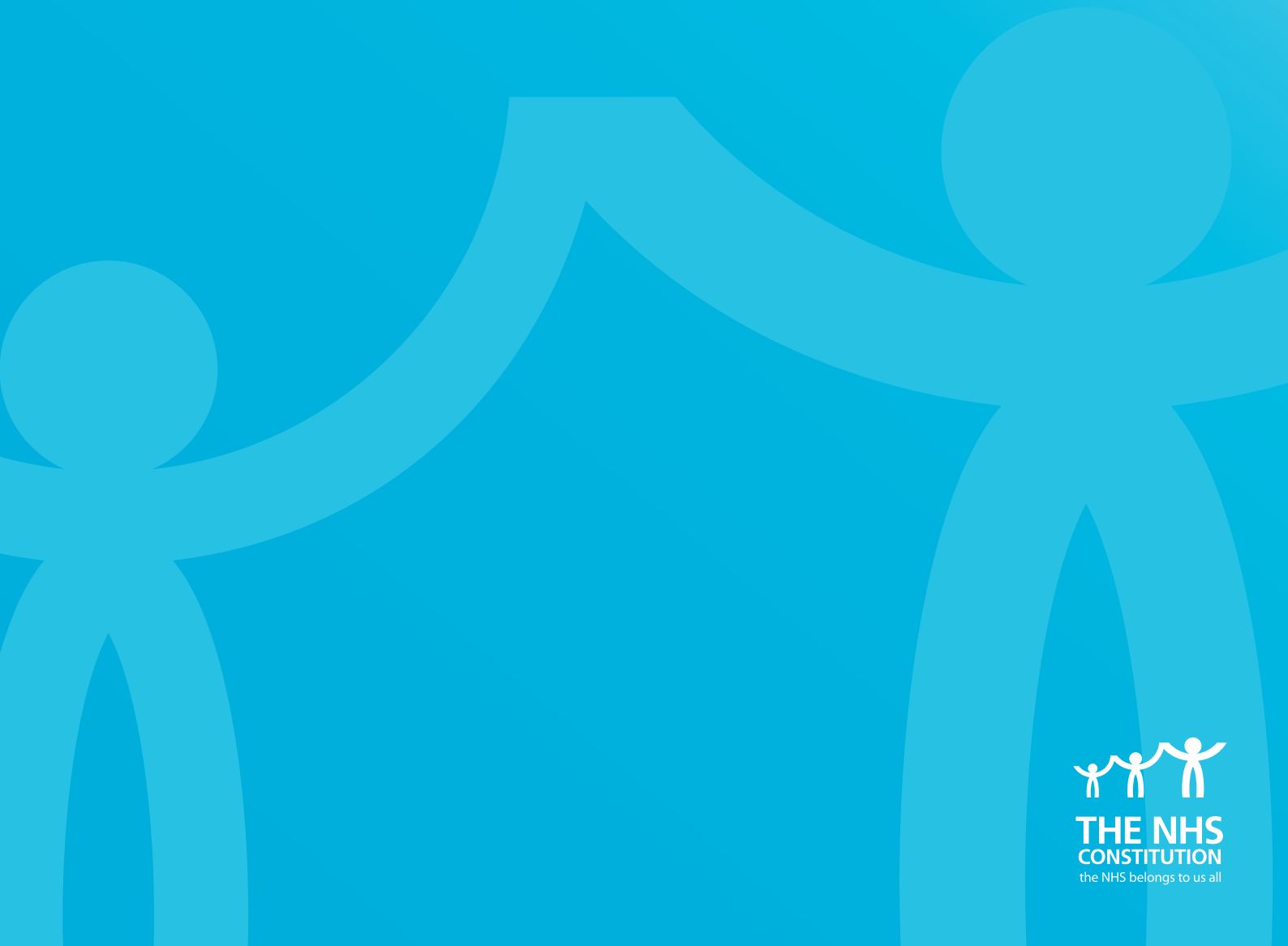
NHS

THE HANDBOOK TO
The NHS Constitution

for England
8 March 2012



THE NHS CONSTITUTION
the NHS belongs to us all

DH INFORMATION READER BOX

Policy	Clinical	**Estates**
HR / Workforce	Commissioner Development	IM & T
Management	Provider Development	Finance
Planning / Performance	Improvement and Efficiency	Social Care / Partnership Working

Document Purpose	Policy
Gateway Reference	17278
Title	The Handbook to the NHS Constitution
Author	DH
Publication Date	**8 March 2012**
Target Audience	PCT Cluster CEs, NHS Trust CEs, SHA Cluster CEs, Care Trust CEs, Foundation Trust CEs , Medical Directors, Directors of PH, Directors of Nursing, Local Authority CEs, Directors of Adult SSs, PCT Cluster 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, Public, Patients, Carers
Circulation List	
Description	This document sets out the background detail of the NHS Constitution
Cross Ref	NHS Constitution, Government Response to the Consultation on the NHS Constitution. The NHS Constitution and Whistleblowing – consultation report
Superseded Docs	Draft Handbook to the NHS Constitution (June 2008), Handbook to the NHS Constitution, published 21 January 2009, revised 8 March 2010.
Action Required	N/A
Timing	**N/A**
Contact Details	NHS Constitution Team Richmond House 79 Whitehall London SW1A 2NS 020 7210 5229 nhsconstitution@dh.gsi.gov.uk www.dh.gov.uk/nhsconstitution
For Recipient's Use	

Contents

Overview **2**

Part I: Patients and the public

Introduction – Patients and the public 8
Access to health services 12
Quality of care and environment 28
Nationally approved treatments, drugs and programmes 34
Respect, consent and confidentiality 40
Informed choice 48
Involvement in your healthcare and in the NHS 54
Complaint and redress 60
Patient and public responsibilities 66

Part II: Staff

Introduction – Staff 72
Staff rights 76
Staff pledges 94
Staff legal duties 102
Expectations – how staff should play their part in ensuring the success of the NHS 108

Appendix **118**

Glossary **150**

Overview

This Handbook is designed to give NHS staff and patients all the information they need about the NHS Constitution for England. It outlines the roles we all have to play in protecting and developing the NHS and will help you understand our rights, pledges, values and responsibilities.

The first part of the Handbook (starting from page 8) is a guide to the patients' rights and pledges contained in the Constitution, and can be used for reference to explain what the Constitution means for patients. It also sets out the responsibilities of patients and the public in working with NHS staff.

The second part of the Handbook (starting from page 70) is for staff involved in providing NHS services and covers the pledges the NHS has made to staff to help them deliver better quality care and to make the NHS a better place to work. It is clear about the expectations the NHS has of its staff and their rights as employees.

At the back of this Handbook is an appendix outlining the legal sources of both the patient and staff rights in the NHS Constitution. This is followed by a glossary of terms.

What will the NHS Constitution do?
The aim of the Constitution is to protect and renew the enduring principles of the NHS. It empowers staff, patients and the public by setting out existing legal rights and pledges for the first time in one place and in clear and simple language. The Constitution also sets out clear expectations about the behaviours and values of all organisations providing NHS care.

How the Constitution was developed

The Constitution was developed as part of the NHS Next Stage Review led by Lord Darzi. To help ensure that the Constitution would be meaningful and enduring, it was based on evidence of what matters to patients, the public and NHS staff.

There was an extensive development and research process. This involved talking to patients, the public and staff, discussion events with stakeholders, and getting ideas from experts and think-tanks.

A draft of the Constitution was published for consultation on 30 June 2008. The consultation process extended this conversation about the Constitution wider still, with over 1,000 direct responses to the Department of Health, and a wide range of consultation activity at a local level in the NHS allowing thousands of people to take part in the discussion.

A Constitutional Advisory Forum, made up of a number of leading experts and stakeholders, was set up to oversee the consultation process. The Forum was asked to produce a report for the Secretary of State for Health at the end of the consultation. Published in December 2008 as *The National Health Constitution: Report of the Constitutional Advisory Forum to the Secretary of State for Health*, it summarised the reflections of Forum members who had attended consultation events, and received formal representation from groups and organisations on their thoughts about the Constitution. It also summarised the findings of the consultation exercises within the NHS, which were overseen by strategic health authorities.

The NHS Constitution was first published on 21 January 2009 and applies to NHS services in England.

The Constitutional Advisory Forum's report and the Government's response to the consultation can be found at **www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091768**.

What is in the Constitution?

The Constitution contains the following elements:

- a short **overview**, which outlines the purpose of the NHS and of the Constitution;
- the **principles** of the NHS, which are the enduring high-level 'rules' that govern the way that the NHS operates, and define how it seeks to achieve its purpose; these build on previous versions of NHS principles, including those set out in *The NHS Plan* (2000);
- NHS **values** which have been developed by patients, public and staff, are the values that inspire passion in the NHS and should guide it in the 21st century; individual organisations will develop and refresh their own values, tailored to their local needs, so the NHS values provide the common ground for co-operation to achieve shared aspirations;
- **rights** and **pledges** for patients and the public, as well as their **responsibilities;** and
- **rights** and **pledges** for staff, as well as their **responsibilities.**

Rights and pledges

One of the primary aims of the Constitution is to set out clearly what patients, the public and staff can expect from the NHS and what the NHS expects from them in return. The Constitution distinguishes between:

Your rights

A right is a legal entitlement protected by law. The Constitution sets out a number of rights, which include rights conferred explicitly by law and rights derived from legal obligations imposed on NHS bodies and other healthcare providers. The Constitution brings together these rights in one place but it does not create or replace them.

You'll find a description of the legal basis of each right in the appendix to this Handbook. For information on what each right means for patients and staff, see the relevant sections of the Handbook.

Pledges

This Constitution also contains pledges which the NHS is committed to achieve, supported by its management and regulatory systems. The pledges are not legally binding and cannot be guaranteed for everyone all of the time, because they express an ambition to improve, going above and beyond legal rights.

This Handbook explains in detail what each of the pledges means and current actions to meet them. Some of the pledges, such as those relating to waiting times for treatment, are long-standing commitments on which the NHS already has a track record of success and strong mechanisms in place to ensure delivery. In other areas, the pledges refer to relatively new commitments that the NHS is working towards achieving.

Responsibilities

The Constitution sets out expectations of how patients, the public and staff can help the NHS work effectively and ensure that finite resources are used fairly. This Handbook gives further information on those responsibilities.

Who does the Constitution apply to?

The rights and responsibilities in the Constitution generally apply to everyone who is entitled to receive NHS services and to NHS staff.

In some other cases, there are further specific rules that apply. In particular, there are different rules for children, people who lack mental capacity, and patients detained under mental health legislation, which this Handbook describes.

How will the NHS Constitution make a difference?

For the Constitution to succeed in its aims, it needs to become part of everyday life in the NHS for patients, the public and staff. Achieving this will require leadership, partnership and sustained commitment over months and years, to raise awareness of the Constitution and weave it into the way the NHS works at all levels. Publishing the Constitution is only the first step in the journey.

What legal underpinning does the Constitution have?

The Health Act 2009 includes provisions related to the NHS Constitution. These came into force on 19 January 2010 and place a statutory duty on:

- NHS bodies, primary care services, and independent and third sector organisations providing NHS care in England to have regard to the NHS Constitution;
- the Secretary of State to review and republish the NHS Constitution at least once every 10 years;
- the Secretary of State to publish any changes to the guiding principles in regulations;
- the Secretary of State to review and republish the *Handbook to the NHS Constitution* at least once every three years;
- the Secretary of State to consult patients, public, staff, bodies representing patients, bodies representing staff, carers and local authorities, in respect of any changes to the NHS Constitution; and
- the Secretary of State to report on the effect of the Constitution on patients, staff, members of the public and carers every three years.

An explanation of the Health Act can be found at **www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_093280**

Where does the Constitution apply?

The core principles of the NHS are shared across all parts of the United Kingdom. However, the NHS Constitution applies only to the NHS in England. The devolved administrations in Scotland, Wales and Northern Ireland are responsible for developing their own health policies.

What to do if your expectations are not met

The NHS welcomes and encourages feedback (both positive and negative) from patients, the public and NHS staff. This is a vital source of information and will help the NHS to improve.

If patients want to raise concerns, the first step is to contact their clinician or the local NHS (primary care trust) to see if the concern can be resolved immediately. In relation to staff concerns, NHS staff should first contact their line manager to see if they can find a solution. Details of what to do if you want to raise a concern are given on pages 10–11 and 60–65 for patients and from page 72 for staff.

How has the Constitution changed?

A consultation proposing the inclusion of new rights in the NHS Constitution was held between November 2009 and February 2010. Following that consultation, a new right to waiting times will come into effect in April 2010. This Handbook has been amended to explain what the new right to waiting times means.

The Handbook is intended to be a living document, providing information about the NHS Constitution. The Department of Health would welcome your feedback on the content. Please contact:

NHS Constitution Unit
Richmond House
79 Whitehall
London SW1A 2NS

nhsconstitution@dh.gsi.gov.uk

Part I: Patients and the public

Introduction

(Section 2a of the NHS Constitution)

The pledges and rights for patients and the public are set out in detail on the following pages, which cover the seven key areas of the NHS Constitution:

- rights and pledges covering **access to health services**;
- rights and pledges covering **quality of care and environment**;
- rights and pledges covering **nationally approved treatments, drugs and programmes**;
- rights and pledges covering **respect, consent and confidentiality**;
- rights and pledges covering **informed choice**;
- rights and pledges covering **involvement in your healthcare and in the NHS**; and
- rights and pledges covering **complaints and redress**.

The NHS would like to hear your feedback (both positive and negative), as it helps the NHS to improve and respond to your needs effectively.

If you think that a right has not been upheld or the NHS is not meeting its commitments, the NHS would like to hear from you. In the first instance, you should speak to your clinician or local NHS (your primary care trust, or PCT) to see if your concern can be resolved immediately.

If you feel you need further help

- You, your family or someone you have asked on your behalf can feed back directly at the **point of care**, either to the clinician providing care or through the local Patient Advice and Liaison Services (PALS). PALS are available in most hospitals and PCTs, and act on behalf of their service users when handling patient and family concerns. They liaise with staff, managers and, where appropriate, other relevant organisations, to negotiate speedy solutions and to help bring about changes to the way that services are delivered. PALS also refer patients and families to locally- or nationally-based support agencies, where appropriate. By providing a concise statement of what patients can expect from the NHS, the NHS Constitution will make it easier to raise questions and challenges directly at the point of care.

