**HEALTHWATCH AND PUBLIC INVOLVEMENT ASSOCIATION**

**WWW.HAPIA2013.org**

**Patient and Public Involvement in Health and Social Care**

**Healthwatch and Public Involvement Association**

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**STATUTORY DUTIES TO CONSULT**

**ENGAGE AND INVOLVE**

**Legislation - Regulations - Duties**

**NHS AND LOCAL GOVERNMENT**

June 2017



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**This publication is designed to provide a comprehensive understanding of the statutory duties of NHS providers and Commissioners, in relation to the provision of health care.**

**It deals with the duties to involve, engage and consult the public in the development of services, and clarifies the rights of the public to be involved at every level when significant changes are planned for services. In particular, the document makes it clear that it is unlawful for NHS bodies to disregard the public’s views when NHS services and systems are being redesigned.**

**Patients must always be in the centre of NHS planning, organisation and services’ provision, wherever and whenever changes are planned for our services.**

**Public Involvement in the NHS: Legislation, Regulations and Duties**

“We must put every citizen and patient voice absolutely at the heart of every decision we take in purchasing, commissioning and providing services”.

**National Director of Patients and Information at NHS England**

**“**Users must be involved not only in the consideration of proposals to change services, but also in the development of any proposal that will change the manner in which a health service is provided, or the range of services offered... Consultations should begin when proposals are still at a formative stage. Remember. NHS Act requires health bodies to involve the public in “the development and consideration of proposals”. **Real Involvement (DH 2008)**

**1. NHS CONSTITUTION (2013) PLEDGES AND PROMISES**

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

“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. The NHS also commits: to provide you with the information and support your need to influence and scrutinise the planning and delivery of NHS services (pledge)”

**(DH 2015)**

**2. DUTY TO INVOLVE SERVICE USERS - THE NHS ACT 2006 SECTION 242**

**NHS statutory duties - S242 applies to all NHS Trusts and Foundation Trusts:**

“Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services are, whether directly or through representatives, involved (whether by being consulted or provided with information, or in other ways) in – (a) the planning of the provision of those services (b) the development and consideration of proposals for changes in the way those services are provided, and (c) decisions to be made by that body affecting the operation of those services. The duty applies if implementation of the proposal, or a decision (if made), would have impact on – (a) the manner in which the services are delivered to users of those services, or (b) the range of health services available to those users” **(DH 2006).**

**3. GUIDANCE ON s242 NHS ACT (2006) – DEPARTMENT OF HEALTH**

**AND NHSE**

Definition: “A person is a ‘user’ of any health services if the person is someone to

whom those services are being or may be provided.”

1. Excellent advice on public involvement is contained in the DH statutory guidance on public involvement in the NHS - **Real Involvement:** **Working with People to Improve Health Services (DH 2008)**
2. Service providers and CCGs have a statutory duty to take account of **Transforming Participation in Health and Care** (**NHSE 2013**) as the most recent guidance but it does not replace Real Involvement.

**4. WHAT LEVEL OF INVOLVEMENT AND ENGAGEMENT IS REQUIRED?**

A. The Duty placed on all NHS organisations is to secure service user involvement

(whether by being consulted, provided with information or in other ways).

B. The level of involvement depends on the nature and impact of the change

being proposed.

**5. CASE LAW ON THE DUTY TO INVOLVE, ENGAGE & CONSULT**

Cases that define what is required when consulting the public:

***R (on application of Gunning) v Brent London Borough Council: [1985]* 84 LGR 168**

* Consultation must be at a time when proposals are still at a formative stage
* Sufficient reasons must be put forward by the proposer to allow for intelligent consideration and response
* Adequate time must be given for consideration and response
* The product of consultation must be conscientiously taken into account in finalising any statutory proposals

***R (on the application of Save our Surgery Ltd) v Joint Committee of Primary***

***Care Trusts: [2013]***– **EWHC 439 (Admin). Case No: CO/10505/2012**

Relating to specialist centres for paediatric cardiac surgery

***R (on the application of Copson) v Dorset Healthcare University NHS***

***Foundation Trust: [2013]***– **EWHC 732 (Admin).**

Relating to Mental Health Urgent Care Services reconfiguration

**R (on the application of Lewisham LBC and Save Lewisham Hospital Campaign**

**Limited) v Secretary of State for Health (and others): [2013] – EWHC 2329**

**(Admin) - Case No: CO/2744/2012**

Relating to the Trust Special Administrator appointed to South London Hospital.

