Notice of meeting of

Health Scrutiny Committee

To: Councillors Fraser (Chair), Alexander, Ayre (Vice-Chair), Douglas, Morley, Sunderland and Wiseman

Date: Monday, 6 October 2008

Time: 5.00 pm

Venue: The Guildhall, York

A G E N D A

1. Declarations of Interest (Pages 3 - 4)
At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda. A list of general personal interests previously declared are attached.

2. Minutes (Pages 5 - 8)
To approve and sign the minutes of the meeting held on 22 September 2008.

3. Public Participation
At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Panel's remit can do so. Anyone who wishes to register or requires further information is requested to contact the Democracy Officer on the contact details listed at the foot of this agenda. The deadline for registering is Friday 3 October at 5.00pm.

4. Dementia Review – Interim Progress Report (Pages 9 - 14)
To consider an interim progress report on the dementia scrutiny review.

5. Consultation on the NHS Constitution (Pages 15 - 68)
This report asks Members whether they wish to take part in the national consultation on the NHS Constitution.

6. Health Scrutiny Networking (Pages 69 - 72)
This report informs Members of the Committee about recent events attended by both Members and Officers outside of the formal meeting cycle of the Health Scrutiny Committee.

7. Protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee (Pages 73 - 84)
This report presents Members with the draft protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee and asks them to investigate whether they wish to adopt this or not.

[A copy of the Health Scrutiny Committee's work plan for 2008-2009 is attached for Members' information]

8. Urgent Business
Any other business which the Chair considers urgent under the Local Government Act 1972

Democracy Officer:

Name: Jill Pickering
Contact details:
- Telephone – (01904) 552061
- E-mail – jill.pickering@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Agenda Annex

About City of York Council Meetings

Would you like to speak at this meeting?
If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than** 5.00 pm on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

A leaflet on public participation is available on the Council's website or from Democratic Services by telephoning York (01904) 551088

Further information about what's being discussed at this meeting
All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

Access Arrangements
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If you have any further access requirements such as parking close-by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

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Yeteri kadar önceden haber verilmesi koşuluyla, bilgilerin terümesini hazırlatmak ya da bir tercüman bulmak için mümkün olan herşey yapılacaktır. Tel: (01904) 551 550

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اگر مناسب وقت سے اطلاع دی جاتی ہے تو ہم معلومات کا ترجمہ مہیا کرنے کی پوری کوشش کریں گے۔ ٹیلی فون (01904) 551 550

Informacja może być dostępna w tłumaczeniu, jeśli dostaniemy zapotrzebowanie z wystarczającym wyprzedzeniem. Tel: (01904) 551 550

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The majority of councillors are not appointed to the Executive (38 out of 47). Any 3 non-Executive councillors can 'call-in' an item of business from a published Executive (or Executive Member Advisory Panel (EMAP)) agenda. The Executive will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Executive meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees
The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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- Public libraries get copies of **all** public agenda/reports.

Agenda Item 1

HEALTH SCRUTINY COMMITTEE

Agenda item I: Declarations of interest.

Please state any amendments you have to your declarations of interest:

Councillor Fraser	Governor of York Hospitals NHS Foundation Trust and as a member of the retired section of Unison;
Councillor Wiseman	Governor of York Hospitals NHS Foundation Trust.

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City of York Council	Committee Minutes
MEETING	HEALTH SCRUTINY COMMITTEE
DATE	22 SEPTEMBER 2008
PRESENT	COUNCILLORS FRASER (CHAIR), AYRE (VICE-CHAIR), DOUGLAS, MOORE, SUNDERLAND, WISEMAN AND SIMPSON-LAING (SUB FOR CLLR ALEXANDER)
APOLOGIES	COUNCILLOR ALEXANDER
IN ATTENDANCE	JOHN YATES – OLDER PEOPLE'S ASSEMBLY JACK ARCHER – OLDER PEOPLE'S ASSEMBLY ANNIE THOMPSON – LINKS CO-ORDINATOR DI KEAL – ALZHEIMERS SOCIETY ANNE HARDY – ALZHEIMERS SOCIETY GRAHAM PURDY – NYYPCT BILL HODSON - CYC

12. DECLARATIONS OF INTEREST

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

No interests were declared further to the standing personal, non-prejudicial interests declared at previous meetings and circulated with the agenda.

13. MINUTES

RESOLVED: That the minutes of the meeting of the Committee held on 7 July 2008 be approved and signed by the Chair as a correct record.

14. PUBLIC PARTICIPATION

It was reported that there had been two registrations to speak at the meeting, under the Council's Public Participation Scheme. The first was from John Yates on behalf of York Older People's Assembly.

He congratulated Officers on their recording of the evidence presented at the informal evidence gathering session held at Priory Street on 1 September 2008. He referred to the vulnerability of dementia sufferers during the different stages of the illness, to them being less able to adapt to change and to problems they often encountered with diet and lack of personal care. He stated that admission to hospital would be considered a major change and that those patients without a partner, carer or advocate should be able to expect sympathetic treatment by hospital staff rather than the experiences presented in the report. He stated that it was important that all staff were well trained to enable them to deal sympathetically with dementia suffers. He went on to point out that GP's

often did not know patient's histories which made it difficult when there was a need for a hospital admission.

The second registration was from Di Keal of the Alzheimer's Society who had withdrawn her request to speak at the present time.

The Chair confirmed that the points made by the speaker would be noted when consideration was given to the preparation of the draft report.

15. DEMENTIA REVIEW - INTERIM PROGRESS

Consideration was given to the Interim Progress Report on the Dementia Review. In particular the Committee considered the information gathered at the informal session held at the Priory Street Centre on 1 September 2008. At that session Members had received evidence from carers of relatives with dementia and from representatives of the following organisations:

- York Older People's Assembly
- Age Concern, York
- Alzheimer's Society
- York Carer's Forum
- York Carer's Centre
- Epilepsy Action
- York & District MIND
- York LINk (Local Involvement Network)
- City of York Council Social Services Department
- North Yorkshire and York Primary Care Trust (NYYPCT)
- York Hospital
- York Foundation Trust

The Chair stated that mention had been made at the session at the limited attendance of members of the Scrutiny Committee. He went on to confirm that the evidence recorded however did provide useful information for those not present.

Members then made the following comments:

- That the evidence showed that there was a clear need for early identification of patients suffering from dementia and that it highlighted a number of training issues;
- Noted that whilst evidence was collected from a wide range of representatives/organisations that similar themes had been identified;
- The triangle between patients, carers and staff was important;
- That a named nurse for each patient was essential;
- Reference to the proposals for a new scheme that would allow care workers to go into peoples homes immediately after discharge from hospital and the possibility of these workers assisting the patient in hospital between 9am and 5pm;
- Reference made to the Ambulance Service who had been unable to send a representative to the session and the need for their input as first point of contact with the patient after their GP;
- Concern that numbers of dementia suffers did not accept that they had any problems;

- Need to recognise the position of the carer or advocate balanced against patient choice and confidentiality;
- The views of front line staff on what would assist them in their dealings with dementia patients would be useful;
- Useful to consult with the Local Medical Committee (LMC) as to whether it would be possible to include in patient,s GP notes details of named carers to flag up this issue with all medical staff;

A representative of the Alzheimer's Society stressed the importance of ensuring that all training was then implemented.

Following further discussion it was

RESOLVED: (i) That the Ambulance Trust be invited to send a representative to the Committee's 6 October meeting to provide details of their experiences when dealing with dementia sufferers; [1.]

(ii) That, before the next meeting if possible, arrangements be made with Mike Proctor, Deputy Chief Executive of York Hospital, for the Chair and Councillors Ayre and Wiseman, together with any other Member of the Committee available, to visit the hospital to talk to front line members of staff on the issues surrounding dementia sufferers and the training requirements; [2.]

(iii) That any questions Members wished raising at the above visit be sent to the Scrutiny Officer, for collation prior to the visit. [3.]

Action Required

1. York Ambulance Trust to be invited to the attend the 6 October Health Scrutiny Committee meeting.	GR
2. If possible arrangements to be made for Members to visit York Hospital to talk to front line staff.	GR
3. Questions to be raised at above visit to be sent to the Scrutiny Officer.	GR

16. HEALTH SCRUTINY COMMITTEE WORK PLAN 2008/09

Arising out of consideration of the Committees work plan the Chair asked the Committee if they wished to make comment on the contents of the draft NHS Constitution. He explained that the NHS were consulting widely on the document and that comments were required by 17 October 2008. If Members wished to comment a report could be prepared for the Committee's next meeting, with information circulated prior to this, to enable comments to be collated and returned prior to the closing date.

Annie Thompson, LinKs Co-ordinator, confirmed that they were to hold a Group information day on the contents of the NHS document to make people aware of their rights to choice and that this involved access to all.

A member also referred to the omission of a timeframe in the work plan in the work area 'Dental Provision in York' and for the need to pursue updates on this information. The Chair confirmed that Cllr Ayre and himself had met Amanda Brown from the NYYPCT regarding the information she had produced on dentists and waiting lists at the Committee's last meeting. He stated that she was examining the PCT's reporting systems, which produced the information with a view to reporting back to the Committee. Requests had been made for the following information:

- how many patients were on the waiting list at any one time and
- how long patients stayed on the waiting list.

Following the report back Members would be able consider whether this was the best method of reporting and agree on the frequency that information was required.

RESOLVED: (i) That a report be prepared for the next meeting on the NHS Constitution consultation to enable Members to decide whether they wish to make comments; [1.]

(ii) The addition in the Committee's work plan for 2008/09 of the word "Ongoing" in the Timeframe column against the work area 'Dental Provision in York'. [2.]

(iii) That Officers pursue the update report on dental services from the NYYPCT for report back to the Committee. [3.]

Action Required

1. Report on NHS Consultation to be submitted to 6 October meeting.	GR
2. Update Committee's Forward Plan.	GR
3. Report back to Committee on dental services update.	GR

S FRASER, Chair
[The meeting started at 5.00 pm and finished at 5.55 pm].

Health Scrutiny Committee **6th October 2008**

Dementia Review – Interim Progress Report

Background

1. In coming to a decision to review this topic, the Health Scrutiny Committee recognised certain key objectives and the following remit was agreed:

Aim

2. To look at the experience of older people with mental health problems (and their families/carers) who access general health services for secondary care in order to identify where improvements may be required.

Key Objectives

i. Where patients with mental health conditions access general, secondary health services, investigate whether their mental health problems are recognised and whether the connection is made between them and the required treatment.

ii. To identify ways in which healthcare professionals may assist patients with mental health conditions to overcome the barriers they face when accessing secondary care.

iii. To investigate ways of improving the safety of patients with mental health conditions and the secondary healthcare providers who have contact with them.

iv. To develop initiatives for improving the experiences of mental health patients using general, secondary health care and their families/carers.

Consultation

3. At a formal meeting on 22nd September Members discussed their findings from the informal evidence gathering session held on 1st September 2008. Representatives of the following organisations were present at the meeting.

- York Older People's Assembly
- Alzheimer's Society
- York Carer's Forum
- York LINk (Local Involvement Network)
- City of York Council Social Services Department
- North Yorkshire and York Primary Care Trust (NYYPCT)

Information Gathered

4. At the same meeting a representative from the Older People's Assembly spoke to Members in relation to the review and raised the following points:

   - The vulnerability of dementia sufferers during the different stages of their illness
   - Dementia sufferers were less able to adapt to change
   - Dementia sufferers often encountered problems with diet and lack of personal care
   - An admission to hospital was a major change for a person suffering with dementia and those patients without a partner, carer or advocate should be able to expect sympathetic treatment from hospital staff rather than the experiences presented at the informal evidence gathering session
   - It was important that all staff were trained to deal sympathetically with dementia sufferers
   - GP's were often not aware of a patient's history.

5. A representative of the Alzheimer's Society stressed the importance not only of having suitably trained staff available but making sure knowledge learned from training is implemented at all times.

Issues Arising

6. After listening to the additional evidence presented to them at the meeting on 22nd September 2008 and discussing the information gathered at the informal evidence gathering session Members identified several issues that needed further exploration. They decided that these could be addressed by consulting and receiving evidence from the following:

   - Yorkshire Ambulance Service (YAS) - A representative to be invited to attend the next formal meeting on Monday 6th October to present their experiences in relation to dementia patients accessing secondary care. Mike Wright the Locality Manager from YAS has confirmed his attendance.

   - York Hospital front line staff – (if possible before the next formal meeting on Monday 6th October). Members of the Committee to visit front line staff at York Hospital to talk to them about training requirements in relation to caring for patients with dementia who are accessing secondary care and to investigate what would assist them in caring for dementia patients.

   - The North Yorkshire and York Primary Care Trust (NYYPCT) on training issues and the status of the Psychiatric Liaison Service. The PCT have confirmed that they will send representatives to the next formal meeting of the Committee on Monday 6th October to present further information.

   - Local Medical Committee (LMC) as to whether it was feasible to include in GP notes details of named carers and to flag this information up when admitting dementia sufferers to hospital for secondary care.

7. The following issues have been previously identified to Members for consideration. They are included here to assist in making appropriate recommendations for the draft final report.

