

NEXT STEPS FOR THE NHS CONSTITUTION:
**Recommendations by the Expert Advisory
Group to the NHS Constitution**

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Section 1: Introduction and background

1. In this paper, the Expert Advisory Group to the NHS Constitution sets out ten recommendations to the Department of Health, national and local organisations for increasing the impact of the Constitution. These recommendations build on those made by the NHS Future Forum in October 2012.
2. Since the introduction of the NHS Constitution in 2009, the health system has undergone significant reform. The changes made to the health and care system in England from 1 April 2013 give the Constitution greater significance, providing a platform for shared values and a unifying approach among the many newly established health bodies. This was recognised in the Health and Social Care Act 2012, which reaffirmed the importance of the Constitution: the Secretary of State now has a duty to have regard to it, as do all NHS bodies. In addition, NHS England and clinical commissioning groups (CCGs) are now required to promote it along with Health Education England. Local authorities, in the exercise of their public health functions, also have a duty to have regard to the Constitution – paving the way for further and better integration with health services.
3. Throughout this period of change, the NHS Constitution has continued to be a powerful expression of the values and principles which underpin the NHS, enabling patients, the public and staff to hold the NHS to account. It helps patients and citizens to understand what they can legitimately expect from the NHS and makes clear to staff delivering NHS services what is expected of them as well as their rights as employees.
4. But the relevance, visibility and impact of the NHS Constitution in practice and in the day-to-day delivery of NHS services all remain limited. Recent experience has provided a stark demonstration of how far parts of the NHS have fallen short of the principles, values and commitments set out in the Constitution. The final report of the *Mid Staffordshire NHS Foundation Trust Public Inquiry (Francis Inquiry)*, led by Robert Francis QC, dedicated nine of its recommendations to the Constitution.¹ Robert Francis said ‘The core values expressed in the 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.’ In the Government’s response to the Francis Inquiry, *Hard Truths: The Journey to Putting Patients First*, all system partners in the NHS signed a statement of common purpose which began with an affirmation of their commitment to the values of the NHS, as set out in the Constitution.² Professor Don Berwick’s review, *Improving the safety of patients in England*, stated that culture change was needed to ensure patient safety was not overridden by financial concerns, through

1 Robert Francis, *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* (2013) www.midstaffspublicinquiry.com/report (accessed 25 February 2014).

2 Department of Health, *Hard Truths: The Journey to Putting Patients First* (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/259648/34658_Cm_8754_Vol_1_accessible.pdf (accessed 25 February 2014).

'living the values of the NHS Constitution'.³ Camilla Cavendish stated in her review, *An Independent Review into Healthcare Assistants and Support Workers in the NHS and social care settings*, that the 'NHS Constitution sets out an admirable set of pledges, which are simply not being put into practice in too many NHS Trusts'.⁴

5. The NHS Future Forum, tasked with making recommendations on strengthening the NHS Constitution, wrote to the Secretary of State on 31 October 2012 setting out its advice.⁵ It recommended:
 - further awareness-raising of the Constitution amongst the public and staff;
 - giving the Constitution greater impact so that patients, the public and staff are able to use it to uphold their rights and expectations of the NHS; and
 - revising and strengthening the content of the Constitution to reflect the new system.
6. These recommendations were accepted and the Minister of State for Care and Support, Norman Lamb, committed to take them forward.⁶ To help the Department of Health (hereinafter the Department) realise these recommendations, the Expert Advisory Group to the NHS Constitution (hereinafter Expert Group) was established in December 2012.
7. The Expert Group met for the first time in January 2013 with the immediate task of overseeing the final stage of revisions to the NHS Constitution to bring it up to date with the new system. The Expert Group then met again to agree advice to the Department on ways to increase the impact of the Constitution. The work of the Expert Group took place alongside the *Francis Inquiry* and the reviews set up in its wake.⁷ Our recommendations take these reviews into consideration where possible, as well as the Government's response to the *Francis Inquiry, Hard Truths: The Journey to Putting Patients First (Hard Truths)*.

3 National Advisory Group on the safety of patients in England, *A promise to learn – a commitment to act: Improving the Safety of Patients in England* (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf (accessed 25 February 2014).