**R (on the application of Coughlan) v North and East Devon Health Authority:**

**[1999] -** [**EWCA 1871**](http://www.bailii.org/ew/cases/EWCA/Civ/1999/1871.html)**(Civ)**

The need for nursing care for a chronically sick person might be primarily a

health or a social services need, and either a health authority or a social service

authority might be responsible for the care provision.

**6. PROPOSALS for SIGNIFICANT CHANGES TO NHS SERVICES – DUTY**

**TO CONSULT**

A. **Consultation Principles and Guidance – (Cabinet Office 2012)**

B. **Common law duty to consult:**

**R (on the application of LH) v Shropshire Council [2014] EWCA Civ 404**

“In the absence of any express or implied statutory duty to consult, the

obligation to consult stems from the expectation that a public body

making decisions affecting the public will act fairly. If therefore the public

body withdraws a benefit previously afforded to the public, it will usually

be under an obligation to consult with the beneficiaries of that service

before withdrawing it”… “It is not sufficient to consult about the closure

of (as yet) unidentified day care centres without then consulting on

specific closures”.

C. **What does consultation require of all NHS bodies?**

* It is not sufficient to consult simply about principles for service reconfiguration - there must be consultation on options.
* Transparency.
* Having an open mind.
* **Willingness to genuinely take views of patient and the public into account**

**7. THE SECRETARY OF STATE’S FOUR TESTS FOR SERVICE**

**RECONFIGURATION**

A. The four tests for reconfiguration proposals were originally set out in

David Nicholson’s letter to the NHS (DH 2010 and were included in the 2010/11

Operating Framework. It is now NHSE statutory guidance.

B. The Four Tests require demonstration of:

**• Support from GP Commissioners**

**• Strengthened public and patient engagement**

**• Clarity on the clinical evidence base**

**• Consistency with current and prospective patient choice**

**8. HEALTHWATCH - PROVIDERS AND COMMISSIONERS MUST ENGAGE**

Local Healthwatch was established in 2013. They are bodies with statutory powers to ‘enter and view’ all publicly funded health and social care services, monitor the standard of care, involve and listen to the public voice and make recommendations for service development to enhance the quality and safety of health and social care.

Their statutory duties are as follows:

1. Promoting and supporting the involvement of local people in the commissioning, provision and scrutiny of local care services.
2. Enabling local people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved.
3. Obtaining the views of local people regarding their needs for, and experiences of, local care services and importantly to make these views known to providers and Commissioners.
4. Carrying out Enter and View inspections of health and social care services.
5. Making reports and recommendations about how local care services could or ought to be improved. These should be directed to Commissioners and providers of care services, and those responsible for managing or scrutinising local care services and shared with Healthwatch England.
6. Providing advice and information about access to local care services so choices can be made about local care services.
7. Formulating views on the standard of provision and whether and how the local care services could and ought to be improved; and sharing these views with Healthwatch England.
8. Making recommendations to Healthwatch England to advise the Care Quality Commission to conduct special reviews or investigations (or, where the circumstances justify doing so, making such recommendations direct to the CQC); and to make recommendations to Healthwatch England to publish reports about particular issues.
9. Providing Healthwatch England with the intelligence and insight it needs to enable it to raise issues nationally and directly with Government.

