



Department  
of Health

# A consultation on updating the NHS Constitution

February 2015

## DH INFORMATION READER BOX

**Title:** A consultation on updating the NHS Constitution

**Author:** Department of Health – Legislation and Policy Unit

**Document purpose:** Consultation

**Publication date:** 11th February 2015

**Target audience:** Patients and the public, NHS staff, healthcare providers and commissioners, armed forces

**Description:** The consultation explains, and seeks comments on, proposals to update the content of the NHS Constitution.

**Action required:** Views and comments are invited by 8th April

**Contact details:**

NHS Constitution Team  
Richmond House  
79 Whitehall  
London  
SW1A 2NS  
Email: [NHSConstitution@dh.gsi.gov.uk](mailto:NHSConstitution@dh.gsi.gov.uk)

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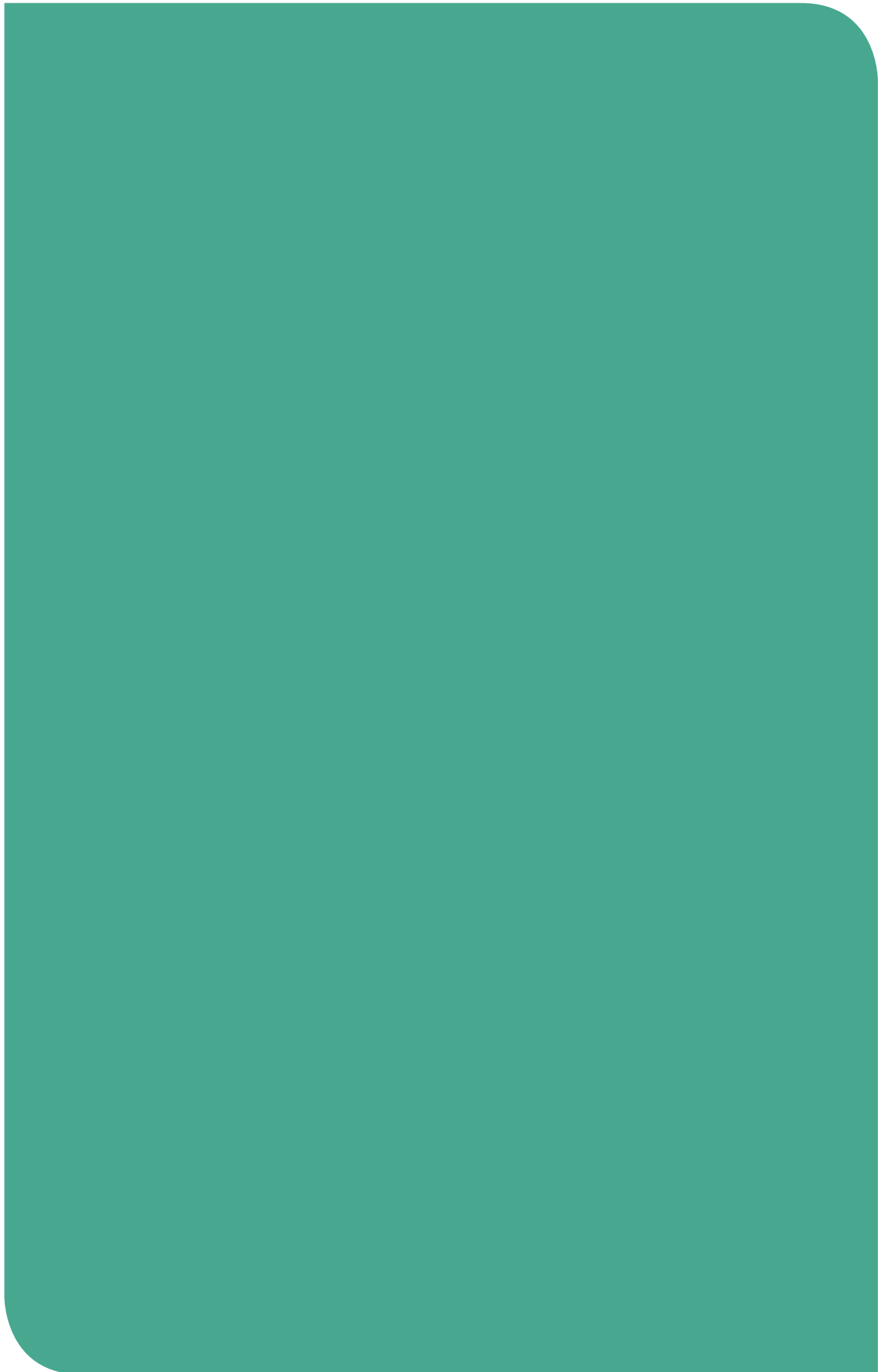
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# A consultation on updating the NHS Constitution

Prepared by the Department of Health



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# Executive Summary

Driven by the terrible failings in care at Mid-Staffordshire NHS Foundation Trust, and informed by Sir Robert Francis QC's Inquiry Report, the need for transparency and accountability within our NHS has never been more evident. In 2014, we launched MyNHS, bringing together almost 400,000 pieces of comparable data from across the health and care system to the public domain, to improve transparency, inspire NHS professionals, and empower the public.

By April 2015, we will see changes to the way hospitals are inspected, with the introduction of new fundamental standards. Failure to meet these standards, and an inability to meet the high standards patients expect and deserve, will result in decisive action to protect patients. It is also of utmost importance to promote a culture of openness within our NHS, which we hope to achieve through the introduction of the duty of candour.

