



Department
of Health

A consultation to inform an update of the NHS Constitution: feedback report

July 2015

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A consultation to inform an update of the NHS Constitution: feedback report

Prepared by the Department of Health

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Background to consultation

- Sir Robert Francis QC was clear in his Inquiry Report¹ that the principal message of the NHS Constitution should be that patients² and their safety come first. In *Hard Truths*³, the Department of Health was clear in its commitment to increasing the impact of the NHS Constitution so that patients and the public understand their rights and responsibilities. As a result of these reports, we identified a number of policy developments that are intended to help to make the Constitution more tangible and meaningful to patients and staff.
- From the 11th February to the 8th April 2015, we publically consulted on a range of proposals. There are four key ways in which we proposed to amend the Constitution:
 - to give greater prominence to mental health;
 - in response to recommendations made by Sir Robert Francis QC;
 - to reflect the importance of access to transparent and comparable data; and
 - to include the Armed Forces Covenant.
- Overall we received 240 responses to the consultation. 184 of these responses came through our online platform, Citizen Space, whilst 54 were sent directly to the NHS Constitution mailbox. We also received 2 responses through hard copies sent to the Department of Health.
- Respondents came from a variety of backgrounds. In general there was about a 50-50 split between respondents writing in on a personal level, and respondents writing in on behalf of an organisation, charity or service.
- Respondents included major health services and organisations, such as NHS England, Health Education England and Healthwatch England.

¹ *Mid Staffordshire NHS Foundation Trust Inquiry Report*, www.midstaffpublicinquiry.com, (2013), Sir Robert Francis QC.

² 'Patient' throughout this document relates to any individual receiving care, support or intervention for their physical or mental health needs.

³ *Hard Truths - The journey to putting patients first*, <https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response>, (2014), *Department of Health*.

Consultation design

- The consultation sought the public's views on proposed changes to the NHS Constitution. When answering each question, there were four options available to the respondent;
 - Yes, and I have no further comments
 - Yes, in principle, but I have some comments
 - No, and I would like to explain why
 - No, and I have no further comments
- If the respondent completely agreed with the proposed wording, and had no further comments, they were asked to respond with 'Yes, and I have no further comments'. Similarly, if the respondent completely disagreed with the proposed wording, but had no further comments, they were asked to respond with 'No, and I have no further comments'.
- If the respondent agreed with the proposal in principle, but wanted to comment on the proposal, they were asked to respond with 'Yes, in principle, but I have some comments'. Similarly, if the respondent disagreed, and wanted to comment on why, they were asked to respond with 'No, and I would like to explain why'. Respondents were then asked to explain their reasons
- All responses were analysed, and used to help inform a revised version of the NHS Constitution. This was published on the 27th July, and can be found at;

<https://www.gov.uk/government/publications/the-nhs-constitution-for-england>

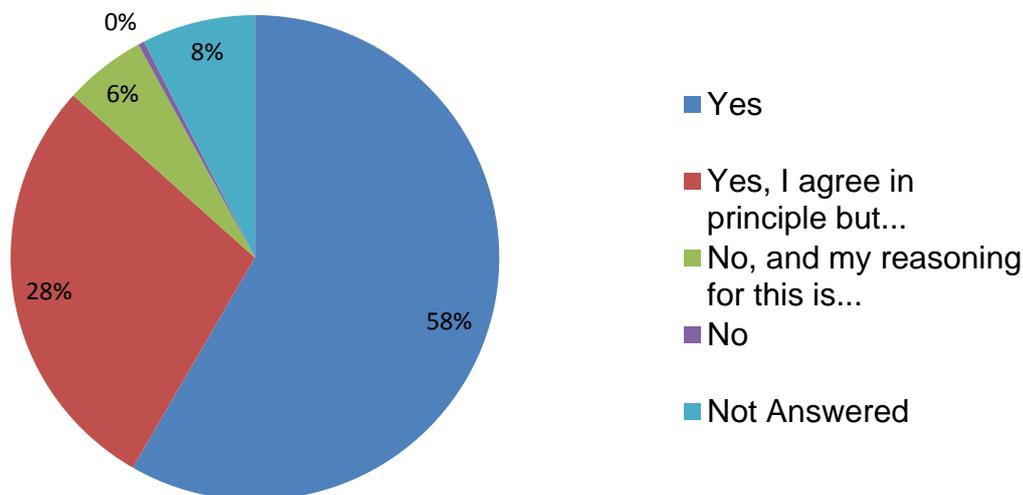
Feedback on the consultation and NHS Constitution

