

THE HANDBOOK TO  
**The NHS Constitution**

for England  
27 July 2015



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# Overview

This Handbook is designed to give the public, patients (their carers and families) and NHS staff all the information they need about the NHS Constitution for England.

It is intended that the Handbook will be used by anyone who wishes to have more detail about the rights and pledges in the Constitution. It will be of particular use to organisations that support and advise patients (their carers and families) and staff.

The Handbook provides an explanation of each right and pledge in the NHS Constitution and the legal sources of both patient and staff rights. It also outlines the roles we all have to play in protecting and developing the NHS.

The first and second parts of the Handbook provide an explanation of the NHS values (page 13) and guiding Principles (page 15) of the NHS that are set out in the Constitution.

The third part of the Handbook (starting from page 19) is a guide to the patients' rights and pledges contained in the Constitution, and can be used for reference to explain what the Constitution means for patients. It also sets out the responsibilities of people in looking after their own health and working with NHS staff.

The fourth part of the Handbook (starting from page 100) is for staff involved in commissioning and providing NHS services and covers the pledges the NHS has made to staff to help them deliver better quality and compassionate care and to make the NHS a better place to work. It is clear about the expectations the NHS has of staff involved in commissioning and delivering care and their rights as employees.

References to the NHS and NHS services include local authority public health services. Where provisions do not apply to local authority public health services these are explained in this Handbook.

The legal sources of both the patient and staff rights in the NHS Constitution are provided after an explanation of what these rights mean to patients and staff.

At the back of this Handbook is a glossary of terms.

## What will the NHS Constitution do?

The aim of the Constitution is to safeguard the enduring principles and values of the NHS. The Constitution also sets out clear expectations about the behaviours of both staff and patients. It is intended to empower the public, patients and staff by setting out existing legal rights and pledges in one place and in clear and simple language. By knowing and exercising their rights, the public, patients (their carers and families) and staff can help the NHS improve the care it provides.

## Who must take into account of the NHS Constitution

The following are required by law to take account of the NHS Constitution in their decisions and actions:

- the Secretary of State for Health;
- all NHS bodies, including, for example, your local clinical commissioning group, NHS trust and NHS foundation trust;
- all private and voluntary sector providers supplying NHS services for example GPs;
- local authorities in the exercise of their public health functions; and
- Health Education England (HEE). The Care Act 2014 placed a further duty on HEE to promote the NHS Constitution.

## What is in the Constitution?

The NHS Constitution contains the following elements:

- a short **overview**, which outlines the purpose of the NHS and of the Constitution;
- the **principles** of the NHS, which are the enduring high-level 'rules' that govern the way that the NHS operates, and define how it seeks to achieve its purpose;
- NHS **values** which have been developed by patients, public and staff, are the 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, so the NHS values provide the common ground for co-operation to achieve shared aspirations;
- **rights** and **pledges** for patients and the public, as well as their responsibilities; and
- **rights** and **pledges** for staff, as well as their responsibilities.

## Rights and pledges

One of the primary aims of the Constitution is to set out clearly what patients, the public and staff can expect from the NHS and what the NHS expects from them in return. The Constitution distinguishes between:

### Rights

A right is a legal entitlement protected by law. The Constitution sets out a number of rights, which include rights conferred explicitly by law and rights derived from legal obligations imposed on NHS bodies and other healthcare providers. The Constitution brings together these rights in one place but it does not create or replace them. These rights are not necessarily for individuals to take action in the courts; they may depend for enforcement on action being taken by other health organisations.

You'll also find a description of the legal basis of each right in this Handbook. For information on what each right means for patients and staff, see the relevant sections of the Handbook.

### Pledges

This Constitution also contains pledges which the NHS is committed to achieve, supported by management and regulatory systems. The pledges are not legally binding and cannot be guaranteed for everyone all of the time, because they express an ambition to improve, going above and beyond legal rights.

This Handbook explains in detail what each of the pledges means and current actions to meet them. Some of the pledges, such as those relating to waiting times for treatment, are long-standing commitments on which the NHS already has a track-record of success and strong mechanisms in place to ensure delivery. In other areas, the pledges refer to relatively new commitments that the NHS is working towards achieving.

### Responsibilities

The Constitution sets out expectations of how patients, the public and staff can help the NHS work effectively and ensure that finite resources are used fairly. This Handbook gives further information on those responsibilities.

## To whom does the Constitution apply?

The rights and responsibilities in the Constitution generally apply to everyone who is entitled to receive NHS services and to NHS staff.

In some other cases, there are further rules or considerations that apply. There are specific rules for children, people who lack mental capacity, and patients detained under mental health legislation, which this Handbook describes.

In order for the Constitution to apply effectively to children and young people, this Handbook identifies situations where the NHS should aim to provide services in a manner that specifically takes account of their needs.

## How will the NHS Constitution make a difference?

For the Constitution to succeed in its aims, it needs to become part of everyday life in the NHS for patients, the public and staff. Achieving this requires leadership, partnership and sustained commitment over months and years from all those involved in the provision of NHS services, to raise awareness of the Constitution and weave it into the way the NHS works at all levels

## What legal underpinning does the Constitution have?

The Health Act 2009<sup>1</sup> includes provisions related to the NHS Constitution.

These came into force on 19 January 2010 and place a statutory duty on:

- NHS bodies, providers of primary care services, and voluntary organisations providing NHS care in England to have regard to the NHS Constitution;
- the Secretary of State to review and republish the NHS Constitution at least once every 10 years;
- the Secretary of State to publish any changes to the guiding principles in regulations;
- the Secretary of State to review and republish the Handbook to the NHS Constitution at least once every three years;
- the Secretary of State to consult patients, public, staff, bodies representing patients, bodies representing staff, carers and local authorities, in respect of any changes to the NHS Constitution; and
- the Secretary of State to report on the effect of the Constitution on patients, staff, members of the public and carers every three years.

The Health and Social Care Act 2012<sup>2</sup> also includes provisions related to the NHS Constitution. These provisions came into force on 1 October 2012 and 1 April 2013 and place a statutory duty on:

- the Secretary of State for Health to have regard to the NHS Constitution; and
- the NHS Commissioning Board, known as NHS England, and clinical commissioning groups (CCGs) to promote the NHS Constitution.

And, by amending the Health Act 2009 so that:

- the new NHS bodies established by the Act must have regard to the NHS Constitution; and
- local authorities, when they are undertaking their public health functions, must have regard to the NHS Constitution.

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1 Health Act 2009: <http://www.legislation.gov.uk/ukpga/2009/21/contents>

2 Health and Social Care Act 2012: <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

The Government has introduced new requirements for registration with the Care Quality Commission (CQC) that include new fundamental standards. These came into force on 1 April 2015 and are the standards below which care must never fall. They are the minimum standards that everybody has a right to expect when they receive care. All health and social care providers registered with the CQC have to meet the fundamental standards, and CQC has a range of enforcement powers that it can use to protect patients and service users when these standards are not met.

The duty to promote requires that both NHS England and clinical commissioning groups must, in the exercise of their functions, act with a view to securing health services that are provided in a way which promotes the NHS Constitution, and promotes awareness of the NHS Constitution among patients, staff and members of the public.

The Care Act 2014 includes a duty for Health Education England to promote and have regard to the NHS Constitution.

The Health Act 2009 can be found at:

**[www.legislation.gov.uk/ukpga/2009/21/section/1/enacted](http://www.legislation.gov.uk/ukpga/2009/21/section/1/enacted)**

The Health and Social Care Act 2012 can be found at:

**[www.legislation.gov.uk/ukpga/2012/7/contents](http://www.legislation.gov.uk/ukpga/2012/7/contents)**

The Act 2014 can be found at:

**<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>**

## Where does the Constitution apply?

The core principles of the NHS are shared across all parts of the United Kingdom. However, the NHS Constitution applies only to the NHS in England. The devolved administrations in Scotland, Wales and Northern Ireland are responsible for developing their own health policies.

## What to do if your expectations are not met

### Providing Feedback

The NHS welcomes and encourages feedback (both positive and negative) from patients (their carers and families), the public and NHS staff. This is a vital source of information and will help the NHS to improve.

### Patients

You, your family or someone acting on your behalf can feed back directly at the point of care, either to the clinician or organisation providing care, or through the local Patient Advice and Liaison Services (PALS). PALS are available in most hospitals and act on patient and family concerns. They liaise with staff, managers and, where appropriate, other relevant organisations, to seek to deliver speedy solutions and to help bring about changes to the way those services are delivered. PALS may also be able to provide details of locally – or nationally-based support



agencies, where appropriate. By providing a concise statement of what patients can expect from the NHS, the NHS Constitution makes it easier for service users to raise questions and provide challenge directly at the point of care.

**Healthwatch England** is the national consumer champion for both health and social care, and has a role in representing the views of patients, service users and the public at the national level. This includes providing information and advice to the Secretary of State for Health, NHS England, CQC, and Monitor.

**Local Healthwatch** ensure that people's views and experiences inform the commissioning, provision and scrutiny of local health and social care services, including through its seat on the local Health and Wellbeing Board. A Health and Wellbeing Board is in place in each upper tier and unitary local authority in England. It brings together Local Government (elected councillors and senior officers), the local NHS and other key local partners, to provide strategic leadership for the local health and wellbeing system. They are a forum where key leaders from the health and care system work together to improve the health and wellbeing of their local population, to reduce health inequalities. The public's views and concerns about their local health and social care services help build a picture of where services are doing well and where they can be improved.

Local Healthwatch can also alert Healthwatch England or the CQC to concerns about specific health and care issues and providers, and provide people with information about local services and what to do when things go wrong, including information about how to complain.

If you would like to raise concerns or provide feedback about services received from your primary care provider (for example, GP, dentist or pharmacist) or secondary care provider (for example, a hospital) you can do so by contacting them directly. If you would like to raise concerns or provide feedback on your local public health services, you can contact the Director of Public Health at your local authority.

### Making a complaint

The NHS also has arrangements in place, allowing patients to complain if they are dissatisfied with the services they receive. You have the choice of making a complaint to either the service provider or the body that arranged for that service to be provided – the local CCG or NHS England. If you are unsure whether to make a complaint locally, you may wish to discuss the matter with your local PALS, NHS England (for primary care services e.g. GP services) or your local CCG. You can also seek assistance in making a complaint from the Complaints Advocacy Service. If you remain unhappy with the local resolution of your complaint, you can ask the **Parliamentary and Health Service Ombudsman** to look into your case.

Local authorities are responsible for the provision of public health services. If you wish to complain about public health services provided through local authorities, you should raise this directly with either the service provider or the local authority in the first instance. If, after exhausting the provider's or local authority's complaints procedure, you are not satisfied with the outcome of your complaint, you can complain to the **Local Government Ombudsman** who can investigate complaints about local authorities in a fair and independent way.

### **Most hospitals have a PALS. For help to find your local PALS contact your Local Healthwatch, which you can find via Healthwatch England's website**

- visit **[www.healthwatch.co.uk](http://www.healthwatch.co.uk)**

In addition to complaining to the Local Authorities and providers directly or to the Local Government Ombudsman, you can also tell your Local Healthwatch about the nature of your complaint. Under Section 221(2)(c) of the Local Government and Public Involvement in Health Act 2007, Local Healthwatch has a legal obligation to obtain the views of local people about their experiences of local care services, and also to make those views known to service providers, commissioners, Healthwatch England and the CQC.

The 'How do I give feedback and make a complaint' guidance explains how patients can give feedback or make a complaint about NHS care or treatment. It includes information on the NHS complaints arrangements, and what patients can expect when they make a complaint:

**<https://www.gov.uk/government/publications/the-nhs-constitution-for-england>**

#### **To contact NHS England**

- visit **[england.contact@nhs.net](mailto:england.contact@nhs.net)**
- call the Customer Service Centre: **0300 311 22 33**
  - Monday – Tuesday 8am to 6pm
  - Wednesday 9.30am to 6pm
  - Thursday – Friday 8am to 6pm
  - Closed at weekends and bank holidays

#### **To contact Healthwatch England and to find out how to contact your Local Healthwatch;**

- Visit **[www.healthwatch.co.uk](http://www.healthwatch.co.uk)**

#### **To contact the Parliamentary and Health Service Ombudsman;**

- visit **[www.ombudsman.org.uk](http://www.ombudsman.org.uk)**
- call the Helpline: **0345 015 4033**
- Use the Textphone (Minicom): **0300 061 4298**
- Text 'call back' with your name and your mobile number to **07624 813 005**; you will be called back within one working day during office hours (Mon to Fri, 8.30am–5:30pm)

#### **To contact the Local Government Ombudsman for advice or to make a complaint;**

- Visit **[www.lgo.org.uk/making-a-complaint](http://www.lgo.org.uk/making-a-complaint)**
- Call the Local Government Ombudsman Advice Team: **0300 061 0614**

If you have a question or concern about the application of the NHS Constitution, you should contact your local CCG. CCGs are responsible for commissioning the majority of services in their local area (except certain services such as primary care) and for ensuring themselves as to the quality and effectiveness of those services. They have specific duties to ensure that services are provided in a way consistent with the NHS Constitution and to promote awareness of the NHS Constitution among patients, staff and members of the public. They can therefore be approached on any matter relating to the NHS Constitution. To find your local CCG, please visit NHS Choices ([www.nhs.uk](http://www.nhs.uk)).

Patients and staff are in many cases also able to seek legal redress if they feel that NHS organisations have infringed the legal rights described in the NHS Constitution. For patients and the public, this could be in the form of a judicial review of the process by which an NHS organisation has reached a decision.

For detail on the rights and pledges relating to complaints and redress in the Constitution, see pages 84–92.

### Staff

In relation to staff concerns, NHS staff should first contact their line manager to see if they can find a solution. Details of what to do if you want to raise a concern are given from page 100 for staff.

## History of the NHS Constitution

The Constitution was developed as part of the NHS Next Stage Review led by Lord Darzi. It was first published on 21 January 2009 and brought together, for the 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 empowers patients, staff and the public to know and exercise their rights in order to help drive improvements in the services that the NHS provides.

The NHS Next Stage Review final report ‘High quality care for all’ can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085825](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085825)

Overseen by the Constitutional Advisory Forum, the Constitution was developed through extensive engagement and consultation with patients, the public and NHS staff and is based on evidence of what matters to them.

The Constitutional Advisory Forum’s report and the Government’s response to the consultation can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_091768](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091768)

The first report on the effect of the NHS Constitution was published on 4 July 2012. This report showed that three years on from the launch of the Constitution, the NHS remained true to its fundamental principles and values as expressed in the Constitution. The report also showed that whilst the NHS Constitution enjoyed wide spread support, awareness of the document among staff was low and lower still among the public. The report concluded that awareness among both staff and the public needed to increase and the Department of Health, NHS England, clinical commissioning groups, and Health Education England all would have an important role to play in promoting the NHS Constitution.

The second report on the effect of the NHS Constitution was published on the 1st July 2015. This report showed that six years on from its launch, there remains much work to be done to further embed the NHS Constitution into the NHS. Overall, public awareness of the NHS Constitution has dropped, emphasising the importance of promoting the Constitution so that patients and the public are more aware of it, and understand how to use it. Conversely, staff awareness of the NHS Constitution has in general significantly risen, and it is clear that NHS staff are increasingly engaging with the NHS Constitution to help inform their work. Staff remain enthusiastic and supportive of the Constitution. The report concluded that the NHS Constitution provides a focal point on what the health service is about, reminding everyone what the NHS is striving to achieve.

The first and second report can be found at:

**<https://www.gov.uk/government/publications/report-on-the-effect-of-the-nhs-constitution>**

## How has the Constitution changed?

Since its publication in 2009, there have been four public consultations that have proposed adding new patient and staff rights and staff duties. In light of these consultations and changes to the NHS Constitution, this Handbook has been revised four times in 2010, 2012, 2013, and again in 2015.

### March 2010

The NHS Constitution was updated to add new patient rights including:

- a new right for patients to start consultant-led non-emergency treatment within a maximum of 18 weeks of a GP referral and for the NHS to take all reasonable steps to offer a range of alternatives if this is not possible; and
- a new right to be seen by a specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected.

### March 2012

The Constitution was updated in 2012, as part of a series of measures intended to highlight the importance of whistleblowing in the NHS adding:

- an expectation that staff should raise concerns at the earliest opportunity;
- a pledge that NHS organisations should support staff when raising concerns; and
- clarity around the existing legal right for staff to raise concerns about safety, malpractice or other wrong doing without suffering any detriment.

### April 2013

In 2013, the Constitution was further updated in relation to a number of key areas such as:

- patient involvement;
- feedback;
- duty of candour;
- end of life care;
- integrated care;
- complaints;
- patient information;
- staff rights,
- responsibilities and commitments; and
- dignity, respect and compassion.

Also changed were the first, fourth, fifth and sixth guiding Principles of the NHS Constitution. The guiding principles were changed by regulations, see:

**[www.legislation.gov.uk/uksi/2013/317/contents/made](http://www.legislation.gov.uk/uksi/2013/317/contents/made)**

Technical amendments to the Constitution were also made in April 2013 to ensure that the Constitution reflected the changes made by the Health and Social Care Act 2012 (see page 5).

### July 2015

In July 2015, the Constitution was updated to reflect a limited package of changes. These include:

- reflecting recommendations made by Sir Robert Francis QC in his Inquiry Report on Mid-Staffordshire NHS Foundation Trust<sup>3</sup>;
- incorporating a series of fundamental standards, below which standards of care should never fall;
- highlighting the importance of transparency and accountability within the NHS;

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3 The Mid Staffordshire NHS Foundation Trust Public Inquiry Report:  
<http://webarchive.nationalarchives.gov.uk/20150407084003/http://www.midstaffspublicinquiry.com/report>

- giving greater prominence to mental health, through reflecting a parity of esteem between mental and physical health problems; and
- making reference to the Armed Forces Covenant.

Also changed were the first and fourth guiding principle of the NHS Constitution,<sup>7</sup> see <http://www.legislation.gov.uk/uksi/2015/1426/>

The Handbook is intended to be an enduring document, providing information about the NHS Constitution. The Department of Health would welcome your feedback on the content. Please email [NHSConstitution@dh.gsi.gov.uk](mailto:NHSConstitution@dh.gsi.gov.uk) or write to:

NHS Constitution Team  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

# Part I: NHS Values

This section explains the common values that underpin the NHS. The values are integral to creating a culture where patients come first in everything the NHS does.

These values are not intended to be limiting, individual organisations should use them as a basis on which to develop their own, adapting them to local circumstances. The values should be taken into account when developing services with partner organisations, patients, the public and staff

## Working together for patients

The value of 'working together for patients' is a central tenet guiding service provision in the NHS and other organisations providing health services. Patients must come first in everything the NHS does. All parts of the NHS system should act and collaborate in the interests of patients, always putting patient interest before institutional interest, even when that involves admitting mistakes. As well as working with each other, health service organisations and providers should also involve staff, patients, carers, local communities to ensure they are providing services tailored to local needs.

## Respect and dignity

Every individual who comes into contact with the NHS and organisations providing health services should always be treated with respect and dignity, regardless of whether they are a patient, carer or member of staff. This value seeks to ensure that organisations value and respect different needs, aspirations and priorities and take them into account when designing and delivering services. The NHS aims to foster a spirit of candour and a culture of humility, openness and honesty, where staff communicate clearly and openly with patients, relatives and carers.

## Commitment to quality of care

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. Quality should not be compromised – the relentless pursuit of safe, compassionate care for every person who uses and relies on services is a collective endeavour, requiring collective effort and collaboration at every level of the system. The delivery of high quality care is dependent on feedback: organisations that welcome feedback from patients and staff are able to identify and drive areas for improvement.

## Compassion

Compassionate care ties closely with respect and dignity in that individual patients, carers and relatives must be treated with sensitivity and kindness. The business of the NHS extends beyond providing clinical care and includes alleviating pain, distress and making people feel valued and that their concerns are important.

## Improving lives

The core function of the NHS is emphasised in this value – the NHS seeks to improve the health and wellbeing of patients, communities and its staff through professionalism, innovation and excellence in care. This value also recognises that to really improve lives the NHS needs to be helping people and their communities take responsibility for living healthier lives.

## Everyone counts

We have a responsibility to maximise the benefits we obtain from NHS resources, ensuring they are distributed fairly to those most in need. Nobody should be discriminated or disadvantaged and everyone should be treated with equal respect and importance.