**s221(2) Local Government and Public Involvement in Health Act 2007 (DH 2007)**

**9. WHAT MAKES A WELL-RUN CONSULTATION?**

1. Ensuring decisions regarding service changes are well informed, well made and are based on the needs of those who use services.
2. Reducing the risk of or need for a legal challenge by service users who feel their services are being run down.
3. Working collaboratively - aiming to prevent divisions between patients/service users/community and NHS bodies that are proposing significant service changes.
4. Communicating well about proposed service changes, thereby reducing the potential harm of negative publicity for the NHS.
5. Ensuring well-advertised and interactive public meetings, inviting all service users and their families/carers who might be affected by the proposals.
6. Publicising the proposed service changes through poster campaigns in the community, NHS buildings, GP surgeries, ambulances and extensive use of the media including local radio, Twitter, Whatsapp and Facebook.
7. Actively involving Healthwatch, Patients’ Forums and other key voluntary sector organisations.
8. Making sure all feedback is valued equally and that there is evidence that feedback has been considered and influenced decision making.

**“There is no set form for a consultation. It is for the NHS body undertaking the consultation to decide which form it will adopt. What matters is that clear information is given to the public; that they are able to respond; and that their responses are taken into account when making the final decision” -**

**REAL INVOLVEMENT (DH 2008)**

**10. ENSURING EFFECTIVE PUBLIC INVOLVEMENT - NHS ENGLANDS’s**

**ADVICE – THE MANDATE**

1. Take a strategic sense check: explore case for change and level of consensus for change; ensure full range of options are considered and risks identified.
2. Assurance check: Commissioners should obtain formal assurance from their

Board and other key players for their proposals before initiating wider public

consultation.

1. There must be no decision to proceed with a particular option until the

proposals have been fully consulted on.

1. Evidence must be provided regarding compliance with the Four Tests.
2. In exceptional circumstances, NHSE may consider the use of a formal process

to support Commissioners or use intervention powers where the quality

and/or safety of patient care is at potential risk. **HM Government (2014)**

**11. COMMISSIONERS’ STATUTORY PUBLIC INVOLVEMENT DUTIES**

**(Health & Social Act 2012, Section 26)**

**CLINICAL COMMISSIONING GROUPS – CCGs** have a statutory duty to involve, engage with and consult patients and the public before making decisions on changes

to health services:

**14Z2, section 26 of the Health and Social Care Act 2012 states:**

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a CCG in the exercise of its functions (“commissioning arrangements”).

(2) The CCG **must** make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways):

(a) In the planning of the commissioning arrangements by the CCG.

(b) In the development and consideration of proposals by the CCG for changes

in the commissioning arrangements where the implementation of the

proposals would have an impact on the manner in which the services are

delivered to the individuals or the range of health services available to

them, and

(c) In decisions of the group affecting the operation of the commissioning

arrangements where the implementation of the decisions would (if made)

have such an impact

Subsection 3 requires all CCGs to include in their constitution –

(a) Description of their public engagement arrangements and

(b) A statement of the principles that they will follow when implementing

them.

**DH (2012)**

**12. CCGs’ OTHER STATUTORY DUTIES**

**Health and Social Care Act 2012, Section 26)**

* Promote the **NHS Constitution** – 14P.
* Secure continuous improvements in **safety and quality** of NHS services – 14R.
* **Reduce inequalities** in access to services and outcomes of care – 14T.
* **Promote involvement of patients** in their diagnosis, prevention of illness, care and treatment – 14U.
* **Promote patient choice** in the provision of services – 14V.
* Promote integration with health and social care services to improve the quality of NHS services, reduce inequalities in access to and outcomes of service – 14Z1.

**See Appendix One for more details of CCG statutory duties contained in Section 26 of the Act. DH (2012)**

**13. SPECIALIST AND PRIMARY CARE COMMISSIONING**

**BUT:**

In the case where services are commissioned directly by NHS England, the duty to involve the public in planning the commissioning arrangement, and in any changes to commissioning arrangement, where such changes would affect the delivery of services, is laid out in paragraph13Q “Public involvement and consultation by the Board” of the 2012 Health and Social Care Act (section 23). **DH (2012)**

These services include:

1. **Primary care,** including GP, dental, ophthalmic and pharmaceutical.
2. **Specialised services**, usually commissioned on a national basis for rare

conditions, provided in few hospitals and/or accessed by small numbers of

patients. These include secure mental health services.