- Overall, there was a great deal of support for the proposed additions to the NHS Constitution. It was felt that these additions were particularly pertinent in the aftermath of the incidents at Mid-Staffordshire NHS Foundation Trust, and helped to reassure patients that their safety and quality of care was a fundamental focus of the NHS.
- Some respondents queried whether it would be practical to deliver the proposed additions to the NHS Constitution, and therefore questioned whether they should be included. Rights in the NHS Constitution must have a legal underpinning, and therefore it is a legal requirement to meet them. Pledges must be being delivered in practice in order to be considered for inclusion in the NHS Constitution.
- Many respondents also felt that staff aims should become duties within the NHS Constitution. However, a staff duty, like a patient right, must have a legal underpinning, and therefore be enforceable through that legal underpinning. Staff aims do not have a legal underpinning, and therefore cannot be considered as a duty until this legal basis is established.
- Many respondents also felt that whilst the NHS Constitution was a useful document, its impact would be limited until awareness of it was raised. We recognise these concerns, and understand that promotion and raising awareness of the NHS Constitution is very important.

Feedback by question

Mental Health

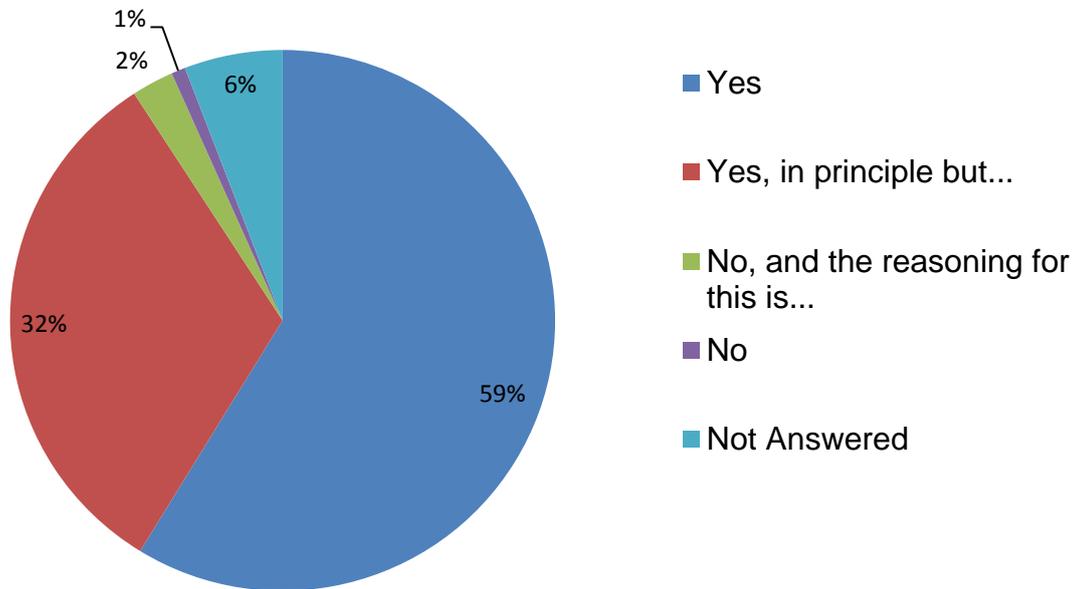
We would like to rephrase principle one of the NHS to read: 'The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard'. (Annex 2, Change 1). We would also like to rephrase an existing right to read: 'You have the right to drugs, treatments and psychological therapies that have been recommended by NICE for use in the NHS, if your doctor says they are clinically appropriate for you'. (Annex 2, Change 7). Do you agree?



