

The UK-US Free Trade Deal and UK Health Services

by Gus Fagan



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Trade deals are not about trade as we normally understand it

Trade in goods such as cars and agricultural products is a very small part of modern trade deals. This basic trade was agreed a long time ago. Modern trade deals are largely about having common rules (standards, regulations, protections) and opening up public services to private corporations (always described as “liberalisation of services”). What the Centre for Economic and Policy Research said about the EU’s failed trade deal with the US (TTIP) back in 2016 is still true of any deal between the US and the UK: “As much as 80% of the total potential gains come from cutting costs imposed by bureaucracy and regulations, as well as from liberalising trade in services and public procurement.” It is this “liberalisation of services”, a pro-business policy pursued and enforced by all western governments, that is behind the UK government’s push to contract more and more health services to private companies.

The use of language to mislead

The UK government has begun negotiations with the USA over the free trade treaty. It has published an initial [document](#) setting out its aims in the negotiations. According to Boris Johnson, “There are no circumstances whatever in which this government or any Conservative government will put the NHS on the table in any trade negotiation. Our NHS will never be for sale.” The claim that “the NHS is not for sale” is legally true. The government “contracts out” NHS services to firms like Deloitte and Serco. These do not own the service, they provide it on behalf of the

NHS. They can't charge patients for the service. The real issue for NHS campaigners is the contracting out. The government claims that the NHS is not for sale but continues to contract health services to private corporations. The "not for sale" claim is just a way of misleading the public about what is really at issue.

Another common phrase used by governments in response to claims that public services are up for sale in international trade treaties is that the government "maintains the right to regulate" public services. In the UK government document, we find exactly this claim, that the government will "protect the right to regulate public services". (10) This assurance is completely misleading. All rights are limited by law. And in a legal treaty concerning trade in services, the right to regulate will be constrained by the terms of the legal treaty. So the government will have the right to regulate public services within the terms set down by the treaty. For example, most trade deals contain "standstill" or "ratchet" clauses that lock in existing levels of privatisation and make it difficult for any government to roll back privatisation or deregulation in the future. For instance, some Canadian provinces offer public (state) automobile insurance that is cheaper than private insurance. Existing public insurance in these provinces was protected in CETA, the EU-Canada trade deal. But now, if another province wanted to introduce public car insurance, they couldn't do so because of CETA.

US corporate access to the NHS

The real issue for NHS campaigners is whether US corporations will have the right to access the NHS and other public services markets in the UK in a way that will increase the trend towards greater privatisation.

In its [opening document](#), published in November 2019, the US set out its demands with regard to services. Any treaty must prohibit

*"Discrimination against foreign services suppliers;
Restrictions on the number of services suppliers in the market;
and Requirements that cross-border services suppliers establish a local presence."*

If the UK wants to make any exceptions, then there must be

"... negotiation, on a negative list basis, of the narrowest possible exceptions with the least possible impact on U.S. firms." (5)

The UK has accepted that equal access for the US is part of the deal. This is stated in the part of the UK document dealing with public procurement. Public procurement is a big issue for the UK in its relations with the US. Many state governments in the US, when contracting public services, have a policy of "buy American" and the UK wants to get into that US state procurement market. The US procurement market is valued at £1.4 trillion and the UK currently has access to only a third of this market. The US, in turn, will want access to state procurement here. Will the US have the right of access to NHS and other public service contracts in the UK? Here's what the government document on procurement says:

"There were some comments calling for the UK's international procurement obligations to favour UK domestic suppliers, but the UK's domestic regulations, which apply to Government procurement, require contracting authorities and contracting entities to treat suppliers equally and without discrimination. These principles will continue now the UK has left the EU". (21)

In other words, the US will have access to government procurement of services in the UK; US corporations will be treated "equally and without discrimination".