## Part II: Principles that guide the NHS

The guiding principles set out in the NHS Constitution are the enduring high-level 'rules' that govern the way that the NHS operates, and define how it seeks to achieve its purpose. They are underpinned by the core NHS values and are made by Regulations

Like the NHS Constitution itself, the principles should be embedded at every level within the health service and among those organisations providing NHS services

### **Principle 1: The NHS provides a comprehensive service available to all**

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.

This principle makes clear that the NHS covers every branch of medical and allied activity, and that it exists to address both mental and physical health. NHS services should be available to everyone: no individual should be excluded from receiving NHS services based on the characteristics cited. The protected characteristics set out in this Principle are the same as those listed in the Equalities Act 2010.

Legal duties require NHS England and each clinical commissioning group to have regard to the need to reduce inequalities in access to health services and the outcomes achieved for patients.

This principle is mindful of the NHS' integral role in alleviating health inequalities, which can be defined<sup>4</sup> as 'differences in health status or in the distribution of health determinants between different population groups.' The Principle makes clear that the NHS has a 'wider social duty to promote equality through the services it provides'. This is a reference to the Public Sector Equality Duty arising from the Equality Act. The Health and Social Care Act 2012 builds on the requirements set out in the Equality Act, placing new legal duties on the Secretary of State, NHS England, clinical commissioning groups and Monitor in relation to health inequalities.

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4 World Health Organisation

**Principle 2: Access to NHS services is based on clinical need, not an individual's ability to pay**

This principle states unequivocally that NHS services should be free at the point of use, except where charges are expressly provided for in legislation (e.g. prescription charging and dentistry). Any decision to introduce new charges would need to be sanctioned by Parliament.

**Principle 3: The NHS aspires to the highest standards of excellence and professionalism**

This principle highlights the standards of excellence and professionalism that all parts of the NHS should aspire to when providing high quality care. In line with Lord Ara Darzi's definition of quality, this Principle explains that quality in health care focuses on effectiveness, safety and patient experience.<sup>5</sup> The Health and Social Care Act 2012 provides a further legal basis to this Principle, placing duties on the Secretary of State, NHS England and CCGs to secure continuous improvement in the quality of outcomes achieved by health services.

This principle also recognises that the NHS is dependent on its staff, and that it is only when staff are valued and supported that patients receive excellent care. This goes beyond education, training and development and includes, for instance, being listened to and treated with respect and understanding. It also emphasises the importance of patients being treated with respect, dignity, compassion and care.

The importance of innovation and medical research is underscored by this Principle as integral to driving improvements in healthcare services for patients.

**Principle 4: The patient will be at the heart of everything the NHS does**

The NHS 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, reservists, their families and veterans are not disadvantaged in accessing health services in the area they reside. 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.

This principle enshrines the NHS as a patient-centred service, emphasising that patients will be at the heart of everything the service does. It accentuates that, rather than being passive recipients of health care, patients also play a key role in managing their own health and should be actively supported by the NHS to do so. It recognises the need for patients, along with their families and carers, to be involved in discussions about their care, where it is appropriate to do so. The words "where appropriate" reflects the fact that involvement in all discussions and

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<sup>5</sup> High Quality Care for All: NHS Next Stage Review Final Report (2008)  
<http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/healthcare/highqualitycareforall/index.htm>

decision-making may not be possible in all instances, such as for practical reasons or where a patient has not consented to the involvement of their families and carers in discussions. The importance of individuals being involved in their own care and treatment was set out in the Health and Social Care Act 2012, which placed new duties on commissioners to do this.

This principle also highlights that NHS services should be coordinated around and tailored to the needs and preferences of patients. The Health and Social Care Act 2012 also places duties on commissioners to promote integration.

Finally, this principle makes clear that the NHS will encourage and welcome feedback from patients, the public and staff. It recognises that service improvement is dependent on feedback.

### Armed Forces Covenant

As part of this principle and in line with the Armed Forces Covenant,<sup>6</sup> the NHS will ensure that members of the Armed Forces Community (including those serving, reservists, their families and veterans) are supported, treated equally and receive the same standard of, and access to healthcare as any other UK citizen in the area they live. For those with concerns about their mental health who may not present for some time after leaving Service, they should be able to access services with health professionals who have an understanding of Armed Forces culture. Veterans who have lost a limb as a result of their service will be able to access prostheses that reflect their clinical need.

Veterans receive their healthcare from the NHS and are encouraged to identify themselves to their GP as member of the Armed Forces Community. Families of serving personnel moving around the country, any time taken on an NHS treatment waiting list will be taken to account in their new location. For further information on what you can expect if in the Armed Forces Community see Section C.2 Scope of the Covenant, Healthcare<sup>7</sup>. For families of serving personnel moving around the country, any time taken on an NHS treatment waiting list will be taken into account in their new location.

The Armed Forces Covenant sets out the relationship between the nation, the Government and the Armed Forces Community. The Covenant aims to ensure that those who the Armed Forces, whether as Regular Personnel or as a Reservist, their families and those who have served in the past (veterans), should face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is appropriate in some circumstances. 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.

For further information on the Covenant and the Annual Report visit:

**<https://www.gov.uk/government/publications/the-armed-forces-covenant>**

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<sup>6</sup> The Armed Forces Covenant 2013 <https://www.gov.uk/government/publications/2010-to-2015-government-policy-armed-forces-covenant/2010-to-2015-government-policy-armed-forces-covenant>

<sup>7</sup> Armed Forces Covenant, 2013

**Principle 5: The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population.**

This principle makes clear that patient interest comes before institutional interest, and that organisations involved in delivering NHS services (including local authority public health services) must work with each other and with other organisations if they are to achieve genuine improvements in the population's health and wellbeing. In addition, the NHS should work with the full range of local authority services, for example social care services, children's services and education services. The NHS should also work with other public sector organisations, for example, the police and criminal justice system, as well as private and voluntary sector organisations.

All organisations involved in delivering NHS services should share the values and Principles enshrined in the NHS Constitution.

**Principle 6: The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources.**

As the NHS is funded by public money, this principle highlights the importance of using this funding fairly in a way that benefits everyone the NHS serves. The NHS seeks to maximise benefits within the constraints of limited resources.

**Principle 7: The NHS is accountable to the public, communities and patients that it serves.**

This principle recognises that as a taxpayer-funded service, the Government is accountable to Parliament for the outcomes and spending of the NHS. There are various levels of responsibility and accountability for the NHS, and these must be clear to the public, patients and staff. The Government is required to explain how these accountabilities work in the Statement of NHS Accountability.

# Part III: Patients and the public

## Introduction

(Section 3a of the NHS Constitution)

The rights and pledges for patients and the public are set out in detail on the following pages. The rights and pledges recognised the importance of involving families and carers where appropriate.

The rights and pledges cover the seven key areas of the NHS Constitution:

- rights and pledges covering access to health services;
- rights and pledges covering quality of care and environment;
- rights and pledges covering nationally approved treatments, drugs and programmes;
- rights and pledges covering respect, consent and confidentiality;
- rights and pledges covering informed choice;
- rights and pledges covering involvement in your healthcare and in the NHS; and rights and pledges covering complaints and redress

## Fundamental Standards

The fundamental standards set the line below which care and treatment 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. The fundamental standards are legal requirements that NHS Hospitals, NHS Foundation Trusts, GP Practices, Ambulance services and other providers of NHS services must meet when providing health care and treatment

Since April 2015, providers registered with the CQC must comply with the fundamental standards as set out in Regulations 8 to 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (SI 2014/2936). The fundamental standards replace existing quality and safety regulations. Some fundamental standards are already partly reflected in the NHS Constitution.

Some fundamental standards, however, were not already reflected in the Constitution. In these cases, either a new right has been inserted in the Constitution, or the language amended to reflect the new fundamental standard. The fundamental standards apply to all registered persons registered with the CQC. Most providers of health services are required to register with the CQC – including, for example, NHS bodies and local authorities.

## Role of Care Quality Commission (CQC)

It is the CQC's role to make sure that providers meet the requirements contained in the fundamental standards, and to take action against providers who fail to meet them. The CQC can prosecute providers of health services for a breach of some regulations.

Patients should always be treated in line with the fundamental standards. If this is not happening, then the organisation is not meeting its legal duties, and CQC can take action against the provider.

Individual patients cannot enforce the fundamental standards directly through the courts, but if providers are not meeting their legal duties under the fundamental standards, the CQC can take action against that provider. Where rights contained in the fundamental standards are reflected elsewhere, there may be an alternative mechanism that enables individuals to enforce these rights. For example, one of the fundamental standards protects the right to safe care and treatment. Although individuals cannot enforce the fundamental standards directly, the law of negligence imposes on providers of healthcare a duty to take reasonable care and skill in the provision of treatment or other healthcare. If those providing your care do not take reasonable care to ensure that you receive safe treatment, and you are injured as a result, you may be able to bring an action in the courts for negligence.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

NHS services are generally provided free of charge. This includes access to local services like your GP, hospital or clinic, or health improvement services provided by your local authority, so you do not have to worry about payment.

There are some exceptions: for example, some people will have to pay for prescription charges and visits to the dentist. Overseas visitors may also have to pay charges.

### Source of the right

Section 1 of the NHS Act 2006<sup>8</sup> sets out the primary duty on the Secretary of State to promote a comprehensive health service and to exercise the Secretary of State's functions as to secure the provision of services for that purpose. The section goes on to state that services provided as part of the health service must be provided free of charge (unless charges are expressly provided for). The requirement to provide services free of charge applies in particular to hospital and community health services (services commissioned by NHS England and clinical commissioning groups under sections 3 and 3B of the Act) and to public health services (services provided or arranged by local authorities under sections 2A and 2B of the Act).

For primary care services, including GP services, the legislation that governs the arrangements (under which those services are commissioned by NHS England) does not generally permit the charging of patients (sections 83, 99, 115 and 126 of the NHS Act 2006).

There are a number of exceptions to the general prohibition on charging. In particular:

- prescription charges – section 172 of the NHS Act 2006 enables the Secretary of State to make regulations imposing prescription charges;
- dental charges – section 176 enables the Secretary of State to make regulations imposing charges for dental services;

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8 NHS Act 2009: <http://www.legislation.gov.uk/ukpga/2006/41/contents>

- ophthalmic charges – sections 179 and 180 enable the Secretary of State to make regulations providing for the making and recovery of charges for the supply of optical appliances and cost of a sight test; and
- charges for overseas visitors – section 175 enables the Secretary of State to make regulations imposing charges where certain non-UK residents receive NHS services.

There is provision for local authorities to charge for certain services, but not those provided to an individual for the purpose of improving their health (see regulation 9 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013).



## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

NHS services will always be available for the people who need them. Remember, no one can deny you the right to access these services because of your age, disability, race, gender or gender reassignment, sexual orientation, pregnancy and maternity, religion or belief, or marital or civil partnership status – these are all ‘unreasonable grounds’ on which to refuse patients access.

Access to NHS services is not denied in situations where patients pay for additional private care separately. Further information is set out in the Government’s response to Professor Richards’s report, *Improving access to medicines for NHS patients* (2008).<sup>9</sup>

If you are in the Armed Forces, the Ministry of Defence is responsible for your medical care. Primary care will generally be provided by Defence Medical Services and secondary care by the NHS.

### Source of the right

The Equality Act 2010 makes it unlawful for a public authority in the exercise of its functions, and for persons (including public authorities) providing goods, facilities or services to the public, to discriminate on specified grounds (subject to exceptions).

The National Health Service Act 2006, as amended by the Health and Social Care Act 2012, places duties on NHS England and clinical commissioning groups to have regard to the need to reduce inequalities in access to, and outcomes from, health care services for patients, and to assess and report on how well they have fulfilled this duty.

Furthermore, NHS England, clinical commissioning groups, NHS trusts and NHS foundation trusts must act in accordance with administrative law, i.e. their policies and decisions must be in accordance with their statutory duties, be reasonable and procedurally fair. In addition to the legislation on discrimination, therefore, it would be unlawful for those bodies to refuse access on unreasonable grounds.

<sup>9</sup> Department of Health (2009) Guidance on NHS patients who wish to pay for additional private care: Response to consultation: [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_096577.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_096577.pdf)

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

Your care and treatment needs and preferences should be assessed by people with the required levels of skill and knowledge for the particular task, and met where possible. The right distinguishes between your need for care and treatment, which must be met (providing the care/treatment is appropriate, available to you on the NHS, and in line with your consent), and your preferences, which should be reflected where possible.

This right should ensure that your care and treatment is well planned and that you are treated as an individual. The plans for your care and treatment should be reviewed regularly and whenever necessary, for example when you transfer between services.

There may be times when your needs and preferences cannot be met for some reason. In these instances, providers must explain the impact of this to you, and explore alternatives so that you can make informed decisions about your care and treatment.

### Source of right

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.

The purpose of the ‘person-centred care’ fundamental standard is to ensure that providers of health and adult social care services plan and provide patient care and treatment by meeting the following criteria:

- (a) be appropriate,
- (b) meet their needs, and
- (c) reflect their preferences.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

Clinical commissioning groups are responsible for commissioning most local health services. NHS England is responsible for commissioning primary care services (including the services provided by your local GP surgery, services provided by community pharmacies, dental services, and NHS sight tests). NHS England is also responsible for commissioning ‘specialised’ services for the small number of people who have rare health conditions, together with prison health services and some health services for members of the armed forces. Local authorities are responsible for providing and commissioning public health services.

All bodies commissioning services must assess the health requirements of the populations they serve, take account of inequalities in access to and outcomes from healthcare services, and commission the services that they consider necessary to meet the population’s needs.

Clinical commissioning groups are working closely with their local authority, and its partners including Health and Wellbeing Boards and Local Healthwatch, to assess and address local needs across health, public health and social care through joint strategic needs assessments and local commissioning plans.

## Source of the right

The legislation under which NHS England, and clinical commissioning groups commission services requires them to arrange for the provision of services for which they are responsible to such extent as they consider necessary to meet all reasonable requirements (sections 3, 3B, 83, 99, 115 and (with some differences) 126 of the NHS Act 2006).

Local authorities have a duty to take such steps as they consider appropriate to improve the health of the people in their area (section 2B of the NHS Act 2006) and additional duties in relation to particular services (see the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013).

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

UK patients may be able to travel to another country in the European Economic Area (EEA) or to Switzerland to receive medical treatment and either have this funded upfront or subsequently receive reimbursement from NHS England of some or all of the costs of that treatment.

The EEA consists of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

**Under Regulation (EC) No 883/2004** where your treating NHS consultant agrees that you should be offered a particular treatment on the NHS, and if that treatment is available under an EEA country's or Switzerland's health system, you can apply to NHS England to have your health costs met under an S2 form.

An S2 form must be authorised by NHS England if the NHS cannot provide the treatment without 'undue delay'.

What constitutes 'undue delay' is determined by a clinical assessment of a medically acceptable period of time for a patient to wait for treatment. This should be considered on a case-by-case basis and be subject to on-going review until the treatment is received.

The S2 form only covers treatment from a provider in the state system so will not cover private providers. If an S2 form is issued, you should be treated as if you are a resident of the country treating you. This means that if patients from that country in the same circumstances have to make an additional payment for particular care, so will you. If you have to make such a payment, you may request reimbursement of your costs from the NHS.

**Under EU Directive 2011/24/EU on the application of patients' rights in cross-border healthcare** (as implemented in England by the National Health Service (Cross Border Healthcare) Regulations 2013 which introduced sections 6BA and 6BB into the NHS Act 2006), you may travel to an EEA country (not Switzerland) to purchase treatment and if you would be entitled to that treatment under the NHS, you can apply for reimbursement, subject to certain limitations or conditions. You may be treated in either the state or private sector of that country.

If you seek treatment under this route, you are exercising a right to make a personal decision to leave the NHS and access another country's healthcare system. You will be treated under the legislation and standards of that country, though rules affecting what services you are eligible for are determined in the UK. However, the treatment must be medically necessary and the same as or equivalent to a service that you would be eligible to receive under the NHS.

When seeking to determine your entitlement to a certain treatment, you have a right to expect clear and transparent information from NHS commissioners (NHS England or your local CCG) about the treatments that would be available to you under the NHS. In most cases you would have to pay upfront for healthcare under this route and subsequently may request reimbursement from NHS England for some or all of the costs of this treatment. There may be cases where you can request that the NHS pay the foreign provider directly (in this instance the NHS will not be commissioning the service, it will act as a third party payer and would not be liable for negligent treatment).

In certain circumstances, you may be required to obtain prior authorisation (that is, before travelling) from NHS England for the treatment you seek in another EEA country. This is normally for high cost or specialised services. You are therefore advised to discuss your plans with NHS England or your clinician in advance to ensure that you will subsequently be able to claim reimbursement of some or all of the costs. Patients who receive emergency care in a private hospital or clinic while visiting another EEA Member State may also claim the reimbursement of the cost of that treatment up to the NHS equivalent cost. As part of the Directive, Member States are also required to set up National Contract Points to provide information for patients thinking of receiving healthcare in another Member State.

### Before you travel:

Before going abroad for medical treatment, it is important to get enough information to enable you to make the right choices. You should consider:

- whether you are likely to have language difficulties in the country where you plan to have treatment;
- how much you know about the medical practitioners and clinics you intend using;
- how your medical notes would be exchanged between medical teams in the UK and abroad;
- how your aftercare would be coordinated when you return home; and
- how you would deal with any complaint or problem should something go wrong following your treatment (the NHS is not liable for negligence or failure of treatment).

### Source of the right

European Community law, in particular:

- EU Directive 2011/24/EU on the application of patients' rights in cross-border healthcare) as implemented in England by the National Health Service (Cross Border) Healthcare Regulations 2013 and sections 6BA and 6BB of the NHS Act 2006;
- Under Regulation (EC) No 883/2004; and
- European Court of Justice case law.

## Right

“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.”

(Section 3a of the NHS Constitution)

### Source of the right

The Equality Act 2010 makes it unlawful for a person providing services to discriminate on various grounds listed above (subject to certain exceptions).

In addition, where your human rights are engaged (e.g. Article 2 of the European Convention on Human Rights (ECHR) (right to life)), discrimination may be contrary to Article 14 of the ECHR.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

This right is also based on the new fundamental standard of safeguarding service users from abuse and improper treatment as set out in regulation 13 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.



## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

You have the right to:

- start your consultant-led treatment within a maximum of 18 weeks from referral for non-urgent conditions; and
- be seen by a cancer specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected.

If this is not possible, the clinical commissioning group or NHS England, which commissions and funds your treatment, must take all reasonable steps to offer a suitable alternative provider, or if there is more than one, a range of suitable alternative providers, that would be able to see or treat you more quickly than the provider to which you were referred. A suitable alternative provider is one that can provide clinically appropriate treatment and is commissioned by a clinical commissioning group or NHS England. You will need to contact either the provider you have been referred to or your local clinical commissioning group before alternatives can be investigated for you. Your clinical commissioning group or NHS England must take all reasonable steps to meet your request.

Your right to start treatment within 18 weeks from referral will include treatments where a consultant retains overall clinical responsibility for the service or team, or for your treatment. This means the consultant will not necessarily be physically present for each appointment, but will take overall responsibility for your care. The setting of your consultant-led treatment, for example whether hospital based or in a GP-based clinic, will not affect your right to start treatment within 18 weeks.<sup>10</sup>

## Exceptions

The right to treatment is subject to various exceptions. In particular, the right to treatment within 18 weeks from referral will cease to apply in circumstances where:

- you choose to wait longer;
- delaying the start of your treatment is in your best clinical interests, for example where smoking cessation or weight management is likely to improve the outcome of the treatment;
- it is clinically appropriate for your condition to be actively monitored in secondary care without clinical intervention or diagnostic procedures at that stage;
- you fail to attend appointments which you had chosen from a set of reasonable options; or
- the treatment is no longer necessary.

The following services are not covered by the right:

- mental health services that are not consultant-led:<sup>11</sup>
- maternity services; and
- public health services provided or commissioned by local authorities.

## Source of the right

Part 9 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, as amended from time to time.

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<sup>10</sup> For information on mental health services, where the first waiting time standards are now being implemented, see footnote 11.

<sup>11</sup> The first mental health access and waiting time standards are currently being introduced and the Government has committed that by 31st March 2016, 75% of people accessing psychological therapies should do so within 6 weeks, 95% of people accessing psychological therapies should do so within 18 weeks, and 50% of people experiencing a first episode of psychosis should access early intervention in psychosis services within 2 weeks.

## Pledge

# “The NHS commits to provide convenient, easy access to services within the waiting times set out in this Handbook to the NHS Constitution.”