4 Camilla Cavendish, *The Cavendish Review: An Independent Review into Healthcare Assistants and Support Workers in the NHS and social care settings* (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236212/Cavendish_Review.pdf (accessed 25 February 2014).

5 NHS Future Forum, *Letter to the Secretary of State for Health from the NHS Future Forum Working Group on the NHS Constitution* (2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216966/NHS-future-forum-letter.pdf (accessed 25 February 2014).

6 Department of Health, *A consultation on strengthening the NHS Constitution* (2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/167913/Consultation-on-strengthening-the-NHS-Constitution.pdf (accessed 25 February 2014).

7 Reviews included: National Advisory Group on the safety of patients in England, *A promise to learn – a commitment to act: Improving the safety of patients in England* (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf (accessed 25 February 2014) and Professor Sir Bruce Keogh, *Review into the quality of care and treatment provided by 14 hospital trusts in England: overview report* (2013) <http://www.nhs.uk/NHSEngland/bruce-keogh-review/Documents/outcomes/keogh-review-final-report.pdf> (accessed 25 February 2014).

Section 2: Recommendations

8. Our recommendations build on those of the NHS Future Forum, setting out specific actions which, if implemented, will go some way to realising one of the headline recommendations made in the *Francis Inquiry*, that ‘the NHS Constitution should be the first reference point for all NHS patients and staff’.⁸ These recommendations are for the Secretary of State, the Department, relevant national and local organisations to take forward. Where possible, we name the organisations that we anticipate having a role in delivering these recommendations. However, the names given do not necessarily constitute a complete list of those responsible. The Expert Group expects all organisations to seriously consider how their work is related to each recommendation. The ten recommendations seek to increase the Constitution’s impact through both “top-down” approaches, focusing on NHS leadership, good governance, organisational processes and culture, and “bottom-up” approaches driven by the voluntary sector, patients and their representatives, the public and staff.
9. ***Recommendation 1: We recommend that the Department, working with other organisations, focuses now on embedding the NHS Constitution and leaves content changes till later.*** In *Hard Truths* the Government committed to consult on several amendments to the Constitution as a result of the *Francis Inquiry*. Suggestions for changes have come from other sources too. The Expert Group believes that frequent changes to the Constitution risk undermining its status as an enduring statement. However, we also recognise that the Constitution must evolve and that therefore, there is a balance to be struck. We recommend that no changes are considered until the next legally required report on the effect of the Constitution is published in 2015 and that in the meantime the emphasis is on implementation.
10. For the NHS Constitution to have a positive impact on NHS culture it must be embedded in every part of the NHS family: providers of NHS services (whether they are private, voluntary sector or NHS), commissioners, regulators and other national bodies, primary and community services as well as those based in hospitals, the public health community and educators. It has been encouraging to see some of the new national bodies visibly demonstrating their commitment to the Constitution. Since they were established, both NHS England and Health Education England have sought to build the Constitution into their organisational processes, using its values to recruit staff and develop their own local organisational cultures. More needs to be done by senior leaders and managers of all national and local NHS organisations to embed this type of approach within their organisations.

⁸ Robert Francis, *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* (2013) www.midstaffspublicinquiry.com/report (accessed 25 February 2014).

11. **Recommendation 2: We recommend that the Department, NHS England, the NHS Trust Development Authority (NHS TDA), Monitor, the Care Quality Commission (CQC), and CCGs hold the relevant national and local organisations in the health system to account for fulfilling their duties in relation to the NHS Constitution.** These include embedding the Constitution values and commitments into leadership, contracts, training and all other activity, and challenging those organisations that fail to live by the values enshrined in it. The Constitution should be made visible in all provider settings. In line with the Patients Association's 2012 review of the Constitution we recommend that a particular emphasis is put on making the Constitution visible in primary care settings where the vast majority of patient interactions with the NHS take place.⁹ The Department, NHS England, and CCGs need to do more to work with primary care providers to ensure they are aware of the Constitution and the role it should play in primary care services. All health organisations need to own it, use it and be held properly to account for carrying out their functions in line with it. Significant levers of accountability – such as the NHS Outcomes Framework, the Department's mandate to NHS England, the CQC's new fundamental standards and inspection frameworks – must reinforce and be aligned with the Constitution.
12. **Recommendation 3: We recommend that a system is developed to effectively monitor the extent to which the rights and pledges in the NHS Constitution are being met, tapping into existing sources of evidence where possible.** The Department should work in partnership with NHS England, CQC, the Health and Social Care Information Centre, Monitor, NHS TDA and other bodies where appropriate to develop this. In the 2012 *Report on the effect of the NHS Constitution* the previous Secretary of State, Andrew Lansley, acknowledged that 'What matters most to patients and staff is that the rights and pledges...are delivered. It is therefore important that a clear evidence base for examining this is established'.¹⁰ Similarly, a 2013 report by National Voices concluded that the NHS needs to 'monitor, test and review the achievement' of rights to enable the system to see whether rights are making a difference to patients and staff.¹¹ There is a need for a robust and wide evidence base – underpinned by appropriate metrics – to demonstrate the extent to which organisations are meeting the rights and pledges set out in the Constitution. This evidence would enable patients and staff to identify and drive improvements in the quality of care. Where possible this evidence should use existing data sources rather than creating new and potentially burdensome processes.