1. Other specified services include:

* Secondary care dental services;
* Mental health aftercare in certain circumstances;
* Health and justice healthcare services (Prison and Immigration Removal

Centres);

* Services for members of the armed forces and their families;
* Some public health services commissioned on behalf of the Secretary of

State for Health.

**See also: Statement of Arrangements and Guidance on Patient and Public Participation in Commissioning – NHS England. NHSE (2015-1)**

**14. NHS MUST CONSULT WITH LOCAL AUTHORITIES ON MAJOR**

**SERVICE CHANGES**

1. **The Local Authority (Public Health, Health and Wellbeing Boards and**

**Scrutiny Regulations)** **2013** arose out of Section 244 of the NHS Act 2006.

1. **Local Authority Regulations (Regulation 23) under NHS Act 2006:** Consultation by “responsible persons” means an NHS body: NHS Trusts, Foundation Trusts, CCG or NHS England**.**

**C. THE DUTY TO CONSULT A LOCAL AUTHORITY**

23.—(1) Where a responsible person has under consideration any proposal for

a substantial development of the health service in the area of a local authority,

or for a substantial variation in the provision of such service, the responsible

person must …

1. Consult the local authority;
2. When consulting, provide the local authority with—

(i) the proposed date by which the responsible person intends to

make a decision as to whether to proceed with the proposal; and

(ii) the date by which the responsible person requires the local authority

to provide any comments;

The local authority’s response to the health body’s proposals may be through their Health Overview and Scrutiny Committee but, local authorities are no longer obliged to have a Health OSC.

**D. CCG OR NHS ENGLAND MAY ACT ON BEHALF OF PROVIDERS**

The CCG or NHS England will in many cases act on behalf of the provider if the service change is one for which the Commissioners are responsible for arranging the provision. In cases where the proposals for service change cover an area of more than one health body, they may operate jointly in relation to their consultation with the local authority.

**E. REQUIREMENT TO RESOLVE ISSUE LOCALLY IF POSSIBLE**

If a local authority makes a recommendation to a health body which the health body does not accept, *they* [[who/which??]] must negotiate to find a resolution to the disagreement – this negotiation may include both the Commissioner/s and Provider. The local authority can require members or employees of the health body to attend a meeting of the local authority to answer their questions.

**F. REFERRAL TO THE SECRETARY OF STATE FOR HEALTH**

23. – (9)-(13) If agreement is not reached between the local authority and health body within a reasonable time, a referral may be made by the LA to the Secretary of State for Health. Referral to the SoS may be because the consultation has not been adequate or the responses from the health body/ies is inadequate or where the ‘local authority considers that the proposal would be detrimental to the health services in its area’. The report must be evidence based and explain why the referral is being made, including evidence of the “effect or potential effect of the proposal on health services in the area of the local authority.

**For further information see: Local Authority Health Scrutiny Guidance to support Local Authorities and their partners to deliver effective health scrutiny.**

**DH (2014)**

**G. INDEPENDENT RECONFIGURATION PANEL - IRP**

The SoS may refer the matter of dispute to the IRP for advice. The local authority or any other connected body may also seek advice from the IRP.

**IRP 2017**

1. **PUBLIC SECTOR EQUALITY DUTY (PSED) & PUBLIC INVOLVEMENT**

When a public body is proposing changes that will affect people with protected characteristics, it must have regard to the PSED (s149 (1) of the Equality Act 2010).

Their needs must be met before or at the time any policy is being considered. Courts refer to it as being an “essential preliminary” and not a “rearguard action”. NHS providers and Commissioners, and local authorities, must ensure that they:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equalities Act.
2. Advance equality of opportunity between persons who share protected characteristics and those who do not share these characteristics, e.g. race, age, disability, or sexual orientation.
3. Remove or minimise any disadvantage suffered by persons with protected

characteristics.

1. Take steps to meet the needs of those with protected characteristics.
2. Undertake **equality impact analyses** in order to demonstrate compliance

with the PSED, and evidence that people with protected characteristics have

influenced the work of the NHS body or local authority.