(Section 3a of the NHS Constitution)

All patients should receive high-quality care without any unnecessary delay.

This is emphasised in the mandate from the Government to NHS England April 2015 to March 2016, which sets out that timely access to services is a critical part of people’s experience of care<sup>12</sup>

Patients can expect to be treated at the right time and according to their clinical priority. Patients with urgent conditions, such as cancer, will be able to be seen and receive treatment more quickly. Organisations’ performance is monitored across all waiting time pledges.

There are a number of government pledges on waiting times, including:

- a maximum one month (31-day)<sup>13</sup> wait from diagnosis to first definitive treatment for all cancers;
- a maximum 31-day wait for subsequent treatment where the treatment is surgery;
- a maximum 31-day wait for subsequent treatment where the treatment is a course of radiotherapy;
- a maximum 31-day wait for subsequent treatment where the treatment is an anti-cancer drug regimen;
- a maximum two month (62-day) wait from urgent referral for suspected cancer to first treatment for all cancers;

<sup>12</sup> The mandate 2015 to 2016: <https://www.gov.uk/government/publications/nhs-mandate-2015-to-2016>

<sup>13</sup> ‘The NHS Constitution Handbook, The NHS Cancer Plan (2000), The Cancer Reform Strategy (2007) and Improving Outcomes: A Strategy for Cancer (2011) refer to the start date of the maximum one month (31-day) cancer waiting as being from ‘diagnosis to first definitive treatment’. In practice the Department of Health has been clear from the outset that, in order to enable the consistent reporting and management of cancer waiting times for a range of different diseases, the date the clock starts (day zero) for the one month wait is known as the “cancer treatment period start date”. In practice, for patients waiting for first definitive treatment, the “cancer treatment period start date” will be the same date as the “decision to treat date”. “Decision to treat date” is the date upon which the patient agreed the treatment with the clinician responsible for that care.

## Pledge (contd.)

- a maximum 62-day wait from referral from an NHS cancer screening service to first definitive treatment for cancer;
- a maximum 62-day wait for first definitive treatment following a consultant's decision to upgrade the priority of the patient (all cancers);
- a maximum two-week wait to see a specialist for all patients referred for investigation of breast symptoms, even if cancer is not initially suspected;
- a maximum four-hour wait in A&E from arrival to admission, transfer or discharge;
- patients waiting for a diagnostic test should have been waiting less than 6 weeks from referral;
- a maximum 7 day wait for follow-up after discharge from psychiatric in-patient care for people under adult mental illness specialties on Care Programme Approach.
- all patients who have operations cancelled, on or after the day of admission (including the day of surgery), for non-clinical reasons to be offered another binding date within 28 days, or the patient's treatment to be funded at the time and hospital of the patient's choice; and
- all ambulance trusts to respond to 75 per cent of Category A calls within eight minutes and to respond to 95 per cent of Category A calls within 19 minutes of a request being made for a fully equipped ambulance vehicle (car or ambulance) able to transport the patient in a clinically safe manner.

In addition, local authorities with public health responsibilities should bear in mind that it is best practice for the care of patients and their sexual partners to offer genito-urinary medicine appointments as soon as possible, and that the clinical evidence indicates a maximum of 48 hours.

## Pledge

**“The NHS commits to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered.”**

(Section 3a of the NHS Constitution)

NHS England and clinical commissioning groups (CCGs) are responsible for involving their patients, carers and the public in decisions about the services they commission. Furthermore, CCGs must consult on their annual commissioning plans and any changes that may affect patient services.

In addition to the legal duty on NHS organisations to involve people and their representatives about services, patients and the public are placed at the heart of local decision-making through health and wellbeing boards

- Local Authority Health and Wellbeing Boards will bring together all of the key local system leaders of health and wellbeing, including local councillors, directors of public health, commissioners of adult social care and children’s services, CCGs and local Healthwatch to undertake Joint Strategic Needs Assessments (JSNAs) and to develop Joint Health and Wellbeing Strategies (JHWSs) which inform local authority, CCG and NHS England commissioning plans.
- Local authority directors of public health have a duty to publish annual reports on the health of the local population. Transparency at local level is enhanced by the Public Bodies (Admission to Meetings) Act 1960, which opened up meetings to the public, allowing members of the public and press to attend meetings of councils. Additionally, the Local Government Act 2000 provides people with access to information held by local authority executives, like leaders and elected mayors.
- JSNAs and JHWSs must be published and health and wellbeing boards should consider a variety of means of disseminating these in a way that makes them accessible to the public. Amongst other things, the publication allows the health and wellbeing board to show the local community that their needs, inequalities and key priorities were considered properly and their views and feedback were listened to and acted upon.

### Pledge (contd.)

Healthwatch works to ensure that the views and feedback from patients and users are an integral part of local commissioning. Local Healthwatch do this partly through their statutory seat on the Health and Wellbeing Board while Healthwatch England advise and provide information to the Secretary of State, NHS England, Monitor, English local authorities and the Care Quality Commission. Both Healthwatch England and Local Healthwatch organisations must produce annual reports, which may include information about how their activities have had an impact on the design and delivery of health and care services.

## Pledge

**“The NHS commits 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.”**

(Section 3a of the NHS Constitution)

Providing effectively integrated care, achieving better outcomes for service users in a cost-effective way is a key priority for the NHS. In particular, improving integration between health and social care is an important ambition, as signalled in the Health and Social Care Act 2012, the Care & Support White Paper<sup>14</sup> and the draft Care & Support Bill<sup>15</sup>, which introduce important measures to further promote integrated care.

The NHS and partner organisations, such as local authority social services departments, are jointly responsible for delivering integrated care. The NHS has a duty to work in partnership with local authorities to provide you with effective and personalised services that meet your health and wellbeing needs. In doing so, the NHS and partner organisations, should coordinate their health and social care services, where this is the best way of meeting your needs. The mandate to NHS England sets out the areas of health and care where the Government expects to see improvements. It:

- centres on the person as a whole, rather than on specific conditions;
- is coordinated around the needs, convenience and choices of patients, their carers and families;
- ensures people experience smooth transitions between care settings and organisations; and
- empowers service users so that they are better equipped to manage their own care, as far as they want and are able.

<sup>14</sup> Care & Support White Paper, 2012: <https://www.gov.uk/government/publications/caring-for-our-future-reforming-care-and-support>

<sup>15</sup> Draft care and Support Bill 2012: <https://www.gov.uk/government/publications/draft-care-and-support-bill-published>

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

NHS staff must treat you with reasonable care (this will be determined by the health professional's practice) in your treatment or when providing other healthcare. The staff who provide NHS services must be qualified and have the experience needed to do their jobs well. They are governed by professional bodies and/or regulators. A list of professional regulators is provided in the glossary (see page 152).

As well as taking reasonable care to ensure a safe system of healthcare and using qualified and experienced staff, NHS and private organisations which have to be registered must register with the Care Quality Commission, and be responsible for meeting essential safety and quality standards on an on-going basis.

### Source of the right

The law of negligence imposes a duty of care on providers of healthcare. This is a duty to take reasonable care and skill in the provision of treatment or other healthcare. For a health professional, what constitutes 'reasonable care and skill' will be determined by reference to professional practice. In the case of an NHS body or private organisation, it must take reasonable care to ensure a safe system of healthcare – using appropriately qualified and experienced staff.

If a provider breaches the duty and as a result causes injury to a patient, the patient is entitled to damages to compensate for the injury and resulting financial loss.

Regulations under the NHS Act 2006 governing the provision of GP and most other primary care services require practitioners to exercise reasonable care and skill in the delivery of obligations under their contracts.



Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Under the Health and Social Care Act 2008<sup>16</sup> persons who carry out regulated activities in England, including NHS and private and voluntary providers, have to register with the CQC and meet these essential requirements of safety and quality.

This right is also based on the new fundamental standards which sets out the required level of quality and safety providers must meet fit and proper persons employed as set out in regulations 12, and 19, of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The CQC's role is to improve care by regulating and inspecting services. The CQC ensures that only persons carrying out the regulated activity who have made a legal declaration that they meet the essential fundamental standards are allowed to provide care. The CQC actively works as part of the wider system to detect and address failing organisations, sharing its findings with other regulators, including Monitor, and the commissioners of services.

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<sup>16</sup> Social Care Act 2008: <http://www.legislation.gov.uk/ukpga/2008/14/contents>

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

The quality, design and general upkeep of healthcare premises has a material impact on the health and wellbeing of those using them. Those providing your care and treatment must take reasonable steps to ensure it is delivered in appropriate premises with adequate equipment. This right applies to patients and services users as well as staff and visitors.

Healthcare should always be provided in a clean, safe, secure and suitable environment. In practical terms this means that in addition to complying with specific legal requirements that are set out in health and safety legislation and the law relating to negligence, healthcare providers should:

- ensure that their premises are always ‘visibly clean and free from odours that are offensive or unpleasant’.
- have robust assurance arrangements in place to provide and maintain high standards of safety, security and suitability for their premises and equipment at all times.
- make sure that organisations and individuals with responsibility for the safety of premises and equipment are appropriately governed, adequately trained and qualified, apply the correct protocols and follow best practice guidance.<sup>17</sup>

The extent to which your right to a clean, safe, secure and suitable environment applies may be dependent on the circumstances and where you are receiving care. For example, if you are in your own home or using your own equipment, your provider may not be responsible for the standard of cleanliness. Regardless of where you are receiving care or treatment, if you are concerned about standards of cleanliness for which your provider is responsible, let the staff know.

The CQC will check that healthcare providers are meeting all these requirements and take action against providers who fail to meet them.

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<sup>17</sup> These requirements are more extensively set out in, Guidance for providers on meeting the regulations, March 2015, Care Quality Commission: [http://www.cqc.org.uk/sites/default/files/20150324\\_guidance\\_providers\\_meeting\\_regulations\\_01.pdf](http://www.cqc.org.uk/sites/default/files/20150324_guidance_providers_meeting_regulations_01.pdf)

## Source of right

This right is based on the specific fundamental standards of safe care and treatment, premises and equipment, set out in regulations 12, 15 and 17 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The law of negligence also imposes a duty of care on providers of healthcare. This is a duty to take reasonable care and skill in the provision of treatment or other healthcare. For a healthcare professional, what constitutes “reasonable care and skill” will be determined by reference to professional practice. In the case of an NHS body or private organisation, it must take reasonable care to ensure a safe system of healthcare using appropriate qualified and experienced staff. If a provider breaches the duty and as a result causes you injury, you are entitled to damages to compensate for the injury and resulting financial loss.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

Where you are provided with accommodation or an overnight stay as part of your care or treatment, or where you receive nutrition and hydration as part of your care and treatment, your nutrition and hydration needs must be met. Each patient should receive suitable nutrition and hydration appropriate to their individual needs, whether nutritionally well or nutritionally vulnerable. Patients should be screened for malnutrition in order to inform their individual plan of care.

Nutrition and hydration can range from food and drink provided by the catering service, to specialist nutritional interventions administered by clinical staff. Dietary requirements should be reasonably met, whether specific or unusual to an organisation's general population, for example cultural or religious.

In order for patients to receive appropriate nutrition and hydration, it is important that unnecessary activity is ceased to protect mealtimes. Those who require assistance to eat and drink should receive appropriate support, including encouraging involvement of family members/carers where possible.

Your nutritional needs must be regularly reviewed.

### Source of right

This right is based on the new fundamental standard about nutrition and hydration, which is set out in regulations 9,14 and 17 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

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.

NHS organisations are expected to meet any hospital food standards identified in the NHS Standard Contract covering patient nutrition and hydration, healthier eating for the whole hospital community and sustainable food and catering services.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

Quality of care is personal to each individual patient – you have the right to high-quality care that is safe, effective and right for you.

NHS England and clinical commissioning groups (CCGs) have a duty to act with a view to securing continuous improvements in the quality of services provided to individuals. Improvements will be measured in terms of the actual outcomes achieved for patients, including those that show the effectiveness of the services being provided, the safety of the services being provided, and the quality of the experience undergone by patients.

To help achieve this, NHS bodies have put in place systems to measure and improve the overall care they provide, so that they can find out how well they are delivering these standards of care.

The NHS and local authorities will also monitor effectiveness and outcomes more systematically through measurement against metrics. At a national level, quality improvement will be measured through the Outcomes Frameworks. The NHS Outcomes Framework sets out over sixty indicators designed to measure outcomes across the ‘comprehensive service’<sup>18</sup> and span five domains, which seek to show what the NHS should be striving to achieve for patients and relate to the statutory definition of quality:

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18 NHS Outcomes Framework 2015-16: <https://www.gov.uk/government/publications/nhs-outcomes-framework-2015-to-2016>

### Effectiveness of care

- Domain 1: Preventing people from dying prematurely.
- Domain 2: Enhancing the quality of life for people with long-term conditions.
- Domain 3: Helping people to recover from episodes of ill-health or following injury.

### Patient experience

- Domain 4: Ensuring people have a positive experience of care.

### Patient safety

- Domain 5: Treating and caring for people in a safe environment and protecting them from avoidable harm.

NHS England has translated, where possible, these national outcome indicators down to clinical commissioning groups through the Clinical Commissioning Group Outcome Indicator Set, [www.england.nhs.uk/ccg-ois/](http://www.england.nhs.uk/ccg-ois/)

The public health outcomes framework is based on 66 indicators, all of which are measured at local authority level.

The National Institute for Health and Care Excellence (NICE) supports the NHS to understand what high quality care looks like through the development of robust evidence-based guidance and quality standards. These can be used by health and care practitioners, commissioners and providers to assess and improve the quality of the services that they offer

### Source of the right

The National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) places a duty on NHS England to exercise its functions effectively, efficiently and economically (section 13D), and a duty as to the improvement in quality of services provided to individuals (section 13E). Clinical commissioning groups (CCGs) are also under a duty to assist and support NHS England in discharging its duty under section 13E so far as relating to securing continuous improvement in quality of primary medical services (section 14S) of the NHS Act 2006. CCGs are also under a similar duty as to improvement in quality of services (section 14R).

Those provisions also place a duty on the Secretary of State (section 1A(4)) and NHS England (section 13E(4)), in discharging those duties, to have regard to any quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

The law of negligence imposes a duty of care on providers of healthcare. This is a duty to take reasonable care and skill in the provision of treatment or other healthcare. For a health professional, what constitutes 'reasonable care and skill' will be determined by reference to professional practice. In the case of an NHS body or private organisation, it must take reasonable care to ensure a safe system of healthcare – using appropriately qualified and experienced staff.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Under the Health and Social Care Act 2008 persons who carry on regulated activities in England, including NHS, private and voluntary providers, have to register with the CQC and meet a set of essential requirements of safety and quality.

## Pledge

# “The NHS commits to identify and share best practice in quality of care and treatments.”

(Section 3a of the NHS Constitution)

All NHS organisations and local authorities work to improve the quality of the services they provide or commission, including by assessing clinical and service innovations relevant to their clinical responsibilities. *High Quality Care For All* defined quality as having three dimensions: ensuring that care is safe, that it is effective, and that it provides patients with the most positive experience possible. These three dimensions of quality are being placed at the core of everything the NHS does – both as ends in themselves, but also because delivering the best quality of care will ultimately ensure that the system as a whole gives best value. This definition of quality has been reflected in legislation through the Health and Social Care Act 2012 (see new duties as to improvement in quality of services inserted into the NHS Act 2006 – sections 1A, 13E and 14R (as inserted by sections 2, 23, and 26 of the 2012 Act). Under section 3(1) of the Local Government Act 1999, local authorities are under a statutory duty to improve the way their functions are exercised having regard to the economy, efficiency and effectiveness. This duty affects the decisions local authorities make in commissioning and providing services, including public health services.

Individual clinical teams are already encouraged to participate in clinical audit, comparing their standards of care with current best practice. Furthermore, NHS England has a legal duty to have regard to the quality standards prepared by NICE. NICE Evidence Services provides access to quality-assured information on best practice in health and care. Local services' use of these products will be informed by local needs and priorities, and the NHS will make information about quality performance more accessible through the continued publication of Quality Accounts.

For more information on how the NHS will monitor the effectiveness and outcomes of care see page 48.



## Right

“You have the right to drugs and treatments that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you.”

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 from a date no longer than three months from the publication of the recommendation unless, in certain limited circumstances, a longer period is specified.

(Section 3a of the NHS Constitution)

### What this right means for patients

NICE is the National Institute for Health and Care Excellence. It is an independent organisation responsible for providing national guidance to help those working in the NHS, local authorities and the wider community to deliver high quality care.

NICE technology appraisals and highly specialised technology assessments may lead to recommendations on the use of specific new and existing drugs or treatments within the health service. When a NICE technology appraisal or highly specialised technology assessment results in a recommendation for the use of a drug or treatment, the relevant health body must fund that drug or treatment for patients when it is clinically needed. The relevant health body may be a CCG, NHS England or a Local Authority depending on the service the drug or treatment supports.

In practice, this means that you have a right to receive that drug or treatment if NICE has recommended its use in a technology appraisal or a highly specialised technology assessment and your clinician says it is appropriate for you to receive it.

There may be a few cases where the usual three month period for compliance with the statutory duty to fund a particular recommendation is extended, usually for a limited period in order to allow the NHS to make arrangements for implementation. In those cases, the right applies once the extended period specified in the NICE recommendation has expired.

## Source of the right

Regulations 7 and 8 of the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013 require compliance with NICE technology appraisal recommendations and highly specialised technology recommendations.

The regulations require that the relevant health body apply funding so as to ensure that a treatment covered by a prescribed NICE recommendation be made available within the three month period specified by NICE in the recommendation. Very occasionally, the period for funding may be extended, in which case, this will be notified in the NICE recommendation at the time of a publication and only after consultation with the relevant stakeholders.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

The availability of some healthcare services is determined nationally – for example, under the National Institute for Health and Care Excellence’s (NICE) technology appraisal or highly specialised technology recommendations, where all CCGs, NHS England or local authorities have to fund the recommended drugs and treatments. There are also some services that are commissioned directly by NHS England, which will therefore take a national decision on their funding.

However, in most cases, decision-making on whether to fund a service or treatment is left to the local CCG or local authority. This is to enable CCGs and local authorities to commission services that best fit the needs of their local population.

For such decision-making, it is important that the process is rational, transparent and fair. This right ensures that there is such a process.

If a CCG, a local authority or NHS England has decided that a treatment will not normally be funded, it needs to be able to consider whether to fund that treatment for an individual patient on an exceptional basis.

## Source of the right

From 1 April 2013,<sup>19</sup> Part 7 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 placed a requirement on CCGs and NHS England to have arrangements in place for making decisions and adopting policies on whether a particular drug or other treatment is made available for the people for whom they are responsible. NHS England and CCGs will also have to publish information on those arrangements, and publish reasons for any funding policy or make such reasons available on request.

Administrative law requires that the decisions of NHS bodies and local authorities are rational, procedurally fair and within their powers.

In addition, decisions by the courts have made it clear that, although an NHS commissioner (which since 1 April 2013 includes a local authority commissioning public health services) can have a policy not to fund a particular treatment (unless recommended in a NICE technology appraisal recommendation or highly specialised technology recommendation), it cannot have a blanket policy; i.e. it must consider exceptional individual cases where funding should be provided.

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<sup>19</sup> This aspect of the Standing Rules comes into force for limited purposes on 1 February 2013: namely insofar as it relates to the functions of the Board or a CCG in arranging for the provision of services as part of the health service on and after the relevant date.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

The Joint Committee on Vaccination and Immunisation (JCVI) is the national expert advisory body responsible for advising the Secretary of State for Health on issues regarding vaccination and immunisation.

The JCVI gives different types of advice. The right applies where, following a request from the Secretary of State for Health, the JCVI makes a recommendation to introduce a new national immunisation programme, or to make a change to an existing national immunisation programme.

Where the JCVI makes a recommendation of this sort, the Secretary of State will be obliged to make arrangements in England to ensure that the national immunisation programme is implemented so that the people who meet the criteria in the recommendation have access to the vaccine via the NHS.

In practice this means that, if you fall into a group that the JCVI recommends is vaccinated against a particular disease, you have the right, after allowing for a reasonable period of time to implement the programme, to be vaccinated against that disease free of charge on the NHS if you wish to receive the vaccination.

### Source of the right

Regulations place a duty on the Secretary of State to make the necessary arrangements to implement JCVI recommendations, where those recommendations meet certain conditions.