- The local **PCT** offers another route to raise questions or concerns about the application of the NHS Constitution. PCTs are responsible for services in their local area and for ensuring co-ordination between them; they can therefore be approached on any matter relating to the NHS Constitution. To find your local PCT, please contact NHS Choices (**www.nhs.uk**).

- The NHS also has **complaints arrangements** in place, allowing patients to raise concerns about services. Depending on the nature of the complaint, it should generally be addressed directly to the provider of the service. You have the choice of making a complaint to either the service provider or the local PCT. If you are unsure whether to make a complaint locally, you may wish to discuss the matter with your local PALS or your local PCT. If you remain unhappy with the local resolution of your complaint, you can ask the **Health Service Ombudsman** to look into your case: **www.ombudsman.org.uk**.

- In the last resort, patients and staff can seek **legal redress** if they feel that NHS organisations have infringed the legal rights described in the NHS Constitution. For patients and the public, this could be in the form of a judicial review of the process by which an NHS organisation has reached a decision.

- For detail on the rights and pledges relating to complaints and redress in the Constitution, see pages 60-65.

The Constitution is not intended to develop a 'lawyer's charter'. Where a mistake has been made, the NHS needs to accept something has gone wrong, apologise for it, and make sure it does not happen again. The Constitution seeks to encourage a more open environment that allows concerns to be resolved quickly and effectively.

Access to health services

(i)There are five rights covering access to health services:

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

NHS services are generally provided free of charge. This includes access to local services like your GP, hospital or clinic, so you do not have to worry about payment.

There are some exceptions: for example, some people will have to pay for prescription charges and visits to the dentist. Overseas visitors may also have to pay charges.

(Refer to page 118 in the Appendix for the source of the right)

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

NHS services will always be available for the people who need them. Remember, no one can deny you the right to access these services because of your race, religion or belief, gender, disability or sexual orientation – these are all 'unreasonable grounds' on which to refuse patients access. 'Reasonable grounds' to refuse access to the NHS include abusive or violent behaviour by the patient, for example.

Access to NHS services is not denied in situations where patients pay for additional private care separately. Further information is set out in the Government's response to Professor Richards's report, *Improving access to medicines for NHS patients* (2008).

If you are in the Armed Forces, your medical care will be provided by the Defence Medical Services.

(Refer to page 119 in the Appendix for the source of the right)

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

This is the responsibility of your local PCT, which must assess the health requirements of the local population and provide the services as it considers necessary to meet their needs.

The NHS also provides access to 'specialised services' for the small number of people who suffer from rare conditions. These specialised services are commissioned either regionally or nationally from a few specialist centres, depending on the rarity of the condition or treatment.

(Refer to page 120 in the Appendix for the source of the right)

Right

"You have the right, in certain circumstances, to go to other European Economic Area countries or Switzerland for treatment which would be available to you through your NHS commissioner."

(Section 2a of the NHS Constitution)

What this right means for patients

UK patients may be able to travel to another country in the European Economic Area (EEA) or to Switzerland to receive medical treatment and either have this funded upfront or subsequently receive reimbursement from their PCT of some or all of the costs of that treatment.

The EEA consists of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Under *EC Regulation 1408/71 (from May 2010 EC Regulation 883/2004)* where your local commissioner (usually your local PCT) agrees that you should be offered a particular treatment on the NHS and that treatment is available under an EEA country's or Switzerland's health system, you can ask your commissioner to recommend to the Department of Health that your health costs be met under an E112 form.

Right

What this right means for patients

The decision to authorise an E112 form is at the discretion of the Secretary of State for Health, unless your treatment is not available in the UK without 'undue delay'. If you cannot get your treatment without undue delay, an E112 form must be granted.

What constitutes 'undue delay' is determined by a clinical assessment of a medically acceptable period of time for a patient to wait for treatment. This should be considered on a case-by-case basis and be subject to ongoing review until the treatment is received.

The E112 form only covers treatment from a provider in the state system. If an E112 form is issued, you should be treated as if you are a resident of the country treating you. This means that if patients from that country in the same circumstances have to make an additional payment for particular care, so will you. If you have to make such a payment, you may request reimbursement of your costs from the NHS.

Under *Article 56 of the EC treaty* you may travel to an EEA country (not Switzerland) to receive treatment that you would be entitled to receive on the NHS and may request reimbursement from the NHS for some or all of the costs of this treatment.

If you seek treatment under Article 56, you are exercising a right to make a personal decision to leave the NHS and access another country's healthcare system. You will be treated under the legislation and standards of that country, though rules affecting entitlement are determined in the UK. You may be treated in either the state or private sector of that other country. You would have to pay upfront for healthcare under this route and subsequently may request reimbursement from your local commissioner (usually your PCT) for some or all of the costs of this treatment.

If you are seeking non-hospital treatment, you do not need the formal agreement of your local commissioner before travelling, though you are advised that you should discuss your plans with them in advance.

Right

What this right means for patients

If you are seeking hospital care, you should contact your local commissioner in advance to discuss obtaining prior authorisation from them before accessing healthcare and subsequently requesting reimbursement for some or all of the cost of this treatment. This will also enable you to confirm what healthcare you will be reimbursed for.

Your local commissioner should consider your request in accordance with the Department of Health guidance: 'Patient Mobility: Advice to Local Healthcare Commissioners on Handling Requests for Hospital Care in other European Countries following the ECJ's Judgment in the Watts case.' In any event, you are advised to contact your NHS commissioner before you travel to confirm what treatment they will fund.

Further information can be found at the Department of Health (**www.dh.gov.uk**) and the NHS Choices website (**www.nhs.uk**).

(Refer to page 120 in the Appendix for the source of the right)

Right

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

The Government intends to use the Equality Bill to make unjustifiable age discrimination against adults unlawful in the provision of services and exercise of public functions. Subject to Parliamentary approval, this right not to be discriminated against will extend to age when the relevant provisions are brought into force for the health sector.

(Section 2a of the NHS Constitution)

What this right means for patients

You have the right not to be discriminated against by the NHS based on your gender, race, religion or belief, sexual orientation or disability (that includes learning disability or mental illness).

(Refer to page 121 in the Appendix for the source of the right)

Right

"You have the right to access services within maximum waiting times, or for the NHS to take all reasonable steps to offer you a range of suitable alternative providers if this is not possible. The waiting times are described in the Handbook to the NHS Constitution."

(Section 2a of the NHS Constitution)

What this right means for patients

This is a new right and there is new legislation to support it. From 1 April 2010, you will have the right to:

- start your consultant-led treatment within a maximum of 18 weeks from referral for non-urgent conditions; and
- be seen by a cancer specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected.

If this is not possible, the PCT or SHA which commissions your treatment must investigate offering you a range of suitable alternative providers that would be able to see or treat you more quickly than the original provider. You will need to contact the provider you have been referred to or your local PCT before alternatives can be investigated for you. Your PCT or SHA must take all reasonable steps to meet your request.

Your right to treatment within 18 weeks from referral will include treatments where a consultant retains overall clinical responsibility for the service or team, or for your treatment. This means the consultant will not necessarily be physically present for each appointment, but will take overall responsibility for your care. The setting of your consultant-led treatment, for example whether hospital based or in a GP-based clinic, will not affect your right to treatment within 18 weeks.

Exceptions

The right will cease to apply in circumstances where:

- you choose to wait longer;
- delaying the start of your treatment is in your best clinical interests, for example where smoking cessation or weight management is likely to improve the outcome of the treatment;
- it is clinically appropriate for your condition to be actively monitored in secondary care without clinical intervention or diagnostic procedures at that stage;
- you fail to attend appointments which you had chosen from a set of reasonable options; or
- the treatment is no longer necessary.

The following services are not covered by the right:

- non-medical consultant-led mental health services; and
- maternity services.

(Refer to page 122 in the Appendix for the source of the right)

(ii) In addition, there are three pledges covering access to health services:

"The NHS commits to provide convenient, easy access to services within the waiting times set out in this Handbook to the NHS Constitution."

(Section 2a of the NHS Constitution)

All patients should receive high-quality care without any unnecessary delay.

The NHS Operating Framework sets the priorities for the NHS over the next year and helps deliver the vision set out in *High Quality Care for All*. Within the Operating Framework, the detail behind this pledge is set out. There are strong NHS systems to ensure delivery of this pledge. Organisations that deliver prompt access to high-quality care will be rewarded by more patients choosing their services and recognition by regulators, e.g. the Care Quality Commission. Organisations' performance will be monitored across all waiting time pledges. Clear thresholds exist giving organisations clarity about what is expected of them by when and interventions should they not deliver.

As now, patients with urgent conditions, such as cancer and heart disease, will be able to be seen and receive treatment more quickly.

There are a number of **government pledges on waiting times**, including:

- a maximum 31-day wait for subsequent treatment where the treatment is surgery;
- a maximum 31-day wait for subsequent treatment where the treatment is an anti-cancer drug regimen;
- a maximum 62-day wait from referral for suspected cancer to first treatment for all cancers;
- a maximum two-week wait to see a specialist for all patients referred for investigation of breast symptoms, even if cancer is not initially suspected;
- a maximum four-hour wait in A&E from arrival to admission, transfer or discharge;
- access to a primary care professional within 24 hours or a primary care doctor within 48 hours;
- a maximum three-month wait for patients who need a revascularisation;
- a maximum two-week wait for Rapid Access Chest Pain Clinics;
- access to a genito-urinary medicine clinic within 48 hours of contacting a service;
- all patients who have operations cancelled, on or after the day of admission (including the day of surgery), for non-clinical reasons to be offered another binding date within 28 days, or the patient's treatment to be funded at the time and hospital of the patient's choice;
- all ambulance trusts to respond to 75 per cent of Category A calls within eight minutes and to respond to 95 per cent of Category A calls within 19 minutes of a request being made for a fully equipped ambulance vehicle (car or ambulance) able to transport the patient in a clinically safe manner; and
- all ambulance trusts to respond to 95 per cent of Category B calls within 19 minutes.

Pledge

The NHS is also working to make it easier to access NHS services at a time that is convenient to you. By July 2009, over three-quarters of GP practices were offering extended opening hours. The 2010/11 NHS Operating Framework sets out a clear expectation that PCTs will push on from this achievement, ensuring they continue to make progress in ensuring that extended opening matches local needs. Each PCT is also opening a new GP health centre. All the centres will be open from 8am to 8pm, 365 days a year, and any patient, regardless of their home address or the practice they are registered with, can pre-book an appointment or 'walk-in' to access services. This means that patients can see a GP or nurse for a routine consultation if they are away from home, or if their registered practice is closed. Almost 120 of these centres were open to the public by the end of 2009. The remaining centres will open during 2010.

The NHS Operating Framework for 2010/11 makes it clear that PCTs need to continue to develop NHS dental services, with the aim of being able to provide dentistry for anyone who seeks help in accessing services. The NHS is committed to the aim of ensuring that by March 2011 anyone who is seeking NHS dentistry can get it.

"The NHS commits to make decisions in a clear and transparent way, so that patients and the public can understand how services are planned and delivered."

(Section 2a of the NHS Constitution)

PCTs are responsible for involving their local populations in decisions about the local services that they commission. In addition to the legal duty on NHS organisations to involve people and their representatives in decisions about services, and on PCTs to report back publicly on how they have responded to local views, the Department of Health has introduced a comprehensive framework of policies to strengthen the local accountability of PCTs, including:

- introducing Local Involvement Networks (LINks) to gather the views of local people and communities; and
- strengthening partnerships between the NHS and local government, and giving local councils the power to review and scrutinise local health services.

These reforms are supported by further efforts to ensure that public and patients are at the heart of local decision-making. For example, the World Class Commissioning programme, which holds PCTs to account for their performance, requires PCTs to demonstrate that they are proactively leading continuous and meaningful engagement with the public and patients to shape services and improve people's health. A NHS planning regime has been implemented which distinguishes clearly between priorities that need to be decided nationally (in order to have consistent services across the country), and those priorities chosen locally to meet the needs of individual populations.

Pledge

"The NHS commits to make the transition as smooth as possible when you are referred between services, and to include you in relevant discussions."

(Section 2a of the NHS Constitution)

Providing effectively integrated care, achieving better outcomes for service users in a cost effective way, is a key priority for the NHS. In particular, improving integration between health and social care is an important ambition, as signalled in the White Paper *Our health, our care, our say* and in *Putting People First*, the cross-government agreement on adult social care.

Delivery of integrated care is currently a joint responsibility of the NHS and partner organisations, such as the social services departments including local authorities. The NHS has a duty to work in partnership with local authorities to provide you with effective, integrated and personalised services to meet your health and well-being needs. The delivery of services to improve the health and well-being of the local population is agreed by the NHS and its local authority partners in a Joint Strategic Needs Assessment.

In addition to the legal requirements, particular efforts to improve the integration of care include the following:

- PCTs can agree a formal partnership arrangement with a local authority under regulations made under section 75 of the National Health Service Act 2006 (previously section 31 of the Health Act 1999). This agreement allows the NHS and local authorities to pool resources and/or enables one partner to provide or commission both NHS and health-related local authority services.

- The *End of Life Care Strategy* (2008) outlines a number of measures that will be put in place to help patients nearing the end of their lives to receive co-ordinated care and support, ensuring that patients' needs are met, irrespective of who is delivering the service. Implementation is now in hand at national and local levels, for example through the eight pilot sites for locality registers.

- Local authorities, the NHS and other key local organisations have made improving the health and well-being of their communities a key priority in their local area agreements (LAAs). LAAs set out what issues each locality has chosen to tackle over the next three years. Local partners will be held to account for progress on those issues.

Quality of care and environment

(i)There are two rights covering quality of care and environment:

Right

"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 that meets required levels of safety and quality."

Subject to Parliamentary approval, the new registration system will apply to NHS providers from April 2010, and independent sector providers from October 2010.

(Section 2a of the NHS Constitution)

What this right means for patients

NHS staff must treat you with reasonable care (this will be determined by the health professional's practice) in your treatment or when providing other healthcare. The staff who provide NHS services must be qualified and have the experience needed to do their jobs well. They are governed by professional bodies and/or regulators. For example, the Nursing and Midwifery Council is the regulatory body for nurses.

As well as taking reasonable care to ensure a safe system of healthcare and using qualified and experienced staff, NHS and private organisations which have to be registered must register with the Care Quality Commission, and be responsible for meeting safety and registration standards on an ongoing basis.