- Overall 222 respondents responded to this question. 86% of these agreed, with just 6% of respondents disagreeing with this addition.
- Respondents welcomed the emphasis on a parity of esteem between mental and physical health problems. In general, respondents were very happy that this was represented within the principles of the NHS, as it was felt this would carry more weight than a pledge or commitment.
- Where individuals disagreed with the inclusion, the reasoning behind this decision was based around practicality, with a particular focus on finance. No respondents disagreed outright with the content. Instead, they disagreed on the inclusion of this wording as they queried whether 'equal regard' could be delivered within the current health system.
- Others queried the resources of the NHS in delivering this amendment, for example, one respondent suggested that in rural areas, the limited availability of mental health services meant that a parity of esteem between mental and physical health problems, could not feasibly be delivered.

A patient-centred NHS [Francis Recommendation 4]

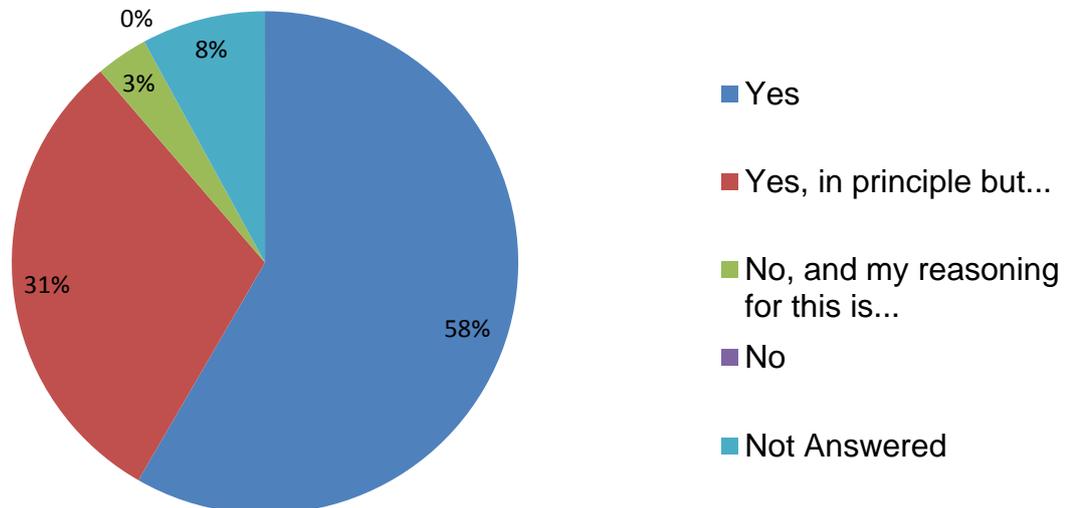
We would like to change the current wording to: ‘Patients will be at the heart of everything the NHS does’. (Annex 2, Change 2). Do you agree?



- Over 90% of respondents agreed with this addition, with just 3% of respondents disagreeing.
- Of the respondents who agreed, the most prominent reason given was that the proposed wording emphasised the central role of patients in the NHS.
- Some respondents felt that the term ‘patients’ could be strengthened to reinforce more of a focus on individuals within the NHS. It was suggested that amending the wording to reflect ‘the patient’, might help to emphasise that the NHS works to help you as an individual, as opposed to patients as a group.
- Respondents who disagreed with the addition, tended to do so based around issues of practicality in delivery. These respondents suggested that the financial issues facing the NHS meant that in practice, centralising each and every patient was difficult to achieve. They felt that the wording should reflect this.
- Other respondents who disagreed with this addition emphasised the increased workload this would place on staff, as well as the difficulty in achieving this given the bureaucracy within the NHS.