Accessing & Sharing Information

- In the age of computerised record keeping is there no way that patients who have a diagnosis of dementia, live alone and need more support could be flagged up in some way
- Different service providers had different computer systems and these were not always compatible with each other
- It would be very easy to flag up on GP notes if a patient had dementia & no relatives. The Voluntary Organisations such as Age Concern and Alzheimer's Society would then be able to assist
- There was difficulty sharing confidential information across agencies.
- Is there a way that certain information could be shared with voluntary organisations to enable them to assist their clients

Involvement of Carers/Relatives

- Older people and their families often did not know how to deal with the early stages of dementia (pre-diagnosis) and were often not given enough support. Once a patient was 'in the system' they (and their families/carers) were more likely to get the support they needed
- The importance of keeping carers/relatives involved during a patient's stay in hospital
- Poor pay for care workers
- There was a fine balance between knowing when to ask the patient questions and when to ask the carer/relative. It was noted that people with dementia could be convincing.
- There was a need to improve carer experiences.

Attitudes towards dementia

- There is a lot of ignorance surrounding dementia and many people do not know how to deal with parents who are incapacitated by it. Better publicity may help
- Attitudes towards mental health needed to be changed

Dementia patients and the hospital environment

- The importance of keeping carers/relatives involved during a patient's stay in hospital
- Hospital visiting times and supervision at meal times
- Practical considerations are very important when a patient is in hospital (i.e. working hearing aids, whether a patient can eat and drink unaided)
- Clinicians in 'short appointment clinics', such as the outpatients' clinics may not always have full medical history on hand and may not recognise that a patient has memory problems/dementia

- Hospital staff do not always talk to relatives/carers but amongst themselves
- It is sometimes difficult to get hospital staff to take on board the concerns that carers have or to listen to the information that they can provide about the needs of the patient
- Carers/relatives are not necessarily familiar with hospital systems. Is there anything that can be done to change this?
- How should the needs of elderly people, especially those with dementia, be met when attending hospital appointments and during hospital stays?
- There was a lack of private space for meetings and assessments to take place in the hospital environment

Psychiatric Liaison Service

- The fact that a 'psychiatric liaison service' did not exist at the present time.
- Information regarding what a liaison service would provide is attached at annex A to this report

Voluntary Organisations

- Not everyone is aware of voluntary organisations and what they can do to assist. The general public are not always given a good picture of what is out there in terms of moral support

General

- Family GPs no longer exist and often are not aware of a person's history
- We are an aging population and thus there will be more people with dementia
- People's choices must be respected
- Many people are reluctant to accept that they have dementia
- There was a fine balance between knowing when to ask the patient questions and when to ask the carer/relative. It was noted that people with dementia could be convincing.
- The need to maintain the health and safety of the patient at all times and for positive relationships to be built.

Options

8. After hearing evidence from the health organisations set out in paragraph 6 of this report Members may wish to consider whether they have enough information to produce a draft final report and identify some appropriate recommendations.

9. If Members feel that they need further evidence they will need to indicate who this information should be gathered from and when they would like to receive it.

Recommendation

10. It is recommended that Members consider and agree:

    i. Whether it is necessary to gather further information and if so from whom and when

    ii. If the above is not considered necessary then to make some appropriate recommendations to be included in the draft final report.

    Reason: To progress this review

Contact Details

Author:
Tracy Wallis
Scrutiny Officer
Scrutiny Services
01904 551714

Chief Officer Responsible for the report:
Quentin Baker
Head of Civic, Democratic & Legal Services
01904 551004

Interim Report Approved	√	**Date**	26.09.2008

Wards Affected: **All** √

For further information please contact the author of the report

Background Papers:

None

Annexes

None

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Health Scrutiny Committee **6th October 2008**

Report of the Head of Civic, Legal and Democratic Services

Consultation on the NHS Constitution

Summary

1. The purpose of this report is to ask Members whether they wish to take part in the national consultation on the NHS Constitution. A copy of the letter inviting Members to comment is attached at Annex 1; a copy of the consultation document is attached at Annex 2 and a copy of the constitution at Annex 3. Further information on the consultation process and additional documentation is available at www.dh.gov.uk/consultations.

Background

2. The draft NHS Constitution now records in one place what the NHS does, what it stands for and what it should live up to. It sets out principles to guide how all parts of the NHS should act and make decisions.

3. The draft Constitution renews the commitment to the enduring principles of the NHS. It confirms commitment to a service that is for everyone, paid for out of taxes, based on clinical need rather than an individual's ability to pay, and without discrimination of any kind.

4. The NHS Constitution sets out seven core principles, which aim to empower patients, make decision-making criteria clearer and safeguard the future of the service. The draft Constitution proposes a new law to ensure that it is reviewed every ten years with its values reaffirmed every three years.

Consultation

5. A national consultation on the NHS Constitution is now underway. Locally NHS organisations are being encouraged to ensure there is wide input from the public, stakeholders, patients and staff before the NHS Constitution is taken through Parliament, as part of the Health and Social Care Act early in 2009.

6. The consultation runs until 17th October 2008.

Options

7. Members are presented with the following two options:

i. Take part in the consultation process

ii. Do not take part in the consultation process

Analysis

8. The NHS wishes to consult as widely as possible on the constitution and welcomes views from Local Authorities. The Government wishes to engage everyone in the debate.

9. The Department of Health will bring together the comments received both nationally and locally to produce a formal government response to the consultation process.

10. If Members choose to take part in the consultation they will need to consider the time constraints for submitting their comments. Members may wish to consider adding an item to the work plan to discuss the consultation documentation at the meeting scheduled for Monday 6th October 2008.

Corporate Strategy 2007-2011

11. This relates to the following Priority for Improvement as set out in the Corporate Strategy 2007-2011

- Improve the health and lifestyles of the people who live in York, in particular among groups whose levels of health are the poorest.

Implications

12. **Financial** – There are no known financial implications associated with this report.

13. **Human Resources** – There are no known Human Resources implications associated with this report.

14. There are no Equalities, Legal, Crime & Disorder, Information Technology, Property or other implications associated with this report.

Risk Management

15. In compliance with the Council's risk management strategy there are no known risks associated with the recommendations of this report.

Recommendations

16. Members are asked to decide whether they wish to take part in the consultation process and if so to authorise the Chair and the Scrutiny Officer to collate the comments for submission in accordance with the deadlines.

Reason: In order to give the Local Authority a voice in the consultation process

Contact Details

Author:
Tracy Wallis
Scrutiny Officer
Scrutiny Services
01904 551714

Chief Officer Responsible for the report:
Quentin Baker
Head of Civic, Democratic & Legal Services
01904 551004

Report Approved √ **Date** 26.09.2008

Specialist Implications Officer(s)
None

Wards Affected: **All** √

For further information please contact the author of the report

Background Papers:

Background documentation and additional information can be found at www.dh.gov.uk/consultations

Annexes

Annex 1 Letter inviting Members to comment on the Constitution
Annex 2 The Consultation Document
Annex 3 The Constitution

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North Yorkshire and York NHS
Primary Care Trust

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1 August 2008

Dear Colleague

Consultation on *The NHS Constitution*

To coincide with the 60th anniversary of the NHS and the publication of the Next Stage review the first written constitution for the NHS has been drafted by patients, the public and staff.

The NHS Constitution sets out seven core principles which aim to empower patients, make decision-making criteria clearer and safeguard the future of the service. The draft constitution proposes a new law to ensure that it is reviewed every ten years with its values reaffirmed every three years. Our own objectives, which can be found on our website www.nyypct.nhs.uk, reflect the principles set out in the constitution.

A national consultation on the *NHS Constitution* is now underway. Locally NHS organisations are being encouraged to ensure there is wide input from the public, stakeholders, patients and staff before *The NHS Constitution* is taken through Parliament, as part of the Health and Social Care Act early in 2009.

The consultation document and supporting information can be accessed through the DH website www.dh.gov.uk/consultations. The consultation runs until 17 October 2008 and if you would like to offer any comments there are a number of ways you can do so. You can provide your comments by email to nhsconstitution@dh.gsi.gov.uk or, in writing to: NHS Constitution Consultation, Richmond House 611a, London, SW1A 2NS.

Yours sincerely

John Wardle OBE DL
Chairman

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A consultation on

The NHS Constitution

DH INFORMATION READER BOX

Policy	Estates
HR/Workforce	Commissioning
Management	IM & T
Planning	Finance
Clinical	Social Care/Partnership Working

Document purpose	Consultation/Discussion
Gateway reference	0074
Title	A consultation on the NHS Constitution
Author	DH
Publication date	30 June 2008
Target audience	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT PEC Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Directors of Finance, Allied Health Professionals, GPs, Communications Leads, Emergency Care Leads, Directors of Children's SSs
Circulation list	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT PEC Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Directors of Finance, Allied Health Professionals, GPs, Communications Leads, Emergency Care Leads, Directors of Children's SSs, Voluntary Organisations/NDPBs
Description	Follows the statutory consultation process
Cross ref	Published alongside the draft NHS Constitution, the draft *Handbook to the NHS Constitution*, and staff and patient booklets
Superseded docs	N/A
Action required	Respond to consultation
Timing	Comments by 17 October 2008
Contact details	NHS Constitution Room 611a Richmond House 79 Whitehall London SW1A 2NS 020 7210 5787 nhsconstitution@dh.gsi.gov.uk
For recipient's use	

Foreword

from the Secretary of State for Health

The NHS is our proudest achievement.

Its future is too important to be left to chance. That is why the Government is proposing to secure the NHS for the future in a Constitution, which forms part of a broader approach to improving governance in Britain, led by the Ministry of Justice.[1]

The NHS was created 60 years ago in a remarkable act of political courage and vision, to remove the fear that haunted many families, of not being able to pay for necessary healthcare.

Since then, the NHS has changed radically and for the better. As set out in Lord Darzi's *Next Stage Review*, published alongside the NHS Constitution, the NHS is already world-class in many aspects, and if it is to provide a world-class health service in the 21st century it will need to keep changing to adapt to advances in medical science, new technology and an ageing population.

But for the NHS some things remain constant: what it is for, and the principles and values that underpin its activities. Staff, patients and the public should know what they are entitled to expect from the NHS, and what they can do if their needs are not met. We must use it well, look after its resources, and take responsibility for our health and well-being. We should know who is responsible for what, and how decisions are made.

This draft Constitution has been developed through a wide process of consultation and research into what matters to staff, patients and the public. The next step in the process is a public consultation, where everyone can have their say about what is in the Constitution and how it will work. This document is intended to help to explain our plans, and tell you how you can get involved.

Rt Hon Alan Johnson MP
Secretary of State for Health
30 June 2008

1 *The Governance of Britain*, Ministry of Justice, CM 7170, July 2007

Executive summary

The NHS is the world's largest publicly funded health service.

The draft NHS Constitution now records in one place what the NHS does, what it stands for and what it should live up to. It sets out principles to guide how all parts of the NHS should act and make decisions.

The NHS Constitution renews our commitment to the enduring principles of the NHS. It confirms again the commitment to a service that is for everyone, paid for out of taxes, based on clinical need rather than an individual's ability to pay, and without discrimination of any kind. It offers, for the first time, a set of NHS-wide values created with the help of patients, the public and staff.

It collects together important rights for both patients and staff – and it sets out a number of pledges that reflect where the NHS should go further than the legal minimum. Each right or pledge is backed up by an explanation, in the *Handbook to the NHS Constitution*, of how it will be enforced and how to seek redress.

The Constitution also sets out responsibilities – how we can all play our part to make the best use of NHS resources.

The Government will be required by law to renew the NHS Constitution every 10 years, with the full involvement of the patients who use the health service, the public who fund it and the staff who work in it. All NHS organisations will be required to take account of the NHS Constitution in the decisions that they make.

The *Handbook to the NHS Constitution* will be refreshed every three years so that it reflects the latest service standards. As well as setting out the legal basis for all the rights contained within the Constitution, it details how the performance management and regulatory regime of the NHS will ensure that the pledges are delivered.

The NHS belongs to us all. The Constitution is designed to reflect what matters, whether you are a patient or a member of staff. We welcome your views.

In addition to this consultation document, two short guides to the Constitution for patients, the public and staff are also being published and will be available on the Department of Health website (www.dh.gov.uk).

1 The case for the Constitution

1.1 The NHS was created 60 years ago this week in a remarkable act of political courage and vision. The NHS Constitution is designed to renew and secure our commitment to the enduring principles of the NHS, making sure that it continues to be relevant to the needs of patients, the public and staff in the 21st century.

1.2 We have developed it to:

a) **secure the NHS for the future.** The NHS Constitution will clearly set out all the enduring principles and values for the NHS, and the rights and responsibilities for patients, the public and staff;

b) **empower all patients and the public.** Patients already have considerable legal rights in relation to the NHS, but these are scattered between different legal instruments and policies. This is the first time that they are summarised in one place. The NHS Constitution also sets out a new right on choice and a series of pledges. The *Handbook to the NHS Constitution* sets out in detail how each right and pledge will take effect, and the means for redress;[2]

c) **empower and value staff.** The NHS is a service provided by over 1.3 million staff. For an NHS Constitution to be an enduring settlement, it needs to reflect what we are offering to the workforce: a commitment to provide all staff with quality jobs along with the training and support that they need. The *Handbook to the NHS Constitution* clearly sets out what employment rights each member of staff currently has, ensuring clarity and information for all;

d) **create a shared purpose, values and principles.** As the NHS evolves, a wider range of providers, including those from the third and independent sector, are offering NHS-commissioned services. Patients expect that wherever they receive their NHS-funded treatment, the same values and principles should apply. That is why we are setting out the purpose, principles and values for the NHS in the Constitution; and

e) **strengthen accountability through national standards for patients and local freedoms to deliver.** In discussions with patients, the public and staff, we have received a strong message that they are committed to the NHS as a national system, paid for out of general taxation, and that they expect certain standards of care and access no matter where they live.