(Refer to page 122 in the Appendix for the source of the right)

Right

"You have the right to expect NHS organisations to monitor, and make efforts to improve, the quality of healthcare they commission or provide."

(Section 2a of the NHS Constitution)

What this right means for patients

Quality of care is personal to each individual patient – you have the right to high-quality care that is safe, effective and right for you.

NHS bodies have put in place systems to measure and improve the overall care they provide so that they can find out how well they are delivering these standards of care. To help achieve this, from April 2010 all PCTs must have arrangements in place to secure continuous improvement in the quality of the healthcare provided by or for them.

Furthermore, PCTs are obliged to ensure that providers of GP services have in place clinical governance arrangements and quality assurance systems.

(Refer to page 124 in the Appendix for the source of the right)

Pledge

(ii) In addition, there are two pledges relating to quality of care and environment:

"The NHS commits to ensure that services are provided in a clean and safe environment that is fit for purpose, based on national best practice."

(Section 2a of the NHS Constitution)

This pledge goes beyond the specific legal requirements for NHS bodies. For example, in committing to ensure that its facilities are fit for purpose, the NHS recognises that the quality and design of buildings and their upkeep have a material impact on the health and well-being of those using them – both public and staff. Specific legal requirements are set out in health and safety legislation and the law relating to negligence. Additionally, the NHS has developed a national framework for assessing the quality and efficiency of hospital premises – the Premises Assurance Model – enabling trusts to provide assurance that their facilities are fit for purpose and money is not wasted.

This pledge focuses on those things that the NHS commits to do alongside or in addition to its legal requirements. In particular:

- NHS organisations should take account of the series of **specifications and guidance** that describe how to provide a **clean and safe environment for patient care**. For example, the *National Specifications for Cleanliness in the NHS* set out the standard of cleanliness expected, as well as suggesting the frequency of cleaning needed across the NHS. A new publicly available specification on hospital cleanliness is being developed with the British Standards Institute. This will eventually supersede the existing national specifications for cleanliness in the NHS, at a time to be agreed but probably in 2011. National best-practice guidance for the design and operation of healthcare facilities ensures that the NHS has the information it needs when refurbishing or rebuilding its facilities to meet both clinical requirements and patients' expectations that their privacy and dignity will be respected and their comfort assured.

- The NHS is expected to continue to address MRSA bloodstream infections. It met the nationwide target to halve the number of these infections in 2008/09, and the latest quarterly figures show that there has been a 76% reduction nationally. From April 2010, a new MRSA objective will be applied across all NHS organisations, which will require organisations with the highest rates to make the biggest reductions, and challenge the best performers to sustain their low rates and to strive for further reductions where possible. The NHS also reduced *C. difficile* infections by over 30%, two years before the target date of 2010/11. Commissioners can take action to ensure high-quality care for patients, such as fining providers who are not making the required improvements on *C. difficile* infections. Patients can find information on infection rates for individual trusts on the NHS Choices website at **www.nhs.uk**.

- The NHS has described the **comprehensive measures that it needs to take to prevent infections** and ensure a clean environment in a **national strategy**: *Clean, safe care*. Measures include making sure that appropriate resources and training are in place for cleaning and undertaking 'deep cleaning', as well as increasing the number of matrons and defining nursing responsibilities in relation to cleaning.

- NHS trusts have **Design Champions** who **promote high-quality, patient-focused environments** with good working conditions for staff and buildings that make a positive contribution to the neighbourhood. The NHS Design Review Panel helps the NHS achieve high standards of design by reviewing major building proposals at key stages of their development.

Pledge

"The NHS commits to continuous improvement in the quality of services you receive, identifying and sharing best practice in quality of care and treatments."

(Section 2a of the NHS Constitution)

All NHS organisations work to improve the quality of the services they provide or commission, including by assessing clinical and service innovations relevant to their clinical responsibilities. *High Quality Care For All* defined quality as having three dimensions: ensuring that care is safe, that it is effective, and that it provides patients with the most positive experience possible. These three dimensions of quality are being placed at the core of everything the NHS does – both as ends in themselves, but also because delivering the best quality of care will ultimately ensure that the system as a whole gives best value.

Individual clinical teams are already encouraged to participate in clinical audit, comparing their standards of care with current best practice. They are also encouraged to share information about what works. Indicators for Quality Improvement, a menu of assured quality indicators, was launched to support this process. The NHS will do more to clarify what high-quality care looks like, by supporting the National Institute for Health and Clinical Excellence (NICE) in developing quality standards that can be used by commissioners and providers to assess current practices and to inform the commitments they make to patients about what quality of services to expect. NICE has also established NHS Evidence, a tool to improve NHS access to quality-assured information on clinical best practice (what interventions work best for patients) and, increasingly, guidance on the best models for delivering services. Local services' use of these products will be informed by local needs and priorities, and the NHS will make information about quality performance more accessible through the local publication of Quality Accounts.

The NHS will also monitor the effectiveness and outcomes of care more systematically through measurement against metrics. These will primarily help local management, although organisations achieving improvements against metrics designed to assess the quality of care can be rewarded financially through the NHS payment mechanism by the Commissioning for Quality and Innovation payment framework. Care will be safeguarded by the Care Quality Commission and continually improved through support for innovation.

Nationally approved treatments, drugs and programmes

(i)There are three rights covering nationally approved treatments, drugs and programmes:

Right

"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."

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.

(Section 2a of the NHS Constitution)

What this right means for patients

NICE is the National Institute for Health and Clinical Excellence. It is an independent organisation responsible for providing national guidance on promoting good health and preventing and treating ill health.

NICE health technology appraisals make recommendations on the use of specific new and existing drugs and treatments within the NHS. And when a NICE technology appraisal recommends the use of a drug or treatment, PCTs must fund that drug or treatment for patients when it is clinically needed.

In practice this means that you have a right to receive that drug or treatment if your clinician says it is appropriate for you to receive it and it has been recommended by NICE's technology appraisals.

There are a few cases where the statutory duty to fund a particular technology appraisal recommendation does not apply, usually for a limited period in order to allow the NHS to make arrangements for implementation. In those cases, the right applies once the exemption has expired.

(Refer to page 125 in the Appendix for the source of the right)

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

The availability of some healthcare services is determined nationally – for example, under NICE's technology appraisals, where all PCTs have to fund the recommended drugs and treatment.

However, in most cases, decision-making on whether to fund a service or treatment is left to the local PCT. This is to enable PCTs to provide services that best fit the needs of their local population.

For such local decision-making, it is important that the process is rational, transparent and fair. This right ensures that there is such a process.

If a PCT has decided that a treatment will not normally be funded, it needs to be able to consider whether to fund that treatment for an individual patient on an exceptional basis.

The Department of Health has issued statutory Directions to PCTs and guidance (Supporting rational local decision-making about medicines (and treatment) 2009) to ensure that their responsibilities in this area are clear.

(Refer to page 125 in the Appendix for the source of the right)

Right

"You have the right to receive the vaccinations that the Joint Committee on Vaccination and Immunisation recommends that you should receive under an NHS-provided national immunisation programme."

(Section 2a of the NHS Constitution)

What this right means for patients

The Joint Committee on Vaccination and Immunisation (JCVI) is an advisory body responsible for advising the Secretary of State for Health on issues regarding vaccination and immunisation.

The JCVI gives different types of advice. The right applies where the JCVI makes a recommendation to introduce a new national immunisation programme, or to make a change to those who qualify for an existing national immunisation programme.

Where the JCVI makes a recommendation of this sort, the Secretary of State will be obliged to make arrangements in England to ensure that the national immunisation programme is implemented so that the people who meet the criteria in the recommendation have access to the vaccine via the NHS.

In practice this means that, if you fall into a group that the JCVI recommends is vaccinated against a particular disease, you have the right, after allowing for a reasonable period of time to implement the programme, to be vaccinated against that disease free of charge on the NHS if you wish to receive the vaccination.

(Refer to page 126 in the Appendix for the source of the right)

(ii) In addition, there is one pledge on access to nationally approved treatments, drugs and programmes:

"The NHS commits to provide screening programmes as recommended by the UK National Screening Committee."

(Section 2a of the NHS Constitution)

The UK National Screening Committee is the national advisory body for the Government and the NHS. It advises on which screening programmes to introduce nationally, taking into account issues such as safety, quality, and clinical and cost effectiveness. It also supports the implementation, development and quality assurance of screening programmes.

Screening has the potential to save lives and improve quality of life through the early diagnosis of conditions. Screening can reduce the risk of developing a condition or its complications. Two examples include:

- Approximately 4,500 women's lives are saved each year in England because of cervical cancer screening.
- 1,600 newborn babies are screened for hearing impairment every day, identifying problems two years earlier than previous methods and safeguarding educational and social development.

This is the first time that the Government has explicitly pledged to fund all recommended screening programmes in the future. Since the NHS started the introduction of a new screening programme in 2008 for abdominal aortic aneurysm in men aged 65 and over, 10 screening programmes are now fully operational. In order to successfully implement this programme nationwide, the NHS will continue to work with those involved in providing the service as well as providing additional funding to help local services get started. This includes paying for training, ultrasound equipment, providing clear information for patients and ensuring high-quality systems are in place.

Respect, consent and confidentiality

(i)There are five rights covering respect, consent and confidentiality:

Right

"You have the right to be treated with dignity and respect, in accordance with your human rights."

(Section 2a of the NHS Constitution)

What this right means for patients

The right to dignity and respect is established by the European Convention on Human Rights (ECHR). The ECHR is designed to protect human rights and fundamental freedoms.

The right to dignity includes a right not to be subjected to inhuman or degrading treatment. The right to respect includes the right to respect for private and family life.

This right has broad meaning, but for the NHS your care, where possible, should be provided in a way that enables you to be treated with dignity and respect.

Health professionals – e.g. your clinician, your physiotherapist or your care worker – must also follow the standards set by their own professional body and/or regulator's regulatory regime.

(Refer to page 127 in the Appendix for the source of the right)

Right

"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."

If you are detained in hospital or on supervised community treatment under the Mental Health Act 1983 different rules may apply to treatment for your mental disorder. These rules will be explained to you at the time. They may mean that you can be given treatment for your mental disorder even though you do not consent.

(Section 2a of the NHS Constitution)

What this right means for patients

No one can carry out any physical examination or give you treatment unless you have given your valid consent. You can therefore accept or refuse any treatment that is offered to you. If you lack capacity to consent yourself, and have given a person legal authority to make treatment decisions for you, then they can consent to or refuse treatment for you (this is called having a lasting power of attorney) where this would be in your best interests. If there is no such person then doctors will have to act in your best interests in deciding whether or not to carry out a treatment. In some difficult cases the courts will be asked to decide what is in a person's best interests. Further detail about what happens when you cannot give consent yourself can be found in the Mental Capacity Act 2005 and its associated Code of Practice. For children who are unable to consent to or refuse treatment because they lack sufficient understanding (i.e. they are not 'Gillick competent') parents may consent or refuse treatment where this would be in the child's best interests. Again in some difficult cases the courts will be asked to determine what is in a child's best interests.

(Refer to page 127 in the Appendix for the source of the right)

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

When you are deciding whether to give your consent, this right entitles you to have the information you need to make a decision. The information you are given should include the benefits and the risks of the suggested treatment, as well as the risks if you decide not to take the suggested treatment.

(Refer to page 128 in the Appendix for the source of the right)

Right

"You have the right to privacy and confidentiality and to expect the NHS to keep your confidential information safe and secure."

(Section 2a of the NHS Constitution)

What this right means for patients

NHS staff will respect your right to privacy and confidentiality. All the personal information on you and about any treatment you receive from healthcare organisations is confidential. NHS bodies must comply with 'data protection principles', which include, subject to certain exceptions, personal information being held or disclosed only with the consent of the individual concerned.

There is a senior clinician in every large NHS organisation, termed a 'Caldicott Guardian', who oversees and advises on confidentiality matters and safeguards the interests of patients.

(Refer to page 129 in the Appendix for the source of the right)

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

You have the right to see your health records. Ask your clinician if you would like to see them.

There are limited exceptions to this right, mainly to do with national security and the prevention of crime.

(Refer to page 130 in the Appendix for the source of the right)

(ii) In addition, there is one pledge relating to respect, consent and confidentiality:

"The NHS commits to share with you any letters sent between clinicians about your care."

(Section 2a of the NHS Constitution)

There is evidence that, when patients receive copies of letters between clinicians about their care, it improves their understanding of their condition, enabling them to take control of their own health and to make decisions about their treatment. It also allows them to correct any errors. The relationship between patient and clinician works best when it is based on trust, openness and understanding: copying letters helps to achieve this.

Copies of letters sent between clinicians should be shared with patients. Patients can ask for, and should receive copies of, letters about their care, including letters on referral, letters following outpatient appointments and discharge letters that are routinely sent between clinicians as part of patient care.

The NHS Plan committed the NHS to provide copies of letters to patients, and the Department of Health issued guidance to support NHS trusts in delivering this policy. The NHS is making progress in copying letters to patients, and every year more and more patients are receiving copies of letters as part of their care.

Informed choice

(i)There are three rights covering informed choice:

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

You can choose which GP practice you would like to register with. That GP practice must accept you unless there are good grounds for not doing so, for instance because you live outside the boundaries that they have agreed with the PCT or because they have no spaces left on their list. Whatever the reason, they must tell you why.

If you cannot register with your preferred GP practice, the NHS will help you find another.

(Refer to page 130 in the Appendix for the source of the right)

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

Within your GP practice, you have the right to say which particular GP you would like to see. Your GP practice will try to give you your choice, but there may be good reasons why you cannot see your preferred GP.

(Refer to page 130 in the Appendix for the source of the right)

"You have the right to make choices about your NHS care and to information to support these choices. The options available to you will develop over time and depend on your individual needs."

(Section 2a of the NHS Constitution)

What this right means for patients

You have the right to choose the organisation that provides your NHS care when you are referred for your first outpatient appointment with a service led by a consultant. There are certain exceptions including:

Persons excluded

- persons detained under the Mental Health Act 1983
- military personnel
- prisoners

Services excluded

- where speed of access to diagnosis and treatment is particularly important, e.g.:
  - emergency attendances/admissions
  - attendances at a Rapid Access Chest Pain Clinic under the two-week maximum waiting time, and
  - attendance at cancer services under the two-week maximum waiting time
- maternity services
- mental health services.

Your right to choose will develop as choice is extended into other areas.

