

# **Why new legislation is needed to protect our NHS from any future US/UK trade deal**

*MP briefing from Keep Our NHS Public, We Own It and OurNHS/OpenDemocracy*

## **The NHS is a national treasure**

The National Health Service is one of the UK's greatest achievements. For over 70 years it has provided a cost effective, comprehensive, universal health service, free at the point of need. The public cares about this a great deal:

- YouGov polling shows people think the NHS is the second most important issue facing the country right now (the first most important is Brexit).<sup>1</sup>
- 84% of the public support a publicly owned NHS.<sup>2</sup>
- 700,000 people have so far signed the change.org Keep Our NHS Public petition against the NHS being included in a US trade deal.<sup>3</sup>

## **Words are not enough to protect our NHS**

As soon as we sign a trade deal with the US, our hands are tied. Because the NHS in England has already been opened up to competition, and many healthcare services are already outsourced to the private sector, it is vulnerable to automatic inclusion in trade deals. The NHS in Scotland, Northern Ireland and Wales is not immune either - the US could argue that access to providing services should be the same across all four nations.

Boris Johnson has repeatedly said the NHS won't be on the table when it comes to a US trade deal. Liz Truss, Matt Hancock, Dominic Raab, Jeremy Hunt and Donald Trump himself have all said the same.

*But the NHS isn't safe with just words - new legislation is needed.*

## **Privatisation, competition and marketisation is already happening in our NHS**

The NHS was originally set up as a system of comprehensive, publicly funded, publicly owned and provided, and publicly accountable health services available to all, but increasingly, due to marketisation, private firms are taking over the provision of NHS services and running them for profit:

- £9.2 billion of clinical services in England have already been privatised, plus billions more in equipment, support services and buildings.<sup>4</sup>
- Our NHS is already open to competition from private companies like Virgin Care.
- US-owned firms – like UnitedHealth/Optum and Priory Group - already have contracts to run services in our NHS, and are also involved in shaping corporate-led restructurings and contracts that are leading to the declining local access to services including GPs, A&E and local hospitals.<sup>5</sup>

## **Existing competition means the NHS can't be protected from a trade deal**

As long as private companies continue to compete for NHS services, the NHS can be included in trade deals. This means that the door is wide open for more privatisation, deregulation and takeover by US healthcare giants in the future.

Since the marketisation of the NHS (with the introduction of the purchaser/provider split), its protection can no longer be assumed. Any remaining doubt about the vulnerability of the

NHS was removed in 2012, when the Health and Social Care Act (HSCA) ensured competition between service providers.<sup>6</sup>

The only way to protect our NHS is to remove legislation that allows private contracts for NHS services. The NHS has to return to a government-run public service not structured for the purposes of commercial profit, through legislation along the lines of the NHS Reinstatement Bill.<sup>7</sup> We need laws to safeguard our NHS from both existing privatisation and free trade agreements now and in the future.

### **A US trade deal could lock in privatisation and make it irreversible**

Signing a trade deal with the US means that current levels of privatisation will be ‘locked in’ – and very difficult to reverse.<sup>8</sup>

- The NHS is reliant on a wide range of public sector institutions and services, such as public health provision social care and emergent technology. The US is likely to insist on **‘negative listing’** which means everything is on the table unless it is explicitly excluded. We would have to list a huge range of NHS related services in order to exclude them from a trade deal. It also means we wouldn’t have protection for new, unforeseen services and technologies that could be important in the future.
- **‘Standstill’ and ‘ratchet’ clauses** that will almost inevitably be included in any trade deals will lock in existing levels of privatisation and make it almost impossible for any government to roll back privatisation or deregulation in the future.
- Future trade deals are more than likely to include **investment protection measures**, like Investor State Dispute Settlement (ISDS). This means that corporations can sue the UK government in private tribunals for any changes in government policies that they think might affect future potential profits. Only international investors can make use of these secretive, unaccountable courts – there is no equivalent mechanism for domestic companies, governments or citizens. This threat is enough to create a ‘policy chill’ on government policies, like reinstating the NHS. Canada, Australia and Slovakia have already had to pay millions in compensation due to investment protection measures.

### **Legislation is needed to protect us from new threats**

- **Vital access to medicines** could be restricted by a trade deal. Donald Trump has already made clear that he wants to pressure the UK through trade negotiations to pay more for drugs. What’s at stake here is the NHS’s ability to hold down drug prices and demand cost-effectiveness and safety before approving their use, in the UK and across other countries that peg drug expenditure to NHS reference prices.<sup>9</sup> This could mean, for example, diabetes medicine is 13x more expensive, or EpiPen injections cost 10x more.<sup>10</sup>
- **UK patient data** is very comprehensive and therefore of great interest to corporations developing global business models for new markets. US trade negotiators want US firms to be able to harvest this data freely and sell it back to the NHS and globally at a premium, through “state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows”.<sup>11</sup> If ‘data is the new oil’ then it’s vital we don’t give this precious asset away.
- **Vital safety standards** for drugs, new technology, and numbers, skill levels and working hours of staff, could be dropped to make our NHS more profitable to US firms. The language of the US negotiating objectives clearly indicates this is their goal. Indeed, this is already underway and needs to be reversed.
- **Public health** measures, for instance around sugary drinks or tobacco, could be blocked by trade deals, especially ISDS.

- **Trade deals also have wider implications** in terms of food standards, climate change, protection for the environment and for workers. Government needs the ability to regulate to protect public health in general.
- As things stand, parliament has **no power to veto a trade agreement**, even if the majority of MPs knew that a deal would destroy the NHS.

**We need proactive legislation now to protect our NHS so that all of these issues can be dealt with, BEFORE any trade deal with the US or anyone else.**

**Please write to Boris Johnson to ask that legislation to protect the NHS and associated services is drawn up and implemented as a matter of urgency.**



<sup>1</sup> <https://yougov.co.uk/topics/political-trackers/survey-results> (5<sup>th</sup>-6<sup>th</sup> August 2019)

<sup>2</sup> <https://yougov.co.uk/topics/politics/articles-reports/2017/05/19/nationalisation-vs-privatisation-public-view>

<sup>3</sup> <https://www.change.org/p/liam-fox-protect-our-nhs-from-us-corporations>

<sup>4</sup> <https://www.theguardian.com/society/2019/jul/21/private-firms-nhs-budget-matt-hancock-promise>

<sup>5</sup> <https://www.opendemocracy.net/en/ournhs/nhs-already-table-heres-exactly-how-trump-wants-sharpen-knives/>

<sup>66</sup> <https://keepournhspublic.com/wp-content/uploads/2019/08/2019-08-Excluding-health-from-Trade-Deals-Nov15.pdf>

<sup>7</sup> <http://www.nhsbillnow.org/>

<sup>8</sup> [https://www.globaljustice.org.uk/sites/default/files/files/resources/trading\\_up\\_for\\_health\\_briefing\\_web.pdf](https://www.globaljustice.org.uk/sites/default/files/files/resources/trading_up_for_health_briefing_web.pdf)

<sup>9</sup> <https://www.opendemocracy.net/en/ournhs/nhs-already-table-heres-exactly-how-trump-wants-sharpen-knives/>

<sup>10</sup> <https://www.mirror.co.uk/news/politics/price-differences-between-uk-shows-18973739>

<sup>11</sup> Ibid.