1.3 The draft Constitution works from the presumption that decision-making is best

2 This can be found on the Department of Health website at www.dh.gov.uk

located as close as possible to patients and communities, unless there are reasons of principle or fairness that require a regional or national oversight. It will always be the responsibility of the Government to set the overall framework and to ensure that the system of devolution and accountability works in the best interests of the public, patients and staff.

1.4 Nationally we will ensure that minimum quality and access standards are set and will provide the necessary resources to meet them; and the Government of the day will be held to account for delivery. Alongside the Constitution, we propose that the Government be required to publish a statement of accountability so that it is clear to all who has responsibility for which decisions within the NHS. But we are in no doubt that within a national accountability framework, change and improvement must be driven locally, ensuring that local services directly engage with and respond to front-line clinicians, patients and the public.

1.5 The Constitution forms part of a broader approach to improving governance in Britain, led by the Ministry of Justice.[3] This approach has informed the development of the rights, responsibilities and pledges that are at the heart of the draft NHS Constitution.

3 *The Governance of Britain*, Ministry of Justice, CM 7170, July 2007

2 The source and status of the Constitution

Sources and context

2.1 For an NHS Constitution to be meaningful and enduring it needs to be based on real evidence of what matters to patients, the public and staff. The draft presented for consultation builds on an extensive development process, including a literature review, discussions with patients, the public and staff, advice from lawyers, contributions from a wide range of experts and think-tanks, and a major deliberative event with stakeholders in February 2008. Early drafts of the Constitution have been tested with these stakeholders, with experts and with patients, the public and staff. International comparisons have been considered,[4] and we have also drawn on parallel work underway at the Ministry of Justice on the governance of Britain, including work on rights and responsibilities.[5]

What we learned from our research and consultation

2.2 Our extensive programme of research and consultation revealed some common, if challenging, themes for the Constitution. Common messages that came back were:

> To qualify as a Constitution, the document needs to be short and enduring (ie contain high-level rights and principles that would endure for at least 10 years, and not contain organisational or policy details that could be subject to change).

> The Constitution should be flexible and not hold back the NHS in terms of its ambitions for patients.

> For the Constitution to be meaningful it must provide means for enforcement and redress, and not just consist of warm words or aspirations.

> However, there was no appetite for a 'lawyers' charter', and there was a consensus that we should avoid fuelling litigation.

2.3 The draft Constitution that we publish for consultation today attempts to balance the ambitions and concerns expressed by our patients, the public and staff.

The status of the Constitution

2.4 The Constitution itself will not be passed into law but will be a 'declaratory document', articulating existing legal rights, and one new right, in one place. It does not replace the underlying law. The new right proposed, concerning choice, will be put into law separately. In addition, we propose to use the

4 The most famous health constitution is for the World Health Organization, but this is for an international organisation and does not capture the relationship between patients, providers, delivery partners and the role of the state.

5 See www.justice.gov.uk/whatwedo/governance.htm

forthcoming NHS Reform Bill to place a legal duty on all NHS organisations to take account of the Constitution when performing their functions.

2.5 The courts may of course still take account of the Constitution in some instances. So while we summarise existing rights as clearly as possible, we have taken care not to extend the meaning of the underlying legal right.

2.6 The intention of the Constitution is to capture the enduring principles and values that underlie the NHS, and to help to guide and shape behaviour across the system. It is not intended as either a legal instrument or a spur to litigation.

2.7 In addition to the Constitution itself we are publishing a draft *Handbook to the NHS Constitution*, to be renewed every three years, that sets out in detail how the rights, pledges, duties and responsibilities established by the Constitution will take effect, and, where relevant, what means of redress are available should the NHS fall short.

2.8 In the forthcoming NHS Reform Bill, we plan to include a duty on NHS bodies to take account of the Constitution and a duty on the Secretary of State for Health to renew the Constitution every 10 years.

2.9 Independent and third sector providers of NHS services will be required to take account of the Constitution through contracting and commissioning arrangements.

2.10 In addition, the Constitution provides a context for the reviews of the NHS currently carried out by the Healthcare Commission and, from 2009, by the Care Quality Commission. It also provides a context for the new system of registration being introduced from 2010.

Consultation questions

1. Should all NHS bodies and NHS-funded organisations be obliged by law to take account of the NHS constitution?

2. Should legislation require the Secretary of State for Health to renew the Constitution every 10 years?

3. Should the *Handbook to the NHS Constitution* be renewed every three years?

3 The purpose and principles of the NHS

Purpose

3.1 At a deliberative event in February 2008, we asked participants what they saw as the purpose of the NHS. We heard that a helpful statement of purpose for the NHS would:

- make clear that the NHS achieves better results through working in partnership with patients;
- emphasise mental as well as physical health;
- emphasise preventing illness as well as curing it;
- acknowledge the reality that people cannot always fully recover and many live with long-term conditions;
- acknowledge that the majority of NHS activities are provided for people in their last two years of life;
- include the declaration, some suggested, that the NHS purpose should include helping people to have a 'good death', as the NHS provides care from cradle to grave; and
- recognise the breadth of what the NHS does – from caring and compassion through to innovation and the adoption of new types of diagnosis and treatment.

3.2 We believe that the preamble in the Constitution captures these sentiments:

The NHS belongs to the people. It is there to improve our health, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can. It works at the limits of science – bringing the highest levels of human knowledge and skill to save lives and improve health. It touches our lives at times of basic human need, when care and compassion are what matter most.

Principles

3.3 The principles of the NHS are intended to be the enduring high-level 'rules' that govern the way that the NHS operates, and define **how** it seeks to achieve its purpose. The Constitution sets out the following principles:

1. The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, religion or sexual orientation. It has a duty to each and every individual that it serves. 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.

2. Access to NHS services is based on clinical need, not an individual's ability to pay. NHS services are free of charge, except in limited circumstances sanctioned by Parliament.

3. The NHS aspires to high standards of excellence and professionalism – in the planning and delivery of the clinical and other services it provides; in the people it employs and the education, training and development they receive; in the leadership and management of its organisations; and through its commitment to innovation and to the promotion and conduct of research to improve the current and future health and care of the population.

4. NHS services must reflect the needs and preferences of patients, their families and their carers. Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment.

5. The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population. The NHS is an integrated system of orgtanisations and services bound together by the principles, values and commitments now reflected in the Constitution. The NHS is committed to working jointly with local authorities and a wide range of other private, public and third sector organisations at national and local level to provide and deliver improvements in health and well-being.

6. The NHS is committed to providing best value for taxpayers' money and the most effective and fair use of finite resources. Public funds for healthcare will be devoted solely to the benefit of the people that the NHS serves.

7. The NHS is accountable to the public, communities and patients that it serves. The NHS is a national service funded through national taxation, and it is the Government which sets the framework for the NHS and which is accountable to Parliament for its operation. However, most decisions in the NHS, especially those about the treatment of individuals and the detailed organisation of services, are rightly taken by the local NHS and by patients with their clinicians. The system of responsibility and accountability for taking decisions in the NHS should be transparent and clear to public, patients and staff. The Government will ensure that there is always a clear and up-to-date statement of NHS accountability for this purpose. In addition, all NHS organisations will give patients and the public the opportunity to influence and scrutinise their performance and priorities; and patients, public and staff will be involved in relevant decisions about the NHS which affect them, either directly or through their representatives.

3.4 The purpose and principles for the NHS draw on the National Health Service Act 1946, which delivered a comprehensive health service based on clinical need rather than ability to pay, and also the NHS Plan of 2000.[6] Annex B shows how all the principles in the NHS Plan filter through, in some form, to the principles, values, rights and pledges proposed for the Constitution.

Consultation question

4. Are the statement of purpose and the set of principles right? Are there any principles that should be added?

6 National Health Service Act 1946, c81; *The NHS Plan: a plan for investment, a plan for reform*, Department of Health, July 2000
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4002960

4 Patients and the public

What the public can expect from the NHS

4.1 In developing the Constitution's section on patients and the public ('Patients and the Public – Your Rights and NHS Pledges to You'), we have drawn on lessons from other countries, from other government departments and from the past, particularly the 1991 Patients Charter. The Patients Charter laid out what patients were guaranteed and what they could expect, but failed to distinguish between legal rights and aspirational commitments.[7] We have taken this into account in developing our legal rights.

4.2 We have endeavoured to learn from experience by ensuring that the NHS Constitution and *Handbook to the NHS Constitution* clarify what is a legal right and what is an NHS pledge; they also describe how the pledges will be delivered, and what happens if they are not. We have underpinned our work by listening to the views of patients, the public and staff about what they would like to see in the NHS Constitution.

Legal rights and pledges

4.3 When asked, patients and the public liked the idea of summarising their key rights in one place as, for the most part, they were not aware of their existing rights.

4.4 A consensus also emerged around what should be described as 'rights' in the Constitution. People wanted 'rights' to be restricted to legal rights that could be clearly defined, which would be expected to be delivered without fail across the NHS, and for which a form of legal redress was available, if necessary.

4.5 A legal right is an entitlement protected by law. The rights described in the Constitution include rights conferred explicitly by the law and rights derived from legal obligations imposed on NHS bodies and healthcare providers. Further details of the legal basis of the rights listed in the Constitution is set out in the *Handbook to the NHS Constitution*.

4.6 Legal rights set a minimum standard which must be complied with; failure to comply may result in litigation or other forms of legal enforcement against the NHS. In addition, however, there are various other outcomes or objectives the NHS should aspire to achieve, but which may not be appropriate as legal standards – it may not be possible to achieve compliance, or it may be impracticable or prohibitively expensive to do so. Inappropriate, ambiguous or over-ambitious legal standards may lead to unnecessary additional litigation and costs to the NHS.

7 *The new NHS charter – a different approach: report on the new NHS charter by Greg Dyke*, Department of Health, 1998, www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4005210

4.7 In order to respond to what patients and the public told us matters to them and to ensure that the NHS continues to be ambitious, while seeking to ensure that we maintain clarity about what constitutes a legal right, the Constitution includes various 'pledges'. These are commitments that the NHS will strive to achieve a particular outcome or standard even though it cannot be guaranteed for everyone all the time.

4.8 An example is the pledge that the NHS will strive to provide convenient, easy to access services within the waiting times set out in the *Handbook to the NHS Constitution*. There are various performance standards operating within the NHS which make services easier to access, such as the 18-week maximum wait from referral to treatment. However, there is not a general obligation in law for the NHS always to achieve such a standard, because there will always be circumstances where it is inappropriate – if, for example, someone chooses to go away rather than attend a hospital appointment, this will delay treatment times. Nonetheless, the NHS should always strive to provide easily accessible and convenient services for every patient.

4.9 The *Handbook to the NHS Constitution* contains further details of how the NHS will ensure that the pledges are met through the application of the NHS performance and regulatory regime.

4.10 The draft Constitution sets out 37 rights and pledges to patients and the public under seven broad headings, as listed in the boxes on pages 14 to 20.

Access to healthcare services

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

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

You have the right to expect your local NHS to assess the health requirements of the local community and to put in place the services to meet those needs as considered necessary.

You have the right to seek treatment elsewhere in Europe if you are entitled to NHS treatment but you face undue delay in receiving that treatment.

You have the right not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, religion, sexual orientation, disability (including learning disability or mental illness).

The NHS will strive to provide convenient, easy access to services within the waiting times set out in the *Handbook to the NHS Constitution*. (pledge)

The NHS will strive to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered. (pledge)

The NHS will strive to make the transition as smooth as possible when you are referred between services, and to include you in relevant discussions. (pledge)

4.11 Our research showed that the public greatly value the NHS caring for all on the basis of clinical need, not an individual's ability to pay. This section of the Constitution sets out the five rights and three pledges that underpin this fundamental principle. It clearly sets out the right to receive NHS services without discrimination, and free of charge (except in limited circumstances explicitly sanctioned by Parliament).

4.12 In terms of waiting times we pledge that 'the NHS will strive to provide convenient, easy access to services within the waiting times set out in the *Handbook to the NHS Constitution.*' This document sets out the current NHS waiting time standards so that these are clear to everyone. While the high-level pledge is set out in the Constitution itself and will endure for 10 years, the minimum standards will be reviewed at least every three, with local NHS organisations free to set more challenging ambitions for their populations.

Quality of care and environment

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.

You have the right to expect NHS organisations to monitor, and make efforts to improve, the quality of healthcare they provide, taking account of the applicable standards.

The NHS will strive to ensure services are provided in a clean and safe environment that is fit for purpose, based on national best practice. (pledge)

The NHS will strive for continuous improvement in the quality of services you receive, identifying and sharing best practice in quality of care and treatments. (pledge)

4.13 Patients and staff are clear that quality should be at the heart of all that the NHS does. This section sets out the two rights and two pledges that will ensure all patients receive the highest quality care possible. It sets out the right of all patients to be treated with a professional standard of care, by qualified staff, and in line with national standards.

4.14 Reflecting a key concern from research and reflecting our continued emphasis on tackling healthcare-associated infections, there is a new pledge that 'the NHS will strive to ensure services are provided in a clean and safe environment that is fit for

purpose, based on national best practice.' The *Handbook to the NHS Constitution* sets out in detail how the performance and regulatory regime will ensure that this is delivered, and the means for redress.

Nationally approved treatments, drugs and programmes

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.

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.

