



House of Commons

Work and Pensions and
Business, Innovation and Skills
Committees

BHS

*First Report of the Work and Pensions
Committee and Fourth Report of
the Business, Innovation and Skills
Committee of Session 2016–17*

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Work and Pensions and Business, Innovation and Skills Committees

BHS

*First Report of the Work and Pensions
Committee and Fourth Report of the Business,
Innovation and Skills Committee of Session
2016–17*

*Report, together with formal minutes relating
to the report*

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1 Introduction

Our inquiry

1. In launching her campaign to be leader of her party and Prime Minister, Theresa May said that one way “to make our economy work for everyone is by getting tough on irresponsible behaviour in big business [...] we’re the party of enterprise, but that does not mean we should be prepared to accept that ‘anything goes’”.¹ It was in this same spirit that we undertook our joint work on BHS.

2. We chose to investigate BHS because it encapsulated many of our ongoing concerns about the regulatory and cultural framework in which business operates, including the ethics of business behaviour, the governance of private companies, the balance between risk and reward, mergers and acquisitions practices, the governance and regulation of workplace pension schemes, and the sustainability of defined benefit pensions. In Chapter 8 of this Report we set out how our work in these areas will continue.

3. In the main body of the Report we consider the actions and conduct of those who owned and operated BHS, those involved in the company’s March 2015 sale and acquisition, and those responsible for protecting the pension fund.

- In Chapter 2 we demonstrate how the Green family became incredibly wealthy, partly on the back of BHS, but in doing so reduced the capacity of the company to invest and succeed.
- In Chapter 3 we set out the growth of BHS’s pension deficit and the repeated failure of Sir Philip Green and his directors to take opportunities to resolve it.
- In Chapter 4 we explain how BHS was hurriedly sold to a manifestly unsuitable purchaser in Dominic Chappell and his company Retail Acquisitions Limited (RAL), who came to the deal with no new money or sustainable means of raising any. We also explore the role of advisors.
- In Chapter 5 we consider corporate governance in the Taveta group. We find a paucity of challenge and oversight which allowed Sir Philip to run it as a family empire.
- In Chapter 6 we examine the shambolic RAL ownership of BHS during which Dominic Chappell and his associates used BHS for personal gain as it crumbled around them.
- In Chapter 7 we set out our conclusions.

4. Our inquiry will not be the end of scrutiny of the demise of BHS. We support investigations by the Financial Reporting Council, the Pensions Regulator, the Insolvency Service and the Serious Fraud Office.²

¹ [Speech by Rt Hon Theresa May MP](#), 11 July 2016

² We would like to thank our Specialist Advisers: Robin Ellison, Gabriel Moss QC, Sir David Norgrove, John Ralfe, Mike Rollings, Ryan Perkins, Professor Prem Sikka and Hannah Thornley; and the staff of the House of Commons Scrutiny Unit and Web and Publications Unit.

Losers and winners

5. BHS, which was founded in 1928, was bought by Sir Philip Green in 2000. It became part of the Taveta group, which is ultimately controlled by Lady Green, in 2009. On 11 March 2015 it was sold to Retail Acquisitions Limited (RAL), owned by Dominic Chappell. BHS went into administration on 25 April 2016 and now faces being broken up: the end of a longstanding fixture of the British high street.

6. The jobs of the 11,000 employees of BHS,³ the majority of whom are low paid, are now at risk. Mrs Patel, who is 56 and has worked for BHS since leaving school, told us how she felt “so helpless in what is happening”.⁴ This was partly due to the prospective cuts to her pension entitlement. 20,000 current and former BHS employees face reductions to their pensions of up to 77 per cent,⁵ though the typical cut is far lower and will be felt over time. Those reduced pensions are set to be paid by the Pension Protection Fund (PPF), which is supported by a levy on 6,000 other defined benefit pension schemes with 11 million members. Many of those schemes are attached to businesses far smaller than BHS: more than 2,000 have fewer than 100 members.⁶ Other companies that are suppliers to BHS are now also under threat. More generally, Simon Walker, Director General of the Institute of Directors, said that the circumstances of the collapse of BHS were “a blight on the reputation of British business”.⁷

7. **BHS’s demise has created many losers. Its 11,000 employees face an uncertain future seeking work or facing unemployment. Its 20,000 current and future pensioners face substantial cuts to their entitlements. Their pension costs will now be met through levies paid by other pension schemes, including many attached to small companies. Companies in BHS’s supply-chain, and their employees, have already been hit too. The reputation of business, the engine of prosperity, has been damaged, to the dismay of responsible investors, owners and business leaders. The episode is not, however, without winners. Many of those closest to the decisions that led to the collapse of BHS have walked away greatly enriched despite the company’s failure.**

3 [BHS Annual accounts](#), June 2015, p.15

4 Mrs C Patel ([PPF0022](#))

5 [BHS Pension Scheme Annual report and accounts](#), March 2015, p. 7; BHS pension trustee minutes, 15 October 2015

6 [PPF Purple Book 2015](#)

7 Institute of Directors ([PPF0057](#))

2 BHS under Sir Philip Green

8. Sir Philip Green bought BHS in May 2000 for £200 million. He sold it to Taveta Investments (No. 2) Limited (Taveta 2), another Green family company, in July 2009 for £200 million.⁸ Taveta 2 sold BHS in March 2015 for £1. We looked at the performance of BHS to better understand the reasons for its decline and its prospects for recovery. In particular, we examined the extent to which the Green family looked after its own financial interests and those of the business.

9. There was an increase in profits in the early years of the Green family's tenure and dividends were only paid in these years. But the total dividends paid by BHS Ltd were £414 million in the 2002–04 period, almost double the after-tax profits of £208 million. BHS Group, the parent company, paid dividends of £423 million in this period.⁹ These would have included the value of dividends paid by BHS Ltd, as well as additional items such as the sale-and-leaseback deal with Carmen discussed in this chapter and the amortised negative goodwill (the value of assets above the original purchase price).¹⁰ We were told that the Green family received £307 million of this.¹¹ This effectively removed value from the company, precluding its use for purposes such as investment or pension contributions.¹² Whilst BHS was not alone in this period in paying dividends in excess of profits, the scale of the payments were proportionately far higher as a percentage of net profits than key competitors.¹³

10. The BHS dividends were not the only example of the Green family paying itself dividends far in excess of company profits. In 2005, the parent company of Sir Philip's Arcadia group of companies, Taveta Investments Ltd ("Taveta"), paid a record dividend of £1.3 billion, described as "the biggest pay cheque in British corporate history."¹⁴ A major corporate restructuring was required to make the dividend possible. The payment was effectively funded by taking out loans of around £1 billion, significantly reducing the covenant of the Group.¹⁵

11. In evidence, Sir Philip did not consider BHS paying dividends so far in excess of profits improper or unwarranted. In his view, the company was profitable and the dividends were conservative.¹⁶ Fellow shareholder at the time, Robin Saunders, also thought that the

8 Taveta Investments (No. 2) Limited, [Annual accounts to 29 August 2009](#). Taveta 2 took out a 10-year £200 million loan at an 8 per cent interest rate to fund the purchase. That loan was provided by three companies owned by Lady Green and registered offshore. ([Letter from Lady Green, 4 July 2016](#)) This transaction is set out in further detail in paragraph 118 of this report.

9 [BHS Ltd accounts 2001–2014](#)

10 [BHS Group accounts 2001–14](#)

11 [Letter from Paul Budge, 14 July 2016](#); [Letter from Taveta commenting on 15 June transcript](#)

12 [Letter from Sir Philip Green, 13 July 2016](#)

13 BHS Ltd, Primark, and M&S Company Accounts; BHS paid dividends of 172 per cent, 110 per cent and 305 per cent of net profits attributable in 2002, 2003 and 2004. In the same three years, Primark paid dividends of 69 per cent, 55 per cent and 71 per cent; Marks & Spencer paid dividends of 156 per cent, 52 per cent and 47 per cent.

14 'Philip Green pays himself record £1.2bn,' [The Guardian, 21 October 2005](#)

15 Taveta had purchased Arcadia in 2002 for £850 million (or £866.4 million, including fees and expenses). In 2004, Taveta Investments No.2 Ltd ("Taveta 2") was established and took ownership of Arcadia in return for shares to the value £2.3 billion, effectively revaluing the company and making that increase in share valuation available for dividend payments. It was confirmed to us that Taveta 2 was established for this purpose. It appears that this dividend was ultimately funded through loans: the value of loans on the Taveta balance sheet increases by £1 billion and its shareholder equity is reduced by the same amount. Effectively, Taveta 2's shareholders realised £1.3 billion of the assumed revaluation of Arcadia, funded through raising loans.

16 [Qs 1743–1747](#)

dividends were justified.¹⁷ Sir Philip argued, reasonably enough, that the dividends should be seen in the context of the company's profitability at the time they were paid, rather than the later dwindling profits and the subsequent loss-making period after 2009.¹⁸ It was his choice to consider the prevailing retail environment at that time and decide whether to invest or extract cash.

12. The high level of dividends paid in the early years of Sir Philip's ownership, followed by several years of losses, meant that BHS was left in a far weaker position by 2014 than it had been when it was bought in 2000.¹⁹ By 2014, BHS was left on life-support, having drawn on all its accumulated reserves and more as a result of large dividends and heavy losses. It was effectively propped up by debt to other Green family companies totalling around £250 million—debt that Sir Philip was largely forced to write off when he sold the company.

Table 1: BHS balance sheet: 2001 and 2014

	£ million	
	2001	2014
Total assets	501.0	295.3
Total liabilities	-205.4	-551.6
Net assets:	295.6	-256.3
of which:		
Share capital	66.7	66.7
Accumulated reserves	228.8	-323.0

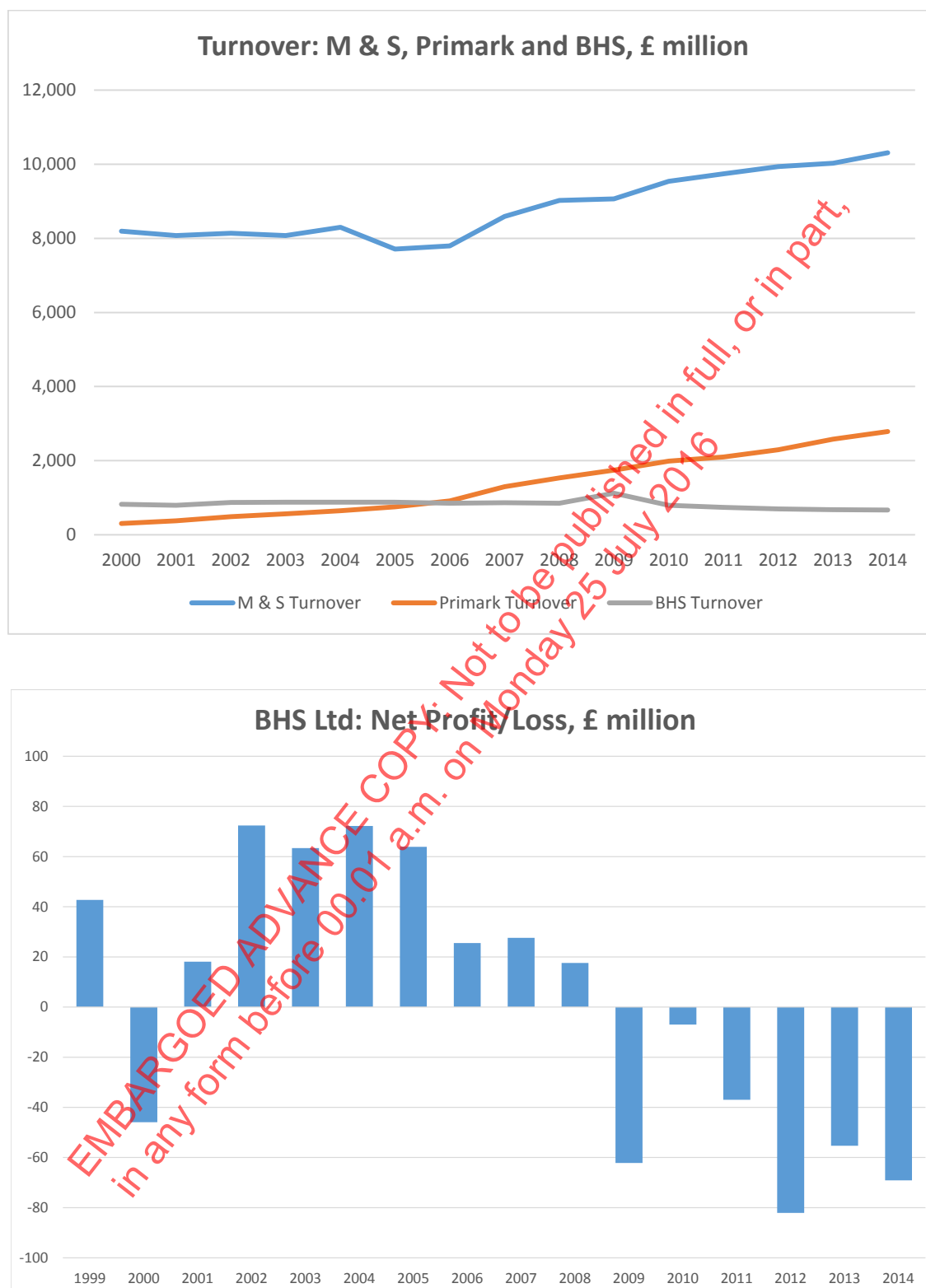
Source: BHS Company Accounts

13. The improvement in BHS's profitability in the early years of Sir Philip's tenure is indisputable. However, this appears to have been achieved primarily through cost-cutting measures and squeezing suppliers. Crucially, BHS's turnover remained flat through much of Sir Philip's tenure and declined in the latter years (see Figure 1, below). Sir Philip initially cut costs but he did not grow the business.