Health Protection (Vaccination) Regulations 2009.<sup>20</sup>

The Secretary of State will be permitted reasonable time in which to introduce the national immunisation programme. Implementing a national campaign can be complicated to organise and the high-level implementation stage can take up to two years or more following a recommendation.

<sup>20</sup> Health Protection (Vaccination) Regulations 2009: <http://www.legislation.gov.uk/uksi/2009/38/contents/made>

## Pledge

# “The NHS commits to provide screening programmes as recommended by the UK National Screening Committee.”

(Section 3a of the NHS Constitution)

The UK National Screening Committee is the national advisory body, which advises Ministers and the NHS on all aspects of screening. It makes recommendations on which screening programmes should or should not be introduced based on robust analysis against a set of internationally recognised criteria. Screening should only be introduced where there is evidence that it will be effective and do more good than harm.

**Screening has the potential to save lives and improve quality of life** through the early diagnosis of conditions. Screening can reduce the risk of developing a condition or its complications.

Examples include:

- Approximately 4,500<sup>21</sup> women’s lives are saved each year in England because of cervical screening, and 1,300<sup>22</sup> from breast cancer screening.
- Evidence shows abdominal aortic aneurysm (AAA) screening should reduce preventable deaths from ruptured aneurysms among men aged 65 and over by around 50%.<sup>23</sup>
- 1,600 newborn babies are screened for hearing impairment every day, identifying problems two years earlier

21 Peto, J. et al. (2004) The cervical cancer epidemic that screening has prevented in the UK. *Lancet* 364, 249-256.

22 The Independent UK Panel on Breast Cancer Screening. (2012) *The Benefits and Harms of Breast Cancer Screening: An Independent Review.*

23 Thompson SG. Et al. (2009) Multicentre Aneurysm Screening Study Group. *BMJ.* 2009 Jun 24;338:b2307.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means

The right to dignity and respect is established by the European Convention on Human Rights (ECHR). The ECHR is designed to protect human rights and fundamental freedoms.

The right to dignity includes a right not to be subjected to inhuman or degrading treatment. The right to respect includes the right to respect for private and family life.

This right has broad meaning, but for the NHS your care, where possible, should be provided in a way that enables you to be treated with dignity and respect.

Health professionals, for example your clinician, your physiotherapist or your care worker – must also follow the standards set by their own professional body and/or regulator’s regulatory regime.

### Source of the right

The right to be treated with dignity and respect is derived from the rights conferred by the ECHR, as given effect in UK law by the Human Rights Act 1998. The relevant rights under the ECHR are the right to life (Article 2), the right not to be subject to inhuman or degrading treatment (Article 3) and the right to respect for private and family life (Article 8).

It is unlawful for a public body to act incompatibly with those ECHR rights (section 6 of the Human Rights Act).

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

People who use services must be protected from suffering any form of abuse or improper treatment, including degrading treatment or treatment which significantly disregards their needs. Abuse includes physical or psychological ill-treatment, neglect, theft, misuse or misappropriation of money or property, discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It also means that unnecessary restraint should not be used.

To achieve this all providers must make sure that they have, and implement, robust systems and processes that make sure that people are protected. Staff should be aware of their individual responsibilities to prevent, identify and report abuse when providing care and treatment.

Providers must take action as soon as they are alerted to suspected, alleged or actual abuse, or the risk of abuse.

If a patient makes allegations of abuse, they must receive the support they need and where allegations of abuse are substantiated, providers must take action to redress the abuse and take the necessary steps to ensure the abuse is not repeated.

### Source of the right

This new right is based on the fundamental standard requiring providers registered with CQC to protect people from abuse and improper treatment set out in regulation 13 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The fundamental standards are legal requirements that NHS Hospitals, NHS Foundation Trusts, GP Practices, Ambulance services, and other providers of NHS services must meet. Patients should always be treated in line with the fundamental standards. If this is not happening, then the organisation is not meeting its legal duties, and CQC can take action against the provider. The fundamental standards came into force on 1st April 2015.



## Right

“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 interest.”

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.

(Section 3a of the NHS Constitution)

### What this right means for patients

No one can carry out any physical examination or give you treatment unless you have given your valid consent. You can therefore accept or refuse any treatment that is offered to you.

If you lack capacity to consent yourself, and have given a person legal authority to make treatment decisions for you, then they can consent to or refuse treatment for you (this is called having a lasting power of attorney) where this would be in your best interests.

If there is no such person then doctors will have to act in your best interests in deciding whether or not to carry out a treatment. Doctors must follow the guidance in the Mental Capacity Act 2005 when they make decisions in your best interest; they must consult with family members and other interested people where possible. For serious medical treatment decisions, if there is no family available with which to consult, they must consult an independent mental capacity advocate (an IMCA), who will support and represent you if you lack capacity to make a decision. In some difficult cases the courts will be asked to decide what is in a person's best interests.

Further detail about what happens when you cannot give consent yourself can be found in the Mental Capacity Act 2005 and its associated Code of Practice. For children who are unable to consent to or refuse treatment because they lack sufficient understanding (i.e. they are not 'Gillick competent') parents may consent or refuse treatment where this would be in the child's best interests. Again in some difficult cases the courts will be asked to determine what is in a child's best interests.

### Source of the right

The law relating to battery and assault makes it generally unlawful for a person to be given a physical examination or treatment unless they have given valid consent.

Investigation or treatment without valid consent may constitute a criminal offence or amount to battery.

If a person does not have the capacity to consent because of their physical or mental state, or because they are a child with insufficient understanding to give consent, treatment may take place without the consent of the individual concerned. In such cases, treatment may be consented to by another individual – for example, the parent of a child, or a personal welfare attorney appointed under the Mental Capacity Act 2005. In other cases, treatment must be in the best interests of the patient (in some cases, the NHS may apply to the court for a declaration that a particular treatment is in a person's best interests).

The Mental Capacity Act 2005 contains further detailed rules about capacity and consent to treatment.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

When you are deciding whether to give your consent, this right entitles you to have the information you need to make a decision. The information you are given should include the benefits and the risks of the suggested treatment, as well as the risks if you decide not to take the suggested treatment. This information should be provided in a way that you can understand.

Information about your treatment is an important part of your care and you should be given high quality information that is clear, accurate, impartial, balanced, evidence-based, easy to use and up-to-date.

### Source of the right

Under the law of negligence, a health professional may breach their duty of care to their patient if they fail to provide them with sufficient information in advance of treatment to ensure valid consent.

If no information is provided, or the information is insufficient and the individual patient would not have consented if they had been given sufficient information, and they have suffered physical harm as a result of the procedures, they are entitled to bring a claim for damages as compensation for the loss suffered.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

You have the right to see your health records. Ask your health professional in writing if you would like to see them. There are limited exceptions to this right. The main kind of circumstances where information may be withheld are where the information includes details about another person such as a family member and it is not clear whether you already know this information or where some of the information may be seriously harmful to you, for example, where serious mental illness means you may be a risk to yourself.

From 2015 your GP should be able to give you electronic access to your own GP records, with the view that in due course, that you will be able to access online your own records across health and care services.<sup>24</sup>

You have the right to have any factual inaccuracies corrected. Ask your health professional about amending your records if you believe they contain a factual error. There are limited exceptions to this right. There is no obligation to amend professional opinion, however sometimes it is difficult to distinguish between fact and opinion. Where you and the health professional cannot agree on whether the information in question is accurate you can ask that a statement is included to set out that the accuracy of the information is disputed by you.

### Source of the right

The legal right of access to your own health records and other information an organisation holds about you is a requirement of the Data Protection Act 1998 (sections 7-14). This right is not an absolute right but the circumstances in which information may be withheld are limited and you should still be given access to the rest of the information. There are also a number of exemptions (sections 27-39).

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<sup>24</sup> Personalised Health and Care 2020: A framework for action: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/384650/NIB\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384650/NIB_Report.pdf)

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

NHS staff have both a professional and legal duty to keep information you provide to them confidential and to respect your privacy. This does not mean that your information will not be shared but it does mean that it will only be shared with your agreement (consent) or if there is another legal basis. This means that apart from if you give your consent, your information can be shared where the law provides or has the effect that personal confidential information must or may be shared for a specific purpose, for example, certain diseases that must be notified to Public Health staff.

### Source of the right

Common law imposes a duty of confidentiality on individuals or bodies that receive or hold personal information about a patient in the course of treatment or otherwise seeking clinical assistance. The duty requires that information held in confidence is only disclosed to a third party when:

- the person that the information is about has consented;
- there is another basis in law for disclosure; or
- the public good that would be served by disclosure outweighs the public good of maintaining public trust in the NHS as a confidential service and an individual's right to confidentiality.

Keeping personal information, such as health records, confidential is in the public interest so that people feel able to trust clinicians and other health professionals treating them with their most sensitive and personal information and therefore to get the most effective care for themselves and also to make the best use of the limited resources of the NHS. Sharing information to protect another person's health or for the benefit of other patients or society as a whole is also in the public interest. Often these two public goods work together but sometimes they need to be weighed up against one another and the right balance found. The public interest test involves balancing these public goods in different circumstances. This means that your information can also be shared (under common law and the Human Rights Act 1998) where the wider public interest to share the information outweighs the public interest in protecting the public's trust in the NHS as a confidential service and your personal privacy.

The Data Protection Act 1998 provides additional safeguards by requiring those who hold personal information to comply with various 'Data Protection principles'. These include ensuring that information is held securely with appropriate technical and organisational measures to prevent unauthorised or unlawful use.

A right to privacy, for both individual and family life, is provided under Article 8 of the European Convention on Human Rights (ECHR). This has been adopted in UK law through the Human Rights Act 1998. Article 8 establishes a right to respect for private and family life, which encompasses the disclosure of personal information.

Regulations under the NHS Act 2006 governing the provision of GP and other primary care services require providers to comply with specified requirements concerning confidentiality. Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession, for example, General Medical Council Guidance on Confidentiality.<sup>25</sup>

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<sup>25</sup> General Medical Council Guidance on Confidentiality: [http://www.gmc-uk.org/guidance/ethical\\_guidance/confidentiality.asp](http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp)

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

You can know how information that identifies you and is collected about you as part of your care is used for purposes other than your direct care, such as for research or for NHS management purposes.

### Source of the right

Legal rights to be informed about how your information is used are requirements of the Data Protection Act 1998.

The Data Protection Act created a positive obligation on organisations to provide individuals with information about the fact that they hold their personal data, the purposes for which their personal information will be used and anything else that a reasonable person might expect to know in the circumstances. This obligation does not apply where there is a statutory basis for the use of your information. There is a positive obligation in the Data Protection Act to deal with personal information fairly as well as lawfully (Schedule 1, Part I, paragraph 1) and it also includes an obligation on organisations to respond to people’s requests for information about how their information is used.

There are a number of exemptions in the Act, for example where someone is under investigation by the police, and informing the individual concerned would undermine the purpose of the investigation (sections 27-39).

Under the common law duty of confidence, you have a right to be informed about how your confidential information is to be used as part of the process of obtaining your consent for its use. In relation to the use of your information to support your care, consent is implied as part of you consenting to be examined and receive treatment. It is therefore important that you understand which staff could have access to your information, or if caring for you involves sharing information with other teams and organisation. You can of course ask for information at any time and this should be provided to you unless there is an exemption that applies. Where consent is required for the use of data, sufficient information about how it will be used will need to be provided to enable an informed decision to be made.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

You can request that your confidential data is not used for reasons other than your direct care. NHS staff need to consider any objection you might have. If there are legal reasons why they cannot respect your wishes about your data, these must be explained to you.

### Source of the right

Where the legal basis for using your confidential data is under statutory law, you do not have the right to choose whether or not your information is used. However, statutory law providing a legal basis for processing fall into two types: those that make the disclosure of information compulsory (or mandatory) and those which permit the disclosure of information. In general, most statutory provisions permit confidential and other personal information to be disclosed but do not compel disclosure. In addition, personal and confidential information may also be disclosed where the balance of public interests favours disclosure (see the right to privacy and confidentiality on page 59).

If you object to your information being used, you have the right to have your objections considered, where the statutory basis for using your information is ‘permitted’ rather than ‘mandated’ or the public interest is being used.

The right to have your objections considered (and your wishes respected unless there is a good reason, and to be informed of that reason), is derived from the common law and the Human Rights Act, which requires that interference with your privacy is necessary and proportionate. All uses of personal data and confidential information must have a legal basis and being informed of the legal basis is part of the right to be informed (see above).



There are also rights to prevent or block the processing of your personal data under the Data Protection Act (sections 10 and 14). However, the right to prevent processing has a high threshold because you have to show that the use of your personal data has or could cause substantial and unwarranted damage or distress. The right to block the use of data involves seeking remedy through the courts. Both of these rights are therefore a last resort.

### Consent

Where consent is the legal basis for processing, you have the right to choose to give or refuse your consent. You also have the right to change your mind and either give or withdraw your consent after your initial decision. Where you withdraw your consent, this will apply to continuing and future uses of your information which are based on your consent. The NHS will do its best to take account of your wishes in relation to other uses of your information and previous uses. In relation to previous uses, it may not be practicable to remove your data entirely from use but it may be possible to anonymise your information.

## Pledge

**“The NHS 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.”**

(Section 3a of the NHS Constitution)

This pledge is intended to encourage better communication between organisations and staff to support the care of individuals and as a result to improve the safety and effectiveness of care. Where the purpose is to support your care, information about you will only be shared with your consent. In general, this consent will be implied as part of the consent you give to be referred to other services but you should be informed about these uses. If you do not want information shared then you should discuss this with your clinicians, so that you understand how this may compromise the quality of care the NHS is able to provide.

## Pledge

**“The NHS commits 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 this Handbook to the NHS Constitution.”**

(Section 3a of the NHS Constitution)

Providers of NHS funded care are expected to eliminate mixed sex accommodation except where it is in the best overall interest of the patient involved, or reflects their personal choice.

## Pledge (Contd)

This means that patients should not have to share sleeping accommodation with others of the opposite sex, and should have access to segregated bathroom and toilet facilities. Patients should not have to pass through opposite-sex areas to reach their own facilities. Women in mental health units should have access to women-only day spaces.

Sleeping accommodation includes areas where patients are admitted and cared for on beds or trolleys, even when they do not stay overnight. It therefore includes all admissions and assessment units (including all clinical decision units), plus day surgery and endoscopy. It does not include areas where patients have not been admitted, such as accident and emergency cubicles.

Single-sex accommodation can be provided in:

- Single-sex wards (i.e. the whole ward is occupied by men or women but not both)
- Single rooms with adjacent single-sex toilet and washing facilities (preferably en-suite)
- Single-sex accommodation within mixed wards (for instance, bays or rooms that accommodate either men or women, not both; with designated single-sex toilet and washing facilities preferably within or adjacent to the bay or room).

## Pledge

**“The NHS commits to anonymise the information collected during the course of your treatment and use it to support research and improve care for others.”**

(Section 3a of the NHS Constitution)

This pledge is intended to protect your privacy and confidentiality whilst enabling the NHS to use information collected or generated during the provision of care to improve the care, treatment and services for everyone. This uses a variety of sources including: clinical audit, population needs assessment and research. Information that has been anonymised is no longer regarded as personal data and therefore the same restrictions of needing consent or another legal basis to use the information no longer apply.

## Pledge

**“The NHS commits where identifiable information has to be used, to give you the chance to object wherever possible.”**

(Section 31 of the NHS Constitution)

This pledge acknowledges that in some instances it is not possible to use anonymised information. Where this is the case, a legal basis is needed to use identifiable information. This may be through consent, in which case you can either give or refuse to give your consent. Often, however, a legal basis other than consent will be used. This may be either set out in statute or where the balance of public interests supports the use of the information. Other than where a statutory provision mandates the use of the information, you have the right to object (as set out above). Where the activity is supported under the Health Service (Control of Patient Information) Regulations 2002, made under section 251 of the NHS Act 2006, then your objections would generally be respected.

## Pledge

**“The NHS commits to inform you of research studies in which you may be eligible to participate.”**

(Section 3a of the NHS Constitution)

This pledge aims to give people better access to the potential benefits of participating in research studies including clinical trials. Information that identifies you will not be given to researchers unless you have given your consent or the research has been given approval under the Health Service (Control of Patient Information) Regulations 2002.

## Pledge

# “The NHS commits to share with you any correspondence sent between clinicians about your care.”

(Section 3a of the NHS Constitution)

The relationship between patient and clinician works best when it is based on trust, openness and understanding and sharing correspondence in this way helps to achieve this. This commitment is about enabling patients to be better informed about their condition, to provide what they need for effective care and to enable them to take greater responsibility for their own health.

There is evidence that, when patients receive copies of correspondence between clinicians about their care, it improves their understanding of their condition, enabling them to take control of their own health and to make decisions about their treatment. It can also enable more accurate medical records allowing people to correct any errors.

Patients can ask for, and should receive copies of letters and other correspondence about their care. This includes letters on referral, letters following outpatient appointments and discharge letters that are sent routinely between clinicians as part of patient care.

The Care Quality Commission has tracked delivery of this commitment by NHS trusts through its national patient survey programme. Trust-by-trust results are available at [www.cqc.org.uk/public/reports-surveys-and-reviews/surveys](http://www.cqc.org.uk/public/reports-surveys-and-reviews/surveys).

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

You can choose with which GP practice you would like to register. That GP practice should accept you onto its list of NHS patients unless there are good grounds for not doing so, for instance because you live outside the boundaries that it has agreed with NHS England or because they have approval to close their list to new patients. In rare circumstances, the GP practice may not accept you if there has been a breakdown in the doctor-patient relationship or because you have behaved violently at the practice. Whatever the reason, they must tell you why.

If you cannot register with your preferred GP practice, NHS England will help you find another.

### Source of the right

The right is derived from the duties imposed on the provider of GP services by virtue of regulations made under the NHS Act 2006, in particular paragraphs 15 to 17 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004 and paragraphs 14 to 16 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

Within your GP practice, you have the right to say which particular GP you would like to see. Your GP practice will try to give you your choice, but there may be good reasons why you cannot see your preferred GP.

### Source of the right

The right is set out in the regulations made under the NHS Act 2006, which underpin the contractual arrangements for the providers of GP services – in particular paragraph 18 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004 and paragraph 17 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

Patients have the right to access clear and comparable data about the organisations that provide their care. This transparency will help patients to make informed choices about their care, and will also help to drive improvements in quality.

Since April 2015, registered providers who have received a quality rating from CQC have been required to display the rating awarded in all premises where a regulated activity is being delivered, and in their main place of business. This includes community premises and other locations which might not necessarily be registered with CQC (for example premises from which they provide occasional clinics). This is part of the information published in various places, including: Quality Accounts; CQC’s own website and sites such as MyNHS and NHS Choices.

My NHS is a website (<https://www.nhs.uk/service-search/performance/search>) that provides performance information to support transparency and drive quality. You can see key data used by the NHS and local councils to monitor performance and shape the services you use. We are continually adding new information and working to make it as clear as possible. We have made it easy for people to comment on how it could be improved, and to tell us what they want to see.

### Source of right

From April 2015, registered providers who have received a quality rating from CQC are required to display the rating awarded under regulation 20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

<http://www.cqc.org.uk/content/regulation-20a-requirement-display-performance-assessments>



## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means for patients

You have the right to choose the organisation or team that provides your NHS care when you are referred for your first outpatient appointment with a service led by a consultant or by a named health care professional. There are certain exceptions including:

#### Persons excluded

- persons detained under the Mental Health Act 1983;
- serving members of the Armed Forces; and
- prisoners, including those on temporary release from prison or detained in other prescribed accommodation (e.g. a court, secure children’s home, secure training centre, an immigration removal centre and a young offender institution).

#### Services excluded

- where speed of access to diagnosis and treatment is particularly important, for example
  - emergency attendances/admissions;
  - attendances at a Rapid Access Chest Pain Clinic under the two-week maximum waiting time; and
  - attendance at cancer services under the two-week maximum waiting time.
- maternity services; and
- public health services commissioned by local authorities.

Local authorities arranging public health services are not required to offer a choice of service provider, but can be expected to do so as a matter of good practice whenever it is appropriate.

Your right to choose will develop as choice is extended into other areas. You have a right to information where there is a legal right to choice. Currently, this gives you a right to information to support you in choosing your provider when you are referred for your first outpatient appointment with a service led by a consultant. Information to help you make your choice can be found on the NHS Choices website ([www.nhs.uk](http://www.nhs.uk)). CCGs are expected to promote this information and make it more accessible to patients.

### Source of the right

Part 8 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013.

