and treat both physical and mental health problems with equal regard*' (Annex 2, Change 1). Do you agree?

We would also like to rephrase an existing right to read: '*You have the right to drugs, treatments and psychological therapies that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you*'. (Annex 2, Change 7). Do you agree?

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| Yes, and I have no further comments | <input type="checkbox"/> |
| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
| No, and I would like to explain why | <input type="checkbox"/> |
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Further Comment

Age UK strongly supports the amendment of principle 1 and believes it is crucial for NHS services to take account of the whole of a person's needs (please see our response to question 2 on 'patient-centredness'). Putting mental health on a par with physical health is particularly important for later life, in a context of historic under diagnosis of mental health conditions in older people and inequalities in access to services. The Royal College of Psychiatrists estimates that 85% of older people with depression receive no help at all from the NHS. It is estimated that depression affects 40% of older people in care homes, and 78% have at least one form of cognitive impairment.

The evidence for both under-provision of mental health services and support among older people and poor regard for parity of esteem has led to dual discrimination for this group. We would strongly encourage the Department of Health to consider this when promoting the NHS Constitution and within its wider duties with regard to the Equality Act 2010.

¹ Please see response to question 10 on page 9 for our overall comments on the consultation.

Question 2: A patient-centred NHS [Recommendation 4]

We would like to change the current wording to: '*Patients will be at the heart of everything the NHS does*' (Annex 2, Change 2). Do you agree?

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| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
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Further Comment

Age UK welcomes the change to principle 4, which strengthens the ambition to put patients at the heart of everything the NHS does. However, we are concerned that the explanatory text for principle 4 does not go far enough in explaining 'patient-centredness', and in linking this with the necessity to better coordinate care across organisational boundaries.

We want to see person-centred care as the norm across health and social care, which should not be an end in itself but the means to achieving the best possible outcomes. As part of this vision, we believe the NHS should find new ways of referring to people without resorting to their medical conditions and 'ailments'. 'Patient-centredness' must start with a consideration of the whole of a person's needs and circumstances, including social, environment and carers' needs (where appropriate).

This means ensuring NHS services are delivered in a way that fits around people's needs and aspirations, rather than expecting people to fit around the system, joining up services with other agencies, such as social care, where necessary. Although this is recognised in principle 5 of the Constitution, we are concerned this is not sufficiently linked to the principle of 'patient-centredness'.

We would recommend amending the third sentence in the paragraph as follows: '*NHS services must reflect, and should be coordinated around and tailored to, the individual needs and preferences of patients, their families and their carers, taking account of their social and environmental circumstances and working, where necessary, with other agencies such as social care.*'

Question 3: Protecting patients from avoidable harm [Recommendation 5]

We would like to include the following wording for staff: '*You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm.*' (Annex 2, Change 12). Do you agree?

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| Yes, and I have no further comments | <input type="checkbox"/> |
| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
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Further Comment

We welcome the inclusion of this staff responsibility, which recognises the link between staff and patient safety, and reflects recommendations made by Sir Robert Francis QC in the wake of the terrible failings in care at Mid-Staffordshire NHS Foundation Trust. However, we think this aim does not go far enough in enabling staff to ensure the provision of safe care through challenging unsafe practice and whistleblowing, and making sure staff are fully trained to deliver safe care.

In line with recommendations from Professor Don Berwick, we believe that there should be a duty on all NHS staff to 'identify and help to reduce risks to the safety of patients, and to acquire the skills necessary to do so in relation to their own job, team and adjacent teams'². As such, all NHS staff should be encouraged to challenge unsafe practice. They should be supported and have their views respected when blowing the whistle on wrongdoing in the workplace.

In addition, they should be appropriately trained, and acquire the skills to protect all patients from avoidable harm. We know, for example, that hospital admissions can be particularly disturbing for people living with dementia, increasing their risks of falling, wandering off, developing challenging behaviours or harming themselves. A better understanding of dementia could enable staff to manage potential risky behaviour before it escalates.

In order to strengthen this aim, and in light of the above comments, we would recommend amending this new staff responsibility as follows: '*You must aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm. This includes an expectation that you have the necessary skills to do so and are fully supported to challenge any unsafe practice*'.

Question 4: Helping patients find assistance [Recommendation 5]

We would like to include the following wording for staff: '*You should aim to help patients find alternative sources of assistance, when you are unable to provide the care or assistance a patient needs*' (Annex 2, Change 14). Do you agree?

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| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
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Further Comment

Age UK firmly believes in people's right to expect that every person working in NHS-funded care will provide them with a compassionate response to their needs, and make every possible efforts to accommodate these needs.

