NHS Confederation response to the House of Commons International Trade Committee call for evidence on trade negotiations with India

Who we are

1. The NHS Confederation is the membership organisation that brings together, supports, and speaks for the whole healthcare system in England, Wales, and Northern Ireland. The members we represent employ 1.5 million staff, care for more than 1 million patients a day and control £150 billion of public expenditure. We represent hospitals, community and mental health providers, ambulance trusts, primary care networks, clinical commissioning groups and integrated care systems. Some of our members work internationally in addition to delivering domestic services.

2. In responding to this call for evidence, we have sought feedback from our NHS members and have incorporated valuable first-hand experience from those who have engaged with partner organisations in India. We have also exchanged views with relevant Government departments and agencies including the Department for International Trade (DIT), Healthcare UK and the British High Commission in India. We used this information to inform our detailed response in August 2021 to the DIT's consultation on UK-India trade negotiations.

Summary: Our recommendations to Government for inclusion in a future FTA with India

3. Reservations for health services in line with the UK's WTO GPA reservations, excluding publicly funded healthcare services from the scope of the FTA and/or exempting such services from liberalisation commitments.
4. An explicit recognition of the right of government to protect and promote public health and safety, through policy, legislation and regulation.
5. Removing disproportionate barriers to overseas bidders for services: commercial presence by organisations in the other party's territory to be allowed but not required, allowing individuals to work without requirement for permanent in-country establishment.
6. In relation to technical barriers to trade (TBT), provisions facilitating regulatory convergence for standards in both goods and services.
7. Visa free business travel for short periods of time, and/or visitor visas for longer periods to undertake permitted activities such as provision of clinical services or health-related research.
8. Clear, legally enforceable provisions for standard contracting and prompt payment procedures, underpinned by fair procedures for dispute resolution.
9. Protection of intellectual property rights and branding (e.g. NHS branding).
10. Digital: agreement on data protection standards to apply to collection, location and transfer of data (e.g. patient data required for clinical or research purposes).
11. Clarity about taxation on income earned from activities in the other party's territory under their taxation regime.
12. Safeguards against perpetuating or facilitating human rights abuses as a result of the FTA's provisions, and promoting improvements (e.g. equality of access to services for women).

Why we are submitting evidence

13. We have not attempted to answer all of the questions in the call for evidence. Instead we focus on those issues that are of particular relevance to the National Health Service and on the likely impact of a UK-India free trade agreement (FTA) for our members and the patient services they provide.

Key areas of interest to NHS organisations:

14. Services, Digital, Innovation, Government Procurement, Intellectual Property, Taxation, Dispute Settlement, Recognition of professional qualifications.

15. In addition to trading partnerships between individual Trusts and partners in India, the wider NHS has a vital interest in future investment and innovation in new medicines and health technologies and in the research that underpins them. India is an important prospective partner for these activities, given its strong science and technology base and its key position in the global supply chain as a manufacturer of pharmaceuticals. Commercial research and development activities are often conducted by private industry, research institutes or by Government and its agencies in collaboration with NHS organisations (for example when conducting clinical trials): NHS service providers and patients are the end beneficiaries of these innovative products and treatments.

16. A free trade agreement with India that included provisions such as removing disproportionate barriers to overseas bidders for services and for data sharing, protecting intellectual property rights, establishing fair procedures for dispute resolution and facilitating regulatory convergence for standards in both goods and services, would be a "win/win" for both countries.

17. The NHS has strong and longstanding connections with India, especially as a source of staff. Historically, the UK has recruited healthcare professionals from India in large numbers, assisted by the similarity in healthcare education and training and the advantage of shared English language.

<u>Services and digital</u>

18. Some NHS organisations provide their expertise to foreign organisations (both governmental and non-governmental) via commercial partnerships. Engagements range from providing short term, specialty specific education and training, both remotely and through brief in-country visits, through to providing specialist private patient services in the UK to state sponsored patients.

19. These services provide a small but significant additional revenue stream to NHS organisations that they reinvest into frontline NHS services. Growing these commercial partnerships can be shown to materially benefit NHS patients and professionals, countering objections that such activities detract from care for UK patients or encourage the "privatisation" of the NHS.

