



### **A consultation to inform an update of the NHS Constitution**

We are consulting on how to strengthen the NHS Constitution.

The main changes proposed cover:

- the changes recommended by Sir Robert Francis QC, in his Inquiry Report following the terrible failings at Mid-Staffordshire NHS Foundation Trust;
- giving greater prominence to mental health;
- weaving in some of the new Fundamental Standards;
- making reference to a more transparent and accountable NHS; and
- making reference to the Armed Forces Covenant.

The questions below seek your views on the proposed changes. When answering each question, there are four options available to you;

- Yes, and I have no further comments
- Yes, in principle, but I have some comments
- No, and I would like to explain why
- No, and I have no further comments

If you completely agree with the proposed wording, and have no further comments, please respond 'Yes, and I have no further comments'. Similarly, if you completely disagree with the proposed wording, but have no further comments, please respond 'No, and I have no further comments'. If you select either of these two options, please move on to the next question.

If you agree with the proposal in principle, but would like to comment on the proposal, please respond 'Yes, in principle, but I have some comments'. Similarly, if you disagree, and would like to comment on why, please respond 'No, and I would like to explain why'. Please then explain your reasons in the space provided below the options.

All responses will be analysed, and used to inform an update of the Constitution later in 2015.

The closing date for comments is 11<sup>th</sup> March 2015

Question: **What is your name?**

Nursing and Midwifery Council (NMC)

Question: **What is your email address?**

[Policy@nmc-uk.org](mailto:Policy@nmc-uk.org)

Question: **What is your organisation?**

Nursing and Midwifery Council

We welcome the opportunity to comment on the proposals outlined in this consultation. We have first set out some introductory comments, followed by our responses to the specific questions in the consultation document.

The Nursing and Midwifery Council is the independent regulator for nurses and midwives in the UK. We exist to safeguard the health and wellbeing of the public. We set standards of education, training, conduct and performance for nurses and midwives, and hold the register of those who have qualified and meet those standards. We have clear and transparent processes to investigate and deal with nurses and midwives who fall short of our standards.

We support the proposals in the consultation to update the NHS Constitution, which seeks to incorporate the recommendations made in the Francis Inquiry report, better reflect wider Government policy and bring the content of the Constitution up to date with current legislation.

Our response is framed in the context of needing to ensure alignment between the Constitution and the professional standards expected of nurses, midwives and other healthcare professionals. There is a close synergy between the Constitution, which contains the core principles and values guiding the NHS in all it does and our Code, which is an expression of the professional standards nurses and midwives must uphold in their practice.

We have recently published a revised and updated version of the Code, which will

come into effect on 31 March 2015. The Francis Inquiry and other recent reports have all impacted on the nursing and midwifery professions and the revising of the Code. Throughout this consultation response, we have pointed to specific sections in the Code which were influenced by recommendations from these reports, along with other measures that we have undertaken in response.

Question 1: **Mental Health**

We would like to rephrase principle one of the NHS to read: '***The service is designed to improve and prevent, diagnose and treat both physical and mental health problems with equal regard***' (Annex 2, Change 1). Do you agree?

We would also like to rephrase an existing right to read: '***You have the right to drugs, treatments and psychological therapies that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you***'. (Annex 2, Change 7). Do you agree?

- |   |                                     |
|---|-------------------------------------|
| Yes, and I have no further comments         | <input type="checkbox"/>            |
| Yes, in principle, but I have some comments | <input checked="" type="checkbox"/> |
| No, and I would like to explain why         | <input type="checkbox"/>            |
| No, and I have no further comments          | <input type="checkbox"/>            |

**Further Comment**

We agree with the proposed changes to strengthen the prominence of mental health in the Constitution. We feel that the redrafted principle reflects the importance of parity of esteem between physical and mental health and the explicit mention of psychological therapies as a right further supports this.

In recognition of the need to treat mental and physical health equally, the Code states that registered nurses and midwives must act on their understanding of both the physical and mental health needs of the person in their care. They must ensure that people's full range of needs, including physical, social and psychological needs, are assessed and responded to.

Question 2: **A patient-centred NHS [Recommendation 4]**

We would like to change the current wording to: ***'Patients will be at the heart of everything the NHS does'*** (Annex 2, Change 2). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We welcome and support the redrafted wording to show the clear and unequivocal commitment to putting patients at the heart of the NHS. This is strongly aligned with our Code which sets out putting the interests of patients above else as a primary duty that registered nurses and midwives must uphold in their daily practice.

The revised Code has a new structure based around four fundamental themes, including prioritising people. The Code makes clear that registered nurses and midwives must put the interests of people needing their services first, make care and safety their primary concern and ensure people's dignity is preserved.

Question 3: **Protecting patients from avoidable harm [Recommendation 5]**

We would like to include the following wording for staff: ***'You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm.'*** (Annex 2, Change 12). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We agree that the Constitution should articulate that those working within the NHS have an obligation to treat people in a safe care environment and

protect them from avoidable harm.

We have put greater emphasis in the revised Code on preserving safety and minimising the potential for harm. Registered nurses and midwives have a professional duty to act or speak out if safety may be compromised.

The Code states that they must:

- Be aware of, and minimise, any potential for harm associated with their practice. To this end, nurses and midwives must consider how to take measures to minimise the likelihood of errors, near misses, harms and the impact of harm if it occurs.
- Act without delay if they believe that they, a colleague or anyone else may be putting someone at risk or not acting within the requirements of the Code. This includes raising and, if necessary, escalating any concerns held over patient or public safety, or the level of care people are receiving in the workplace or any other healthcare setting. Nurses and midwives must also raise concerns if being asked to practice beyond their remit, experience or training.
- Raise concerns immediately if they believe a person is vulnerable or at risk and in need of additional support and protection. Nurses and midwives must take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse, and must disclose information if they believe someone may be at risk of harm.