## Pledge

**“The NHS commits to inform you about the healthcare services available to your, locally and nationally.”**

**“The NHS commits 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.”**

(Section 3a of the NHS Constitution)

Providing information to support choice is a major priority for the NHS. Everyone should be given the opportunity to participate in decision making about their care, and in order for this to happen, information should be given in a form appropriate to their understanding and level of development.

Considerations should be given to children and young people so that they are able to participate in decision making about their care and treatment with their families and carers should they wish to.<sup>26</sup>

Considerations should be given to the clinical needs and mental capacity of people with mental illness, so that they are able to participate and make informed decisions about their care and treatment, and to include their families and carers should they wish.

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<sup>26</sup> System wide pledge for Better Health Outcomes for Children and Young People.  
[www.dh.gov.uk/health/2013/02/national-pledge-cyp](http://www.dh.gov.uk/health/2013/02/national-pledge-cyp)

## Pledge (Contd)

Important information includes:

- NHS Choices, which is a website (**[www.nhs.uk](http://www.nhs.uk)**) setting out information on services, treatments and lifestyles. It helps people to understand what services are available and where these services can be accessed. Increasingly, the information will become available through other channels (such as mobile phones and touch-screen kiosks) which are being developed for those who do not use the internet. NHS Choices is regularly updated with new comparative information, and there is a process to ensure that this is sufficiently robust to be of real use to patients;
- choice in the NHS – **<http://www.nhs.uk/choiceintheNHS>**
- choice in mental health – **[www.nhs.uk/mentalhealthchoice](http://www.nhs.uk/mentalhealthchoice)**
- NHS England guidance: **<http://www.england.nhs.uk/ourwork/qual-clin-lead/pe/bp/guidance/>**
- information prescriptions, which are available on NHS Choices and locally from healthcare professionals, help people to access relevant, reliable and personalised information about their long-term condition and how to manage their care;
- *Your health, your way – your guide to long-term conditions and self care*<sup>27</sup>, which has been published on NHS Choices to provide patients with long-term conditions, such as asthma and diabetes, with information about the choices that should be available to them locally to enable them to care for themselves (self care) in partnership with health and social care professionals;
- information about how NHS services are performing, published by the Care Quality Commission;
- information about how local authorities are performing on improving public health, published by Public Health England.
- MyNHS, is a website (**<https://www.nhs.uk/service-search/performance/search>**) that provides performance information to support transparency and drive quality. You can see key data used by the NHS and local councils to monitor performance and shape the services you use. We're continually adding new information, and working to make it as clear as possible, based on what people tell us they want to see.
- local Healthwatch organisations have a role in providing (or signposting to) information about access and choice in relation to local services.

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27 Your health, Your Way - your guide to long term conditions and self care: <http://www.nhs.uk/Planners/Yourhealth/Pages/Yourhealth.aspx>

## Right

“You have the right to be involved in planning and making decisions about your health and care with your care provider or providers, including your end of life care, and to be given information and support 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, if appropriate.”

(Section 3a of the NHS Constitution)

### What this right means for patients

This right is about providing you with the opportunity to help plan and make decisions about your care and treatment. You should be involved as much as you want to be in discussing your needs and preferences, and you should be given the information you need to understand the choices available to you, as well as the risks and benefits involved. You will be listened to and treated as an individual.

‘If appropriate’ has been included as it is not possible to offer patients the chance to manage their own care and treatment at all times: for example, if the patient is unconscious and in need of urgent care and treatment. This right includes offering the option of having a personal health budget (PHB). A personal health budget is an amount of money and a person-centred care and support plan to support your identified health and wellbeing needs, planned and agreed between you and your local NHS team. The aim is to give people with ongoing health care needs and disabilities greater choice and control over the healthcare and support they receive.

Adults and children who are eligible for NHS Continuing Healthcare already have a right to have a PHB. However, the NHS is also working towards rolling PHBs out further for those patients with ongoing health needs who could benefit, and CCGs should make clear what patients can expect in respect of PHBs in their local area.

## Source of right

This right 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 collaborate with patients to develop 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.

It also reflects the right of patients who are eligible for NHS Continuing Healthcare to Personal Health Budgets under Part 6A of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendments) Regulations 2013.

GP services are provided under arrangements made with the NHS Commissioning Board. Those arrangements must comply with requirements set out in regulations made under the NHS Act 2006. In particular, the relevant regulations define the core “essential services” that providers must or may provide, as services for patients “delivered in the manner determined by the practice in discussion with the patient” (regulation 15 of the National Health Service (General Medical Services Contracts) Regulations 2004).

In addition, in relation to both GP and secondary care, for example hospital treatment, doctors registered with the General Medical Council have a duty to work in partnership with patients, which must include listening to patients and responding to their concerns and preferences, and giving patients the information they want or need in a way they can understand (in line with the General Medical Council’s Guidance: *Good Medical Practice and Consent: patients and doctors making decisions together*<sup>28</sup>). Other health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Health professionals must comply with common law requirements relating to informed consent. The NHS Commissioning Board and CCGs have a duty to promote the involvement of patients, and their carers and representatives, in decisions, which relate to the prevention and diagnosis of illness in the patients, or their care or treatment (sections 13H and 14U of the NHS Act 2006, as inserted by the Health and Social Care Act 2012).

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28 Good Medical Practice and Consent: patients and doctors making decisions together: [http://www.gmc-uk.org/guidance/ethical\\_guidance/consent\\_guidance\\_index.asp](http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp)

## Right

“You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident relating to your care which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You must be given the facts, an apology, and any reasonable support you need.”

(Section 3a of the NHS Constitution)

### What this right means for patients

This right is to ensure that providers are open and transparent with you, and/or with other relevant people who may be acting lawfully on your behalf in relation to your care and treatment. It also sets out some specific requirements that providers must follow when things go wrong with care and treatment. This includes informing you about the incident, providing truthful information and an apology when things go wrong.

Providers must also give all reasonable support necessary to help you overcome the physical, psychological and emotional impact of the incident. You must be treated with dignity and respect and should be shown empathy at all times.

### Source of the right

The new right reflects the legal obligation on providers registered with the CQC to act in an open and transparent way with patients and their families set out in regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. It came into force for NHS Trusts and Foundation Trusts in November 2014, and was extended to all providers registered with the CQC in April 2015. Providers registered with the CQC must inform patients about “notifiable safety incidents”, apologise and offer reasonable support.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means

You have the right to have your say in person or through a representative;

- in the planning of healthcare services commissioned by the NHS England and CCGs;
- on the proposals for any changes in the way in which those services are provided; and
- on decisions which may affect the operation of those services.

This right applies if implementation of a proposal or decision would have an impact on;

- the manner in which services are delivered to you or other people; or
- the range of health services available to you or other people.

### Source of the right

The legislation governing the NHS imposes duties on NHS bodies to make arrangements with a view to securing such public involvement in relation to the services for which they are responsible (section 13Q, 14Z2 and 242 of the NHS Act 2006).



## Pledge

**“The NHS commits to provide you with the information and support you need to influence and scrutinise the planning and delivery of NHS services.”**

(Section 3a of the NHS Constitution)

In addition to the duty of clinical commissioning groups (CCGs) and NHS England to involve their local populations in decisions about the planning and delivery of NHS services in their area, there are a number of policy commitments. Providing accurate and relevant information to support public involvement is an essential element of this.

- CCGs and LAs have a statutory obligation to carry out a joint strategic needs assessment and to agree a joint health and wellbeing strategy, through the health and wellbeing board. Engaging patients (their carers and families) and the broader community in the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy process is a key way to involving the local community in the decisions about planning and delivery of NHS services in their area.
- Local Healthwatch organisations are the local consumer champion for health and social care. One of their roles is to gather and represent the views of the community about their experiences of health and care services in the local area. Local Healthwatch have a statutory seat on the health and wellbeing board, alongside CCGs and local area teams of NHS England. By working together, these organisations can help to ensure that patients are fully engaged in the planning and delivery of NHS services.
- In addition, the independent assessments of service quality from the Care Quality Commission can be used by all involved in planning, influencing and scrutinising NHS services.

## Pledge

# “The NHS commits to work in partnership with you, your family, carers and representatives.”

(Section 3a of the NHS Constitution)

## Working in partnership with you

Working in partnership with individual patients is at the heart of many Department of Health policies. This has been given extra impetus by the Health and Social Care Act 2012 which requires NHS England and clinical commissioning groups to involve patients (and their carers and representatives, if appropriate) in decisions about their health and treatment. This is often referred to as ‘Shared Decision Making’. When taking decisions about your health and treatment, you should receive support so that you feel able to make informed choices, including information about the available options and the risks and benefits associated with each option.

Examples of DH policies that promote working in partnership with patients include the ‘choose and book’ initiative, where patients work in partnership with clinicians to arrange their care and book hospital appointments. Information prescriptions have been developed on NHS Choices for people with long-term conditions to help signpost them to the right information at the right time.

Another way you can be more involved in the care you receive is by a Personal Health Budget (PHB). Adults who are eligible for NHS Continuing Healthcare and children and young people eligible for Continuing Care already have a right to have a PHB. However, the NHS is also working towards rolling PHBs out further for those patients with on-going health needs who could benefit, and CCGs should make clear what patients can expect in respect of PHBs in their local area.

The Information Strategy<sup>29</sup> explains the benefits of information to health and wellbeing. For example, we can use information to understand how to improve our own and our family’s health, to know what our care and treatment choices are and to assess for ourselves the quality of services and support available.

Better use of information and innovative technology can help professional teams to prioritise more face-to-face support where that is needed, and can also enable local areas to design integrated health and care services, and improvement strategies that reflect local need.

29 Department of Health (2012) The information Strategy <http://informationstrategy.dh.gov.uk/>

## Pledge (contd)

### Working in partnership with your family, carers and representatives

There are currently many examples across the NHS of carers being treated as expert partners in care and being fully involved in care and discharge planning. *Recognised, valued and supported: next steps for the Carers Strategy 2010*<sup>30</sup> and includes a number of key commitments to making this a reality across the service. The updated strategy identifies four priority areas:

- supporting those with caring responsibilities to identify themselves as carers at an early stage, recognising the value of their contribution and involving them from the outset both in designing local care provision and in planning individual care packages;
- enabling those with caring responsibilities to fulfil their educational and employment potential;
- personalised support both for carers and those they support, enabling them to have a family and community life; and
- supporting carers to remain mentally and physically well.

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<sup>30</sup> Recognised, valued and supported: next steps for the Carers Strategy: <https://www.gov.uk/government/publications/recognised-valued-and-supported-next-steps-for-the-carers-strategy>

## Pledge

**“The NHS commits to involve you in discussions about planning your care and to offer you a written record of what is agreed if you want one.”**

(Section 3a of the NHS Constitution)

### **Involving you in discussions about planning your care**

The Government is committed to a patient-led NHS, strengthening your choice and management of your own care. We want to support shared decision-making and focus on improving patient outcomes. Involving you (and your carers and family, where appropriate) in discussions about planning your care is key to helping you understand what choices are available to you, and what support you might need to manage your condition and stay healthy.

For people with long-term conditions, the aim is to identify how your condition is impacting on the things that are important to you. A care planning discussion can help to identify a range of personal goals, and how the health system will support you in achieving them. It can also include your wishes around end of life care if this is relevant or appropriate. The discussion can also identify the range of support available, the extent to which you are able to self-care (or do things for yourself), what support groups are available and the most convenient way for you to access further information.

In this way, you will have more control over the care and support you receive, and this should help reduce the chance of any unplanned emergencies or unscheduled admissions to hospital.

The care planning discussion is generally led by your main health or care professional, so that could be in primary or secondary care (i.e. a GP or a hospital doctor). It may also be offered by a community pharmacist, e.g. after a medicines use review or a healthy lifestyle discussion. For people with long-term conditions, it is likely to be led by the GP and then added to by other health/care professionals as appropriate.

## Pledge (contd.)

The NHS has developed a range of Patient Decision Aids to support you and your health professional in discussions about planning your care. Patient Decision Aids are specially designed information resources that help people make decisions about difficult healthcare options. They will help you to think about why one option is better for you than another. People's views change over time depending on their experiences and who they talk to. Understanding what is important to you about your decision will help you choose the option that is best for you.

### **To offer you a written record of what is agreed**

The outcome of the discussion about your care will usually be recorded.

This record could be called many things – for example a care plan, a health plan, a support plan, a self-management plan or an information prescription. For some people their 'plan' will be very detailed, for others it might be something simpler.

It is good practice to offer you a written record of what is agreed. The care planning approach is well established in mental health services and in aspects of social care. The aim is to make this type of practice more generally available.

You may not want a written document, you might just want to record what you've agreed, say, in your patient notes. The important thing is that you know you have a plan and that you are happy with what has been agreed in it.

The Department of Health's End of Life Care Strategy (2008)<sup>31</sup> outlined a number of measures to be put in place to ensure that patients' needs are met. At a local level, for example we have piloted and supported the roll out of electronic palliative care co-ordination systems. These enable the recording and sharing of information about people's needs, wishes and preferences for end of life care, with their agreement, so that care provision is delivered in line with people's choices.

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<sup>31</sup> Department of Health (2008) End of Life Care Strategy – promoting high quality care for all adults at the end of life. [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_086277](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_086277)

## Pledge

**“The NHS commits to encourage and welcome feedback on your healthcare and care experiences and use this to improve services.”**

(Section 3a of the NHS Constitution)

The Government is committed to improving patients' experiences of NHS services, and that is why making the NHS more responsive to patients' needs is a key priority. Only by listening and responding to your views and experiences, and those of your family and carers, will the NHS know that it is delivering high quality care in the eyes of patients and the public. There are a variety of different methods that the NHS uses to capture your responses.

The feedback will be used by the NHS to improve in those areas that patients say matter most to them, or to celebrate where things are going well, so do please be honest and open about your experiences; both positive and negative.

The Friends and Family test is being implemented nationally from 1 April 2013 in inpatient wards and Accident and Emergency (A&E) departments. All patients who have stayed overnight on an inpatient ward, or who have been discharged from an A&E department will be given the opportunity to say whether they would recommend the ward or A&E department to their family or friends should they need similar care or treatment. All results will be published so you can compare results, and hospitals can judge their performance against others. The test will be rolled out to maternity services from October 2013, and as rapidly as possible thereafter for all those using NHS services.

Local Healthwatch gives citizens and communities a stronger voice to influence and challenge how health and social care services are provided within their area. Local Healthwatch enables people to share their views and concerns about their local health and social care services to help build a picture of where services are doing well and where they can be improved. Local Healthwatch also alerts Healthwatch England and the Care Quality Commission to concerns about specific health and care providers. Local Healthwatch works closely with local authorities, CCGs and NHS England in the planning of local health and care services – in this way they will ensure that local people's views are heard and used to shape local services.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means

If you are unhappy with a NHS service and decide to make a complaint, you have the right to have that complaint acknowledged by the organisation receiving the complaint within three working days (this does not include weekends and Bank Holidays). You also have the right for that complaint to be investigated properly.

### Source of the right

The right is derived from the legislation governing the NHS complaints procedure, which sets out various obligations on NHS bodies, local authorities, GPs and other primary care providers, and voluntary sector providers of NHS care.

See the (Local Authority Social Services and National Health Service Complaints England Regulations 2009) and Part 5 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012).

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means

If you make a complaint, you have the right to be offered a discussion about the way in which the complaint is to be handled and the time it is likely to take to investigate the complaint and to send you a response.

### Source of the right

The regulations governing the NHS complaints procedures impose a duty on NHS bodies to discuss with you the manner in which the complaint is to be handled, the periods in which the investigation into the complaint is likely to be completed and the response is likely to be sent to you (regulation 13 of the Local Authority Social Services and National Health Service Complaints England Regulations 2009, and Part 5 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012).



## Right

“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 need in consequence of the complaint has been taken or is proposed to be taken.”

(Section 3a of the NHS Constitution)

### What this right means

If you make a complaint, you have the right to be kept informed of how the investigation into that complaint is progressing. When the investigation is completed, you have the right to be told the outcome; this will include an explanation of the conclusions reached and what action has been taken (or will be taken) as a result.

### Source of the right

The regulations governing the NHS complaints procedures impose a duty on NHS bodies to keep you informed of the progress, as far as reasonably practicable, of your complaint. After completing the investigation, the body must send a written response to the complainant that explains how the complaint has been considered, and the conclusions reached in relation to the complaint. If the body is satisfied that any action is needed following the complaint, it must confirm whether this action has been taken or is proposed to be taken (regulation 14 of the Local Authority Social Services and National Health Service Complaints (England) Regulations

2009) and regulation 29 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012).

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means

If you are not happy with the outcome of your complaint, you can take your complaint to the Parliamentary and Health Service Ombudsman (or in the case of a complaint about a public health services, to the Local Government Ombudsman), who carries out independent investigations into complaints about unfair or improper action or poor service by the NHS in England.

For the Parliamentary and Health Service Ombudsman please:

- visit: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

For the Local Government Ombudsman

- visit: [www.lgo.org.uk](http://www.lgo.org.uk)

### Source of the right

This right is derived from the Health Service Commissioners Act 1993 and the Local Government Act 1974.

The Ombudsman will generally not investigate your complaint if you have not already invoked and exhausted the NHS or public health complaints procedures, unless under the circumstances it is not reasonable to expect you to have invoked or exhausted those procedures.

## Right

“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.”

(Section 3a of the NHS Constitution)

### What this right means

Judicial review is a process by which you can challenge a decision of the Secretary of State or an NHS body or local authority, on the basis that it is unlawful. Judicial review is not a form of appeal and is concerned primarily with how decisions are made, rather than the merits of the decision itself.

To be entitled to bring a claim for judicial review, a person must have a direct, personal interest in the action or decision under challenge. If this is something you want to do, you should seek legal advice. There are time limits for making a claim.

### Source of the right

This right is derived from administrative law. It is not a right of appeal, but is concerned with the lawfulness of a decision or policy.

## Right

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

(Section 3a of the NHS Constitution)

### What this right means for patients

If you have been harmed through negligent treatment, you have a right to claim for damages. If this is something you want to do, you should seek legal advice.

### Source of the right

#### The law of negligence.

Individual health professionals are governed by the standards set under the Professional regulatory regime that applies to their profession.

## Pledge

**“The NHS commits to ensure that you are treated with courtesy and you receive appropriate support throughout the handling of a complaint; and that the fact you have complained will not adversely affect your future treatment.”**

**“The NHS commits to ensure that when mistakes happen or if you are harmed while receiving healthcare, you receive an appropriate 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 (contd.)

**“The NHS commits to ensure that the organisation learns lessons from complaints and claims and uses these to improve NHS services.”**

(Section 3a of the NHS Constitution)

If you do have cause to make a complaint about NHS services or public health services commissioned by your local authority, the emphasis should be on seeking to resolve a complaint to your satisfaction, and to learn lessons from that complaint to prevent similar situations occurring again.

Although making a complaint to the organisation that provided the service is one way of enabling an organisation to learn lessons from its mistakes and to prevent them happening to anyone else, you are also able to complain to the body that commissions those services – your local clinical commissioning group, local authority (for public health services) or NHS England – if you prefer. These commissioning bodies have an important role in ensuring that all organisations providing NHS services have a fair and effective complaints process. If it proves not to be possible to resolve your complaint locally, you have the right to ask the Parliamentary and Health Service Ombudsman or the Local Government Ombudsman to look into your case.

Whilst the CQC does not have a role in handling individual complaints, it does use information from people who use services in its assessment of whether registered service providers are meeting the registration requirements; there is a requirement on providers to have effective systems in place for handling complaints, and for learning from complaints. The CQC has enforcement powers it can use if registered NHS providers fail to meet registration requirements to handle complaints properly.

The pledges are consistent with the *Principles of Good Administration*<sup>32</sup>, *Principles of Good Complaint Handling*<sup>33</sup> and *Principles for Remedy*<sup>34</sup>, published by the Parliamentary and Health Service Ombudsman, which the Department of Health fully endorses. These documents are available from the Ombudsman’s website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk).

32 Principles of Good Administration: <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration>

33 Principles of Good Complaint Handling: <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full>

34 Principles for Remedy: <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-for-remedy>

## Responsibility

“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.”

(Section 3 of the NHS Constitution)

### What this means in practice

You have a role to play in staying healthy. For information about how to do this, you can talk to your doctor, nurse (including health visitors and midwives) or therapist, or visit NHS Choices ([www.nhs.uk](http://www.nhs.uk)). You can ask about what support you might be offered in managing your condition yourself or changing to a healthy lifestyle stopping smoking, reducing weight, taking up exercise or reducing excessive alcohol consumption.