But all kinds of corporations have access to public service contracts. What difference would it make if US corporations were thrown into the mix? In fact, they are already part of the mix and have been for some time. Any US corporation that has a branch or subsidiary in the UK can tender for NHS contracts. US companies now run about 13 per cent of NHS mental health beds. Optum, headquarters in Minnesota, is a subsidiary of the US giant health corporation, United Health. Optum has contracts with many CCGs across England. In 2015, Optum won a place on NHS England's Lead Provider Framework (LPF) for commissioning support services. In 2014 Optum won a £150 million three-year contract to carry out acute commissioning services for 18 Wessex and the Thames Valley clinical commissioning groups, including Oxfordshire CCG (*Health Service Journal*, 14 April 2014).

If US corporations like United Health already have access to NHS contracts, what difference would a US-UK trade deal make? It would make a difference in two ways. Firstly, US corporate access to the NHS would be anchored in an international legal treaty which a future government could not change. During the past year there was some talk of the NHS moving away from competition and towards greater "integration". There was even a suggestion that the government would abolish the need for CCGs to tender services on the private market. But if US corporate access to public service contracts were written into a US-UK trade deal, it would be difficult to see how abolishing tendering in health services could happen without legal challenge.

Secondly, there's the hugely unpopular ISDS which sank TTIP. The Investor-State Dispute Settlement (now renamed, after the TTIP debacle, as Investment Court System) would allow US corporations to sue UK governments if, in the awarding of public service contracts, US corporations were treated unfairly, or governments didn't adhere to the treaty, or future corporate profits were negatively affected by new government regulations. This threat in itself has a powerful influence on government decision-making and the framing of new regulations.

What's the solution?

Is it possible to protect the NHS from a trade treaty dealing with services? Yes, one way to do this is by "positive listing". Only the services offered explicitly are ruled by the treaty. If health services were not listed, the NHS would be excluded from the treaty. The alternative is "negative listing" where everything is on offer unless it is explicitly excluded. This is the US favoured approach. In the negotiations between the EU and the US over TTIP, member states of the EU had the option to exclude specific services. The UK chose not to make any exclusions. So if the government really wanted to show that the NHS is not on the table, it could do that quite simply with a statement in the treaty that all health services were excluded from the treaty.

The US-UK trade deal will use negative listing. What we need to demand, therefore, is that the NHS should be explicitly excluded from the treaty. In the negotiations with the US over TTIP, the German government made such an explicit exemption which stated that it could adopt any measure in health and social services, even "where services may be provided by different companies or entities involving competitive elements". This reference to competitive elements is important because free trade treaties have defined "public services" as "services carried out exclusively in the exercise of governmental authority" and not involving competition.

Finally, there's the question of public and parliamentary input into the whole process of agreeing and ratifying an international trade deal. Reports in the media have said that the Conservative government may limit or even [exclude parliamentary debate](#) on the terms of trade treaties after Brexit. It is entirely in keeping with the record of this government that it would attempt to limit parliamentary debate or involvement except for the final ratification of the deal which would be a simple take-it-or-leave-it vote.

Digital NHS

Digital services are an increasingly important area of commerce and a key area for trade in international services. In the document setting out the US's aims in any trade deal with the UK, it makes clear that the US wants unlimited access to UK

digital data, the right to move data to the US, and the right to protect US source codes:

“- Ensure non-discriminatory treatment of digital products transmitted electronically and guarantee that these products will not face government-sanctioned discrimination based on the nationality or territory in which the product is produced.

- Establish state-of-the-art rules to ensure that the UK does not impose measures that restrict cross-border data flows and does not require the use or installation of local computing facilities.