The NHS will strive always to provide vaccination and screening programmes as recommended by the appropriate national advisory bodies. (pledge)

4.15 In 1999, the National Institute for Health and Clinical Excellence (NICE) was created to ensure there was one authoritative source of advice on clinical and cost effectiveness of significant new drugs and treatments, rather than leaving it up to individual health authorities, which was both costly and unfair. Much progress has been made since then, as NICE has developed highly regarded, transparent processes for assessing new, licensed drugs and medical technologies to determine clinical and cost effectiveness.

4.16 The number one concern expressed in our research with patients and the public and in other surveys is the perceived 'postcode lottery' for access to drugs. This has arisen in part because the robustness of the NICE process has sometimes led to long delays in the decisions that it makes. In the absence of guidance from NICE, individual primary care trusts (PCTs) have had to make decisions about whether to fund new drugs, often using different sources of advice and decision-making processes. The Constitution gives us an opportunity to address this important issue in three ways.

4.17 **Firstly,** we will make clear that everyone has a right to drugs and treatments approved by NICE for use in the NHS if clinically appropriate. PCTs already have a statutory responsibility to make funding available for drugs and other treatments that are recommended in NICE's technology appraisal guidance, but it is not always obvious to patients what this means for them in practice. The ability to articulate this as an individual right is the result of the nine-year legacy following the creation of NICE. This right reaffirms that access to the most important new drugs and treatments does not depend on where you live and empowers patients to ask their clinicians for NICE-appraised drugs and treatments.

4.18 **Secondly**, we will work with NICE to enable them consistently to produce fast guidance on important new drugs, so that NICE can issue the majority of its appraisal guidance within a few months of a new drug's launch. Significantly reducing the time taken to publish authoritative NICE guidance should help end the postcode lottery for new drugs and treatments, as it is often in the window where NICE has yet to publish guidance that variation in funding decisions occurs.

4.19 **Thirdly**, as well as making the national process fairer and faster, we will take steps to further reduce the postcode lottery at PCT level where NICE has yet to issue guidance, or where NICE will not be appraising a drug. The NHS Constitution will set out your right to 'expect local decisions on funding of other drugs and treatment 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.'

4.20 To underpin this, we will require PCTs to put in place clear and transparent arrangements both for local decision-making on funding of new drugs and for considering exceptional funding requests, and to publish information on those arrangements. To further support this, we will work with the NHS to develop a set of principles that will inform the work PCTs do to make local decisions on the funding of new drugs. We will also invest in further guidance and support for PCTs, to help them put these principles into action.

Respect, consent and confidentiality

You have the right to be treated with dignity and respect.

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 interests.

You have the right to be given information about your proposed treatment in advance, including any significant risks and any alternative treatments which may be available, and the risks involved in doing nothing.

You have the right to privacy and confidentiality.

You have the right to access your own health records. These will always be used to manage your treatment in your best interests.

The NHS will strive to share with you any letters sent between clinicians about your care. (pledge)

4.21 Anyone who has ever received or provided care knows just how important respect, consent and confidentiality are. When we are sick, we are not just patients, we are

people. But often when we are very sick we are at our most vulnerable. This is why in this section we set out clearly the right to be treated with dignity and respect; and the right to informed consent – and in order for that to be meaningful, to receive information in advance about the proposed treatment, including the risks of doing nothing. These are existing rights, but by pulling them together in one place we hope that they will be a powerful reminder of how we all should be treated when we are sick.

Informed choice

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.

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.

You have the right to make choices about your NHS care. The options available to you will develop over time and depend on your individual needs. Details are set out in the *Handbook to the NHS Constitution*.

The NHS will strive to inform you about what healthcare services are available to you, locally and nationally. (pledge)

The NHS will strive to offer you easily accessible information to enable you to participate fully in your own healthcare decisions and to support you in making choices. This will include information on the quality of clinical services where there is robust and accurate information available. (pledge)

4.22 Choice is now a normal and natural feature of people's lives, and there is no reason why health services should be any different. People want to be in control over their care. They should be able to expect the NHS to consistently provide individualised treatment that takes account of their needs and their preferences. Evidence gathered on what matters to patients told us that patients wanted care to fit around their lives, and wanted to be involved in their care where it matters to them. Giving people greater choice over their care is a good way of achieving this, so since April 2008 'free choice' has enabled people to choose which hospital they get treated at when they are referred for elective care.

4.23 Two existing rights to choice are set out in the Constitution: to choose your GP practice and your GP.

4.24 In addition to these existing rights we propose creating a new right, to make choices about your NHS care.

4.25 The right is intended as a general right to choice and will be underpinned by new statutory directions from the Secretary of State to PCTs, as the policy evolves.

4.26 Setting out this right in the Constitution ensures that the right to choice enshrines choice as a core feature of a responsive NHS in the 21st century.

Involvement in your healthcare and in the NHS

You have the right to be involved in discussions and decisions about your healthcare, and to be given information to enable you to do this.

You have the right to be involved, directly or through representatives, in the planning of healthcare services, 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.

The NHS will strive to provide you with the information you need to participate effectively to influence the planning and delivery of NHS services. (pledge)

The NHS will strive to work in partnership with you, your family and carers. (pledge)

4.27 The NHS belongs to the people. It is funded through general taxation and is accountable to the public through Parliament. The NHS Constitution makes clear your right to be involved in decisions about your own healthcare as a patient, as well as your right to be involved in decisions about the planning of local healthcare services as a citizen. Since the publication of the *NHS Plan* in 2000 there have been substantial legislative, structural and cultural changes to extend and improve patient and public involvement, and these are set out fully in the *Handbook to the NHS Constitution*. The *Handbook* will ensure that all patients and citizens are fully aware of their rights to be involved. The statement of accountability will make clearer who is responsible for making what decisions on behalf of patients and the public, and provide opportunities for challenge and scrutiny.

Complaint and redress

You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated.

You have the right to know the outcome of any investigation into your complaint.

You have the right to take your complaint to the Health Service Ombudsman where you have exhausted any other rights of appeal or review.

You have the right to make a claim for judicial review if you think you have been directly affected by an unlawful NHS decision or action.

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

The NHS will strive to ensure that if you make a complaint, you receive a timely and appropriate response, that any harm you suffered is corrected where possible, and that the organisation learns lessons and puts in place necessary improvements. (pledge)

The NHS will strive to ensure that you receive appropriate support and are treated with respect and courtesy throughout the handling of any complaint you make, but the fact that you have complained will not affect your future treatment. (pledge)

4.28 Throughout the development of the Constitution, patients, the public, staff and stakeholders have all stressed the need to strike an appropriate balance between ensuring the Constitution has enough teeth to make a difference, while avoiding creating a litigious culture. We are also conscious that a new complaints procedure is about to take effect, so we want to avoid creating another tier or structure relating to the Constitution.

4.29 In the draft consultation we propose to ensure that the Constitution takes effect through:

a) **responsibility.** Giving all NHS organisations a duty to take account of the Constitution and making PCTs the local champion of the Constitution on behalf of patients – with a named board member given responsibility;

b) **clarity.** Setting out clearly for the first time in the Constitution your rights to redress, and (in the *Handbook to the NHS Constitution*) the options for redress specific to each of the 37 rights and pledges; and

c) **local resolution.** From April 2009 the new, reformed complaints system will come into effect, making it easier and clearer for complaints to be resolved at a local level.

4.30 Our guiding principle has been to work within existing mechanisms, but it is vital that the system of redress is both proportionate and has the trust of patients and the public, so we will consult further on whether we have the balance right.

Patients' and the public's responsibilities

You should recognise that you can make a significant contribution to your own and your family's good health, and take some personal responsibility for it.

You should register with a GP practice – the main point of access to NHS care.

You should treat NHS staff and other patients with respect and recognise that causing a nuisance or disturbance on NHS premises could result in prosecution.

You should provide relevant and accurate information about your health, condition and status

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

You should follow the course of treatment which you have agreed with your clinician.

You should participate in important public health programmes such as vaccination.

You should ensure that those closest to you are aware of your wishes about organ donation.

You should give feedback – both positive and negative – about the treatment you have received, including any adverse reactions you may have had.

4.31 The section on responsibilities explains how patients and the public can play their part in looking after their own and their family's health.

4.32 Our discussions with patients and the public have shown support and agreement that we all have a responsibility to look after our own health and to use services appropriately. The concept of 'responsibilities' was thought to be sensible and fair. Discussions with patients, the public and staff also indicated that, while some sanctions may be acceptable, responsibilities should mainly act as a guide for individual behaviour.

4.33 We have firmly ruled out linking access to NHS services to any sort of sanction for people not looking after their own health. Separately, though, receiving treatment within the waiting time standards will always be dependent on patients keeping appointments or cancelling within reasonable time when it is not possible to keep them.

4.34 There is a legal duty for patients not to cause a nuisance or disturbance to NHS staff on hospital premises. We do not propose listing other legal duties. The remaining responsibilities offer guidance on what patients can do to work as partners with the NHS in their health and to use resources responsibly.

4.35 The *Handbook to the NHS Constitution* will show where further information about each responsibility can be found.

Consultation questions

5. Is the list of public and patients' rights clearly explained and accessible to all sections of the population?

6. Is it useful to bring together all of the key public and patients' rights and pledges?

7. Do you agree with a new legal right to choice about your NHS care?

8. Is this list of pledges right? Which are most helpful?

9. Are the responsibilities and expectations of patients and the public appropriate? Which are most helpful?

10. Are the mechanisms for complaint and redress clear and sufficient?

5 Staff

5.1 It is clear from our research and engagement that for a constitution to be enduring, it needs to be based on what matters not just to our patients and the public, but also to the NHS's 1.3 million staff. The commitment, loyalty and hard work of staff commissioning and delivering NHS services makes a real and positive difference to patients' experience and the quality of care they receive. The inclusion of staff rights and pledges, responsibilities and expectations in this document acknowledges the central role staff play.

Staff – what they can expect from the NHS

Staff legal rights

5.2 The NHS has a good record of fair employment and respecting the rights covered by employment law, such as those prohibiting discrimination and respecting human rights. These rights are set out in the *Handbook to the NHS Constitution*, as a reminder. In addition, individual contracts of employment contain terms and conditions giving staff further rights.

5.3 These existing rights are there to help ensure that staff:

> have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives;

> have a fair pay and contract framework;

> can be involved and represented in the workplace;

> have safe working conditions free from harassment, bullying or violence;

> are treated fairly, equally and free from discrimination; and

> can raise an internal grievance, and if necessary seek redress, where it is felt that a right has not been upheld.

Pledges to NHS staff

5.4 NHS staff survey results confirm that staff have high levels of commitment to the job they do, but they do not always feel supported at work. This makes a difference to how effectively they can deliver care for patients. Therefore, in addition to the legal rights set out above, the pledges for NHS staff[8] reaffirm the commitment that good workplaces should exist for all NHS staff – they should not just be the preserve of highly performing organisations.

5.5 The pledges are aimed at NHS organisations and their employees but should apply to all staff commissioning or

8 By NHS staff we mean NHS employees

providing NHS services. We will explore how to include a requirement within model contracts for non-NHS contractors to explain how they will deliver the pledges for those staff covered by that contract.

5.6 We do not propose to enshrine these pledges in law – this is not consistent with the themes which have emerged from Lord Darzi's *Next Stage Review* around enabling local employers. In addition, this would reduce the need to alter the pledges over time to meet emerging and new needs. Like the patient pledges, they are not legally binding or directly enforceable in the courts – but they will stretch the system to improve performance, going above and beyond minimum legal requirements.

5.7 Nevertheless, at local level, employers, commissioners and strategic health authorities (SHAs) will wish to consider how they can deliver the pledges within local health economies and ensure that they are consistent with SHAs' strategic visions for improving health and healthcare over the next decade.[9] They will also wish to consider how they engage with and inform their staff about the pledges.

5.8 National action to support the delivery of the pledges is outlined in the *Handbook to the NHS Constitution*.

The NHS will strive to provide all staff with well-designed and rewarding jobs that make a difference to patients, their families and carers, and communities. (pledge)

The NHS will strive to provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed. (pledge)

The NHS will strive to provide support and opportunities for staff to keep themselves healthy and safe. (pledge)

The NHS will strive to engage staff in decisions that affect them and the services they provide, individually and through representatives. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families. (pledge)

NHS staff responsibilities

Staff duties

5.9 Existing staff responsibilities relevant to the NHS and defined elsewhere in legislation are set out in the Constitution. We have summarised the key relevant existing responsibilities for all employees, some of which may also apply to other staff such as contractors or agency workers. These provide a balance to the rights of staff – if both sides deliver on their respective obligations, a better, fairer workplace will result. The proposed *Handbook to the*

9 SHA strategic visions can be seen at: www.ournhs.nhs.uk/

NHS Constitution sets out for staff a detailed explanation of their responsibilities.

You have a 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.

You have a duty to take reasonable care of health and safety at work for you and others, and to co-operate with employers to ensure compliance with health and safety requirements.

You have a duty to act in accordance with the express and implied terms of your contract of employment.

You have a duty not to discriminate against patients or staff and to adhere to equal opportunities and diversity legislation.

You have a duty to protect the confidentiality of personal information that you hold.

You have a duty to be honest and truthful in applying for a job.

NHS expectations of staff

5.10 In the same way as the Constitution includes expectations of people who use the NHS, it also includes expectations of staff who provide NHS services. These expectations have been drafted to correspond to the staff pledges to indicate how staff should also play a part in their own well-being, development and involvement.

5.11 As with the pledges these are not legally enforceable expectations, but rather describe what employers can legitimately expect from employees when pledges are actively promoted.

5.12 The expectations are also intended to chime with and support the values on which we are consulting.

You should strive to maintain the highest standards of care and service, 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.

