

# ROYAL PHARMACEUTICAL SOCIETY

## NHS Constitution consultation: 10 Year Review

### Royal Pharmaceutical Society Response

#### *Responding to deterioration*

Patients and their families, carers and advocates have a critical part to play in their care and can be uniquely placed to identify deterioration in their or their loved ones' condition, including where that indicates a need for an escalation in their treatment or care. We need to facilitate this input more effectively to ensure concerns are listened to and appropriately acted upon, including when there are concerns the local team are not responding to deterioration appropriately. We also need to take a structured approach to obtain information relating to a patient's condition directly from patients and their loved ones at least daily.

We propose adding the following new pledge for patients and the public under 'Involvement in your healthcare and the NHS':

"The NHS pledges to provide patients (and their families, carers and advocates) who are in acute or specialist provider sites a structured approach to providing information about their or their loved one's condition at least daily and if they have concerns about physiological deterioration that are not being responded to, access to a rapid review by appropriate clinicians from outside their immediate care team."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

This is an addition of Martha's rule so we support this. It also builds on the Oliver McGowan training about the importance of listening to the patient and their carers as they're the experts of their condition.

#### *Health Disparities*

There are stark disparities in how long people live and how long people live in good health across England. Poor health outcomes arise from particular combinations of factors and their impact varies geographically: inner city areas have younger populations but higher levels of homelessness and air pollution, and rural and coastal areas typically have an older age demographic, with some coastal areas and rural areas having high levels of deprivation (as addressed in the Chief Medical Officer's annual report for 2021).

Under the NHS Act 2006, NHS England and ICBs are required, in the exercise of their functions, to have regard to the need to reduce inequalities between persons with respect to their ability to access health services, and outcomes (including outcomes that show the quality of the patient experience). These and other duties on health bodies were strengthened in the Health and Care Act 2022. The Levelling Up White Paper and subsequent Levelling-up and Regeneration Act 2023 established the Levelling Up health mission to narrow the gap in healthy life expectancy by 2030 and increase healthy life expectancy by 5 years by 2035.

The NHS Constitution currently sets out, under the value 'Everyone counts', that:

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

We propose adding the following sentence to the value 'Everyone counts' to provide further detail on how the NHS works to understand the needs of different people and reduce disparities:

"NHS organisations work with statutory and non-statutory partners, using the best data available, to understand the range of healthcare needs within and between local communities and how to tailor services accordingly and fairly, reducing disparities in access, experience and outcomes for all."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

The data regarding disparities in access, experience and outcomes is well known and will show broadly similar trends over 10 year periods. Generally, the same postcodes, towns cities and regions will consistently show up as having higher levels of deprivation and poorer health outcomes than other areas and regions. It is important resources and services are tailored accordingly and fairly to reduce any disparities.

### ***Environmental Responsibilities***

The NHS is a major contributor to the UK's carbon footprint, being responsible for over 30% of public sector emissions. The government has already placed legal duties on NHS bodies through the Health and Care Act 2022 that compel action on environmental issues.

As the hosts of the United Nations Climate Change Conference of the Parties (COP26) in 2021, the government further committed to updating the NHS Constitution to reflect its environmental responsibilities, while guaranteeing transparency for patients and the public on how this work aligns with the NHS's core principles and the government's overall environmental strategy.

We are therefore proposing to add a new NHS value of 'Environmental responsibilities':

"We play our part in achieving legislative commitments on the environment. We do this by improving our resilience and efficiency, while always prioritising value for money. We will never compromise standards of care or the needs of patients in pursuit of these targets."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

There may be instances where we may not prioritise value for money when it is worth investing in the environment. This could be further strengthened by adding that the NHS commits to avoiding or minimising the wasting of resources.

### ***Patient Responsibilities***

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

Currently, the NHS Constitution asks patients in 'Patients and the public: your responsibilities':

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

We propose strengthening this responsibility, to make it clearer that patients should cancel or rearrange appointments when they are unable to attend. We also propose strengthening the responsibility on the NHS to communicate appointment information clearly with patients and consider accessibility needs.

Therefore, we propose changing this sentence to:

"Please keep appointments or reschedule or cancel as soon as you know you will not be able to attend the appointment. Receiving treatment within the maximum waiting times, as well as care to other patients, may be compromised unless you do. The NHS will communicate information about your appointment in a clear and timely way, including in alternative formats when this is appropriate and reasonable."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

#### ***Research***

Under the NHS Act 2006, the Secretary of State, NHS England and ICBs have duties to facilitate or otherwise promote research on matters relevant to the health service, and to facilitate the use of evidence obtained from research.