9 Patients Association, *The NHS Constitution: Fact or Fiction?* (2012) http://www.patients-association.com/Portals/0/Public/Files/Research%20Publications/NHS%20Constitution%20Report_Fact%20or%20Fiction.pdf (accessed 25 February 2014).

10 Department of Health, *Report on the effect of the NHS Constitution* (2012) <https://www.gov.uk/government/publications/report-on-the-effect-of-the-nhs-constitution> (accessed 25 February 2014).

11 Don Redding, *The teeth in the NHS Constitution: the case of the right to NICE approved treatments* (2013) http://www.nationalvoices.org.uk/sites/www.nationalvoices.org.uk/files/the_teeth_in_the_nhs_constitution_24-5-13_final.pdf (accessed 25 February 2014).

13. Despite the importance of the NHS Constitution, awareness continues to be low amongst patients, the public and staff at all levels. Even those who have heard of the Constitution are far less likely to be able to describe what it contains or how that content might be used in practice. We echo the NHS Future Forum's call to do more to increase awareness and understanding of the Constitution so that it can influence and shape every day experiences and practices. People need to first be aware of the Constitution if they are to be able to use it to improve their experience of health care.
14. There has never been a national campaign to raise awareness of the NHS Constitution aimed at patients and the public. The awareness raising efforts aimed at staff have often been patchy and half-hearted. **Recommendation 4: We recommend that the Department, in partnership with NHS England, HEE, CCGs and other bodies drive and fund such a campaign.** The campaign needs sufficient resources, including communications, social marketing and social media expertise. It will benefit from the involvement of local Healthwatch, as well as the voluntary and community sector, especially to engage and inform marginalised and disadvantaged communities. It needs to tap into the positive energy for change that exists throughout the NHS and which is exemplified in grassroots initiatives such as NHS Change Day¹² – for example, by establishing a dedicated NHS Constitution Week. Where possible, links should be made with existing campaigns, such as the 6C's campaign within the nursing profession.¹³ The Department and NHS England should consider promoting specific parts of the Constitution in more focused campaigns.
15. The necessary length and complexity of the full NHS Constitution and Handbook make them difficult for patients and citizens to use. **Recommendation 5: We recommend that the Department works with others, including voluntary sector organisations, to produce a range of easy-read and much shorter summary versions.** These should be a central feature of an awareness-raising campaign, though care must be taken in the drafting to ensure that the impact of the Constitution is not diluted. Versions should also be developed that are tailored to specific audiences, for example young people, people with physical or learning disabilities, those with mental health conditions and carers.
16. There is a need to share good practice, both in embedding and in bringing the NHS Constitution to life, including recognising and celebrating individual members of staff, teams, service areas and organisations who uphold and embody its values. The Expert Group heard a number of suggestions, which we would encourage the organisations detailed below to explore and take forward, including:
- developing the online presence of the Constitution through a dedicated and interactive webpage, in partnership with an existing website such as NHS Choices, for patients

12 NHS Change Day <https://changeday.nhs.uk/> (accessed 4 March 2014).

13 Commissioning Board Chief Nursing Officer and DH Chief Nursing Adviser, *Compassion in Practice* (2012) <http://www.england.nhs.uk/wp-content/uploads/2012/12/compassion-in-practice.pdf> (accessed 4 March 2014). [practice.pdf](http://www.england.nhs.uk/wp-content/uploads/2012/12/compassion-in-practice.pdf) (accessed 4 March 2014).