## Responsibility

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

(Section 3b of the NHS Constitution)

### What this means in practice

To find out where you can register, you can telephone or write to NHS England (the organisation responsible for commissioning GP services):

- Visit NHS Choices ([www.nhs.uk](http://www.nhs.uk))

## Responsibility

“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 the NHS services.”

(Section 3b of the NHS Constitution)

### What this means in practice

Patients have a right to be treated with respect and dignity in all their dealings with the NHS, but it is also important that they (and anyone who might accompany them) treat staff providing NHS services and other patients with respect and consideration in return. NHS staff should be able to work, and other patients be treated, without fear of being subjected to violence or abuse, nuisance or disturbance.

It is difficult to provide care to a patient if they are behaving violently and abusively. It is therefore in the interests of their own care, the safety, wellbeing and effectiveness of staff and the care of other patients that individuals do not act abusively and violently when seeking to access NHS services.

### Prosecution

NHS Protect provides standards for the NHS on protecting staff from violence.<sup>35</sup> These standards include steps to prevent violence against staff whenever possible and detail the actions available to the NHS, including prosecution of offenders where violence does occur. NHS Protect works with local organisations to help them take appropriate action, and with clinical experts and other stakeholders to promote the safety and security of NHS staff.<sup>36</sup>

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<sup>35</sup> NHS Protect leads work to identify and tackle crime across the health service. The aim is to protect NHS staff and resources from activities that would otherwise undermine their effectiveness and their ability to meet the needs of patients and professionals. For further information, please see <http://www.nhsbsa.nhs.uk/>

<sup>36</sup> For example, an online Design Council toolkit for reducing violence and aggression in Accident and Emergency units while providing efficient and informed service for patients is available at [www.designcouncil.org.uk/AEtoolkit/](http://www.designcouncil.org.uk/AEtoolkit/)



The NHS is encouraged to work with local police forces to deal with anyone who is aggressive and abusive to staff. Assaulting a member of staff or another patient is a serious criminal offence which can carry a prison sentence of up to life imprisonment depending on the severity of the assault. A joint working agreement has been signed by NHS Protect with the Association of Chief Police Officers and the Crown Prosecution Service to facilitate effective prosecution action against those who assault NHS staff. The fact that an offence has been committed against a person serving the public is considered an aggravating factor.

Provisions under the Criminal Justice and Immigration Act 2008 give NHS hospitals the power to remove from hospital premises individuals not in need of treatment and causing a nuisance or disturbance. If they refuse to leave without a reasonable excuse, they may be prosecuted. Those found guilty of the offence may be liable to a fine of up to £1,000. Where this nuisance or disturbance is persistent and disruptive, NHS bodies can also work in partnership with other authorities to seek Anti Social Behaviour Orders to place restrictions on an individual's ability to enter NHS premises.

### Alcohol and drugs

Hospital security staff can also be given powers, through the Community Safety Accreditation Scheme, to issue Penalty Notices for Disorder to those individuals whose behaviour is likely to cause harassment, alarm or distress. Those staff can also take action against the consumption of alcohol in a designated public place. Some hospitals have also found it effective to place police officers in A&Es. This could be funded through the late night levy which enables councils to collect a contribution from late-opening licensed premises towards the cost of policing.

Committing an offence while under the influence of alcohol or drugs is a factor that can increase the seriousness for the purposes of sentencing.<sup>37</sup>

### Denial of access to any NHS services

Providers of NHS services will have their own policies, which will seek to balance the interests of the patient, other patients and staff. These should reflect that violent and abusive patients can only be denied access to NHS services if it is clinically appropriate to do so, with consideration given to the possibility that the patient may have a severe or life-threatening condition that requires immediate attention. The processes and clinical assessment needed to establish this will depend on the services sought and the circumstances. In most circumstances the patient is to be assessed by an appropriate medical practitioner or suitably qualified person before any decision to refuse access is taken.<sup>38</sup> All decisions should be based upon an assessment of what a patient's reasonable requirements are in the light of their behaviour and in any given set of circumstances, and should only be made by a senior team member. Where urgent treatment is required, services may need to be provided in a manner that can safely and appropriately manage violent and abusive behaviour.

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<sup>37</sup> Sentencing Council Assault Definitive Guideline 2011, <https://www.sentencingcouncil.org.uk/publications/item/assault-definitive-guideline/>

<sup>38</sup> Requirements may differ in some circumstances, such as where patients are seeking dental or pharmacy services.

Some medical conditions or other underlying reasons may cause patients to exhibit disturbed, violent or abusive behaviours. If the patient has a disability, and their impairment is causing or contributing to the violent and abusive behaviour, 'reasonable adjustments' should be made in accordance with Equality Act 2010 to ensure that the medical condition is identified and treated.

There is no obligation on staff providing NHS services to refuse access to NHS services for patients who are violent and abusive.<sup>39</sup> Decisions must be taken as to what is reasonable in any given circumstances, including considering how to protect the health and safety of staff.

If a decision is made to refuse access to any NHS services, the patient should be given information about the appropriate way of challenging this decision.

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<sup>39</sup> However, NHS staff may not be able to provide treatment if they feel in serious and imminent danger as a result of any violence or abuse from either the patient(s) they are trying to treat or others in the vicinity.

## Responsibility

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

(Section 3b of the NHS Constitution)

### What this means in practice

The delivery of safe and effective care is reliant on good quality information. Patients are responsible for ensuring that information about them is accurate and up to date.

## Responsibility

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

(Section 3b of the NHS Constitution)

### What this means in practice

If you cannot make your planned appointment, please contact your doctor, nurse or therapist as soon as you can to let them know. This might make it possible for your appointment to be offered to somebody else.

## Responsibility

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

(Section 3b of the NHS Constitution)

### What this means in practice

You should follow the course of treatment that you have agreed with your doctor, nurse or therapist wherever possible. You can ask your doctor, nurse or therapist to explain to you what your treatment options are, what the most appropriate treatment is and why. Where required, a written care plan can also be requested.

## Responsibility

“Please participate in important public health programmes such as vaccinations.”

(Section 3b of the NHS Constitution)

### What this means in practice

Your doctor, nurse or therapist will advise you of the benefits and risks of vaccination programmes appropriate to you and other services designed to improve your health.

## Responsibility

“Please ensure that those closest to you are aware of you wishes about organ donation.”

(Section 3b of the NHS Constitution)

### What this means in practice

You can find out more about organ donation and how to become a donor at [www.organdonation.nhs.uk](http://www.organdonation.nhs.uk).

## Responsibility

“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 of someone you are a carer for is a patient and unable to provide feedback, you are encourage to give feedback about their experiences on their behalf. Feedback will help to improve NHS services for all.”

(Section 3b of the NHS Constitution)

### What this means in practice

All NHS organisations and local authorities providing public health services should provide you, your family and carers with an opportunity to give feedback on the care that you receive. This might be through, for example, national, local and/or practice surveys, or real-time feedback systems. Feedback to local authorities on their public health services can be provided directly to the Director of Public Health.

The Yellow Card Scheme is the UK’s system for collecting information on suspected side effects or adverse drug reactions to any medicine or vaccine [yellowcard.mhra.gov.uk](https://yellowcard.mhra.gov.uk).

Local Healthwatch also enables people to share their views and concerns about their local health and social care services to help build a picture of where services are doing well and where they can be improved.

# Part IV: Staff

## Introduction – Staff

(Sections 4a and 4b of the NHS Constitution)

This section describes the elements of the NHS Constitution that refer to NHS staff it covers:

- staff rights;
- staff pledges;
- staff legal duties; and
- expectations of staff.

It is our vision that all staff commissioning and providing NHS services should have rewarding jobs. They will be able to provide quality care because jobs will have been designed around patients with the input of staff. The inclusion of staff pledges, expectations, responsibilities and legal duties in the Handbook reflects the fact that improving the patient experience requires the continued improvement and of the working lives of staff. Staff covered by this Handbook include employees and contractors (people operating under a contract to provide services) who commission and/or provided NHS services, whether they work for the NHS organisations or for non-NHS organisations.

## Context

The principles that this section is based on come from research on 'What Matters to Staff',<sup>40</sup> which was carried out in 2007. This involved around 9,000 NHS staff across all professions and sought to identify what matters to them in their work. The research identified four themes. These are now reflected in the NHS staff survey and were also used to inform the NHS Constitution's values. What matters to staff is that they have:

- the resources to deliver quality care for patients;
- the support they need to do a good job;
- a worthwhile job with chances to develop; and
- the opportunity to improve the way they work.

To really embrace the full and challenging definition of quality set out in *High Quality Care For All*, it must be recognised that high-quality care requires high-quality workplaces, with commissioners and providers aiming to be employers of choice.

## Rights, pledges, expectations and responsibilities

This Handbook sets out our vision of the rights, pledges, expectations and legal duties that staff and employers can expect. These exist on two levels – the organisational and the personal.

At an organisational level, the NHS staff survey provides a key tool through which staff can express their views and offer feedback about their organisation as a whole. This Handbook should provide useful information to allow staff to consider their responses to any surveys. More and more organisations are using their survey findings to influence the way in which things are done locally and to address staff concerns. In addition, staff survey results are grouped under the staff pledge headings set out in the NHS Constitution, with an explanation added to reflect how they relate to these pledges. Together, these additions ensure the survey is better placed to support organisations to deliver improvements for their staff. The Care

Quality Commission uses the NHS staff survey data to support registration of NHS trusts and will use this to assess their ongoing compliance with the registration requirements.

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<sup>40</sup> Department of Health (2007) What matters to our patients, public and staff [http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Bulletins/theweek/DH\\_080355](http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Bulletins/theweek/DH_080355)

At a personal level, the information in this Handbook should provide a framework for discussions among individual members of staff and with their line managers, informing and enabling discussions on service improvement, team working, performance management, training and development. It is always better to discuss and resolve issues quickly. Staff should speak to a member of the management team or seek support from a colleague; options such as mediation should also be explored if problems persist.

The Handbook is designed to be a useful reference tool and is not intended to provide any new grounds for individual grievances or litigation.

The first section (page 103) summarises the current legal position (as at July 2015) on employees' rights.

The second section (page 117) includes pledges from employers, demonstrating their commitment to strive to provide a good working environment for staff.

The third section (page 128) summarises the current position on employees' legal duties.

The fourth section (page 135) includes details of employers' general expectations of staff.

However, the law changes all the time, and rights and duties will also vary according to individual contracts of employment, so this should not be regarded as definitive legal advice. Anyone seeking to enforce legal rights or duties should seek their own legal advice.



# Staff rights

This section summarises some important existing rights for all employees.

It is not a statement of the law and should not be regarded or relied upon as legal advice. Individual employees or employers must seek their own legal advice in all cases. Please remember that the law is constantly changing and that this document is a snapshot of the position as of July 2015.

It is important to note that legal rights and duties will also vary according to an individual contract of employment. Employers or employees seeking to rely upon or enforce legal rights or duties should also seek their own legal advice in all cases. Where an employee feels that a right is not being respected this should normally be raised with their line manager in the first instance.

Local Human Resources/Personnel teams will have details of their informal and formal resolution procedures and of how redress can be sought. In certain circumstances, an employee may also have to complain to an employment tribunal and it is very important for the employee to seek legal advice before doing so.

1. **“Have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives.”**

## Right

“To fair treatment regarding leave, rights and flexible working and other statutory leave requests relating to work and family, including caring for adults with whom you live.”

(Section 4a of the NHS Constitution)

### What this right means for staff

This right means that you can seek redress through your local arrangements to deal with disagreements either on specific contractual issues (terms and conditions) or on more general employment rights. If unsuccessful, you would have recourse to employment tribunal processes.

Employers are required to make reasonable adjustments to working hours for disabled staff and job applicants plus they must consider flexible working requests by employees with at least 26 weeks continuous service.

### Source of the right

The statutory rules (relating to flexible working) are set out in the Employment Rights Act 1996 and the Flexible Working Conditions 2014.

1. **“Have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives.”**

## Right

“To request other ‘reasonable’ time off for emergencies (paid and unpaid) and other statutory leave (subject to exceptions).”

(Section 4a of the NHS Constitution)

### What this right means for staff

Employers should provide employees with access to leave arrangements that help them to balance their work responsibilities with their personal commitments.

### Source of the right

Section 57A of the Employment Rights Act 1996

1. **“Have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives.”**

## Right

“To expect reasonable steps are taken by the employer to ensure protection from less favourable treatment by fellow employees, patients and others (e.g. bullying or harassment).”

(Section 4a of the NHS Constitution)

### What this right means for staff

Bullying and harassment are serious issues and should not be tolerated. Every organisation should have in place a bullying and harassment policy that is easily accessible to staff and managers. This should be monitored on a regular basis by senior managers. It should include details on how such issues will be investigated in a fair and timely way.

### Source of the right

Equality Act 2010

## 2. "Have a fair pay and contract framework."

### Right

"To pay; consistent with the National Minimum Wage or alternative contractual agreement.

"To fair treatment regarding pay."

(Section 4a of the NHS Constitution)

### What this right means for staff

Although individual employers retain some rights to determine their own pay policies, the overwhelming majority of NHS organisations continue to use national NHS pay policy.

National pay policy for the NHS is designed to provide fair, affordable pay in order to recruit, retain and motivate staff for the benefit of patients and to provide value for money for taxpayers. It also provides a range of flexibilities, such as the opportunity for recruitment and retention premia, to ensure that individual employers have the ability to respond effectively to local circumstances, while retaining a consistent national pay framework that is transparent and ensures equal pay for work of equal value. Changes to pay and pay systems from year to year are important to everyone involved in providing NHS services – both as employees and employers. In making these changes, independent advice and recommendations are sought as part of the transparent process to inform the final decision.

If your line manager cannot resolve a problem with your pay and you have sought advice and support from other people in your organisation, you may be able to lodge a 'grievance' with your employer. If that does not lead to a resolution locally, then you may be able to make a claim, which, in some circumstances, would be heard by an employment tribunal or county court.

For staff who are compulsorily transferred from the NHS to work on NHS-funded contracts will have, their pay, terms and conditions protected at the point of transfer under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE if TUPE applies).

### Source of the right

National Minimum Wage Act 1998 and may also exist in the terms and conditions of an employee's contract

Section 1 of the Equal Pay Act 1970 as amended by the Equal Pay (Amendment Regulations) 1983

### 3. "Be involved and represented in the workplace."

#### Right

"To be accompanied by either a Trade Union official or a work colleague at disciplinary or grievance hearings in line with legislation, your employer's policies or your contractual rights."

(Section 4a of the NHS Constitution)

#### What this right means for staff

If you are required to attend either a grievance hearing or a meeting or hearing that may result in disciplinary action, you can make a reasonable request to your employer to be accompanied by a colleague.

The person accompanying you can present and summarise your case and respond, on your behalf, to any view expressed at the hearing if you want them to do so. They cannot, however, answer questions on your behalf unless you and your employer agree.

Your employer's own disciplinary and grievance procedures may allow the accompanying person to take a fuller representational role and participate at an earlier stage of the process.

#### Source of the right

Sections 10 and 11 of the Employment Relations Act 1999 section 13(5) of the Employment Relations Act 1999 section 37 of the Employment Relations Act 2004 and Employment Act 2008

ACAS Code of Practice on Disciplinary and Grievance Procedures.

### 3. “Be involved and represented in the workplace.”

#### Right

“To consultation and representation either through the Trade Union or other staff representatives (for example where there is no Trade Union in place) in line with legislation and any collective agreements that may be in force.”

(Section 4a of the NHS Constitution)

#### What this right means for staff

It is good practice for your employer to inform and consult you and your Trade Union or other staff representatives on issues which may have an impact on your employment.

You should be consulted on an individual basis by your employer in any situation where your job may be at risk.

In certain situations, such as redundancy or staff transfers, your employer has either a statutory or a contractual obligation to inform and consult you or your Trade Union (or other staff representatives where there is no Trade Union in place).

Exactly who is consulted and how this occurs will depend upon the particular circumstances of your case, your individual employment contract and whether any collective agreements apply.

A recognised Trade Union may enter into collective agreements on your behalf where the Trade Union is recognised for this purpose by your employer in line with legislation.

#### Source of the right

Information and Consultation of Employees Regulations 2004

Trade Union and Labour Relations (Consolidation) Act 1992 and Regulations made pursuant to it.

Regulations 11–16 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 if there is a transfer of a function between employers

#### 4. "Have healthy and safe working conditions and an environment free from harassment, bullying or violence."

##### Right

"To work within a healthy and safe workplace and an environment in which the employer has taken all practical steps to ensure the workplace is free from verbal or physical violence from patients, the public or staff, to work your contractual hours, take annual leave and to take regular breaks from work."

(Section 4a of the NHS Constitution)

##### What this right means for staff

You can expect your employer to have made a suitable and sufficient assessment of the risks to the health and safety of employees and to have identified preventive and protective measures to be put in place. This will include arrangements to ensure effective planning, organisation, control, monitoring and review of the preventive and protective measures.

Assessing risks and implementing measures to prevent and manage violence against staff is a local responsibility. NHS organisations are encouraged to adhere to standards of security management developed by NHS Protect. These include ensuring that there is top-down organisational support for initiatives to protect staff from violence, providing conflict resolution training, and implementing preventive measures and response systems in case of violent incidents. NHS bodies are also encouraged to have local security management leads in place for work to ensure the safety and security of staff working at the organisation. NHS Protect provides guidance and assistance to health bodies and accredited training for security specialists.

If your organisation is unable to resolve an issue, under health and safety legislation a complaint can be raised with the Health and Safety Executive or the local enforcing authority.

##### Source of the right

Health and Safety at Work Act 1974 and associated regulations made under the Act

Working Time Regulations 1998 (for provisions relating to leave)



## 5. "Be treated fairly, equally and free from discrimination."

### Right

"To a working environment (including practices on recruitment and promotion) free from unlawful discrimination on the basis of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status."

(Section 4a of the NHS Constitution)

### What this right means for staff

NHS organisations are bound by the laws on unlawful discrimination that apply to all employers. In addition, as public bodies, they generally have duties in carrying out their functions, to have due regard to the need to promote equality of opportunity and to eliminate unlawful discrimination.

As a matter of good practice, your organisation should have a clear policy on equality and diversity, enabling people from the widest range of backgrounds to join and progress through the organisation, and a zero-tolerance approach to unlawful discrimination, bullying and harassment. Your organisation should also be knowledgeable about equality and diversity (with staff training available on these issues), and be committed to working towards best practice for inclusive recruitment and development. Examples of best practice include guaranteeing an interview to any disabled candidate who meets the essential criteria set out in the person specification for a vacancy.

If you believe and have evidence that your employer has breached its legal responsibilities, once internal options have been pursued, a complaint can be made to an employment tribunal or to the Equality and Human Rights Commission.

### Source of the right

Equality Act 2010

## 6. "Can in certain circumstances take a complaint about their employer to an Employment Tribunal."

### Right

"To appeal against wrongful dismissal."

(Section 4a of the NHS Constitution)

#### Source of the right

Any internal appeal process should be set out in your local contractual terms and conditions.

#### What this right means for staff

Employment Rights Act 1996 unfair dismissal or common law right to claim for breach of contract for wrongful dismissal.

### Right

"If internal processes fail to overturn a dismissal, you have the right to pursue a claim in the employment tribunal, if you meet required criteria."

(Section 4a of the NHS Constitution)

#### What this right means for staff

Any complaint may be made to either the employment tribunal or civil courts, depending on the nature and value of the claim made.

#### Source of the right

Section 86 and 94 of the Employment Rights Act 1996

Individual's contracts of employment will set out their entitlement to notice.

## 7. "Can raise any concern with their employer, whether it is about safety, malpractice or other risk, in the public interest."

### Right

"To protection from detriment in employment and the right not to be unfairly dismissed for 'whistleblowing' or reporting wrongdoing in workplace."

(Section 4a of the NHS Constitution)

### What this right means for staff

The Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 (PIDA) gives employees and workers a right not to suffer any detriment caused by any action, or failure to act, by their employer on the basis that the worker has made a protected disclosure (commonly referred to as whistleblowing). In certain circumstances, this right not to suffer detriment extends to detriment caused by others, such as colleagues. Where this right is breached the Employment Rights Act 1996 gives employees and workers a right to seek a remedy through an employment tribunal.