² *A promise to learn – a commitment to act: improving the safety of patients in England*, (2013), National Advisory Group on the Safety of Patients in England.

However, this assistance should not be limited to a medical response, and NHS staff should seek to find, and signpost to, adequate support to address people's needs and encourage their recovery, including support with daily living.

An estimated 870,000 older people – nearly a third of people aged 65 to 89 – who struggle with daily tasks such as washing themselves and dressing have to fend for themselves, without any support from social services or their own families. We would expect clear guidance in the Handbook to the NHS Constitution to bring these principles to life, including an explanation of the type of assistance NHS staff may consider across agencies, including from social care and the voluntary sector.

We are again concerned that the language used in describing staff responsibilities is not clear enough, and would suggest changing 'you should aim' to 'you *must* aim'.

Question 5: Complying with guidance and standards [Recommendation 10]

We would like to include the following wording for staff: "*You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers*" (Annex 2, Change 13). Do you agree?

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| Yes, and I have no further comments | <input type="checkbox"/> |
| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
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| No, and I have no further comments | <input type="checkbox"/> |

Further Comment

Age UK supports the added responsibility for staff to follow guidance, standards and codes relevant to their work. However, we also think it is important to make more explicit the type of guidance and standards that they should follow to help ensure greater consistency of care across the NHS, and would recommend featuring examples in the Handbook to the Constitution. These may include guidance and standards from the National Institute for Health and Care Excellence and the CQC, as highlighted in Sir Robert Francis QC's recommendation. This is particularly important in light of recent efforts by the CQC to encourage a greater uptake of NICE guidance and awareness of its new fundamental standards of care.

Additionally, we believe it is important to highlight staff's responsibility, alongside their employer's, to keep up to date on guidance and standards. We would therefore recommend amending the wording as follows: '*You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers. You will be supported to stay up to date on guidance, standards and codes, and engaged in on-going quality improvement activities.*'

We would also expect the Handbook to include guidance on how staff should be made aware of this new responsibility (i.e. the means through which they will be notified), and how they should be informed of any updates to guidance, standards and codes.

Question 6: Duty of candour [Recommendation 178]

We would like to include the following wording for patients: *'You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident which has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need, in relation to the incident.'* (Annex B, Change 11).
Do you agree?

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| Yes, and I have no further comments | <input type="checkbox"/> |
| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
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Further Comment

We welcome the commitment to promoting a culture of openness and transparency, which is a central part of Sir Robert Francis QC's Inquiry Report and the work that we have undertaken through the Dignity Commission, jointly with the NHS Confederation and the Local Government Association.

However, we believe it is particularly important that a *proactive* approach to the duty of candour be reflected in the Constitution, being explicit in saying the NHS will not wait for complaints to be lodged. Therefore, to reinforce the proactive side of this commitment, we would suggest amending the second sentence as follows: *'You must be made aware of any safety incident which has caused, or could still cause, significant harm or death, even when this is not in response to a complaint.'*

In addition, we regret that the regard to a person's trauma, and concern around delivering information with sensitivity, have been lost in the updated wording. While ensuring honest and transparent conversations is important, this must be done in a tactful and sensitive way, which takes full account of a person's circumstances, so as not to cause any harm. This is all the more important as we know compassionate care is not currently the norm, as illustrated by the many examples in Sir Robert Francis QC's report. We would therefore suggest amending the third sentence as follows: *'You should be given the facts, an apology, and any reasonable support you need, in relation to the incident, with sensitivity and recognition of the trauma you have experienced.'*

Question 7: Fundamental standards [Recommendation 13]

We would like to include the following wording for patients:

- *'You have the right to receive care and treatment that is appropriate for you, meets your needs and reflects your preferences.'* (Annex B, Change 4)
- *'You have the right to be cared for in a clean, safe, secure and suitable environment.'* (Annex B, Change 5)
- *'You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.'* (Annex B, Change 6)

- ‘You have the right to be protected from abuse, neglect, and care that is degrading.’ (Annex B, Change 8)
- ‘You have the right to be involved in planning and making decisions about your health and care with your care provider, including your end of life care, and to be given information to enable you to do this. Where appropriate this right includes your family and carers. This includes being given the chance to manage your own care and treatment.’ (Annex B, Change 10). Do you agree?

- Yes, and I have no further comments
- Yes, in principle, but I have some comments
- No, and I would like to explain why
- No, and I have no further comments

Further Comment

We strongly support the addition of these patient rights, which mirror some of the new fundamental standards of quality and safety for all registered health and care providers, and are now central to the CQC’s inspection regime.