**Guidance for NHS Commissioners on equality and health inequalities legal duties. NHS England (2015-2)**

**Protected Characteristics:**

**Age; Disability; Gender Reassignment; Pregnancy and Maternity; Race; Religion or**

**Belief; Sex; Sexual Orientation.**

1. **REFERENCES – CHECKED AND UPDATED**

Cabinet Office (2012) Consultation Principles. Updated 2018: Accessed: 18/5/2018:

[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)

Department of Health (2006) National Health Service Act.

s.242 Public involvement and consultation. s.244 Functions of Overview and Scrutiny Committees. London: HMSO. Accessed18/5/18: [www.legislation.gov.uk/ukpga/2006/41/contents](http://www.legislation.gov.uk/ukpga/2006/41/contents)

Department of Health (2007) Health services and social services: local involvement networks. The Local Government and Public Involvement in Health Act 2007. Section 221(2). London: HMSO

Accessed: 18/5/2018: http://www.legislation.gov.uk/ukpga/2007/28/section/221

Department of Health (2008) Real Involvement: Working with People to Improve Health Services. Guidance for NHS organisations s242 of the NHS Act 2006). London: HMSO. Accessed 18/5/2018: [http://webarchive.nationalarchives.gov.uk/20130124044347/http://www.dh.gov.uk/prod\_consum\_dh/groups/dh\_digitalassets/@dh/@en/documents/digitalasset/dh\_089785.pdf](http://webarchive.nationalarchives.gov.uk/20130124044347/http:/www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_089785.pdf)

Department of Health (2010) Service Reconfiguration.

Gateway reference number: 14543. David Nicholson. London: HMSO Accessed: 18/5/2018:<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216051/dh_118085.pdf>

Department of Health (2012) Clinical commissioning groups: general duties etc. Health and Social Care Act. s23 and s26. Accessed 18/5/2018:

www.legislation. gov.uk/ukpga/2012/7/ section/26/enacted

Department of Health (2013). Consultation with responsible persons.

Local Authority (Public Health, Health and Wellbeing Boards and Scrutiny Regulations). Regulation 23. London: HMSO

Accessed 18/5/2018: [www.legislation.gov.uk/uksi/2013/218/contents/made](http://www.legislation.gov.uk/uksi/2013/218/contents/made)

Department of Health (2014) Local Authority Health Scrutiny. Guidance to support Local Authorities and their partners to deliver effective health scrutiny. London: HMSO. Accessed18/5/2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/324965/Local\_authority\_health\_scrutiny.pdf

Department of Health (2015) The NHS Constitution for England – Guidance. London: HMSO. Accessed 18/5/2018: <https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england>

Healthwatch England (2013) Understanding the Legislation: An overview of the legal requirements for local Healthwatch. **Accessed: 18/5/2018:** [www.healthwatch.co.uk/sites/healthwatch.co.uk/files/20130822\_a\_guide\_to\_the\_legislation\_affecting\_local\_healthwatch\_final.pdf](http://www.healthwatch.co.uk/sites/healthwatch.co.uk/files/20130822_a_guide_to_the_legislation_affecting_local_healthwatch_final.pdf)

HM Government (2014) NHS Mandate 2014 to 2015. The Mandate.

A mandate from the Government to NHS England: April 2014 to March 2015. London: HMSO.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/383495/2902896\_DoH\_Mandate\_Accessible\_v0.2.pdf

Independent Reconfiguration Panel. Accessed 18/5/2018: [www.gov.uk/government/organisations/independent-reconfiguration-panel](http://www.gov.uk/government/organisations/independent-reconfiguration-panel)

# Mills and Reeve (2015). Ten rules for running an effective, lawful public consultation. London: Mills and Reeve. Accessed 18/5/2018: [www.mills-reeve.com/ten-rules-run-an-effective-lawful-public-consultation/](http://www.mills-reeve.com/ten-rules-run-an-effective-lawful-public-consultation/)

Minister of Justice (2010) Public sector equality duty. Equality Act. S149 (1)