¹⁷ [Qs 917 & 946](#) (Robin Saunders)

¹⁸ [Q 1744](#)

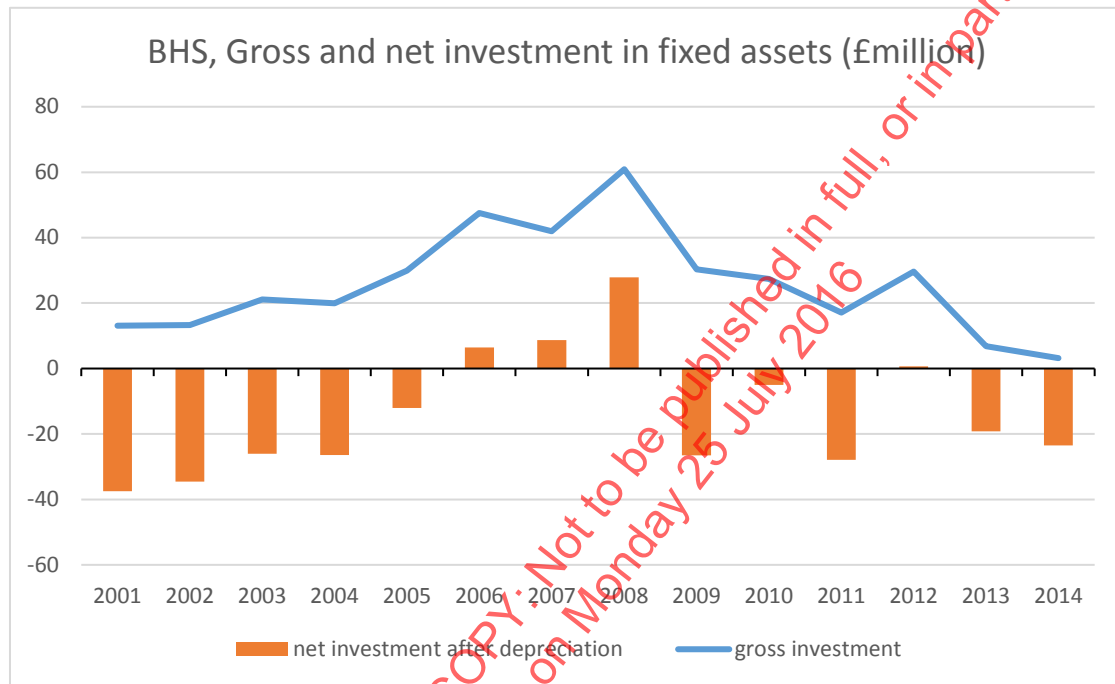
¹⁹ As a private company, BHS's accounts were much less forthcoming than they had been when it had been a publicly listed company, with little commentary given in the accounts after 2001 on performance, cost drivers or the nature of any investment which took place. The position is further complicated by the changing ownership structures of BHS and related companies, inter-company transactions and the lack of any published accounts since the sale to RAL.

Figure 1: BHS Turnover and Profit 2000–2014²⁰

²⁰ BHS Company Accounts. NB the peak in 2009 turnover coincided with a longer than usual accounting year, following the integration of BHS into the wider Taveta corporate group.

14. In his evidence to us, Sir Philip rejected the idea that the dividend payments had been at the expense of subsequent investment. He said that £600 million was invested in BHS in the years after the dividends were paid.²¹ Regardless of this, it is clear that during Green's ownership, BHS's tangible fixed assets diminished in value—from £430 million in 2000 to £183 million in 2014;²² i.e. Sir Philip did not invest enough to maintain the value of the company.

Figure 2: BHS Gross and Net Investment 2000–2014²³



15. Another way in which Sir Philip was able to boost BHS's profitability in the short-term, while ultimately increasing payments to other Green family companies, was through the sale of property. In 2001, BHS Group sold a number of BHS stores to Carmen Properties Ltd (Carmen) as part of a sale-and-leaseback arrangement. Ten stores were sold to Carmen—a Jersey-registered company owned ultimately by Lady Green²⁴—for £106 million. BHS Ltd then paid rent to Carmen for the use of these properties. They were ultimately sold back to BHS as part of the sale to RAL for only £70m (with the proceeds of the sale going to Lady Green as the sole beneficial owner) but, over the lifetime of the sale-and-leaseback arrangement, rent of £153million was paid by BHS to Carmen.²⁵ The arrangement would have acted to reduce profits earned in the UK on which tax was payable. It would also have had tax benefits for the Green family, given that Carmen Properties was registered in Jersey.²⁶

16. Sir Philip Green's family accrued incredible wealth during the early, profitable years of BHS ownership. Over the duration of their tenure, significantly more money

²¹ Q 1782

²² Analysis of BHS Accounts Tangible Fixed Assets Notes 2000–2014

²³ BHS Ltd Company Accounts 2000–2014

²⁴ Letter from Lady Green, 4 July 2016

²⁵ BHS Group Accounts Related Party Note 2002–2008; BHS Ltd Accounts Related Party Note 2009–2014

²⁶ BHS would have recorded the rent it paid as an expense that could have been offset against tax. While Carmen Properties would have paid tax on rental income as a non-resident landlord, Lady Green would not have paid tax on any profits taken from Carmen, given that it is a Jersey-based company.

left the company than was invested in it. There is no evidence of improved turnover, market share, or major increase in investment that might be expected from a leading retailer. Investment was evidently either inadequate in scale or ineffective in improving the competitive edge of the business. This sustained poor retail performance forms the backdrop to Sir Philip's efforts to sell the business.

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3 Pension schemes

17. BHS has two defined benefit pension schemes: a main scheme and a senior management scheme. The schemes are managed separately from BHS by a board of trustees who act in the interests of the beneficiaries. Trustees are responsible for collecting contributions from both the members and the sponsoring employer, investing assets and paying benefits.²⁷ Defined benefit pensions are a form of deferred pay.²⁸ Trustees are tasked, among other things, with working collaboratively with the employer to attempt to ensure that those pay promises are met.

18. Work-based pensions are regulated by The Pensions Regulator (TPR). TPR is expected to protect the benefits of scheme members while minimising any adverse impact on the sustainable growth of the employer.²⁹ TPR also has an objective of reducing the risk of the Pension Protection Fund (PPF) having to pay compensation.³⁰ Subject to certain conditions, the PPF provides compensation to members of defined benefit pension schemes if the sponsoring employer enters insolvency and there are insufficient assets in the scheme to pay PPF levels of compensation. Those levels are lower than the pensions promised by the employer.³¹ The PPF is funded by a risk-based levy on eligible schemes.³²

Growth of BHS pension deficits

19. Table 2 shows trends in the health of the BHS pension schemes. The schemes were in a combined surplus of £43 million when Sir Philip Green bought BHS in 2000. The surplus gradually declined and the schemes fell into combined deficit in 2006, following the period when large dividends were paid to the Green family. By the time of the sale in 2015 the value of the schemes' assets was almost £350 million short of the liabilities.

Table 2: Trends in BHS pension surplus/deficits

Pension surplus/deficit, £ million			
Data from triennial actuarial valuations at 31 March			
	Main scheme	Senior scheme	Total
2000	26	17	43
2003	12	16	28
2006	-19	11	-7
2009	-148	-18	-166
2012	-211	-22	-233
2015	-315	-30	-345

Source: BHS pension trustee minutes, 27 Sep 2000, 21 May 2003, 16 Aug 2006, 29 June 2010, 24 July 2012, 19 May 2015

Note: 2015 valuation has not yet been finalised.

27 TPR [Trustee guidance](#), issued December 2007

28 TPR [Code of practice no. 3 "Funding defined benefits"](#), para 45

29 [Pensions Act 2004 s5](#)

30 As above

31 Members who have already reached the PPF's definition of normal pension age receive 100 per cent of scheme benefits, subject to lower levels of indexation than is typical in schemes. Members who have not yet reached that age receive 90 per cent of scheme benefits, subject to a cap. Those reduced payments are also subject to lower indexation.

32 Eligibility terms are set out on the [PPF website](#).

20. Following the proposal by BHS of a Company Voluntary Arrangement (CVA) on 3 March 2016, the pension schemes entered a period of formal assessment for entry into the PPF.³³ The deficit for the purposes of Section 75 of the Pensions Act 1995, an estimated cost of purchasing annuities to guarantee promised benefits to each member of the schemes, was £571 million.³⁴ Recent falls in expectations of future interest rates act to reduce expected returns on pension scheme assets and have therefore further increased deficit estimates.

21. BHS declined to make the employer contributions necessary to maintain the sustainability of the pension schemes over the duration of Sir Philip Green's period in charge.³⁵ The chair of the board of trustees from 2000 to 2013, Dr Margaret Downes, was concerned enough about the declining state of the schemes in 2005 to write to the then Chief Operating Officer of BHS, Paul Coackley, seeking written assurances of the company's long-term commitment to the schemes, including paying the requisite contributions.³⁶ Assurances on those terms were not forthcoming.³⁷ Trustee demands for increased contributions were initially resisted on the grounds that investing in the business would be more lucrative and then, when BHS's struggles intensified, on the grounds they could not be afforded in a company that was, in the words of Mr Coackley, being "stripped to the bone".³⁸ The company also repeatedly rejected demands for the pension schemes to take security over company assets. Attention was, however, paid to trying to reduce BHS's PPF levy. This first took place through the avoidance mechanism of a guarantee from Davenbush Ltd, a related company, which on review the PPF deemed not to provide the purported substantial reduction in risk.³⁹ Then, when the levy was adjusted upwards, a "very aggrieved" Sir Philip sought to lobby the then Pensions Minister in a "rather aggressive" manner.⁴⁰

22. Negotiations over the deficit recovery plan relating to the 2009 valuation of the schemes began with the company maintaining that it had a fixed pensions budget of £6.5 million.⁴¹ This figure was calculated with no apparent regard to the sustainability of the schemes. TPR investigated the plan because of concerns about the length of time—12 and a half years—it would take the scheme to become fully funded, and because of some of the optimistic assumptions used.⁴² While many schemes fared badly in the light of the 2008 financial crisis, the BHS schemes weakened more markedly than their comparators.⁴³

33 In practice, this meant that the schemes would have gone in to the PPF and pension payments made at PPF levels, unless the schemes could give assurance that they could be sustainable in paying above PPF levels of benefits. The act of entering into the CVA made it harder to secure a resolution on the pension schemes.

34 [Q 38](#)

35 [BHS pension trustee minutes, 11 June 2002, 24 November 2006, 13 February 2007, 8 May 2009, 26 August 2009](#)

36 [Letter from Dr Margaret Downes to Paul Coackley, 29 August 2005](#)

37 [Letter from Paul Coackley to Dr Margaret Downes, 11 January 2006](#)

38 [BHS pension trustee minutes, 20 November 2007, 25 November 2008](#)

39 [Letter from Alan Rubenstein, 11 May 2016](#)

40 [Letter from Rt Hon Steve Webb, 13 June 2016](#); [BHS pension trustee minutes, 31 October 2012](#)

41 [BHS pension trustee minutes, 8 May 2009](#). The minutes record "Paul Coackley remains adamant that the Company's pension budget cannot exceed £6.5 million per year".

42 [Letter from TPR, 20 May 2016](#)

43 [TPR, Scheme funding statistics May 2014](#). The BHS Pension Schemes' 31 March 2012 funding valuation can be compared with that of other schemes that had valuations at the same time. TPR reported on "tranche 7" DB schemes in May 2014. Tranche 7 comprises schemes with effective valuation dates falling from 22 September 2011 to 21 September 2012, so the 31 March 2012 BHS valuation falls neatly in the middle of this. Measured by assets as a percentage of technical provisions, BHS was significantly more weakly funded than the median in 2012 (62 per cent compared with 81 per cent) and its position worsened slightly from 2009 (65 per cent to 62 per cent), whilst Tranche 7 schemes typically improved. In 2009 BHS was just above the lower quartile of schemes whereas by 2012 it was just above the bottom 5 per cent.

23. The 2012 valuation followed a similar pattern. Sir Philip insisted that £10 million, which would be provided by a loan from the wider Taveta group,⁴⁴ was the maximum annual contribution the employer would make. The trustees were unable to negotiate any concessions.⁴⁵ The arithmetic consequence was a 23 year recovery plan.⁴⁶ This was an extraordinary length of time to recover a scheme in distress: 8 years was the median at that time, while 95 percent of comparable schemes had a recovery plan of less than 17 years.⁴⁷ The payments barely covered the interest on the schemes' deficit and that deficit continued to grow in the light of this agreement.⁴⁸

24. Sir Philip told us that he had no involvement in the pension schemes before 2012.⁴⁹ He suggested the trustees had made "stupid, stupid, idiotic mistakes" and were "asleep at the wheel" of the pension schemes, given he would have been willing to offer much larger contributions earlier had he been aware of the growing deficit.⁵⁰ Sir Philip, however, made repeated representations to the trustees on their investment strategy between 2002 and 2008.⁵¹ His trusted senior finance directors Paul Coackley and Paul Budge were in even more regular contact with the trustees.⁵² Sir Philip also investigated the possibility of an insurance company buy-out of the schemes on multiple occasions during that period.⁵³ The board of Taveta considered regularly and in detail the 2009 valuation of the BHS pension scheme, including the size of the deficit, the level of contributions and the withholding of security.⁵⁴ Sir Philip Green was present at those meetings. The BHS company accounts, for which as a director he was responsible, included information on the pension deficit in each year.

25. When Sir Philip Green bought BHS, the pension schemes for which he became responsible were in surplus. As these schemes declined into substantial and unsustainable deficit he and his directors repeatedly resisted requests from trustees for higher contributions. Such contributions were not charitable donations: they were the means of the employer meeting its obligations for deferred pay. We reject any assertion that Sir Philip was not aware of the growth of the deficit: he had a responsibility to be aware and he was aware. That there is a massive deficit is ultimately Sir Philip Green's responsibility.