However, the inclusion of these additional rights is only worth it if all patients are made aware of them, and can reference these rights and raise concerns when they feel they have been breached. As part of this, we believe it is essential that the Government and NHS leaders at all levels take action to raise awareness of these fundamental rights and ensure they embed into practice.

In addition, we are concerned the enforcement regime behind these rights may thwart their use in practice. Paragraph 38 of the guidance on updating the NHS Constitution currently sets out that ‘individual patients cannot directly enforce these rights through the courts’ and that ‘it is the CQC’s role to make sure that providers are meeting these requirements’. We would see little point in translating these fundamental standards of quality and safety into patient rights if the enforcement regime behind these rights did not enable people to challenge poor treatment and care, including through judicial review. We would like to see a clarification of the enforcement regime behind these rights so as to give greater traction and maximise the use of the Constitution, an issue that has remained unresolved since it was first published.

Question 8: Transparency

We would like to include the following wording for patients: ‘You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally’ (Annex B, Change 9). Do you agree?

- Yes, and I have no further comments
- Yes, in principle, but I have some comments
- No, and I would like to explain why
- No, and I have no further comments

Further Comment

Age UK supports the introduction of this right, which aims to support people's access to information about the quality and performance of their local healthcare provider. However, in order to enable people to make effective choices, it is equally important to ensure effective support is in place to provide universal access to information as well as helping people to use that information. These choices must happen in the context of detailed shared decision-making with people fully engaged in their health and care, particularly where choices may span multiple health conditions.

The simple provision of information defeats the purpose of transparency and accountability if it is not coupled with efforts to ensure that information is clear, meaningful and accessible, and that people are enabled to access and use this information. As such, older people's disproportionate low rates of access to the internet must not act as a barrier to obtaining information about local providers.

Age UK strongly believes in older people's right to be supported to make informed and meaningful decisions about where they receive care, and in particular the ability to respond to poor experience by seeking care elsewhere. Further consideration should also be given to providing advocacy support to, and seeking the views of, people who do not have family/carers or support networks, as well as people living with cognitive impairment, including dementia.

In light of the above, we would suggest amending this right as follows: 'You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally, *and to be supported in accessing, and making use of, the data*'.

Question 9: Armed Forces Covenant

We would like to include the following wording '*As part of this the NHS will ensure that in line with the Armed Forces Covenant, those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside*' (Annex B, Change 3). Do you agree?

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Further Comment

Question 10: Do have any other comments about the NHS Constitution?

Age UK welcomes the update of the NHS Constitution in response to recommendations made by Sir Robert Francis QC and the ambition to give greater prominence to mental health.

Older people are often the least able to be confident that the care they receive live up to the principles, rights and pledges set out in the NHS Constitution. Extensive reports in the past few years, including the report into the terrible failings in care at Mid-Staffordshire NHS Foundation Trust, have highlighted examples of appalling and unacceptable standards of care. Stories of people being neglected, dehydrated and abused suggested many NHS organisations had forgotten basic principles of care and were often putting organisational considerations ahead of patients. Many, if not most, of the patients in such stories were older people.

However, we do not believe the NHS Constitution in itself can make a substantial difference to fundamental concerns with regard to how the NHS cares for our older and ageing population. The duty on staff to follow the principles and pledges of the Constitution does not solve the fundamental problem that staff remain under-equipped to care for older people, the NHS's largest users. Most hospitals and other care settings are currently not designed or managed to address the needs of people living with frailty and/or dementia. There are embedded issues, which require a fundamental cultural change beyond a constitutional intent. Recognising the limitations of the NHS Constitution is essential in clarifying the purpose of the document and avoiding deferring responsibility for failures of care.

While we should not over-estimate the role of the NHS Constitution, we must support it to serve an important purpose: clarifying people's rights and expectations in relation to NHS services, and equipping them to challenge poor practice. As such, we believe the NHS Constitution must be seen as an important tool to reassert patients' fundamental rights as well as managing the performance of all NHS staff. Employers must reference these rights and pledges in all workforce development strategies and explain how they are fulfilling them in annual reporting. There should be no excuse for low awareness of the document among staff.

Ensuring the NHS Constitution fulfils its purpose will require concerted efforts to raise awareness of its principles, rights and pledges, and clarify how patients and staff can use the Constitution to challenge poor and unsafe care practice. This will also require that NHS England monitor and assess levels of awareness of the Constitution and be held to account for improving them. Age UK is happy to support the Government and the NHS in achieving this.