Accessed 18/5/2018. [www.legislation.gov.uk/ukpga/2010/15/section/149](http://www.legislation.gov.uk/ukpga/2010/15/section/149)

NHS England (2013) Transforming Participation in Health and Care. ‘The NHS belongs to us all’. Gateway reference: 0038. London: HMSO. Accessed 18/5/2018: www.nurturedevelopment.org/wp-content/uploads/2016/01/NHS-England-participation-and-inclusion-guidance-2013.pdf

NHS England (2015-1) Statement of Arrangements and Guidance on Patient and Public Participation in Commissioning. London: HMSO. Accessed 18/5/2018: www.engage.england.nhs.uk/survey/strengthening-ppp/supporting\_documents/ppppolicystatement.pdf-1

NHS England (2015-2) Guidance for NHS Commissioners on equality and health inequalities legal duties. London: HMSO. Accessed 18/5/2018: www.england.nhs.uk/wp-content/uploads/2015/12/hlth-inqual-guid-comms-dec15.pdf

NHS England (2016) Effective Service Change. A support and guidance toolkit

v.2. London: HMSO. Accessed 23/5/2018:

www.wmscnsenate.nhs.uk/files/2114/4887/4750/NHS\_England\_-\_Effective\_Service\_Change-A\_support\_and\_guidance\_toolkit-\_v2\_-\_2016.pdf

R (on the application of Gunning) v Brent London Borough Council: [1985] 84 LGR 168. Accessed 18/5/2018.

www.bindmans.com/insight/updates/putting-moseley-in-a-box-recent-cases-on-consultation

www.casemine.com/judgement/uk/5a8ff70060d03e7f57ea57e3

www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Public-sector/The\_Public\_Law\_Duty\_to\_Consult

R (on the application of Coughlan) v North and East Devon Health Authority:

[1999[ - [EWCA Civ 1871](http://www.bailii.org/ew/cases/EWCA/Civ/1999/1871.html)

https://en.wikipedia.org/wiki/R.\_v.\_North\_and\_East\_Devon\_Health\_Authority,\_ex\_parte\_Coughlan

R (on the application of Save our Surgery Ltd) v Joint Committee of Primary Care Trusts: [2013[ – (relating to specialist centres for paediatric cardiac surgery). Neutral Citation Number: [2013] EWHC 439 (Admin). Case No: CO/10505/2012. Accessed 18/5/2018: [www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/judgment-leeds-heart-case.pdf](http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/judgment-leeds-heart-case.pdf)

R (on the application of Copson) v Dorset Healthcare University NHS Foundation Trust: [2013[ – (relating to Mental Health Urgent Care Services) reconfiguration. Neutral Citation Number: [2013] EWHC 732 (Admin)

Accessed 18/5/2018: [www.bailii.org/ew/cases/EWHC/Admin/2013/732.html](http://www.bailii.org/ew/cases/EWHC/Admin/2013/732.html)

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R (on the application of Lewisham LBC and Save Lewisham Hospital Campaign Limited) v Secretary of State for Health (and others): [2013[ – EWHC 2329 (Admin) - Case No: CO/2744/2012. Accessed 18/5/2018: www.judiciary.gov.uk/judgments/lb-lewisham-v-sos-health/

# **R (on the application of LH) v Shropshire Council, Court of Appeal - Civil Division, [April 04 2014] EWCA Civ 404. Accessed 18/5/2018:**

<https://court-appeal.vlex.co.uk/vid/-504555286>

1. **APPENDIX ONE – SPECIFIC DUTIES FROM HEALTH AND SOCIAL**

**CARE ACT**

Health and Social Care Act 2012 Section 26  **DH (2012)**

**14P. Duty to promote NHS Constitution**

1. Each Clinical Commissioning Group must, in the exercise of its functions—
2. Act with a view to securing that health services are provided in a way

which promotes the NHS Constitution, and (b) promote awareness of

the NHS Constitution among patients, staff and members of the public.

**14R Duty as to improvement in quality of services**

Each CCG must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness. The outcomes include those which show—

(a) The effectiveness of the services.