44 [Q 1880](#)

45 BHS pension trustee minutes, [31 October 2012](#) and [21 May 2013](#); [Q 742](#). The 31 October 2012 minutes state that because of "the private company status of BHS Limited [...] these payments are effectively being met by Sir Philip and the Green family".

46 [Q 746](#)

47 TPR, [Scheme funding statistics May 2014](#). TPR analysis of "tranche 7" valuations (conducted between 22 September 2011 and 21 September 2012), shows that the median recovery plan length was 7.8 years and the 95th percentile was 17.1 years.

48 BHS pension trustee minutes, [19 May 2015](#)

49 [Qs 1854–6](#)

50 [Q 1895](#), [Qs 1869–70](#)

51 See, for example [BHS pension trustee minutes](#), 11 June 2002, 10 September 2002, 30 October 2002, 21 May 2003, 22 May 2003, 21 November 2003, 8 June 2006, 8 April 2008

52 See, for example (up to 2012 valuation), [BHS pension trustee minutes](#), 27 September 2000, 20 March 2002, 11 June 2002, 26 February 2003, 21 May 2003, 16 June 2005, 22 November 2005, 8 December 2005, 15 February 2006, 15 May 2006, 8 June 2006, 24 November 2006, 14 August 2007, 20 November 2007, 25 November 2008, [2 March 2009](#), [8 May 2009](#), 19 May 2009, 12 June 2009, 23 June 2009, 26 August 2009, 24 November 2009, 1 February 2010, 16 February 2010, 20 May 2010, 29 June 2010, 12 October 2010, 30 November 2010, 13 December 2011, 14 March 2012

53 Evidence from Rothesay Life ([PPF00187](#))

54 See, for example, [TIL board minutes](#) 24 September 2009, 28 January 2010, 18 February 2010, 23 March 2010.

26. The 23 year recovery period for the pension scheme established in 2013 was extraordinary. The annual payments of £10 million, which were calculated with no apparent regard to the sustainability of the scheme, were presented to the trustees as a non-negotiable offer. The payments were wholly inadequate and the deficit continued to grow.

Project Thor

27. Project Thor was a proposed solvent restructuring of the BHS business. It was devised by Deloitte, who were appointed by Taveta to advise on it in November 2013.⁵⁵ Thor included several strands:

- a) writing-off intra-group BHS debt;
- b) renegotiating with landlords and suppliers; and
- c) restructuring the pension schemes.⁵⁶

Successfully implemented, Thor would have made BHS a more sustainable business. It would also have made it a more attractive proposition to a potential purchaser.

28. An initial proposal for Thor was presented to Chris Martin, the new chair of trustees of the pension schemes, on 29 January 2014. He was told that, as Taveta would no longer support BHS, the company would go insolvent, and the schemes into the PPF, unless Thor was implemented.⁵⁷ Scheme members with pension pots with a capital value of up to £18,000 would be given the option of receiving a lump sum payment.⁵⁸ Those who did not take up this option or had larger pension pots would be transferred into a new scheme. The new scheme would provide benefits above PPF levels but substantially below entitlements accrued. Taveta was proposing to make a one-off contribution of approximately £54 million. As the schemes would shortly report a combined £225 million deficit, in simple terms, it was proposed that scheme members would therefore bear three-quarters of the cost of pensions restructuring.⁵⁹

29. A period of discussion followed between the trustees, who appointed KPMG to advise them on the project, and Taveta, advised by Deloitte. There was ongoing disagreement about the “estimated outcome statement”, the prospective value to the schemes in the event of insolvency. Ascertaining this figure was necessary for the trustees to establish that Thor was preferable to insolvency for the schemes.⁶⁰ Among other things, TPR needed this amount to be less than the one-off contribution being proposed by Taveta in order to approve Thor. The trustees expressed further concerns including:

- many aspects of the proposal had not been “properly addressed or thought through”;⁶¹

⁵⁵ [Letter from Deloitte](#), 6 June 2016

⁵⁶ [Project Thor presentation](#), Deloitte, 29 January 2014

⁵⁷ BHS pension trustee minutes, [6 February 2014](#)

⁵⁸ As above

⁵⁹ BHS pension trustee minutes, [6 February 2014](#), [24 June 2014](#)

⁶⁰ For example, BHS pension trustee minutes, [24 June 2014](#)

⁶¹ BHS pension trustee minutes, [22 April 2014](#)

- the structure of the plan was untested and therefore was likely to attract considerable interest from TPR;⁶²
- the proposed timeline, by which Deloitte had hoped to deliver Thor by early 2015 having secured TPR clearance in Autumn 2014, was “over-optimistic”;⁶³
- they remained to be satisfied that the “burning platform” of inevitable BHS insolvency had been established, given the complexities of Taveta governance;⁶⁴ and
- though they were under pressure to complete due diligence quickly, they had not been provided with the necessary data: for example, they were told that cash flow data distinguishing BHS from Arcadia were not available because transactions were operated through a single group account.⁶⁵

Chris Martin asserted that the trustees would not be “bumped into agreeing” Thor.⁶⁶

30. The trustees broadly concurred with the company, however, that a restructuring along the lines of Thor was desirable.⁶⁷ The trustees sent TPR a summary of the proposal, known as the Thor “storybook”, on 3 July 2014.⁶⁸ A draft clearance application was submitted to TPR by Taveta on 17 July 2014. This included a request for a Regulated Apportionment Arrangement (RAA), a rarely-used device which TPR would need to approve for Thor to be implemented.⁶⁹ The proposal submitted lacked key financial data, including the estimated outcome statement.⁷⁰ This figure, and the assumptions behind it, remained a matter of dispute between Deloitte and KPMG. On 22 August 2014, Chris Martin estimated that their respective estimates of the Taveta contribution necessary were £40 million apart.⁷¹

31. TPR has various regulatory powers intended to ensure that sponsoring employers cannot avoid their responsibilities to pension schemes. These are known as “moral hazard” provisions.⁷² From their initial receipt of the storybook, TPR expressed concerns about moral hazard with respect to the BHS schemes.⁷³ On 22 August 2014, TPR asked the trustees to establish whether a better settlement for the schemes than Thor might be achieved through the use of moral hazard powers.⁷⁴ TPR discussed this requirement with

62 BHS pension trustee minutes, [6 March 2014](#)

63 BHS pension trustee minutes, [6 March 2014](#) and note of meeting between Taveta, trustees and respective representatives, [7 May 2014](#)

64 BHS pension trustee minutes, [22 April 2014](#)

65 BHS pension trustee minutes, [22 April 2014](#)

66 Notes of conference call between trustees and advisers, [20 May 2014](#)

67 Q 227–8 (David Clarke and Tony Clare) and Project Thor, [Proposed pensions solution: Clearance Application to TPR](#), sent to TPR on 3 July 2014

68 Project Thor, [Proposed pensions solution: Clearance Application to TPR](#), sent to TPR on 3 July 2014

69 The original Thor proposals presented to the trustees included voluntarily seeking clearance from TPR. It was envisaged that members would be moved into the new scheme in bulk without providing consent. This proposal, about which the trustees had expressed reservations (see [minutes](#) of the 6 February and 6 March 2014 meetings of the trustees) had been dropped by the 7 May 2014 meeting between Taveta and the trustees. It was not clear how the Scheme Actuary would give the required certificate that the benefits were “broadly no less favourable”. As some members would inevitably not have provided consent to either a lump sum or joining the new scheme, a residual scheme would result. It was intended that the residual scheme would enter the PPF. This would require RAA approval from TPR and the PPF. TPR stressed that RAAs are “extremely uncommon” and intended by Parliament to be used rarely. See [Letter from TPR](#), 20 May 2016.

70 [Draft Clearance Application](#) by Taveta to TPR, 17 July 2014

71 [Notes of conference call between Chris Martin and TPR, 22 August 2014](#). Deloitte suggested an estimated outcome statement of £50 million while KPMG believed it was “more like £90 million”.

72 [Pensions Act 2004 s38–51](#)

73 [Note of call between trustees and TPR](#), 7 July 2014

74 [Notes of call between Chris Martin and TPR](#), 22 August 2014

Taveta on 28 August.⁷⁵ TPR subsequently wrote to Chris Martin on 4 September setting out the information the trustees needed to request. This included data on dividends, intra-group payments including rents and management charges and the use of BHS as collateral for business purchases or debt,⁷⁶ back to the acquisition of BHS in 2000.⁷⁷

32. In a conference call the next day Paul Budge and Neville Kahn, of Deloitte, informed the trustees that Sir Philip wished to “pause” Project Thor pending a review of all options in January 2015. Though the role of TPR was discussed, including Sir Philip’s concern that it was “taking an overly keen interest in Thor”, the reasons cited for the pause recorded in the trustees’ notes were:

- “economic uncertainty, given the Scottish independence vote”;
- “political uncertainty/global tensions”, referencing Russia, Ukraine and the Far East; and
- “Christmas/peak trading period — to allow BHS’s new management the chance to prove themselves”.⁷⁸

In a subsequent private discussion, Chris Martin noted that Sir Philip and his company’s position had “changed since yesterday”.⁷⁹ He subsequently told us that the pause was “very, very disappointing” given Thor promised to provide better benefits to pensioners than the PPF.⁸⁰

33. In the aftermath of Sir Philip’s decision not to proceed with Project Thor, the trustees and TPR were aware both that BHS could not adequately meet its pension responsibilities alone and that Taveta did not intend to continue supporting it.⁸¹ The trustees noted that “TPR will be very concerned because the main Scheme is so significantly under-funded and therefore a risk to the PPF”.⁸² As the deficit would continue to grow, the failure to agree a restructure would leave the PPF liable for greater compensation in the event of insolvency.⁸³ The trustees quite properly acted quickly, de-risking the schemes’ assets and preparing for a possible un-pausing of Thor in early 2015 through, for example, continuing to seek agreement on the estimated outcome statement.⁸⁴ Though Sir Philip’s stated position was that all options remained open for BHS and its pension scheme, Paul Budge and Neville Kahn acknowledged that a “business as usual” outcome was no longer

⁷⁵ [Email from Eversheds to Chris Martin](#), 29 August 2014

⁷⁶ In its [call with trustees](#) on 22 August 2014 TPR said that it was interested in the Green family’s acquisition of Arcadia being “supported” by their ownership of BHS.

⁷⁷ [Letter from TPR to Chris Martin](#), 4 September 2014

⁷⁸ [Notes of conference call between Taveta, the trustees and their respective advisers](#), 5 September 2014. See also [correspondence](#) between Deloitte and TPR regarding the pause.

⁷⁹ [Notes of call between trustees and their advisers](#), 5 September 2014

⁸⁰ [Q 665](#)

⁸¹ The [notes of a call between trustees and their advisers on 5 September 2014](#), the day Thor was paused, state “The ‘genie’ is well and truly out of the bottle”.

⁸² [Notes of call between trustees and their advisers](#), 5 September 2014

⁸³ As above

⁸⁴ [Email from Chris Martin to Paul Budge and Neville Kahn](#), 15 September 2014

credible: some form of resolution was needed for the schemes to be sustainable.⁸⁵ The trustees continued to press for the moral hazard information that was a pre-requisite of TPR signing off any subsequent proposal.⁸⁶ Sir Philip continued to refuse to provide it.⁸⁷

34. **The pension deficit had long been a substantial barrier to the sale of BHS. Project Thor was a credible approach to making the company's pension liabilities more manageable. With a resolution of pension liabilities a sale of BHS to an appropriate purchaser would have been more possible. Thor would have resulted in reductions to pension entitlements, but these cuts would have been smaller than BHS pensioners now face in the PPF.**

35. **The Arcadia board cited a variety of explanations for pausing Project Thor, ranging from Christmas to the Scottish independence referendum and instability in Ukraine. We do not accept them. The primary reason was Sir Philip Green's resistance to TPR's moral hazard requests. He did not wish to respond to requests for information regarding historic dividends, management charges, sale and leaseback arrangements, inter-company loans and the use of BHS shares or assets as collateral for company purchases. At best this demonstrated a lack of willingness to act to secure the pension funds' future.**

Pension schemes and the sale

36. The proposed sale of BHS to RAL (known at that time as "Swiss Rock"), came as a surprise to both the trustees and TPR.⁸⁸ At a meeting with Paul Budge and Neville Kahn on 2 February 2015, Chris Martin was told that the decision to sell was primarily a result of Sir Philip Green having decided that Project Thor had become too expensive.⁸⁹

37. At that same meeting, Chris Martin was told that RAL was the preferred purchaser, that Goldman Sachs was leading the corporate finance process and that RAL had deposited £35 million in a bank account as a statement of means.⁹⁰ Only the first of these was correct.⁹¹ Surprised that a bidder was willing to take on the pension schemes in full,⁹² Chris Martin sought assurances that the proposed purchaser could meet their obligations. Sir Philip told him that RAL were providing £120 million of working capital as a requirement of their offer.⁹³ That also did not prove to be the case.⁹⁴ Annual pension contributions of £10 million, as agreed in the 23 year recovery plan, would be provided for three years, split equally between Taveta and RAL. There was no commitment after three years.⁹⁵

85 [Chris Martin's notes of meeting with Paul Budge and Neville Kahn](#), 24 September 2014

86 See, in particular, the detailed request for moral hazard information sent from KPMG to Deloitte on 3 October 2014 and [Chris Martin's notes of meeting with Paul Budge and Neville Kahn](#), 8 December 2014 (in email on 13 December)

87 See Chris Martin's [notes of his meeting with Paul Budge and Neville Kahn on 8 December 2014](#). Sir Philip proposed that the signing off of accounts by PwC, his company's auditor, would provide the necessary assurances.

88 See [email from Chris Martin to TPR regarding press speculation of a sale](#), 26 January 2015

89 [Chris Martin's notes of meeting with Paul Budge and Neville Kahn](#), 2 February 2015

90 As above

91 ACE transferred £35 million to an Olswang escrow account two days later, on 4 February 2015. That transaction is considered in Chapter 4. The [trustee minutes](#) of 3 March 2015 further cites Tony Clare of Deloitte stating that Goldman Sachs were advising Taveta 2.

