NHS Confederation

Response to the Department for International Trade's consultation on trade with the Gulf Cooperation Council (GCC)

January 2022

About us

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 promote collaboration and partnership working as the key to improving population health, delivering high-quality care, and reducing health inequalities.
2. In responding to this consultation, we have sought feedback from our NHS member organisations regarding their experiences (successful and unsuccessful) of collaboration with organisations in the six countries of the GCC. We have also exchanged views with Government departments and agencies.

Our priorities in a future free trade agreement

3. Trade in Services, Intellectual Property, Dispute Settlements, and Human Rights.
4. The organisations that the NHS represent are primarily providers and commissioners of NHS services, and as such our response to this consultation is framed with institution-to-institution trading partnerships in mind.

Key area of interest to NHS organisations:

5. Legal safeguards in contracts for provision of services and goods
6. Payments: Full and timely payments to NHS organisations are rare.
7. Dispute settlement/arbitration
8. Intellectual property/branding: The protection of the NHS brand from improper use is of paramount importance to NHS organisations
9. Taxation: Lack of clarity regarding tax liabilities when undertaking activities abroad, that makes financial planning hard for NHS organisations
10. Establishing a physical presence: NHS organisations wish to be able to establish a physical presence within the GCC without there being a requirement to do so.

11. Visa free travel and visitor visas for permitted activities e.g. healthcare and medical research
12. Data location and sharing, e.g. patient data
13. Human Rights: NHS risk assessment when working in countries with lower human rights standards.

State Sovereignty

14. As in the UK's trade agreements with other countries, 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. 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".
15. Existing UK trade agreements explicitly recognise the right of government to protect and promote public health and safety, through policy, legislation and regulation.
16. This does not however preclude NHS organisations from inviting bids from overseas investors to provide services to benefit patients, as at present, and we would welcome the opportunity for our members to provide services in the Gulf States in a similar fashion. We note that the UK has not taken out reservations in respect of digital health services, which (given the geographical distance between the countries and the expansion of remote service provision over the internet) could offer significant opportunities. A free trade agreement with the GCC that included provisions such as removing disproportionate barriers to overseas bidders for services and for data sharing; protecting intellectual property rights; setting clear, legally enforceable standards for contracting and payment procedures, underpinned by fair procedures for dispute resolution; and facilitating regulatory convergence for standards in both goods and services, would be a "win/win" for both parties.

Why these issues matter to our members

17. The GCC is a priority market for the Department for International Trade and HealthcareUK due to the current scale of investments in their healthcare systems, and the opportunities this presents for UK business in these markets. For example, the World Bank estimates that spending on healthcare in the UAE, as a percentage of GDP, is to rise from 4.27% in 2018 to 4.6% in 2026. As such, it is also a priority market for NHS organisations who are currently in a position to 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. Collectively these activities have generated millions in revenue.

    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.

    NHS organisations are aware that there is an entirely different business culture amongst the GCC nations that they must take into account to if they are to make the most of these opportunities. Whilst adapting their approach in line with cultural sensitivities, there are

nevertheless concrete technical and legal barriers that present challenges for NHS organisations and which a well negotiated free trade agreement could help to address.

Impact of the difficulties

18. Jurisdiction and dispute settlements:

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.

Within the GCC, NHS organisations can overcome this to some extent by making use of some of the ‘free trade zones’ that exist across the GCC nations, rather than resorting to the interpretation of laws by national and local courts.

One example of this is NHS organisations using the courts and arbitration systems under the jurisdiction of the Dubai International Finance Centre (DIFC), due to its basis in the English common law system. This basis makes contracting and potential arbitration proceedings a simpler process for NHS organisations, with more predictable outcomes. The UAE and Saudi Arabia are signatories to the New York convention, meaning that their courts cannot accept jurisdiction of disputes which are currently subject to arbitration.

Due to the dissolution of the DIFC-LCIA Arbitration centre in 2021, and the move to the Dubai International Arbitration Centre, the location and precise arrangements for dispute resolution of cases referred to the DIFC is currently under discussion.

19. Payment(s):

Feedback from our members is that payment to NHS organisations is often delayed and agreed amounts are routinely disputed by GCC partners.

