UK TRADE & BUSINESS COMMISSION

UKTBC POST-SESSION REPORT: HEALTHCARE

APRIL 2023

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1. INTRODUCTION

The UK Trade and Business Commission brings together ten MPs from all nine Westminster parties and all four nations of the UK, along with business leaders and expert economists to provide independent scrutiny of the UK's trade deals and provide recommendations to the UK Government.

The Commission met on 20th April 2023 to examine the UK's healthcare sector and how it is affected by UK trade policy - and what it needs going forward.

The UK's healthcare sector - specifically the NHS - is under considerable pressure. Brexit has had an undeniable impact on the sector, leading to workforce shortages, long term uncertainty over regulation and new administrative processes.

International trade boosts domestic economic growth, a driver of improved health outcomes. High levels of population health are also a vital part of a thriving economy. But trade deals can also have negative consequences on public health if FTAs do not protect consumers and patients.

The UK Government insists that the NHS is 'not on the table' when it comes to future trade agreements, but our witnesses expressed concern around whether this statement is misleading. Our witnesses made it clear that the current priorities for the healthcare industry should be addressing staffing shortages and maintaining regulatory alignment with the EU.

2. SESSION WITNESSES

- **PETER ELLINGWORTH,** Chief Executive, Association of British HealthTech Industries
- **MARTHA MCCAREY,** Brexit and Health Researcher, Nuffield Trust
- **TAMARA HERVEY,** Jean Monnet Professor of EU Law, City University London
- **KATE LING,** Senior Policy Manager, NHS Confederation
- **DR NICK MANN,** GP, Keep Our NHS Public

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3. KEY FINDINGS

1. Regulatory alignment with the EU is important for the healthcare sector in the UK.

2. Protecting public health should be a key part of trade negotiations as some trade deals could contain provisions which harm public health.

3. The UK healthcare sector is facing severe staffing problems.

4. There are concerns around the privatisation of the NHS and whether it is possible to keep the NHS 'off the table' in trade negotiations.

3.1 REGULATORY ALIGNMENT

Leaving the EU has significant implications for the UK's medical regulatory framework. Following Brexit, the UK left the European Medicines Agency (EMA) and its own Medicines and Healthcare products Regulatory Agency (MHRA) became the sole agency with responsibilities for regulation over drugs and medical devices in use in the UK. Our witnesses highlighted the importance of regulatory alignment with the EU to ease the regulatory burden for researchers, producers and importers.

> *"Regulatory alignment is important because it significantly eases trade flows, as we've already said no free trade agreement gives better access to the EU market than EEA membership or EU membership, no free trade agreement replicates the benefits that flow from being part of the large EU market. UK non-alignment in terms of process, regulatory governance, has already had important effects, so the end of mutual recognition within EU membership of multiple aspects of medical products relations means higher costs and a greater burden on researchers, producers, and importers. The need to go through a different process for access to the UK market because different bodies are responsible makes the UK less attractive as a market and a smaller global player."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

> *"It makes life much easier for businesses if they have to follow as few as possible different sets of rules."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"I think from the point of view of patients and access to safe and reliable medicines and medical devices that the more convergence there can be globally in international regulatory standards, the easier it will be for us to trade goods and services across borders and to speed up licensing and access to the products that we need in the UK. So, there's a very delicate balance there obviously, but I think that it's possible for different jurisdictions to recognise each other's standards as equivalent without them being identical, they can be different and achieve the same outcomes."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"Alignment gives you, think of Covid, it gives you access to products during the pandemic when otherwise if the product didn't have some commonality of regulation you wouldn't be able to get access, and security of supply chain."* **- PETER ELLINGWORTH, CHIEF EXECUTIVE, ASSOCIATION OF BRITISH HEALTHTECH INDUSTRIES**

> *"From an exporting point of view there are many, we have something like 4,000 small companies in the UK and wider health technology, devices, diagnostics, they find it very, very difficult now to trade with EU countries"* **- PETER ELLINGWORTH, CHIEF EXECUTIVE, ASSOCIATION OF BRITISH HEALTHTECH INDUSTRIES**

Cases where regulations do not develop in-line with EU regulatory changes, are concerning. They leave the UK behind the curve of regulation and should be actively mitigated by the UK Government. The UK should not only actively align with the EU, but it should ensure that no other FTAs trigger regulatory divergence.