Protecting patients from avoidable harm [Francis Recommendation 5]

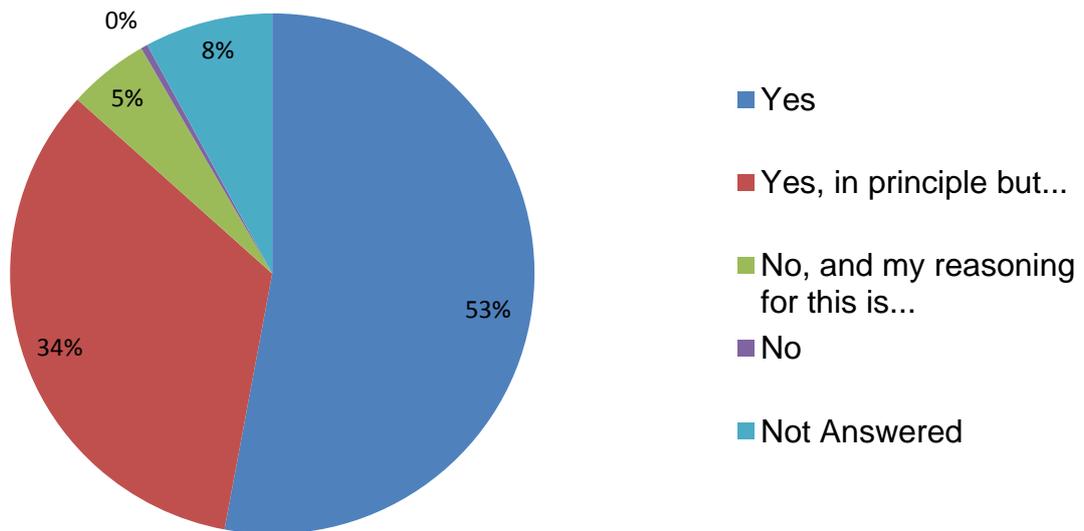
We would like to include the following wording for staff: 'You should aim to provide all patients with safe care, and to do all you can to protect patients from avoidable harm.' (Annex 2, Change 12). Do you agree?



- Nearly 90% of respondents agreed to this addition, with just 3% of respondents disagreeing.
- Of the respondents who agreed to this addition, the most prominent reason given was that it would help prevent a similar situation to that that occurred at Mid-Staffordshire NHS Foundation Trust, from ever happening again. Respondents particularly welcomed the reference to protecting patients from avoidable harm, suggesting that signposting the term in the NHS Constitution was a positive step towards ensuring such failings never happen again.
- However, many respondents queried what actually constituted 'avoidable harm'. As a result of this, we have produced a definition of 'avoidable harm' in the Government response, and outlined it within the Handbook to the NHS Constitution.
- Other respondents also outlined how this should be a patient right as opposed to a staff aim. However as outlined previously, a right must have a legal basis, and therefore be legally enforceable. Staff aims do not have this legal basis, and therefore this addition must be a staff aim as opposed to a right.

Helping patients find assistance [Francis Recommendation 5]

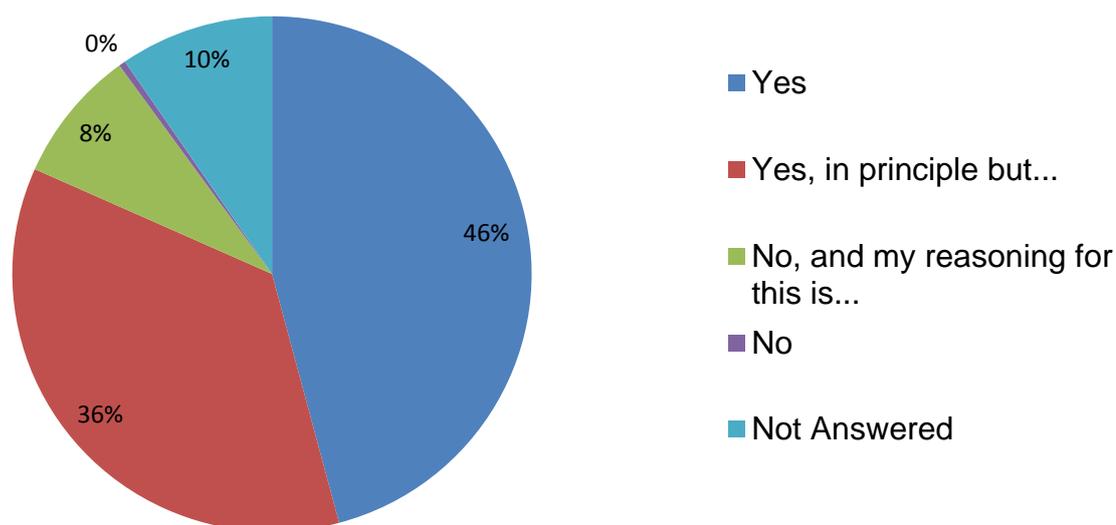
We would like to include the following wording for staff: ‘You should aim to help patients find alternate sources of assistance, when you are unable to provide the care or assistance a patient needs’ (Annex 2, Change 14). Do you agree?