You have a right to information where there is a legal right to choice. Currently, this gives you a right to information to support you in choosing your provider when you are referred for your first outpatient appointment with a service led by a consultant. Information to help you make your choice can be found on the NHS Choices website (**www.nhs.uk**). PCTs are expected to promote this information and make it more accessible to patients.

(Refer to page 131 in the Appendix for the source of the right)

Pledge

(ii) In addition, there are two closely related pledges covering informed choice:

"The NHS commits to inform you about the healthcare services available to you, locally and nationally."

"The NHS commits to offer you easily accessible, reliable and relevant 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."

(Section 2a of the NHS Constitution)

Providing information to support choice is a major priority for the NHS. Important developments include:

- NHS Choices, which is a website (**www.nhs.uk**) setting out information on services, treatments and lifestyles. It helps patients to understand what services are available and where these services can be accessed. Increasingly, the information will become available through other channels (such as mobile phones and touch-screen kiosks) which are being developed for those who do not use the internet. NHS Choices is regularly updated with new comparative information, and there is a process to ensure that this is sufficiently robust to be of real use to patients.

- Information prescriptions, which are available on NHS Choices and locally from healthcare professionals, help people to access relevant, reliable and personalised information about their long-term condition and how to manage their care.

- *Your guide to local health services*, which all PCTs are required to produce and to distribute to every household in the locality every year.

- *Your health, your way – your guide to long-term conditions and self care*, which has been published on NHS Choices to provide patients with long-term conditions, such as asthma and diabetes, with information about the choices that should be available to them locally to enable them to care for themselves (self care) in partnership with health and social care professionals.

- Information about how NHS services are performing, published by the Care Quality Commission.

- Procedures to ensure that patients are notified of opportunities to join in relevant ethically approved research and are free to choose whether they wish to do so. Research is a core part of the NHS. It enables the NHS to improve the current and future health of the people it serves. The NHS will do all it can to ensure that patients, from every part of England, are made aware of research that is of particular relevance to them.

Involvement in your healthcare and in the NHS

(i)These are two rights covering involvement in your healthcare and in the NHS:

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

Your doctor should listen to you and respond to your concerns and preferences about your healthcare. That way you can find out what is the best treatment for you. NHS staff will give you the information you need to support these discussions and decisions.

(Refer to page 132 in the Appendix for the source of the right)

Right

"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."

(Section 2a of the NHS Constitution)

What this right means for patients

You have the right to have your say in person or through a representative:

- in the planning of healthcare services;
- on the proposals for any changes in the way in which your services are provided; and
- on decisions which may affect the operation of these services.

This right applies if implementation of a proposal or decision would have an impact on:

- the manner in which services are delivered to you or other service users; or
- the range of health services available to you or other service users.

(Refer to page 133 in the Appendix for the source of the right)

(ii) In addition, there are two pledges covering involvement in your healthcare and in the NHS:

"The NHS commits to provide you with the information you need to influence and scrutinise the planning and delivery of NHS services."

(Section 2a of the NHS Constitution)

In addition to the duty of PCTs to involve their local populations in decisions about the planning and delivery of NHS services in their area, there are a number of policy commitments. Providing accurate and relevant information to support public involvement is an essential element of this. Measures to support PCTs in achieving this include:

- *Our NHS, our future: Leading local change* (published in May 2008), which established clear processes for PCTs to involve patients and the public in decisions about changes to local services.
- The World Class Commissioning programme, which is a challenging development programme for all PCTs. PCT capability is measured against ten competencies, including one on engaging with patients and the public. This includes a requirement for PCTs to ensure "that patients and the public understand how their views will be used, which decisions they will be involved in, when decisions will be made, and how they can influence the process, and [that they] publicise the ways in which public input has influenced decisions".
- *Real Involvement* (published in October 2008), which provides guidance to PCTs about how they can improve their involvement of patients and the public and embed involvement in their ways of working.
- All PCTs should produce *Your guide to local health services* to inform patients about what services are available locally to support involvement in decisions about the future of services. PCTs should ensure that every household in the locality receives a copy and that it contains information about the ways people can get involved in local health services.
- In addition to this information, the independent assessments of service quality and performance from the Care Quality Commission can be used by all involved in planning, influencing and scrutinising NHS services.

Pledge

"The NHS commits to work in partnership with you, your family, carers and representatives."

(Section 2a of the NHS Constitution)

Working in partnership with you

Working in partnership with individual patients is at the heart of many Department of Health policies. These are outlined in the White Paper *Our health, our care, our say*, which sets out how people can take greater control over their care. For example, through the 'choose and book' initiative, patients work in partnership with clinicians to arrange their care and book hospital appointments. The NHS is developing information prescriptions for people with long-term conditions to help clinicians signpost people to the right information at the right time.

Providing good quality, timely and relevant information is crucial, as are self care and self management support. *Our Health, our care, our say* sets out the NHS's commitment to offer a care plan to everyone with a long-term condition by 2010. This is reiterated in the End of Life Care Strategy (2008), which sets out the need for every person at the end of life, and their carer, to be given a care plan to help ensure services are provided to meet their needs and preferences.

Working in partnership with your family, carers and representatives

There are currently many examples across the NHS of carers being treated as expert partners in care and being fully involved in care and discharge planning. The 2008 Carers Strategy includes detailed expectations and committed funds to the vision of making this a reality across the service. This includes demonstrator sites in PCTs looking at how the NHS can better support carers and provide training for both GPs and other health professionals. Furthermore, a key part of respecting and treating carers as partners in care is ensuring that their health does not suffer because of their caring role. One of the five expected outcomes of the Carers Strategy is to ensure that carers are supported to stay mentally and physically well. The Department is also funding demonstrator sites to carry out health and well-being checks for carers, in addition to the actions described above to gather evidence on what is cost effective and helps to improve health outcomes.

The publication *Putting People First* (published December 2007) highlights the need to recognise family members and carers as experts and care partners. It also identifies the need for support mechanisms to enable carers to develop their skills and confidence. This is particularly pertinent where carers participate in providing aspects of care such as rehabilitation exercises, wound or drug management and manual handling. The Department is funding a national programme of training, Caring with Confidence, to support carers to carry out their caring role more effectively and a national information and advice service, Carers Direct (www.nhs.uk/carersdirect; freephone 0808 802 02 02 (7 days a week)).

Complaint and redress

(i) There are five rights covering complaint and redress:

Right	What this right means for patients
"You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated." (Section 2a of the NHS Constitution)	If you are unhappy with your NHS services, you have the right to make a complaint and for that complaint to be investigated properly. (Refer to page 134 in the Appendix for the source of the right)

Right	What this right means for patients
"You have the right to know the outcome of any investigation into your complaint." (Section 2a of the NHS Constitution)	If you make a formal complaint (refer to the right above), you have the right to be told about the outcome of the complaint investigation. (Refer to page 134 in the Appendix for the source of the right)

Right

"You have the right to take your complaint to the independent Health Service Ombudsman, if you are not satisfied with the way your complaint has been dealt with by the NHS."

(Section 2a of the NHS Constitution)

What this right means for patients

If you are not happy with the outcome of your complaint, you can take your complaint to the Health Service Ombudsman, who carries out independent investigations into complaints about unfair or improper action or poor service by the NHS in England.

Please refer to **www.ombudsman.org.uk**

(Refer to page 135 in the Appendix for the source of the right)

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

Judicial review is a process by which you can challenge a decision of the Secretary of State or an NHS body, on the basis that it is unlawful. Judicial review is not a form of appeal and is concerned primarily with how decisions are made, rather than the merits of the decision itself.

To be entitled to bring a claim for judicial review, a person must have a direct, personal interest in the action or decision under challenge. If this is something you want to do, you should seek legal advice. There are time limits for making a claim.

(Refer to page 135 in the Appendix for the source of the right)

Right

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

(Section 2a of the NHS Constitution)

What this right means for patients

If you have been harmed through negligent treatment, you have a right to claim for damages. If this is something you want to do you should seek legal advice.

(Refer to page 135 in the Appendix for the source of the right)

(ii) In addition, there are three closely related pledges on complaint and redress in the NHS Constitution:

"The NHS commits to ensure you are treated with courtesy and you receive appropriate support throughout the handling of a complaint; and the fact that you have complained will not adversely affect your future treatment."

"The NHS commits, when mistakes happen, to acknowledge them, apologise, explain what went wrong and put things right quickly and effectively."

"The NHS commits to ensure that the organisation learns lessons from complaints and claims and uses these to improve NHS services."

(Section 2a of the NHS Constitution)

If you do have cause to make a complaint about NHS services, the emphasis should be on seeking to resolve a complaint to your satisfaction. You should be involved in decisions about how the complaint is to be handled, and the timescales for providing you with a reply. Although making a complaint to the organisation that provided the service is one way that better allows that organisation to learn lessons from its mistakes and to prevent them happening to anyone else, you can complain to the body that commissions those services – your local PCT – if you prefer. PCTs have an important role in ensuring that all organisations providing NHS services have a fair and effective complaints process. If it proves not to be possible to resolve your complaint locally, you have the right to ask the Health Service Ombudsman to look into your case.

The Care Quality Commission (CQC) does not have a role in handling individual complaints, but the Department of Health is proposing a requirement on registered service providers to have effective systems in place for handling complaints, and for learning from complaints. From April 2010, the CQC will have the powers it needs to ensure that all registered NHS providers are handling complaints properly. Where registered service providers fail to meet registration requirements, the CQC will be able to use enforcement powers.

The pledges are consistent with the *Principles of Good Administration*, *Principles of Good Complaint Handling* and *Principles for Remedy*, published by the Parliamentary and Health Service Ombudsman, which the Department of Health fully endorses. These documents are available from the Ombudsman's website: **www.ombudsman.org.uk**.

Patient and public responsibilities

The Constitution also describes the responsibilities of patients, the public and staff, setting out the part they can play in helping the NHS to work effectively. The NHS Constitution contains nine responsibilities for patients and the public:

Responsibility	What this means in practice
"You should recognise that you can make a significant contribution to your own, and your family's, good health and well-being, and take some personal responsibility for it." (Section 2b of the NHS Constitution)	You can talk to your doctor, nurse (including health visitors and midwives) or therapist, use NHS Direct (online at **www.nhsdirect.nhs.uk** or telephone 0845 4647), or go online at NHS Choices (**www.nhs.uk**). You can ask about what support you might be offered in managing your condition yourself or changing to a healthy lifestyle (e.g. stopping smoking, reducing weight, exercise or reducing excessive alcohol consumption).

Responsibility	What this means in practice
"You should register with a GP practice – the main point of access to NHS care." (Section 2b of the NHS Constitution)	To find out where you can register, you can telephone or write to your local primary care trust (the organisation that organises healthcare in your locality), telephone NHS Direct on 0845 4647 or go online at NHS Choices (**www.nhs.uk**).

Responsibility

"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."

(Section 2b of the NHS Constitution)

What this means in practice

Patients have a right to be treated with respect and dignity in all their dealings with the NHS, but it is equally important that they treat NHS staff with respect in return and do not cause a nuisance or disturbance.

Responsibility

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

(Section 2b of the NHS Constitution)

What this means in practice

The delivery of safe and effective care is reliant on good quality information. Patients are responsible for ensuring that information about them is accurate and up to date. To support patients in this, the NHS is working to develop online applications for storing health information, for example through the HealthSpace initiative. You can find out more at **www.healthspace.nhs.uk**.

Responsibility

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

(Section 2b of the NHS Constitution)

What this means in practice

If you cannot make your planned appointment, please contact your doctor, nurse or therapist as soon as you can to let them know. This might make it possible for your appointment to be offered to somebody else.

Responsibility

"You should follow the course of treatment which you have agreed, and talk to your clinician if you find this difficult."

(Section 2b of the NHS Constitution)

What this means in practice

You should follow the course of treatment that you have agreed with your doctor, nurse or therapist wherever possible. You can ask your doctor, nurse or therapist to explain to you what your treatment options are, what the most appropriate treatment is and why. Where required, a written care plan can also be requested.

Responsibility	What this means in practice
"You should participate in important public health programmes such as vaccination." (Section 2b of the NHS Constitution)	Your doctor, nurse or therapist will advise you of the benefits and risks of vaccination programmes appropriate to you and other services designed to improve your health.

Responsibility	What this means in practice
"You should ensure that those closest to you are aware of your wishes about organ donation." (Section 2b of the NHS Constitution)	You can find out more about organ donation and how to become a donor at **www.uktransplant.org.uk**.

Responsibility	What this means in practice
"You should give feedback – both positive and negative – about the treatment and care you have received, including any adverse reactions you may have had." (Section 2b of the NHS Constitution)	The Department of Health will ensure that all NHS organisations provide an opportunity to give feedback on the NHS care that you receive. This might be through national, local and/or practice surveys, complaints, or through the formal grievance processes.

Part II: Staff

Introduction

(Sections 3a and 3b of the NHS Constitution)

This section describes the elements of the NHS Constitution that refer to NHS staff. It covers:

- staff rights;
- staff pledges;
- staff legal duties; and
- expectations of staff.

It is our vision that all staff commissioning and providing NHS services should have rewarding jobs. They will be able to provide quality care because jobs will have been designed around patients with the input of staff. The inclusion of staff pledges, expectations, responsibilities and legal duties in this Handbook reflects the fact that improving the patient experience requires the continued improvement of the working lives of staff. Staff covered by this Handbook include employees and contractors (people operating under a contract to provide services) who commission and/or provide NHS services, whether they work for NHS organisations or for non-NHS organisations.

Context

The principles that this section is based on come from research on 'What Matters to Staff', which was carried out in 2007. This involved around 9,000 NHS staff across all professions and sought to identify what matters to them in their work. The research identified four themes. These are now reflected in the NHS staff survey and also informed the NHS Constitution's values. The values represent what is important to those who both use and provide NHS services, and can guide it in the 21st century. What matters to staff is that they have:

- the resources to deliver quality care for patients;
- the support they need to do a good job;
- a worthwhile job with chances to develop; and
- the opportunity to improve the way they work.

To really embrace the full and challenging definition of quality set out in *High Quality Care For All*, it must be recognised that high-quality care requires high-quality workplaces, with commissioners and providers aiming to be employers of choice.

Rights, pledges, expectations and responsibilities

This Handbook sets out our vision of the rights, pledges, expectations and legal duties that staff and employers can expect. These exist on two levels – the organisational and the personal.

