A consultation on strengthening the NHS Constitution: a joint LGA and ADASS response

Introduction

About the Local Government Association (LGA)

Local Government Association (LGA) is the national voice of the local government sector. We work with and on behalf of our membership promote support and improve local government. The 422 authorities that make up the LGA cover every part of England and Wales. Together they represent over 50 million people. They include county councils, metropolitan district councils, English unitary authorities, London boroughs, shire district councils and Welsh unitary authorities, along with fire authorities, police authorities, national park authorities and passenger transport authorities.

About the Association of Directors of Adult Social Services (ADASS)

The **Association of Directors of Adult Social Services** (ADASS) represents Directors of Adult Social Services in councils in England. As well as having statutory responsibilities for the commissioning and provision of social care, ADASS members often also share a number of other responsibilities for the commissioning and provision of housing, leisure, library, culture, arts, community services and a significant proportion also hold the statutory children's Director role.

The LGA and ADASS welcome the opportunity to comment on the consultation on the NHS constitution. We have chosen to submit a joint response because we share the same views on key issues effecting local government. We have not chosen to address each question in detail because we generally support the proposed changes outlined in the consultation document and do not have specific comments or suggestions to add.

General observations

The LGA and ADASS support the NHS Constitution as an enduring document that clearly lays out the principles, values, rights and responsibilities that are the cornerstones of the NHS. We also support the principles and commitments outlined in the document.

In our view, there are three key challenges for the Constitution in the future:

Public health The NHS Constitution was developed to apply solely to the NHS. After April 2013, the Constitution will also apply to local public health services that are the statutory responsibility of local authorities. This will mean that the Constitution will apply to some local authority services and staff but not all. If councils take a 'lift, shift and drop' approach to public health – simply operating the same services, by the same people but from the council rather than the PCT – it will be relatively easy for service users, the public and

staff to understand to which services and which staff the Constitution applies. However, many local authorities are choosing to fully embed public health within their existing plans and services in order to maximise the health improving potential. It may become increasingly difficult to be clear about which staff and which services the NHS Constitution applies.

That said, the seven principles of the NHS Constitution are reasonable and we see no reason why local authorities would find them unacceptable or inappropriate to underpin public health services that they commission or provide.

Integration We welcome the renewed commitment in the Constitution to a common understanding of integration from the perspective of patients, service users, their family and carers. A key challenge for the Constitution is the ever more complex commissioning and provision architecture for health and social care services and how this is clear, accessible and meaningful to people who use services. Effective integration results in seamless services, where a range of professionals work together to ensure care is tailored to the needs and preferences of individuals. But it may be very difficult for those individuals to know about who is commissioning and providing services. When things are going well, this is not a problem. However, when plans and services do not meet acceptable standards it may be confusing for people to know to which elements of their care package the NHS Constitution applies and which components fall outside the remit of the NHS.

Translating the Constitution into practice We welcome the acknowledgement that more needs to be done to raise awareness of the Constitution and give it sharper teeth. We are happy to support any national and regional initiatives to raise awareness of the Constitution and have made some specific suggestions in our response to Questions 14, 15 and 16 in the section below. It is important not to underestimate this challenge. Many people do not have a clear understanding of their rights and responsibilities in relation to public services: neither do they have a clear understanding of which organisation commissions and provides which services. The changing health landscape, combined with greater diversification of service providers and greater integration between services may make it more difficult for patients, service users, their families and carers and the public to understand the new architecture.
It will be important for the Government to recognise the lack of clarity promoting and publicising the Constitution so it is something the public are fully aware of and fully understand the services to which it applies.

We think it would be helpful for the DH to work with the LGA and ADASS to provide a supplement to the Constitution which explains how it is relevant to local government and the specific role of local government in promoting the Constitution and ensuring that it is fully understood and adhered to.

Response to specific consultation questions

Please note that we have not responded to every consultation question.

Q1. ***Patient involvement*** *What are your views on the proposed changes to strengthen patient involvement in the NHS Constitution?*

LGA and ADASS generally support the proposed changes to strengthen patient involvement, in particular the commitment to involving patients and their carers role in shared decision-making. However, we believe that this could go further in committing the NHS to putting the individual's own wishes at the centre of health and social care and working with them to agree an individual care plan. This means planning according to the needs of the 'whole individual' rather than a narrow focus on their health needs.

The reference to 'patients' is problematic in relation to the integration of health and social care services, where people see themselves not as patients but as people. The term patient is also problematic in relation to the provision of public health, especially in early intervention and preventative public health strategies aimed at preventing ill-health.