> *"The UK's position in terms of regulatory alignment with the EU can be seen in one of three orientations, it's either parallel with the EU, where the UK makes deliberate policy choices to stay in step with the EU, because bear in mind that EU policy and legal approach for medical products has not stayed still since EU law ceased to apply in the UK, or it can be divergent from the EU where UK or GB policy makers make deliberately different choices from the EU's, or it can be drifting where the UK makes few or no deliberate choices, meaning we've got an initial alignment that then divergence when the EU changes regulatory content, institutional structures or practices."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

> *"Accepting EU approvals and processes keeps costs lower, but it makes the UK a passive rule taker and it also means a need to follow effects of changes in EU regulatory standards as they would be accepted in a changing UK regulatory space and market, so there's a need for a public conversation about whether that is the right thing to do at a granular level. Over time drift matters because it's likely to impact investment decisions, research focus and product availability within the NHS, and then we need to look at the interactions of alignment or non-alignment in different stages of the regulatory life cycle for medical products, and the following rational actions of relevant actors."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

> *"The main area I would say to watch out for is about the friction between the agreements between the UK and the EU and the UK's new agreements with countries in the rest of the World that if these free trade agreements contain provisions that diverge significantly from existing EU norms, you know there is the possibility that it could trigger retaliation under the level playing field provisions of the free trade agreement, of sorry the trade and cooperation agreement between the UK and the EU."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"For both clinical trials of medicines and medical devices, the EU has, as we've already briefly heard, the EU has significantly changed its regulatory content since EU law ceased to apply in Great Britain, and further changes are in the pipeline, for example the European Union's Artificial Intelligence Act would categorise most uses of AI as a medical tool as high risk, so subject to significant risk assessment measures and human oversight."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

The UK Government's post-Brexit regulatory agenda is at odds with what experts in the healthcare sector know is beneficial for the UK.

> *"There's a rhetoric of divergence in government circles, associated with sovereignty is good in its own right and so on, and with seeing reduced regulation as a strong determinant of improved economic performance, and that might be contrasted with what we heard from industry, from policy actors within the NHS and from civil society who are much more interested in alignment with the EU."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

Witnesses highlighted the need to discuss regulatory alignment in detail, as healthcare regulation has a range of complex areas.

> *"It's really essential to think at a granular and detailed level when we're thinking about regulatory alignment in medical products or the products that the NHS needs and sweeping or over-simplified or ideologically based statements at best don't help and at worst they obfuscate realities that are actually complex."* **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

3.2 PUBLIC HEALTH

Public health should be a priority of any UK Government. The well being of a population is paramount to a thriving economy as one cannot be achieved without the other. Witnesses outlined the impact Brexit has had on public health, through both economic downturns or changes in health care. It is clear that the NHS is struggling to cope with high-demand, lack of funding, and an ageing population, compounded by the impacts of Brexit .

> *"We were looking at the effects of Brexit on health outcomes and if we look at it in terms of economic downturn obviously the OBR has been confirmed in its estimate of 4% loss of GDP following Brexit in the next ten to 20 years, what that ultimately means is a decrease in real income, a decrease in ability to afford food and decent housing and we know that that sort of has a downstream impact on health and health outcomes,"* **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

Trade deals that boost the UK economy are able to support the improvement of the UK's population health - but these improvements may not be felt evenly across the country.

> *"Boosting the UK's economy and exports, there's this argument that if we improve the economy overall, the nation's wealth, that will also improve people's health. This is a bit controversial because there'll be a differential impact, there'll be winners and losers, so there'll be some sectors and industries and regions that could benefit enormously from trade agreements with other countries because they've got new and expanding industries and you know there'll be job creation, regeneration all of that, and trade agreements can promote the UK as an attractive destination for investment, so there can be really big pluses."*
> **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"So we could see improvements in terms of longer-term public health because of wealth and regeneration and general economic uplift, or we could see it having a really bad effect in some areas and in some sectors."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

Public health requires forward planning to support an ageing demographic. Trade deals can form part of the forward planning strategy that the healthcare sector needs.

> *"The increasing ageing population, the UN did some work on this, and I don't think it's quite as bleak as we've been told for the last ten years. The population is increasing probably till about 2100, it'll level off at 11 billion, so going up from seven to 11 billion. And in the time between now and 2100 which is another lifetime for the NHS there'll be an increase of two billion people aged 30 to 60 and two billion people over 60. So, we are going to see an increased productive workforce which is there to support our older people."*
> **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

There are concerns around how trade deals could introduce mechanisms that damage public health and introduce food products or medicines to the UK market that do not uphold UK public health standards.