(b) The safety of the services, and

(c) The quality of the experience undergone by patients.

**14T Duties as to reducing inequalities**

Each CCG must, in the exercise of its functions, have regard to the need to—

1. Reduce inequalities between patients with respect to their ability to

access health services, and

1. Reduce inequalities between patients with respect to the outcomes

achieved for them by the provision of health services.

**14U Duty to promote involvement of each patient**

1. Each CCG must, in the exercise of its functions, promote the involvement

of patients, and their carers and representatives (if any), in decisions which relate to—

(a) The prevention or diagnosis of illness in the patients, or

(b) Their care or treatment.

**14V Duty as to patient choice**

Each CCG must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

**14Z1 Duty as to promoting integration**

1. Each clinical commissioning group must exercise its functions with a view

to securing that health services are provided in an integrated way where it

considers that this would—

1. Improve the quality of those services (including the outcomes that are

achieved from their provision).

1. Reduce inequalities between persons with respect to their ability to

access those services, or

1. Reduce inequalities between persons with respect to the outcomes

achieved for them by the provision of those services.

**14Z2 Public involvement and consultation by CCGs**

(1). This section applies in relation to any health services which are, or are to

be, provided pursuant to arrangements made by a CCG in the exercise of its

functions (“commissioning arrangements”).

(2). The CCG must make arrangements to secure that individuals to whom the

services are being or may be provided are involved (whether by being

consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group.

(b) in the development and consideration of proposals by the group for

changes in the commissioning arrangements where the

implementation of the proposals would have an impact on the

manner in which the services are delivered to the individuals or the

range of health services available to them, and

1. in decisions of the group affecting the operation of the

commissioning arrangements where the implementation of the

decisions would (if made) have such an impact.

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| 1. **APPENDIX TWO**   **Ten rules for an effective, lawful consultation process**  **1. Consult when your proposals are at a formative stage**  It is unlawful to make a decision on a change to services, and then consult on that decision.  If an NHS body is strongly of the view that only one of a number of alternatives is realistic,  then it must say so and explain why. The public must be given the opportunity to disagree.  **2. Language**  The consultation document must not give the appearance to the public that a decision has  already been taken and the consultation a sham. |
| **3. NHS bodies must set out exactly what they are proposing; what the options**  **are; and why these changes are needed**  The public body must give out information that contains sufficient reasons for particular  proposals, to allow those consulted to give the proposals intelligent consideration and an  intelligent response. If the public do not know what they are being consulted about or why  a change needs to be made, they cannot properly take part in the consultation process. |
| **4. NHS bodies must be up front about the reasons for their proposed change**  If the driver for change is financial the NHS body must say so and set out the financial  position that It is faced with. Hiding behind other reasons to change a service may result  in the NHS body’s consultation being struck down as unlawful. |
| **5. How long should the consultation last for?**  The public must have adequate time to respond. The *Cabinet Office Principles* state  “timeframes should be proportionate and realistic to allow stakeholders sufficient time to  provide a considered response”. |
| **6. Responses must be taken into account before a final decision is made.**  NHS bodies are not bound by the views of the public, but courts expect that the  public's views will be fully considered by the decision makers and will take those views  into account when reaching their decision. NHS bodies must ensure a paper-trail  demonstrating that this was done. If a public body takes a decision that goes against  the general views of the public, it needs to have good reasons for it and to make sure those  reasons are recorded. |
| **7. There is no set form for a consultation**  How to conduct the consultation is a decision for the NHS body. The courts have approved  consultations that involve responses on paper or electronically, public meetings and  citizens’ juries. What matters is whether the consultation is fairly conducted and complies  with the Public Sector Equality Duty. |
| **8. NHS bodies may consult on a single option**  If an NHS body identifies only one serious option to put to the public, it is lawful to consult on  implementing that single option. However, the public body may need to justify why only one  option was realistic. NHS bodies must allow members of the public to suggest alternative  options and, if they do so, those options must be given genuine consideration. |
| **9. NHS bodies can reach a final decision that was not an option put forward in the**  **consultation**  There must be good reasons for such a change of approach – usually it will be based on  information discovered as part of the consultation. Secondly, if the final decision departs very  substantially from the initial options, it may be necessary to undertake a second consultation.  NHS bodies do not have to give consultees the opportunity to see and to comment on the  responses of other consultees. However, if a response has opened up a new issue that the  NHS body is taking into account, it should consider giving other consultees the opportunity to  comment on that issue. |
| **10. Making promises to the public**  If the NHS body makes clear that unequivocal promises have been made to individual service  users or groups as part of the consultation process, the NHS body will have created a  “legitimate expectation” that those promises will be kept.  If the NHS body wants to go back on them, it will need to redo the consultation exercise.  Failure to do this may result in the whole process being struck down by the courts.  **Mills and Reeve (2015)** |

