

BMA response to The DHSC Consultation of the NHS Constitution 10-year review

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Introduction

The Department of Health and Social Care has published its eight-week consultation on amendments to the current NHS Constitution in England. The proposed changes form part of the statutory 10-year review which the Secretary of State is obliged to carry out under the Health Act 2009. They are requesting feedback from patients, carers, NHS staff and the public on the proposals set out in the consultation document. You can read the full consultation [here](#). An updated NHS Constitution, together with a revised NHS Constitution handbook will be published later this year.

BMA response

(submitted 25.06.2024)

Responding to deterioration

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree

- Don't know

BMA Response:

While we welcome this pledge, it is unclear why this is restricted to 'physiological deterioration' and does not refer instead to 'medical deterioration' which would include significant deterioration in a person's mental health.

We suggest the word 'equitable' is added to ensure that there is focus on equitable impact when the pledge is being implemented – for example "The NHS pledges to provide patients (and their families, carers and advocates) who are in acute or specialist provider sites an equitable, structured approach to providing information". There must also be commitment that there will be accountability from the top of organisations when implementing the pledge – no patient should feel ignored. Additionally, use of the term 'active listening' in the pledge will provide direction on how this might be achieved on the ground.

Lastly, we suggest that alternative wording to 'loved ones' is considered. For many individuals, often from marginalised communities (e.g. homeless people or asylum seekers), this term can be triggering.

Health disparities

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

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

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

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The BMA welcomes additional efforts by the NHS to tackle health inequalities within its constitution. However, we would urge NHS to reconsider its use of the term health ‘disparities’ in place of health ‘inequalities’. The word ‘disparities’ belies the fact that inequality exists because of systematic and entrenched discrimination and unfair treatment of certain groups. The BMA would therefore urge, as other organisations have done, that the word ‘inequalities’ be used instead within the constitution. Addition of the word ‘equity’ to the pledge would strength the commitment to equitable care.

To make the proposed additional statement more meaningful, the BMA would ask that it specify that the NHS should work with partners both within and external to the NHS. This would emphasise that health inequalities can only be tackled when all the services that keep us healthy work together.

Additionally, we believe the statement should refer to using the best expertise available as well as the best data. Qualified public health specialists are critical to gathering, interpreting, and using data to understand the health needs of specific populations and those of wider communities. Emphasising the use of the best data without also stressing the need to have the best experts to utilise it would undermine the end goal of this change to the constitution. Therefore, it is essential that the role of qualified public health specialists is reflected here, and that associated NHS England guidance mandates ICBs (Integrated Care Boards) to include them on their boards and relevant sub-groups. Potential wording could be: “NHS organisations work with statutory and non-statutory partners, using the best data available and interpreted and informed by advice from qualified public health specialists and others....”

Environmental responsibilities

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

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The BMA agrees with the inclusion of environmental responsibilities in the NHS Constitution but believes that this section is too weak and needs to be strengthened.

Climate change and air pollution poses a huge threat to the health of the population. As major contributors to the UK's carbon emissions, the NHS has a responsibility to reduce its carbon footprint and help to safeguard the health of our patients.

However, as currently drafted it is not clear what is expected of NHS organisations or individual clinicians. It is particularly not clear what "improving our resilience" means in relation to environmental responsibilities. "Prioritising value for money" also needs to be clarified, in particular over what time period value for money will be assessed and how it will be balanced against other measures of value.

The NHS has made some good progress in reducing carbon emissions, with decreases being seen between 2016 and 2019. However, BMA [research](#) found that this significantly slowed down after 2019. It is important that momentum is not lost and reductions in emissions continue.

The BMA found that most NHS organisations have not received any funding support for implementing sustainability practices. Given the huge pressures NHS organisations are under, major improvements will not happen if specific funding is not made available by UK governments. Dedicated staff in house are needed to drive these initiatives – which requires funding and resources. Practical guidance tools on implementing simple sustainability techniques will also be hugely beneficial to those organisations struggling.

Patient responsibilities

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

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

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

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

Therefore, we propose changing this sentence to:

Please keep appointments or reschedule or cancel as soon as you know you will not be able to attend the appointment. Receiving treatment within the maximum waiting times, as well as care to other

patients, may be compromised unless you do. The NHS will communicate information about your appointment in a clear and timely way, including in alternative formats when this is appropriate and reasonable.