92 [Chris Martin's notes of meeting with Paul Budge and Neville Kahn](#), 2 February 2015

93 [Chris Martin's notes of meeting with Sir Philip Green and Tony Clare](#), 19 February 2015

94 See Chapter 4

95 This arrangement was set out in Schedule 8 of the BHS [Sale and Purchase Agreement](#), 11 March 2015

38. The trustees were also told they would be given a security package, which they understood to be “mitigation for detriment to the sponsoring employer’s covenant”, though it was not clear what was expected in return. Originally, and in addition to the three years of pension contributions, the scheme was to receive floating charge over the BHS stock capped at £20 million and was to be assigned £80 million of Arcadia’s intercompany loan balance to BHS. Following the sale, on 23 March 2015, the trustees were told that their total support package would be a £40m fixed and floating security plus £15m of contribution support.⁹⁶ That reduced security ultimately proved illusory. It was withdrawn by Sir Philip Green in a phone call with Chris Martin on 7 October 2015 having never formally been put in place. Sir Philip said he would hold back assignment until discussions with TPR had been resolved.⁹⁷

39. Chris Martin first met Dominic Chappell and RAL on 19 February 2015. He was accompanied by Tony Clare, Taveta’s adviser from Deloitte. RAL explained that they would only proceed with the purchase if they understood a Thor-like solution to the pension scheme could proceed.⁹⁸ Mr Martin was surprised, however, that due diligence regarding the pension schemes “had not been the focal point anticipated”.⁹⁹ Indeed, at that point no pensions papers had been disclosed to Grant Thornton, who were conducting financial due diligence on behalf of RAL.¹⁰⁰ Grant Thornton contrasted Arcadia’s “very responsive” approach to information requests on non-pension issues, to the limited provision of information on the state of the pension scheme.¹⁰¹ In an email five days before the sale, Keith Hinds of Grant Thornton recounted Tony Clare stating that Sir Philip had refused to grant Grant Thornton access to TPR or Chris Martin.¹⁰² The same email illustrates various other misconceptions about Project Thor, including that that the trustees and Sir Philip had “broadly agreed” that a £50 million contribution would ensure that a Thor-like arrangement would be of no material detriment to the schemes.¹⁰³ Paul Budge had opted not to “enlighten” Dominic Chappell about the far higher updated cost of a potential restructuring in an earlier exchange.¹⁰⁴ Neither RAL nor their representatives met TPR, nor had any further meetings with the trustees. The RAL minutes for the board meeting that approved the purchase of BHS note that a direct approach to the trustees without the seller’s permission risked “de-railing the deal”.¹⁰⁵ Sir Philip chastised Chris Martin the following day for jeopardising the sale by demanding guarantees of security and informing the purchaser that pension contributions might need to increase to £30 million per year.¹⁰⁶

40. Based on the limited high-level information to which they had access, Grant Thornton were able to report to RAL that the pension schemes’ size and deteriorating

96 [Written submission from Chris Martin on pension security package](#)

97 BHS pension trustee minutes, 15 October 2015

98 [Chris Martin’s notes of meeting with Dominic Chappell, Eddie Parladorio, Lennart Henningson and Tony Clare](#), 19 February 2015

99 BHS pension trustee minutes, 3 March 2015

100 [Chris Martin’s notes of meeting with Sir Philip Green and Tony Clare](#), 19 February 2015

101 [Q 825–827](#); Letters from Grant Thornton, 23 June 2016 and 7 July 2016

102 [Email from Keith Hinds to RAL and advisers](#), 6 March 2015

103 [Email from Keith Hinds to RAL and advisers](#), 6 March 2015

104 Email from Paul Budge to Sir Philip Green, 20 January 2015, in [Goldman Sachs documents](#)

105 RAL board minutes, 11 March 2016

106 [Chris Martin’s notes of call with Sir Philip Green](#), 12 March 2015

funding position presented “a real threat to the viability of the business” unless a Project Thor-style settlement could be achieved. They also warned of the possibility that such a deal could be rejected by the trustees, TPR or PPF.¹⁰⁷

41. Olswang, RAL’s legal advisers, also had only limited pensions information. In their due diligence report, prepared for RAL, they noted that the schemes were “anywhere between £250 million and £500 million in deficit”, which was “far too large for a group that is this size that is loss making” and therefore the schemes needed to be “restructured post Completion”.¹⁰⁸ Stating that they, too, “had not been permitted access” to the trustees or TPR, Olswang highlighted the “inherent risk that the trustees or the regulator may engineer a situation post-Completion which is adverse to the Buyer and the Group’s prospects”.¹⁰⁹ RAL were aware that implementing Project Thor would be “expensive and time-consuming”.¹¹⁰ It is not clear that they understood how reliant any pensions resolution would be on Sir Philip’s willingness and ability to negotiate with TPR an appropriate contribution. Olswang were told, by Taveta or their advisers, that TPR had “raised no particular concerns” regarding the draft clearance application. That was simply not true. There was, the Olswang report noted, “no supporting evidence, beyond the seller’s word” that Thor had been acceptable to TPR and the trustees.¹¹¹

42. Taveta had barely more contact with TPR than RAL in the run-up to the sale. Paul Budge told Chris Martin on 2 February 2015 that Sir Philip was unlikely to agree to any moral hazard work unless he was compelled to do so. Mr Martin warned that TPR’s interest in the schemes would be “heightened by an acquisition”.¹¹² On 3 March, TPR wrote to Arcadia expressing concerns about the sale, including that trustees were awaiting critical information, and requested an urgent meeting.¹¹³ At this meeting, which took place the following day, Sir Philip Green set out a proposed settlement for the pension schemes in the event of a sale and a possible subsequent Thor-style restructuring of the schemes. The options open should the sale not proceed were also discussed.¹¹⁴ No formal applications were submitted and it was not clear what he was expecting of TPR. It was also not clear to TPR that the purchaser was aware of Sir Philip’s proposals.¹¹⁵ In a subsequent letter to Sir Philip on 5 March, TPR explained that the meeting would be the beginning of a “more intense” period of engagement between TPR and his company.¹¹⁶

43. In the event, that letter concluded the engagement between TPR and Taveta in advance of the sale. While Thor required the approval of TPR, a sale did not and it proceeded on 11 March. The sale and purchase agreement included a commitment for RAL to use “reasonable endeavours” to agree and implement a compromise on the pension scheme “as soon as reasonably practicable” following completion.¹¹⁷ We were repeatedly told by Taveta that BHS was sold to RAL as a “going concern”.¹¹⁸ Yet any Thor-style agreement

¹⁰⁷ [Grant Thornton Due Diligence Report](#), p9

¹⁰⁸ [Olswang Due Diligence report](#), p13

¹⁰⁹ As above

¹¹⁰ RAL board minutes, [11 March 2016](#)

¹¹¹ [Olswang Due Diligence report](#), p121

¹¹² [Chris Martin’s notes of meeting with Paul Budge and Neville Kahn](#), 2 February 2015

¹¹³ [Letter from TPR](#), 20 May 2016

¹¹⁴ [Letter from TPR to Sir Philip Green](#), 5 March 2015

¹¹⁵ [Letter from TPR](#), 20 May 2016

¹¹⁶ [Letter from TPR to Sir Philip Green](#), 5 March 2015

¹¹⁷ BHS [Sale and Purchase Agreement](#), 11 March 2015, Schedule 8

¹¹⁸ For example, [Q 491](#) (Lord Grabiner)

would have been dependent on TPR acknowledging the inevitability of insolvency.¹¹⁹ TPR launched an anti-avoidance investigation immediately following the sale. On 25 March 2015 it issued its first demands for documents under Section 72 of the Pensions Act 2004.¹²⁰

44. **Project Thor required sign-off from TPR. The sale of BHS to RAL, and subsequent switching of direct sponsor responsibility for the pension schemes, did not. The sale was materially detrimental to the pension schemes. It came dressed with an informal assurance of a security which proved to be illusory as BHS collapsed. Arcadia also held the simultaneous positions that BHS was both a solvent business and in urgent need of a pensions restructuring that had inevitable insolvency as a prerequisite. That TPR decided to launch an anti-avoidance investigation and demand documents immediately following the sale should not have come as a surprise to anyone involved.**

45. **Dominic Chappell and RAL were aware that the pension schemes were in heavy deficit when they bought BHS. They were not, however, fully aware of the prospects for the pension compromise on which their plans were reliant. Sir Philip Green acted to conceal the true state of the BHS pension problem from RAL and its advisers. He also encouraged RAL to believe that resolution of the schemes' problems through restructuring was more imminent and more achievable than was the case.**

The Pensions Regulator and resolution

46. Taveta sought to attribute the absence of resolution of the BHS pension scheme to a failure of regulation. Sir Philip told us that TPR “hasn’t run towards us to try and help find a solution, for whatever reason”.¹²¹ Both Paul Budge and Chris Harris, Arcadia’s Property Director, told us that “we would not be here” if TPR had been set up in a different way.¹²² Michael Hitchcock, former BHS finance consultant, told us that TPR’s unwillingness to approve Project Vera, which was RAL’s version of Project Thor, suggested that the regulatory process was “not fit for the current commercial world”.¹²³ We briefly consider Project Vera in Chapter 6.

47. We saw some evidence of TPR moving slowly with regards to BHS. Most glaringly, having received a 23 year deficit recovery plan in September 2013, already two months after the statutory deadline, it took until January 2014 for TPR to send their first information requests to the trustees.¹²⁴ Thor might have had more chance of progressing were TPR able to participate fully in a more iterative negotiation process. It is also clear that their predominant lines of contact and information gathering, via the trustees, the trustees’ advisers and then Taveta’s advisers, put considerable distance between TPR and both Taveta and the individual on whom any deal would hinge.¹²⁵ We have not sought to judge the regulatory framework on the basis of this one unusual case. We note, however, TPR’s evidence that pensioners may be better protected by a more proactive supervisory approach and stronger requirements for sponsors to cooperate with, and provide information to,

119 [Letter from TPR to Frank Field](#), 6 July 2016

120 As above

121 [Q 1957](#)

122 [Qs 3105 & 3141](#)

123 [Q 1245](#)

124 [Email from TPR to Margaret Hannell](#), Secretary to the trustees, 7 January 2014

125 See, for example, [email from KPMG to Deloitte](#), 3 October 2014

trustees and TPR.¹²⁶ We also note that the recent restructuring of the Halcrow pension scheme, a Thor-like arrangement which included TPR granting approval for an RAA, demonstrates that complex proposals can be authorised.¹²⁷

48. The BHS pension scheme awaits resolution. Sir Philip pledged to us that “We will sort it. We will find a solution”.¹²⁸ Sir Philip has made assurances of his intention to resolve the pension scheme for many years. In 2005 and 2006 his company discussed with Paternoster, an insurance company, the possibility of the scheme being bought out.¹²⁹ A similar option was considered in 2008, but was considered too expensive.¹³⁰ In 2012 he reassured the scheme trustees of his ongoing commitment to honouring his duties to the scheme members.¹³¹ He gave the same assurances to the Pensions Minister.¹³² In the minutes of the board meeting approving the purchase of BHS in 2015, RAL noted Sir Philip’s “oft-repeated representations” that he would “participate in any pension deficit solution [...] including making a substantial contribution”.¹³³ Since the sale, Sir Philip has continued to seek a pension settlement.¹³⁴ This was, he explained, always the understanding.¹³⁵ He has also continued to express frustration with TPR, saying they were “trawling through bullshit from 10 years ago” and that he wanted to “stop being tortured” by them.¹³⁶ TPR is, however, yet to receive a single detailed proposal for resolution or an adequate offer to the schemes.¹³⁷

49. **The Pensions Regulator (TPR) is reactive and can be slow-moving. Its first response to the 23 year recovery plan came in January 2014, four months after it was submitted and six months after it was due. TPR could also, at times, have shown more urgency in engaging with BHS and the pension scheme trustees regarding the various incarnations of Thor. TPR will increasingly be called upon to make decisions crucial for thousands of employees and pensioners in a fast-moving and uncertain environment. It is essential that it has the powers, resources, leadership and commercial acumen to act decisively.**

50. **Sir Philip Green and Paul Budge both sought to shift blame for their ongoing failure to resolve the pension fund to TPR. It is true that their mode of operation contrasts with that of TPR. But TPR, which has a primary purpose of defending the rights of current and future pensioners, is not placed to barter or accept informal assurances. Plans without numbers were quite reasonably deemed insufficient. The fact remains that Sir Philip could have “sorted” the pension scheme at any stage, not through force of personality but by providing TPR with the information they required or making a sufficiently large financial contribution. The onus was, and remains, on him.**

¹²⁶ [Letter from TPR, 24 June 2016 \(PPF00160\)](#)

¹²⁷ [TPR, Regulatory intervention report issued under s89 of the Pensions Act 2004 in relation to Halcrow Pension Scheme, July 2016](#)

¹²⁸ [Q 1911](#)

¹²⁹ [Evidence from Rothesay Life \(PPF00187\)](#)

¹³⁰ [BHS pension trustee minutes, 8 April 2008](#)

¹³¹ [BHS pension trustee minutes, 31 October 2012](#)

¹³² [Letter from Rt Hon Steve Webb, 13 June 2016](#)

¹³³ [RAL board minutes, 11 March 2015](#)

¹³⁴ For example [PPF log of engagement with Taveta group companies](#), 27 June 2016

¹³⁵ [Q 1919](#)

¹³⁶ [Chris Martin’s notes of a call with Sir Philip Green, 7 October 2015](#)

¹³⁷ [Letter from TPR, 13 June 2016](#)

51. **Dominic Chappell and the directors of RAL should not be absolved of blame for the plight of the BHS pension scheme. They accepted responsibility for it with a negligent and cavalier disregard for the risks and potential consequences. This negligence continued into their incompetent and self-serving ownership of the company. Should Sir Philip come to a settlement with TPR, RAL directors should not escape regulatory investigation.**

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4 Selling BHS

Finding a buyer

52. Sir Philip Green has claimed that he first started to seriously consider selling BHS in 2014.¹³⁸ Regarding reports of attempts to sell BHS dating back to 2006, Sir Philip said there may have been casual conversations but “no serious proper dialogue [...] about making a disposal.”¹³⁹

53. There were many reasons why BHS was not an appealing prospect for a new purchaser: the company had been loss making for a number of years, and suffered from a poor market position, expensive lease arrangements, and substantial pension obligations. Since 2013, BHS accounts have made clear that the company was only a going concern on the basis that Taveta had undertaken to provide continuing financial support.¹⁴⁰ **Sir Philip Green faced a considerable challenge in finding a credible buyer for a business that was consistently losing money and had a pension scheme with a large and growing deficit.**

Paul Sutton

54. Sustained efforts to sell the company commenced in April 2013 when Robin Saunders introduced Sir Philip to Paul Sutton. Ms Saunders had worked on financing Green’s takeover of BHS in 2000 and, as a shareholder until 2009, subsequently benefited from the dividends that were paid out.

