What “having regard” for the NHS Constitution means for pharmacy

From 19 January 2010, pharmacists and pharmacies employed by and contracted to the NHS have been expected to “have regard” for the NHS Constitution. Ailsa Colquhoun finds out what this means.

The NHS Constitution was launched to great fanfare in January 2009 and having had a year to embed itself, both in the NHS psyche and in law, “having regard” for the NHS Constitution has now become a legal duty for all NHS bodies and NHS contractors in England. It was the Department of Health’s view that from 19 January 2010, all providers of NHS services would need to be able to demonstrate that they have given proper consideration to the constitution in carrying out their functions. In short, they must have good reasons for making any decisions that depart from the constitution.

But before contractors and NHS pharmacists rush to consult the handbook and guidance that has been published to support the publication of the constitution, it is worth noting that many of the rights, pledges and duties contained in the main statement (see Panel) simply repeat what primary care organisations, pharmacists and other service providers are already doing. For example, the constitution pledge “The NHS commits to work in partnership with you, your family, carers and representatives” refers to the pledges contained within the 2006 White Paper “Our health, our care, our say: a new direction for community services”.

However, even if the constitution does not herald a revolutionary change in the way the NHS operates, it renews the impetus and need for best practice in the NHS in areas such as the way in which patients access their medicines and how they use the NHS. Importantly for pharmacists working in, or for the NHS, the constitution also provides an ongoing safety check on how well the NHS interacts with its staff and contractors.

Patient access to medicines

In the area of patient access, the constitution lays down three rights and one pledge covering access to medicines. The medicines are approved and unapproved by the National Institute for Health and Clinical Excellence, vaccinations and the funding of NHS screening programmes.

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Primary care trusts are normally obliged to fund NICE technology appraisals within three months of the appraisal’s publication date and in 2008, the Richards report “Improving access to medicines for NHS patients” concluded that: “A recommendation by NICE ends any uncertainty and inequality about prescribing. Once national guidance has been issued by NICE, it replaces local recommendations and promotes equal access for patients across the country.” However, the report also pointed to considerable discrepancy in the handling at individual PCT level of exceptional treatment requests — for technologies not approved by NICE. Professor Richards found that in 2008 PCTs received around 15,000 requests for exceptional case funding but the proportion of applications that were approved varied substantially among PCTs, between as much as 12.5 and 88 per cent.

In light of the Richards report recommendations, the NHS Constitution endorses the principle of equity of access to medicines and confirms the statutory directions for PCTs that came into effect from 1 April 2009. These make clear that although a PCT can still refuse to fund a particular treatment (unless recommended by a NICE technology appraisal), it must consider individual cases and it must have a defined and accessible decision-making framework.

Locally, the impact of the directions has been considerable. In Yorkshire and Humber Strategic Health Authority area, for example, a regional working group has been set up to help local PCTs meet the requirements of the directions, and this has identified work to be done in three areas:

- Identification of treatments that are to be funded
- Establishment of a funding decision framework
- Communication, monitoring and feedback

Whether such initiatives have, nationally, resulted in more exceptional requests being granted is hard to say, and it is the view of the NHS Confederation, which represents PCTs, that this was never the Government’s intention anyway. Primary Care Trust Network director David Stout told The Journal: “The directions were about making medicine decision making more open, transparent and accountable. They were never about saying ‘yes’ to patients more often.’

Patients also question what difference the NHS Constitution will make in terms of improving their access to medicines. Michael Summers, vice-chairman of the Patients Association, said: “We support the aims of the constitution, but we are not convinced it’s going to make a big difference to patients on the ground. Nothing new has been introduced alongside it to support implementation. Many patients still don’t know what they are entitled to through NICE so they are ignorant as to whether they are receiving the care the constitution says they are legally entitled to.”

Self care — an opportunity missed?

As well as patients’ rights, the NHS Constitution also outlines one responsibility for patients and the public: “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.”

Although making a welcome contribution to developing the self care agenda in pharmacy, this responsibility falls short of its po-
Gopa Mitra, PAGB director of health policy and public affairs, says: “It has missed an opportunity to encourage better dialogue about self care between PCTs and their local patient populations and clinicians. It fails to spell out that responsibility for good health lies in more than just motherhood and apple pie.”

Citing an annual £2bn spend on unnecessary NHS consultations for minor ailments, the PAGB says it will look to the review of the NHS Constitution to lobby for a more specific emphasis on self care. In the meantime, it is calling for a range of self care promoting actions, including GP training on self care aware consultations, and communications designed to define appropriate individual responsibility, for example, by defining the duration of the self care phase of a minor illness.

NHS staff working conditions

Of the 57 rights and pledges contained in the NHS Constitution, 18 relate directly to NHS staff, in particular their rights to fair pay and contract frameworks, involvement and representation in the workplace, and healthy, safe and equal working conditions. Although much of this section of the NHS Constitution is again already enshrined in law and current working practice, the rights and pledges may well encourage further scrutiny of the issue of staff satisfaction.

In 2008, areas now enshrined in the NHS Constitution were incorporated into the annual NHS Staff survey, and it is clear that there is still more work to do in terms of improving the lot of NHS staff. For example, in 2008, in the area of roles, responsibilities and rewarding jobs, 31 per cent of staff said they did not feel valued by their trust.

In terms of personal development, access to training and line management support, the 2008 NHS staff survey found that only 40 per cent of staff said they had good development opportunities at work. With regards to maintaining health, well-being and safety, 28 per cent of staff said they experienced work-related stress in the past year and on the subject of engaging staff in decisions that affect them, 21 per cent of staff said their trust did not communicate clearly about what it is trying to achieve. “The principles contained within the constitution will support organisations to improve staff engagement, which in turn will provide a better patient experience. By building values into everything they do, employers will significantly improve staff engagement and productivity levels,” said Gill Bellord, director of core membership services at NHS Employers.

Although the NHS Constitution applies only to England, none of the devolved administrations has moved away from the core principles upon which the NHS was founded. England, Scotland, Northern Ireland and Wales remain committed to a high-level statement declaring the principles of the NHS across the UK on 3 July 2008.