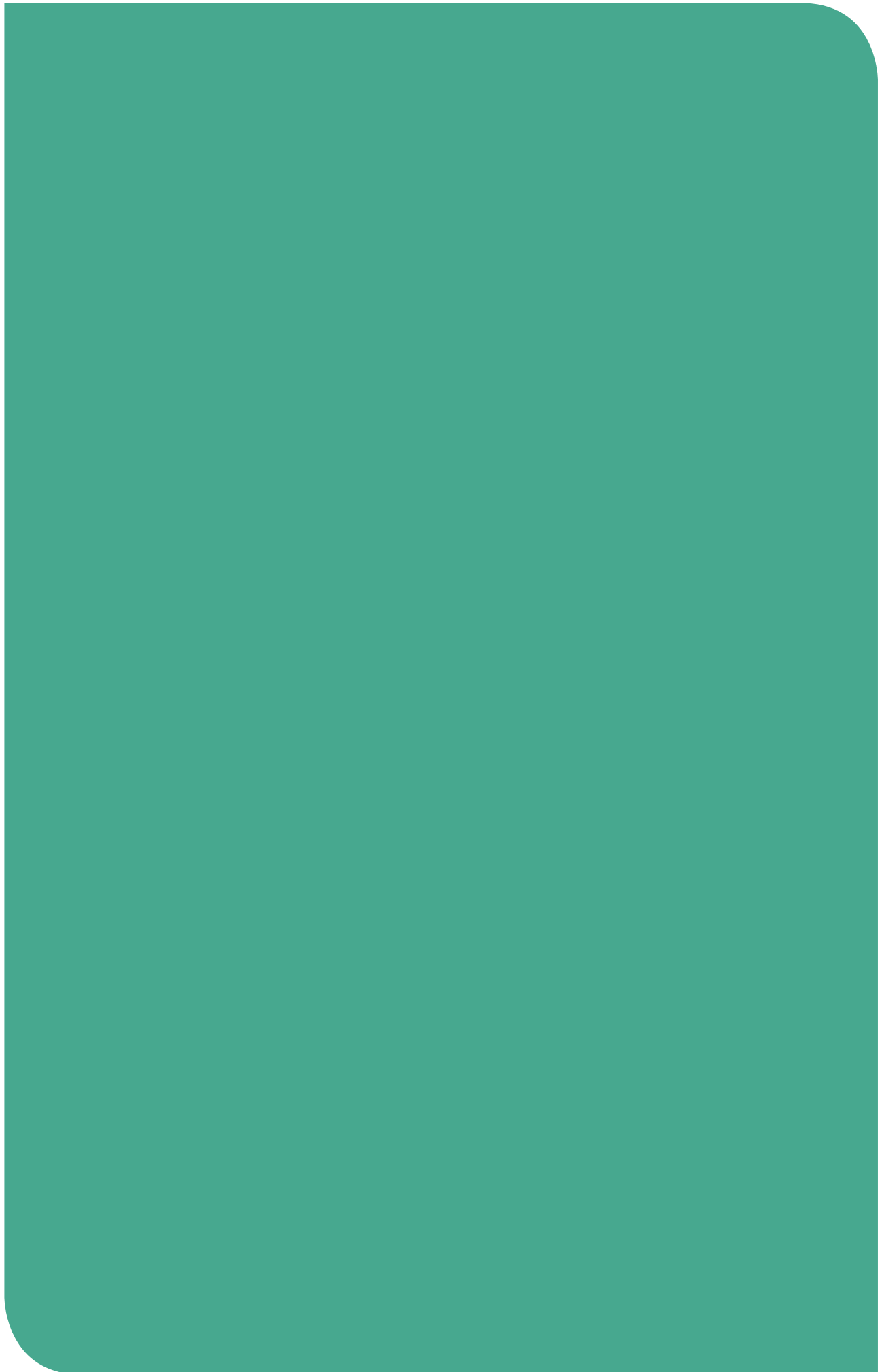
We need to close the gap between physical and mental health, and we believe that the NHS Constitution should make it clear that both are of equal importance. We also want to recognise the role Armed Forces have in keeping us safe, by enshrining the Armed Forces Covenant in the NHS Constitution.

We believe that these important policies deserve to take their place amongst the core principles, values and responsibilities of the NHS – and should be set out clearly in the rights and pledges we make to patients.

The NHS Constitution sets out the enduring character of the NHS as a comprehensive and equitable health service. 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. Sir Robert Francis QC highlighted the NHS Constitution as being central to promoting the correct values within the NHS. Any changes made to the NHS Constitution should therefore be clear and compelling – and should have the support of the public. This is why we are seeking views on how best to reflect these changes in the NHS Constitution.

Over the coming weeks, the Department of Health would like to hear from a wide range of patients and service users. The NHS Constitution applies to all those who use its many services. During this consultation exercise, we want to hear from people across this broad spectrum, to help us define and enshrine the values of the NHS for years to come.

We look forward to hearing from patients, NHS staff, the public and our partners, on the proposals set out in this document – and will use the feedback from the consultation to work out how best to reflect these changes in the Constitution.





# Chapter 1: Introduction

## Purpose of the consultation

1. Sir Robert Francis QC was clear in his Inquiry report<sup>1</sup> that the principal message of the NHS Constitution should be that patients<sup>2</sup> and their safety come first. In *Hard Truths*,<sup>3</sup> the Department of Health made a commitment to increasing the impact of the NHS Constitution so that patients and the public understand their rights and responsibilities. We have also identified a number of policy developments that could make the Constitution more tangible and meaningful to patients.

2. This consultation seeks views on our proposals to update the NHS Constitution. There are four key ways in which we propose to amend the Constitution:

- to give greater prominence to mental health;
- in response to recommendations made by Sir Robert Francis QC;
- to reflect the importance of access to transparent and comparable data; and
- to include the Armed Forces Covenant.

3. The NHS Constitution is designed to be an enduring document. The threshold for making changes to the Constitution should be high. Any changes should be clear and compelling. That is why the Health Act 2009 requires there to be a public consultation on all changes to the content of the Constitution, and for any changes to the principles of the NHS to be laid as a Statutory Instrument before Parliament.

4. The changes set out in this consultation document build on earlier amendments to the NHS Constitution. In 2013, the Constitution was strengthened in the following areas:

- patient involvement;
- feedback;
- candour;
- end of life care;
- integrated care;

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<sup>1</sup> *Mid Staffordshire NHS Foundation Trust Inquiry Report*, (2013), Sir Robert Francis QC.

<sup>2</sup> 'Patient' throughout this document relates to any individual receiving care, support or intervention for their physical or mental health needs.

<sup>3</sup> *Hard Truths – The journey to putting patients first*, (2014), Department of Health.

- complaints;
- patient information;
- staff rights, responsibilities and commitments; and
- dignity, respect and compassion.

5. We are seeking views on a limited package of further changes intended to strengthen the NHS Constitution and better reflect Government policy.

6. Subject to the outcome of this consultation, the Government plans to publish an updated Constitution during 2015. The Department also intends to publish a revised NHS Constitution Handbook.

## Role of the NHS Constitution

7. The NHS Constitution brought together for the very first time the principles, values, rights and responsibilities that underpin the NHS. It sets out the enduring character of the NHS as a comprehensive and equitable health service and it is intended to empower patients, staff and the public to know and exercise their rights to help drive improvements throughout the NHS.

8. The Constitution is a 'declaratory document', codifying rights contained in existing legislation, drawing them together in one place. It does not, in itself, create new rights or replace existing ones. The Handbook to the NHS Constitution describes the legal basis of each right, helping patients, staff and the public to understand how to enforce their rights. Pledges in the Constitution are aims which the NHS is committed to achieve. Unlike rights, pledges do not have a legal underpinning, but there is a clear expectation that they can, and should, be delivered.

9. The NHS Constitution has a framework in primary legislation, established by the Health Act 2009. NHS bodies and independent and voluntary sector providers supplying NHS services are required by law to take account of the NHS Constitution in their decisions and actions. The intention is that the Constitution, and with it the principles of the NHS, is embedded at every level within the health service and among those organisations providing NHS services.

10. The Health and Social Care Act 2012 (the Act) strengthened the legal foundation of the NHS Constitution. The Act placed duties on NHS England and clinical commissioning groups to promote the NHS Constitution. It also extended the existing duty to have regard to the NHS Constitution to the Secretary of State for Health. In addition, the Act required local authorities to have regard to the Constitution in the exercise of their public health functions.

# Chapter 2: Strengthening the content of the NHS Constitution

## Introduction

11. This section outlines our proposals for strengthening the content of the NHS Constitution. The specific changes we propose are set out as a marked-up draft Constitution in Annex 2. This incorporates a detailed commentary explaining each individual change and should be considered alongside the information in this consultation document.