In partnership with the NHS, the National Institute for Health and Care Research (NIHR) has recently launched the Be Part of Research service to help support the discharge of these duties. Members of the public can sign up to the service and get in touch with researchers to discuss eligibility for participation in particular research studies. NHS England has also integrated the Be Part of Research service into the NHS App.

To better support our aim to embed research in the NHS, we propose strengthening the existing pledge ("to inform you of research studies in which you may be eligible to participate").

We propose adding an additional sentence to the pledge:

"Health research and the offer to be part of research should be integrated into health and care across the NHS."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

We are keen to see more research across health and social care. There should be an action to make this easier across marginalised communities. There is a lack of diversity in the research participants from an ethnicity and disability perspective. As part of this statement, it should also include sharing this information in different languages and formats, so more people are aware and have the opportunity to participate.

## **Leadership**

The NHS Constitution and the Staff handbook already include an extensive set of rights and pledges that are focused on ensuring staff have rewarding roles and feel supported in the workplace. These could be reinforced by reflecting the important role that leaders and senior managers can play in creating good workplace culture.

To achieve this, it is proposed that we add the following wording near the beginning of 'Staff: your rights and NHS pledges to you':

"Both the handbook to the NHS Constitution and the Staff handbook outline the rights and pledges that are central to creating a positive and supportive culture in the NHS workplace. Strong and effective leadership, management and governance of NHS organisations is central to the delivery of high-quality care, will support learning and innovation and promote an open and fair culture."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

We believe this could be improved by adding the words 'inclusive' and 'equitable', so, 'strong, effective, inclusive and equitable leadership....'

To enable a positive and supportive culture within the workplace we believe it is critical that all healthcare professionals are offered protected learning time within their working hours.

## **Sex and Gender Reassignment (1 of 3)**

In the NHS Constitution, 'Access to health services' includes a right for patients to "receive care and treatment that is appropriate to you, meets your needs and reflects your preferences".

We want patients to feel confident asking for care that meets their needs and preferences, including requests for intimate care to be carried out by someone of the same sex. We also want patients to have confidence that any such request will be accommodated, where reasonably possible.

Same-sex care is recognised through accompanying CQC statutory guidance to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The guidance sets out how providers should act when providing intimate or personal care, and make every reasonable effort to make sure that they respect people's preferences about who delivers their care and treatment, such as requesting staff of a specific sex. We are defining sex as biological sex.

We are defining intimate care as an examination of breasts, genitalia or rectum, and care tasks of an intimate nature such as helping someone use the toilet or changing continence pads. This definition aligns with that used by the General Medical Council.

The NHS Constitution does not currently reference same-sex intimate care. We want to introduce a new pledge to reinforce NHS healthcare providers' responsibilities to accommodate requests of this nature where reasonably possible.

We propose adding a pledge to 'Access to health services' to state that:

"Patients can request intimate care be provided, where reasonably possible, by someone of the same biological sex."

- Agree
- Neither agree or disagree

- Disagree
- Other

Comments:

Patients can currently do this but, in practice, this is not always possible to achieve and it needs to be clear that this can only be delivered where reasonably possible and practical at the time of request.

### **Sex and Gender Reassignment (2 of 3)**

The NHS Constitution contains a pledge that states:

"if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite sex, except where appropriate, in line with details set out in the handbook to the NHS Constitution."

This means that patients should not have to share sleeping accommodation with patients of the opposite sex and should also 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 in hospital 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 (this means 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)

In considering how the provision of single-sex accommodation for men and women should apply to transgender people - a term used to refer to people whose gender identity is different from their biological sex - the needs of each patient in a ward or clinical area should be considered on an individual basis to understand how best to protect the privacy, dignity and safety of all patients. When making these decisions it is important to balance the impact on all service users and show that there is a sufficiently good reason for limiting or modifying a transgender person's access.

Recognising the concerns that patients may have about sharing hospital accommodation with patients of the opposite sex, we propose to amend the pledge to reflect the legal position on the provision of same-sex services and on which transgender patients can be offered separate accommodation as a proportionate means to a legitimate aim.

Specifically, the Equality Act 2010 expressly allows for the provision of single-sex or separate-sex services if certain conditions are met. Such provision must be a proportionate means of achieving a legitimate aim. The act also allows for persons with the protected characteristic of gender reassignment to be provided a different service in this scenario, provided such an approach is a proportionate means of achieving a legitimate aim. This could, for example, mean a transgender patient is provided with a single room in a hospital setting (provided other clinical priorities are considered). Any decision relating to accommodation of transgender patients should always consider the privacy, dignity and safety of all patients in a ward or bay.

