

**LETTER TO THE SECRETARY OF STATE FOR HEALTH
FROM THE NHS FUTURE FORUM WORKING GROUP ON THE NHS CONSTITUTION**

31 October 2012

Dear Secretary of State

Andrew Lansley asked the NHS Future Forum in March 2012 to make recommendations on how to strengthen the NHS Constitution. This letter represents our response.

Now more than ever, the NHS Constitution has a vital role to play. It unites staff around the common purpose that binds the NHS together. It expresses the enduring principles and values that underpin the NHS. It sets out the offer for patients in terms of access, quality, equality, fairness, dignity and redress and conveys the parity of esteem for mental health. The power of the Constitution lies in the fact that it is enduring, enjoys widespread support from patients, staff and the public, and transcends party politics. At a time of increasing demand, reorganisation and financial pressure, its importance should not be underestimated.

The NHS Constitution offers you a powerful way of holding the NHS to account for its values, principles and behaviours, alongside the mandate to the NHS Commissioning Board. The Constitution can be an inspiring force for change and a key tool for improving the culture of all organisations involved in the delivery of NHS services.

Over the last few months, the NHS Future Forum has met many organisations, patient and staff groups. We have met children and young people, homeless charities, voluntary patient organisations, and mental health service users and staff. Social media have opened the discussion to thousands more. We found a striking degree of consensus around the existing content and wording of the NHS Constitution: people believe that the principles are largely right; the values resonate; the document is seen as helpful in explicitly laying out rights, responsibilities and pledges for patients, the public and staff.

Yet, despite the importance and potential of the NHS Constitution, its effect so far has been patchy, low key and inconsistent. It has failed to have the impact required to influence the quality of the service, the level of patient experience and give appropriate support to hard-working staff.

We believe that there is a real opportunity to remedy this, to embed the Constitution in everything the NHS does and put it at the heart of every organisation involved in the delivery of NHS services.

There are three essential steps that need to be taken now if the Constitution is to make a real difference in the NHS:

- **First, awareness of the NHS Constitution needs to be increased dramatically amongst public, patients and staff. For staff especially, this is not just about headline awareness, but about real understanding of the Constitution and what it means for their every day work;**
- **Second, the NHS Constitution must be given greater traction – especially around what happens when the NHS falls short of people’s rights or expectations;**

- **Third, the content of the NHS Constitution needs to be fully up-to-date and strengthened in several key areas including: patient involvement; support for staff; feedback; a duty of candour; protection and use of information; and ‘making every contact count’.**

Raising awareness and embedding the NHS Constitution

Awareness of the Constitution is unacceptably low and needs to be increased. Few people know about it. Fewer still use it to uphold their expectations of the NHS. This must change. There are several areas which need concerted effort to drive up awareness.

The Constitution needs to be embedded into the culture of all organisations involved in the delivery of NHS services. The East of England SHA tried – with some success – to do this by having champions for the NHS Constitution in all NHS organisations and incorporating the NHS Constitution into staff appraisals; having it as a standing item on all board and staff meeting agendas; and feeding it into all communications with patients and staff. As a result, awareness among staff and patients was the highest in England. This needs to happen everywhere. All organisations commissioning and delivering NHS services must be able to demonstrate clearly how they have taken account of the Constitution and they should be held publicly accountable for doing so in a meaningful way.

The new legal duties on the NHS Commissioning Board, clinical commissioning groups and Health Education England present an important opportunity to drive up awareness and embed the Constitution more fully. You should hold the NHS Commissioning Board to account for its new duty to promote the Constitution, defining in particular, what you expect them to achieve in terms of informed staff awareness. You should set out in your annual report on the health service how you have done this. You should also make clear how you, as Secretary of State, have taken account of the Constitution, setting an example for all organisations that are required by law to take account of it in their actions.

Raising awareness, of course, is not cost-free. While we do not advocate launching an expensive advertising campaign, resources – carefully targeted – do need to be committed to ensure that, this time, the message gets through to staff, patients and the public. Furthermore, the Constitution needs to be more accessible and relevant for different groups and communities, particularly for the most vulnerable and marginalised groups. Alternative versions are needed – for example, a one-side summary and an improved easy-read version. We look to you to develop these, and publish and disseminate them widely alongside the revised NHS Constitution.