Given the uncertainty this has created, some NHS organisations have had to make use of intermediaries to guarantee payment in circumstances where payments are either significantly delayed, or not paid at all. These guarantees cost the NHS a significant percentage of any revenue generated, and costs can run into the millions of pounds.

20. Taxation:

The various taxation systems, especially within the Kingdom of Saudi Arabia (KSA), are described by NHS organisations as being complicated and unclear. This lack of clarity creates uncertainty for NHS organisations seeking to do business in the GCC and so reduces appetite for undertaking commercial opportunities in the country. Before entering into financial commitments, UK organisations need to have clarity about what their tax liabilities will be, who will bear them and if this is to be the UK partner, how these costs will be factored into the overall pricing.

21. Visa Free Travel:

NHS organisations prefer remote provision of services, however brief periods of in-country travel are sometimes required. It is rare that these last more than a couple of days, with two weeks the upper limit of what would typically be expected.

Despite this, as an NHS professional, working in the GCC can require burdensome visa requirements.

The UAE requires either a ‘short stay work authorisation’ or a ‘mission visa’ in order to provide professional services in the country.

Given the short-term nature of any NHS professionals visit to the UAE, the requirement for completion of a short stay work authorisation (Free Zone) or mission visa (mainland) leads to an outsized administrative burden on the NHS, sponsoring organisation and Emirate government, that visa-free travel could overcome.

Within the Kingdom of Saudi Arabia (KSA), the Business Visit Visa provides 90 days of access to KSA and provides the authorisation for applicants to provide technical training, consulting and auditing (among others) which broadly covers the activities undertaken by NHS organisations in the KSA. However, some NHS organisations do work in partnership to operate hospitals and so this may require alternative visa requirements.

22. Contracting:

NHS organisations report contractual processes that are at odds with UK norms and to which NHS organisations have difficulty adhering. Instead of open contractual processes that are timetabled and planned ahead, NHS organisations report a stop start approach that includes months of silence from GCC partners, but equally a requirement to be completely ready to deliver with a week's notice. This is an approach that isn’t compatible with NHS organisations’ domestic forward planning requirements and significant budgetary pressures.

23. Human rights:

When seeking to work in the GCC a thorny question for any NHS organisation is their level of comfort undertaking paid work with nations where documented human rights abuses are prominent and numerous.

The extent to which trade agreements can or should be used by the UK to leverage pressure on regimes perpetrating human rights abuses (and if so, how high should that bar be set?) goes much wider than trade with the GCC and has, for example, been raised by Parliamentarians in both the Commons and the Lords.

NHS organisations attempt to take a broadly objective view, and, in all circumstances, the ultimate decision is taken on a case-by-case basis by the senior leadership team.

Decisions range from an acknowledgement that the UK government has chosen to promote GCC nations as markets for UK business and so there is therefore no reason to hold the NHS to a higher standard, through to a decision that it is in fact at odds with the values of the NHS organisation and so no activity will be undertaken.

Where NHS organisations have chosen to undertake work in a Gulf State, care has always been taken to ensure that the services provided will in no way perpetuate or unintentionally aid human rights abuses within the country.

A free trade agreement with the GCC that incorporated safeguards against human rights abuses would be likely to result in greater confidence among NHS organisations to go ahead with commercial opportunities in the region.

Top Priorities

24. Arbitration, contractual procedures, and payments

Our recommendations to government for inclusion in an FTA with the GCC:

25. 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
26. An explicit recognition of the right of government to protect and promote public health and safety, through policy, legislation and regulation
27. Establishment/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
28. 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
29. Clear, legally enforceable provisions for standard contracting and prompt payment procedures, underpinned by fair procedures for dispute resolution. Arbitration could, for example, take place under the dispute resolution procedures used by the Dubai International Finance Centre (DIFC)
30. Protection of intellectual property rights and branding (e.g. NHS branding)
31. Agreement on data protection standards to apply to collection, location and transfer of data (e.g. patient data required for clinical or research purposes)
32. Clarity about taxation on income earned from activities in the other party's territory under their taxation regime
33. 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).
34. Removing disproportionate barriers to overseas bidders for services and for data sharing; protecting intellectual property rights; and facilitating regulatory convergence for standards in both goods and services.

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