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The NHS is undoubtedly under pressure, and we agree that patients (or their carers) should cancel appointments with adequate time where possible. However, we feel that this statement places too much emphasis on blaming patients without adequately acknowledging the many barriers that patients and their carers face that might prevent them attending appointments. Adding in reference to other patients' appointments adds to a culture of blame that is unlikely to improve the situation on the ground, and we suggest removing the clause "as well as care to other patients". Although the pledge references the provision of information in an accessible way, we know this does not always happen. We must better understand the reason for non-attendance and the shortcomings of the current appointment administration system to inform how we go about improving access to care, and research should be undertaken to evaluate accessibility issues and options for improvement.

Research

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

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

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

We propose adding an additional sentence to the pledge:

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree

- Disagree
- Don't know

BMA Response:

It is unclear what is meant by the integration of research into healthcare. We suggest that the sentence is reworded using more precise language.

The BMA is very supportive of patients being given options to find out about research and to participate. In fact, such a proposal could go even further. The BMA supports an approach of co-production between researchers, academics, patients and the public. Co-production goes beyond the provision of information. It means that patients and the public are not simply participants in medical research but co-producers of it i.e. participation in the identification of research questions, data collection and promulgation of results.

There is, however, a lack of clarity about how the aim of integrating research into healthcare should be interpreted. Specifically, it is unclear what, if any, implications there are for data sharing and the confidentiality of patient data. Data collected for healthcare can also be used to perform vital research which can improve and advance healthcare for everyone. However, we would strongly oppose any policy which made an individual's right to receive NHS care dependent on them agreeing access to their health data for research purposes.

There are well-established legal, ethical and professional standards for accessing data for research purposes. Any policy which falls short of these standards would undermine the trust relationship between doctors and patients. The procedures for gaining access to data collected during care for other purposes, such as research, must be robust if they are to maintain public trust. If people do not have trust in how the healthcare system uses their data they may be reluctant to share data with their doctor or avoid seeking healthcare. They are also more likely to choose to exercise their right to opt-out of sharing their data for this reason.

This would have serious consequences not just for an individual's own health but a rise in the number of people opting out may affect the quality of the data and the research that can be undertaken with it.

It is also unclear whether integrating research into health and care will place any obligations on health professionals to raise the issue of research with patients or facilitate research involving patients or medical records.

Leadership

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The BMA fully recognises the importance of clinical leadership throughout the NHS, and we believe that doctors can and should play a vital role in shaping the priorities and work of the NHS at a national, regional, and local level. We suggest including the wording “Strong and effective leadership, including clinical leadership...”

However, doctors also frequently lack the support they need to be able to take up and sustain these roles, particularly in terms of their employment status. BMA members have, for example, reported that some ICB clinical roles lack vital employment benefits such as maternity leave, sick leave, and annual leave. BMA members have also highlighted the question of whether or not ICBs will provide indemnity for these roles, which is a key concern.

Therefore, alongside this change to the constitution, all relevant guidance must stress the need for clinicians to be supported – both with time and resources - to undertake leadership roles. Otherwise, the good intentions of the constitution will not be deliverable in practice.

Finally, it is critical that the constitution and related guidance also stresses the importance of accountability and NHS managers and leaders being subject to proper scrutiny. In the BMA’s view, managers and leaders not otherwise on a professional register must be required to be registered and regulated, as well as face sanction for breaches of accepted managerial codes of practice.

Sex and gender reassignment

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

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

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

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

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

This proposal, and the others within this section, stems from a particular ideological position that is at odds with the BMA's views. As a result, some are unnecessary, unworkable, and potentially unlawful.

Patients can already request that intimate care is provided by a staff member of specific gender. In some instances, for the psychological safety of a patient, there are occasions where accommodations can be made about the presenting gender of a professional who treats a patient. For example, if a patient has been the victim of sexual abuse by a person of a particular gender, they may ask for a professional to examine them who physically presents in a different gender. These requests are rarely discriminatory in nature and are dealt with sensitively on a case-by-case basis.

Whilst we accept that there may be some limited circumstances in which it may be appropriate to consider such requests, the inclusion of a 'right to request' to be treated by someone of a particular 'biological sex' in the NHS constitution, goes much further than this. Its inclusion implies both that it is acceptable for patients to enquire, or make assumptions, about the sex at birth of the person treating them, and that there may be some obligation on NHS establishments to comply with such requests.

