A Consultation on updating the NHS constitution

Royal British Legion response

About us

1. The Royal British Legion (RBL) was created as a unifying force for the military charity sector at the end of WWI, and still remains one of the UK's largest membership organisations. We are the largest welfare provider in the Armed Forces charity sector, providing financial, social and emotional support, information, advice, advocacy and comradeship to hundreds of thousands of Service personnel, veterans and their dependants every year. In 2014, we provided services and grants to over 450,000 Service personnel, veterans and dependants – more than ever before – and spent £1.4m every week on welfare support. For further information, please visit www.britishlegion.org.uk

General Comments

2. RBL welcomes the opportunity to respond to this consultation on updating the NHS Constitution. As the statutory provider of health services for veterans and the wider ex-service community in England we believe that NHS England must do all it can to meet the specific health needs of this population. Having left the armed forces the wounded, injured and sick must be able to access suitable health care support with ease to enable them to live independent and fulfilling lives.

3. We have been pleased to work with colleagues both within NHS England and the Department of Health on shaping Veterans' health provision in England and enjoy a productive relationship with the armed forces leads in these bodies. The policy intention behind the ten National Veterans Mental Health Networks (NVMHN) are a positive step towards achieving cohesion and clarity for veterans and Reservists with mental health problems, ensuring that the NHS, military charities and other agencies are working together to achieve the best outcomes.

4. RBL research has found that awareness of priority treatment, as set out in the Armed Forces Covenant, amongst veterans and GPs appears to be very low. In response to a 2009 survey of 500 GPs across England and Wales, 81 per cent of respondents said they knew not very much or nothing at all about priority treatment.[1] Although this may be improving, anecdotal evidence would suggest it is still a significant problem

[1] Ipsos-MORI online questionnaire completed by 500 GPs across England and Wales. Fieldwork was conducted between 13-23 March 2009. Data weighted according to age, gender, region, practice size and practice list size, to reflect the profile of GPs in England and Wales

and more should be done to educate GPs and other medical professionals about military health needs, especially as over recent years, the NHS has gained greater responsibility for the commissioning of health services for serving members of the Armed Forces and their families. RBL wish to take this opportunity to highlight the importance of routinely recording whether a patient has previously served in the armed forces. The current NHS Read code/SNoMed CT Code "History Relating to Military Service" is in place yet evidence suggests that it isn't being routinely and uniformly used to identify veterans accessing health care. Without this code being used across the board, we don't believe the NHS will be able to effectively commission services for the armed forces community, nor live up to the proposed Constitution's aim to meet the needs of the Armed Force's Covenant.

5. In June 2013 the All Party Parliamentary Group (APPG) for Patient and Public involvement in Health and Social Care, along with the Patient's Association published the results of an inquiry into the NHS constitution. The APPG report highlights that there is "widespread confusion about the legal enforceability of parts of the NHS Constitution. While the Health Act 2009 only makes provision that all providers of NHS services must have regard to the Constitution, there is no legal enforceability of the NHS's "pledges" within the document. That being said, the "rights" described are underpinned by statute or the Common Law and are effectively legal rights, but no single piece of legislation details these rights."[2] RBL shares the concern of the APPG that the legal enforceability of the "pledges'" is ambiguous and would welcome an upgrading of these pledges to rights, and strict measures put in place to identify where gaps in services fail to meet pledges. This would bring greater clarity to both NHS professionals and the patient, and would also be a strong demonstration of NHS England's commitment to putting patients at the heart of the health service.

Consultation response

6. RBL is a leading charity for the Armed Forces and ex-Service community and therefore will only be responding to consultation questions where we have relevant expertise.

7. **Q1. 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). Do you agree?** *Yes, in principle, but we have some comments*. The NHS is responsible for the mental healthcare of demobilised Reservists and veterans. As stated above, we have been pleased to see the establishment of the ten NVMHN across England and there has been significant investment by local commissioners in some parts of the country, enabling the Networks to employ their own clinical staff and ensure a smooth and efficient patient journey from assessment to treatment. In other areas, however, funding is very limited, and we have heard of cases where waiting lists for

[2] The All Party Parliamentary Group for Patient and Public involvement in Health and Social Care*, NHS Constitution Inquiry,* June 2013

psychotherapy services are up to two years long. As a result of these factors, veterans and Reservists currently experience a postcode lottery when accessing NHS mental health services to an extent that isn't seen for physical health. We expect the introduction of the 18 week target for mental health treatment to address the present disparity in waiting times, but more needs to be done to ensure that the quality of service is consistent across the country. We therefore welcome the inclusion of this phraseology but believe it can only be achieved with continuing investment in Veterans Mental Health Networks alongside further training for NHS staff in the specific needs of veterans with mental health disorders and annual reporting of the numbers in treatment, in order to measure progress. To achieve this, routine recording of veteran status by GPs is necessary.