You should strive to take up training and development opportunities provided.

You should strive to play your part in improving services for patients, the public and communities.

You should strive to contribute to a climate where the truth can be heard and the reporting of, and learning from, errors is encouraged.

You should strive to involve patients, their families and carers in the services you provide.

Consultation questions

11. Is the list of staff pledges right? Which are most helpful?

12. Is it useful for the Constitution to set out staff responsibilities? Is the description right?

6 Accountability

Accountability arrangements in the NHS

6.1 The NHS is a national service, funded by general taxation, and as with other public services, accountability is of key importance. Debates about how to improve the accountability of the NHS have been a constant feature since its creation in 1948.

6.2 The NHS is responsible for spending over £100 billion of taxpayers' money every year, and policy and spending decisions are taken by democratically elected Ministers who are accountable to Parliament. This enables Members of Parliament from all parties to debate issues that matter to patients and the public – to whom they are in turn accountable – and to scrutinise the decisions Ministers take in relation to health policy.

6.3 There must be a continuous thread of accountability to the Government running throughout the NHS. This is why the Government believes that calls for an 'independent' NHS board, which would remove the NHS from meaningful democratic control, are misplaced. Our research with patients and the public has shown strong support for retaining accountability to Parliament.

6.4 In addition, the NHS has just been through a period of reorganisation. We do not believe this is the right time to impose further top-down structural change. What matters more is that there should always be clarity and transparency about who takes what decisions on our behalf.

6.5 The Constitution will:

a) **make clear for the first time what individuals have a right to expect from the NHS.** This radical change in how we do business in the NHS will make accountability real;

b) **make clear the principles by which decisions will be made.** Accountability is at the heart of good public services, and the draft Constitution makes accountability one of its core principles; and

c) **make clear who is responsible for what decisions.** The Constitution commits the Government of the day to publishing a statement of accountability, which, alongside the *Handbook to the NHS Constitution*, will make it clear who takes decisions and on whose behalf. We propose to publish the statement of accountability alongside the final version of the Constitution, after the consultation process.

Freeing up local ambition to meet local needs

6.6 At a local level, it is vital that primary care trusts (PCTs) engage with their populations and partners, such as local authorities and the third sector, to promote health and well-being.

6.7 This Government has already introduced a comprehensive framework of policies to strengthen the local accountability of the NHS. This has included:

- empowering people to take part in the running of their local NHS services as members of their NHS foundation trust;
- giving councils the power to review and scrutinise local health services;
- putting a legal duty on NHS organisations to involve local people and their representatives in decisions about services; and
- introducing Local Involvement Networks (LINks) to gather the views of local people and communities.

These reforms are backed up by the World Class Commissioning programme, which holds PCTs to account for their performance, including on how well they engage with their local population.

6.8 We are also exploring with the Appointments Commission ways of strengthening democratic engagement in key local NHS appointments, for example PCT chairs.

6.9 We do not intend to make any further changes to the formal accountability structures at a national level. We do, however, want actively to encourage PCTs to experiment in how they take account of local views in the decisions they make. Many PCTs are already doing this, working with local communities and partner organisations to come up with governance arrangements that increase their responsiveness in a way that best fits their local needs.

6.10 The current legislative framework allows PCTs to experiment with ambitious options for taking into account local views. PCTs have many options, including:

a) **creating a local membership system.** Although a PCT membership system would not have the formal status of foundation trust membership, PCTs have great flexibility to design ways of recruiting local members from the public, patients and staff, and to involve them in innovative ways in considering local issues and priorities;

b) **inviting local councillors (or mayors) onto PCT boards.** PCTs already have the ability to invite a councillor or

their mayor to sit on the board as a non-voting member, and many PCTs do this already. This can be mirrored with a reciprocal arrangement, where the PCT chair (or another board member) attends the council cabinet for health-related matters. In addition, PCTs can encourage local councillors to apply to be non-executive directors;

c) **joint planning arrangements.** The Local Government Association Health Commission recommends that local authorities and PCTs should test approaches to increasing integration of commissioned services. This builds on the existing requirement for local authorities and PCTs to work together to produce a joint strategic needs assessment. For example, local authorities and PCTs may develop a reciprocal process for discussing and agreeing each other's strategic plans; and

d) **other forms of joint working.** There are many other ways in which PCTs can improve their links with local government, including through joint appointments of senior executives, formal partnership arrangements and pooled budgets.

Consultation question

13. Do you support the proposal to publish a separate statement of accountability? How can we make this most helpful?

Hull PCT's membership system

Hull PCT is drawing up a membership system similar to foundation trusts, with different 'constituencies' for patients and the public, staff and the voluntary sector. There will then be three tiers of membership: core members; 'NHS Hull Champions'; and a shadow board of governors. Core members will play a largely reactive role (completing questionnaires, attending focus groups and public meetings, etc). The 'champions' will work proactively with the PCT as partners, generate health information relevant to the PCT, and support Locality Boards in identifying local health priorities. Members of the shadow board of governors will be elected from the 'NHS Hull Champions'. The shadow board of governors will establish a programme of work as defined by the membership and in line with the corporate objectives of the PCT. Hull PCT is also trying to co-ordinate its membership with the local acute and mental health trusts, which are both applying for foundation trust status.

MyNHS Walsall Parliament

Walsall PCT has launched a scheme called MyNHS Walsall, which allows local residents to sign up as members of the PCT. Members are able to discuss and vote on a variety of local health issues on a members-only website. Members can also stand for election to, and vote for, members of the 'MyNHS Walsall Parliament'. This will have up to 60 members, meet up to four times a year, and will be able to put proposals onto the agenda for the main PCT board.

7 NHS values

7.1 People often talk about 'NHS values' as if they were self-evident. But there are two reasons why we feel it is helpful to set them out in the Constitution. Firstly, by being explicit about our values we can be clearer about the behaviours we expect from all patients, the public and staff. Secondly, as more organisations become involved in providing NHS care to patients, it becomes more important that we are clear about the behaviours and values we expect across the wider NHS system.

Values as a guide to behaviours

7.2 The draft NHS Constitution sets out clearly the purpose of the NHS, and the rights and responsibilities of patients, the public and staff in terms of what they can expect and what they can offer.

7.3 As the NHS evolves, a wider range of providers, including those from the third and independent sector, are offering NHS commissioned services. All organisations are part of an integrated system working for the benefit of patients. Successful large organisations and systems are those that have a clear and shared purpose, and a clear set of values to guide their behaviours.

7.4 Any organisation working to ensure NHS services in England – be it a commissioner, a private provider, a third sector provider, a foundation trust or an NHS trust – is likely to have a set of locally determined values. The local values inspire behaviour within an organisation and the NHS values are there to inspire behaviour across organisations.

7.5 The NHS-wide values can be used by organisations and teams who have not previously adopted statements of values, and encourage them to develop their own values with the full participation of their staff.

Values based on what matters to patients, the public and staff

7.6 If values are to reflect the beliefs and inform the behaviours of the NHS, then they cannot by their very nature be developed in a top-down way. We have therefore conducted extensive research to establish a set of NHS-wide values, involving over 9,000 staff and over 5,500 patients and the public, as well as reviewing existing surveys of over 1 million patients.

7.7 From our research, we concluded that the following statements accurately reflect what matters to patients, staff and the public.

Patients

Get the basics right – don't leave it to chance

Fit in with my life – don't force me to fit into yours

Treat me as a person – not a symptom

Work with me as a partner in my health – not just a recipient of care

Staff

The resources to deliver quality care for patients

The support I need to do a good job

A worthwhile job with the chance to develop

The opportunity to improve the way we work

Public

Financial support for the NHS and care for its staff

Users treated fairly – based on need, not ability to pay

NHS money not wasted

The NHS there when we need it

7.8 The emergent values were tested and refined through a range of workshops and interviews with several hundred patients, carers, staff and the public, as well as other stakeholders.[10]

7.9 As a result of this research and engagement, we developed six values for the NHS that appear in the draft Constitution. These are set out in more detail below.

How will these values make a difference?

7.10 Where values are 'lived' in organisations and put into action they can lead to improved outcomes and quality. If they are to make a difference, they need to be lived by staff, patients and communities. Locally determined values are what matters within an organisation – teams who have not already adopted statements of values can now do so with access to best practice.

10 See Annex A for the organisations consulted during the process to identify and test the values

NHS values

The NHS values have been derived from extensive discussions with staff, patients and the public.

Respect and dignity. We value each person as an individual, respect their aspirations and commitments in life, and seek to understand their priorities, needs, abilities and limits. We take what others have to say seriously. We are honest about our point of view and what we can and cannot do.

Commitment to quality of care. We earn the trust placed in us by insisting on quality and striving to get the basics right every time: safety, confidentiality, professional and managerial integrity, accountability, dependable service and good communication. We welcome feedback, learn from our mistakes and build on our successes.

Compassion. We find the time to listen and talk when it is needed, make the effort to understand, and get on and do the small things that mean so much – not because we are asked to but because we care.

Improving lives. We strive to improve health and well-being and people's experiences of the NHS. We value excellence and professionalism wherever we find it – in the everyday things that make people's lives better as much as in clinical practice, service improvements and innovation.

Working together for patients. We put patients first in everything we do, by reaching out to staff, patients, carers, families, communities and professionals outside the NHS. We put the needs of patients and communities before organisational boundaries.

Everyone counts. We use our resources for the benefit of the whole community, and make sure nobody is excluded 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 others' opportunities. We recognise that we all have a part to play in making ourselves and our communities healthier.

Consultation question

14 Should values be included in the Constitution?

8 The consultation process

The consultation process: next steps

8.1 The NHS belongs to the people and the NHS Constitution needs to belong to the people as well. This means consulting widely and deeply with patients, staff and the public on our proposals for the Constitution. Constitutional arrangements are strong and enduring only where they enjoy popular democratic support. The Government wishes to engage everyone in the debate.

8.2 The *Handbook to the NHS Constitution* and other supporting documents can be found on the Department of Health website (www.dh.gov.uk/consultations).

8.3 The process will be led by David Nicholson, the NHS Chief Executive and Ivan Lewis MP, the Parliamentary Under Secretary of State for Care Services, supported by a 'Constitutional Advisory Forum', made up of a range of stakeholders from patient and professional bodies. They will offer advice on the consultation process and report back to the Secretary of State for Health.

8.4 There will be a strong local focus to the consultation, with SHA chairs expected to play a leadership role by mobilising the non-executive community of the NHS to ensure genuine local discussion. The Department of Health will bring together what people tell us nationally and locally to produce a formal government response to the consultation process.

8.5 You can comment:

- by email to: nhsconstitution@dh.gsi.gov.uk; or
- by post to:
  NHS Constitution
  Room 611a
  Richmond House
  79 Whitehall
  London SW1A 2NS

8.6 Responses should be submitted by 17 October 2008.

Criteria for consultation

8.7 This consultation follows the Cabinet Office *Code of Practice on Consultation*. In particular, we aim to:

- consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;
- be clear about what our proposals are, who may be affected, what questions we want to ask and the timescale for responses;

- ensure that our consultation is clear, concise and widely accessible;
- ensure that we provide feedback regarding the responses received and how the consultation process influenced the development of the policy;
- monitor our effectiveness at consultation including through the use of a designated consultation co-ordinator; and
- ensure our consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the code of practice is available at:
www.berr.gov.uk/files/file44364.pdf

Confidentiality of information

8.8 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

8.9 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

8.10 The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Comments on the consultation process itself

8.11 If you have concerns or comments which you would like to make relating specifically to the consultation process itself, please contact:

Consultations Co-ordinator
Department of Health
3E58, Quarry House
Leeds LS2 7UE

e-mail:
consultations.coordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

9 Consultation questions for the NHS Constitution

The source and status of the Constitution

1. Should all NHS bodies and NHS-funded organisations be obliged by law to take account of the NHS Constitution?

2. Should legislation require the Secretary of State for Health to renew the Constitution every 10 years?

3. Should the *Handbook to the NHS Constitution* be renewed every three years?

The purpose and principles of the NHS

4. Are the statement of purpose and the set of principles right? Are there any principles that should be added?

Patients and the public

5. Is the list of public and patients' rights clearly explained and accessible to all sections of the population?

6. Is it useful to bring together all of the key public and patients' rights and pledges?

7. Do you agree with a new legal right to choice about your NHS care?

8. Is this list of pledges right? Which are most helpful?

9. Are the responsibilities and expectations of patients and the public appropriate? Which are most helpful?

10. Are the mechanisms for complaint and redress clear and sufficient?

Staff

11. Is the list of staff pledges right? Which are most helpful?

12. Is it useful for the Constitution to set out staff responsibilities? Is the description right?

Accountability

13. Do you support the proposal to publish a separate statement of accountability? How can we make this most helpful?

NHS values

14. Should values be included in the Constitution?

The *Handbook to the NHS Constitution*

15. Is the level of detail in the *Handbook to the NHS Constitution* right?

Further questions

16. How can we best ensure that there is widespread awareness of the Constitution among the public, patients and staff?

17. How do you think implementation of the Constitution should be monitored?

A Organisations consulted during the process to identify and test the values

Academy of Royal Colleges; Airedale NHS Trust; Appointments Commission; Asthma UK; Basingstoke and North Hampshire NHS Foundation Trust; Birmingham East and North PCT; Bolton PCT; Breakthrough Breast Cancer; British Medical Association; Cambridge University Hospitals NHS Foundation Trust; Central Manchester and Manchester Children's University Hospitals NHS Trust; Clatterbridge Centre for Oncology NHS Foundation Trust; County Durham and Darlington NHS Foundation Trust; Coventry PCT; Croydon PCT; Derby PCT; Doncaster and Bassetlaw Hospitals NHS Foundation Trust; Doncaster PCT; East Lancashire PCT; Great Ormond Street Hospital for Children NHS Trust; King's College Hospital NHS Foundation Trust; Lancashire Care NHS Foundation Trust; Leeds PCT; Local Government Association; Luton and Dunstable Hospital NHS Foundation Trust; Managers in Partnership; Mayday Healthcare NHS Trust; Medway NHS Foundation Trust; Mental Health Foundation; Monitor; NHS Confederation; NHS Employers; NHS Institute for Innovation and Improvement; NHS North East; NHS Partners Network; NHS South Central; NHS South East Coast; Northampton General Hospital NHS Trust; Nottingham Service Improvement Academy; Oldham PCT; Oxford University; Patient Information Forum; Red Cross; Rotherham PCT; Royal College of General Practitioners; Royal College of Midwives; Royal College of Nursing; Royal College of Physicians; Salford Royal NHS Foundation Trust; Sandwell and West Birmingham Hospitals NHS Trust; Socio-technical Strategy Group; South Devon Healthcare NHS Foundation Trust; South of Tyne and Wear PCT; Southampton University Hospitals NHS Trust; Tower Hamlets PCT; TUC; Turning Point; University Hospitals Bristol NHS Foundation Trust; UNISON; Walsall Hospitals NHS Trust; Warwickshire PCT; West Sussex PCT.