A patient does not have a right to know if a healthcare worker has a gender different to the sex they were assigned at birth. When a person has affirmed their gender to be different than the sex they were assigned at birth, they are protected from discrimination. They are not obligated to inform their employer about their sex at birth. It is important to recognise that transgender and gender-diverse people are a heterogeneous group. Individuals transition at different life stages and may not physically present as transgender or gender diverse.

Many doctors do not feel safe enough to be open about their gender identity at work. A recent BMA survey showed that just 34% of transgender respondents were open about their gender identity with everyone in their place of work or study and that almost half had directly experienced transphobia at work. Giving patients the right to request a health professional who was assigned a particular sex at birth is likely to exacerbate this.

The NHS Constitution contains a pledge that states:

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

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

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

Single-sex accommodation can be provided in:

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

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

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

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

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

if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite biological sex, except where appropriate. The Equality Act 2010 allows for the provision of single-sex or separate-sex services. It also allows for transgender persons with the protected

characteristic of gender reassignment to be provided a different service - for example, a single room in a hospital - if it is a proportionate means of achieving a legitimate aim.

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

This proposal is out of step with existing BMA policy, which calls on the Government to enable transgender people to receive healthcare in settings appropriate to their gender identity and to ensure transgender people can access gendered spaces in line with the gender with which they identify.

The proposal that ‘you will not have to share sleeping accommodation ...’ does not take account of how achievable this would be practice, given the very significant shortage of space in hospitals. While the right to accommodation in a single-sex ward has been enshrined in the NHS Constitution since 2010, this rule was [reportedly](#) breached 44,000 times last year because appropriate beds were not available. It is also not clear how this would be managed without the inappropriate, and potentially unlawful, sharing of information about a patient’s previous gender.

The proposal states that transgender people will be provided with separate accommodations if it is a proportionate means to a legitimate aim, but also implies that they will be segregated by default. The caveat ‘except where appropriate’ in the proposal implies that justification is needed to permit transgender people to share sleeping accommodation with others of their acquired gender. The proposal does not provide examples of when it would be appropriate – if this proposal is adopted, NHS staff would be required to interpret the NHS Constitution and the Equality Act 2010 without sufficient guidance to ensure a lawful response, putting them at risk of breaking the law.

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

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

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

The wording we are proposing for the new right is related to the legal obligations on the NHS through the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 about providing

person-centred care. It also aligns with the Equality Act 2010, specifically paragraphs 26, 27 and 28 of schedule 3 relating to separate services and single-sex services respectively.

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

We are concerned at the proposal to delineate service provision on the basis of the 'differing biological needs of the sexes'. This directly contradicts patients' constitutional right to access care in accordance with their preferences and needs. Transgender people should receive healthcare in settings appropriate to their gender identity should be able to access gendered spaces in line with the gender with which they identify. Furthermore, this proposal does not account for the complex needs of patients with DSD (differences in sexual development).

We acknowledge that trans and non-binary patients, as well as patients with DSD, may require access to disease prevention and organ specific screening programmes (such as cervical smears, breast screening or prostate examinations) which are habitually offered only to specific groups and which may not align with the patient's own gender identity. Doctors should work with these patients to ensure that they understand any screening procedures they should continue to have. This may also include providing access to information on how patients may opt out of specific screening calls.

Technical changes to reflect the Equality Act 2010

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

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

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

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

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

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

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

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

Under principle 1:

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

Under access to health services:

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

Replacing 'gender' with 'sex' is unnecessary and could limit the protections offered to certain trans patients. Under the Equality Act 2010, 'sex' is not clearly defined and there has been significant debate around the scope of its definition. Gender, while not a concept in the Equality Act 2010, is a broad concept and suggests protection for all gender identities from discrimination.

We support a broad interpretation of the Equality Act 2010 that protects individuals from discrimination on the basis of their sex and/or gender. It is important that the NHS Constitution provides the most comprehensive support possible. We therefore propose that any technical changes include reference to gender.

A more adaptive approach would be to use the terminology from Article 14 of the European Convention of Human Rights (ECHR) that is incorporated into UK legislation through the Human Rights Act 1998 'discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' This inclusion of 'any other status' leaves room for future changes in equality law categories.

Unpaid carers

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

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

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

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

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

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

We pledge to recognise and value your caring responsibilities.

To what extent do you agree or disagree with this proposal?