55. In late June 2013, Ms Saunders found out that there were “significant issues to be addressed” with regards to Mr Sutton’s background — i.e. his now widely known history of bankruptcy and previous fraud conviction.¹⁴¹ Ms Saunders said that at that time Sir Philip Green had contacted her and made clear that a deal with Mr Sutton “was not going to happen”¹⁴² because of his concerns about Mr Sutton’s reputation.¹⁴³ Ms Saunders said that whenever they spoke after June 2013, Sir Philip would remind her that he was no longer in contact with Paul Sutton.¹⁴⁴

56. Contrary to what he told Ms Saunders, Sir Philip or his team continued to work with Paul Sutton until Spring 2014, during which time he developed a business plan to purchase BHS called ‘Project Albion’.¹⁴⁵ Paul Budge, Sir Philip’s Finance Director, told us that attempts to do a deal with Mr Sutton ended in March 2014.¹⁴⁶ Contradicting this, we have seen copies of emails showing that Sir Philip’s office arranged a meeting with Paul Sutton for 13 May.¹⁴⁷ It was only after it emerged that Paul Sutton was using Sir Philip’s name “as a reference in Monaco” that Sir Philip appears to have decided the risk to his reputation

¹³⁸ Q 1777

¹³⁹ Q 1779

¹⁴⁰ BHS Group Ltd Directors’ report for the year ending 31 August 2013

¹⁴¹ Q 940

¹⁴² Q 928

¹⁴³ Letter from Robin Saunders, 14 June; Letter from Robin Saunders, 6 July 2016

¹⁴⁴ Q994. Robin Saunders referred to 2013 both in oral evidence and, when asked to confirm this, did so in her letter of 14 June 2016. Taveta have subsequently suggested that Ms Saunders “is likely remembering a call in 2014” (Taveta Investments comments on oral evidence) but we note that Ms Saunders referred to 2013 on two separate occasions.

¹⁴⁵ Project Albion Business Plan

¹⁴⁶ Letter from Paul Budge, 14 July

¹⁴⁷ Email from Dominic Chappell, 2 May 2014

of continuing to discuss a deal was too great.¹⁴⁸ Mr Budge was asked to investigate Paul Sutton and Sir Philip subsequently decided to terminate contact; Mr Budge told us that this had happened on 13 May 2014, the same date they were due to meet.¹⁴⁹ The person who arranged the meeting on behalf of Mr Sutton was Dominic Chappell, who described the meeting in an email at the time as “conformation [sic] on the BHS deal with SPG”.¹⁵⁰

Dominic Chappell

57. Dominic Chappell started working with Paul Sutton in around January 2014¹⁵¹—initially as his driver then, later, as an associate in structuring the deal to purchase BHS.¹⁵² The discrediting of Paul Sutton enabled Dominic Chappell to take the reins of the deal; as Mr Sutton “stepped back” from BHS, “Dominic stepped forward”.¹⁵³ Paul Budge confirmed that he met with Mr Chappell and Peter Graf (the man Mr Sutton had proposed as BHS’s new CEO) on 16 July 2014.¹⁵⁴ By Autumn 2014, Mr Chappell was presenting his plan to purchase BHS as a done deal, advising River Rock and others that he would be acquiring BHS for £1 both debt free and pension free.¹⁵⁵

58. In reality, Dominic Chappell had scarcely, if any, more credibility than Paul Sutton as a suitable buyer for BHS. Mr Chappell had a record of bankruptcy, of which Sir Philip was aware,¹⁵⁶ and neither retail experience nor any experience of running a similar-sized company. It has subsequently been reported that Mr Chappell was forced out of a previous venture in the oil business “after taking around €400,000 (£315,000) from the company for his personal use”.¹⁵⁷ It is amazing that his association with a convicted fraudster and previous bankruptcy did not lead to more thorough scrutiny of his credibility, not least when it became known that he had been misrepresenting the deal to his own advisers, as was made clear to Goldman Sachs in December 2014.¹⁵⁸ Other examples of exaggeration, if not misrepresentation, included:

- both Dominic Chappell and Paul Sutton cited LEK Consulting LLP as advisers despite the fact that they were never engaged or had an informal role in the transaction;¹⁵⁹
- Mr Chappell intimated that he had serious retail figures like Alan Jacobs and Kevin Lyon lined up for key roles while both had told him this wasn’t the case;¹⁶⁰ and,
- Mr Chappell gave misleading suggestions that he would be investing his own money in to the company and that he had £120m working-capital available to help finance BHS.¹⁶¹

¹⁴⁸ [Letter from Sir Philip Green, 13 July 2016](#)

¹⁴⁹ [Q 2958](#) (Paul Budge)

¹⁵⁰ [Email from Dominic Chappell, 2 May 2014](#)

¹⁵¹ Mr Chappell told us that he started working with Paul Sutton in “early 2014” (Q 1381); LEK informed us that on 10 February 2014, Mr Chappell was in attendance at meetings with Mr Sutton ([letter from LEK, 22 June 2016](#))

¹⁵² [Q 2547](#)

¹⁵³ [Q 906](#)

¹⁵⁴ [Q 523](#) (Paul Budge)

¹⁵⁵ [Q 1122](#) (Joseph Dryer)

¹⁵⁶ [Q 2028](#)

¹⁵⁷ [The Guardian, 6 May 2016](#)

¹⁵⁸ [Email from Joseph Dryer, River Rock, to Anthony Gutman, Goldman Sachs, 16 December 2014](#)

¹⁵⁹ [Letter from LEK Consulting, 22 June 2016](#)

¹⁶⁰ [Letter from Kevin Lyon, 13 June 2016](#); [Letter from Alan Jacobs, 13 June 2016](#)

¹⁶¹ See paragraphs 90–94

Darren Topp, BHS's CEO, became concerned about Mr Chappell within weeks of him purchasing the company, as did Michael Hitchcock, whom Mr Topp had recruited due to his level of concern about RAL's management. Yet despite engaging with Mr Chappell for over six months in developing a deal, Paul Budge and, later, Sir Philip himself apparently found Mr Chappell credible.

59. Contrary to Mr Budge's assertion that Mr Chappell "started from a clean sheet of paper",¹⁶² it is clear that he was the continuity candidate. While Chappell did have his own board and advisers, including Grant Thornton and Olswang, his bid was clearly built on the groundwork developed with Paul Sutton. Eddie Parladorio, who had advised Sutton, was a member of Mr Chappell's team, Peter Graf had previously featured in Paul Sutton's bid for BHS, Vail Williams continued to provide property advice, LEK continued to be erroneously cited as consultants, and Mr Chappell built his business plan on data previously provided to Paul Sutton by Paul Budge.¹⁶³ In an exchange with Anthony Gutman of Goldman Sachs, Mr Budge said Paul Sutton had been "part of their [RAL's] team".¹⁶⁴

60. Sir Philip was vague as to when he became aware of the link between Paul Sutton and Dominic Chappell. However, an email from Paul Budge to Goldman Sachs dated 12 December 2014, indicated that "SPG [Sir Philip Green]/The BHS Board [were] concerned also that Paul Sutton still involved."¹⁶⁵ Such was the extent of Arcadia's concerns that Mr Chappell asked Mr Sutton to sign an affidavit confirming that he was not involved. This was produced in December 2014 and signed in February 2015.

61. **Sir Philip rejected Paul Sutton, his first choice of buyer, seemingly finally cutting off ties when faced with the prospect of his name being publicly associated with that of a convicted fraudster. Such was his determination to sell the business as a going concern, Sir Philip was prepared to sell to Dominic Chappell, Sutton's erstwhile driver and junior business associate. Chappell had no retail experience and Sir Philip knew him to have been previously bankrupt.**

62. **It is implausible for Paul Budge to claim that Dominic Chappell began with a blank sheet of paper. Mr Budge himself acknowledged that Chappell and Sutton were originally part of the same team. Chappell had picked up Sutton's plans with the full knowledge of Arcadia board members.**

The role of advisers

63. Large numbers of advisers were involved at various stages of the deal acting for Sir Philip Green and Dominic Chappell. Some were engaged formally, some informally, and some existed on paper alone. Many of those closely involved claim to have drawn comfort from the presence of others. For River Rock, who stood down from the deal on realising they had been misled by Mr Chappell, the presence of Linklaters and Goldman Sachs had given comfort.¹⁶⁶ Linklaters appear to have taken comfort from Olswang.¹⁶⁷ Taveta

¹⁶² Q 529

¹⁶³ In an email to Goldman Sachs, Mr Budge noted that Mr Chappell hadn't done detailed due diligence notwithstanding "some conversations when Paul Sutton (who was part of their team) reviewed the property side."
[Email from Paul Budge to Anthony Gutman, 9 January 2015.](#)

¹⁶⁴ [Email from Paul Budge to Anthony Gutman, 9 January 2015](#)

¹⁶⁵ [Email from Paul Budge to Anthony Gutman, 12 December 2014](#)

¹⁶⁶ Q 1011

¹⁶⁷ [Q 404](#)

and Sir Philip Green argue that the presence of Olswang and Grant Thornton helped give Dominic Chappell credibility.¹⁶⁸

64. Advisory firms are legally required to carry out ‘know your client’ checks on new clients to confirm their identity and provide protection against money laundering and terrorist financing. The only constraint beyond the legally required checks is the risk that a company is willing to take that its reputation may be tarnished by association with a particular client or deal. In the case of BHS, it appears that advisory firms either did not consider the reputational risk or demonstrated a remarkable level of ‘group-think’ in relying solely on each other’s presence. An example of the cursory nature of checks can be seen in the ‘know your client’ discussion that took place between Linklaters and Olswang on 10 March, the day before the transaction took place (see Box 1, below).

Box 1: Transcript of handwritten note from Linklaters “KYC” (Know Your Client) call with Olswang, 10 March 2015

<p>Page 1</p> <p>KYC Call with David Roberts @ Olswang on 10/3/15</p> <p>Usual external agents</p> <p>Bell Pottinger</p> <p>Original he obtained River Rock as financial advisers –worked with GS</p> <p>Entrepreneur</p> <p>-business failure with Lehman</p> <p>-they got a stat declaration from him</p> <p>Director who borrowed from Anglo Irish to fund a Marina in Bournemouth</p> <p>Anglo unlawfully triggered a swap (£:€) + triggered insolvency + put Co into insolvency</p> <p>Page 2</p> <p>He got legal advice not to fight + didn’t have wherewithal to fight</p> <p>-----</p> <p>He was asked to give ev in crim trial against 3 people at Anglo Irish who are now in prison</p> <p>-----</p> <p>He was forthcoming.</p> <p>Last 4/5 years –he’s busy doing oil + gas turnarounds in Spain</p>	<p>Page 3</p> <p>Exposure to oil terminals in Spain</p> <p>3 year [window]1 when investments mature (time)</p> <p>Paul Sutton negotiating with SPG asked Dom to help.</p> <p>He now decided to take on himself</p> <p>-----</p> <p>N/t to suggest fraud or bad faith</p> <p>Olswangs grilled him hard. He has been v. open</p> <p>Sat down for week + did [some] Digging</p> <p>Page 4</p> <p>Honest guy + entrepreneur</p> <p>Fault –eternal optimist</p> <p>Has surrounded himself with long term</p> <p>friends with good back grounds</p> <p>-known him for 20 years. Good business people</p> <p>This is effectively an MBO</p> <p>Run off with cash? –wouldn’t be involved</p> <p>Family man. Stable</p>
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Source: Linklaters

65. Advisers ultimately did not need to concern themselves with the material consequences of the deal, provided that their advice was accurate and their terms of engagement fulfilled. As one witness put it: “Businessmen do not employ deal lawyers to vet the business acumen of their counterparties.”¹⁶⁹

66. **Expert advisers are an important part of business transactions. They should, however, be there to advise, not to provide an expensive badge of legitimacy to people who would otherwise be bereft of credibility. The presence of reputable advisers does not absolve the client from exercising judgement. Equally, their engagement cannot be taken as a guarantee of the business acumen of their clients. It is disingenuous of Sir Philip Green to cite Dominic Chappell’s employment of Olswang and Grant Thornton as evidence of his credibility as a prospective owner of BHS.**

Due diligence by Olswang and Grant Thornton

67. Olswang and Grant Thornton started working on the deal with RAL in November 2014. They commenced detailed due diligence on BHS on 16 February 2015, following the signing of the Points of Principle for the sale.¹⁷⁰ Both advisers were rewarded handsomely for this work: their terms of engagement suggest that they earned fees totalling around £1.75 million in relation to the deal alone. Both received significantly higher fees because the deal went ahead than if it had been aborted. In Grant Thornton’s case the fee was four times higher for a successful transaction—well above normal rates.¹⁷¹ Sir Philip told us that Grant Thornton and Olswang together earned total fees from BHS/RAL of at least £8 million.¹⁷² We wrote to Grant Thornton and Olswang asking them to clarify the total fees they received but they refused to say.¹⁷³

68. Advisers were doubly dependent on a successful transaction because RAL did not have the resources to pay them otherwise. It is clear from email exchanges between Grant Thornton and Olswang that both were preoccupied with how their fees would be paid following the completion of the transaction.¹⁷⁴ This concern was addressed by Sir Philip, who apparently suggested that their RAL’s advisers’ fees might be paid via a loan from BHS or through profit from the (aborted) sale of Marylebone House.¹⁷⁵ The two main advisers to the transaction denied being in contact with Sir Philip’s team about their fees before the transaction. It is apparent, however, that Sir Philip found a way to ensure that advisers’ fees did not act as a barrier to the transaction proceeding.