- Establish rules to prevent governments from mandating the disclosure of computer source code or algorithms.” (6)

Digital services are a big part of government plans for the transformation of the NHS. In 2018, the Department of Health issues [a document](#) setting out plans to digitise NHS services. This involves data storage, sharing, and access, online access to clinicians, personalised health information and advice, AI, robotics, a vast array of apps, etc. The document makes clear that the technology companies will be the main drivers in this digitised NHS. Any barriers to the entry of private providers will be removed. The central role of the private sector is repeated many times in the document:

“We already have some of the world’s leading healthtech companies ... And, in the NHS, we have the world’s biggest health institution. ... We are committed to working with partners to make that happen.”

“We need to build nationally only those few services that the market can’t provide and that must be done once for everyone, such as secure login and granular access to data. ...

“We want to make the rules and opportunities as clear and simple as possible to create a competitive marketplace for innovation where any tech company can compete and have an equal opportunity to deliver.”

“It means removing barriers to market entry for innovators and developers, including streamlining and simplifying the landscape for innovation, so that innovators and those working in health and care know how and where to find the support they need.”

“Our goal is to simplify the landscape for innovators wanting to work with the NHS and to make it significantly easier for health technology innovators to navigate the system.”

And this takeover of digital NHS will be from the centre where any regulations preventing the entry of private companies will be removed:

“For the NHS, we also want to remove the barriers to technology providers selling into the system – removing the need for innovators to travel the country selling to one trust at a time. We will support the procurement of technology through the application of procurement frameworks.”

Private companies will not only manage the technological infrastructure but will also be involved in areas that are more clinical than technological. Right now, for instance, private companies can send sample medicines to GPs but there is a suggestion that, in the digital NHS, they can make clinical recommendations direct in the individual patient record:

“vendors with products that could support patients can, with consent, securely access and contribute information back to a patient’s care record”.

So the aim is clear: a health market in which high tech companies compete to run digital NHS.

As in so many other areas of the NHS, US firms are already part of the digital network. According to the *Health Service Journal*,

“Palantir ..[a US data mining firm] is part-way through a three-month [contract] with the CSU on behalf of NHS E/I to track, model and visualise various data related to Covid-19. ...

Palantir is chaired by Peter Thiel, who is best known for setting up Paypal with Elon Musk and others. The Silicon Valley firm is known for its work with military, intelligence, and law enforcement agencies. Palantir has faced criticism over data mining software used by US immigration officials to investigate undocumented workers.” (HSJ, 27 May 2020)

Palantir also works with another company, Faculty, which the HSJ describes as “a company linked to Dominic Cummings”.

Given the size of the NHS and the complexity of the digital infrastructure that is to be created and managed, the financial investment will be huge as will the potential profits. Of course, the NHS itself doesn't have the technological skills to create such a digital infrastructure but this leaves open the question of ownership and management. Running a digital NHS is not just a technological issue – it also involves political and clinical choices: not only questions of access to data and privacy but also who owns and manages this important sector of future healthcare.

The power of finance to influence trade deals

When top government officials set down their aims and demands in free-trade negotiations, they don't do so in a vacuum. Behind them are very powerful forces that we shouldn't underestimate.

When we hear statements like “the world's richest 1% get 82% of the wealth” (Oxfam), we tend to think of very rich individuals, the traditional big capitalist owners or big bourgeoisie, the Rockefellers of yesteryear and the Bransons of today. But corporate ownership and wealth concentration has changed radically in recent years and that matters because it changes how we need to view the exercise of corporate power, the power to influence government decisions.

In the United States, for instance, three financial investment firms, Blackrock, Vanguard, and State Street own assets worth \$17,000 billion (more than the GDP of China in 2019). These three giants are the top shareholders in 40% of US listed firms. They are the dominant shareholders in 88% of the 500 largest US firms. These three institutional shareholders coordinate their voting and concentrate their immense corporate power. These are massive institutions that also manage the money of other people, from the billionaire class of Sanders' campaign to the pension funds of UK workers.

The UK is the second largest country for these three firms. According to research carried out by the Social Science Research Network in Amsterdam,

“... the big three are the largest owner in approximately 60 percent of the FTSE 100 corporations. In addition, they are the second and third largest owner in another 25 percent. ...