- There was widespread support for this addition, with 87% of respondents agreeing to it. 5% of respondents disagreed with this inclusion.
- Of the respondents who agreed, many referenced the focus on patients as individuals as the reason. This aim was also seen as improving patient pathways, to the benefit of all who use the NHS.
- However, others queried whether there was a need for this aim, suggesting instead that it is human nature for staff to help patients find alternate sources of assistance, if they themselves cannot help.
- Of the respondents who disagreed, some mentioned the difficulties in achieving this aim. It was felt that in some cases, particularly in rural locations, alternative sources of assistance are not always available, and therefore this aim could not always be applicable.
- Others who disagreed did so on the basis that this would require further training for NHS staff, suggesting this would impact upon the level of care they could provide to patients in the short term.

Complying with guidance and standards [Recommendation 10]

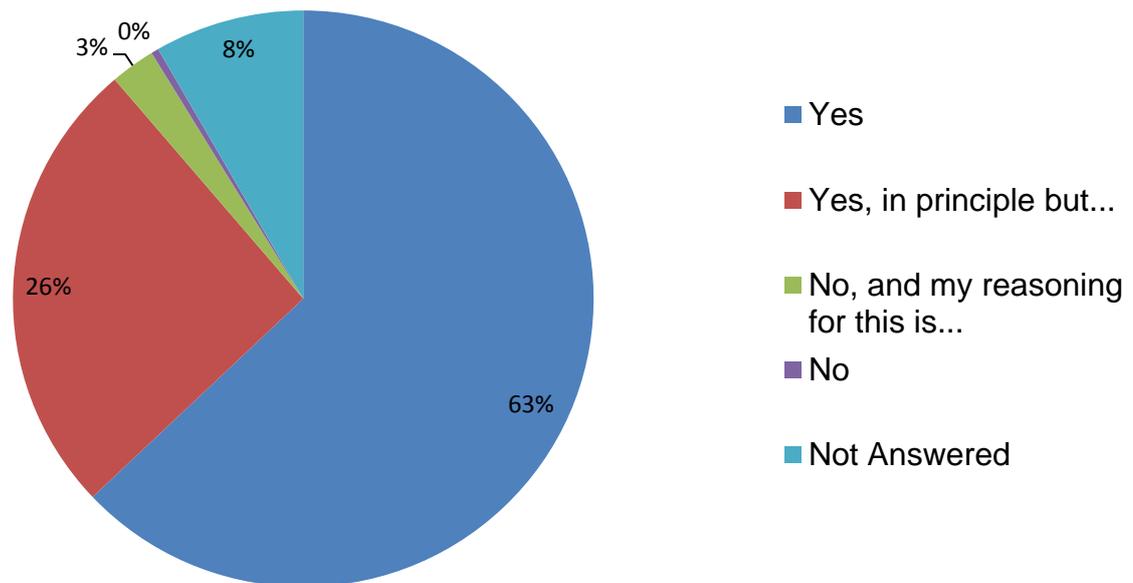
We would like to include the following wording for staff: 'You should aim to follow all guidance, standards and codes relevant to your role, subject to any more specific requirements of your employers.' (Annex 2, Change 13). Do you agree?



- There was widespread support for this addition, with over 80% of respondents agreeing with its inclusion. 8% of respondents disagreed with this inclusion.
- Of the respondents who agreed, it was largely felt that this would help to ensure that patients are treated in the most appropriate manner, according to the guidance, standards and codes that are set within professional code. This would help to ensure a more consistent service across the NHS.
- However, of the respondents who agreed, it was again queried whether there was a need for a specific aim around this, given that it should already be standard procedure for staff.
- Some respondents felt that the phrase 'subject to any more specific requirements of your employers', led to confusion rather than clarification. We have therefore defined what this means within the Handbook to the NHS Constitution, and outlined the types of guidance, standards and codes that staff should follow.
- Others pointed to the additional training NHS staff would need in order to meet this aim, suggesting it would impact on their level of care they could provide in the short term.

