

# THE NHS CONSTITUTION



## Comments from Manchester Alliance for Community Care

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MACC welcomes the opportunity to comment on the draft NHS Constitution. We strongly support the principle of such a document for a number of reasons:

- as a citizens' charter for clear rights to and expectations of health services
- as a reflection of what the best of the NHS offers, that NHS staff can relate and aspire to
- to enshrine the fundamental principle of the NHS services provided free of charge.

However, we have concerns that the document, while well-intentioned could be easily dismissed as a gimmick or a more rhetorical document. Our view is that a much clearer statement is needed on the legal status of the Constitution – particularly in relation to challenges by members of the public who have received an unsatisfactory service from the NHS.

While broadly accepting the document, we have a number of suggestions and comments to make which are set out below:

### Page 2

The right “not to be discriminated against unlawfully” in the provision of is disappointingly restricted to purely legal requirements. While we support the advances which have been made in discrimination legislation, this still does not include discrimination on the basis of age. Given that for the past 8 years, the NHS has been working to National Service Frameworks which have explicitly required action against age discrimination, it is our view that this is a major and unacceptable omission. Age discrimination should be referred to explicitly in this section – and we hope that the discrimination legislation will follow suit in due course.

### Page 3

There is something of an omission in the statements concerning “information about your proposed treatment” and “access to your own health records”. These are rights, but there is no commitment to ensuring that this information is actively *offered* to patients – all too often, we hear of patients having to challenge practitioners to gain access to their information. There is a need for an explicit statement about access to the information supplied to patients about their *diagnosis*. Again, we hear of examples of such information being

withheld from patients seemingly on medical grounds and yet the decision to withhold is being made by relatively junior staff. We believe the decision to withhold any such information should be given equal status to a decision to proceed with treatment without informed consent.

The commitment to “strive to inform you about what healthcare services are available to you locally and nationally” is clearly right but does not address the question of accessibility of services. Curiously it is followed by a commitment to “accessible information” but there is a gap in the thinking. The most obvious gap is that of how to get to services: we have heard recently from patients who are being offered “choice” in relation to services and yet they have not equally been offered information about public transport, parking facilities (and a selection of suitable loan companies who can help with the cost of paying the car park charges....), crèche facilities, etc.

This is a revealing point and begs a question: how involved patients themselves have been in putting this constitution together? Physical access to the location of services is a very practical issue which we hear time and again and it seems curious that it should not have figured in the drafting of the Constitution. On page 1, in key principle 7, there is some discussion of accountability to the public and the final point about a commitment to “give patients and the public the opportunity to influence and scrutinise performance and priorities” is a tentative step towards engagement. We believe this should go much further and provide a commitment to engaging patients and the public in the **planning and design** of services.

The right to be involved “directly or through representatives” is again one which could be improved greatly with clarification. MACC has long campaigned for the provision of advocacy services (it should go without saying that these services should be independent of the NHS). Unfortunately, the experience of many people is that while there may be a right to have the support of an advocate, there is equally no requirement to ensure that advocates are actually available. We strongly believe that people’s experiences of both health and social care services are greatly improved when they are clearly able to express their views, needs and wishes whether with their own voice or with the support of relative, carer or advocate. In driving towards more “personalised public services” it should surely be the case that the NHS and Central Government must recognise and invest in the provision of advocacy services. Initiatives such as PALS and ICAS have a limited value which has been well documented.

#### **Page 4**

The pledge around complaints should be strengthened with a commitment to an explicit principle of non-obstruction. Too often, complaints are stretched

out into difficult and upsetting processes because there is a fear of criticism among professionals.

While there is an understandable wish to avoid a “blame culture”, the truth is that this is precisely what the individual complainant usually wants: to know who is to blame and bring them to account in order to feel that justice has been done and to prevent it happening to anyone else. The reaction to this among professionals is inevitably a closing of ranks and escalation of the issue to such an extent that the complaint becomes not just about the original issue but also about the way the complaint itself has been handled. The concept of blame is usually dismissed as a negative one which undermines individuals: but equally buries what can sometimes be a significant issue.

If the Constitution is to act as a staff pledge, there needs to be a commitment to a culture of transparency and to reaching a level of honesty with the public about “blame”.

Equally, this should be addressed in the section on the responsibilities of the public to respect staff.

## **Page 5**

Section 3b does not refer to responsibilities around safeguarding, abuse or neglect – either within an NHS context or within the wider context of public sector services. This seems a curious omission and we question why this has not been included.

## **Other points**

There are other matters which the draft constitution does not appear to address at all. These include:

- The respect for and need to support carers in their role
- Public access to performance information in relation to specific services. If patient choice is a defining feature of the NHS, on what grounds can people make choices? The commitment is there to “high standards of excellence” but where is this measured and presented in a way which enables patients to use it in making decisions?
- A commitment is needed to remove internal service barriers – we frequently hear of people who, while receiving support from one part of the NHS experience difficulty in getting support from another – such as mental health in-patients having to wait at Accident and Emergency in order to access services around physical health needs, despite the potential inappropriateness of the setting. The concept of an holistic approach and support breaks down on these occasions.
- An explicit statement is needed to set out the extent to which the Constitution is binding on organisations (and their employees) which

are providing NHS services under subcontracting or outsourcing arrangements. If the Constitution is to have “teeth” the public needs to know that they can and should have the same expectations of all services provided in the name of the NHS – and that the accountability for these services is through the same mechanisms. Patients must not be caught in arcane disputes over corporate responsibilities – as currently happens all too often in the “health care” or “social care” disputes between NHS Trusts and Local Authorities.

## About MACC

Manchester Alliance for Community Care (MACC) is a voluntary sector development agency which, for over 20 years, has been working to reduce inequalities in health and social care and wellbeing across Manchester.

Broadly our work includes

- challenging both statutory and voluntary sectors to design and deliver services which address the rights, needs and wishes of individuals rather than the ability of organisations to deliver them
- the development of the capacity of local voluntary and community groups to identify unmet needs and to work to meet this need, through building up the skills base of the individuals inside these organisations.
- supporting networks of local voluntary and community groups to enable them to be a mechanism for developing collaborative work across the sector
- encouraging and enabling participation by the voluntary and community sectors in the planning and decision making structures which shape the health and social care economy in Manchester and to provide a conduit for this participation.
- promoting understanding of inequalities in health, social care and wellbeing and the role of the voluntary and community sectors in addressing them

Further details about our work can be found on our website [www.macc.org.uk](http://www.macc.org.uk)

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