In short, BlackRock, Vanguard, and State Street have become a crucial factor concerning corporate ownership in the United States and the United Kingdom. Seen together, they are the largest owner in the majority of member firms of the dominant American and British stock indexes.”

For instance, who owns United Health, one of the biggest healthcare corporations in the world (2019 revenue of \$242.2 billion) and a prominent corporation in the UK health system? It is owned by financial asset firms. The list includes Blackrock (biggest investor), Vanguard, State Street, JPMorgan, Morgan Stanley, Goldman Sachs, Credit Suisse, Deutsche Bank and more than 150 other banks and financial investors (source: [Stockzoa](#)). The firm spent over \$4 million on lobbying governments in 2018.

Who owns Serco, another big player in the NHS? Once again, it's the familiar names from Wall St and the City: Blackrock, USB, Vanguard, JPMorgan, Barclays, State Street, Standard Life and a host of other finance groups. The top 25 of these shareholders own 78% of the company. Popular reporting, for instance an excellent article in The Guardian on Serco by John Harris back in 2013, tends to name the local managers of these firms but not the big financial firms whose interests these managers represent. Capita, another big name in contracting out, is also owned by financial asset groups, among them: RWC Partners, Invesco, Blackrock, Vanguard, Morgan Stanley, Legal and General, State Street, etc.

The tendency towards monopolisation and the concentration of corporate power was already familiar over a century ago but it continues at a rapid pace today. The NHS frequently contracts services to professional service firms like Deloitte (accounting, management consultancy). In the 1980s there were eight major service providers known through most of the 20th century as the “big eight”. Today there's a “big four” - Deloitte, Price Waterhouse, Ernst and Young, and KPMG. A similar concentration has taken place in the area of financial investment. The wealth and power in the hands of investment managers like Blackrock and Vanguard increased massively after the financial crisis of 2008. The owners of money see these powerful

firms as safe hands for the management of their wealth. These are the corporations that are setting the terms for international trade deals.

The City of London is not just a location for British banks and insurance companies. It is a centre for international finance, hedge funds, accountancy firms, as well as their trade groups and lobby groups (often disguised as think-tanks). The influence of the City is not just due to its size but the way it is hand and glove with the British political establishment. George Osborne was advisor to Blackrock while he was still an MP. Tony Blair joined JPMorgan shortly after leaving office. HSBC's former chair became a trade minister. The examples are numerous.

There are a number of mechanisms for the exercise of corporate influence on governments. An important one in the UK is the "revolving door" but the most important mechanism is lobbying. This involves direct and secret meetings between government and big business and the direct involvement of corporations in actually deciding the text of government policy. According to [a count](#) by Global Justice Now and Corporate Europe Observatory, in late 2017, 91 percent of the meetings that UK trade ministers had over a period of eight months were with business groups. ... One sector alone, the financial sector, had [more meetings](#) with UK Brexit ministers than all non-business groups put together.

The present prime minister is no stranger to lobbying. In April 2009 the European Commission proposed the first-ever EU attempt to regulate hedge funds, venture capital, and private equity, the Alternative Investment Fund Managers Directive (AIFMD). According to [an article](#) in The Guardian, the hedge funds mobilised then-mayor of London, Boris Johnson, to lobby on their behalf. The financial sector had provided 77% of his election campaign funds and he duly took a lobbying trip to Brussels to warn against AIFMD.

The financial firms represented by the City of London and Wall St are the most concentrated and powerful force in modern capitalist society and they are also more closely intertwined with governments, especially in the US and the UK, than at any time in history. They are centrally involved in the formation of trade policy here and in the US. NHS campaigners need to be constantly aware of the power and influence of these financial giants that are the real power behind the more familiar names we run up against in the campaign against NHS privatisation. We need to raise awareness of the power of these global financial giants and the interests they ruthlessly pursue.

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