20. More extensive trading has been hampered by cost factors – NHS organisations cannot make a lot of money out of trading with India as they do, for example, when entering into commercial activities supplying clinical services, education and expertise into wealthy Middle Eastern Gulf states. There is increasing potential for this kind of activity with the Indian private healthcare sector, providing services to the affluent urban middle classes, but little opportunity to get a commercial return from the public healthcare sector which serves

the bulk of the population. This has been cited as the main reason why NHS Trusts tend not to actively pursue commercial partnerships with public sector bodies in India.

21. This is exacerbated by the inability of public bodies, unlike companies, to claim exemption from corporation tax (currently in the region of 10%) on income earned in India. Lack of clarity regarding tax liabilities when undertaking activities abroad hampers financial planning for NHS organisations. A tax agreement between the two countries rectifying this situation would be extremely helpful.

22. We are pleased to see that the UK's negotiating objectives state clearly that *"the National Health Service (NHS), its services, and the cost of medicines are not on the table. To this end we will not accept any provisions that would increase the cost of medicines for the NHS. Protecting the NHS is a fundamental principle of our trade policy, and our commitment to this will not change during our negotiations with India".*

23. The NHS Confederation has consistently argued that the NHS should be kept "off the table" in this manner. See the Confederation's 2019 paper "The NHS and future free trade agreements".

24. As in the UK's trade agreements with other countries, for example the recent agreement with Australia, we expect the UK to schedule reservations for health services in line with our WTO GPA reservations, excluding publicly funded healthcare services from the scope of the FTA and/or exempting such services from liberalisation commitments.

25. This does not however preclude NHS organisations from inviting bids from overseas investors to provide services to benefit patients, as at present. We understand that current procurement practices in India tend to favour domestic bidders. We would welcome the opportunity for our NHS members to provide services to India by establishing a physical presence in India where appropriate, without there being a requirement to do so.

26. We note that the UK's recent agreements use the "negative list" approach whereby full market access applies except for services to which reservations are applied. The Confederation has always advocated positive listing to provide more explicit safeguards, especially in respect of novel future services. We note however that the UK has not taken out reservations in respect of digital health services, which (given the geographical distance between the two countries and the expansion of remote service provision over the internet) could offer significant opportunities.

27. We also note the standard wording in recent agreements defining a "service supplied in the exercise of governmental authority" as "any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers" – this allows potential ambiguity where some publicly funded NHS services may fall within this definition.

28. We welcome the statement in the negotiating objectives that the government will *"protect the right to regulate public services, including the NHS and ….continue to ensure that decisions on how to run public services are made by UK Governments, including the devolved administrations (DAs), and not our trade partners".* We therefore expect inclusion in the trade deal with India of protections for the right to regulate public services (including the NHS).

29. We also welcome the intention to facilitate business travel and mutual recognition of professional qualifications, and to pursue an ambitious digital chapter in the FTA that will *"seek commitments on free and trusted cross-border data flows, prevent unjustified data localisation, and maintain the UK's high standards for personal data protection."* We would welcome a robust digital/data sharing agreement to maximise collaboration on data sharing and enable secure access to anonymised NHS data for research and innovation.

Innovation and research

30. We welcome the Government's intention to strengthen the UK's economic partnership with India focusing on the role trade policy can play in facilitating innovative technology, innovation and research and development (R&D). We would therefore welcome provisions in a UK-India Agreement for a mechanism to discuss the impact of innovation on trade including regulatory approaches, commercialisation of new technology and supply chain resilience.

31. The NHS has an excellent worldwide reputation, and the UK is an acknowledged life sciences powerhouse and a world leader in research and innovation in (for example) genomics and artificial intelligence. The UK regulator, the MHRA (Medicines and Healthcare Regulatory Agency) is driving an ambitious programme to incentivise development of new products and fast track marketing authorisation whilst maintaining high patient safety standards, and by joining international regulatory forums beyond the EU.