and the public to access information about the rights and pledges in the Constitution, what they can expect when using NHS services and where they can contribute patient experience stories. This could be one way of gathering qualitative evidence of awareness and the extent to which the rights and pledges in the Constitution are being upheld (NHS England should consider its role in this);

- ensuring the Constitution is promoted and information (including details of the rights and pledges, as well as practical advice on how patients can exercise these rights) is made available in all health care settings and on the websites of all organisations providing services to the NHS (NHS England, NHS TDA, Monitor, Health Education England, NICE and CCGs should consider their role in this);
- encouraging provider organisations to identify Constitution ‘Champions’ making use of existing groups, for example the Caremakers (similar to Olympic “Games Makers”)¹⁴ (NHS England, NHS TDA, Monitor, Health Education England and CCGs should consider their role in this);
- training staff and advocates to help people understand their rights and how to exercise them (Health Education England, Healthwatch England and local Healthwatch organisations should consider their role in this);
- developing a webpage for staff, containing information about the Constitution and facilitating the sharing of ideas on how to put its values into action in their own jobs. This should build on the work already being implemented on values based recruitment¹⁵ (Health Education England and NHS Employers should consider their role in this);
- considering a Constitution-sponsored award, for example, linking in with an existing national awards scheme to recognise staff and organisations that have successfully embedded the Constitution in their services (the Department, NHS England, Health Education England should consider their role in this).

17. The Rt. Hon Ann Clwyd MP and Professor Tricia Hart’s *Review of the NHS Hospitals Complaints System* highlighted that many patients, families and staff members feel they cannot give feedback, raise concerns or make complaints for fear of the consequences.¹⁶ This is unacceptable. On the contrary, providing feedback helps the NHS to improve and is one of the patient responsibilities set out in the NHS Constitution.¹⁷ Additionally, the review found that ‘too often patients feel uncertain or confused when they feel they have

14 NHS Employers, *Care Makers Hub* <http://www.nhsemployers.org/caremakers/Pages/Home.aspx> (accessed 25 February 2014).

15 NHS Employers, *Recruiting for values* (2014) <http://www.nhsemployers.org/RecruitmentAndRetention/values/Pages/Recruiting-for-values.aspx> (accessed 4 March 2014).

16 Right Honourable Ann Clwyd MP and Professor Tricia Hart, *A Review of the NHS Hospitals Complaints System: Putting Patients Back in the Picture* (2013) www.gov.uk/government/uploads/system/uploads/attachment_data/file/255615/NHS_complaints_accessible.pdf (accessed 25 February 2014).

17 Department of Health, *The NHS Constitution: the NHS belongs to us all* (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170656/NHS_Constitution.pdf (accessed 25 February 2014).

a problem. Some never complain because they feel it may be unjustified or because they think staff are too busy. Others may lack confidence or feel intimidated or find the complaints procedure hard to understand, too complex or tiring'.¹⁸ The Constitution should be a source of support and information for people when they have a problem, helping to inform them about what they can expect when using NHS services and providing them with reassurance that any feedback or complaint they make will not have an adverse impact on their care.

18. **Recommendation 6: We recommend that a guide to complaints and feedback is developed as a supplement to the NHS Constitution to provide greater clarification for people on how to use the complaints process.** The Department should work with the Parliamentary and Health Service Ombudsman, Healthwatch England, the Local Government Ombudsman, the Local Government Association and NHS England to produce this. Many people do not know where to turn when they have a concern or complaint about a health or social care service. There are multiple local and national complaints systems, regulators and contact points, meaning the system is hard to navigate and few people are able to find a timely resolution for their complaint. A guide is needed to help patients, their carers and families, and members of the public understand how to make their views known and how to make best use of complaints procedures where necessary. This supplement should focus on practical guidance for patients and service users wishing to provide feedback or make a complaint about NHS services, and should sit alongside the Constitution so that people are clear about what to do if they feel that their care has fallen short of the rights and pledges set out in the Constitution.
19. Further consideration should also be given to how the NHS Constitution can be better integrated into the complaints system. For example, if a complaint identifies that care has fallen short of the rights set out in the Constitution, a clear explanation should be given to the complainant as to how processes have been reviewed and improved to prevent it occurring again in the future.
20. **Recommendation 7: We recommend that the specific behaviours associated with NHS Constitution rights are clearly defined to enable staff and patients to better understand what to expect from, and how to improve, their experience of NHS care, in particular through the work NHS England is undertaking to embed patient rights.** This approach, which has been pioneered by Macmillan Cancer Support,¹⁹ as well as a number of NHS providers such as Guy's and St Thomas',²⁰ makes