12. Our approach to updating the document has been to ensure that proposed changes are consistent with the Constitution's intended purpose and that they are:

- empowering to patients and staff;
- enduring and consensual;
- legally accurate;
- concise and accessible;
- of general concern to all patients;
- meaningful to individuals; and
- credible in that they are already well established in NHS practice or have a legal basis.

13. We propose a limited set of specific content changes aimed at improving the current text, reflecting key changes to Government policy and, in some cases, to keep the two documents legally up to date.

## Mental health

14. It is important that mental health problems are considered to have equal importance to physical health problems. Section 1 of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, makes clear that the health service should secure improvement in both physical and mental health, and in the prevention, diagnosis and treatment of both physical and mental health problems. *No Health Without Mental Health*,<sup>4</sup> the Government's mental health strategy published in February 2011 sets out this commitment to parity of esteem. Further detail on how parity of esteem can be achieved is set out in *Closing*

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<sup>4</sup> *No Health Without Mental Health*, (2011), Her Majesty's Government/Department of Health.

*the Gap*,<sup>5</sup> published in February 2014 and *Achieving Better Access to Mental Health Services by 2020*<sup>6</sup> published in October 2014.

15. The Constitution applies to both mental and physical health with any relevant detail explained in the Handbook to the NHS Constitution. The opening paragraph already highlights the importance of giving due regard to mental and physical health. We propose changing principle one of the NHS, to embody the commitment to parity of esteem and make it clear that patients can expect the health service to consider their mental health needs as being of equal importance to their physical health needs.

16. We also propose making specific reference to psychological therapies within patients' right to *drugs and treatments that have been recommended by NICE for use in the NHS*.

17. When we update the NHS Constitution Handbook, we will be reflecting the rights that people have to choose their mental health treatment. In the future, when mental health access and waiting standards are in place, we will further update the Handbook.<sup>7</sup>

**Q1.** We would like to rephrase principle one of the NHS to read: ***'The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard.'*** (Annex 2, Change 1)

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?

## Recommendations made by Mid Staffordshire NHS Foundation Trust Public Inquiry

18. In his Public Inquiry report, Sir Robert Francis QC recommended a number of specific changes to the NHS Constitution. In its response to the Inquiry, the Government committed to consider how best to reflect these in the NHS Constitution when it is next updated.

19. Some of the issues raised by the Inquiry Report are already addressed in the NHS Constitution. Others may be more appropriate as additions to the Handbook to the NHS Constitution. For example, recommendation nine asked the Department of Health to consider listing the professional and managerial codes by which NHS staff are bound. We agreed with this recommendation, but felt that this level of detail would be more appropriate for the Handbook – and we have committed to considering how best to reflect this when we update the Handbook in 2015.

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<sup>5</sup> *Closing the Gap*, (2014), Department of Health.

<sup>6</sup> *Achieving Better Access to Mental Health Services by 2020*, (2014), Department of Health.

<sup>7</sup> The Handbook to the NHS Constitution, (2013), Department of Health.

20. The Government has reported on the further progress made since the publication of *Hard Truths: The Journey to Putting Patients First* in its report, *Culture change in the NHS – applying the lessons of the Francis Inquiry One Year On*.<sup>8</sup>

## A patient-centred NHS [Recommendation 4]

*Inquiry Report: “The core values expressed in the NHS Constitution should be given priority of place, and the overriding value should be that patients are put first, and everything done by the NHS and everyone associated with it should be informed by this ethos.”<sup>9</sup>*

21. The Constitution sets out the overarching principles of the NHS. Principle four asserts that “the NHS *aspires* to put patients at the heart of everything it does”. The Inquiry report showed the consequences when this is not the case. We want to make it clear that patients always come first. In *Hard Truths*, the Department of Health committed to considering how the statement that ‘the NHS *aspires* to put patients at the heart of everything it does’, in principle four, should be strengthened. Putting patients first is a core principle of the NHS.

**Q2.** 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?

## Protecting patients from avoidable harm [Recommendation 5]

*Inquiry Report: “In reaching out to patients, consideration should be given to including expectations in the NHS Constitution that staff...will do everything in their power to protect patients from avoidable harm.”<sup>10</sup>*

22. Whilst the NHS Constitution already makes it clear that patients have a right to safe, high quality care, we have given careful consideration to this recommendation and believe that we could do more to emphasise this in the staff responsibilities section.

23. *A promise to learn – a commitment to act: improving the safety of patients in England*,<sup>11</sup> chaired by Professor Don Berwick recommended that “every person working in NHS-funded care has a duty 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”. NHS staff are uniquely placed to address conditions that might give rise to avoidable harm. They should be prepared to challenge unsafe practice wherever it occurs within an environment that encourages vigilance, openness and transparency.

<sup>8</sup> *Culture change in the NHS – applying the lessons of the Francis Inquiry One Year On*, (2015), Department of Health.

<sup>9</sup> *Mid Staffordshire NHS Foundation Trust Inquiry Report*, (2013), Robert Francis, p1,436.

<sup>10</sup> *Mid Staffordshire NHS Foundation Trust Inquiry Report*, (2013), Robert Francis, p1,436.

<sup>11</sup> *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.

**Q3.** 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?

## Helping patients find assistance [Recommendation 5]

*Inquiry Report: "In reaching out to patients, consideration should be given to including expectations in the NHS Constitution that staff...where they are unable to provide the assistance a patient needs, will direct them where possible to those who can do so."<sup>12</sup>*

24. We believe it is important that all NHS staff are able to help patients, or if this is not possible, to direct them to another source of assistance. This is especially true where patients are unable to ask for assistance themselves.

25. It is important that those delivering care have clinical accountability and provide patients with a person to guide them through the system, not just a protocol to ensure better coordination of care.

**Q4.** We would like to include the following wording for staff: ***'You should aim to help patients find alternate sources of assistance, when you are unable to provide the care or assistance a patient needs.'*** (Annex 2, Change 14)

Do you agree?

26. Recommendation 5 also suggested that the Constitution should set out expectations that staff should:

- (a) put patients before themselves
- (b) be honest and open with patients regardless of the consequences for themselves
- (c) apply the NHS values in all their work.

27. The Government accepted this recommendation in full. However, as set out in *Hard Truths*,<sup>13</sup> we believe that these expectations are already reflected in the NHS Constitution. On point (a) this consultation proposes strengthening the Constitution to make it clear that patients will be firmly at the heart of everything the NHS does. We would not want to go further than this, as we have heard concerns from stakeholders that this may have an impact on staff safety and wellbeing. Point (b) is addressed directly by the inclusion of a strengthened duty of candour (see Recommendation 178). Finally, on point (c), the Constitution already makes it clear that its values should underpin everything the NHS does.

<sup>12</sup> *Mid Staffordshire NHS Foundation Trust Inquiry Report*, (2013), Robert Francis, p1,436.

<sup>13</sup> *Hard Truths: The Journey to Putting Patients First*, (2014), Department of Health.