> *"I suppose the two things that might be grey areas, there's been a lot of concern about the investor state dispute parts of, well aspect of the CPTPP. Certainly, in theory it means that a company, an investor could decide to challenge some decision around standards of public health for example, some decision that was made by a future UK government, and they could decide to try and challenge that through the investor state dispute mechanism. I think it's a remote possibility, I don't think there is actually any instance of the UK ever having lost such a case, I think the bar, the standard is pretty high though there are concerns about how much it would cost to defend such a case and the so-called chilling effect. Whether or not in fact Governments might think twice about introducing certain public health measures just in case a company were to challenge them. It's very hard to tell because it's speculative, it's all hypothetical, we don't really know whether this is actually likely to happen."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"There's a slight concern that by opening up your markets through trade deals you'd open access on an equal level to a certain amount of food products with standards that might be more concerning, so others have raised for example you know Australian meat and pesticides. So yes, that ultimately would be, we'd sort of be locking in that access and compromising our own standards for this."* **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

> *"What I've been seeing over the last five to ten years is a significant reduction in the quality and standards breaks, checks and balances that are put on drugs and medical devices."* **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

> *"Slovakia decided to make its health insurance system non-profit and they were sued. Germany was sued for I think it was about €7 billion for deciding to shut its nuclear power stations by the Vattenfall Swedish firm and they won, the Swedish firm won. And Australia of course was sued by Philip Morris for bringing in plain packaging on its cigarettes. So, these are very real examples of governments being sued for very large sums by industry for implementing public health measures in the public interest and we need to be wary of that"* **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

Leaving the EU has also caused a reduction in health funding, directly impacting public health. The UK Government has not taken adequate action to mitigate this.

> *"Some other things sort of relate to public health on a population basis, so for example funding that came from the EU and went directly to the UK devolved nations on things like life sciences and cancer hospitals, we heard from people we interviewed on our project that there's a very, very poor engagement, we know that that funding is going to be essentially repatriated to Westminster and then redistributed from there to individual countries. The engagement has been pretty woeful from the central Government, we still don't understand what the sums are and how they're going to be redistributed and that could have a fairly significant impact."* **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

3.3 STAFFING SHORTAGES

The UK's healthcare sector, particularly the NHS, is facing considerable workforce shortages. Brexit has had a huge impact on staffing shortages, leading to a decrease in EU doctors and nurses. Evidence suggests that increased visa costs and an increasingly hostile environment has impacted the number of EU workers joining the healthcare workforce in the UK.

> *"If we look at sort of the direct effects of leaving the EU, those would look like a significant increase in paperwork and costs and that's not just for individual applicants trying to join, so bureaucracies and visa costs, but also for the institutions managing those costs, and I would say that is particularly significant for adult social care where there's a really high number of small and medium enterprises who will increasingly find it difficult to deal with those costs. On top of that you look at a problem of, well evidence and/or perceived discrimination, a feeling of just feeling unwelcome, what can be referred to as a hostile environment now, extended to new staff, that's something that's been raised through participants in our study but can also kind of be seen through NHS surveys in the last few years."* **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

However, staffing levels in the NHS have long been inadequate and witnesses highlighted a lack of forward planning and staff retention schemes that have contributed to the issue.

"Setting the historical context that the UK has historically been dependent on large amounts of overseas staffing that we've always had a lower doctor/patient ratio for example than the European norm, all of that, so I agree with everything that she's said. The most obvious change really since Brexit has been the change in the composition of the healthcare workforce [...] the current economic climate, the availability of other less onerous jobs at a similar level of pay for example in retail hospitality for people at the lower echelons of the healthcare and particularly social care sector is you know a really, really big problem and we see that being played out at the moment of course in the industrial action in the NHS."
- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION

"I think it's worth going back to existing long-term trends and think of sort of changing a trading environment and Brexit having exacerbated them more than anything else, so historically the UK's health system extensively requires migration of healthcare staff and health and social care staff and has done so at times where it required surge capacity or it was facing shortages. It's also true that the UK has and has in the long-term had fairly small number of doctors and EU nurses per population than say its peers in the OECD and sort of very significant issues linked to pay and progression and retention and staffing for doctors, for nursing we've seen estimates that we're still going to look at shortages of around 35-40k by 2030 by the Health Foundation and obviously in general practice and in adult social care where we've actually seen the level of vacancies increasing over the pandemic and sort of an actual decrease in access to social care by older people requiring it." **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

Dealing with healthcare workforce shortages presents particular challenges as training takes a significant amount of time. Our experts detailed policies that could be adopted in order to begin the work of filling gaps in the healthcare workforce. Trade agreements can help fill vacancies but the UK Government should also implement domestic training strategies.