18 Right Honourable Ann Clwyd MP and Professor Tricia Hart, *A Review of the NHS Hospitals Complaints System: Putting Patients Back in the Picture* (2013) www.gov.uk/government/uploads/system/uploads/attachment_data/file/255615/NHS_complaints_accessible.pdf (accessed 25 February 2014).

19 Governance International, *The Values Based Standard™ of Macmillan Cancer Support: A quality framework for improving both patient and staff experience through co-production* (2013) <http://www.govint.org/good-practice/case-studies/the-values-based-standard-of-macmillan-can> (accessed 25 February 2014).

20 Guy's and St Thomas', *Values and Behaviours Framework* (2012) <http://www.guysandstthomas.nhs.uk/resources/careers/values-and-behaviours-framework.pdf> (accessed 4 March 2014).

existing NHS Constitution rights clear and understandable by defining the behaviours expected from staff and ways in which poor experiences can be challenged by patients. It can also provide a useful framework for staff to consider detailed patient feedback from the Friends & Family Test and ensure that patients have the opportunity to give feedback.²¹ The behaviours should be audited by patients or service users and linked to complaints handling.

21. **Recommendation 8: We recommend that NHS England, working with the voluntary sector and CCGs, develops ways to engage and support patients in understanding their responsibilities as well as their rights, and address barriers that may prevent patients exercising responsibility for their health.** The NHS Constitution already contains responsibilities intended for patients. In the current financial context, patients need more help to understand the role they can play in making NHS resources go further for the benefit of all patients.
22. **Recommendation 9: We see the Healthwatch network as a key player in bringing the content of the NHS Constitution to life in order to help patients and citizens, and we recommend that they formulate detailed plans for doing this, building on Healthwatch England's work to develop a consumer rights-based framework that sets out the public's expectations of health and social care services.**²²
23. In considering the need to give the NHS Constitution more "teeth" the Expert Group has examined the question of legal force. While the Constitution sets out a number of legally enforceable rights underpinned by different pieces of legislation, it is not in itself a route of enforcement. In the post-Francis world this settlement strikes the Expert Group as weak and unsatisfactory. Far from being a lawyer's charter the Constitution has barely pricked public consciousness. The Government's response to the Francis inquiry includes commitments to create a new statutory duty of candour and a new criminal offence of wilful neglect. The failings in Stafford and in other cases have changed the mood about the role of the law in ensuring acceptable standards of care and the Constitution now looks out of kilter with that mood.
24. **Recommendation 10: We recommend that the Department considers and brings forward recommendations for strengthening the enforceability of the NHS Constitution.** When amendments to the Constitution are next consulted on in 2015, consideration should be given to whether the legal duties relating to the Constitution are sufficient, as well as how non-statutory mechanisms can best be exploited to enforce the Constitution, for example NHS England's CCG assurance framework.

21 NHS Choices, *The NHS Friends and Family Test* <http://www.nhs.uk/NHSEngland/AboutNHSservices/Pages/nhs-friends-and-family-test.aspx> (accessed 4 March 2014).

22 Healthwatch England, *Annual Report 2012/13*, http://www.healthwatch.co.uk/sites/default/files/full-report-2012-13_0.pdf (accessed 25 February 2014).

Section 3: Conclusion

25. The principles, values, rights and pledges of the NHS Constitution have too often seemed more aspirations than reality. This must change. To make the transition from warm words to reality, the entire NHS must accept responsibility for implementing the Constitution and living its values in everything it does.
26. Our recommendations are aimed at achieving this. They lay out ways to make the NHS Constitution more visible, accessible for and applicable to patients, the public and staff. We urge the Department, in partnership with relevant national and local organisations to take these recommendations forwards so that the Constitution, its principles, values, rights and pledges are lived out in practice as well as in theory.