To qualify for protection under the whistleblowing legislative framework set out in the Employment Rights Act 1996, a whistleblower must make a protected disclosure in accordance with the requirements as set out in that Act. Whether disclosing a concern amounts to making a protected disclosure will depend on a number of things, such as, for example, to whom the disclosure is made, what it is about (e.g. if the health and safety of an individual has been or is likely to be endangered) and whether, in the reasonable belief of the worker, the disclosure is made in the public interest.

In the NHS itself, protected disclosures can be raised internally within the organisation. All NHS organisations should have an internal whistleblowing policy. Alternatively, the disclosure can be raised with a prescribed body, (such as the CQC and Monitor) or to a Minister at the Department of Health.

The whistleblowing provisions in the Employment Rights Act 1996 cover temporary workers including temporary agency staff and self-employed staff who are working for and supervised by the NHS or local authorities, and some students on work experience placements. It does not cover volunteers, but the Department of Health regards it as good practice for NHS organisations to include all workers including volunteers and all students on placements within the scope of their whistleblowing policies (local authorities are responsible for their own policies). The Employment Rights Act 1996 also makes it clear that any clause in a contract or agreement that purports to prevent an individual from raising a “protected disclosure” is void.

Where an individual is subjected to reprisals by their organisation for raising a concern or is dismissed in breach of the Employment Rights Act 1996, they can bring a claim for compensation in an Employment Tribunal.

Individuals should obtain their own legal advice. Further help and advice can be obtained free of charge via the freephone Whistleblowing Helpline on **08000 724 725** or **<http://www.wbhelpline.org.uk/>**. In addition, organisations such as PCaW publish material etc. including information about the law, which can be found at: **<http://www.pcaw.co.uk/law-and-policy>**

### Source of the right

The Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998

## 8. "Have employment protection (NHS employees only)."

### Right

"You have a right to employment protection in terms of continuity of service for redundancy purposes if moving between NHS employers."

(Section 4a of the NHS Constitution)

### What this right means for staff

A doctor or dentist on the training grades of registrar, senior registrar or specialist registrar will have their employment with a health service employer treated as being continuous when they move to a different health service employer. They will continue to be eligible for redundancy payments.

### Source of the right

Employment Protection (Continuity of Employment of National Health Service Employees) (Modification) Order 1996

Also section 218(8) of the Employment Rights Act 1996 Redundancy Payments (National Health Service) (Modification) Order 1993

## 9. "Can join the NHS Pension Scheme (NHS employees and some other groups, e.g. GPs)."

### Right

"You have rights relating to the ability to join the NHS Pension Scheme."

(Section 4a of the NHS Constitution)

### What this right means for staff

Staff employed by NHS organisations are able to join the NHS Pension Scheme, as are GPs, dentists, some other NHS primary care practitioners and employees of Independent Providers of NHS Health Services. Local authority staff have their own pension scheme.

The Treasury Guidance '*A Fair Deal for Staff Pensions*' allows all staff compulsorily transferred from the NHS to Independent providers delivering public services to retain access to the NHS Pension Scheme in many circumstances in. Further details can be found at:

**<https://www.gov.uk/government/publications/fair-deal-guidance>**

All providers of NHS services are encouraged to adhere to the Government's 'Principles of Good Employment Practice', which is a statement of good employment practice for Government, contractors and suppliers. The statement encourages suppliers to provide new entrants with fair and reasonable pay and terms and conditions.

### Source of the right

Rights conferred by the National Health Service Pension Scheme Regulations 1995, the National Health Service Pension Scheme Regulations 2008 and the National Health Service Pension Scheme Regulations 2015 (all amended from time to time). Note that as of 1 April 2015, a person cannot accrue further service in the 1995 or 2008 Sections of the NHS Pension Scheme (governed by the 1995 and 2008 Regulations respectively) unless they have transitional protection. Otherwise, all service from this date must be accrued in the 2015 NHS Pension Scheme (governed by the 2015 Regulations).

## Staff pledges

The pledges to NHS Staff reaffirm the vision that quality workplaces should exist for all staff delivering NHS services – they should not just be the preserve of high-performing organisations. This is important, since the evidence suggests that there is a clear connection between the experiences of patients and staff.

The pledges are made by all employers that provide NHS services, and are made to all staff that deliver NHS care, both professional and non-professional.

The pledges are not legally binding but represent a commitment by the NHS to provide high quality working environments for staff.

## Pledge

**“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.”**

(Section 4a of the NHS Constitution)

A positive working environment not only has benefits in terms of the experience of staff; it is also linked to positive outcomes for patients. In environments where they feel valued, cared about and supported, staff are in turn more able to value, care about and support their patients. A culture for NHS staff that is personal, fair and diverse can also be beneficial for patients.<sup>41</sup>

Several studies have shown clear evidence of the link between good staff experience and good patient experience, including:

- research undertaken in 2011 by the Aston University Business School ([www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_129643](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_129643)); and
- a 2012 report by Jill Maben, Riccardo Peccei, Mary Adams, Glenn Robert, Alison Richardson, Trevor Murrells and Elizabeth Morrow ([http://www.netscc.ac.uk/hsdr/files/project/SDO\\_FR\\_08-1819-213\\_V01.pdf](http://www.netscc.ac.uk/hsdr/files/project/SDO_FR_08-1819-213_V01.pdf)).

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<sup>41</sup> For further information about the ‘personal, fair and diverse’ NHS, refer to the NHS Equality and Diversity Council, <http://www.england.nhs.uk/nursingvision/>



### Pledge (contd.)

An open and supportive culture has been identified by the Mid Staffordshire Foundation Trust Public Enquiry ('Francis Inquiry') as a key element in successful organisations.

NHS staff are committed to their jobs and wish to perform to the best of their ability. Organisations play an important role in supporting staff to do this.

Compassion in Practice (Nursing, Midwifery and Care Staff Vision and Strategy):

**<http://www.england.nhs.uk/nursingvision/>** commits to implementing a measure of organisational culture within all organisations that provide care, and developing a plan for supporting those organisations to monitor and publish results including feedback from staff and the people the organisation cares for. It also aims to support positive staff experience that includes the review of the Nursing and Midwifery Council's 'raising concerns' message. This will only be achieved if members of staff are supported to do their job well through supporting positive staff experience.

See: **<http://www.england.nhs.uk/2012/12/20/edc/>**

## Pledge

**“The NHS commits 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.”**

(Section 4a of the NHS Constitution)

There is a real chance to benefit everyone by designing roles and responsibilities that both enable the delivery of high-quality care and allow staff to make a difference to patients, their families, carers and communities.

Contracts of employment for most NHS staff support this pledge. For example, under Agenda for Change, staff jobs should have been robustly evaluated and linked to pay rates. Staff should receive regular appraisals and opportunities for training and development.

A career framework and preceptorship framework for nursing have been published that will assist career development. The career framework will be developed further to provide more detail and improve usability and we are exploring the potential to extend the preceptorship framework to midwives and allied health professionals.

Work is now under way to develop roles, education and training pathways for a range of support staff in Bands 1-4.

## Pledge

**“The NHS commits 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.”**

(Section 4a of the NHS Constitution)

Health Education England is responsible for ensuring that education, training, and workforce development drives the highest quality public health and patient outcomes.

Health Education England will:

- Place providers of NHS services firmly in the driving seat to plan and develop the workforce, within a coherent national framework and to consistent standards;
- Ensure that staff are available with the right skills and knowledge, at the right time, and that the shape and structure of the workforce evolves to meet changing needs;
- Provide a clear focus on the entire healthcare education and training system, and ensure greater accountability against service improvements; and
- Ensure that investments made in education and training are transparent, fair and efficient, and achieve good value for money.

For more information see: <http://hee.nhs.uk/>

## Pledge

# “The NHS commits to provide support and opportunities for staff to maintain their health, wellbeing and safety.”

(Section 4a of the NHS Constitution)

All NHS staff should be able to work in a safe and healthy environment, in line with existing general employment law. Employers are legally responsible for providing a safe working environment for staff, and staff should ensure that they are fit to practise and that they, too, comply with health and safety legislation.

NHS employers, staff and staff side are working in partnership to go beyond the legal minimums by building on the Department of Health’s Improving Working Lives Standard (2000): [http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_4010416](http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4010416), Healthy Workplaces Handbook (2007) and the NHS Staff Council Occupational Health and Safety Standards (2008). Local authorities and their staff are able to negotiate similar arrangements.

Staff are also supported at work in a number of other ways:

- NHS Protect provides standards for NHS bodies on the protection of staff from violence. These include work on preventing violence wherever possible through appropriate policies, procedures, training and support, as well as taking all appropriate action when violence does occur. NHS Protect offers policy and operational guidance and assistance on this and provides training for local security-specialists. NHS Protect works with local organisations, clinical experts and other stakeholders to promote the safety and security of NHS staff. Joint working agreements are in place between NHS Protect, the Association of Chief Police Officers and the Crown Prosecution Service to facilitate effective criminal action against those who assault NHS staff.
- In order to tackle anti-social behaviour that affects staff and their ability to perform their roles, legislation provides a power for NHS staff or the police to remove from hospital premises individuals, not requiring treatment, who are creating a nuisance or disturbance. Failure to leave without reasonable excuse is an offence that could result in a fine of up to £1,000.

## Pledge (contd.)

- The Health and Social Care Act 2008 Code of Practice<sup>42</sup> on the prevention and control of infections and related guidance places a duty on all providers of healthcare and adult social care to ensure that staff, as well as patients and others, are protected against the risks of acquiring a healthcare associated infection.

Staff should also receive appropriate support for their health and wellbeing, including their mental health. There are already a considerable number of initiatives at all levels. The Department of Health, NHS Protect, NHS Employers, NHS Plus and others are actively supporting programmes to provide a healthy working environment, improve the health and wellbeing of NHS staff, and tackle violence, bullying, harassment and stress in the workplace. Individual local authorities have their own initiatives.

Some NHS organisations have found it helpful to sign up to the Public Health Responsibility Deal – an initiative whereby organisations work in partnership with Government to improve aspects of public health. In particular a growing number of NHS organisations have signed up to the health and work network of the deal which includes 8 pledges – 8 ways to improve the health and wellbeing of staff, including healthy eating in staff canteens, offering smoking cessation classes and health checks. (Full details can be found on the responsibility deal website, at <http://www.england.nhs.uk/nursingvision/>).

A key area of promoting the health and wellbeing of staff at work is to ensure that all managers recognise the need for supporting staff when off sick to help them back into work – in particular, they need to think carefully about necessary workplace adjustments which may be needed to ensure that the return to work is sustained.

Compassion in Practice (Nursing, Midwifery and Care Staff Vision and Strategy, 2012<sup>43</sup>) aims to support positive staff experience by ensuring that staff who provide care are nurtured and supported to be positive about their role and show this in the care that they provide, and in the way that they describe it. This means promoting healthy and safe environments, and creating worthwhile and rewarding jobs in which every role counts.

See: <https://www.gov.uk/government/policies/obesity-and-healthy-eating>

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42 The Health and Social Care Act 2008 Code of Practice: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400105/code\\_of\\_practice\\_14\\_Jan\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400105/code_of_practice_14_Jan_15.pdf)

43 Compassion in Practice (Nursing, Midwifery and Care Staff Vision and Strategy 2012: <http://www.england.nhs.uk/wp-content/uploads/2012/12/compassion-in-practice.pdf>

## Pledge

**“The NHS commits to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnerships working arrangements. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families.”**

(Section 4a of the NHS Constitution)

The national Social Partnership Forum, which includes the Department of Health, NHS Employers, NHS Trade Unions, NHS England and Health Education England, offers an opportunity to discuss, debate and get involved in the development and implementation of the workforce implications of policy. Partnership arrangements are in place or are being developed across NHS structures at national, regional or employer level. Organisations that deliver NHS services often rely on good partnership working with trade unions. They also rely on partnership working with professional organisations and stakeholders. The benefits of such working are best realised when staff representatives bring an authentic employee voice to the partnership in a spirit of flexibility and constructive joint problem solving, with the aim of service improvement.

In February 2012, the chairs of the national Social Partnership Forum signed a refreshed Partnership Agreement. The agreement outlines how the partners will work together to promote effective partnership working and engage on workforce issues. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216240/dh\\_132583.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216240/dh_132583.pdf)

It is also good practice for local authorities to also engage staff, and individual authorities will have their own mechanisms for doing so.

## Pledge (contd)

Effective partnership working requires all partners to build capability and make a firm commitment to provide the necessary resources.

Organisations in the NHS can involve their staff in a range of ways, ranging from line managers informally seeking views from staff to formal consultations. Staff that are involved have higher levels of engagement, are better able to contribute to service improvement and help organisations meet current challenges. NHS Employers have produced a range of resources to help support staff engagement and involvement, including professional networks and communities ([www.nhsemployers.org](http://www.nhsemployers.org)).

A growing body of evidence shows that high levels of staff engagement in NHS organisations can have a positive impact on patient experience and healthcare outcomes. The best performing organisations have good staff engagement policies, creating a culture where staff are engaged with their employer and motivated by the work they do.

In 2011, the Aston University Business School conducted research on behalf of the Department of Health, providing clear evidence of the link between good staff experience and good patient experience. ([www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_129643](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_129643)).

The NHS Staff Survey will continue to be an important benchmark, encouraging organisations to engage with their staff.

## Pledge

# “The NHS commits to have a process for staff to raise an internal grievance.”

(Section 4a of the NHS Constitution)

A grievance is usually a complaint by an employee about action which their employer has taken or is contemplating taking in relation to them, and should not be confused with a whistleblowing concern, which is usually about a risk, malpractice or wrongdoing that affects or relates to others, and which is, in the reasonable belief of the individual making the disclosure, made in the public interest.

(See Right 7 page 128)

Your organisation should have a written procedure for handling any disciplinary or grievance issues. This will set out the process, which should be followed.



## Pledge

**“The NHS commits 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 Employment Rights Act 1996.”**

(Section 4a of the NHS Constitution)

There should be no reprisal against staff raising concerns, even if this has resulted from a misunderstanding or because staff were mistaken, provided the staff members who raised concerns did so in the reasonable belief that it was in the public interest.

All NHS organisations and local authorities should have policies and procedures in place to support and encourage staff to raise concerns at the earliest reasonable opportunity, and respond to those concerns. The Social Partnership Forum (Department of Health, NHS Employers and trade unions) has developed a guide for NHS organisations to assist them in developing robust arrangements to support their staff to raise concerns. The guidance is available at: <http://www.socialpartnershipforum.org/priority-areas/raising-concerns-%28whistleblowing%29/>

In addition, the NHS is being encouraged to take action to promote these policies and create a culture built on openness and accountability, where staff are empowered to speak out where they have concerns.

NHS bodies and local authorities have a role in building trust and confidence across the health service.

A responsible attitude to supporting staff who raise concerns helps each organisation to promote a healthy workplace culture built on openness and accountability.

# Staff legal duties

This section summarises some important existing legal duties, that staff must observe. This is a summary of the position and is not intended to be legal advice or relied upon as legal advice. Employees are advised to seek independent legal advice on their duties in all cases.

## 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.”

(Section 4b of the NHS Constitution)

### What this means in practice

Action can be taken based on the policies and practices of regulatory bodies:

- the General Medical Council (GMC);
- the Nursing and Midwifery Council (NMC);
- the General Dental Council (GDC);
- the General Chiropractic Council (GCC);
- the General Optical Council (GOC);
- the General Osteopathic Council (GOsC);
- the General Pharmaceutical Council (GPhC); and
- the Health & Care Professions Council (HCPC).

For further guidance see page 131.

### Where it exists in law

As stated in relevant guidance or regulations of regulatory bodies.

## 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.”

(Section 4b of the NHS Constitution)

### What this means in practice

Disciplinary action may be taken by the employer against staff who breach health and safety policies.

### Where it exists in law

Health and Safety at Work Act 1974

## Duty

“To act in accordance with the express and implied terms of your contract of employment.”

e.g. the express terms regarding hours, place and duties of work, annual and sickness absence provisions, equality and diversity policies etc. and also the implied duty of mutual trust and confidence, the duty to serve and work for the employer, exercise reasonable skill and competence when undertaking your duties, to obey reasonable and lawful orders. To adhere to the duty of fidelity towards the employer.

(Section 4b of the NHS Constitution)

### What this means in practice

An employer may take disciplinary action against the employee for failure to observe the express and implied terms of their contract, the ultimate sanction being dismissal after following a fair and legal process.

These are express and implied terms of the contract of employment under common law. A written statement of particulars is required to be provided to an employee, not later than two months after the beginning of the employment contract.

### Where it exists in law

Section 1 of the Employment Rights Act 1996

## Duty

“Not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation.”

(Section 4b of the NHS Constitution)

### What this means in practice

Disciplinary action may be taken by an employer against workers who breach discrimination policies, which should reflect the duties set out in the Equality Act 2010. The information commissioner may also take action against an employer for an employee's breach of the Data Protection Act.

### Where it exists in law

Equality Act 2010

Human Rights Act 1998

Where human rights are concerned (e.g. Article 2 of the European Convention on Human Rights (ECHR) (right to life)), discrimination may be contrary to Article 14 of the ECHR. If discrimination amounts to a breach of Article 14 ECHR, there may be a claim for damages under the Human Rights Act 1998.

Judicial review of a discriminatory decision or policy.

## Duty

“To protect the confidentiality of personal information that you hold.”

(Section 4b of the NHS Constitution)

### What this means in practice

You have a duty when using and sharing data in the interests of a person’s care and of improving NHS services, to protect the confidential data in accordance with NHS and/or your organisation’s guidelines and to ensure that when it is shared there is a legal basis to do so.

Disciplinary action may be taken by the employer against workers who breach the confidentiality and data protection policies.

### Where it exists in law

Data Protection Act 1998

Common law duty of confidentiality

Also covered in professional conduct guidance

## Duty

“To be honest and truthful in applying for a job and in carrying out that job.”

(Section 4b of the NHS Constitution)

### What this means in practice

An employer could take disciplinary action for failure to adhere to duty of trust and confidence.

Certificates of an employee's previous convictions can be obtained from the Criminal Records Bureau under Part V of the Police Act 1997.

### Where it exists in law

The duty to be honest and truthful is an implied duty of trust and confidence in the employment relationship, which emanates from common law.

The duty to declare criminal convictions exists in the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.



# Expectations – how staff should play their part in ensuring the success of the NHS

High quality patient care is delivered by staff who are ambitious in their expectations of themselves and their colleagues. These expectations show how staff can play their part in delivering high-quality care. They also correspond to some degree to the staff pledges and chime with the NHS values. They apply to all staff providing NHS care.

This section sets out what employers can legitimately expect from employees they deliver their pledges to, and gives some examples of what staff can do to help realise these expectations.

## Expectation

“You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm.”

(Section 4b of the NHS Constitution)

### What this means in practice

All members of staff have a personal responsibility for patient safety and individual's needs. Every person working in NHS-funded care has a duty to identify and help reduce the risks to the safety of patients, and acquire the skills necessary to do so in relation to their own job, team and adjacent teams.

Even though hazards in care cannot be eliminated, harm to patients can be and should be reduced continually and everywhere. All members of staff have a personal responsibility for patient safety and individuals' needs. The following extracts from 'A promise to learn-a commitment to act'<sup>44</sup>, outlines what staff should do in line with this expectation:

“For NHS staff and clinicians, especially important steps are to:

1. Participate actively in the improvement of system care
2. Acquire the skills to do so
3. Speak up when things go wrong
4. Involve patients as active partners and co-producers in their own care”

End of extract.

There is no standard definition for 'avoidable harm'. It is a simple term used to describe a complex concept. In practice, it can be very hard to be certain whether harm is 'avoidable' or 'unavoidable'. Indeed it is important to guard against a simplistic view that some harm is avoidable and the rest is not. In this context, the concept of 'avoidable harm' is generally used to refer to unexpected or unintended injury, suffering, disability and death, where that is directly caused by either the provision of healthcare that in some way falls short of what is considered acceptable practice, or by healthcare not being provided when it should have been. Determining what is 'acceptable' in healthcare can be very difficult and will vary depending on who is being asked, but judging whether harm could have been prevented does rely on

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<sup>44</sup> A promise to learn-a commitment to act: Improving the safety of patients in England, National Advisory Group on the Safety of Patients in England, 2013:[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226703/Berwick\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf)

assessing whether 'acceptable' healthcare was provided. It can also be very difficult to determine if injury, suffering and death, is the direct result of falling short of acceptable practice or arises from the patient's clinical condition.