At an organisational level, the NHS staff survey provides a key tool through which staff can express their views and offer feedback about their organisation as a whole. This Handbook should provide useful information to allow staff to consider their responses to any surveys. More and more organisations are using their survey findings to influence the way in which things are done locally and to address staff concerns. In addition, staff survey results are now reported under the staff pledge headings, with new content added to reflect the content of the pledges. Together, these additions ensure the survey is better placed to support organisations to deliver improvements for their staff. The Care Quality Commission uses the NHS staff survey data to support registration of NHS trusts and will use this to assess their ongoing compliance and annual periodic review, which also includes the measure of staff job satisfaction.

At a personal level, the information in this Handbook should provide a framework for discussions among individual members of staff and with their line managers, informing and enabling discussions on service improvement, team working, performance management, training and development. It is always better to discuss and resolve issues quickly. Staff should speak to a member of the management team or seek support from a colleague; options such as mediation should also be explored if problems persist. The Handbook is designed to be a useful reference tool and is not intended to provide any new grounds for individual grievances or litigation. **The first section (page 76)** summarises the current legal position (as at March 2010) on employees' rights. **The second section (page 94)** includes pledges from employers, demonstrating their commitment to strive to provide a good working environment for staff. **The third section (page 102)** summarises the current position on employees' legal duties. **The fourth section (page 108)** includes details of employers' general expectations of staff. However, the law changes all the time, and rights and duties will also vary according to individual contracts of employment, so this should not be regarded as definitive legal advice. Anyone seeking to enforce legal rights or duties should seek their own legal advice.

Staff rights

This section summarises some important existing rights for all employees. It is not a statement of the law and should not be regarded or relied upon as legal advice. Individual employees or employers must seek their own legal advice in all cases. Please remember that the law is constantly changing and that this document is a snapshot of the position as at March 2010. It is important to note that legal rights and duties will also vary according to an individual contract of employment. Employers or employees seeking to rely upon or enforce legal rights or duties should also seek their own legal advice in all cases. Where an employee feels that a right is not being respected this should normally be raised with their line manager in the first instance. Local Human Resources/Personnel teams will have details of their informal and formal resolution procedures and of how redress can be sought. In certain circumstances, an employee may also have the right to complain to an employment tribunal and it is very important for the employee to seek legal advice before doing so.

1. "Have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives."

(Section 3a of the NHS Constitution)

Right

To fair treatment regarding leave, rights and flexible working and other statutory leave requests relating to work and family, including caring for adults that you live with.

What this right means for staff

This right means that you can seek redress through your local arrangements to deal with disagreements either on specific contractual issues (terms and conditions) or on more general employment rights. If unsuccessful, you would have recourse to employment tribunal processes.

Employers are required to consider flexible working options for disabled staff and job applicants under the Disability Discrimination Act (DDA) and parents/carers of some children.

(Refer to page 136 in the Appendix for the source of the right)

Right	What this right means for staff
To request other ‘reasonable’ time off for emergencies (paid and unpaid) and other statutory leave (subject to exceptions).	Employers should provide employees with access to leave arrangements that help them to balance their work responsibilities with their personal commitments. (Refer to page 136 in the Appendix for the source of the right)

Right	What this right means for staff
To expect reasonable steps are taken by the employer to ensure protection from less favourable treatment by fellow employees, patients and others (e.g. bullying or harassment).	Bullying and harassment are serious issues and should not be tolerated. Every organisation should have in place a bullying and harassment policy that is easily accessible to staff and managers. This should be monitored on a regular basis by senior managers. It should include details on how such issues will be investigated in a fair and timely way. (Refer to page 137 in the Appendix for the source of the right)

2. "Have a fair pay and contract framework."

(Section 3a of the NHS Constitution)

Right

To pay; consistent with the National Minimum Wage or alternative contractual agreement.

To fair treatment regarding pay.

What this right means for staff

Although individual employers retain some rights to determine their own pay policies, the overwhelming majority continue to use national NHS pay policy.

National pay policy for the NHS is designed to provide fair, affordable pay in order to recruit, retain and motivate staff for the benefit of patients and to provide value for money for taxpayers. It also provides a range of flexibilities, such as the opportunity for recruitment and retention premia, to ensure that individual employers have the ability to respond effectively to local circumstances, while retaining a consistent national pay framework that is transparent and ensures equal pay for work of equal value.

Changes to pay and pay systems from year to year are important to everyone involved in providing NHS services – both as employees and employers. In making these changes, independent advice and recommendations are sought as part of the transparent process to inform the final decision.

If your line manager cannot resolve a problem with your pay and you have sought advice and support from other people in your organisation, you may be able to lodge a 'grievance' with your employer. If that does not lead to a resolution locally, then you may be able to make a claim, which, in some circumstances, would be heard by an employment tribunal or county court.

For staff who transfer from the NHS to work on NHS-funded contracts, their pay, terms and conditions are protected at the point of transfer under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

(Refer to page 138 in the Appendix for the source of the right)

3. "Be involved and represented in the workplace."

(Section 3a of the NHS Constitution)

Right

To be accompanied by either a Trade Union official or a work colleague at disciplinary or grievance hearings in line with legislation, your employer's policies or your contractual rights.

What this right means for staff

If you are required to attend either a grievance hearing or a meeting or hearing that may result in disciplinary action, you can make a reasonable request to your employer to be accompanied by either a Trade Union official (if you are a member of the union) or another work colleague. The person accompanying you can present and summarise your case and respond, on your behalf, to any view expressed at the hearing if you want them to do so. They cannot, however, answer questions on your behalf unless you and your employer agree.

Your employer's own disciplinary and grievance procedures may allow the accompanying person to take a fuller representational role and participate at an earlier stage of the process.

(Refer to page 139 in the Appendix for the source of the right)

Right

To consultation and representation either through the Trade Union or other staff representatives (for example where there is no Trade Union in place) in line with legislation and any collective agreements that may be in force.

What this right means for staff

It is good practice for your employer to inform and consult you and your Trade Union or other staff representatives on issues which may have an impact on your employment.

You should be consulted on an individual basis by your employer in any situation where your job may be at risk.

In certain situations, such as redundancy or staff transfers, your employer has either a statutory or a contractual obligation to inform and consult you or your Trade Union (or other staff representatives where there is no Trade Union in place).

Exactly who is consulted and how this occurs will depend upon the particular circumstances of your case, your individual employment contract and whether any collective agreements apply.

A recognised Trade Union may enter into collective agreements on your behalf where the Trade Union is recognised for this purpose by your employer in line with legislation.

(Refer to page 139 in the Appendix for the source of the right)

4. "Have healthy and safe working conditions and an environment free from harassment, bullying or violence."

(Section 3a of the NHS Constitution)

Right

To work within a healthy and safe workplace and an environment in which the employer has taken all practical steps to ensure the workplace is free from verbal or physical violence from patients, the public or staff, to work your contractual hours, take annual leave and to take regular breaks from work.

What this right means for staff

You can expect your employer to have made a suitable and sufficient assessment of the risks to the health and safety of employees and to have identified preventive and protective measures to be put in place. This will include arrangements to ensure effective planning, organisation, control, monitoring and review of the preventive and protective measures.

If your organisation is unable to resolve an issue, under health and safety legislation a complaint can be raised with the Health and Safety Executive or the local enforcing authority.

(Refer to page 140 in the Appendix for the source of the right)

5. "Be treated fairly, equally and free from discrimination."

(Section 3a of the NHS Constitution)

Right

To a working environment (including practices on recruitment and promotion) free from unlawful discrimination on the basis of race, gender, sexual orientation, disability, age or religion or belief.

What this right means for staff

NHS organisations are bound by the laws on unlawful discrimination that apply to all employers. In addition, as public bodies, they generally have duties in carrying out their functions, to have due regard to the need to promote equality of opportunity and to eliminate unlawful discrimination.

As a matter of good practice, your organisation should have a clear policy on equality and diversity, enabling people from the widest range of backgrounds to join and progress through the organisation, and a zero-tolerance approach to unlawful discrimination, bullying and harassment. Your organisation should also be knowledgeable about equality and diversity (with staff training available on these issues), and be committed to working towards best practice for inclusive recruitment and development. Examples of best practice include guaranteeing an interview to any disabled candidate who meets the essential criteria set out in the person specification for a vacancy.

If you believe and have evidence that your employer has breached its legal responsibilities, once internal options have been pursued, a complaint can be made to an employment tribunal or to the Equality and Human Rights Commission.

(Refer to page 141 in the Appendix for the source of the right)

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

(Section 3a of the NHS Constitution)

Right

To have disciplinary and grievance procedures conducted appropriately and within internal and legal requirements.

What this right means for staff

A grievance is usually a complaint by an employee about action which their employer has taken or is contemplating taking in relation to them, and should not be confused with a whistleblowing concern, which is about a risk, malpractice or wrongdoing which affects or relates to others, and is where an individual discloses information as a witness.
(See 7 page 90)

Your organisation should have a written procedure for handling any disciplinary or grievance issues. This will set out the process which should be followed. This provides that all employers have to have in place minimum statutory procedures for dealing with dismissal, disciplinary action and grievance in the workplace.
(Refer to page 142 in the Appendix for the source of the right)

Right

To appeal against wrongful dismissal.

What this right means for staff

Any internal appeal process should be set out in your local contractual terms and conditions.

(Refer to page 142 in the Appendix for the source of the right)

Right

If internal processes fail to overturn a dismissal, you have the right to pursue a claim in the employment tribunal, if you meet required criteria.

What this right means for staff

Any complaint may be made to either the employment tribunal or civil courts, depending on the nature and value of the claim made.

(Refer to page 142 in the Appendix for the source of the right)

7. Can raise any concern with their employer whether it is about safety, malpractice or other risk, in the public interest.

Right

To protection from detriment in employment and the right not to be unfairly dismissed for 'whistleblowing' or reporting wrongdoing in the workplace.

What this right means for staff

The Public Interest Disclosure Act (PIDA) gives employees and workers the security of knowing they have a remedy if they suffer a reprisal by any act, or any deliberate failure to act, by their employer for disclosing a genuine concern, whether it be a risk to patients, financial malpractice, or other wrongdoing. PIDA's tiered disclosure regime promotes internal and regulatory disclosures, and encourages workplace accountability and self-regulation.

Essentially, under PIDA, employees and workers who act honestly (in good faith) and reasonably are given automatic protection from victimisation for raising a matter internally. In the NHS an internal disclosure can go up to the highest level and includes going to the Minister at the Department of Health. Protection is also available to individuals who make disclosures to prescribed bodies (such as the CQC and Monitor).

PIDA covers all temporary workers including temporary agency staff, persons on training courses and self-employed staff who are working for and supervised by the NHS. It does not cover volunteers, but the Department of Health regards it as good practice for NHS organisations to include volunteers within the scope of their whistleblowing policies. PIDA also makes it clear that any clause in a contract that purports to gag an individual from raising a "protected disclosure" is void.

Where an individual is subjected to reprisals by their organisation for raising a concern or is dismissed in breach of PIDA, they can bring a claim for compensation in an Employment Tribunal.

Individuals should obtain their own legal advice, which can be obtained free of charge to the individual via the whistleblowing helpline on **08000 724 725**. In addition, organisations such as PCaW publish material etc. including information about the law, which can be found at: **www.pcaw.co.uk/law/legislation.htm**

(Refer to page 143 in the Appendix for the source of the right)

8. Have employment protection (NHS employees only).

Right

You have a right to employment protection in terms of continuity of service for redundancy purposes if moving between NHS employers.

What this right means for staff

A doctor or dentist on the training grades of registrar, senior registrar or specialist registrar will have their employment with a health service employer treated as being continuous when they move to a different health service employer. They will continue to be eligible for redundancy payments.

(Refer to page 144 in the Appendix for the source of the right)

9. Can join the NHS Pension Scheme (NHS employees and some other groups, e.g. GPs).

Right

You have rights relating to the ability to join the NHS Pension Scheme.

What this right means for staff

Staff employed by NHS organisations are able to join the NHS Pension Scheme, as are GPs, dentists and some other NHS primary care practitioners.

Staff transferred to social enterprises, charities and the third sector can retain membership of the NHS Pension Scheme by having their new employer apply for a Secretary of State Direction.

For staff employed on NHS-funded contracts, the Cabinet Office *Code of Practice on Workforce Matters in Public Sector Contracts* requires reasonable pension arrangements to be offered. A good-quality employer pension scheme can be either a contracted-out final salary (defined benefit) scheme or a defined contribution scheme. For defined contribution schemes, including stakeholders schemes, the employer must match employee contributions up to 6% of salary, although either could pay more if they wished.

(Refer to page 145 in the Appendix for the source of the right)

Staff pledges

Pledge

The pledges to NHS staff reaffirm the vision that quality workplaces should exist for all staff delivering NHS services – they should not just be the preserve of high-performing organisations. This is important, since the evidence suggests that there is a clear connection between the experiences of patients and staff.

The pledges are made by all employers that provide NHS services, and are made to all staff that deliver NHS care, both professional and non-professional.

The pledges are not legally binding but represent a commitment by the NHS to provide high-quality working environments for staff.

"The NHS commits to provide all staff with clear roles and responsibilities and rewarding jobs for teams and individuals that make a difference to patients, their families and carers and communities."

(Section 3a of the NHS Constitution)

There is a real chance to benefit both patients and staff by designing roles and responsibilities that both enable the delivery of high-quality care and allow staff to make a difference to patients, their families, carers and communities.

Contracts of employment for most NHS staff support this pledge. For example, under Agenda for Change, staff jobs should have been robustly evaluated and linked to pay rates. There should be regular appraisals and opportunities for training and development.

A career framework and preceptorship framework for nursing have been published that will assist career development. The career framework will be developed further to provide more detail and improve usability and we are exploring the potential to extend the preceptorship framework to midwives and allied health professionals.

Work is now under way to develop roles, education and training pathways for a range of support staff in Bands 1-4.

"The NHS commits to provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed."

(Section 3a of the NHS Constitution)

The Knowledge and Skills Framework (KSF) supports staff through annual appraisal, development review and training.

Educational governance and investment in Continuous Personal Development (CPD) will be strengthened and the Department has been developing some quality metrics for CPD which are likely to be piloted in the near future. We now have just short of 90% of NHS organisations signed up to the Government's Skills Pledge with all NHS organisations expected to be signed up by March 2010.