We propose adding additional wording to the pledge on sleeping accommodation to state:

"if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite biological sex, except where appropriate. The Equality Act 2010 allows for the provision

of single-sex or separate-sex services. It also allows for transgender persons with the protected characteristic of gender reassignment to be provided a different service - for example, a single room in a hospital - if it is a proportionate means of achieving a legitimate aim."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

Whilst we agree with the principle, the implementation of providing single rooms in hospitals at a time when care is being provided to people on trollies in corridors, is possibly not feasible. With that being the case what alternative arrangements will be offered to ensure the dignity and privacy of both the transgender patient and the patients on the ward.

### ***Sex and Gender Reassignment (3 of 3)***

In the NHS Constitution, 'Access to health services' includes a right for patients to "receive care and treatment that is appropriate to you, meets your needs and reflects your preferences". Meeting the needs of patients includes respecting the biological differences between men and women, such as sex-specific illnesses and conditions.

If these biological differences are not considered or respected, there is the potential for unintended adverse health consequences. Language, therefore, is very important when communicating with patients. Patients may be unclear about whether a specific condition applies to them and may not come forward for treatment if language is ambiguous. Clear terms that everyone can understand should always be used.

To this end, we propose adding a new right to 'Access to health services' to make clear patients have a right to expect that NHS services will reflect their preferences and meet their needs, including the differing biological needs of the sexes.

The wording we are proposing for the new right is related to the legal obligations on the NHS through the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 about providing person-centred care. It also aligns with the Equality Act 2010, specifically paragraphs 26, 27 and 28 of schedule 3 relating to separate services and single-sex services respectively.

We propose adding a right to 'Access to health services' to state that:

"You have the right to expect that NHS services will reflect your preferences and meet your needs, including the differing biological needs of the sexes, providing single and separate-sex services where it is a proportionate means of achieving a legitimate aim."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

### ***Technical Changes to reflect Equality Act 2010***

The Equality Act 2010 establishes protection by references to the characteristic of sex as defined in the act. We therefore propose to change the language in the NHS Constitution from 'gender' to 'sex' to align with legislation where appropriate.

Additionally, we propose changing the language 'marital or civil partnership' to 'marriage and civil partnership' and 'religion, belief' to 'religion or belief' to align with the wording in the Equality Act 2010.

Under principle 1, the NHS Constitution currently sets out that:

"It is available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status."

Changing this or any other principle in the NHS Constitution would require the government to introduce secondary legislation.

Under 'Access to health services', the NHS Constitution currently sets out that:

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

We propose changing the language from 'gender' to 'sex', 'religion, belief' to 'religion or belief', and 'marital or civil partnership status' to 'marriage and civil partnership status' so that the amended text reads as follows.

Under principle 1:

"It is available to all irrespective of sex, race, disability, age, sexual orientation, religion or belief, gender reassignment, pregnancy and maternity or marriage and civil partnership status."

Under access to health services:

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

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

Is this change taking into consideration the potential future change the government is proposing in the Equality Act 2010 under gender reassignment? Currently, Section 7 of the Act states that a person who is proposing to undergo, is undergoing, or has undergone a process of changing the sex attributed to them at birth, has the protected characteristic of gender reassignment. Therefore, an individual can be protected regardless of whether they have undergone surgery to change their sex attributes provided that they are proposing to do so. Changing sex to biological sex only means that the protected characteristic of gender reassignment would now only protect those who have gone through the full surgical procedure of changing their sex attributes. If this gets changed in the Equality Act what would that mean for the NHS Constitution and the care it provides for transgender patients who have not undergone the full surgical procedure in the future?

### ***Unpaid Carers***

The government is committed to supporting the health and wellbeing of unpaid carers and supporting people who are carers to balance employment with their caring responsibilities, where they wish to do so. The proposed amendments update the NHS Constitution to reflect changes introduced in the Health and Care Act 2022.

Section 10 of the Health and Care Act 2022 imposed a duty for NHS England to involve unpaid carers in the planning of commissioning arrangements and, in certain circumstances, the development and consideration of proposals by NHS England to change commissioning arrangements and decisions of NHS England relating to the operation of commissioning arrangements.

The Health and Care Act 2022 also includes provisions in respect of:

- the promotion of the involvement of unpaid carers in decisions by ICBs relating to the prevention or diagnosis or care and treatment of patients
- the involvement of unpaid carers in commissioning arrangements by ICBs
- where a patient is likely to have needs for care and support following discharge from hospital, the involvement of unpaid carers in discharge plans

Within 'Patients and the public: your rights and the NHS pledges to you', we propose referencing unpaid carers explicitly. The aim is also to reinforce the principle that the NHS has specific responsibilities towards unpaid carers as part of recent legislation and to capture duties and entitlements that have been introduced in the last 10 years relevant to unpaid carers and young carers.