69. While we have only had partial access to documentation, what we have seen suggests that the due diligence exercise was detailed and rigorous. Considering the risk of insolvency, Olswang went so far as “urging the [RAL] directors not to transact until they have maximum commercial comfort” regarding the intended £120m loan facility from Farallon Capital.¹⁷⁶ Though, in the last days before the transaction, Sir Philip Green and RAL arranged alternative financing.¹⁷⁷ Olswang also highlighted issues around

169 [Q 406](#) (Owen Clay)

170 [Q 789](#)

171 [Grant Thornton terms of engagement](#); included in [Project Harvey Due Diligence Report](#).

172 [Letter from Sir Philip Green, 13 July 2016](#)

173 [Letter from Olswang, 7 July 2016](#); [Letter from Grant Thornton, 7 July 2016](#)

174 [Letter from Stephen Bourne, 13 June 2016](#)

175 As above

176 [Letter from Olswang, 7 March 2015](#)

177 [Letter from Edward Parladorio, 14 July 2016](#)

concessions agreements with Arcadia stores and noted that while Sir Philip Green may have made “representations” that he would continue to support the business, “there is no legal obligation on him to do so.”¹⁷⁸

70. On the crucial issue of the pension schemes, Olswang noted that “most of the material pension warranties have been deleted” from the Sale Purchase Agreement, “further increasing the risk to [RAL] in this matter.” Olswang concluded that “we are not able to give the directors any material assurance or comfort that Project Thor can be implemented.”¹⁷⁹

71. Grant Thornton did not present their findings in such stark terms. Its due diligence report was more muted in tone but, nonetheless, highlighted significant risks, including potential cash-flow issues that could rapidly lead to insolvency. On the pension schemes, Grant Thornton noted that delivering Project Thor would be “challenging to agree from a regulatory perspective” but that, without it, the viability of BHS was in question.¹⁸⁰ That risk rested solely with the buyer. Grant Thornton’s final report was dated 11 March, the day that the RAL Board approved the deal and the day after it was approved by Taveta.

72. Neither Grant Thornton nor Olswang can be blamed for the decision by RAL to go ahead with the purchase. That said, while Olswang flagged up clearly the weaknesses of BHS as a business and the risks associated with acquisition, Grant Thornton deployed a large team for a short period and, based on the documentation we have seen, produced a report which could have more clearly explained the level of risk associated with the acquisition and offered firmer observations.

73. Grant Thornton and Olswang were increasingly aware of RAL’s manifold weaknesses as purchasers of BHS. They were nonetheless content to take generous fees and lend both their names and their reputations to the deal.

Goldman Sachs

74. Sir Philip and his various businesses have had a long-standing relationship with Goldman Sachs, dating back to 2004 when they advised on his failed bid for Marks and Spencer. This relationship appears to have been based on a large number of informal interactions and offers of assistance that did not generate revenue (around 25 in a 12 year period), punctuated by a few lucrative transactions.¹⁸¹ Services provided include private wealth management for the Green family (from which Goldman Sachs have earned significant fees), informal assistance on various business acquisitions and property transactions, and advice on BHS pension schemes’ investment strategy.

75. Advising, or as Goldman Sachs preferred to describe it, providing “preliminary observations”,¹⁸² to Sir Philip Green on the BHS transaction was another instance of Goldman Sachs providing free services. Their involvement in this manner had two key consequences:

¹⁷⁸ [Letter from Olswang, 7 March 2015](#)

¹⁷⁹ As above

¹⁸⁰ [Grant Thornton Due Diligence report](#)

¹⁸¹ Letter from Michael Sherwood, 8 July 2016 (not published due to commercial sensitivity).

¹⁸² [Q 419](#) (Anthony Gutman)

- The lack of a clear terms of engagement caused confusion about Goldman Sachs's role. Goldman Sachs were variously described as "gatekeeper" to the deal (Dominic Chappell),¹⁸³ and as "vet[ting]" Retail Acquisitions Limited on behalf of Sir Philip (Paul Budge),¹⁸⁴ providing corporate finance services for the transaction (Chris Martin),¹⁸⁵ and as "advisers to Sir Philip Green" (River Rock).¹⁸⁶ Goldman Sachs were aware that they were considered in this light but did not seek to disabuse those involved of the limited nature of their role.¹⁸⁷
- Dominic Chappell was able to use Goldman Sachs's involvement to give his bid credibility to others. He spoke of it when recruiting Stephen Bourne to the board;¹⁸⁸ Goldman Sachs's participation gave River Rock comfort;¹⁸⁹ and, Chappell also indicated to his board that he was progressing the deal directly with Sir Philip "via Goldman Sachs".¹⁹⁰

76. With the benefit of hindsight, Michael Sherwood, Goldman Sachs's vice-chair, concluded that "I wish that we had more clearly documented our role in writing."¹⁹¹ When pushed on specific improvements he intended to make, he was less clear: "We will look again at the frequency with which we review clients, but we have a very robust programme that we talk to our regulator about all the time and are convinced that it works."¹⁹²

77. Goldman Sachs provided free advice to Sir Philip on the transaction, having turned down the opportunity to be formally engaged. In doing so, they hoped to maintain a longstanding and lucrative relationship with a wealthy client. Goldman Sachs told us that their role was limited to providing some "preliminary observations" on the proposals. It is clear that their subsequent involvement went considerably beyond that. They enabled their prestigious name to be cited as that of "gatekeeper" to the transaction. This added lustre to an otherwise questionable process. Lack of clarity about their role evidently caused confusion for some parties to the transaction. Goldman Sachs should have been either "in" or "out" of the deal, and demonstrably so. As it was, they had authority without accountability.

78. Sir Philip Green claimed that the Goldman Sachs "process" was designed to ensure Mr Chappell was suitable to take control of BHS. Sir Philip said "we one million percent would not have done business with him" if Goldman Sachs had said not to.¹⁹³ It says much about his relationship with them that he should seek to place great weight on their word without there being any written documentation setting out his expectations of the bank. Furthermore, Goldman Sachs have been unequivocal in making clear that Sir Philip "did not ask us to make judgments or provide recommendations" and that this would not have been possible given the nature of their role.¹⁹⁴ Yet Sir Philip went ahead.

¹⁸³ [Email from Dominic Chappell to Paul Budge, 15 December 2014](#). Mr Budge forwarded this on to Anthony Gutman of Goldman Sachs on [15 December 2014](#). Goldman Sachs were also described as "gatekeeper" by River Rock (Q1086), Paul Budge (Q2962) and Eddie Parladorio (Q1275).

¹⁸⁴ [Email from Paul Budge to Anthony Gutman, 3 December 2014](#)

¹⁸⁵ [Chris Martin's notes of meeting with Paul Budge and Neville Kahn, 2 February 2015](#)

¹⁸⁶ [Email from Joseph Dryer to Michael Casey, 12 December 2014](#)

¹⁸⁷ See Above.

¹⁸⁸ [Q 1273](#)

¹⁸⁹ [Q 1011](#)

¹⁹⁰ [Q 1277](#)

¹⁹¹ [Q 2886](#)

¹⁹² [Q 2887](#)

¹⁹³ [Qs 2005, 2037](#)

¹⁹⁴ [Q 420](#)

79. While Goldman Sachs did not give an unambiguous “no” to the deal—which, as Sir Philip would have known, it was not their place to do—they did express concerns about the transaction, noting that “there were risks attached to the proposal in light of the lack of retail experience, the bankruptcy and the highly preliminary nature of the proposals and so on and so forth”.¹⁹⁵

80. Sir Philip and Paul Budge cannot pass responsibility for going ahead with the deal to Goldman Sachs. Arcadia failed to follow up adequately concerns expressed about Mr Chappell or the deal. It was also their responsibility to account for the limitations of the unpaid advice provided. Sir Philip maintained that he would not have gone ahead with the deal without their approval. He knows full well that Goldman Sachs were in no position to give such approval and they did not give it.

81. While Goldman Sachs were not responsible for recommending that the transaction proceed, or otherwise, their involvement was protracted. On 25 May, we wrote to Goldman Sachs requesting a record of their contact with Arcadia over the five month period for which they provided informal assistance on BHS. On 1 June, Anthony Gutman, who advised Sir Philip on the transaction provided a log detailing 95 emails, meetings and phone calls.¹⁹⁶

82. On 27 June 2015, Goldman Sachs belatedly notified us “for completeness” that their Vice Chairman, Michael Sherwood, had spoken with Sir Philip about provision of a £40 million loan to support the deal as it approached completion.¹⁹⁷ Although this business opportunity was not pursued, both this and the log indicate that Goldman Sachs were involved for a prolonged period.

83. We regret that Goldman Sachs underplayed to us the nature and extent of their role in the sale of BHS. More serious was the last minute “discovery”—the day before appearing before us for the second time—that they had been asked by Sir Philip to provide a £40m loan to BHS under RAL to facilitate the sale transaction. We note the apology of Mr Sherwood for this highly regrettable oversight and agree with his conclusion that they should have maintained better documentation of their involvement in the deal.

PricewaterhouseCoopers

84. BHS Group’s 2012–13 and 2013–14 Annual report and accounts made clear that the company was a ‘going concern’ on the basis of financial support provided by the wider Taveta Group. This alone meant that it could trade without threat of liquidation for at least the next 12 months.¹⁹⁸ The 2013–14 Annual report and accounts were signed off on 6 March 2015, just days before the sale of BHS to RAL and while the key substance of the deal was still being negotiated. This is also notable because the accounts were normally signed off in May of each year. The accounts were audited by PricewaterhouseCoopers

¹⁹⁵ [Q 2827](#)

¹⁹⁶ [Letter from Anthony Gutman, 1 June 2016](#)

¹⁹⁷ [Letter from Goldman Sachs, 27 June 2016](#) which also provided details of an additional discussion that had not previously been shared with the Committees.

¹⁹⁸ [BHS Group Ltd Financial Statements for years ending 30 August 2013 and 30 August 2014](#)

(PwC), who have a long-standing relationship with Sir Philip Green and have provided auditing services to Taveta for over a decade. Since 2008, the same PwC partner, Steve Denison, has been responsible for auditing the accounts of Taveta and its subsidiaries.¹⁹⁹

85. Despite being aware that BHS was due to be sold imminently and, in such a situation would lose the ongoing support from Taveta, PwC did not dispute BHS's Directors' assessment that the business remained a going concern. While Mr Denison told us that PwC recognised that BHS would potentially lose the ongoing support of Taveta if it was sold, they also considered "to what extent would such a deal bring additional cash, assets and resources to BHS to allow it to continue to trade in the future".²⁰⁰

86. Given that Grant Thornton's own due diligence of BHS had identified a number of significant risks to BHS meeting its cash flow requirements, we were surprised that PwC did not more deeply question whether BHS was genuinely being sold as a going concern. In light of this, we welcome the Financial Reporting Council (FRC) investigation into the conduct of PwC with regards to its audit of BHS's accounts in the year ending August 2014, and continue to urge them to conclude this as swiftly as possible and to include PwC's work in previous years and on the accounts of other Taveta Group companies. We sincerely hope that the FRC can report significantly quicker than the "two years" in which they currently "aim" to conclude their investigations.²⁰¹

Privilege and confidentiality

87. Advisers citing issues of legal privilege and client confidentiality acted as a bar to us gathering information. We appreciate that Sir Philip Green opted to waive privilege with regards to his own advisers. Dominic Chappell did not do so. Grant Thornton and Olswang in particular adopted a very wide interpretation of confidentiality, which included:

- Not providing details of the fees they earned for work carried out during RAL's ownership of BHS.
- Sending substitute witnesses to give evidence rather than those partners directly involved in the transaction.
- In the case of Grant Thornton, refusing to answer questions about their own due diligence report despite the fact that a copy of it was provided to us by Dominic Chappell.
- Citing client confidentiality as a reason for not even confirming at a high level the nature of their role in relation to aspects of the transaction — such as, in the case of Olswang, whether they were involved in providing advice around attempts by RAL to sell BHS before it went in to administration—during oral evidence.

88. *Erskine May* makes clear that: "A witness is bound to answer all questions which the committee sees fit to put" regardless of issues of confidentiality or privilege.²⁰² **We recognise the duty of confidentiality advisers have to their clients and, in particular, the principle of legal professional privilege. In exceptional matters of clear public interest,**

¹⁹⁹ [Q 388](#)

²⁰⁰ [Q 390](#)

²⁰¹ [Letter from Financial Reporting Council, 6 July 2016](#)

²⁰² *Parliamentary Practice, 24th Edition*, p.823.

however, there is a strong case for those concerns to be over-ridden by duties to provide information to Parliament. It is a matter of regret that, in spite of our requests, Dominic Chappell chose not to release his advisers from their formal obligations. This denied them the opportunity to explain fully their actions. Equally, we regret that Olswang and Grant Thornton sheltered behind these duties when their interests—and that of the public—would have been better served by full and frank disclosure to legitimate parliamentary scrutiny. We, and the public, would have had a better understanding of the motives of their client in proceeding with this rushed transaction.