The Department published in December 2009 a set of guidance for Education Commissioners to ensure that multi professional education and training (MPET) expenditure is based on World Class Commissioning principles, that it provides improved value for money and that education and training is responsive to the feedback from trainees, employers and patients.

Spotting and developing confident leaders is a priority for everyone if improving quality is the shared purpose. The Department of Health has produced talent and leadership guidance for regions to help with improvement and bring leadership centre stage.

Pledge

"The NHS commits to provide support and opportunities for staff to maintain their health, well-being and safety."

(Section 3a of the NHS Constitution)

All NHS staff should be able to work in a safe and healthy environment, in line with existing general employment law. NHS employers are legally responsible for providing a safe working environment for staff, and staff should ensure that they are fit to practise and that they, too, comply with health and safety legislation.

NHS employers, staff and staff side are working in partnership to go beyond the legal minimums by building on the Department of Health's *Improving Working Lives Standard* (2000), *Healthy Workplaces Handbook* (2007) and the NHS Staff Council *Occupational Health and Safety Standards* (2008).

Staff are also supported at work in a number of other ways:

- A Secretary of State Direction requires trusts to prevent violence against staff wherever possible and to take all appropriate action, including prosecution of offenders, when violence does occur. The NHS Security Management Service has taken a number of steps to enable reductions in violence against staff and works with local organisations to help them take appropriate action and with stakeholders, including the Social Partnership Forum, to promote the safety and security of NHS staff.

- The code of practice for the prevention and control of healthcare associated infections (published in 2006 and revised in January 2008) places a duty on all NHS organisations to ensure that staff, as well as patients and others, are protected against the risks of acquiring a healthcare associated infection.

- In order to tackle anti-social behaviour that affects staff and their ability to perform their roles, legislation provides a power for NHS staff or the police to remove from hospital premises individuals, not requiring treatment, who are creating a nuisance or disturbance. Failure to leave without reasonable excuse is an offence that could result in a fine of up to £1,000.

Staff should also receive appropriate support for their health and well-being, including their mental health. There are already a considerable number of initiatives at all levels. The Department of Health, NHS Security Management Service, NHS Employers, NHS Plus and others are actively supporting programmes to provide a healthy working environment, improve the health and well-being of NHS staff, and tackle bullying, harassment and stress in the workplace.

The Department of Health has funded a pilot project to improve the health of NHS staff. 'Creating a Healthier NHS' provides online and offline health questionnaires linked to tailored lifestyle management programmes, to help staff choose how best to improve their physical and mental well-being.

Additionally, the Department of Health commissioned a comprehensive review to gather evidence on the health of NHS staff, and their health and well-being provision at work. The independent review built a comprehensive evidence base, and made recommendations for system-wide improvements in the health and well-being of the NHS workforce. The Department is now taking these recommendations forward with the NHS.

Pledge

"The NHS commits to engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families."

(Section 3a of the NHS Constitution)

The national Social Partnership Forum offers an opportunity to discuss, debate and involve partners in the development and implementation of the workforce implications of policy. Similar arrangements are being developed at strategic health authority level and in many employers across the country. Organisations that deliver NHS services often rely on good partnership working with trade unions. They also rely on partnership working with professional organisations and stakeholders. The benefits of such working are best realised when staff representatives bring an authentic employee voice to the partnership in a spirit of flexibility and constructive joint problem solving, with the aim of service improvement.

The national Social Partnership Forum launched the *Partnership Agreement* between the Department of Health, NHS Employers and NHS trade unions in February 2007. The *Partnership Agreement* includes the principles of effective joint working and is available at **www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_072465**.

True partnership working requires all partners to build capability and therefore a firm commitment to provide resources at all levels.

The Department of Health published guidance in the handbook on staff involvement. The handbook is available at: **www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4071622**.

The best-performing organisations have staff who are engaged with their employer and motivated by the work they do. To recognise the achievements of these employers and accelerate sharing of good practices, the Department of Health is working with key partners to ensure that annual competitions identify the best employers. For example, the HSJ 100 awards in 2010 feature categories relating specifically to the staff pledges.

The Department of Health has commissioned a long-term research project to give more information on the experience of NHS staff at work. This is based on both analysis of the NHS staff survey data that has been recorded over time and primary research within NHS organisations. Evidence from this research will be published to support organisations and employees to improve.

The NHS Gateway will be developed as a portal on which to search for the best available guidance and evidence. It will enable staff to access key information resources (such as NHS Mail, Electronic Staff Record and the National Learning Management System) through a single set of login credentials. The Gateway can also be personalised by staff and localities to suit their requirements.

Pledge

"The NHS commits to support all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice, or wrongdoing at work, responding to and, where necessary, investigating the concerns raised and acting consistently with the Public Interest Disclosure Act 1998."

(Section 3a of the NHS Constitution)

All NHS organisations should have policies and procedures in place to support and encourage staff to raise concerns at the earliest reasonable opportunity, and respond to those concerns. The Social Partnership Forum (Department of Health, NHS Employers and trade unions) has developed a guide for NHS organisations to assist them in developing robust arrangements to support their staff to raise concerns. The guidance is available at: **http://www.socialpartnershipforum.org/CurrentWorkProgrammes/Pages/Launchofnewwhistleblowingguide.aspx**

In addition, the NHS is being encouraged to take action to promote these policies and create a culture built on openness and accountability, where staff are empowered to speak out where they have concerns. There should be no reprisal against staff raising concerns, even if this has resulted from a misunderstanding or because staff were mistaken, provided the concerns have been raised in good faith.

NHS bodies have a role in building trust and confidence across the NHS. A responsible attitude to supporting staff who raise concerns helps each organisation to promote a healthy workplace culture built on openness and accountability. As part of this, the NHS will encourage staff to raise any serious concern they may have about malpractice or serious risk at the earliest reasonable opportunity. They will also respond appropriately when concerns are raised.

Staff legal duties

This section summarises some important existing legal duties that staff must observe. This is a summary of the position and is not intended to be legal advice or relied upon as legal advice. Employees are advised to seek independent legal advice on their duties in all cases.

Duty	What this means in practice
"To accept professional accountability and maintain the standards of professional practice as set by the appropriate regulatory body applicable to your profession or role." (Section 3b of the NHS Constitution)	Action can be taken based on the policies and practices of regulatory bodies, e.g. the General Medical Council, Nursing and Midwifery Council, etc. (Refer to page 146 in the Appendix for the source of the duty)

Duty	What this means in practice
"To take reasonable care of health and safety at work for you, your team and others, and to co-operate with employers to ensure compliance with health and safety requirements." (Section 3b of the NHS Constitution)	Disciplinary action may be taken by the employer against staff who breach health and safety policies. (Refer to page 146 in the Appendix for the source of the duty)

Duty

"To act in accordance with the express and implied terms of your contract of employment."

e.g. the express terms regarding hours, place and duties of work, annual and sickness absence provisions, equality and diversity policies, etc., and also the implied duty of mutual trust and confidence, the duty to serve and work for the employer, exercise reasonable skill and competence when undertaking your duties, to obey reasonable and lawful orders, to adhere to the duty of fidelity towards the employer.

(Section 3b of the NHS Constitution)

What this means in practice

An employer may take disciplinary action against the employee for failure to observe the express and implied terms, the ultimate sanction being dismissal after following a fair and legal process.

These are express and implied terms of the contract of employment under common law. A written statement of particulars is required to be provided to an employee, not later than two months after the beginning of the employment contract.

(Refer to page 147 in the Appendix for the source of the duty)

Duty	What this means in practice
"Not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation." (Section 3b of the NHS Constitution)	Disciplinary action may be taken by an employer against workers who breach discrimination policies. The information commissioner may also take action against an employer for an employee's breach of the Data Protection Act. (Refer to page 148 in the Appendix for the source of the duty)

Duty	What this means in practice
"To protect the confidentiality of personal information that you hold unless to do so would put anyone at risk of significant harm." (Section 3b of the NHS Constitution)	Disciplinary action may be taken by the employer against workers who breach the data protection policies. (Refer to page 149 in the Appendix for the source of the duty)

Duty	What this means in practice
"To be honest and truthful in applying for a job and in carrying out that job." (Section 3b of the NHS Constitution)	An employer could take disciplinary action for failure to adhere to duty of trust and confidence. Certificates of an employee's previous convictions can be obtained from the Criminal Records Bureau under Part V of the Police Act 1997. (Refer to page 149 in the Appendix for the source of the duty)

Expectations – how staff should play their part in ensuring the success of the NHS

The highest quality of patient care is delivered by staff who are ambitious in their expectations of themselves and their colleagues. These expectations show how staff can play their part in delivering high-quality care. They also correspond to some degree to the staff pledges and chime with the NHS values. They apply to all staff providing NHS care.

This section sets out what employers can legitimately expect from employees they deliver the pledges to, and gives some examples of what staff can do to help realise those expectations.

Expectation	What this means in practice
"You should aim 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." (Section 3b of the NHS Constitution)	Treat everyone as you would wish to be treated. Engage actively in your team. Work with your manager or supervisor to be clear about your objectives. Set an example to and support your colleagues. Speak well of NHS services and the organisation you work for. Contribute to the training of others.
"You should aim to take up training and development opportunities provided over and above those legally required of your post." (Section 3b of the NHS Constitution)	Keep your professional and other job-related skills up to date. Actively engage in appraisal, personal development planning and revalidation (when introduced). Ensure that you complete mandatory or statutory training.

Expectation

"You should aim to play your part in sustainably improving services by working in partnership with patients, the public and communities."

(Section 3b of the NHS Constitution)

What this means in practice

This means you should actively engage in the annual appraisal process and personal development planning, and ensure that you remain up to date with best practice. This will help you to prepare for the introduction of revalidation for health professionals, which will start with doctors in the coming years.

Contribute your ideas and welcome contribution from others. Inform yourself about, and be prepared to contribute to, discussions on issues and decisions that impact upon your work and/or the services you provide or support.

Expectation

"You should aim to raise any genuine concern you may have about a risk, malpractice or wrongdoing at work, (such as a risk to patient safety, fraud or breaches of patient confidentiality), which may affect patients, the public, other staff, or the organisation itself at the earliest reasonable opportunity."

The term "staff" is used to include employees, workers, students on training placements, and, for the purposes of PIDA, agency workers and general practitioners who meet the wider PIDA definition of being a "worker" (e.g. those performing general medical services under General Medical Services Contracts). Whilst volunteers are not covered by the provisions of PIDA, guidance to employers makes clear that it is good practice to include volunteers within the scope of organisations' local whistleblowing policies.

(Section 3b of the NHS Constitution)

What this means in practice

Set an example to your colleagues in your day-to-day activities by questioning behaviours and practices that you believe may not be professionally ethical, safe, or lawful.

Understand your own responsibilities and your organisation's arrangements for raising concerns and whistleblowing, including who you can approach for advice or to whom you should report any concerns.

Understand any professional obligations you may have as part of the Code of Conduct for statutorily regulated professions such as medicine or nursing.

If you have a concern about a risk, malpractice or wrongdoing at work, you should normally raise it first in confidence with your line manager or lead clinician, either verbally or in writing if you are able to do so.

If you feel unable to do this, you may raise it with the designated officer within your employing organisation. You should find details of the designated officer in your employer's whistleblowing policy.

If you have raised your concern with the designated officer or your line manager, but feel it has not been addressed properly, or that inadequate action has been taken, you should raise your concern with someone higher in your employing organisation; for example, to your department manager, head of midwifery, director of nursing, medical director or chief executive. In Foundation Trusts you may consider a member of the Non-Executive Board. If, for whatever reason, you feel unable to raise your concern at a lower level within your organisation, you may choose to take this action from the outset.

If you are unable to follow any of these channels, or you feel the matter is so serious that you cannot discuss it with any of the above, you may wish to consider raising the concern externally with a regulatory body that has authority to investigate the issue. This could be to a regulator of health and social services or a regulator of health such as, for example, the Care Quality Commission or Monitor.

Before reporting your concerns externally, it makes sense to seek advice so that you receive appropriate support and guidance in these difficult circumstances. This could be from a representative of your professional body, regulatory body, trade union or the Department of Health-funded confidential helpline.

Expectation

What this means in practice

In some cases, it will be a matter of judgement on how best to proceed. The helpline provides a free, independent and confidential service, staffed by legal experts, which can support staff who need advice. The freephone helpline number is **08000 724 725**.

If your concern is related to a detected or suspected incidence of fraud or corruption, you should follow your local whistleblowing policy or the reporting procedure prescribed by NHS Protect by reporting directly to the Local Counter Fraud Specialist, Director of Finance, or via the fraud and corruption line or online reporting form where you are able to. You will still be entitled to make a whistleblowing complaint and receive protection under PIDA.

Wider disclosure

In certain circumstances, wider disclosures to bodies or persons other than your employer or a Minister of the Crown may also be protected by PIDA. A number of additional tests (aside from reasonable belief and good faith) will apply to assess whether such a disclosure is a "protected disclosure". Those additional tests will vary from case to case and may include consideration of the following factors:

- the identity of the body/person to whom the disclosure is made (generally disclosures to the media are unlikely to be covered), and the seriousness of the alleged breach and whether it is "an exceptionally serious" concern;
- there is a risk that evidence could be destroyed or concealed if the disclosure is made to the employer or another prescribed person;
- the disclosure amounts to a breach of confidence with the employer;
- the matter has already been raised
- there is a good reason to believe that the individual will be the subject of a detriment by their employer if the matter were raised internally or with another prescribed person; and
- disclosure was reasonable given the circumstances.

Staff considering such a disclosure are advised to take advice from the helpline, their trade union or their regulatory body before taking this step.

Expectation	What this means in practice
"You should aim to be open with patients, their families, carers or representatives, including if anything goes wrong; welcoming and listening to feedback and addressing concerns promptly and in a spirit of co-operation. You should contribute to a climate where the truth can be heard and the reporting of, and learning from, errors is encouraged." (Section 3b of the NHS Constitution)	Report errors, near misses and incidents. Be vigilant about hygiene and report unacceptable hygiene practices. Participate in the NHS staff survey. Do not tolerate bullying, harassment or violence. Communicate openly, honestly and sympathetically with patients, their families, carers or representatives about their care. Apologise as soon as possible if a patient safety incident occurs. If a mistake or error has been made, acknowledge what has happened; apologise and explain clearly what went wrong and what is being done in response to the incident; reassure patients, their families, carers or representatives that lessons learned will help prevent the incident recurring, and provide support to cope with the physical and psychological consequences of what happened.
"You should aim to view the services you provide from the standpoint of a patient, and involve patients, their families and carers in the services you provide, working with them, their communities and other organisations, and making it clear who is responsible for their care." (Section 3b of the NHS Constitution)	Understand your organisation's complaints procedures. Respect patient concerns. Listen to your patients, their families and carers. Seek users' views on services. Respect patients and treat them with dignity.