## Complying with guidance and standards [Recommendation 10]

*Inquiry Report: “The NHS Constitution should incorporate an expectation that staff will follow guidance and comply with standards relevant to their work, such as those produced by the National Institute for Health and Clinical Excellence and, where relevant, the Care Quality Commission, subject to any more specific requirements of their employers.”<sup>14</sup>*

28. The NHS Constitution already sets out two rights which are relevant:

- The right to be treated with a professional standard of care, by appropriately qualified and experienced staff, in a properly approved or registered organisation that meets required levels of safety and quality.
- The right to expect NHS bodies to monitor, and make efforts to improve continuously, the quality of healthcare they commission or provide. This includes improvements to the safety, effectiveness and experience of services.

29. However neither of these includes an expectation that staff should follow guidance and standards relevant to their work.

30. To reflect this recommendation in a way that is meaningful to staff and patients, we suggest adding a new staff responsibility. Staff will be made aware of this responsibility through a variety of means such as staff induction and support from NHS Employers and professional bodies.

**Q5.** 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?

## Duty of candour [Recommendation 178]

*Inquiry Report: “The NHS Constitution should be revised to reflect the changes recommended with regard to a duty of openness, transparency and candour.”<sup>15</sup>*

31. When we updated the NHS Constitution most recently, we strengthened the wording of the pledge to acknowledge mistakes and explain what went wrong. The pledge currently reads: *“The NHS also commits to ensure that when mistakes happen or if you are harmed while receiving health care you receive an apology, delivered with sensitivity and recognition of the trauma you have experienced, and know that lessons will be learned to help avoid a similar incident occurring again.”* (Annex 2, Change 12)

<sup>14</sup> Mid Staffordshire NHS Foundation Trust Inquiry Report, (2013), Robert Francis, p1,437.

<sup>15</sup> Mid Staffordshire NHS Foundation Trust Inquiry Report, (2013), Robert Francis, p1,494.



32. Since this update, Sir Robert Francis QC highlighted the need for a more compelling statutory duty of candour in his Public Inquiry report.
33. The Government committed to introduce a duty of candour on providers, which came into force for NHS bodies in November 2014 and will be extended to all providers registered with the Care Quality Commission (CQC) in April 2015. The statutory duty of candour places a general requirement on providers to be open and transparent with patients and service users. In addition, where an unintended or unexpected incident has or could still result in, in the view of a health care professional, ‘*severe harm, moderate harm or prolonged psychological harm or death to a patient*’, the duty prescribes a formal set of notification procedures that the provider must follow when informing the service user (or their representative) of that harm.

**Q6.** 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, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need.’*** (Annex 2, Change 11)

Do you agree?

## Fundamental Standards [Recommendation 13]

*Inquiry Report: “No provider should provide, and there must be zero tolerance of, any service that does not comply with fundamental standards of service.”<sup>16</sup>*

34. The fundamental standards were a key recommendation of the Francis Inquiry, and have been developed over the last 18 months in collaboration with the CQC, and through several consultations with patients, the public, staff, and providers.
35. The fundamental standards set the line below which care must never fall. They are clear outcomes about the quality and safety of care that all registered health and adult social care providers must meet, and they will come in to force in April 2015.
36. Although not explicitly recommended for inclusion in the NHS Constitution by Sir Robert Francis QC, we believe that it is valuable to show how these requirements on providers translate into patient rights.
37. The fundamental standards replace existing quality and safety regulations and because of this, they are already partly reflected in the NHS Constitution, although they may not use the same words. To avoid making unnecessary changes to the NHS Constitution, which should be an enduring document, we have only proposed reflecting those fundamental standards that are currently absent. Similarly, some fundamental standards describe the systems by which organisations should operate. As these are not directly meaningful to patients, we have not proposed including these.

<sup>16</sup> *Mid Staffordshire NHS Foundation Trust Inquiry Report*, (2013), Robert Francis, p1,437.



38. It is the CQC's role to make sure that providers are meeting these requirements, and to take action against providers who fail to meet them. Individual patients cannot directly enforce these rights through the courts.

39. The CQC has a range of legal powers that it can use where providers do not meet these standards. For some of the fundamental standards, CQC can also prosecute providers where breaches lead to avoidable harm, or a significant risk of avoidable harm.

**Q7.** 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 2, Change 4)
- ***'You have the right to be cared for in a clean, safe, secure and suitable environment.'*** (Annex 2, Change 5)
- ***'You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.'*** (Annex 2, Change 6)
- ***'You have the right to be protected from abuse, neglect, and care that is degrading.'*** (Annex 2, 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 2, Change 10)

Do you agree?

## Transparency

40. We believe that shining a light on the variability of quality of care between different hospitals, GPs and other providers is the best way to help patients make an informed decision about where to be treated. It will also challenge organisations to be the best they can be.

41. MyNHS has already made available comparable data on a range of health and care services, including the relevant CQC judgement or reassessment of the quality of specific services.

42. Being completely open about the quality of our NHS will encourage organisations to compare their performance. We hope this will make them strive ever harder to improve their performance and deliver safe, effective, world-class care. Bringing this information together allows people to hold public services to account, not just for the amount of money they spend but for how it was spent and what was provided. This will help drive a revolution in patient-led change throughout the NHS.

43. From April 2015, CQC will be imposing 'scores on the doors' at all providers of healthcare. The proposal is to require all providers that receive a quality and safety rating from CQC to display that rating at both the premises from which they provide services and on their

website if they have one. We have consulted on the proposal and aim to have the legislation in force in April 2015.

**Q8.** 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 2, Change 9)

Do you agree?

## Armed Forces Covenant

44. The Armed Forces Covenant<sup>17</sup> sets out the relationship between the nation, the Government and the Armed Forces Community. The Covenant aims to ensure that those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past (veterans), and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. The Armed Forces Covenant looks to address a wide range of issues impacting on the Armed Forces Community, including health, education, housing, care and family life. The Armed Forces Act 2011 created the requirement for an annual *Armed Forces Covenant report* to be made to Parliament.

45. Principle four of the NHS explains how *'NHS services must reflect, and should be coordinated around and tailored to, the needs and preferences of patients, their families and their carers'*. We would like to specifically refer to the Armed Forces Covenant here.

**Q9.** 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 2, Change 3)

Do you agree?

**Q10.** Do have any other comments about the NHS Constitution?

<sup>17</sup> *Armed Forces Covenant*, (2013), MOD.

## Chapter 3: Summary of consultation questions

The questions below seek your views on proposed changes to the NHS Constitution. When answering each question, there are four options available to you;

- 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

If you completely agree with the proposed wording, and have no further comments, please respond 'Yes, and I have no further comments'. Similarly, if you completely disagree with the proposed wording, but have no further comments, please respond 'No, and I have no further comments'.

If you agree with the proposal in principle, but would like to comment on the proposal, please respond 'Yes, in principle, but I have some comments'. Similarly, if you disagree, and would like to comment on why, please respond 'No, and I would like to explain why'. Please then explain your reasons.

All responses will subsequently be analysed, and used to inform the Constitution, when updating it.

### Mental health

**Q1.** We would like to rephrase principle one of the NHS to read: ***'The service is designed to improve, 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?