"There are elements in trade agreements that could be used to encourage inward mobility, particularly for example Government to Government agreements regarding visas or training schemes that would help to encourage international recruitment. Cost of, well the cost of medicines and supplies that we can keep costs down by reducing not so much tariff as Peter said but non-tariff barriers, so regulatory barriers that increase the cost of imports and that therefore you know the availability and the costs to the NHS of medicines and medical devices. And diversifying supply chains by accessing new markets, I think that's something that we can definitely achieve and the CPTPP may be a good thing from that point of view."
- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION

"Essentially there's no short-term fix, that international recruitment is going to happen in the shorter term and there needs to be honest conversation, long-term planning to understand what pay and retention is going to look like in the next five, 10, 15 years and crucially that planning needs to include surge capacity and it needs to build in the notion that international recruitment is a short-term fix, you just can't continue that way." **- MARTHA MCCAREY, BREXIT AND HEALTH RESEARCHER, NUFFIELD TRUST**

"I have to say that longer-term it can't just be about more and more and more staff, you can't end up with half the population working in health and social care, there has to be a way of looking at delivering services differently, more preventative services, services closer to home and out of hospital, more digital service provision where that's appropriate and simply ways of doing things differently because you can't just keep on throwing more and more and more staff I think at the health and social care sector."
- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION

"We should be lobbying for the EU staff return, half of the new NMC, Nursing and Midwifery Council new applicants over the last year and half of the new GMC applicants for the last year were born overseas and in terms of the nurses, this is total for the health service, only 663 out of 22,700 were from the EU. So, you know, the EU should be our primary market for trade in staff and skills." **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

> *"There certainly has been a very big increase in the number of training places, not only for doctors and nurses but also for allied health professionals, so there are more places available, more training being offered I think than ever before. So there's certainly a big push to try to get people into healthcare professions and healthcare careers and I'm aware of a great deal, our members in the NHS Confederation who are the NHS Trusts effectively, there's huge amounts of collaborations going on locally between for example healthcare trusts and their local universities and training colleges in trying to encourage not only young people, also older people into healthcare education courses."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"There's also various schemes for example involving recruiting people from the Armed Forces, the Step into Health scheme and you know targeting particular populations, so there are certainly examples, NHS Employers with a capital E, which is the organisation that represents all of the NHS employers with a small E, certainly across England, they've got various good examples and case studies where there have been very successful local partnerships."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

3.4 PRIVATISATION

Throughout the session there was an awareness that debates around healthcare and trade often focus on whether the NHS is 'on or off the table' in trade deals - leaving it potentially subject to corporate interests from other countries. The UK Government has asserted that the NHS is off the table but there are concerns about whether this is possible in practice.

> *"The deals that the UK has signed so far don't commit health services in their government procurement commitments for example and they don't go beyond what is already permissible in the NHS internal market in England, and [...] there's a long history in successive governments of issues like allowing a degree of privatisation in the NHS. So, this has been happening for a long time and UK and international companies have for a long time been able to bid to provide NHS services and do so."* **- KATE LING, SENIOR POLICY MANAGER, NHS CONFEDERATION**

> *"The NHS shouldn't be on the table here and that's something we'd have complete agreement on, it's a jewel in the crown in the UK, it's socially funded, it's part of our DNA as a country."* **- PETER ELLINGWORTH, CHIEF EXECUTIVE, ASSOCIATION OF BRITISH HEALTHTECH INDUSTRIES**

> *"It's no coincidence that we have an enormous number of US healthcare corporations and their subsidiaries already operating general practice, operating hospital services, potentially operating our data through Palantir and it seems very US-focused. So, the NHS being off the table I'm not sure is a believable phrase actually."* **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

> *"The lobbyists from the US have been very, very active for the last more than ten years, the Alliance for Healthcare Competitiveness which was pretty much led, steered and introduced by Simon Stephens explicitly talks about repeatedly and explicitly talks about breaking open the NHS market and worldwide exporting their, I would say, failing health system and breaking up state-owned enterprises, that's their key and they're aimed at the UK."* **- DR NICK MANN, GP, KEEP OUR NHS PUBLIC**

Our witnesses agreed that the NHS should not be 'on the table', but that trade brings up more complex issues that should be considered. As a consequence, conversations around how trade deals will interact with the NHS should focus on the granular details as the issues are complex and should not be oversimplified.

"I don't think the phrase, the NHS being on the table in a trade negotiation is at all helpful and I think what is much more helpful is a much more granular public debate about the specific elements that we're talking about, so we're talking about the English NHS for certain things, we're talking about tiny elements in Scotland, we are talking about intellectual property, we're talking about medicines pricing and we're talking about investors state dispute settlement. So I just think that the public debate in terms of the NHS being on the table is woefully inadequate, I think we need to have a much more honest and detailed conversation that's not in these kind of ideological terms, but that practic ally recognises that in some regards the NHS is on the table, and that's because of domestic decisions, it's nothing to do with our trade relations" **- TAMARA HERVEY, JEAN MONNET PROFESSOR OF EU LAW, CITY UNIVERSITY LONDON**

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