

British Labour Party strikes a pose against NHS privatisation

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The Private Members Bill brought by Labour MP Clive Efford to repeal and amend sections of the UK government's Health and Social Care Act (2012) is being presented as a move against the privatisation of the National Health Service (NHS).

The 2012 Act established the legislative framework for the dismantling of the NHS. Passed into law in April 2013, it drew only muted opposition from the Labour Party and trade unions. In fact, the groundwork for the privatisation of the NHS was laid by Labour during its 1997-2010 years in office. Through successive measures, they expanded the “internal market”, opening the door for private companies to provide NHS-funded clinical services for the first time.

In the run up to the May 2015 general election, Labour is now trying to cast itself as the saviour of the NHS. It has the backing of trade unions such as Unite, Unison, GMB and the Royal College of Nursing—all of which have stifled opposition to pay restraint, closures of hospital services and outsourcing to the private sector for four years.

The National Health Service (Amended Powers and Services) Bill purports to stem the damage caused by the 2012 Act. Efford stated, “The bill wouldn't repeal the entire Health and Social Care Act. But it cuts the heart out of it. It would repeal some of the worst elements of it that impose market forces on the NHS.”

The claim is unwarranted. The central deceit of the bill is the claim that it restores the duty of the Secretary of State (Health Secretary) to “provide” the NHS. The 2012 Act abolished this legal cornerstone by which the secretary of state was held directly accountable to parliament for providing a universal health service. The bill does not reinstate the “duty to provide or secure provision,” but instead refers to the secretary of state's “duty to arrange”—a definition allowing an approach

based on the commissioning of services.

A key feature of the bill is that while it formally re-establishes control of the secretary of state over the NHS, it leaves intact the framework established to extend the market and outsource services to the private sector.

The Clinical Commissioning Groups (CCGs) established by the 2012 Act would retain their main functions. The CCG's were given statutory responsibility for commissioning approximately 60 percent of NHS provision. An investigation conducted by the *British Medical Journal* demonstrated that one third of general practitioners (GPs) on CCG boards held directorships or shares in private health providers. The Bill states that the secretary of state will direct the CCGs and be able to delegate their responsibility for provision of services to the discredited agencies.

The contention that the Efford Bill will block the privatisation of the NHS rests primarily on the proposed repeal of the Section 75 regulations of the 2012 Act. This has been used to enforce competition and tendering on a compulsory basis through the regulator, Monitor. However, Efford's proposals mean that the NHS would be reinstated essentially as the preferred provider and would not eliminate competition and tendering. Monitor would still grant licenses to private providers.

The process would still be used to discipline the NHS to accept increased competition and allow further privatisation through attrition. This was underscored by Shadow Health Secretary Andy Burnham who stated, “You don't immediately go to an open competition, [the NHS] gets the chance to embrace the model. But [if commissioners judge the] change isn't acceptable or not embraced fully, then [we] say: ‘We've given you first chance to change but it's not worked. We now

need to open up to different ways of doing things’.”

Just as misleading is the claim that the Bill would restrict the amount of income NHS hospitals are permitted to generate through the treatment of private patients—private patient income (PPI). The 2012 Act lifted the cap on this to nearly half of all income (49 percent). At a time of the deepest cost-cutting in the NHS’s history, this directly threatens the provision of universal health care free at the point of access. Fee-paying patients would be granted priority over NHS patients by hospitals under pressure to overcome their funding shortage.

Efford’s Bill merely proposes that the secretary of state determines the amount of income NHS foundation trusts are allowed to raise through this policy, without any reference to reducing the cap. In the context of £20 billion in NHS cuts already going through, and a target of an additional £10 billion by 2021, claims that introducing safeguards to ensure PPI is not to the detriment of NHS patients are worthless. It was the Labour government which created the foundation trusts in the first place to promote their financial autonomy and pursue partnerships with the private sector.

Efford’s attempt to strike an oppositional stance is discredited by the bill’s definition of the NHS as a “service of general economic interest” (SGEI). This definition places it within the scope of European Union (EU) competition law, with obligations on member states to tender services to the private sector.

In response to Efford’s Bill, Professor Allyson Pollock, Peter Roderick and David Price from the Centre for Primary Care and Public Health, Queen Mary, University of London, pointed out it was an unnecessary deference to EU competition law. They refer to a ruling by the European Court of Justice in 2003, which held that the Spanish Health Service was not an SGEI, and a statement last year from the European Commission which defined public hospitals as an example of “non-economic activities of a purely social nature.”

The definition of the NHS as an SGEI refutes the bill’s claim to make the NHS exempt from the EU-US Transatlantic Trade & Investment Partnership (TTIP). The bilateral free trade agreement currently under negotiation includes the opening up of public services—with the NHS a key target—to transnational companies. It would make outsourcing of public

services an irreversible process and enable corporations to sue any future British government that took back into public ownership health services which had previously been privatised.

The Efford Bill passed its second reading on November 21, backed by 241 MPs to 18, which included two Conservatives and seven Liberal Democrats from the governing coalition.

The majority of coalition MPs avoided the debate, including Secretary of State for Health Jeremy Hunt. The government was able to fall back on one main defence in the debate—that it is continuing Labour’s own privatisation legacy. Health Minister Dan Poulter stated, “The aim should be to change fundamentally the way the NHS was run, to break up the monolith, to introduce a new relationship with the private sector, to import concepts for choice and competition—those are not my words, but those of Labour Prime Minister Tony Blair in the reforms he introduced.”

Burnham said if the government stops the Efford Bill from receiving Royal Assent, it will form the basis of a Repeal Bill if Labour is elected in 2015. This only demonstrates that nothing of a progressive nature will emerge from Labour’s proposed repeal of the 2012 Act, such is its commitment to the market and the privatisation of the NHS.



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