Appendix

There are five rights covering access to health services:

Right

"You have the right to receive NHS services free of charge, apart from certain limited exceptions sanctioned by Parliament."
(Section 2a of the NHS Constitution)

Source of the right

Part 1 of the NHS Act 2006 sets out the primary duty on the Secretary of State to promote a comprehensive health service and to provide or secure the provision of services for that purpose. The section goes on to state that those services must be provided free of charge (unless charges are expressly provided for). The requirement to provide services free of charge applies in particular to hospital and community health services (services provided under Part 3 of the Act).

For primary care services, including GP services, the legislation that governs the arrangements (under which those services are commissioned by primary care trusts) does not generally permit the charging of patients (sections 83, 99, 115 and 126 of the NHS Act 2006).

There are a number of exceptions to the general prohibition on charging. In particular:

- prescription charges – section 172 of the NHS Act 2006 enables the Secretary of State to make regulations imposing prescription charges (National Health Service (Charges for Drugs and Appliances) Regulations 2000);

- dental charges – section 176 enables the Secretary of State to make regulations imposing charges for dental services (National Health Service (Dental Charges) Regulations 2005); and

- charges for overseas visitors – section 175 enables the Secretary of State to make regulations imposing charges where certain non-UK residents receive NHS services (National Health Service (Charges for Overseas Visitors) Regulations 1989).

Right

"You have the right to access NHS services. You will not be refused access on unreasonable grounds."
(Section 2a of the NHS Constitution)

Source of the right

Legislation on discrimination makes it unlawful for a public authority in the exercise of its functions, and for persons (including public authorities) providing goods, facilities or services to the public, to discriminate on specified grounds (subject to exceptions). In particular, the following discrimination is unlawful:

- discrimination on grounds of race – sections 19B and 20 of the Race Relations Act 1976;

- discrimination on grounds of religion or belief – sections 46 and 52 of the Equality Act 2006;

- discrimination on grounds of gender – sections 21A and 29 of the Sex Discrimination Act 1975;

- discrimination on grounds of disability – sections 19 and 21B of the Disability Discrimination Act 1995; and

- discrimination on grounds of sexual orientation – regulations 4 and 8 of the Equality Act (Sexual Orientation) Regulations 2007.

Furthermore, primary care trusts, NHS trusts and NHS foundation trusts must act in accordance with administrative law, i.e. their policies and decisions must be in accordance with their statutory duties, be reasonable and procedurally fair. In addition to the legislation on discrimination, therefore, it would be unlawful for those bodies to refuse access on unreasonable grounds.

Right

"You have the right to expect your local NHS to assess the health requirements of the local community and to commission and put in place the services to meet those needs as considered necessary."
(Section 2a of the NHS Constitution)

Source of the right

The legislation under which primary care trusts commission services requires them to provide or arrange for the provision of services to such extent as they consider necessary to meet all reasonable requirements (sections 3, 83, 99, 115 and (with some differences) 126 of the NHS Act 2006).

Right

"You have the right, in certain circumstances, to go to other European Economic Area countries or Switzerland for treatment which would be available to you through your NHS commissioner."
(Section 2a of the NHS Constitution)

Source of the right

European Community law, in particular:

- Article 56 of the Treaty Establishing the European Community;
- Under EC Regulation 1408/71 (from May 2010 EC Regulation 883/2004); and
- European Court of Justice case law.

It should be noted that the European Commission has published a proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare (COM(2008) 414 final).

This is currently being negotiated in Brussels and therefore has no legal force.

Right

"You have the right not to be unlawfully discriminated against in the provision of NHS services including on grounds of gender, race, religion or belief, sexual orientation, disability (including learning disability or mental illness) or age." [1]
(Section 2a of the NHS Constitution)

Source of the right

Legislation on discrimination makes it unlawful for a person providing services to discriminate on various grounds (subject to certain exceptions), in particular:

- discrimination on grounds of race – section 20 of the Race Relations Act 1976;
- discrimination on grounds of religion or belief – section 46 of the Equality Act 2006;
- discrimination on grounds of gender – section 29 of the Sex Discrimination Act 1975;
- discrimination on grounds of disability – section 19 of the Disability Discrimination Act 1995; and
- discrimination on grounds of sexual orientation – regulation 4 of the Equality Act (Sexual Orientation) Regulations 2007.

In addition, where your human rights are engaged (e.g. Article 2 of the European Convention on Human Rights (ECHR) (right to life)), discrimination may be contrary to Article 14 of the ECHR.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Subject to Parliament, the Equality Bill will update existing discrimination legislation, and will prohibit unjustifiable age discrimination.

1 The Government intends to use the Equality Bill to make unjustifiable age discrimination against adults unlawful in the provision of services and exercise of public functions. Subject to Parliamentary approval, this right not to be discriminated against will extend to age when the relevant provisions are brought into force for the health sector.

Right

"You have the right to access services within maximum waiting times, or for the NHS to take all reasonable steps to offer you a range of suitable alternative providers if this is not possible. The waiting times are described in the Handbook to the NHS Constitution."

(Section 2a of the Constitution)

Source of the right

Directions given by the Secretary of State to primary care trusts and strategic health authorities on maximum waiting times. The Directions are made under section 8 of the NHS Act 2006 and primary care trusts and strategic health authorities have a legal obligation to comply with such Directions.

The Secretary of State may suspend the Directions in certain circumstances or crises, such as an influenza pandemic.

There are two rights covering quality of care and environment:

Right

"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 that meets required levels of safety and quality." [2]

(Section 2a of the NHS Constitution)

Source of the right

The law of negligence imposes a duty of care on providers of healthcare. This is a duty to take reasonable care and skill in the provision of treatment or other healthcare. For a health professional, what constitutes 'reasonable care and skill' will be determined by reference to professional practice. In the case of an NHS body or private organisation, it must take reasonable care to ensure a safe system of healthcare – using appropriately qualified and experienced staff.

If a provider breaches the duty and as a result causes injury to a patient, the patient is entitled to damages to compensate for the injury and resulting financial loss.

Regulations under the NHS Act 2006 governing the provision of GP and most other primary care services require practitioners to exercise reasonable care and skill in the delivery of obligations under their contracts.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

From 1 April 2010 in the case of NHS bodies and from 1 October 2010 for independent sector providers, health and adult social care providers in England carrying out 'regulated activity' (as set out in regulations made under the Health and Social Care Act 2008) will need to be registered with the Care Quality Commission in order to provide care. The Commission will provide independent assurance that registered organisations – including NHS organisations – are providing care to the essential levels of safety and quality that users are entitled to expect, and can take independent enforcement action where providers are not meeting their nationally set registration requirements. Before 1 April 2010, the quality of care provided as part of the NHS will be independently monitored and assessed within a framework of quality standards called *Standards for Better Health*.

Certain provisions of Part I of the Health and Social Care Act 2008 were commenced on 1 April 2009 so that infection control requirements imposed on some NHS bodies in England are monitored by the Care Quality Commission. Other healthcare providers that are required to be registered under the Care Standards Act 2000 will need to continue to register under the Care Standards Act until 1 October 2010 when the registration regime under the Health and Social Care Act 2008 comes fully into force.

2 Subject to Parliamentary approval, the new registration system will apply to NHS providers from April 2010, and independent sector providers from Ocotober 2010.

Right

"You have the right to expect NHS organisations to monitor, and make efforts to improve, the quality of healthcare they commission or provide."
(Section 2a of the NHS Constitution)

Source of the right

The law of negligence imposes a duty of care on providers of healthcare. This is a duty to take reasonable care and skill in the provision of treatment or other healthcare. For a health professional, what constitutes 'reasonable care and skill' will be determined by reference to professional practice. In the case of an NHS body or private organisation, it must take reasonable care to ensure a safe system of healthcare – using appropriately qualified and experienced staff.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

From 1 April 2010 in the case of NHS bodies and 1 October 2010 in other cases, health and adult social care providers in England will need to be registered with the Care Quality Commission in order to provide care. The Commission will provide independent assurance that registered organisations – including NHS organisations – are providing care to the essential levels of safety and quality that users are entitled to expect, and can take independent enforcement action where providers are not meeting their nationally set registration requirements.

From April 2010, primary care trusts have a duty to make arrangements to secure continuous improvement in the quality of the healthcare provided by or for them (section 23A of the NHS Act 2006). This replaces the previous duty on NHS bodies to monitor and improve the quality of healthcare (section 45 of the Health and Social Care (Community Health and Standards) Act 2003).

Regulations under the NHS Act 2006 governing the provision of GP and most other primary care services require providers to have clinical governance arrangements and quality assurance systems.

There are three rights covering nationally approved treatments, drugs and programmes:

Right

"You have the right to drugs and treatments that have been recommended by NICE[3] for use in the NHS, if your doctor says they are clinically appropriate for you."
(Section 2a of the NHS Constitution)

Source of the right

Directions given by the Secretary of State to primary care trusts on the funding of guidance in National Institute for Health and Clinical Excellence (NICE) technology appraisals. The directions are made under section 8 of the NHS Act 2006 and primary care trusts have a legal obligation to comply with such Directions.

The Directions require primary care trusts to apply funding so as to ensure that a treatment covered by an appraisal is normally available within three months after the date of publication of the appraisal.

The Secretary of State may, by further Directions under section 8 of the NHS Act 2006, exempt particular appraisals from this right, or extend the period that trusts have to provide funding.

Right

"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."
(Section 2a of the NHS Constitution)

Source of the right

Administrative law requires that primary care trusts' decisions are rational, procedurally fair and within their powers.

3 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.

In addition, decisions by the courts have made it clear that, although a primary care trust can have a policy not to fund a particular treatment (unless recommended by a NICE technology appraisal), it cannot have a blanket policy; i.e. it must consider exceptional individual cases where funding should be provided.

In addition, the Secretary of State has given further Directions to primary care trusts under section 8 of the NHS Act 2006 concerning arrangements for making such decisions. The Directions came into force on 1 April 2009.

Right

"You have the right to receive the vaccinations that the Joint Committee on Vaccination and Immunisation recommends that you should receive under an NHS-provided national immunisation programme."
(Section 2a of the NHS Constitution)

Source of the right

Regulations place a duty on the Secretary of State to accept and make the necessary arrangements to implement JCVI recommendations, where those recommendations meet certain conditions. This came into effect on 1 April 2009.

The Secretary of State will be permitted reasonable time in which to introduce the national immunisation programme. Implementing a national campaign can be complicated to organise and the high-level implementation stage can take up to two years or more following a recommendation.

In addition, a duty will be placed on primary care trusts to make arrangements to offer vaccination to those individuals who fall within the JCVI recommendation.

There are five rights covering respect, consent and confidentiality:

Right

"You have the right to be treated with dignity and respect, in accordance with your human rights."
(Section 2a of the NHS Constitution)

Source of the right

The right to be treated with dignity and respect is derived from the rights conferred by the European Convention on Human Rights (ECHR), as given effect in UK law by the Human Rights Act 1998. The relevant rights under the ECHR are the right to life (Article 2), the right not to be subject to inhuman or degrading treatment (Article 3) and the right to respect for private and family life (Article 8).

It is unlawful for a public body to act incompatibly with those ECHR rights (section 6 of the Human Rights Act).

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Right

"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." [4]
(Section 2a of the NHS Constitution)

Source of the right

The law relating to battery and assault makes it generally unlawful for a person to be given a physical examination or treatment unless they have given valid consent.

Investigation or treatment without valid consent may constitute a criminal offence or amount to battery.

4 If you are detained in hospital or on supervised community treatment under the Mental Health Act 1983 different rules may apply to treatment for your mental disorder. These rules will be explained to you at the time. They may mean that you can be given treatment for your mental disorder even though you do not consent.

If a person does not have the capacity to consent because of their physical or mental state, or because they are a child with insufficient understanding to give consent, treatment may take place without the consent of the individual concerned. In such cases, treatment may be consented to by another individual – for example, the parent of a child, or a personal welfare attorney appointed under the Mental Capacity Act 2005. In other cases, treatment must be in the best interests of the patient (in some cases, the NHS may apply to the court for a declaration that a particular treatment is in a person's best interests).

The Mental Capacity Act 2005 contains further detailed rules about capacity and consent to treatment.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Right

"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."

(Section 2a of the NHS Constitution)

Source of the right

Under the law of negligence, a health professional may breach their duty of care to their patient if they fail to provide them with sufficient information in advance of treatment to ensure valid consent.

If no information is provided, or the information is insufficient and the individual patient would not have consented if they had been given sufficient information, and they have suffered physical harm as a result of the procedures, they are entitled to bring a claim for damages as compensation for the loss suffered.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Right

"You have the right to privacy and confidentiality and to expect the NHS to keep your confidential information safe and secure."

(Section 2a of the NHS Constitution)

Source of the right

The common law imposes a duty of confidentiality, including where individuals or bodies providing healthcare receive or hold personal information relating to an individual patient.

This requires that information held in confidence is only disclosed to a third party when the subject of the information has consented, when there is a basis in law for disclosure, or the public good that would be served by disclosure outweighs an individual's right to confidentiality.

The Data Protection Act 1998 provides additional safeguards by requiring those who hold personal information to comply with various 'data protection principles'. These include ensuring that information is held securely with appropriate technical and organisational measures to prevent unauthorised or unlawful use.

A right to privacy, for both individual and family life, is provided under Article 8 of the European Convention on Human Rights (ECHR) as given effect in UK law by the Human Rights Act 1998. Article 8 establishes a right to respect for private and family life, which encompasses the disclosure of personal information.

Regulations under the NHS Act 2006 governing the provision of GP and other primary care services require providers to comply with specified requirements concerning confidentiality.

Individual health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Right

"You have the right of access to your own health records. These will always be used to manage your treatment in your best interests."
(Section 2a of the NHS Constitution)

Source of the right

Legislation provides that, subject to certain qualifications, individuals have a right to access personal information that relates to them and is held by a 'data controller' (e.g. a GP or an NHS body) – refer to section 7 of the Data Protection Act 1998.