B Principles in the NHS Plan and how they are dealt with in the Constitution

NHS Plan 2000	How they are dealt with in the Constitution
1. The NHS will provide a comprehensive range of services.	Principle: The NHS provides a comprehensive service, available to all.
2. The NHS will provide a universal service for all based on clinical need, not ability to pay.	Principle: Access to NHS services is based on clinical need, not an individual's ability to pay.
3. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.	Principle: NHS services must reflect the needs and preferences of patients, their families and their carers.
4. The NHS will respond to the different needs of different populations.	Right: You have the right to expect your local NHS to assess the health requirements of local communities and put in place the services considered necessary to meet those needs.
5. The NHS will work continuously to improve quality services and to minimise errors.	Principle: The NHS aspires to high standards of excellence and professionalism. Right: You have the right to expect NHS organisations to monitor, and make efforts to improve, the quality of healthcare they provide, taking account of the applicable standards. Value: We earn the trust placed in us by insisting on quality and striving to get the basics right every time… We welcome feedback, learn from our mistakes and build on our successes.
6. The NHS will support and value its staff.	Covered by staff pledges.

NHS Plan 2000	How they are dealt with in the Constitution
7. Public funds for healthcare will be devoted solely to NHS patients.	Principle: Public funds for healthcare will be devoted solely to the benefit of people that the NHS serves.
8. The NHS will work together with others to ensure a seamless service for patients.	Principle: The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population.
9. The NHS will help to keep people healthy and work to reduce health inequalities.	Preamble: The NHS is there to improve our health, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can. Principle: The NHS 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.
10. The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.	Right: You have the right to privacy and confidentiality. Right: You have the right to be given information about your proposed treatment in advance, including any significant risks, any alternative treatments that may be available, and the risks involved in doing nothing. Pledge: The NHS will strive to offer you the information you need to participate effectively to influence the planning and delivery of NHS services.

288744 1p 4k June 08 (RIC)
Produced by COI for the Department of Health

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The National Health Service

Constitution

A draft for consultation, July 2008

The NHS belongs to the people. It is there to improve our health, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can. It works at the limits of science – bringing the highest levels of human knowledge and skill to save lives and improve health. It touches our lives at times of basic human need, when care and compassion are what matter most.

The NHS is founded on a common set of principles, values and commitments that bind together the people who it serves – patients and public – and the staff who work for it.

This Constitution establishes the **principles** and **values** of the NHS in England. It sets out commitments to patients, public and staff in the form of **rights** to which they are entitled and **pledges** which the NHS will strive to deliver, together with **responsibilities** which the public, patients and staff owe to each other to ensure that the NHS operates fairly and effectively. All NHS bodies and private and third sector providers supplying NHS services will be required by law to take account of this Constitution in their decisions and actions.

The Constitution will be renewed every ten years, with the involvement of patients, public and staff. It will be accompanied by the *Handbook to the NHS Constitution*, to be renewed every three years, setting out current guidance on the rights, pledges, duties and responsibilities established by the Constitution. These requirements for renewal will be legally binding. They will guarantee that the principles and values which underpin the NHS are subject to regular review and recommitment; and that any government which seeks to alter the principles or values of the NHS, or the rights, pledges, duties and responsibilities set out in this Constitution, will have to engage in a full and transparent debate with the public, patients and staff.

1. Principles that guide the NHS

Seven key principles guide the NHS in all it does. They are underpinned by core NHS values which have been derived from extensive discussions with staff, patients and the public. These values are set out at the back of this document.

1. The NHS provides a comprehensive service, available to all irrespective of gender, race, disability, age, religion or sexual orientation. It has a duty to each and every individual that it serves. 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.

2. Access to NHS services is based on clinical need, not an individual's ability to pay. NHS services are free of charge, except in limited circumstances sanctioned by Parliament.

3. The NHS aspires to high standards of excellence and professionalism – in the planning and delivery of the clinical and other services it provides; in the people it employs and the education, training and development they receive; in the leadership and management of its organisations; and through its commitment to innovation and to the promotion and conduct of research to improve the current and future health and care of the population.

4. NHS services must reflect the needs and preferences of patients, their families and their carers. Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment.

5. The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population. The NHS is an integrated system of organisations and services bound together by the principles, values and commitments now reflected in the Constitution. The NHS is committed to working jointly with local authorities and a wide range of other private, public and third sector organisations at national and local level to provide and deliver improvements in health and wellbeing.

6. The NHS is committed to providing best value for taxpayers' money and the most effective and fair use of finite resources. Public funds for healthcare will be devoted solely to the benefit of the people that the NHS serves.

7. The NHS is accountable to the public, communities and patients that it serves. The NHS is a national service funded through national taxation, and it is the Government which sets the framework for the NHS and which is accountable to Parliament for its operation. However, most decisions in the NHS, especially those about the treatment of individuals and the detailed organisation of services, are rightly taken by the local NHS and by patients with their clinicians. The system of responsibility and accountability for taking decisions in the NHS should be transparent and clear to public, patients and staff. The Government will ensure that there is always a clear and up-to-date statement of NHS accountability for this purpose. In addition, all NHS organisations will give patients and the public the opportunity to influence and scrutinise their performance and priorities; and patients, public and staff will be involved in relevant decisions about the NHS which affect them, either directly or through their representatives.

2a. Patients and the public – your rights and NHS pledges to you

Everyone who is entitled to use the NHS should understand what legal rights they have. For this reason, important rights are summarised in this Constitution and explained in more detail in the *Handbook to the NHS Constitution*, which also explains what you can do if you think you have not received what is rightfully yours. This summary does not alter the content of your legal rights.

This Constitution also contains **pledges** – those things the NHS strives to do above and beyond its legal requirements.

Access to health services:

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

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

You have the right to expect your local NHS to assess the health requirements of the local community and to put in place the services to meet those needs as considered necessary.

You have the right to seek treatment elsewhere in Europe if you are entitled to NHS treatment but you face undue delay in receiving that treatment.

You have the right not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, race, religion, sexual orientation, disability (including learning disability or mental illness).

The NHS will strive to provide convenient, easy access to services within the waiting times set out in the Handbook to the NHS Constitution. (pledge)

The NHS will strive to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered. (pledge)

The NHS will strive to make the transition as smooth as possible when you are referred between services, and to include you in relevant discussions. (pledge)

Quality of care and environment:

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.

You have the right to expect NHS organisations to monitor, and make efforts to improve the quality of healthcare they provide, taking account of the applicable standards.[1]

The NHS will strive to ensure that services are provided in a clean and safe environment that is fit for purpose, based on national best practice. (pledge)

The NHS will strive for continuous improvement in the quality of services you receive, identifying and sharing best practice in quality of care and treatments. (pledge)

Nationally approved treatments, drugs and programmes:

You have the right to drugs and treatments that have been recommended by NICE[2] for use in the NHS, if your doctor says they are clinically appropriate for you.

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

[1] The current standards are set out in the *Handbook to the NHS Constitution.*

[2] NICE (the National Institute for Health and Clinical Excellence) is an independent NHS organisation producing guidance on drugs and treatments. 'Recommended' means recommended by a NICE technology appraisal. Primary Care Trusts are normally obliged to fund NICE technology appraisals from a date no later than three months from the publication of the appraisal.

and your doctor feel would be right for you, they will explain that decision to you.

The NHS will strive always to provide vaccination and screening programmes as recommended by the appropriate national advisory bodies. (pledge)

Respect, consent and confidentiality:

You have the right to be treated with dignity and respect.

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 interests.

You have the right to be given information about your proposed treatment in advance, including any significant risks and any alternative treatments which may be available, and the risks involved in doing nothing.

You have the right to privacy and confidentiality.

You have the right to access your own health records. These will always be used to manage your treatment in your best interests.

The NHS will strive to share with you any letters sent between clinicians about your care. (pledge)

Informed choice:

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.

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.

You have the right to make choices about your NHS care. The options available to you will develop over time and depend on your individual needs. Details are set out in the *Handbook to the NHS Constitution*.

The NHS will strive to inform you about what healthcare services are available to you, locally and nationally. (pledge)

The NHS will strive to offer you easily accessible information to enable you to participate fully in your own healthcare decisions and to support you in making choices. This will include information on the quality of clinical services where there is robust and accurate information available. (pledge)

Involvement in your healthcare and in the NHS:

You have the right to be involved in discussions and decisions about your healthcare, and to be given information to enable you to do this.

You have the right to be involved, directly or through representatives, in the planning of healthcare services, 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.

The NHS will strive to provide you with the information you need to participate effectively to influence the planning and delivery of NHS services. (pledge)

The NHS will strive to work in partnership with you, your family and carers. (pledge)

Complaint and redress:

You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated.

You have the right to know the outcome of any investigation into your complaint.

You have the right to take your complaint to the Health Service Ombudsman where you have exhausted any other rights of appeal or review.

You have the right to make a claim for judicial review if you think you have been directly affected by an unlawful NHS decision or action.

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

The NHS will strive to ensure that if you make a complaint, you will receive a timely and appropriate response, that any harm you suffered is corrected where possible, and that the organisation learns lessons and puts in place necessary improvements. (pledge)

The NHS will strive to ensure that you receive appropriate support and are treated with respect and courtesy throughout the handling of any complaint you make; and the fact that you have complained will not affect your future treatment. (pledge)

2b. Patients and the public – your responsibilities

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

You should recognise that you can make a significant contribution to your own, and your family's, good health, and take some personal responsibility for it.

You should register with a GP practice – the main point of access to NHS care.

You should treat NHS staff and other patients with respect and recognise that causing a nuisance or disturbance on NHS premises could result in prosecution.

You should provide relevant and accurate information about your health, condition and status.

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

You should follow the course of treatment which you have agreed with your clinician.

You should participate in important public health programmes such as vaccination.

You should ensure that those closest to you are aware of your wishes about organ donation.

You should give feedback – both positive and negative – about the treatment and care you have received, including any adverse reactions you may have had.

3a. Staff – your rights and NHS pledges to you

It is the commitment, professionalism and dedication of staff involved in working for the benefit of the people the NHS serves which really make the difference to patients' quality of care and experience.

All staff should have rewarding and worthwhile jobs, with the freedom and confidence to act in the interest of patients. To do this, they need to be trusted, actively listened to and treated with respect at work; to have the tools, training and support to deliver care; and to have opportunities to develop and progress.

Staff have extensive **legal rights**, embodied in general employment and discrimination law. These are summarised in the *Handbook to the NHS Constitution*. In addition, individual contracts of employment contain terms and conditions giving staff further rights.

The rights are there to help ensure that staff:

- have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives;

- have a fair pay and contract framework;
- can be involved and represented in the workplace;
- have safe working conditions free from harassment, bullying and violence;
- are treated fairly, equally and free from discrimination; and
- can raise an internal grievance and if necessary seek redress, where it is felt that a right has not been upheld.

In addition to these legal rights, there are a number of **pledges** which the NHS will strive to deliver.

The NHS will strive to provide all staff with well-designed and rewarding jobs that make a difference to patients, their families and carers, and communities. (pledge)

The NHS will strive to provide all staff with personal development, access to appropriate training for their jobs, and line management support to succeed. (pledge)

The NHS will strive to provide support and opportunities for staff to keep themselves healthy and safe. (pledge)

The NHS will strive to engage staff in decisions that affect them and the services they provide, individually and through representatives. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families. (pledge)

3b. Staff – your responsibilities

All staff have responsibilities to the public, their patients and colleagues. Important legal duties are summarised below. The Constitution also includes expectations that reflect how staff should play their part in ensuring the success of the NHS.

You have a 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.

You have a duty to take reasonable care of health and safety at work for you and others, and to co-operate with employers to ensure compliance with health and safety requirements.

You have a duty to act in accordance with the express and implied terms of your contract of employment.

You have a duty not to discriminate against patients or staff and to adhere to equal opportunities and diversity legislation.

You have a duty to protect the confidentiality of personal information that you hold.

You have a duty to be honest and truthful in applying for a job.

You should strive to maintain the highest standards of care and service, 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.

You should strive to take up training and development opportunities provided.