Q2. ***Feedback*** *What do you think about our proposal to set out in the NHS Constitution the importance of patient and staff feedback towards improving NHS services?*

We support the acknowledgement of the importance of patient and staff feedback in continuous improvement. However, we would propose that the wider public and community, not just patients and their carers, also have a role in providing information to the NHS on their services. Often, it is those who have the most severe health and care needs – for example, homeless people, refugees and asylum seekers, people with drug and alcohol problems, people with mental health problems, and gypsies and travellers – that have the most difficulties in accessing health services. Is there something about the need to capture the views of hard to reach/seldom heard?

Q3. ***Duty of candour*** *Do you agree with, or have any concerns about, amending this pledge to make it more specific as suggested?*

We agree with this pledge. Local authorities will need to include in new contracts for public health services the requirement to the duty of candour.

Q4. ***Making every contact count*** *What are your views on including in the NHS Constitution a new responsibility for staff to make 'every contact count' with the aim of improving health and wellbeing of patients?*

'Making every contact count' is an approach to health information and improvement that has been adopted by many public sector bodies. We strongly support this approach but there needs to be an explicit recognition to be fully effective a 'whole system' approach is necessary in which NHS staff signpost and provide information on a wide range of

services that can improve people's health, including leisure and recreation, welfare benefits advice, housing, social care, routes to employment, education and training, home safety etc.

It is also important to adopt a person-centred approach, so that the information and signposting is tailored to the individuals needs and is sensitive to their circumstances.

Q5. ***Integrated care*** *Do the proposed changes to the NHS Constitution make it sufficiently clear to patients, their families and carers how the NHS supports them through care that is coordinated and tailored around their needs and preferences?*

We support the commitment that the primary purpose of integration is to better coordinate care to the needs and preferences of individuals to improve outcomes? Our own intelligence supports the findings of the Future Forum: that it is the barriers between services that most frustrate people rather than any shortcomings of the services themselves.

In many local areas, health and social care services are working together to provide seamless, coordinated services planned around the needs and preferences of whole person. However, this still is not mainstream in all areas. The NHS will need to work with social care commissioners, health and wellbeing boards and other commissioners of services to make this rhetorical commitment a reality.

Q6. ***Complaints*** *Do you think it is helpful for the NHS Constitution to set out these additional rights on making a complaint and seeking redress?*

It is important for to be clear about their rights and responsibilities in relation to NHS services and how they can seeks resolution and redress. We therefore welcome the commitment to make the Constitution clearer about the complaints process. However, increasing integration between health, social care and other key services such as housing or welfare benefits – though welcome in providing seamless service, may make it difficult for patients, service users, their families and carers and the public to understand that not all services are subject to the same complaints process. Conversely, public health services, which may be perceived by the public as local authority services, and therefore subject to local authority complaints procedure will come under the remit of the NHS Complaints process.

Q7. *Do the additional new rights make the complaints process easier to understand and make clear to patient what they should expect when they make a complaint?*

It is difficult to provide a response to these questions since the awareness and accessibility of the complaints process relies on two key building blocks: first that patients, carers and service users are

aware of the complaints process and are supported to use if appropriate; and second, that they have reasonable and realistic expectations of services. The first point will require the assertive promotion of the complaints procedures and a change of organisational culture that sees the complaints procedures as an essential component in service improvement, rather than an indication of failure to meet acceptable standards. The second component depends on the availability of accessible and reliable information about 'what good looks like' from the perspective of the individual, in order for them to know what to expect and when services fall below expectations.

Q8. ***Patient data*** *Do the proposed changes to the NHS Constitution make it clear how the NHS will safeguard and use patient data?*

Sharing of health data was raised as an important issue still to be resolved in the recent progress report on the transfer of public health to local government. It states:

"There is a widespread sensitivity to issues of access to Patient Identifiable Data (PID). Many local authorities are waiting for the outcomes of the Caldicott 2 Review before reviewing their longer-term information governance arrangements, but most localities have interim arrangements in place. Many local authorities have developed memoranda of understanding (MOUs) with their clinical commissioning groups but it is unclear how many of these address information requirements."

We strongly support the new pledge to "ensure those involved in your care and treatment have access to your health data so they can care for your safely and effectively" but this must also involve sharing of data with social care and other local authority services.