There are three rights covering informed choice:

Right

"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."
(Section 2a of the NHS Constitution)

Source of the right

The right is derived from the duties imposed on the provider of GP services by virtue of regulations made under the NHS Act 2006, in particular Schedule 6 of the National Health Service (General Medical Services Contracts) Regulations 2004 and Schedule 5 of the National Health Service (Personal Medical Services Agreements) Regulations 2004.

Right

"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."
(Section 2a of the NHS Constitution)

Source of the right

The right is derived from the duties imposed on the provider of GP services by virtue of the regulations made under the NHS Act 2006, in particular Schedule 6 of the National Health Service (General Medical Services Contracts) Regulations 2004 and Schedule 5 of the National Health Service (Personal Medical Services Agreements) Regulations 2004.

Right

"You have the right to make choices about your NHS care and to information to support these choices. The options available to you will develop over time and depend on your individual needs."
(Section 2a of the NHS Constitution)

Source of the right

Directions given by the Secretary of State under section 8 of the NHS Act 2006 require primary care trusts to ensure that patients have the choice of provider for their NHS care when referred for their first outpatient appointment with a service led by a consultant. The Directions came into force on 1 April 2009.

The Directions specify which services are covered by these arrangements, and which are not.

The Directions also require primary care trusts to promote choice in their area, and how the patient should complain if they have been denied the right. Details of complaints received and action taken will be publicised and reported to the strategic health authority.

The Directions specify which services are covered by these arrangements, and which are not.

There are two rights covering involvement in your healthcare and in the NHS:

Right

"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."
(Section 2a of the NHS Constitution)

Source of the right

GP services are provided under arrangements made with primary care trusts. Those arrangements must comply with requirements set out in regulations made under the NHS Act 2006. In particular, the relevant regulations define the core "essential services" that providers must or may provide, as services for patients "delivered in the manner determined by the practice in discussion with the patient" (regulation 15 of the National Health Service (General Medical Services Contracts) Regulations 2004).

In addition, in relation to both GP and secondary care (e.g. hospital treatment), doctors registered with the General Medical Council have a duty to work in partnership with patients, which must include listening to patients and responding to their concerns and preferences, and giving patients the information they want or need in a way they can understand (refer to the General Medical Council's *Good Medical Practice*).

Other health professionals are also governed by the standards set under the professional regulatory regime that applies to their profession.

Right

"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."
(Section 2a of the NHS Constitution)

Source of the right

The legislation governing the NHS imposes a duty on NHS bodies to make arrangements with a view to securing such public involvement in relation to the services for which they are responsible (section 242 of the NHS Act 2006).

There are five rights covering complaint and redress:

Right

"You have the right to have any complaint you make about NHS services dealt with efficiently and to have it properly investigated."
(Section 2a of the NHS Constitution)

Source of the right
The right is derived from the legislation governing the NHS complaints procedure, which sets out various obligations on NHS bodies, GPs and other primary care providers, and independent providers of NHS care in relation to the handling of complaints (Local Authority Social Services and National Health Service Complaints (England) Regulations 2009).

Right

"You have the right to know the outcome of any investigation into your complaint."
(Section 2a of the NHS Constitution)

Source of the right
The regulations governing the NHS complaints procedure impose a duty on NHS bodies to provide a written response (Regulation 14 of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009).

Right

"You have the right to take your complaint to the independent Health Service Ombudsman, if you are not satisfied with the way your complaint has been dealt with by the NHS."
(Section 2a of the NHS Constitution)

Source of the right
This right is derived from the Health Service Commissioners Act 1993.

The Ombudsman will not investigate your complaint if you have not invoked and exhausted the NHS complaints procedures, unless under the circumstances it is not reasonable to expect you to have invoked or exhausted those procedures.

Right

"You have the right to make a claim for judicial review if you think you have been directly affected by an unlawful act or decision of an NHS body."
(Section 2a of the NHS Constitution)

Source of the right
This right is derived from administrative law. It is not a right of appeal, but is concerned with the lawfulness of a decision or policy.

Right

"You have the right to compensation where you have been harmed by negligent treatment."
(Section 2a of the NHS Constitution)

Source of the right
The law of negligence (refer to page 128).

Staff rights

1. "Have a good working environment with flexible working opportunities, consistent with the needs of patients and with the way that people live their lives."

(Section 3a of the NHS Constitution)

Right

To fair treatment regarding leave, rights and flexible working and other statutory leave requests relating to work and family, including caring for adults that you live with.

Source of the right

Employment Act 2002, Employment Rights Act 1996 (Part VIII), Maternity and Parental Leave Regulations 1999, Working Time Regulations 1998, Flexible Working Regulations 2002, Disability Discrimination Act 1995, Work and Families Act 2006 and, from April 2010, the Statutory Paternity Pay and Statutory Pay Leave Regulations 2010

Right

To request other 'reasonable' time off for emergencies (paid and unpaid) and other statutory leave (subject to exceptions).

Source of the right

Section 57A of the Employment Rights Act 1996

Right

To expect reasonable steps are taken by the employer to ensure protection from less favourable treatment by fellow employees, patients and others (e.g. bullying or harassment).

Source of the right

Section 4A of the Sex Discrimination Act 1975, section 3A of the Race Relations Act 1976, regulation 5 of the Employment Equality (Religion or Belief) Regulations 2003, regulation 5(1) of the Employment Equality (Sexual Orientation) Regulations 2003, section 3(B) of the Disability Discrimination Act 1995, Health and Safety at Work Act 1974, Protection from Harassment Act 1997

2. "Have a fair pay and contract framework."

(Section 3a of the NHS Constitution)

Right

To pay; consistent with the National Minimum Wage or alternative contractual agreement.

Source of the right

National Minimum Wage Act 1998 and regulations made under the Act of 1999

May also exist in the terms and conditions of an employee's contract

To fair treatment regarding pay.

Source of the right

Section 1 of the Equal Pay Act 1970 as amended by the Equal Pay (Amendment Regulations) 1983

3. "Be involved and represented in the workplace."

(Section 3a of the NHS Constitution)

Right

To be accompanied by either a Trade Union official or a work colleague at disciplinary or grievance hearings in line with legislation, your employer's policies or your contractual rights.

Source of the right

Sections 10 and 11 of the Employment Relations Act 1999
Section 13(5) of the Employment Relations Act 1999
Section 37 of the Employment Relations Act 2004
Employment Act 2008
ACAS Code of Practice on Disciplinary and Grievance Procedures

Right

To consultation and representation either through the Trade Union or other staff representatives (for example where there is no Trade Union in place) in line with legislation, and any collective agreements that may be in force.

Source of the right

Information and Consultation of Employees Regulations 2004

Trade Union and Labour Relations (Consolidation) Act 1992 and Regulations made pursuant to it

Regulations 11–16 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 if there is a transfer of a function between employers

4. "Have healthy and safe working conditions and an environment free from harassment, bullying or violence."

(Section 3a of the NHS Constitution)

Right

To work within a healthy and safe workplace and an environment in which the employer has taken all practical steps to ensure the workplace is free from verbal or physical violence from patients, the public or staff, to work your contractual hours, take annual leave and to take regular breaks from work.

Source of the right

Health and Safety at Work Act 1974 and associated regulations made under the Act

Working Time Regulations 1998 (for provisions relating to leave)

5. "Be treated fairly, equally and free from discrimination."

(Section 3a of the NHS Constitution)

Right

To a working environment (including practices on recruitment and promotion) free from unlawful discrimination on the grounds of race, gender, sexual orientation, disability, age or religion or belief.

Source of the right

Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006

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

(Section 3a of the NHS Constitution)

Right

To have disciplinary and grievance procedures conducted appropriately and within internal and legal requirements.

Source of the right
Employment Act 2002 (Part 3), Employment Act 2002 (Dispute Resolution) Regulations 2004

Right

To appeal against wrongful dismissal.

Source of the right
Employment Rights Act 1996 or common law right to claim for breach of contract for wrongful dismissal

Right

If internal processes fail to overturn a dismissal, you have the right to pursue a claim in the employment tribunal, if you meet required criteria.

Source of the right
Section 108 of the Employment Rights Act 1996

7. Can raise any concern with their employer whether it is about safety, malpractice or other risk, in the public interest.

Right

To protection from detriment in employment and the right not to be unfairly dismissed for 'whistleblowing' or reporting wrongdoing in the workplace.

Source of the right
Public Interest Disclosure Act 1998

8. Have employment protection (NHS employees only).

Right

You have a right to employment protection in terms of continuity of service for redundancy purposes if moving between NHS employers.

Source of the right

Employment Protection (Continuity of Employment of National Health Service Employees) (Modification) Order 1996

Also section 218(8) of the Employment Rights Act 1996

Redundancy Payments (National Health Service) (Modification) Order 1993

9. Can join the NHS Pension Scheme (NHS employees and some other groups, e.g. GPs).

Right

You have rights relating to the ability to join the NHS Pension Scheme.

Source of the right

Rights conferred by the NHS Pension Scheme Regulations, including the National Health Service (Pension Scheme, Injury Benefits and Compensation for Premature Retirement) Amendment Regulations 2003. Note that the new National Health Service Pension Scheme Regulations 2008 apply to those staff who started on or after 1 April 2008.

Staff legal duties

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."
(Section 3b of the NHS Constitution)

Where it exists in law
As stated in relevant guidance or regulations of regulatory bodies

Duty

"To take reasonable care of health and safety at work for you, your team and others, and to co-operate with employers to ensure compliance with health and safety requirements."
(Section 3b of the NHS Constitution)

Where it exists in law
Health and Safety at Work Act 1974

Duty

"To act in accordance with the express and implied terms of your contract of employment", e.g. the express terms regarding hours, place and duties of work, annual and sickness absence provisions, equality and diversity policies, etc., and also the implied duty of mutual trust and confidence, the duty to serve and work for the employer, exercise reasonable skill and competence when undertaking your duties, to obey reasonable and lawful orders, to adhere to the duty of fidelity towards the employer.
(Section 3b of the NHS Constitution)

Where it exists in law
Section 1 of the Employment Rights Act 1996

Duty

"Not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation."

(Section 3b of the NHS Constitution)

Where it exists in law

Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Human Rights Act 1998, Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006, Equality Act 2006, Equality Act (Sexual Orientation) Regulations 2007

Where your human rights are concerned (e.g. Article 2 of the European Convention on Human Rights (ECHR) (right to life)), discrimination may be contrary to Article 14 of the ECHR.

Proceedings may be brought in the county court under:

(a) section 57 of the Race Relations Act 1976;
(b) section 66 of the Sex Discrimination Act 1975;
(c) section 25 of the Disability Discrimination Act 1995; or
(d) regulation 20 of the Equality Act (Sexual Orientation) Regulations 2007.

Judicial review of a discriminatory decision or policy. If discrimination amounts to a breach of Article 14 ECHR, claim for damages under the Human Rights Act 1998.

Duty

"To protect the confidentiality of personal information that you hold unless to do so would put anyone at risk of significant harm."

(Section 3b of the NHS Constitution)

Where it exists in law

Data Protection Act 1998

Also covered in professional conduct guidance

Duty

"To be honest and truthful in applying for a job and in carrying out that job."

(Section 3b of the NHS Constitution)

Where it exists in law

The duty to be honest and truthful is an implied duty of trust and confidence in the employment relationship, which emanates from common law.

The duty to declare criminal convictions exists in the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

Glossary

Administrative law – the branch of law that governs public bodies (including NHS bodies) in the exercise of their functions.

Care Quality Commission – the safety and quality regulator (or watchdog) of the healthcare and adult social care services from April 2009. The Commission's website is **www.cqc.org.uk**.

Common law – the law derived from decisions of the courts, rather than Acts of Parliament or other legislation.

ECHR – the European Convention on Human Rights. It is unlawful for a public body to act incompatibly with the rights conferred by the Convention (section 6 of the Human Rights Act 1998).

Judicial review – a type of court proceeding in which a judge reviews the lawfulness of an act or decision or action of a public body. Judicial review is therefore a procedure by which you can challenge a decision of the Secretary of State or an NHS body, on the basis that it unlawful. Judicial review is not a form of appeal and is concerned primarily with how decisions are made, rather than the merits of the decision itself. To be entitled to make a claim for judicial review, a person must have a direct, personal interest in the action of decision under challenge. For further guidance on applying for judicial review, refer to 'Notes for guidance on applying for judicial review' published on Her Majesty's Courts Service website – **www.hmcourts-service.gov.uk/cms/1220.htm**.

Local Involvement Networks (LINks) – LINks are made up of individuals and community groups who work together to improve local services. Their job is to find out what the public like and dislike about local health and social care. They will then work with the people who plan and run these services to improve them. This may involve talking directly to healthcare professionals about a service that is not being offered or suggesting ways that an existing service could be made better. LINks also have powers to help with the tasks and to make sure changes happen. To find your local LINk, contact your local authority or visit Directgov – **www.direct.gov.uk/localinvolvementnetworks**.

Monitor – the regulator for NHS foundation trusts.

NHS Act 2006 – the National Health Service Act 2006. The main piece of legislation governing the NHS in England, which sets out the powers and duties of the Secretary of State and provides for the establishment and functions of NHS bodies. The Act replaces earlier NHS Acts (e.g. the National Health Service Act 1977 and the Health Act 1999).

NHS complaints process – the complaints process provided for by legislation; in particular, regulations made under the NHS Act 2006 and section 113 of the Health and Social Care (Community Health and Standards) Act 2003. A complaint should initially be made to the relevant NHS body – e.g. in relation to your treatment in hospital, to the NHS trust or NHS foundation trust that manages the hospital. The regulations require each NHS body to have a process for handling and considering complaints. If an individual is not satisfied with the outcome, a complaint may ultimately be taken to the Health Service Commissioner. The Commissioner (also known as the Health Service Ombudsman) carries out independent investigations of complaints about the NHS in England – further information at **www.ombudsman.org.uk/index.html**.

PCT – primary care trust. The NHS body with responsibility for delivering healthcare services and health improvement to a local area.

Third sector – describes the range of organisations that occupy the space between the state and the private sector. These include small local community and voluntary groups, registered charities (both large and small), foundations and trusts, as well as social enterprises and co-operatives.

For further information on the NHS system, refer to the *Statement of NHS Accountability* at **www.dh.gov.uk/nhsconstitution**.

Produced by Williams Lea for the Department of Health