You should strive to play your part in improving services for patients, the public and communities.

You should strive to contribute to a climate where the truth can be heard and the reporting of, and learning from, errors is encouraged.

You should strive to involve patients, their families and carers in the services you provide.

NHS values

The NHS values have been derived from extensive discussions with staff, patients and the public:

Respect and dignity. We value each person as an individual, respect their aspirations and commitments in life, and seek to understand their priorities, needs, abilities and limits. We take what others have to say seriously. We are honest about our point of view and what we can and cannot do.

Commitment to quality of care. We earn the trust placed in us by insisting on quality and striving to get the basics right every time: safety, confidentiality, professional and managerial integrity, accountability, dependable service and good communication. We welcome feedback, learn from our mistakes and build on our successes.

Compassion. We find the time to listen and talk when it is needed, make the effort to understand, and get on and do the small things that mean so much – not because we are asked to but because we care.

Improving lives. We strive to improve health and well-being and people's experiences of the NHS. We value excellence and professionalism wherever we find it – in the everyday things that make people's lives better as much as in clinical practice, service improvements and innovation.

Working together for patients. We put patients first in everything we do, by reaching out to staff, patients, carers, families, communities, and professionals outside the NHS. We put the needs of patients and communities before organisational boundaries.

Everyone counts. We use our resources for the benefit of the whole community, and make sure nobody is excluded 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 others' opportunities. We recognise that we all have a part to play in making ourselves and our communities healthier.

288970 1p 5k June 08 (CWP)
Produced by the Department of Health

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Health Scrutiny Committee **6th October 2008**

Report of the Head of Civic, Democratic & Legal Services

Health Scrutiny Networking

Summary

1. This report is to inform Members of the Committee about recent events attended by both Members and Officers outside of the formal meeting cycle of the Health Scrutiny Committee.

Background

2. Both Members and Officers attend events on a regular basis and in the past these have not been reported back to the Committee. Many of these events are directly linked with some of the work set out in the Committee's work plan.

Consultation

3. The following paragraphs detail the events and meetings that have taken place.

4. **Introductory meeting with North Yorkshire & York Primary Care Trust (16.06.2008)**

   The Scrutiny Officer met with the Assistant Director, Corporate and Public Affairs at NYYPCT. He suggested that quarterly meetings be held with the NYYPCT, Scrutiny Officer, Chair & Vice-Chair of the Health Scrutiny Committee, Acute Trust, LINks (Local Involvement Networks) Host and the Yorkshire Ambulance Service (YAS). The Chair has asked us to put this on hold until it is known whether the Chapter 10 Group will be continuing.

5. **Regional Health Scrutiny Officer's Meeting (23.07.2008)**

   Health Scrutiny Officer's across the Yorkshire and Humber meet on a regular basis. At a recent meeting they discussed progress in relation to adopting a protocol for Joint Health Scrutiny Committees. Discussions also took place about three workshops that were being planned in relation to LINks and Regional Specialist Commissioning (08.09.2008), Consensus Building and Joint Health Scrutiny (03.10.2008) and Scrutinising Health Inequalities (07.10.2008). Chairs, Vice Chairs and Scrutiny Officers from across the region were invited to attend these events.

6. **Members' Visit to York Hospital (01.08.2008)**

The Head of Patient Flow facilitated a tour of several areas of the Hospital for the benefit of Members of the Health Scrutiny Committee.

7. **Meeting with NYYPCT (13.08.2008)**

The Chair, Vice Chair, Scrutiny Officer and Assistant Director of Commissioning and Service Development at NYYPCT met informally to discuss the best way of presenting updates on dental provision in York to the Committee. It was suggested that the Assistant Director of Commissioning and Service Development prepare a draft format for future reports. Further updates will follow on receipt of further information.

8. **Launch of York Carer's Forum (04.09.2008)**

The Chair of the Health Scrutiny Committee and the Scrutiny Officer attended the above event. The York Carer's Forum has been established to support unpaid carers in York. Representatives from this forum also attended the Informal Evidence Gathering Session on 01.09.2008 and gave evidence in relation to their experiences of caring for people with dementia.

9. **Workshop on LINks and Regional Specialist Commissioning**

The Chair and Scrutiny Officer attended this event, which had been organised by the Regional Health Scrutiny Officers' Network. Attendees heard from several Local Authorities and LINks Hosts in relation to the stages they were at with establishing a LINk. Discussions were also had in relation to good working relationships between Health Scrutiny Committees and LINks.

The Director of the Yorkshire & Humber Specialist Commissioning Group and the Regional Medical Advisor to the group gave an overview of their role and discussions were had regarding proposals for scrutinising specialist commissioning.

10. **Launch of York LINk (15.09.2008)**

The Chair and Scrutiny Officer attended this event. Attendees heard from the Chair of NYYPCT, the Chair of County Durham LINk Interim Steering Group, the Director of Housing & Adult Social Services at City of York Council and the Assistant Director, Corporate & Public Affairs at NYYPCT. Discussions took place in the form of workshops to investigate what changes needed to be made to improve local health and social care services. Common themes emerged such as lack of domestic support, respite care services, the importance of communication, personalisation of services, and using LINk as a 'voice' to represent carers.

11. **NYYPCT Annual General Meeting (AGM) (23.09.2008)**

The Chair of the Health Scrutiny meeting attended the above meeting and he reported that the Chief Executive of the NYYPCT, Janet Soo-Chung, looked forward to the PCT clearing the historic debt and resuming investing in new

initiatives for the benefit of patients throughout North Yorkshire and the City of York. Already improved community services were being provided in the treatment of eating disorders, musculo-skeletal conditions and a case management system (to guide a patient through the care pathways relevant to their condition).

The PCT was also “re-branding” themselves as NHS North Yorkshire & York, to emphasise their leadership role in the provision of healthcare throughout the county.

Options

12. This report is for information only but Members may wish to consider whether they would like to receive further reports of this nature and if so how often.

Analysis

13. Members and Officers who undertake work in relation to Health Scrutiny attend many events outside of the Committee’s formal meeting cycle. This report has been prepared for the purposes of transparency and information sharing.

Corporate Strategy

14. This relates to the following Corporate Value:

‘Encouraging improvement in everything we do’.

Implications

15. There are no known Financial, Human Resources, Equalities, Legal, Crime and Disorder, Information Technology, Property or other implications associated with this report.

Risk Management

16. This report is for information only and there are no known risks associated with it.

Recommendations

17. Members are requested to:

i. Note the report

ii. Consider whether they would like to receive further reports and at what intervals

Reason: To keep Members informed of events attended that are relevant to Health Scrutiny.

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Report Approved √ **Date** 26.09.2008

Specialist Implications Officer(s)

None

Wards Affected: *List wards or tick box to indicate all* **All** √

For further information please contact the author of the report

Background Papers:

None

Annexes

None

Health Scrutiny Committee **6th October 2008**

Report of the Head of Civic, Democratic and Legal Services

Protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee

Summary

1. The purpose of this report is to present Members with the draft protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee (attached at Annex A to the report). Members will need to investigate whether they wish to adopt this or not.

Background

2. The Centre for Public Scrutiny (CfPS) in its publication entitled 'Joint Health Scrutiny Committees – A Practical Guide' (the full version of this is available on CfPS website) states that:

   'It is important that Health Overview and Scrutiny Committees work together to bring the views of their communities into the processes for planning and delivering health services and to work in partnership with the NHS to discuss plans for 'substantial' changes at an early stage. It is likely that all Health Overview and Scrutiny Committees and NHS bodies will, sooner or later, be involved with a Joint Health Overview and Scrutiny Committee and it is crucial that everyone considers how to make joint health scrutiny arrangements work.

   In July 2003 the Secretary of State for Health issued a Direction about situations where Health Overview and Scrutiny Committees are required to establish a joint committee. In cases where an NHS body consults more than one Health and Overview and Scrutiny Committee (because its proposals affect the residents of each of their areas) those health Overview and Scrutiny Committees that consider the proposals to be 'substantial' are required to form a joint committee.'

   While most health scrutiny reviews focus on local services and the health of local communities, Health Overview and Scrutiny Committees can join together to carry out health scrutiny reviews or consider health issues that cross boundaries.

3. The protocol has been developed as a framework for carrying out scrutiny of regional and specialist health services that impact upon residents across

Yorkshire and the Humber under powers for Local Authorities to scrutinise the NHS contained in the Health and Social Care Act 2001.

4. It is proposed that the regional health scrutiny protocol will replace existing sub-regional protocols. The protocol has been jointly drafted by scrutiny officers from across the region and is currently being presented for adoption to the 15 Local Authorities that it affects.

Potential Impact

5. Particularly with the advent of 'Choose and Book', health services are now provided to patients living in an increasingly wider geographical area. A proposed service change could easily affect patients from an area that spans two or more local authorities that are not in the same sub-region.

6. To address these issues the Regional Health Scrutiny Network has drafted a protocol (Annex A) that suggests how the 15 Local Authorities in the Yorkshire and Humber region could undertake scrutiny work together. It provides a framework for any number of authorities (from 2 to 15) to meet, investigate any issues and make recommendations, taking the best elements from all the sub-regional protocols that are currently in existence. As of August 2008, 7 of the 15 Local Authorities had adopted the protocol.

Consultation

7. The Regional Health Scrutiny Network has consulted the individual Local Authorities through their contact Scrutiny Officers to ensure all authorities in region have the opportunity to consider adopting the proposed protocol.

8. The Chair of the Health Scrutiny Committee has had sight of the draft protocol and he can see no reason not to adopt it.

Options

9. Members have the following options:

Option 1 Adopt the Protocol for the Yorkshire and the Humber Councils Joint Health Scrutiny Committee.

Option 2 Do not adopt the Protocol

Analysis

10. Adopting the regional protocol will allow City of York Council to clarify its part in scrutinising health services which could affect York residents, but are not necessarily provided within an NHS Trust within the Council's boundaries.

11. There are two grounds on which Health Overview and Scrutiny Committees may come together to work jointly on issues affecting local services:

a. **Discretionary Joint Health Overview & Scrutiny Committees** – While most health scrutiny reviews focus on local services and the health of local communities, Health Overview and Scrutiny Committees may choose to join together to carry out health scrutiny reviews or consider health issues that cross boundaries.

b. **Statutory Joint Health Overview & Scrutiny Committees** – Health Overview and Scrutiny Committees are required under a Direction from the Secretary of State issued in July 2003 to establish a Joint Health Overview and Scrutiny Committee to consider and respond to proposals for developments or variations in health services that affect more than one local authority area and that are considered 'substantial' by the Health Overview and Scrutiny Committees for the areas affected by the proposals. (Points a and b are taken from 'Joint Health Scrutiny Committees – A Practical Guide'.) as referred to in paragraph 2 of this report.

Corporate Strategy 2007-2011

12. The proposals in this report affect the following corporate priority for improvement:

'Improve the health and lifestyles of the people who live in York, in particular among groups whose levels of health are the poorest.'

Implications

13. **Financial** – There are no direct financial implications from this report. Any administrative costs arising from regional health scrutiny work would be either met by the host organisation or, if more substantial, be shared between those authorities that are working on that particular investigation. Arrangements and terms of reference would need to be agreed between relevant authorities if a joint review took place under the protocol.

14. **Human Resources** – There are no known Human Resources implications associated with this report. However if York became a lead authority as part of a joint review under the protocol, scrutiny administrative support would need to be identified.

15. **Legal** – Constitutionally the Health Scrutiny Committee has the power to establish Joint Committees with other Local Authorities to undertake overview and scrutiny of health services. They also have the authority to delegate functions of overview and scrutiny of health to another Local Authority Committee.

16. There are no known Equalities, Crime and Disorder, Information Technology or Property implications.

Risk Management

17. In compliance with the Council's risk management strategy there are no known risks associated with the recommendations in this report.

18. If City of York Council does not adopt the protocol it will not affect this Council's Health Scrutiny Committee's right to be legally consulted on health service changes which may affect residents in the area. However, not adopting the protocol could potentially create a risk in that the authority would not be party to any established formal process for participating in joint reviews.

Recommendations

19. Members are asked to consider adopting the protocol for the Yorkshire and Humber Council's Joint Health Scrutiny Committee.

    Reason: To ensure Members can fully take part in necessary health consultation.

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Report Approved √ **Date** 10.09.2008

Specialist Implications Officer(s) None

Wards Affected: **All** √

For further information please contact the author of the report

Background Papers:

Joint Health Scrutiny Committees – A Practical Guide

Annexes

Annex A – Draft Protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee.

PROTOCOL FOR THE YORKSHIRE AND THE HUMBER COUNCILS JOINT HEALTH SCRUTINY COMMITTEE

1.0 INTRODUCTION

1.1 This Protocol has been developed as a framework for carrying out scrutiny of regional and specialist health services that impact upon residents across Yorkshire and the Humber under powers for Local Authorities to scrutinise the NHS contained in the Health and Social Care Act 2001.

1.2 The Health and Social Care Act 2001 strengthens arrangements for public and patient involvement in the NHS. Sections 7 to 10 of the Act provide for local authority Overview and Scrutiny Committees to scrutinise the NHS and represent local views on the development of local health services, whilst section 242 of the National Health Service Act 2006 (formally section 11 of the Health and Social Care Act 2001), places a duty on NHS organisations to make arrangements to involve and consult patients and the public in service planning and operation, and in the development of proposals for changes. Section 242 has subsequently been amended by the Local Government and Public Involvement in Health Act 2007. NHS organisations are now required to make arrangements so that users of services are involved in the planning and development of these services.