Other 'advisers' cited by Dominic Chappell

89. In addition to the advisers who actually had a role in the sale of BHS, a number of individuals and companies were also cited by Dominic Chappell as part of his “team”. These include LEK Consulting LLP, and experienced retail figures: Alan Jacobs and Kevin Lyon, who Mr Chappell proposed would become BHS’s Chief Executive and non-executive Chairman respectively. Correspondence with all three of these indicates that Mr Chappell significantly over-inflated their roles, if any, in providing advice. LEK had informal meetings with Mr Chappell to explore business opportunities but these were never progressed,²⁰³ and Alan Jacobs and Kevin Lyon have both confirmed that they explicitly refused the roles offered by Mr Chappell.²⁰⁴ Mr Lyon made this clear to Ian Grabiner, the Chief Executive of Arcadia and a Taveta Director, when they spoke on 10 March, the day that Taveta approved the transaction.²⁰⁵

The deal

RAL’s proposed sources of finance

90. From an early stage, RAL’s proposal came with a substantial commitment to fund BHS. On 12 December 2014, Dominic Chappell talked his plans through with Anthony Gutman of Goldman Sachs. RAL would provide £120 million of working capital and £35 million of equity.²⁰⁶ These sums featured prominently in subsequent discussions around the deal and also in our evidence. Paul Budge told us that RAL “had ability proof that they had £120 million of working capital”,²⁰⁷ which “meant that their intentions were serious in that they wanted to run the business as a going concern”.²⁰⁸ Chris Harris said Chappell “had managed to put £35 million in a bank within about three days [...] which showed credibility”.²⁰⁹ The importance of financial capability in assessing RAL’s credibility chimed with Sir Philip Green’s instructions to Anthony Gutman for his first meeting with Dominic Chappell; “proof of finance” was his “key concern”.²¹⁰

91. RAL’s proposed source of working capital was Farallon Capital, a US based asset management firm. On 5 February 2015, Farallon issued a non-binding term-sheet to RAL setting out the terms of a possible loan.²¹¹ Nicolas Giaque, of Farallon, described

203 Letter from LEK, 22 June 2016

204 Letter from Alan Jacobs, 13 June 2016; Letter from Kevin Lyon, 13 June 2016

205 Letter from Kevin Lyon, 13 June 2016

206 Anthony Gutman’s note of call with Dominic Chappell, 12 December 2014

207 Q 532

208 Q 533

209 Q 553

210 Email from Paul Budge to Anthony Gutman, 28 January 2015

211 Farallon non-binding Term sheet

the term sheet as a “very early stage expression of interest” designed to establish “joint understanding” between the two parties.²¹² Mr Giauque estimated that around one in five deals that reached this stage progressed to completion. In his business, he explained, “you have to kiss a lot of frogs”.²¹³

92. The term sheet describes a “£120 million term loan facility”, secured on BHS property. However, those funds were to be provided in three separate tranches of £40 million, each subject to the full repayment of the previous £40 million. It was, in effect, an outline of a rolling £40 million loan.²¹⁴

93. This facility was also subject to a series of conditions. These included:

- approval from the Farallon investment committee;
- satisfactory due diligence; and
- “satisfactory resolution and consent of the pension regulator with respect to pension issues”.²¹⁵

Stephen Bourne, a former director of RAL, told us that “no one reading those letters from Farallon would believe that finance was available [...] the conditions could not be met”.²¹⁶ Goldman Sachs advised Taveta that the Farallon proposal was subject to due diligence and documentation.²¹⁷

94. **Sir Philip Green originally set proof of finance as the key test of Dominic Chappell’s credibility in purchasing BHS. Mr Chappell did not, however, have access to the working capital for BHS to be a sustainable business. The proposed £120 million from Farallon was in fact three consecutive £40 million loans, each available only upon repayment of the last. It was also a far from firm offer subject to many conditions, not least TPR approval of a restructuring of the pension fund. This was all very clear from the documentation. Given the importance Taveta placed on this funding in assessing Mr Chappell, it is simply not credible that Paul Budge neither knew these simple facts nor took steps to establish them.**

95. A further condition of the Farallon funding was RAL providing £35 million of equity financing to BHS. An outline offer to buy the company, emailed by Dominic Chappell to Anthony Gutman on 8 January 2015 despite Goldman Sachs’s professed minimal involvement, included the proposal to “invest £35 million clean, unencumbered equity funds into BHS”. This funding was to come from directors and associates of RAL.²¹⁸ This commitment was gradually watered down. Successive drafts of the Points of Principle document that set out the heads of terms for the sale saw it relegated to “provisional equity funding” and then “provisional funding”.²¹⁹ The final version, signed by Sir Philip and Mr Chappell on 16 February 2016, required RAL to demonstrate that it had “£35 million of provisional funding at Olswang on shore to acquire Marylebone House”.²²⁰

²¹² [Q 1081](#)

²¹³ [Q 1032](#)

²¹⁴ [Farallon non-binding term sheet](#)

²¹⁵ [Farallon non-binding term sheet](#)

²¹⁶ [Q 1345](#)

²¹⁷ [Letter from Goldman Sachs, 1 June 2016](#) (log entry 89)

²¹⁸ [Email from Dominic Chappell to Anthony Gutman, 8 January 2015](#)

²¹⁹ [Draft Points of Principle, provided by Dominic Chappell](#)

²²⁰ [Points of Principle, 16 February 2015](#)

96. Marylebone House was used as the head office of BHS. It was owned, however, by Wilton Equity Ltd, a Green family company registered in the British Virgin Islands. Dominic Chappell agreed to purchase Marylebone House for £35 million. In a further deal, he would immediately on-sell it to Allied Commercial Exporters Ltd (ACE) for £45 million.²²¹ As part of the terms of that arrangement, ACE placed £35 million in an Olswang escrow bank account on 4 February. Those funds, which were in effect a down-payment by ACE for the purchase, were “held to the strict order of ACE’s solicitors”.²²² It was not RAL’s money, and it was not intended to be injected into BHS on acquisition.²²³

97. Marylebone House was not in the event sold as planned because an offer of £52 million had been received.²²⁴ The property was eventually sold to Arcadia in July 2015 for £53 million, a transaction we consider in Chapter 5. Taveta told us that figure represented the true market value of the property.²²⁵ Dominic Chappell succeeded only in arranging to on-sell Marylebone House at below market value.

98. **The original terms of the deal were that RAL would provide £35 million of equity to BHS. It was also a condition that RAL would secure working capital from Farallon. Paul Budge and Chris Harris both repeatedly told us that the ability to source £35 million at short notice gave Dominic Chappell credibility as a purchaser. That figure was, however, attained through Allied Commercial Exporters (ACE) placing funds in an Olswang escrow account. This was in effect a down-payment by ACE to purchase a property owned by the Green family. The money was held to the order of ACE. This in no way demonstrated Dominic Chappell’s credibility as a purchaser of BHS. At best it demonstrated his capability as a would-be estate agent. We do not find it credible that businesspeople of the experience of Paul Budge and Chris Harris were not aware of this distinction.**

Alternative sources of finance

99. The £35 million of equity that would have been required to meet Farallon’s conditions of providing working capital was never found. Stephen Bourne told us that Dominic Chappell was “frantically looking for it”, but there was “no sign” that it was “ever likely to appear”. He concluded that there was “no finance to do the deal”.²²⁶

100. Instead, Sir Philip secured some working capital for RAL himself. The “day one” post-sale balance sheet for BHS provided to the Taveta board on 25 March 2015 included net cash of £25 million from an HSBC facility. This was arranged by Sir Philip on more favourable terms than RAL would have been able to secure.²²⁷ The loan was guaranteed by Arcadia, which took a fixed and floating charge over BHS assets.²²⁸

101. By initially offering Marylebone House to RAL for £35 million on the understanding it would be immediately on-sold for £45 million, Sir Philip sought to compensate for RAL’s failure to provide adequate equity finance to the deal. £8.5 million of the proceeds were

²²¹ Letter from Alexander Dellal, 6 June 2016

²²² Letter from Alexander Dellal, 6 June 2016

²²³ Q 1292

²²⁴ Q 3014

²²⁵ Q 3022

²²⁶ Q 1380

²²⁷ Notes to Taveta board minutes, 25 March 2015. The loan also included £15 million assigned to paying a mortgage on Jersey properties.

²²⁸ Noah loan guarantee document

to be invested in BHS.²²⁹ In the event, Marylebone House was not sold to finance the deal. Instead, a Framework Agreement was agreed on 26 June 2015, whereby BHS received a £3.5 million interest free loan from Arcadia and RAL received £6.5 million in cash. These funds were intended to pay down the HSBC loan.²³⁰ Both the original proposal and its replacement were arranged by Sir Philip.

102. RAL failed to provide working capital and they failed to provide equity. £25 million of working capital was arranged by Sir Philip Green and guaranteed by Arcadia. Sir Philip first arranged equity by offering Marylebone House for £35 million on the understanding it would be immediately resold for £45 million. When he decided not to proceed with this deal, he found £10 million from elsewhere. Sir Philip attempted to make good RAL's financial inadequacies to facilitate the sale. He was both sides of the deal.

103. The "day one" balance sheet also included £5 million of equity. Eddie Parladorio told us that until very shortly before the sale he and other RAL directors understood this would be provided personally by Dominic Chappell. This became a personal loan and then a loan to RAL.²³¹ The funding was arranged by Dominic Chappell on 10 March 2015, the day before the sale. It was a two month loan from ACE, secured against BHS's Atherstone distribution centre, specifically for the purchase of BHS. Arcadia told us that they were not aware that the funds were raised in this fashion.²³² The total redemption on the loan was to be £6 million, with £2 million due on 18 March, a week after the sale, and the remainder due on 11 May. These were extraordinary terms, especially for a secured loan. In the event, only £1 million was repaid on 18 March. A variation to the terms of agreement was agreed, resulting in additional costs to BHS of £1.15 million. The loan was finally repaid on the sale of Atherstone in August 2015.²³³ It was the first in a series of loans on punitive terms arranged with ACE and others, as outlined in paragraph 148.²³⁴

104. The £5 million supposed equity that was provided by RAL as part of the deal was a hurried short term loan on extraordinary terms secured on BHS property. RAL in no way passed Sir Philip's test of proof of finance. They came to BHS with a pound.

BHS's financial position at the time of acquisition

105. In total, the "day one" BHS balance sheet presented to the Taveta board showed £94 million in cash and facilities available for BHS. This figure was just above the estimated peak to trough working capital requirement of £90 million identified as necessary by both Sir Philip and Gillian Hague, his Group Financial Controller.²³⁵ As already outlined, it included £25 million in cash from an HSBC loan facility secured by Arcadia, £8.5 million from the sale of Marylebone House and £5 million in supposed equity that transpired to be a high interest loan. The same balance sheet, with the exception that the borrowing facility was originally intended to be provided by Goldman Sachs rather than HSBC, was prepared by Paul Budge and signed by both Dominic Chappell and Sir Philip Green on 11 March 2015 in agreeing the deal. It is shown in Figure 3 below.

²²⁹ Though RAL Directors understood this money would be used to fund their fees.

²³⁰ [Framework Agreement, 26 June 2015](#)

²³¹ [Letter from Edward Parladorio, 14 July 2016](#)

²³² [Information provided by Arcadia in relation to BHS balance sheet](#)

²³³ [Letter from Alexander Dellal, 6 June 2016](#)

²³⁴ [Letter from Alexander Dellal, 6 June 2016](#)

²³⁵ [Email from Gillian Hague to Dominic Chappell, 14 November 2014](#)

Figure 3: BHS balance sheet agreed as part of sale

Final Statement.

	£m	
Gift Cards / Credit Notes	6.3	
VAT	5.5	
PAYE/N.I	2.1	
Insurance	1.7	
Cash in Transit/early payments	15.7	
	(4.9)	
Inc/Outs	10.8	10.8
Earnings (6.9 - HKBSI - Oxford 0.5)	5.84	
Overseas / Taxes	7.0	
Stays In	12.84	
Jersey	(5.00)	
	7.84	7.84
		18.64
NW House		32.00
Carlisle (Monday)		4.92
Marylebone House		8.50
		64.16
Equity		5.00
Goldman's Facility	40	69.16
less Jersey	(15)	25.00
		94.16
(Take off the early payments)		

106. Further items on this balance sheet gave us concern:

- It includes £15.7 million in case for liabilities, such as income tax and national insurance on the February 2015 payroll and VAT on sales between December 2014 and February 2015, which would be due very shortly after the sale.
- It notes £32 million of proceeds from the sale North West House, but footnotes that £7 million was “transferred elsewhere”. It transpired that these funds were transferred to RAL in an interest free loan for which RAL took fees, in contravention of the covenant.²³⁶
- £4.9 million was due from the sale of Carlisle House in mid-April 2015; in the event this sale did not proceed until February 2016.²³⁷

²³⁶ For example, Q 1144, and [Letter from Michael Hitchcock, 12 June 2016](#)

²³⁷ [Letter from Michael Hitchcock, 12 June 2016](#)

BHS would also have to find £5 million to contribute to the pension fund, which had previously been financed by the wider Taveta group.

107. The Taveta board was presented, two weeks after the event, with a rosy picture of the sale: the pension scheme was secure and BHS, unencumbered by substantial debt, was left with a healthy “day one” balance sheet of £94 million. The reality was very different. The balance sheet included cash for immediate liabilities, property deals that took many months to materialise, funds that went to RAL never to return and equity that was a loan on punitive terms. It was patently obvious that there was simply not enough cash in BHS to give it a realistic chance of medium term survival.