Under Section 20 of the Health and Social Care Act 2008, "The term 'avoidable harm' will be subject to interpretation and substantiation and will be considered in the circumstances of any case. Harm is avoidable, in relation to a service, unless the person providing the service cannot reasonably avoid it (whether because it is an inherent part or risk of a regulated activity or for another reason). Compliance by providers will be checked by the CQC who will develop their own practice in terms of what they look for."<sup>45</sup>

In order to protect patients from avoidable harm, healthcare professionals should ensure they adhere to the relevant professional codes relating to safety. Health Professionals should also adhere to all those policies and instructions issued by the provider organisation they serve, which support its ability to comply with Regulations 12 and 13, fundamental standards of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. As the National Advisory Group on the Safety of Patients in England made clear, "there is no way to guarantee the safety of patients always and everywhere. Safety is a continually emerging property, and the battle for safety is never 'won'; rather, it is always in progress. But healthcare professionals should always strive to work in a way that continually reduces risk."<sup>46</sup>

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45 Definitions of different types of harm can be found in the glossary of this Handbook, on page 153

46 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: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226703/Berwick\\_Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226703/Berwick_Report.pdf)

**Expectation:**

“You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers.”

(Section 4b of the NHS Constitution)

**What this aim means in practice**

It is important to reassure patients that all NHS staff are following the required guidance, standards and codes when fulfilling their role. This aim helps to clarify this, whilst also reflecting the need for staff to follow any further specific requirements of their employer. The phrase ‘subject to any more specific requirements’ refers to any additional guidance, standards or codes provided by the employer of NHS staff, and should only ever build on the professional codes of practice, which are outlined below.

**Source of aim**

Professional codes of practice are a set of written rules which explains how people working in a particular profession should behave. Below are some examples of applicable professional codes and practices;

General Medical Council – <http://www.gmc-uk.org/guidance/>

Nursing and Midwifery Council – <http://www.nmc.org.uk/standards/code/>

General Pharmaceutical Council – <http://www.pharmacyregulation.org/standards>

General Dental Council – <http://www.gdc-uk.org/Dentalprofessionals/Standards/Pages/home.aspx>

Health and Care Professions Council – <http://www.hpc-uk.org/aboutregistration/standards/standardsofconductperformanceandethics/>

General Osteopathic Council – <http://www.osteopathy.org.uk/about-us/the-organisation/code-of-conduct/>

General Chiropractic Council – <https://www.gcc-uk.org/good-practice/>

General Optical Council – [https://www.optical.org/en/Standards/Standards\\_for\\_individuals.cfm](https://www.optical.org/en/Standards/Standards_for_individuals.cfm)

[http://www.mas.org.uk/codes\\_of\\_management/managers-code-of-conduct.html](http://www.mas.org.uk/codes_of_management/managers-code-of-conduct.html)

For further information, please visit the NHS Employers page at [www.nhsemployers.org](http://www.nhsemployers.org)

## Expectation

“You should aim 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.”

(Section 4b of the NHS Constitution)

### What this means in practice

Keep your professional and other job-related skills up to date.

Actively engage in appraisal, personal development planning and revalidation.

Ensure that you complete mandatory or statutory training.

## Expectation

“You should aim to find alternative sources of care or assistance for patients when you are unable to provide this (including for those patients who are not receiving basic care to meet their needs).”

(Section 4b of the NHS Constitution)

### What this means in practice

- Where a patient is in need of basic care<sup>47</sup> which you are unable to give, you should either ensure that it is provided by others, or inform someone who is in a position to take the appropriate action;
- Where the provider is unable within an acceptable time to provide treatment or care needed by a patient, you should either refer the patient to a provider who is able to do so, or advise the patient where such treatment or care can be obtained; and
- Where a patient prefers a reasonable alternative to the treatment they are offered, you should either refer them to a provider who can offer the alternative, or offer advice as to where the alternative might be found.

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<sup>47</sup> A definition of basic care can be found in the glossary to this Handbook, on page 153

## Expectation

“You should aim to take up training and development opportunities provided over and above those legally required of your post.”

(Section 4b of the NHS Constitution)

### What this means in practice

- Keep professional and other job-related skills up to date.
- Actively engage in appraisal, personal development planning and revalidation.
- Ensure that you complete mandatory or statutory training.

## Expectation

“You should aim to play your part in sustainably improving services by working in partnership with patients, the public, and communities.”

(Section 4b of the NHS Constitution)

### What this means in practice

Contribute your ideas and welcome contribution from others. Inform yourself about, and be prepared to contribute to, discussions on issues and decisions that impact upon your work and/or the services you provide or support.

Explore opportunities to engage with patients, carers and communities. Offer challenge where services are changed without patient or staff contribution.



## Expectation

“You should aim to raise any genuine concern you 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 or the organisation itself at the earliest reasonable opportunity.”

The term “staff” is used to include employees, workers, and, for the purposes of the Employment Rights Act 1996, agency workers and general practitioners who meet the wider statutory definition of being a “worker” (e.g. those performing general medical services under the General Medical Services Contracts). Whilst volunteers are not covered by the whistleblowing legislative provisions set out in the Employment Rights Act 1996, guidance to employers makes clear that it is good practice to include volunteers within the scope of organisations’ local whistleblowing policies.

(Section 4b of the NHS Constitution)

### What this means in practice

Set an example to your colleagues in your day-to-day activities by questioning behaviours and practices that you believe may not be professionally ethical, safe, or lawful.

Understand your own responsibilities and your organisation’s arrangements for raising concerns and whistleblowing, including whom you can approach for advice or to whom you should report any concerns.

Understand any professional obligations you may have as part of the Code of Conduct for statutorily regulated professions such as medicine or nursing.

If you have a concern about a risk, malpractice or wrongdoing at work, you should normally raise it first in confidence with your line manager or lead clinician, either verbally or in writing if you are able to do so.

If you feel unable to do this, you may raise it with the designated officer within your employing organisation. You should find details of the designated officer in your employer’s whistleblowing policy.

If you have raised your concern with the designated officer or your line manager, but feel it has not been addressed properly, or that inadequate action has been taken, you should raise your concern with someone higher in your employing organisation; for example, to your department manager, head of midwifery, director of nursing, medical director or chief executive. In foundation trusts you may consider raising your concern with a member of the Non-Executive Board. If, for whatever reason, you feel unable to raise your concern at a lower level within your organisation, you may choose to take this action from the outset.

If you are unable to follow any of these channels, or you feel the matter is so serious that you cannot discuss it with any of the above, you may wish to consider raising the concern externally with a regulatory body that has authority to investigate the issue. This could be to a regulator of health and social services or a regulator of health such as, for example, the Care Quality Commission or Monitor.

For further information on guidance of what constitutes 'avoidable harm', see page 136.

Before reporting your concerns externally, it makes sense to seek advice so that you receive appropriate support and guidance in these difficult circumstances. This could be from a representative of your professional body, regulatory body, trade union or the Department of Health-funded confidential helpline.

In some cases, it will be a matter of judgement on how best to proceed. The helpline provides a free, independent and confidential service, which can support staff who need advice. The freephone helpline number is **08000 724 725** or **<http://wbhelpline.org.uk/>**

If your concern is related to a detected or suspected incidence of fraud or corruption, you should follow your local whistleblowing policy or the reporting procedure prescribed by NHS Protect by reporting directly to the Director of Finance, the local anti-fraud lead or via the fraud and corruption line or online reporting form. You will still be entitled to make a whistleblowing complaint and if you have made a protected disclosure, receive protection under Employment Rights Act 1996. Local authority staff are also subject to the same expectation, and individual authorities are responsible for putting appropriate processes in place.

### Wider disclosure

In certain circumstances, wider disclosures to bodies or persons other than your employer or a Minister of the Crown may also be protected by the Employment Rights Act 1996. A number of tests will apply to assess whether such a disclosure is a “protected disclosure”. Those additional tests will vary from case to case and may include consideration of the following factors:

- whether, in all circumstances, it is reasonable to make the disclosure which would also include consideration of the identity of the body/person to whom the disclosure is made (generally disclosures to the media are unlikely to be covered),
- the seriousness of the alleged breach and whether it is “an exceptionally serious” concern;
- whether the person making the disclosure reasonably believes that the information disclosed and any allegations in the disclosure are substantially true;
- whether the disclosure is made for personal gain;
- there is a risk that evidence could be destroyed or concealed if the disclosure is made to the employer or another prescribed person;
- whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any person.
- the disclosure amounts to a breach of confidence with the employer;
- the matter has already been raised;
- there is a good reason to believe that the individual will be the subject of a detriment by their employer if the matter were raised internally or with another prescribed person; and

Staff considering such a disclosure are advised to take legal advice, or advice from the whistleblowing helpline, their trade union or their regulatory body before taking this step.

## Expectation

“You should aim to involve patients, their families, carers or representatives fully in decisions about prevention, diagnosis, and their individual care and treatment.”

(Section 4b of the NHS Constitution)

### What this means in practice

It is important that patients are treated as equal, informed and active partners, and that they are given all the information they need to enable them to make an informed decision about their care, rather than simply told what the treatment will be. You will want to discuss their preferences and personal circumstances with each patient and ensure that those are reflected in the decision that is made, where a range of potentially suitable treatments or forms of healthcare are available. If the patient wishes, these discussions can include their family and carers.

Not everyone will wish to take up their right to be involved in discussions and decisions about their health and care. Some people will not be able to do so for themselves, for example if they are not conscious or if they have lost mental capacity. The Mental Capacity Act sets out how others can make healthcare decisions for individuals in these circumstances.

## Expectation

“You should aim 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 a spirit of co-operation.”

(Section 4b of the NHS Constitution)

### What this means in practice

Communicate openly, honestly and sympathetically with patients and their families, carers or representatives about their care.

If a patient safety incident occurs, acknowledge what has happened; apologise to the patient and their families, carers or representatives for the harm that may have resulted and explain clearly what went wrong and what is being done in response to the incident as soon as possible. This includes involving the patient or their representative appropriately in any investigation and keeping them updated about its progress.

Use the results of investigations to explain to patients, their families, carers or representatives how lessons are being learned to help prevent the incident recurring.

Provide support to the patient and their families, carers or representatives to help them cope with the physical and psychological consequences of what happened.

Understand your organisation's complaints procedures.

Respect patient concerns.

Seek users' views on services. Listen to your patients, their families and carers. Use the feedback you receive to improve your practice and the care you provide.

## Expectation

“You should aim 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.”

(Section 4b of the NHS Constitution)

### What this means in practice

Report patient safety incidents, including ‘no harm’ incidents or near misses.

Actively support colleagues involved in patient safety incidents.

Seek out and implement the learning from investigations to prevent recurrence of incidents.

Be vigilant about hygiene and report unacceptable hygiene practices.

Participate in the NHS staff survey.

Do not tolerate bullying, harassment or violence.

## Expectation

“You should aim 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.”

(Section 4b of the NHS Constitution)

### What this means in practice

Listen to your patients, their families and carers and respect their concerns. Respect and treat them with dignity.

Welcome and encourage feedback (both positive and negative) from patients, their families and carers and use this to improve the services you provide.

Understand your organisation's complaints procedures.

## Expectation

“You should aim to take every appropriate opportunity to encourage and support patients and colleagues to improve their health and wellbeing.”

(Section 4b of the NHS Constitution)

### What this means in practice

You should use, where appropriate, opportunities to help patients understand how they can improve their health and wellbeing and help to reduce health inequalities by:

- Identifying appropriate opportunities as they arise to help people make healthy life-style changes;
- understanding and respecting an individual’s feelings towards discussing their life-style behaviours; and
- providing brief life-style advice and signposting and/or referring to appropriate services.

Making Every Contact Count is an opportunity to improve patient care, treatment and outcomes and help people live well for longer.



## Expectation

“You should aim to contribute towards providing fair and equitable services for all and play your part, whatever possible, in helping to reduce inequalities in experience, access or outcomes between differing groups or sections of society requiring healthcare.”

(Section 4b of the NHS Constitution)

### What this means in practice

You should use, where appropriate, opportunities to help patients understand how they can improve their health and wellbeing and help to reduce health inequalities by:

- recognising that the social and economic conditions in which people are born, live, work and grow older affect their health, and the ways in which they look after their own health and use services throughout their lives;
- understanding the barriers faced by vulnerable groups in accessing services, such as high levels of illiteracy, lack of knowledge of mainstream services, experience of discrimination and mistrust of authority;
- appreciating the need for cultural awareness and cultural competency to avoid misunderstanding and creating tension; and
- taking the opportunity to address all the health problems of those with complex, multiple needs, which are often compounded by chaotic lifestyles, and only discharging patients from care when their health and housing needs have been addressed.

## Expectation

“You should aim to inform patients about the use of their confidential information and record their objections, consent or dissent.”

(Section 4b of the NHS Constitution)

### What this means in practice

As a staff member, you should aim to support patients in understanding how their confidential information is used. You should record the patient’s views – any objection, consent or dissent.

Where you are not able to provide this information or answer questions about it then you should refer them to the relevant person in the organisation who can provide this information and consider any objections.

## Expectation

“You should aim to provide access to patient’s information to other relevant professionals, always doing so securely, and only where there is a legal and appropriate basis to do so.”

(Section 4b of the NHS Constitution)

### What this means in practice

This duty reflects the pledges in the Constitution to ensure information is available to those caring for individuals to support the best care possible and for other purposes but only where there is a legal basis to do so.

# Glossary

**Administrative law** – the branch of law that governs public bodies (including NHS bodies and local authorities) in the exercise of their functions.

**Basic care** – ensuring a patient’s basic needs are met (e.g. nutrition, hydration, comfort, hygiene) and is a vital part of good-quality, personalised and attentive care.

**Care Quality Commission** – The Care Quality Commission (CQC) is the ‘watchdog’ responsible for ensuring that providers of regulated health and social care activities meet essential standards of safety and quality (including hospitals, care homes, care delivered in the home, dentists, GPs, mental health and other specialist services). The Commission’s website is [www.cqc.org.uk](http://www.cqc.org.uk).

**Clinical commissioning group (CCG)** – The local, clinically-led NHS organisation responsible for commissioning the majority of healthcare services in a local area (except certain services, such as primary care, which are commissioned by NHS England).

**Commissioning** – the process of deciding what health and care services are required, purchasing them and ensuring that they meet requirements.

**Common law** – the law derived from decisions of the courts, rather than Acts of Parliament or other legislation.

**Complaints process** – a complaint should initially be made to the relevant NHS body that either provided the service or arranged for the service to be provided – (e.g. in relation to your treatment in hospital, to the NHS trust or NHS foundation trust that manages the hospital) or to the local Clinical Commissioning Group (CCG), or, for public health services, either to the organisation, the service or to the local authority. Each NHS body or local authority is required to have a process for handling and considering complaints. For more information on making a complaint to either an NHS body or local authority see page 7 of this Handbook.

**ECHR** – the European Convention on Human Rights. It is unlawful for a public body to act incompatibly with the rights conferred by the Convention (section 6 of the Human Rights Act 1998).

**Harm** – CQC define harm as physical or psychological damage or injury.

- **Avoidable harm:** there is no legal definition of avoidable harm, please refer to page 136 for an explanation.
- **Significant harm:** there is no legal definition of significant harm. The term is employed in the right as an umbrella term for a number of categories of harm that are defined in the Duty of Candour regulation. Please refer to page 77 for further details.

**Health Education England (HEE)** – this independent body provides oversight and leadership for professional education and training. Health Education England’s website is <http://hee.nhs.uk/>.

**Healthwatch** – the Healthwatch network operates at two levels:

- Healthwatch England works at the national level and supports local Healthwatch organisations. It takes local experiences of health and care and uses them to influence national policy with the Secretary of State, CQC and NHS England.
- There is a local Healthwatch organisation covering for every local authority area in England. They work to ensure the views and experiences of patients, service users and the public inform the commissioning, delivery and scrutiny of local health and social care services.
- The Healthwatch England website is [www.healthwatch.co.uk](http://www.healthwatch.co.uk).

**Judicial review** – a type of court proceeding in which a judge reviews the lawfulness of an act or decision or action of a public body. Judicial review is therefore a procedure by which you can challenge a decision of the Secretary of State or an NHS body, on the basis that it is unlawful. Judicial review is not a form of appeal and is concerned primarily with how decisions are made, rather than the merits of the decision itself.

To be entitled to make a claim for judicial review, a person must have a direct, personal interest in the action of decision under challenge. For further guidance on applying for judicial review, refer to ‘Notes for guidance on applying for judicial review’ published on Her Majesty’s Courts Service website – [www.hmcourts-service.gov.uk/cms/1220.htm](http://www.hmcourts-service.gov.uk/cms/1220.htm).

**LAs (local authorities)** – Some local authorities are responsible for improving the health of local communities and coordinating local efforts to protect the public’s health and wellbeing, in response to local needs and priorities. They also have responsibility, and are funded for a range of public health services previously provided by the NHS – sexual health for example, and drug and alcohol misuse. The types of local authorities which now have these public health functions are:

- county councils in England;
- district councils (where there is no county council);
- London boroughs and the Common Council of the City of London; and
- the Council of the Isles of Scilly.

The link to more detail on local authorities' commissioning responsibilities is:

**[www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_131901.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131901.pdf)**

**Monitor** – protects and promotes the interests of people using health care services by making sure that NHS services are effective and offer value for money. Licensing providers of health care will be one of the main tools Monitor will use to do this. Monitor's website is:

**[www.monitor-nhsft.gov.uk/](http://www.monitor-nhsft.gov.uk/)**

**National Institute for Health and Care Excellence (NICE)** – provides guidance and information to help health and social care professionals deliver the best possible care for patients based on the best available evidence. NICE involves patients, carers and the public in the development of its guidance and other products. NICE's website is **<http://www.nice.org.uk/>**

**The NHS** – in the Constitution and the Handbook, the NHS refers to the health service continued under the NHS Act 2006, and includes that part of the health service provided by local authorities under their public health functions.

**NHS services** – means services provided as part of the health service, including both the health services commissioned by NHS England and clinical commissioning groups, and the services provided or commissioned by Secretary of State (Public Health England) or local authorities under their public health functions.

**NHS Act 2006** – the National Health Service Act 2006. The main piece of legislation governing the NHS in England, which sets out the powers and duties of the Secretary of State and provides for the establishment and functions of NHS bodies and confers public health functions on local authorities. The Act was amended by the Health and Social Care Act 2012 and replaces earlier NHS Acts (e.g. the National Health Service Act 1977 and the Health Act 1999).

**NHS England (the NHS Commissioning Board)** – the NHS Commissioning Board was established by section 1H of the NHS Act 2006 as an executive non-departmental public body. Since 1 April 2013, the NHS Commissioning Board has used the name 'NHS England' for operational purposes. The main aim of NHS England is to improve the health outcomes for people in England. Its main statutory functions are to arrange the provision of certain NHS services and to exercise functions in relation to CCGs, so as to secure that services are provided in accordance with the NHS Act 2006. It will directly commission primary and specialised care and a number of other services; and it will authorise and support clinical commissioning groups to commission care for their communities. NHS England is committed to using the public and patient voice to inform its work and will empower and support clinical leaders throughout the NHS. Information about the NHS England can be found at: **[www.england.nhs.uk/](http://www.england.nhs.uk/)**

**Private and voluntary sector** – These organisations include small local community and voluntary groups, registered charities (both large and small), foundations and trusts, as well as social enterprises and co-operatives.

**Professional regulators** – are responsible for ensuring that all health and social care professionals are providing safe care. They are focused on the individuals who give care, unlike other health system regulators that focus on the organisations that provide care.

In England, there are professional regulators for:

- doctors (the General Medical Council);
- nurses and midwives (Nursing and Midwifery Council);
- dental teams (General Dental Council);
- optical professionals (General Optical Council);
- pharmacists (General Pharmaceutical Council);
- chiropractors (General Chiropractic Council);
- osteopaths (General Osteopathic Council); and
- health, psychological and social work professionals (Health and Care Professions Council).

For more information visit the Professional Standards Authority (the body that oversees the professional regulators) website: [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

**Whistleblowing** – whistleblowing is making a protected disclosure within the meaning given at section 43A of the Employment Rights Act 1996. The Employment Rights Act 1996 sets out the requirements under that Act to qualify for protection against detriment and the remedies available. The requirements include that the person making the disclosure reasonably believes that the disclosure is made in the public interest.

For further information on the NHS system, refer to the Guide to the NHS, which contains the Statement of NHS Accountability at:

<https://www.gov.uk/government/publications/the-nhs-constitution-for-england>.