**19. APPENDIX THREE – ABOUT HAPIA**

**OBJECTS OF HAPIA**

Healthwatch and Public Involvement Association (HAPIA) is a not-for-profit company with exclusively charitable objects. The Company is committed to act for the public benefit through its pursuit of wholly charitable initiatives, comprising:

1. The advancement of health or the saving of lives, including the prevention or relief of sickness, disease or human suffering.
2. The relief of those in need by reason of youth, age, ill-health, disability, hardship or other disadvantage, including by the provision of accommodation or care.

**VISION STATEMENT**

Healthwatch and Public Involvement Association (HAPIA) is a registered Charity that aims to provide a national voice for Healthwatch, and to help build the capacity of HAPIA members to achieve change and improvement in health and social care services at local, regional and national levels.

HAPIA aspires to facilitate the involvement of all people in the determination of health and social care policy, especially those whose voices are not currently being heard. HAPIA actively promotes diversity, inclusivity and equal opportunities in relation to the improvement of health and social care services.

**MISSION STATEMENT**

1. To provide a national voice for Healthwatch and Healthwatch members.
2. To promote public involvement that leads to real change and the ability to influence key decisions about how care services are planned and run.
3. To promote the capacity and effectiveness of Healthwatch members to monitor and influence services at local, regional and national levels and to give people a genuine voice in their health and social care services.
4. To support the capacity of communities to be involved with and engage in consultations about changes to services, to influence key decisions about health and social services and hold service providers and commissioners and the Department of Health to account.
5. To promote open and transparent communication between communities across the country and the health service.
6. To promote accountability in the NHS and social care to patients and the public.
7. To support the involvement of people whose voices are not currently being heard, and to promote inclusivity, diversity and equal opportunities.

**HAPIA MANIFESTO**

* HAPIA has produced a Manifesto based on its aim to provide Healthwatch and the wider public with a better understanding of HAPIA’s work. The Manifesto is based on the following key points:
* Build HAPIA as the independent national voice for Healthwatch and users of health and social care services.
* Promote, for the benefit of the public, the long-term development and strengthening of Healthwatch, as powerful, independent and influential bodies for patient and public involvement in policy, strategy and delivery of care services.
* Support the growth and development of the NHS as the provider of health services free to all at the point of use.
* Campaign for the right of all vulnerable people to get the care and support that they need to lead fulfilled lives.

**HAPIA WEBSITES**

HAPIA operates several websites. The main HAPIA website is updated daily and provides information about Healthwatch and other major developments in the NHS and social care provision. The 2016 websites were as follows:

* [www.hapia2013.org](http://www.hapia2013.org)

The main HAPIA website

* <http://www.healthwatchdevelopment.net>

Details HAPIA’s research into the development of LHW funding

* <http://www.rule43inquests.com>

Research into instances of Coroner’s recommendations following a death.

* <http://www.revalidatingdoctors.net>

Information about revalidation of doctors and leaflets for patients.

* <http://www.achcew.org>

An archive site celebrating the work of the Community Health Councils, and the public involvement between 1974 and 2003.

* **CONFERENCE reports and** presentations can be seen at:

<http://www.hapia2013.org/2015---agm.html>