- Agree
- **Neither agree nor disagree**
- Disagree
- Don't know

BMA Response:

We feel that there is limited value in recognising unpaid carers without more detail of what is being recognised and what is being done to support them.

In the pledge as written, there is no recognition of the current lack of support nationally (both financially and otherwise) for carers and the impact this has on unpaid carers and those they care about.

The pledge should also acknowledge young carers and the impact of caring responsibilities on their lives.

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

We agree that it is very important that carers have the opportunity to provide feedback, raise concerns and be involved in decisions. Carers must not only be listened to but their concerns must be acted upon.

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

It is very important that patients and the people they care about have the option to be involved in decision making and forward planning even if they choose not to. This must be accompanied by clear guidelines around patient consent.

Volunteers

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

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

We propose adding a new pledge to the staff section:

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

We agree that volunteers form an important part of healthcare structures and supporting them in their roles is essential. It is crucial that volunteers working in health and social care settings are not exploited: there must be robust safeguarding and monitoring of these roles. In the interest of patient safety, volunteers must not work outside the constraints of their remit or training. It should also be recognised that often, only those who are able, financially and without other commitments at work or at home, can volunteer, with a very real risk that any voluntary input may not be reflective of the demography of the local population.

Health and work

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

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

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

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

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The BMA firmly agrees that good work can have a positive impact on people's health, and that people should, with compassion and understanding of their individual needs, be supported to work.

In order to achieve this, it is crucial that workers in the UK have access to a universal occupational health and medicine system, free at point of delivery. By allowing all workers to have access to such a system, they would be able to be their best in their profession, meaningfully contribute to their household, and as a consequence would be of benefit to the wider UK economy. It would also contribute to ensuring the health and safety of workers in the UK.

We note that the proposed wording does not distinguish between poor-quality work and high-quality work. This is a crucial distinction. A job with poor working conditions, low pay, and low job security is unlikely to be good for someone's health and can do more harm in some cases.

Moreover, in work poverty is on the rise. Latest data shows that 62% of children and working-age adults in poverty in 2021/22 lived in families where at least one adult was working part-time or more, up from 58% in 2011/12 and 44% in 1996/97. As poverty is a strong indicator of poor health, supporting people into work is not necessarily going to improve the country's health.

It must also be noted that physical and mental health conditions may prevent a person from being able to work. There is a risk that this section could be interpreted as implying that an individual's value in society is linked to their ability to work, which could alienate, and discriminate against, those whose disabilities prevent them from working. These people need to be supported in terms of their health conditions but also wider support, including financial support.

We would therefore propose that the wording be changed to reflect the importance of good-quality work in which an employee has safe working conditions and good employment rights, rather than any job at all. It should also be clear that it is not the role of the NHS to force people to work when they cannot and the NHS must not be the gatekeeper of whether people can receive benefits.

Person-centred care

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

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

make the transition as smooth as possible when you are referred between services, and to put you, your family and carers at the centre of decisions that affect you or them

to:

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

To what extent do you agree or disagree with this proposal?

- Agree
- Neither agree nor disagree
- Disagree
- Don't know

BMA Response:

The pledge should be amended to include social care.

Other areas

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

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

If you have any other comments about the NHS Constitution, please provide these.

BMA Response:

The NHS constitution consultation aims to seek views from everyone including the public, clinicians and medical professionals, patients, carers and organisations representing patients and staff and health stakeholders. The BMA is concerned that the current consultation process risks excluding a large proportion of these people from responding.

The consultation uses technical language which risks reducing or limiting responses. Furthermore, the consultation is only being conducted online. This excludes those who do not have the resources, knowledge or confidence to use digital technology. There are also no translated versions of the consultation or support for BSL users which excludes more, already marginalised, populations. Those who are likely to be excluded from responding to this consultation are some of the populations we need to hear from most. Failing to ensure that everyone is able to have their say is unfair and will skew the consultation response, failing to achieve its aim of putting patients first. The BMA joins others in calling for the consultation process to be extended/reopened following the election, with more accessible options to ensure fewer people are excluded from responding.

Another issue is that the blurring between legal obligations and pledges in the Constitution is confusing and complex. It needs to be clear what patients have a legal right to obtain and what the NHS should aim to provide but which is not, in itself, a 'right' in any legal sense. The wording is too vague, and it is

unclear what weight should be given to the statements and pledges made; this needs to be made explicit so that it is not left to health regulators to provide this interpretation in the event of individual complaints.