### Francis Recommendations

A patient-centred NHS [Recommendation 4]

**Q2.** 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?

Protecting patients from avoidable harm [Recommendation 5]

**Q3.** 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?

Helping patients find assistance [Recommendation 5]

**Q4.** 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?

Complying with guidance and standards [Recommendation 10]

**Q5.** 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?

Duty of candour [Recommendation 178]

**Q6.** 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, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need.'*** (Annex 2, Change 11). Do you agree?

Fundamental standards [Recommendation 13]

**Q7.** 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 2, Change 4)
- ***'You have the right to be cared for in a clean, safe, secure and suitable environment.'*** (Annex 2, Change 5)
- ***'You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.'*** (Annex 2, Change 6)
- ***'You have the right to be protected from abuse, neglect, and care that is degrading.'*** (Annex 2, 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 2, Change 10). Do you agree?

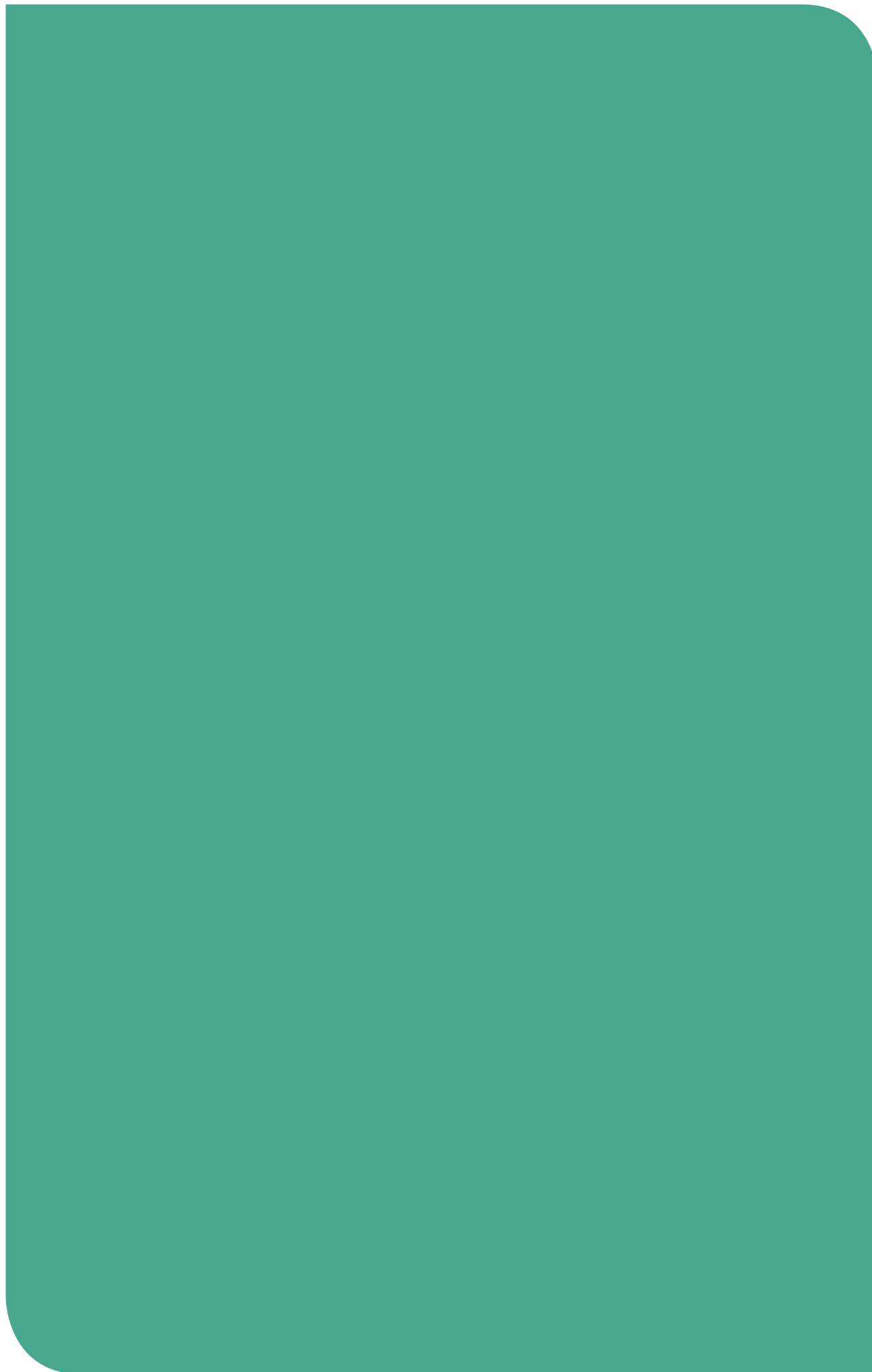
### Transparency

**Q8.** 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 2, Change 9). Do you agree?

### Armed Forces Covenant

**Q9.** 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 2, Change 3). Do you agree?

**Q10.** Do have any other comments about the NHS Constitution?



## Chapter 4: The consultation process

46. This consultation will run from 11th February 2015 – 8th April 2015.

47. You can find out more and respond to this consultation at: <http://consultations.dh.gov.uk/nhs-constitution-team/a-consultation-on-updating-the-nhs-constitution>

48. Alternatively you can email or post responses to the consultation:

contact    NHS Constitution Team  
              Richmond House  
              79 Whitehall  
              London  
              SW1A 2NS

e-mail      [NHSConstitution@dh.gsi.gov.uk](mailto:NHSConstitution@dh.gsi.gov.uk)

49. The consultation principles can be found on the Cabinet Office's website at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

50. The principles inform Government departments of the considerations that should be made during consultation. These include consideration of the subjects of consultation, the timing of consultation, making information useful and accessible, and transparency and feedback.

### Comments on the consultation process itself

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

contact    Consultations Coordinator  
              Department of Health  
              2e26, Quarry House  
              Leeds  
              LS2 7UE

e-mail      [consultations.co-ordinator@dh.gsi.gov.uk](mailto:consultations.co-ordinator@dh.gsi.gov.uk)

***Please do not send consultation responses to this address.***

## Confidentiality of information

52. We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter: <https://www.gov.uk/government/organisations/department-of-health/about/personal-information-charter>

53. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

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

55. The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

## Summary of the consultation

56. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at: <https://www.gov.uk/government/publications>