Giving the NHS Constitution greater traction

In June, we reported the view that the Constitution amounts to fine words but no teeth. This has come through strongly in our engagement events. Many staff delivering NHS services are not clear about what they should do when the service falls short of the expectations set out in the Constitution. Patients and carers do not know where to go for help resolving their problem, or to whom to complain; staff can feel they are poorly supported when they raise concerns or suffer abuse. When people just want help sorting out an immediate problem, they find themselves pushed down a regulated and imperfect complaints system. The potential role of HealthWatch organisations remains unclear. Unless people have a clear and effective answer on what to do when things go wrong, then the credibility of the NHS Constitution is lost. One organisation we spoke to gave a

striking account of how initial enthusiasm for the Constitution among its members gave way to disillusionment when they could not get a clear answer about how they could use it where they didn't get their rights.

We do not believe that there need to be additional legal powers to give the Constitution 'more teeth' – that could create a lawyers' charter, putting them rather than patients and clinicians at the heart of the system. The system for seeking redress under the Constitution should remain one and the same as that for seeking redress from the NHS. Separate systems would cause confusion and make the current process still harder to navigate than it already is.

We recommend that you conduct further work to explore how the NHS Constitution can be given much greater traction. This should include making sure that the processes for feedback, complaints, redress, and advocacy are fit for purpose in the new system and have the NHS Constitution at their heart. The Parliamentary and Health Service Ombudsman should be consulted on this. One solution might be to strengthen Patient Liaison Services (PALS), putting them on a statutory footing, though we recommend that consideration should be given to a wide range of options.

Content – strengthening the content of the NHS Constitution

We believe a substantial rewrite of the NHS Constitution is not desirable. Part of its power lies in its enduring nature; continual tinkering with its content would be counterproductive. There should be a high threshold for making changes but, before embarking on a new push to raise awareness, the text needs to be accurate and up-to-date. Almost four years after the Constitution was launched, this is an appropriate moment to make a single set of coherent changes around which there is a clear and compelling case. In light of what we have heard in our engagement events, we have identified **six** opportunities to strengthen the text to ensure that the NHS Constitution fully resonates with the public, patients and staff.

1. **The principles should recognise that valued, engaged, motivated and supported staff provide better patient care.** Principle 3 of the Constitution should be rewritten to the effect that *'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. The NHS is its patients and staff and they are mutually interdependent. 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 and supported. The performance of the NHS is directly related to the health and wellbeing of its staff.'*
2. **The need for organisations to ask for and act on feedback should be reflected in a new principle** that *"The NHS will actively encourage feedback from the public patients and staff, welcome it and use it to improve its services."* This should be reflected in relevant pledges to patients and staff.
3. **Patient and carer involvement and shared decision-making should be better reflected in the NHS Constitution.** The Constitution can seem paternalistic and read as if patients and their carers are passive recipients of their care and treatment. Principle 4 should make clear that patients own and manage their own health and care

and that the NHS needs to support them to do this. The principle should also emphasise the concept of shared decision-making, encouraging and supporting patients, their families and carers to become active and equal partners with their clinicians in the decisions about their care. This should be reflected in relevant pledges to patients and staff.

4. **The Constitution should reflect the fact that all NHS organisations will have a duty of candour** and should operate a more open culture, where staff are encouraged to raise concerns and are supported in doing this.
5. **The Constitution needs to clarify how the NHS protects and uses patient information.** Considerable confusion exists about the use of patient data and patients' rights and responsibilities in connection with this. Patients must have absolute clarity about how their information might be used and staff need similar clarity about their responsibilities.
6. **The Constitution should set out a new responsibility for healthcare professionals to take every appropriate opportunity to talk to patients and carers about how to improve their health – making 'every contact count'.**

The NHS is going through a period of great change and massive financial challenge. After the debates about structures and systems over the past two years, we believe that the focus should be on what matters most to patients, staff and the public – protecting and improving the quality of the service.

The Constitution encapsulates what makes the NHS so special. Its opening paragraph is a wonderful, emotive description of what the NHS is all about – it is a really powerful statement, while its principles and values provide the basis for driving real cultural change on the ground throughout our health service. This opportunity to embed the Constitution must not be lost. All organisations must play their part. But we also look to you, as Secretary of State, to champion the NHS Constitution and challenge the service to live by it in everything it does.

Given that we have found huge support for the Constitution from NHS staff and patient organisations, we believe that concerted action on increasing awareness and giving the Constitution greater traction offers you an excellent opportunity to turn a widely supported idea into a powerful reality that can bring major benefit to the NHS and the people it serves. It is an opportunity that the NHS cannot afford to miss.

Yours
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