Duty of Candour (Francis Recommendation 178)

We would like to include the following wording for patients: ‘You have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident which, in the opinion of a healthcare professional, has caused, or could still cause, significant harm or death. You should be given the facts, an apology, and any reasonable support you need.’ (Annex B, Change 11). Do you agree?



- Overall there was widespread support for this inclusion, with over 88% of respondents agreeing. 3% of respondents disagreed with this inclusion.
- In particular, respondents who agreed to this inclusion mentioned the importance of having an open and transparent relationship with the organisation providing their care. Many felt this was particularly important given the failings at Mid-Staffordshire NHS Foundation Trust, and would help to prevent similar failings in the future.
- Respondents who disagreed often mentioned that the phrase, ‘must be told about any safety incident’, could be unrealistic. In particular, it was mentioned that it is unfeasible for all patients to be told about any safety incident which could cause significant harm or death. As a result of this, we have amended the wording of the right, as set out in the Government response.
- Other respondents felt that the wording could be strengthened in places. As a result, we have amended the wording of the right to remove ‘should’, and replace it with ‘must’.

Fundamental standards [Francis Recommendation 13]

We would like to include the wording in the text box below for patients. Do you agree?

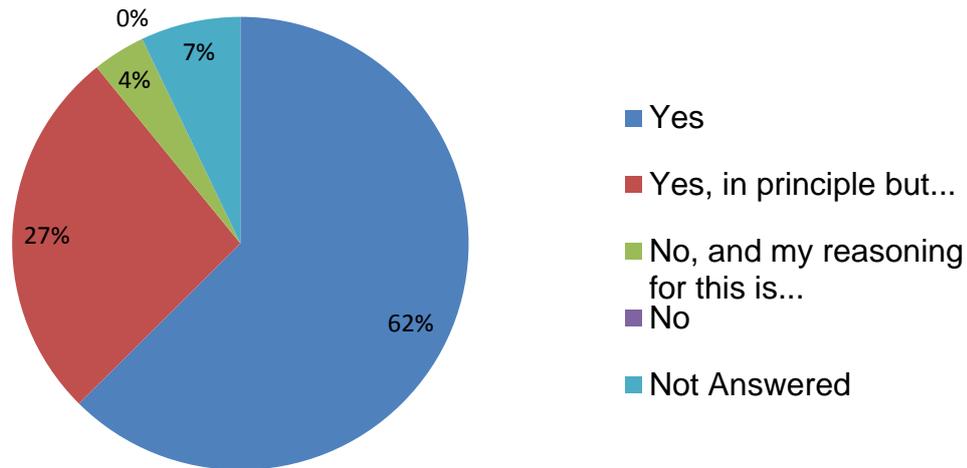
You have the right to receive care and treatment that is appropriate for you, meets your needs and reflects your preferences.' (Annex B, Change 4).

'You have the right to be cared for in a clean, safe, secure and suitable environment.' (Annex B, Change 5).

'You have the right to receive suitable and nutritious food and hydration to sustain good health and wellbeing.' (Annex B, Change 6).

'You have the right to be protected from abuse, neglect, and care that is degrading.' (Annex B, Change 8).