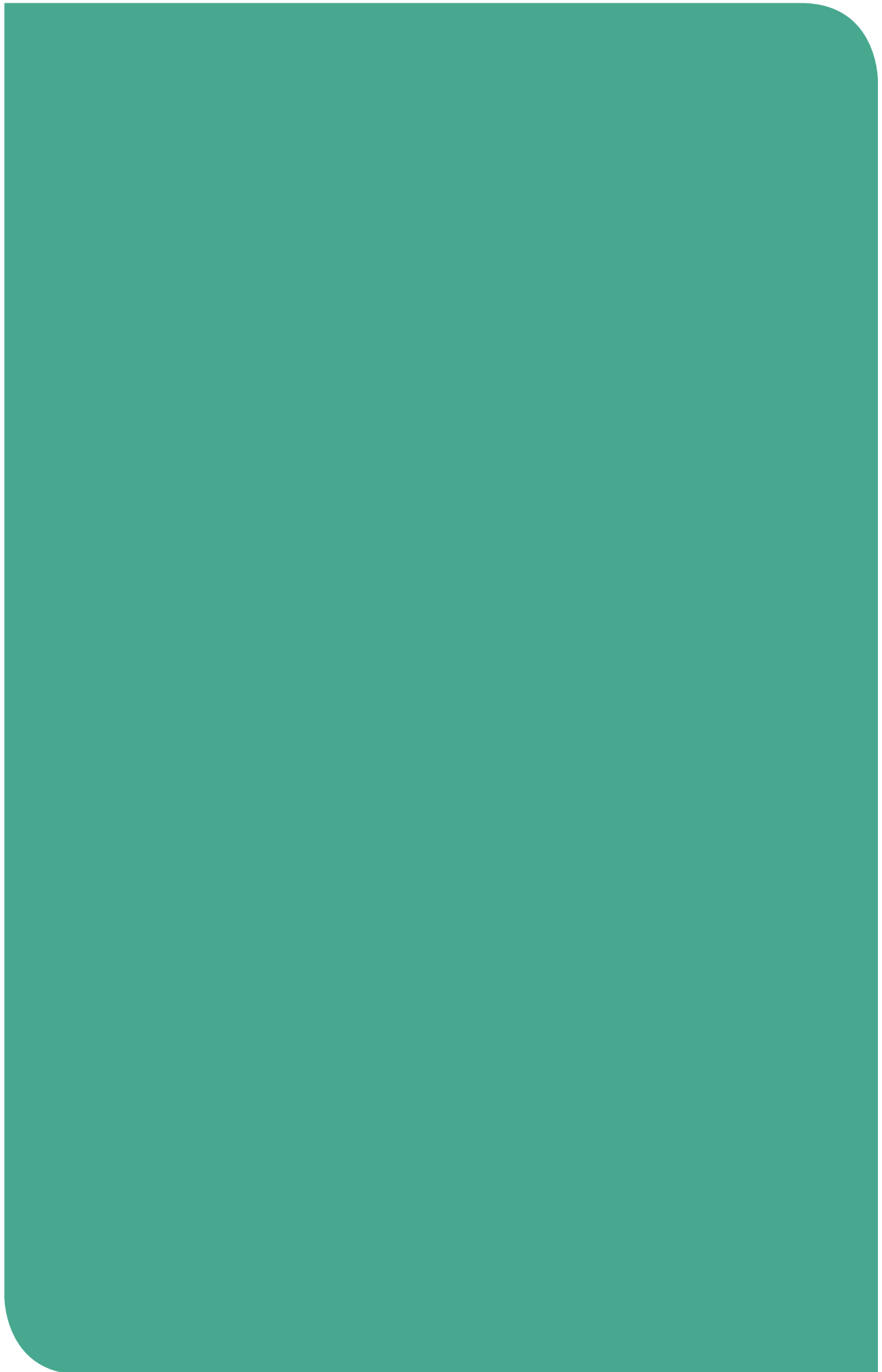
## Annex 1: Glossary

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

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

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

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



## Annex 2: The NHS Constitution: proposed changes and explanatory notes



# **THE NHS CONSTITUTION**

the NHS belongs to us all

## The NHS belongs to the people.

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

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

**This Constitution** establishes the **principles** and **values** of the NHS in England. It sets out **rights** to which patients, public and staff are entitled, and **pledges** which the NHS is committed to achieve, together with **responsibilities**, which the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively. The Secretary of State for Health, all NHS bodies, private and voluntary sector providers supplying NHS services, and local authorities in the exercise of their public health functions are required by law to take account of this Constitution in their decisions and actions. References in this document to the NHS and NHS services include local authority public health services, but references to NHS bodies do not include local authorities. Where there are differences of detail these are explained in the Handbook to the Constitution.

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

# 1. Principles that guide the NHS

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

**1. The NHS provides a comprehensive service, available to all** irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status. The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard. It has a duty to each and every individual that it serves and must respect their human rights. At the same time, it has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population.

**2. Access to NHS services is based on clinical need, not an individual's ability to pay.** NHS services are free of charge, except in limited circumstances sanctioned by Parliament.

**3. The NHS aspires to the highest standards of excellence and professionalism** – in the provision of high quality care that is safe, effective and focused on patient experience; in

the people it employs, and in the support, education, training and development they receive; in the leadership and management of its organisations; and through its commitment to innovation and to the promotion, conduct and use of research to improve the current and future health and care of the population. Respect, dignity, compassion and care should be at the core of how patients and staff are treated not only because that is the right thing to do but because patient safety, experience and outcomes are all improved when staff are valued, empowered and supported.

**4. Patients will be at the heart of everything the NHS does. The NHS aspires to puts patients at the heart of everything it does.** It should support individuals to promote and manage their own health. NHS services must reflect, and should be coordinated around and tailored to, the needs and preferences of patients, their families and their carers. 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.

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## Explanatory Notes

- 1. Mental Health:** We want to make it explicit, with regards to parity of esteem, that mental and physical health should be diagnosed and treated with equal regard. We wanted to clarify that the NHS holds both physical and mental health in equal value. The Health and Social Care Act 2012 amended section 1 of the National Health Service Act 2006, to emphasise that a comprehensive health service is one which addresses both physical and mental health problems.
- 2. Francis Recommendation 4:** We wanted to make it explicitly clear that the NHS puts patients at the centre of everything it does, and that this shouldn't only be an aspiration. In the Government's initial response to the Francis Inquiry, entitled *Patients First and Foremost*, leaders of the health and care system have personally committed to the values of the Constitution.
- 3. Armed Forces Covenant:** The Armed Forces Covenant sets out the relationship between the nation, the government and the armed forces community. The proposed inclusion in Principle four that the NHS will ensure the Armed Forces Community are not disadvantaged in accessing healthcare, reflects the obligation in the Covenant that the Armed Forces Community should enjoy the same standard of, and access to, healthcare as that received by any other UK citizen in the area they live. The Covenant recognises that the whole nation has a moral obligation to members of the armed forces and their families, and it establishes how they should expect to be treated under the Armed Forces Covenant, from a healthcare perspective. This Covenant was recognised in legislation for the first time in 2011 when the Armed Forces Act 2011 created the requirement for an annual Armed Forces Covenant report to Parliament each year – section 343A of the Armed Forces Act 2006 (as inserted by section 2 of the Armed Forces Act 2011) is the relevant provision.

Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment. The NHS will actively encourage feedback from the public, patients and staff, welcome it and use it to improve its services.

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

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

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



## 2. NHS values

Patients, public and staff have helped develop this expression of values that inspire passion in the NHS and that should underpin everything it does. Individual organisations will develop and build upon these values, tailoring them to their local needs. The NHS values provide common ground for co-operation to achieve shared aspirations, at all levels of the NHS.

### **Working together for patients.**

Patients come first in everything we do. We fully involve patients, staff, families, carers, communities, and professionals inside and outside the NHS. We put the needs of patients and communities before organisational boundaries. We speak up when things go wrong.