Question 4: **Helping patients find assistance [Recommendation 5]**

We would like to include the following wording for staff: ***'You should aim to help patients find alternative sources of assistance, when you are unable to provide the care or assistance a patient needs'*** (Annex 2, Change 14). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We recognise that the Francis Inquiry recommended that the proposed commitment should be enshrined in the NHS Constitution. More clarity may, however, be needed about the expectations from staff in terms of directing or signposting people in their care to other sources of support available.

We agree that nurses and midwives have a role in ensuring coordination and continuity of care. The Code covers the issue of care planning by requiring nurses and midwives to keep colleagues informed when you are sharing the care of individuals with other healthcare professionals and staff.

While nurses and midwives are likely to have some knowledge about other sources of support, there is potential for the pledge if interpreted in the widest sense to raise unrealistic expectations among patients.

Linked to this, there may also be implications linked to exercising a conscientious objection. Nurses and midwives have a right, in limited circumstances, to raise a conscientious objection to a particular aspect of patient care. However, they are expected to facilitate patient access to relevant healthcare services, regardless of whether they have a conscientious objection.

Question 5: **Complying with guidance and standards [Recommendation 10]**

We would like to include the following wording for staff: “***You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers***” (Annex 2, Change 13). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We believe that it is helpful for the Constitution to acknowledge and make direct reference to other existing guidance, standards and codes that staff working with the NHS should follow and welcome the inclusion of the proposed new responsibility.

This again echoes the professional responsibility nurses and midwives have in terms of upholding nationally agreed standards as well as the Code as well as speaking out if they experience problems that may prevent them working within either the Code or other national standards.

Question 6: **Duty of candour [Recommendation 178]**

We would like to include the following wording for patients: ***'You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident which has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need, in relation to the incident.'*** (Annex B, Change 11). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We welcome the changes proposed to the Constitution, particularly in relation to placing openness, transparency and candour at the core. We agree that the wording of the Constitution explains in clear terms the statutory duty of candour that providers will need to meet.

As part of reviewing our Code, we have considered how to reinforce the need for candour as recommended in the Francis Inquiry report. The revised Code states clear requirements that nurses and midwives must be open and candid with people in their care about all aspects of care and treatment, including when any mistakes or harm have taken place. It places a clear obligation on all registered nurses and midwives to be open and honest and act with integrity and explain fully and promptly what has happened and the likely effects if someone in their care has suffered harm for any reason.

Further to this, we are in the process of developing joint guidance with the General Medical Council (GMC) which is designed to support nurses, midwives and doctors in fulfilling their professional duty to be open and honest about mistakes. The draft guidance expands upon the fundamental principles in our

Code and provides information on reporting of near misses and apologies.

Question 7: **Fundamental standards [Recommendation 13]**

We would like to include the following wording for patients:

- ***'You have the right to receive care and treatment that is appropriate for you, meets your needs and reflects your preferences.'*** (Annex B, Change 4)
- ***'You have the right to be cared for in a clean, safe, secure and suitable environment.'*** (Annex B, Change 5)
- ***'You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.'*** (Annex B, Change 6)
- ***'You have the right to be protected from abuse, neglect, and care that is degrading.'*** (Annex B, Change 8)
- ***'You have the right to be involved in planning and making decisions about your health and care with your care provider, including your end of life care, and to be given information 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.'*** (Annex B, Change 10). Do you agree?

Yes, and I have no further comments

Yes, in principle, but I have some comments

No, and I would like to explain why

No, and I have no further comments

**Further Comment**

We welcome the proposed wording to ensure that the fundamentals of care are represented in the Constitution. There is a clear statement in the revised Code about the obligation nurses and midwives have to make sure they deliver the fundamentals of care effectively. This means that a breach of any fundamental standard by a nurse or midwife responsible could result in



regulatory action, including a striking off order.

The Code explains that the fundamentals of care include, but are not limited to, nutrition, hydration, bladder and bowel care, physical handling and making sure that those receiving care are kept in clean and hygienic conditions. It includes making sure that those receiving care have adequate access to nutrition and hydration, and making sure that you provide help to those who are not able to feed themselves or drink fluid unaided.

**Question 8: Transparency**

We would like to include the following wording for patients: ***'You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally'*** (Annex B, Change 9). Do you agree?

- Yes, and I have no further comments
- Yes, in principle, but I have some comments
- No, and I would like to explain why
- No, and I have no further comments

**Further Comment**

We do not have any comments on this question.

**Question 9: Armed Forces Covenant**

We would like to include the following wording ***'As part of this the NHS will ensure that in line with the Armed Forces Covenant, those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside'*** (Annex B, Change 3). Do you agree?

- Yes, and I have no further comments
- Yes, in principle, but I have some comments
- No, and I would like to explain why
- No, and I have no further comments

**Further Comment**

We do not have any comments on this question.

Question 10: **Do have any other comments about the NHS Constitution?**

You can either email or post responses to the consultation, using the details below:

**contact**            NHS Constitution Team  
                          Richmond House  
                          79 Whitehall  
                          London  
                          SW1A 2NS

**e-mail**             [NHSConstitution@dh.gsi.gov.uk](mailto:NHSConstitution@dh.gsi.gov.uk)

If you have any questions at all regarding the consultation process, please email [consultations.co-ordinator@dh.gsi.gov.uk](mailto:consultations.co-ordinator@dh.gsi.gov.uk)

Many thanks for taking the time to complete this consultation. Your response will be analysed, and used to inform an update of the Constitution later in 2015.