32. India too has a strong science and clinical base, and there are significant opportunities for future collaboration in healthcare including pharmaceuticals, medical technology and life sciences. The technical barriers to trade (TBT) chapter of the Agreement could helpfully provide for removal of unnecessary obstacles including increased co-operation regarding technical standards, regulations and conformity assessments, which would (for example) significantly assist importation and marketing of medical devices authorised by the other country's regulator. Maximum alignment of regulatory standards moving towards international "norms" for the development and manufacturing of medicines and medical devices would be a win/win for patients, healthcare providers and industry in both countries. We note that the recent agreement with Australia includes establishing a committee to encourage maximum mutual recognition whilst respecting national standards, and advocate a similar provision in a trade deal with India.

33. On a practical level, the use of English as an official language in India enhances the attractiveness of UK/India partnerships in the delivery of education, training, clinical consultancy and collaboration in medical, scientific and technological research.

Public health

34. We do not propose to comment extensively on provisions in the Agreement affecting (for example) environment, food safety and animal welfare, all of which impact public health. However we note that the sanitary-phytosanitary provisions in recent trade agreements recognise the principle of equivalence of SPS measures where they achieve the other country's appropriate level of protection, "based on scientific principles", and that this departs from the more restrictive European Union "precautionary principle" approach.

Contract enforcement and dispute settlement

35. As publicly funded healthcare organisations, NHS organisations are subject to high levels of scrutiny and a higher-than-normal duty of care to ensure that their resources and reputation are properly protected. Working internationally can present additional challenges for NHS organisations due to the variation in legal systems between the UK and their international partner.

36. Enforcement of contracts for provision of services and goods and their jurisdiction has been problematic in some of the collaborations between NHS organisations and their Indian partners. It would be helpful for the trade agreement to include robust legal safeguards covering full and timely payment procedures and their enforcement. We would welcome a UK-India trade deal that includes a fair and transparent state to state dispute settlement mechanism, but not an investor-state dispute settlement (ISDS) system that would allow investors (companies) to sue governments.

Intellectual property

37. We urge that the UK medicines pricing system between government, the NHS and industry that has successfully kept UK medicines prices lower than in many other countries should not be threatened by the IPR or other provisions in the Agreement. This is an important issue in relation to trade with India, which supplies a high proportion of the UK's (and the world's) generic (non-branded) medicines. We therefore support the Government's intention in their outline approach to *"secure patent provisions which achieve an effective balance between rewarding research and innovation, whilst reflecting wider public interests such as ensuring access to medicines".*

38. Improper use of the highly prized NHS "brand" has sometimes been a thorny issue in collaborative ventures between NHS organisations and their Indian counterparts. Protection of the NHS's reputation is important to us and the IPR provisions in a future FTA should reflect this.

Workforce

39. India continues to be a major source of international recruitment for NHS clinical staff. At 30 September 2021, 32,576 of the 744,929 healthcare professionals registered with the Nursing and Midwifery Council had trained in India. Nearly 14,000 doctors practising in the UK obtained their medical qualification in India, compared with over 74,000 trained in the UK. Staff of Indian nationality constituted the largest grouping in the NHS after British nationals, ahead of Filipinos and Irish.

40. Indian applicants for professional registration with UK regulators such as the GMC and NMC must meet UK standards and vice versa: medical, dental, nursing and allied health professional education and training in India is delivered in English and is similar to the UK model. We would want the negotiated text to allow for regulator to regulator mutual recognition agreements where desired. Combined with domestic immigration policy such as visa free travel and visitor visas for activities such as healthcare and medical research, such arrangements can facilitate international mobility by reducing immigration barriers for desirable migrants with medical, scientific or technical skills.

41. The UK and India agreed a memorandum of understanding on a Migration and Mobility Partnership in 2021, offering favourable terms for Indian graduates to come and work in the UK . In particular it established a Young Professionals scheme fast-tracking 3000 Indian professionals aged under 30 to work in the UK for up to two years.

42. In the healthcare sector, there are successful agreements in place with India encouraging Indian nurses, for example, to come to work for the NHS. Health Education England (HEE)'s highly successful Global Learners Programme enabled overseas nurses to come to the UK for a specified period to work, returning to their home country with enhanced experience, skills and (in some cases) evidence of further training and qualifications. HEE has also recently co-developed a Clinical Radiology Programme to enable the NHS to recruit 120 senior Indian Clinical Radiologists to tackle the acute shortage of consultant radiologists.

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