**Respect and dignity.** We value every person – whether patient, their families or carers, or staff – as an individual, respect their aspirations and commitments in life, and seek to understand their priorities, needs, abilities and limits. We take what others have to say seriously. We are honest and open about our point of view and what we can and cannot do.

### **Commitment to quality of care.**

We earn the trust placed in us by insisting on quality and striving to get the basics of quality of care – safety, effectiveness and patient experience – right every time. We encourage and welcome feedback from patients, families, carers, staff and the public. We use this to improve the care we provide and build on our successes.

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

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

**Everyone counts.** We maximise our resources for the benefit of the whole community, and make sure nobody is excluded, discriminated against or left behind. We accept that some people need more help, that difficult decisions have to be taken – and that when we waste resources we waste opportunities for others.

## 3a. Patients and the public – your rights and NHS pledges to you

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

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

### Access to health services:

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

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

**You have the right to receive care and treatment that is appropriate for you, meets your needs and reflects your preferences.**

**You have the right** to expect your NHS to assess the health requirements of your community and to commission and put in place the services to meet those needs as considered necessary, and in the case of public health services commissioned by local authorities, to take steps to improve the health of the local community.

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

**You have the right** not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status.

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

## Explanatory Notes

4. **Fundamental standards:** This right reflects the new fundamental standard about person-centred care, which is set out in regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. These regulations come in to force in April 2015. The purpose of the person-centred care fundamental standard is to ensure that providers of health and adult social care services plan and provide care in a way that meets the needs of each patient, is appropriate for them, and reflects any preferences they have. For further information, please refer to the fundamental standards section within the consultation document.

**The NHS also commits:**

- to provide convenient, easy access to services within the waiting times set out in the Handbook to the NHS Constitution (pledge);
- to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered (pledge); and
- to make the transition as smooth as possible when you are referred between services, and to put you, your family and carers at the centre of decisions that affect you or them (pledge).

**Quality of care and environment:**

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

5

**You have the right to be cared for in a clean, safe, secure and suitable environment.**

6

**You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.**

**You have the right** to expect NHS bodies to monitor, and make efforts to improve continuously, the quality

of healthcare they commission or provide. This includes improvements to the safety, effectiveness and experience of services.

**The NHS also commits:**

- ~~to ensure that services are provided in a clean and safe environment that is fit for purpose, based on national best practice (pledge);~~
- to identify and share best practice in quality of care and treatments (pledge); and
- that if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite sex, except where appropriate, in line with details set out in the Handbook to the NHS Constitution (pledge).

5

**Nationally approved treatments, drugs and programmes:**

**You have the right** to drugs, treatments and psychological therapies that have been recommended by NICE<sup>1</sup> for use in the NHS, if your doctor says they are clinically appropriate for you.

7

**You have the right** to expect local decisions on funding of other drugs and treatments to be made rationally following a proper consideration of

1 NICE (the National Institute for Health and Care Excellence) is an independent organisation producing guidance on drugs and treatments. 'Recommended for use by NICE' refers to a type of NICE recommendation set out in legislation. The relevant health body is obliged to fund specified NICE recommendations from a date no longer than three months from the publication of the recommendation unless, in certain limited circumstances, a longer period is specified.

## Explanatory Notes

5. **Fundamental standard:** Previously a pledge, this line has been amended to become a patient right. It is based on the new fundamental standard about premises and equipment, which is set out in regulation 15 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. These regulations come in to force in April 2015. The premises and equipment fundamental standards requires providers registered with CQC to ensure that all premises and equipment are clean, secure, suitable for the purpose for which they are being used, properly used, properly maintained and appropriately located. For further information, please refer to the fundamental standards section within the consultation document.

6. **Fundamental standard:** This proposed right is based on the new fundamental standard about nutrition and hydration, which is set out in regulations 14(1)-(3), and 9(3)(i) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and comes in to force from April 2015. It applies where someone is provided with accommodation as part of their care or treatment, or where the provision of food and drink is part of the care that is needed. The nutrition and hydration fundamental standard requires providers registered with CQC to ensure that the patient's needs for food and drink are met, that they are given suitable and nutritious food (or other sources of nutrition where needed) and are given any support they may need to eat or drink. The standard also requires providers to meet any reasonable requirements for food and drink arising from their preferences or religious or cultural background. For further information, please refer to the fundamental standards section within the consultation document.

7. **Additional wording:** The addition of 'psychological therapies' reflects the Government's commitment to achieve a parity of esteem between mental and physical health, and subsequently mental and physical health treatments.

the evidence. If the local NHS decides not to fund a drug or treatment you and your doctor feel would be right for you, they will explain that decision to you.

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

**The NHS also commits:**

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

**Respect, consent and confidentiality:**

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

8

**You have the right to be protected from abuse, neglect, and care that is degrading.**

**You have the right** to accept or refuse treatment that is offered to you, and not to be given any physical examination or treatment unless you have given valid consent. If you do not have the capacity to do so, consent must be obtained from a person legally able to act on your behalf, or the treatment must be in your best interests.<sup>2</sup>

**You have the right** to be given information about the test and treatment options available to you, what they involve and their risks and benefits.

**You have the right** of access to your own health records and to have any factual inaccuracies corrected.

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

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

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

**The NHS also commits:**

- to ensure those involved in your care and treatment have access to your health information so they can care for you safely and effectively (pledge);
- to anonymise the information collected during the course of your treatment and use it to support research and improve care for others (pledge);

<sup>2</sup> If you are detained in hospital or on supervised community treatment under the Mental Health Act 1983 different rules may apply to treatment for your mental disorder. These rules will be explained to you at the time. They may mean that you can be given treatment for your mental disorder even though you do not consent.

## Explanatory Notes

8. **Fundamental standard:** This proposed new right is based on the new fundamental standard about safeguarding people from abuse and improper treatment, which is set out in regulation 13 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. These regulations come in to force in April 2015. The fundamental standard about abuse requires providers registered with CQC to protect people from abuse and improper treatment, and makes clear that care must not involve neglect or be degrading. For further information, please refer to the fundamental standards section within the consultation document.

- where identifiable information has to be used, to give you the chance to object wherever possible (pledge);
- to inform you of research studies in which you may be eligible to participate (pledge); and
- to share with you any correspondence sent between clinicians about your care (pledge).

### Informed choice:

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

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

9

**You have the right** to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally.

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

### The NHS also commits:

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

### Involvement in your healthcare and in the NHS:

**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.

10

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



## Explanatory Notes

9. **Transparency:** The decision to consult on adding a new right to the NHS Constitution is a reflection of the importance of transparency in improving the quality of care. We want patients to know they have the right to access clear and comparable data about the organisations that provide their care. Enshrining this in the NHS Constitution ensures that openness and transparency will underpin the NHS for years to come. From April 2015, registered providers who have received a quality rating from CQC will be required to display the rating awarded.