1.3 The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 provide for local NHS bodies to consult the Overview and Scrutiny Committee where the NHS body has under consideration any proposal for a substantial development of the health service or for a substantial variation in the provision of such a service in the local authority's area.

1.4 The Directions also state that when a local NHS body consults with more than one Overview and Scrutiny Committee on any such proposal, the local authorities of those Overview and Scrutiny Committees shall appoint a Joint Overview and Scrutiny Committee for the purposes of the consultation and only that Joint Overview and Scrutiny Committee may:-

(a) Make comments on the proposal consulted on to the local NHS body;

(b) Require the local NHS body to provide information about the proposal;

(c) Require an officer of the local NHS body to attend before it to answer such questions as appear to it to be necessary for the discharge of its functions in connection with the consultation.

1.5 Notwithstanding these arrangements, individual authorities may wish to comment on proposals by NHS bodies under the broader duties imposed on NHS Bodies by Section 242 of the National Health Service Act 2006.

1.6 This protocol has been developed and agreed by all the local authorities with responsibility for health scrutiny in the Yorkshire and the Humber region (Bradford, Calderdale, Kirklees, Leeds, Wakefield, York, North Lincolnshire, Barnsley, Doncaster, Rotherham, Sheffield, East Riding, North Yorkshire, North East Lincolnshire and Hull) as a framework for carrying out joint scrutiny of health in the region in response to a statutory consultation by an NHS body.

2.0 COVERAGE

2.1 Whilst this protocol deals with arrangements within the boundary of Yorkshire and the Humber, it is recognised that there may be occasions when consultations may affect adjoining regions. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

3.0 PRINCIPLES FOR JOINT HEALTH SCRUTINY

3.1 The basis of joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:

- To improve the health of local people and to tackle health inequalities
- Ensuring that people's views and wishes about health and health services are identified and integrated into plans, services and commissioning that achieve local health improvement.
- Scrutinising whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community.

3.2 The Local Authorities and NHS bodies will be willing to share knowledge, respond to requests for information and carry out their duties in an atmosphere of courtesy and respect in accordance with their Codes of Conduct. Personal and prejudicial interest will be declared in all cases, in accordance with the Code of Conduct.

3.3 The scrutiny process will be open and transparent in accordance with the Local Government Act 1972 and the Freedom of Information Act 2000 and meetings will be held in public. Only information that is expressly defined in regulations to be confidential or exempt from publication will be considered in private.

3.4 Different approaches to scrutiny reviews may be taken in each case. The Joint Health Scrutiny Committee will seek to act as inclusively as possible and will take evidence from a wide range of opinion including patients, carers, the voluntary sector, NHS regulatory bodies and staff associations. Attempts will be made to ascertain the views of hard to reach groups, young people and the general public.

4.0 SUBSTANTIAL VARIATION AND SUBSTANTIAL DEVELOPMENT

4.1 When a NHS body is considering proposals to vary or develop health services, those authorities whose residents are affected must be given the chance to decide whether they consider the proposals to be substantial to their communities. Those that do consider the proposals to be substantial must be formally consulted and must form a Joint Health Overview and Scrutiny Committee to respond to the consultation. The decision about whether proposals are substantial (and therefore whether to participate in a Joint Health Overview and Scrutiny Committee) must be taken by the Health Overview and Scrutiny Committees within the relevant authorities.

4.2 The primary focus for identifying whether a change should be considered as substantial is the impact upon patients, carers and the public who use or have the potential to use a service. This would include:-

Changes in accessibility of services: any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location (other than to any part of same operational site).

Impact of proposal on the wider community and other services: including economic impact, transport, regeneration (e.g. where reprovision of a hospital could involve a new road or substantial house building).

Patients affected: changes may affect the whole population (such as changes to A&E), or a small group (patients accessing a specialised service). If changes affect a small group it may still be regarded as substantial, particularly if patients need to continue accessing that service for many years (for example renal services).

Methods of service delivery: altering the way a service is delivered may be a substantial change, for example moving a particular service into community settings rather than being entirely hospital based.

Issues likely to be considered as controversial to local people: (e.g. where historically services have been provided in a particular way or at a particular location.)

Changes to governance: which affect NHS bodies' relationships with the public or local authority Overview and Scrutiny Committees (OSC's).

5.0 RESPONDING TO A STATUTORY CONSULTATION BY AN NHS BODY

5.1 Where a response to a statutory consultation is required on proposals for substantial variation or substantial development affecting two or more local authorities within Yorkshire and the Humber, scrutiny maybe undertaken either by:-

Delegated Scrutiny: The affected local authorities agree to delegate their overview and scrutiny function to a single authority which may be better placed to consider a local priority[1]; or

Joint Committee: The affected local authorities establish a joint committee to determine a single response.

5.2 Accordingly, where any substantial variation or substantial development principally affects residents of a single local authority, scrutiny can be delegated to that authority. Whereas, there is a presumption of wider regional variations or developments are dealt with by a Joint Health Scrutiny Committee.

6.0 DELEGATED SCRUTINY

6.1 Regulations enable a local authority to arrange for its overview and scrutiny functions to be undertaken by a committee from another local authority. Delegation may occur where a local authority believes that another may be better placed to consider a particular local priority and, importantly, the latter agrees to exercise that function. For instance, it might be more appropriate to delegate scrutiny where an NHS body provides a service across two local authority areas but the large majority of those using or affected by the service are in one of those authority areas.

Delegated Powers

6.2 When and where such delegation takes place, the full powers of overview and scrutiny of health shall be given to the delegated committee, but only in relation to the specific delegated function (i.e. a particular inquiry or consultation).

Terms of Reference

[1] Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.1

6.3 In such circumstances and in accordance with Department of Health guidance, clear terms of reference, clarity about the scope and methods of scrutiny to be used must be determined between the affected local authorities. Formal terms of reference should be drafted and formally agreed by the respective Overview and Scrutiny Committees of the affected local authorities and subsequently shared with the relevant NHS bodies.

6.4 In the context of a proposal for a substantial development or variation to services, where the review of any consultation has been delegated, the power of referral to the Secretary of State where such a proposal is contested is also delegated. The delegating local authority is no longer able to influence the content or outcome of the review[2].

6.5 The delegated authority (the authority undertaking the consultation exercise) will be responsible for conducting scrutiny in accordance with its own set procedures and will be expected to regularly communicate with the delegating authority(ies).

7.0 JOINT HEALTH SCRUTINY COMMITTEE

7.1 Where a wider, joint approach is required to a consultation by an NHS body, a separate Joint Health Scrutiny Committee will be established for each consultation.

Membership of a Joint Health Scrutiny Committee

7.2 Under the Local Government Act 2000 provisions, Overview and Scrutiny Committees must generally reflect the make up of full Council. Consequently, when establishing a Joint Health Scrutiny Committee, each participating local authority should ensure that those Councillors it nominates reflects its own political balance. However, the political balance requirements may be waived but only with the agreement of all the participating local authorities[3].

7.3 In accordance with the above, a Joint Committee will be composed of Councillors drawn from Yorkshire and the Humber local authorities in the following terms:-

- where 9 or more Yorkshire and the Humber local authorities participate in a Joint Health Scrutiny Committee – the Chair (or Chair's representative) of each participating authority's Overview and Scrutiny Committee responsible for health will become a member of the Joint Health Scrutiny Committee;

[2] Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P21, para 7.4

[3] Overview and Scrutiny of Health - Guidance. Department of Health, July 2003. P22, para 8.6

- where 4 to 8 local authorities participate - then each participating authority will nominate 2 Councillors; or

- where 3 or less local authorities participate - then each participating authority will nominate 4 Councillors.

7.4 Each local authority should make a decision as to whether it should seek approval from its respective full Council or Executive to delegate authority to its relevant Overview and Scrutiny Committee (responsible for health) or another appropriate body to nominate Councillors on a proportional basis to a Joint Health Scrutiny Committee.

7.5 From time to time and where appropriate, the Joint Health Scrutiny Committee may appoint non-voting co-optees for the duration of a consultation. In these circumstances, one or more co-optees could be drawn from local patient, community and voluntary sector organisations affected by substantial change or variation.

Choice of Lead Authority and Chair

7.6 Where a Joint Health Scrutiny Committee (as defined by the Health and Social Care Act 2001) is required to consider a substantial development of the health service or a substantial variation, one of the affected local authorities would take the lead in terms of organising and Chairing the joint committee.

7.7 Selection of a lead authority, should where possible, be chosen by mutual agreement by the local authorities involved and take into account both capacity to service a Joint Health Scrutiny Committee and available resources. Additionally, the following criteria should guide determination of the Lead Authority:

- The local authority within whose area local communities will be most affected; or if that is evenly spread;

- The local authority within whose area the service being changed is based; or if that is evenly spread;

- The local authority within whose area the health agency leading the consultation is based.

Operating Procedures

7.8 The Joint Health Scrutiny Committee will conduct its business in accordance with the Overview and Scrutiny Committee Procedure Rules of the Lead Authority.

7.9 The Lead Authority will service and administer the scrutiny exercise and liaise with the other affected local authorities.

7.10 The Lead Authority will draw up a draft terms of reference and timetable for the scrutiny exercise, for approval by the Joint Health Scrutiny Committee at its first meeting. The Lead Authority will also have responsibility for arranging meetings, co-ordinating papers in respect of its agenda and drafting the final report.

Meetings of the Joint Health Scrutiny Committee

7.11 At the first meeting of any new inquiry, the Joint Health Scrutiny Committee will determine:

- Terms of reference of the inquiry;
- Number of sessions required;
- Timetable of meetings & venue.

Reports of the Joint Health Scrutiny Committee

7.12 At the conclusion of an Inquiry the Joint Health Scrutiny Committee shall produce a written report and recommendations which shall include:

- an explanation of the matter reviewed or scrutinised
- a summary of the evidence considered
- a list of the participants involved in the review or scrutiny; and
- any recommendations on the matter reviewed or scrutinised.

7.13 Reports shall be agreed by a majority of members of the Joint Health Scrutiny Committee.

7.14 Reports shall be sent to all relevant local authorities, to NHS Yorkshire and the Humber and the relevant health agencies, along with any other bodies determined by the Joint Health Scrutiny Committee and Lead Authority.

7.15 The Joint Health Scrutiny Committee shall request a response to its report and recommendations from the NHS body or bodies receiving the report within 28 working days.

7.16 The Joint Health Scrutiny Committee may, on receipt of the NHS body's response to its recommendations report to the Secretary of State on the grounds that it is not satisfied:

- with the content of the consultation; or
- that the proposal is in the interests of the health service in the area.

7.17 In circumstances where an NHS Body has failed to consult over substantial variation or development, or where consultation arrangements are inadequate or insufficient time provided, then the

affected local authority or authorities may decide to make appropriate representations to the NHS Body concerned.

Minority reports

7.18 Where a member of a Joint Health Scrutiny Committee does not agree with the content of the Committee's report, they may produce a report setting out their findings and recommendations and such a report will form an Appendix to the Joint Health Scrutiny Committee's report.

8.0 DISCRETIONARY JOINT WORKING

8.1 Guidance issued by the Department of Health[4] states '*that the role of* (scrutiny*) committees is to take an overview of health services and planning within the locality and then to scrutinise priority areas to identify whether they meet local needs effectively.* This suggests a more proactive role for overview across Yorkshire and the Humber. It is also recognised that individual local authority scrutiny committees may wish to engage with and scrutinise regional NHS/health bodies or look at broader regional health issues.

8.2 In these circumstances, or where a health scrutiny review is initiated that affects more than one authority, then it may be appropriate and more effective for local authorities in Yorkshire and the Humber to agree on an ad-hoc basis, joint arrangements based on this protocol to undertake such work.

8.3 To enable Yorkshire and the Humber local authorities to explore potential opportunities for future joint working, all local authorities should:

- share work programmes of their respective scrutiny committees (health);
- arrange for appropriate officers to meet and liaise on a regular basis; and
- where appropriate, facilitate member level meetings across Yorkshire and the Humber.

[4] Overview and Scrutiny of Health - Guidance, July 2003

Health Scrutiny Committee Work Plan 2008/09

Work Area	Tasks	Timeframe	Responsible Officer
LINks	• Participate in training and events in connection with the development of the LINk in conjunction with Host (North Bank Forum) • Receive regular updates from Trusts • Report back with a detailed working relationship between LINks, NBF & the Health Scrutiny Committee	Ongoing Ongoing January 2009	Nigel Burchell / Scrutiny Officer (as appropriate)
Dental Provision In York	• Receive regular update from PCT	Ongoing	Scrutiny Officer together with appropriate persons from the PCT.
Annual Healthcheck	• Begin preparations for 2008/09 Annual Healthcheck	December 2008	
Current Scrutiny Review (A review on dementia and secondary care)	• Receive interim report • Receive draft final report • Consider final report prior to its consideration by SMC	October November December	Scrutiny Officer together with appropriate officers in Directorates
Protocol for the Yorkshire and Humber Councils Joint Health Scrutiny Committee	• Adoption of Protocol for the Yorkshire & Humber Councils' Joint Health Scrutiny Committee	October 2008	Scrutiny Officer
Local Area Agreement & Healthy City Board	• Update Report	November 2008	Scrutiny Officer with Denise Simms (Senior Partnership Support Officer – Without Walls) and Rachel Johns
Consultation on the NHS Constitution	• Report on Consultation on the NHS Constitution	October 2008	Scrutiny Officer
General	• Update on events attended in relation to Health Scrutiny	October 2008	Scrutiny Officer

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