We propose to add an additional pledge to 'Involvement in your healthcare and the NHS':

"We pledge to recognise and value your caring responsibilities."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

It is important that those providing ongoing care to patients are recognised, as this can also affect their mental and physical health.

In line with the measures introduced for unpaid carers and the people they are caring for within the Health and Care Act 2022, we propose to add an additional right and pledge to 'Involvement in your healthcare and the NHS':

"The NHS pledges to provide you the opportunity to give feedback, make suggestions and raise concerns about the care we provide for the person you care for. We pledge to respect your expertise, listen and to involve you in decisions (with the consent of the patient)."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

It is important to involve those providing care in decisions about that ongoing care.

We propose to add an additional right to 'Involvement in your healthcare and the NHS':

"You have the right to be involved (with patient consent) at the earliest available opportunity when plans are being made to discharge the person you care for from hospital."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

Pharmacists play a critical role in discharge as this is the point when medicines are often changed. They can support the patient, and carer, through this process.

### **Volunteers**

Within 'Staff: your rights and NHS pledges to you', we propose inserting an additional sentence at the end of the pledges section recognising the importance of the role NHS volunteers play in contributing to the success of the health service. This will signal the support the NHS will continue to offer to volunteers who play a vital role in making a difference to patients and services.

While volunteering sits inside a different legal framework to employment, volunteers still have important legal duties and responsibilities. Therefore, we also propose inserting a sentence at the end of the responsibilities for staff section to reflect the responsibilities all volunteers have to the public, patients, fellow volunteers and staff.

We propose adding a new pledge to the staff section:

"The NHS recognises the incredibly important work volunteers undertake in making a difference to staff, patients and their families. Volunteers complement the NHS workforce; they do not replace it. The NHS will support and encourage volunteers in all aspects of their roles."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

We agree with this principle but we feel that it should be changed to say "*The NHS will support and encourage volunteers in all aspects of their roles within the NHS*". It would be difficult to support all aspects of their roles, outside of what they provide for the NHS.

### **Health and Work**

Work is an important determinant of health, both directly and indirectly on the individual, their families and communities. Fifteen million of the working age population have a long-term health condition and although 10 million of those are in employment, many with long-term conditions are economically inactive.

The government has an ambitious package of support to help people with health conditions and disabled people to start, stay and succeed in work. In the Spring Budget 2023 and the Autumn Statement 2023, we announced new investment to improve access to joined-up work and health support.

The only reference to employment in the current NHS Constitution is with regard to NHS employees' rights and this does not reflect the NHS's key role in supporting people to work.

We propose adding the following wording to the NHS value 'Improving lives':

"We support people to remain in, and return to, work, reflecting the good impact that work can have on a person's health and wellbeing."

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

### **Person-centred Care**

With 1 in 4 adults living with at least 2 health conditions, for many people care is rarely about a single visit to a single service. To effectively support people to manage the complexity of multiple health conditions, there is an increased need for co-ordinated clinical support across primary, community and secondary care. A critical aspect of this is greater join-up between mental and physical health services. Experiences of healthcare and support should feel person-centred, co-ordinated and tailored to the needs and preferences of the individual, their carers and family. This expectation is also set out in CQC's fundamental standards, which includes a standard on person-centred care.

We propose amending the existing pledge in 'Access to health services' from:

"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"

to:

"support a co-ordinated approach to your care and make the transition as smooth as possible between services, including physical and mental health services, particularly if you have a number of health conditions, and to put you, your family and carers at the centre of decisions that affect you or them"

- Agree
- Neither agree or disagree
- Disagree
- Other

Comments:

This should not just be for those who have a number of health conditions. Co-ordinated care should be provided regardless of your condition, or the number of conditions you may have.

### **Other areas**

We know you come into contact with the NHS throughout your lives, and the rights and pledges within the NHS Constitution cover the breadth of experiences you have when you use NHS services. We're keen to hear whether you feel the NHS Constitution reflects the experiences you have and gives you the support you need in your care and your working lives.

We welcome comments on any further areas you believe we should consider, which can be best delivered through the NHS Constitution, and anything you feel should change in the current document.

Comments: Overall, we agree with the current, and proposed changes to the principles. However, the implementation in every day practise is challenging and this also needs to be recognised.