Q9. ***Staff rights, responsibilities and commitments*** *Do you agree with the proposed changes to the wording of the staff duties and the aims surrounding the rights and responsibilities of staff? What do you think about the changes to make clear to staff around what they can expect from the NHS to ensure a positive working environment?*

It will be important for there to be clarity on which staff are included in this duty. Most local public health staff will be employed by local authorities, so it needs to be made clear to local authorities that the proposed change relates to them. Clearly, local authorities will need to ensure that they operate a consistent approach for all of their staff so we will need to give careful consideration to the impact of this commitment for local government.

Q10. ***Parity of esteem between mental and physical health*** *Do you agree with the wording used to emphasise the parity of mental and physical health? Are there any further changes that you think should be made that are feasible to include in the NHS Constitution?*

LGA and ADASS strongly support the explicit commitment in the NHS constitution between mental and physical health. But we feel that this parity should be emphasised throughout the document rather than in just one section.

Q11. ***Dignity, respect and compassion*** *What are you views on the wording used to highlight the importance of ensuring that the tenets of dignity, respect and compassion are sufficiently represented in the NHS Constitution?*

LGA and ADASS have consistently supported national and local initiatives to embed dignity as a core value in health and social care. The report of the Dignity in Care Commission, which was strongly supported by the LGA and ADASS, sets out a clear agenda for improving dignity. We welcome that dignity, respect and compassion have been incorporated into the aims for all staff but it will take concerted action across the health and care sector to ensure that everyone is treated with dignity and respect.

Q12. *Do you agree with the suggestion of including a new pledge for same sex accommodation?*

Without wishing to downplay the importance of the commitment to provide same sex accommodation, there are many other components of treatment and care that contribute to dignity, respect and compassion. The emphasis on same sex accommodation should be balanced with how we would expect to see dignity, respect and compassion in operation. This is especially important in view of the recent cases of exceptionally poor treatment care and service failure, for example, Mid Staffordshire NHS Trust and Winterbourne View.

Q13. ***Local authorities' role*** *Do the proposed changes to the NHS Constitution make it clear what patients, staff and the public can expect form local authorities and that local authorities must take account of the Constitution in their decision and actions?*

We feel that the NHS Constitution does not make it sufficiently clear what patients, staff and the public can expect from local authorities in relation to their new public health duties. Of all the changes to the health improvement landscape, the changes in public health are possibly the least understood by the public. The split in responsibilities for public health between Public Health England, local authorities, the NHS Commissioning Board (in respect of providing some public health services such as immunisation and vaccination and for children's public health for 0 – 5 year olds) is not well understood by the public, service users and even by some commissioners.

It would be helpful if the Constitution or the Handbook made reference to the importance of health and wellbeing boards in coordinating and

driving forward change, especially in relation to integration of services and the public health responsibilities of local government.

Q14. ***Raising awareness and embedding the Constitution*** *Have you seen further examples of good practice in raising awareness and embedding the NHS Constitution that should be taken into account in these plans?*

We agree that the NHS Constitution cannot achieve its potential if patients, the public and staff are unaware of its existence. However, it is important to carefully plan strategies to improve awareness rather than adopt a 'scatter gun' approach to informing patients and the public about the Constitution at every possible opportunity. We are not convinced that it is appropriate to include information about the Constitution on appointments letter unless it is directly relevant to other information in the letter. We are concerned that it detract from important information about an individual's treatment or care pathway.

Q15. *Do you have further recommendations for re-launching, rolling out and embedding the Constitution from next spring?*

We think it would be helpful for the DH to publish a supplementary document which focused on how the NHS Constitution relates to local authority services, staff, plans and processes. The LGA and ADASS would be happy to work with the DH to produce such a document.

The LGA has a range of discussion forums and communication strands to provide local authorities with information. We would be happy to promote the NHS Constitution through our established channels. For example, we have a web-based discussion forum known as the Knowledge Hub which is open to anyone with an interest in health and wellbeing boards and the wider health reforms. It is currently supported by colleagues in the Department of Health, who organise regular 'webinars', themed discussions and 'hotseats'. I am sure that they would be able to organise a web event to promote discussion and awareness of the NHS constitution amongst its members.

Q17. ***Equalities*** *How can we ensure the NHS Constitution is accessible and useable to individuals of different backgrounds and to different sections of society?*

We seriously doubt that the NHS Constitution is fully accessible to all individuals of different backgrounds. It would be helpful if the DH could make the document available in a range of community languages and accessible formats.

Nationally and locally Healthwatch will have a key role in raising awareness of the NHS Constitution as a the documents which makes clear the rights and responsibilities of patients, staff and public in relation to health and care services.