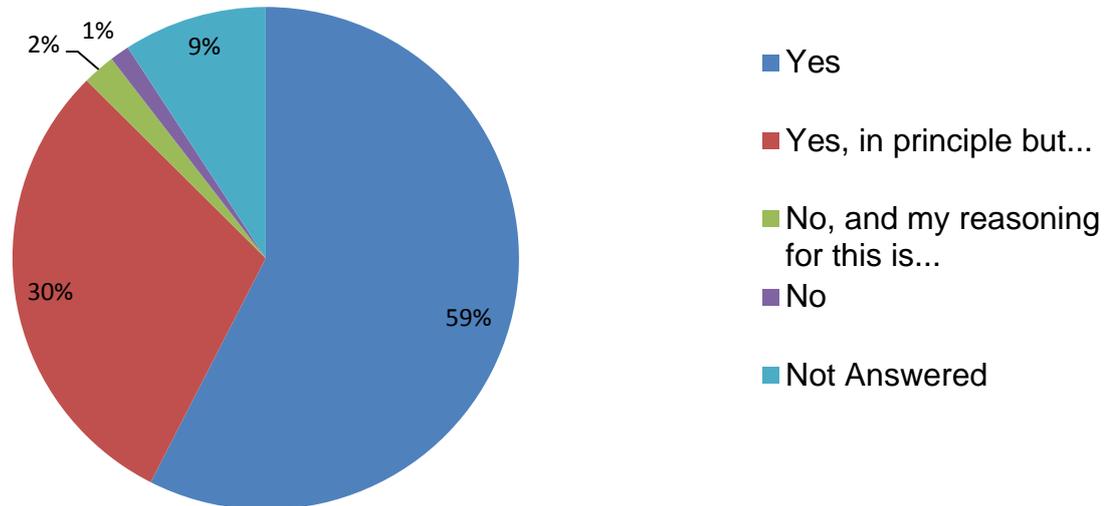
'You have the right to be involved in planning and making decisions about your health and care with your care provider, including your end of life care, and to be given information to enable you to do this. Where appropriate this right includes your family and carers. This includes being given the chance to manage your own care and treatment.' (Annex B, Change 10).



- Overall there was widespread support for this inclusion, with nearly 90% of respondents agreeing. Just 4% of respondents disagreed with this inclusion.
- In general, respondents who agreed with this inclusion felt that a collection of regulated fundamental standards, setting a line below which care should never fall, would be beneficial to the patient. In particular, many respondents felt that the standard of patients' care would improve as a result of the fundamental standards
- Respondents' only particular concern related to how fundamental standards will be measured and monitored. Any right must have a legal underpinning, which in this case are the requirements for registration with the Care Quality Commission (CQC). CQC undertakes regular inspections of hospitals to ensure that fundamental standards are being met, and if not, the hospital is liable for prosecution.
- In general, respondents felt that the fundamental standards were an important addition to the NHS Constitution. Respondents who disagreed often felt that the inclusion of fundamental standards would add in a further layer of bureaucracy, making it more difficult for NHS staff to do their job.
- As a result many respondents also felt it was important that NHS staff received the required training in order to be able to deliver these rights.

Transparency

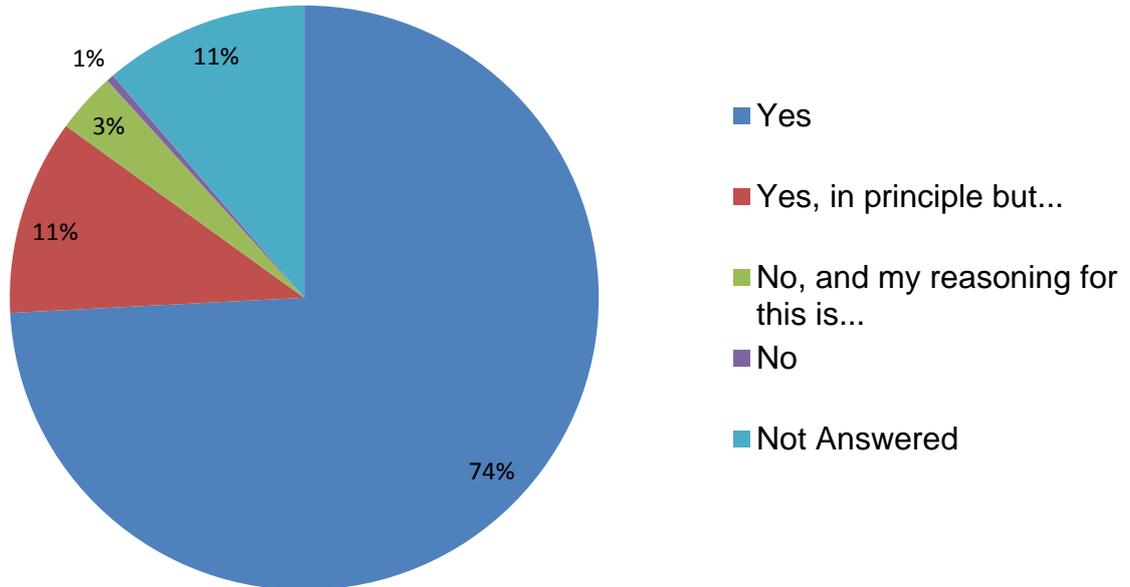
We would like to include the following wording for patients: 'You have the right to transparent, accessible and comparable data on the quality of local healthcare providers, as compared to others nationally' (Annex B, Change 9). Do you agree?