8. **Q2. 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?** *Yes, in principle, but we have some comments*. RBL agrees with the proposed wording and welcomes this move to strengthen the commitment to patients.

9. **Q4. We would like to include the following wording for staff: 'You should aim to help patients find alternative sources of assistance, when you are unable to provide the care or assistance a patient needs.' (Annex 2, Change 14). Do you agree?** *No, and we would like to explain why*. Whilst we believe that this aim is one that should be included in the NHS constitution, RBL does not believe that including it as an "expectation" for staff to "aim" for sufficiently recognises the importance of this principle. Recent RBL research into the ex-Service community indicates that there is significant unmet need in the accessing of suitable support services outside of healthcare providers.[3] Over half of the adult ex-service community received assistance for a health need from their GP in the last year (58%) with this number rising to two thirds of the population (66%) when taking account of other health related sources of help such as A&E or Counselling. However only 14% of the ex-service community report having used support for reasons other than health. Of those with employment difficulties only 17% say that they have used work related support in the past year. Even social care support is only accessed by two in ten of those saying they have difficulties with self-care, mobility, housing and transport. The research therefore shows that health services uniquely constitute one of the most universal points of contact for the ex-Service community. If the NHS is to deliver a truly holistic and integrated support service for the mental and physical wellbeing of a patient, it is vital that staff proactively signpost towards existing external sources of support in both the statutory and charitable sector. We recommend therefore the removal of the phrase "aim to" from section 4b of the constitution. This would strengthen the expectation of staff to read, "You should help patients find alternative sources of assistance, when you are unable to provide the care or assistance a patient needs". This in turn would lead to greater clarity for both patients and health practitioners of what a high quality NHS service should encompass.

10. **Q9. 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**

[3] Royal British Legion, *A UK Household Survey of the ex-Service Community*, 2014

Community are not disadvantaged in accessing health services in the area they reside.' (Annex 2, Change 3). Do you agree? *Yes, in principle, but we have some comments.* RBL warmly welcomes the proposal to include the Armed Forces Covenant principles into the NHS constitution. This further recognition of the Covenant as an underpinning principle of the provision of services by the state to those who have served in our Armed Forces is another step towards ensuring that no-one is left disadvantaged as a result of Service.

However, we believe that the proposed wording should be amended as the consultation's text doesn't accurately reflect the breadth of the Covenant's aims. In addition to ensuring there is no disadvantage, the Armed Forces Covenant states that "special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved". The scope of the Covenant goes on to explain in clearer terms how this relates to the provision of healthcare for veterans: "[Veterans] should receive priority treatment where it relates to a condition which results from their service in the armed forces, subject to clinical need…for those with concerns about their mental health, where symptoms may not present for some time after leaving service, they should be able to access services with health professionals who have an understanding of armed forces culture".[4]

We recognise that the NHS must be based on a principle of clinical need and we acknowledge the difficulties inherent with including priority treatment for Serving and the ex-Service community. However, not addressing special consideration or specialist services risks leaving patients unclear as to what they can expect from the NHS. There are cases where priority treatment is both justifiable and necessary. The mobile nature of a military career could mean that for someone in Service their secondary care provided by the NHS may need to be prioritised on a waiting list before redeployment. Alternatively, for a member of the ex-Service community, special treatment could constitute support to access external sources of higher grade medical equipment, such as via the Veterans Prosthetics Panel, or surgical priority. We believe that flexibility must be introduced to enable priority treatment where it is deemed appropriate by an NHS health care professional bearing in mind the terms of the covenant.

Further evidence that the two concepts of clinical need and priority treatment can co-exist in a health service can be seen across the border in Wales, where the Welsh Government has taken proactive steps to ingrain military covenant obligations. The Welsh Government Package of Support for the Armed Forces Community, from June 2013, states, "Welsh Government continue to remind health bodies and their staff of their obligation to offer priority treatment and care for veterans whose health problems result from their service. This policy is outlined in Welsh Health Circular 051, which was published in 2008 and distributed to all relevant individuals and health bodies across Wales. The commitment has also been reiterated at regular intervals, for example in the veterans e-learning module produced for primary care staff." We understand that NHS England has undertaken similar steps and the NHS constitution should therefore not deviate from this positive trend.

[4] Ministry of Defence, *The Armed Forces Covenant*, 2011

Therefore, RBL recommends that the Principles that guide the NHS should separate Principle 4 into two and create a new principle that reads, “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 and eligible to priority treatment, subject to clinical need”. This new phrasing would encompass the covenant’s pledges whilst leaving discretion in the hands of the clinician as to how to apply “priority need”.

For further information or clarifications, please contact Andy Pike, Policy Adviser, Royal British Legion, on 0203 207 2124 or apike@britishlegion.org.uk

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