10. **Fundamental standard:** This proposed right, amended to reflect patient centrality, is designed to reflect the importance of involving patients in planning and managing their own care. It is based on the new fundamental standard about person centred care, and reflects the fact that care providers registered with CQC should carry out collaboratively with patients an assessment of their needs and preferences, enable and support them to make decisions about their care, and provide opportunities for patients to manage their own care and treatment if they want to do that. The proposed addition to this was set out in regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which come in to force in April 2015. For further information, please refer to the fundamental standards section within the consultation document.

**The NHS also commits:**

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

**Complaint and redress:**

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

**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, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need.**

11

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

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

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

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

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

**The NHS also commits:**

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

## Explanatory Notes

**11. Fundamental standards:** We propose this new right to reflect the new duty of candour. The duty of candour is set out in regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. It came in to force for NHS Trusts and Foundation Trusts in November 2014, and will be extended to all providers registered with CQC in April 2015. Individual patients cannot directly enforce these rights through the courts. However, all fundamental standards are legal requirements that health providers must meet, and we believe that the NHS Constitution should show how these requirements on providers translate into patient rights. The new right is stronger than the pledge- it reflects the legal obligation on providers registered with CQC to act in an open and transparent way with patients and their families. It also requires providers registered with CQC to inform patients about safety incidents that have, or could still, cause significant harm, to apologise, and to offer reasonable support. We still wish to keep the existing pledge, as this reflects our commitment to act with compassion when mistakes are made and to ensure that lessons are learned for the benefit of the health service. For further information, please refer to the fundamental standards section within the consultation document.

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

## 3b. Patients and the public – your responsibilities

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

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

**Please register with a GP practice** – the main point of access to NHS care as commissioned by NHS bodies.

**Please treat** NHS staff and other patients with respect and recognise that violence, or the causing of nuisance or disturbance on NHS premises, could result in prosecution. You should recognise that abusive and violent behaviour could result in you being refused access to NHS services.

**Please provide** accurate information about your health, condition and status.

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

**Please follow the course of treatment** which you have agreed, and talk to your clinician if you find this difficult.

**Please participate** in important public health programmes such as vaccination.

**Please ensure** that those closest to you are aware of your wishes about organ donation.

**Please give feedback** – both positive and negative – about your experiences and the treatment and care you have received, including any adverse reactions you may have had. You can often provide feedback anonymously and giving feedback will not affect adversely your care or how you are treated. If a family member or someone you are a carer for is a patient and unable to provide feedback, you are encouraged to give feedback about their experiences on their behalf. Feedback will help to improve NHS services for all.

## 4a. Staff – your rights and NHS pledges to you

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

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

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

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

The rights are there to help ensure that staff:

- have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives;
- have a fair pay and contract framework;
- can be involved and represented in the workplace;
- have healthy and safe working conditions and an environment free from harassment, bullying or violence;
- are treated fairly, equally and free from discrimination;
- can in certain circumstances take a complaint about their employer to an Employment Tribunal; and
- can raise any concern with their employer, whether it is about safety, malpractice or other risk, in the public interest.

In addition to these legal rights, there are a number of **pledges**, which the NHS is committed to achieve. Pledges go above and beyond your legal rights. This means that they are not

legally binding but represent a commitment by the NHS to provide high-quality working environments for staff.

**The NHS commits:**

- to provide a positive working environment for staff and to promote supportive, open cultures that help staff do their job to the best of their ability (pledge);
- to provide all staff with clear roles and responsibilities and rewarding jobs for teams and individuals that make a difference to patients, their families and carers and communities (pledge);
- to provide all staff with personal development, access to appropriate education and training for their jobs, and line management support to enable them to fulfil their potential (pledge);
- to provide support and opportunities for staff to maintain their health, wellbeing and safety (pledge);
- to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families (pledge);
- to have a process for staff to raise an internal grievance (pledge); and
- to encourage and support all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice or wrongdoing at work, responding to and, where necessary, investigating the concerns raised and acting consistently with the Public Interest Disclosure Act 1998 (pledge).

## 4b. Staff – your responsibilities

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

Important legal duties are summarised below.

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

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

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

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

**You have a duty** to protect the confidentiality of personal information that you hold.

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

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

**You should aim:**

- [to provide all patients with safe care, and to do all you can to protect patients from avoidable harm;](#)
- [to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers;](#)
- to maintain the highest standards of care and service, treating every individual with compassion, dignity and respect, taking responsibility not only for the care you personally provide, but also for your wider contribution to the aims of your team and the NHS as a whole;
- [to help patients find alternate sources of assistance, when you are unable to provide the care or assistance a patient needs;](#)

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## Explanatory Notes

12. **Francis Recommendation 5:** We propose a new aim here to outline staff responsibilities to provide patients with safe care and to do everything in their power to protect them from avoidable harm. In the wake of the terrible failings in care at Mid-Staffordshire NHS Foundation Trust, safety in care and protection against avoidable harm has been a central feature of NHS policy. Regulations 12 and 22 of the Fundamental Standards place a duty on providers to provide care in a safe way, which would include protecting patients from avoidable harm.
13. **Francis Recommendation 10:** This new staff responsibility seeks to emphasise the necessity for staff to follow guidance and comply with standards relevant to their work, such as those produced by the National Institute for Health and Clinical Excellence and, where relevant, the Care Quality Commission. In the Government's initial response to the Francis Inquiry, entitled *Patients First and Foremost*, leaders of the health and care system have personally committed to the values of the Constitution.
14. **Francis Recommendation 5:** We propose that the NHS Constitution should set out the expectation that staff should seek to provide a continuity of care for the patient. This will improve both the 'patient experience' and efficiency of the healthcare system, for the benefit of both the patient, and the service itself.

- to take up training and development opportunities provided over and above those legally required of your post;
- to play your part in sustainably improving services by working in partnership with patients, the public and communities;
- to raise any genuine concern you may have about a risk, malpractice or wrongdoing at work (such as a risk to patient safety, fraud or breaches of patient confidentiality), which may affect patients, the public, other staff<sup>3</sup> or the organisation itself, at the earliest reasonable opportunity;
- to be open with patients, their families, carers or representatives, including if anything goes wrong; welcoming and listening to feedback and addressing concerns promptly and in spirit of co-operation;
- to involve patients, their families, carers or representatives fully in decisions about prevention, diagnosis, and their individual care and treatment;
- to contribute to a climate where the truth can be heard, the reporting of, and learning from, errors is encouraged and colleagues are supported where errors are made;
- to view the services you provide from the standpoint of a patient, and involve patients, their families and carers in the services you provide, working with them, their communities and other organisations, and making it clear who is responsible for their care;
- to take every appropriate opportunity to encourage and support patients and colleagues to improve their health and wellbeing;
- to contribute towards providing fair and equitable services for all and play your part, wherever possible, in helping to reduce inequalities in experience, access or outcomes between differing groups or sections of society requiring health care;
- to inform patients about the use of their confidential information and to record their objections, consent or dissent; and
- to provide access to a patient's information to other relevant professionals, always doing so securely, and only where there is a legal and appropriate basis to do so.

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

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and quote 2900013 The NHS Constitution.  
Tel: 0300 123 1002  
Fax: 01623 724 524  
Minicom: 0300 123 1003 (8am to 6pm, Monday to Friday)