- Overall there was widespread support for the inclusion of the fundamental standards, with nearly 90% of respondents agreeing to their inclusion. Just 3% of respondents disagreed.
- In light of the failings at Mid-Staffordshire NHS Foundation Trust, many respondents recognised that improving transparency within the NHS can drive better health and care treatment for patients.
- However, many respondents also wanted to know how the data was going to be portrayed, and particularly how they could unpick what that data actually meant in practice. As a result of this feedback, we have included a set of existing frameworks in the Handbook to the NHS Constitution, which helps to define the data and outcomes we refer to within this right.
- The respondents who disagreed with this inclusion were often concerned about the use of league tables in health care. In particular, some respondents felt that the use of league tables would be counter-productive, through leading to 'scapegoats' as opposed to driving improvement. Other respondents mentioned that clear caveats need to be included within the data on MyNHS, and suggested that the data ought to be clear and honest about the areas in which an organisation is actually doing well in order to provide balance.

Armed Forces Covenant

We would like to include the following wording 'As part of this the NHS will ensure that in line with the Armed Forces Covenant those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside'. (Annex B, Change 3). Do you agree?



- Overall, 85% of respondents agreed to this inclusion, with just 4% disagreeing.
- In particular, many welcomed the reference to personnel in the Armed Forces Community, citing the work the Armed Forces perform in keeping the country safe.
- However, some respondents queried why individuals from the Armed Forces Community should get 'priority treatment' through the NHS Constitution, in comparison to other groups throughout society. It is important to note that this inclusion does not suggest priority treatment- instead it promotes equality, through ensuring that those in the Armed Forces Community are not disadvantaged in accessing health services in the area they reside.
- Others queried who the Armed Forces Community entailed- for this reason, we have amended the wording.
- Of the respondents who disagreed, some felt that this inclusion did not go far enough, and called for more explicit wording around exactly how this would be met. The Handbook to the NHS Constitution provides further detail.

Changes as a result of consultation

Key amendments made since the consultation include:

- Minor edits to the principles section, to clarify who the 'Armed Forces Community' applies to, and to reflect a more patient-centred NHS;
- Removing the phrase 'psychological therapies' from the right to drugs and treatments that have been recommended by NICE, as the clinical guidelines around psychological therapies are not yet mandated;
- Inclusion of the phrase 'and outcomes' into the right on transparency, to reflect the content available on MyNHS;
- Inclusion of the word 'support' in the fundamental standard right on planning and making decisions about your health and care, with your care provider or providers, to reflect current legislation;
- Inclusion of the phrase 'and providers' to reflect that individuals may have more than one provider across physical and mental health;
- Addition of the phrase 'if appropriate' to the right to be given the chance to manage your own care and treatment, to reflect that it is not always possible for patients to manage their own care and treatment in certain situations in clinical settings;
- Inclusion of the phrase 'relevant to your care' in the duty of candour right, to clarify the meaning behind the right;
- Amending 'should' to 'must' in the duty of candour right, to strengthen the wording, and to reflect that it has a legal underpinning; and
- The addition of the phrase 'help patients access the available NHS treatment they choose within the timescales set out in the NHS Constitution Handbook' in order to clarify the meaning behind the addition.

For further detail on the amendments made as a result of the consultation, including the rationale behind each change, please see the Government response at;

<https://www.gov.uk/government/consultations/updating-the-nhs-constitution>