Proceeding with an unsuitable buyer

108. Sir Philip Green initially appears to have set three conditions for RAL to meet to demonstrate their credibility as a prospective buyer of BHS. However, ultimately he sold the company to Dominic Chappell without any of these having been met:

Table 3: Conditions for sale of BHS set by Sir Philip Green

Initial condition of sale	Position when sale completed
That they inject their own equity in to the company. ²³⁸	RAL provided no equity to the deal. £5 million came via a loan from ACE secured against a property owned by BHS. Further equity was subsequently provided by Sir Philip Green in lieu of the funds from the planned sale of Marylebone House. ²³⁹
That they provide a credible retail ‘front-man’. ²⁴⁰	RAL had no credible retail front-man. On 10 March, prior to Taveta approving the sale, Ian Grabiner telephoned Kevin Lyon (who RAL had proposed as non-executive Chairman), who confirmed that he was not interested in the role. ²⁴¹
That they have sufficient working-capital to keep the business afloat on an ongoing basis. ²⁴²	RAL failed to meet the terms of borrowing £120m from Farallon; the only working-capital available to RAL was provided or arranged by Sir Philip Green. ²⁴³

109. In order to progress the sale of BHS, Sir Philip Green endorsed a management turnaround plan that he claimed should have saved the company;²⁴⁴ he also agreed to write off the majority of the inter-company debt between BHS and Arcadia, while retaining a £40 million secured loan and guaranteeing a £25 million facility with BHS. Sir Philip also made oral commitments to back the BHS pension scheme. He told us:

“We always agreed and knew we would make a contribution towards the pension scheme. When the business was sold that was always understood.”²⁴⁵

²³⁸ Email from Paul Budge to Dominic Chappell, 15 December 2014

²³⁹ Letter from Michael Hitchcock, 12 June 2016

²⁴⁰ Email from Paul Budge to Dominic Chappell, 15 December 2014

²⁴¹ Letter from Kevin Lyon, 13 June 2016.

²⁴² Email from Paul Budge to Anthony Gutman, 3 December 2014

²⁴³ See paragraphs 90 to 104, above.

²⁴⁴ Q 2046: “If the path laid down had been followed, [BHS] would not have gone out of business. It would not be in liquidation.”

²⁴⁵ Q 1919

110. At the point of sale, however, Sir Philip's commitment was limited to paying in £5 million per year for up to three years.²⁴⁶ The RAL board appear to have relied on oral representations from Sir Philip that he would continue to support the business, including by "participat[ing] in any pension deficit solution that is proposed."²⁴⁷ RAL also took comfort from what they understood to be reassurances from Sir Philip that he would secure adequate trade credit insurance for BHS.²⁴⁸ RAL took him at his word; Eddie Parladorio wrote:

"Sir Philip Green emphasised on more than one occasion in meetings that I and others attended that his word was his bond. Sir Philip is a very high net worth, high profile businessman, knighted for services to retail, and it was not unreasonable to accept the assurances and oral commitments of such a man."²⁴⁹

Table 4: Expectations for purchase of BHS set by Dominic Chappell

Initial expectation of purchase	Position when sale completed
BHS would be sold with the pension liability resolved.	Sir Philip Green committed to contribute a maximum of £15m over three years, including in the event that a Project Thor-style solution was implemented.
BHS would come debt free.	Sir Philip had supported BHS for some time via £256m of intercompany loans. ²⁵⁰ At time of sale he wrote off over £200m of inter-company debt with Arcadia but retained a £40m loan secured against BHS assets. In addition, Carmen Properties was sold to RAL as part of the deal with debt attached.
Purchase would be for £1.	Dominic Chappell purchased the company for £1. In reality, he paid £1 for a company with significant property assets, cash and facilities guaranteed by Arcadia. ²⁵¹ However, he also took on liabilities that far exceeded these.

111. It had long been intended that the sale would proceed on 9 March.²⁵² It was actually concluded on 11 March after intensive negotiations, on terms very different to those envisaged just a few days earlier. As Eddie Parladorio noted, "alternative methods of generating sufficient cash to finance the turnaround" were identified between 8 March and 11 March 2015.²⁵³ This had implications for those parties affected. For example, Sir Philip warned Chris Martin the day after the sale that RAL both "hadn't got the expected level of debt" and that they "wanted to move straight to compromise", meaning a Thor-style restructuring of the pension scheme. Sir Philip took credit for driving a deal

²⁴⁶ BHS Sale Purchase Agreement

²⁴⁷ RAL Board Minutes, 11 March 2015

²⁴⁸ Letter from Edward Parladorio, 14 July 2016

²⁴⁹ As above

²⁵⁰ Letter from Sir Philip Green, 13 July 2016

²⁵¹ As above

²⁵² See, for example, Points of Principle (signed 16 February 2015); letter from Sir Philip Green, 13 July 2016

²⁵³ Letter from Edward Parladorio, 14 July 2016

through, telling Mr Martin that he had “put the ball in the net on his own without 27 advisers”. He offered further assurances that he could help to ensure RAL would honour its responsibilities towards the pension scheme: “I can put the ball in the goal for you”.²⁵⁴

112. Sir Philip set a number of conditions for someone suitable to take over BHS. He rejected Paul Sutton, a fraudster and a bankrupt, but chose Sutton’s junior business associate instead. It was clear that Chappell’s team was woefully short of the requisite experience and expertise, notably lacking the credible senior retailer on whom Sir Philip once insisted. They could offer no equity and had no means of raising funds on a sustainable basis. Ultimately, Dominic Chappell and RAL failed all of Sir Philip’s own tests. They were manifestly unsuitable owners of BHS. It is inconceivable that someone with Sir Philip Green’s experience seriously considered otherwise.

113. Regardless, the deal proceeded and with great haste. Dominic Chappell had failed to honour his pledges but each failure was overcome, in several cases through agreements that were formally enacted long after the event. Promises were made, including on the pension fund, some of which would be very difficult to deliver. RAL placed great faith in Sir Philip’s oral commitments but, no longer bringing any finance to the deal, they had nothing to lose. Sir Philip personally drove the sale through to agreement.

²⁵⁴Chris Martin’s notes of a call with Sir Philip Green, 12 March 2015

5 Taveta corporate governance

Company structures

114. Corporate governance is commonly understood as the rules and practices by which a company is run and balances the interests of its many different stakeholders, including management, employees, customers, creditors, pensioners and the community. In investigating the sale of BHS we encountered a pattern of transactions between Green family companies which brought into question their corporate governance and the role of their directors.

115. The complex structure of the Taveta and Arcadia family of companies is illustrated in Figure 4. Taveta Investments Limited is the parent company of Taveta Investments (No. 2) Limited and, determines the group's retail and commercial strategy.²⁵⁵ Taveta 2 is the parent company of the Arcadia Group and was, until its sale, parent of the BHS Group. Taveta Investments Ltd is controlled by Taveta Ltd, the ultimate parent company. That is registered in Jersey and Lady Green is the ultimate beneficial owner.²⁵⁶

Inter-company transactions

116. There are several other companies owned by Lady Green or companies within the Green family group that had connections with BHS or were involved in its sale. We have already noted that Carmen Properties—incorporated in Jersey and with Lady Green as the ultimate beneficiary—bought and leased back to BHS ten properties in 2001 and was transferred to BHS as part of the deal. BHS made another sale-and-leaseback deal, with Mildenhall Holdings Ltd (“Mildenhall”)—another Jersey-registered company whose ultimate beneficiary was Lady Green—for a property in Leeds. Between 2005 and 2012, BHS paid £2.7 million in rent to Mildenhall. As with the Carmen Properties deal, this would have seen the rent received as income in Jersey by Mildenhall and allowed BHS to register it as a cost and adjust its UK tax liability accordingly. Another company, the British Virgin Islands-based Wilton Equity Ltd, owns the freehold of Marylebone House, BHS's head office.²⁵⁷ Wilton was owned by GH One Ltd, also registered in the BVI and owned by Lady Green.²⁵⁸ Wilton was sold to Arcadia in July 2015 at a profit of nearly £22 million in less than two years,²⁵⁹ a transaction we consider later in this Chapter.

²⁵⁵ [Letter from Lady Green, 4 July 2016](#)

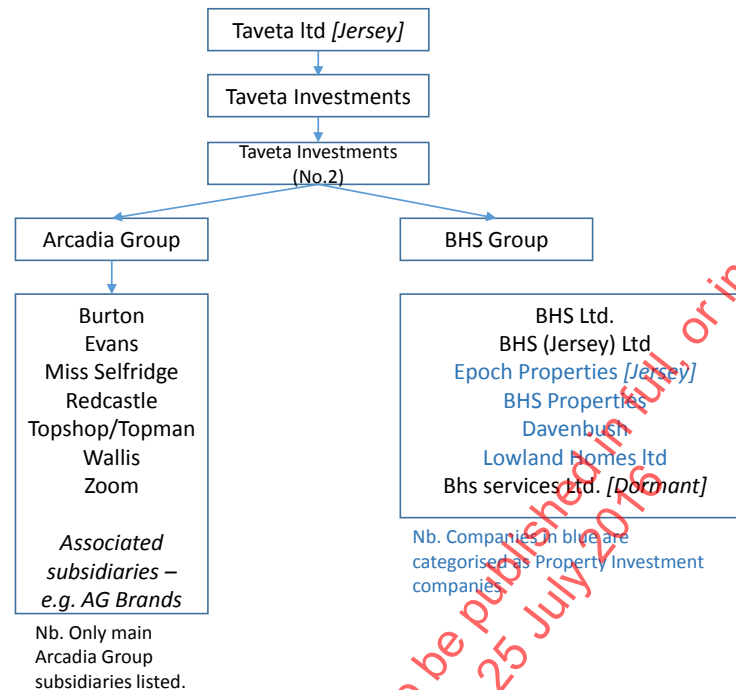
²⁵⁶ Lady Green told us that “The shares are held by nominee companies pursuant to a declaration of trust in my favour.” [Letter from Lady Green, 4 July 2016](#)

²⁵⁷ See chapter 4 for further details

²⁵⁸ [Share Purchase Agreement between GH One Ltd and Arcadia Group Ltd, 16 July 2015](#)

²⁵⁹ Land Registry records. On sale to Arcadia the freehold of the property was combined with the head lease.

Figure 4: Structure of Taveta Group (Green Family companies registered in the UK)



117. BHS's transactions with other Green family-owned companies were not limited to property. In 2001, BHS issued a bond of £19.5 million carrying 8 per cent interest per annum to Tacomer Ltd, a Jersey-registered company whose ultimate owner is Lady Green. The bond was ultimately redeemed in 2006 for £28,975,000, giving Tacomer Ltd, and Lady Green, a return of £9,475,000. As with the property transactions, this would have had tax advantages and, again, would have allowed BHS to reduce its taxable profits.

118. In addition, there are three Global Textiles companies, all controlled by Lady Green and registered in either Jersey or the British Virgin Islands, which loaned Taveta 2 £200 million in 2009 for it to purchase BHS. The annual interest on this is 8 per cent, earning Lady Green £8.3 million in 2015,²⁶⁰ on top of the £20 million per year loan repayments. All these companies are private, and therefore not subject to the same requirements as public companies in respect of share transactions or publication of information. Those registered offshore are subject to far less demanding tax and transparency requirements.²⁶¹ Consequently, it is not possible to obtain a clear picture of the ownership and capital flows in the Green family business empire in order to assess better the significance and implications of the sale of BHS. **There is a complex web of companies, many registered**

²⁶⁰ Letter from Lady Green, 4 July 2016, which states that "I can confirm that Taveta Investments (No 2) Limited raised acquisition finance for the purchase of BHS by issuing £200m 10-year reducing balance subordinated unsecured fixed rate loan notes with an 8 per cent coupon which were listed on the Channel Islands Stock Exchange on 20 July 2009."

²⁶¹ For Jersey registered companies, for example, the ultimate beneficial owner of shares need not be publicly disclosed, accounts need not be audited and are not publicly available, and the transfer of ownership between companies is less open to scrutiny. Corporation and other taxes compare favourably with other jurisdictions. The BVI offers similar advantages, particularly around confidentiality and low corporate governance requirements.

offshore. BHS was involved in a number of transactions with a number of these companies. Whether BHS benefited financially from these transactions is far from clear. What is clear is that the Green family did.

Offshore registration

119. Sir Philip was vague when asked about his choice of Monaco as a place of residence, referring to the need to put his children in school somewhere.²⁶² When asked about the reasons for the choice of registration of the Green family companies, Lady Green wrote:

“My understanding is that jurisdictions such as Jersey and the British Virgin Islands are commonly preferred for their strong regulatory regimes and well-respected regulators and the size and competence of their professional communities”.²⁶³

Sir Philip was more ready to acknowledge the tax benefits of offshore registrations but denied there was any lack of transparency or that tracking funding between companies was at all difficult.²⁶⁴ He described the corporate structure as “very see through” and insisted that tax was properly paid on all UK earnings.²⁶⁵ He argued that some competitor companies were set up more aggressively in terms of tax avoidance and, in any case, the country benefitted from the presence of non-UK based investors.²⁶⁶ The moral case for companies trading largely in the UK and their parent companies to be registered and pay tax here was evidently not a consideration for Sir Philip. His attitude was that he was trading legally, like other companies based offshore, therefore he did not see any problem with the group structure.

120. Sir Philip Green himself is a director of Taveta Investments, was a director of Taveta Investments (No.2) Ltd until March 2015, and was a director of the Arcadia Group until December 2015. He is not a director of Taveta Ltd, the parent company controlled by his wife. In evidence, he distanced himself from the companies under her ultimate control, telling us that, in respect of the Green family accounts “They are not my accounts. I don’t have any control over them”.²⁶⁷ At one point, he denied signing off the accounts for companies for which he was a director even though this is a legal duty in that role.²⁶⁸ **For a businessman of his stature Sir Philip sought to demonstrate an unfeasible degree of unfamiliarity with the financial affairs of some of his businesses or closely related family companies. By contrast, his renowned attention to detail was very apparent in other cases. In spite of our efforts to gain an understanding of the wider context of the sale of BHS, we were not provided with full information about the relationship between various Green family companies and the flow of money between them. Nonetheless, we have seen that the family has used private companies and offshore registrations. These arrangements were designed to reduce tax bills. They have also had the effect of reducing levels of corporate transparency.**

²⁶² Q 1761

²⁶³ Letter from Lady Green, 4 July 2016

²⁶⁴ Q 1769; Lady Green still resides in Monaco; Sir Philip does not.

²⁶⁵ Q 1765

²⁶⁶ Qs 1765–7

²⁶⁷ Q 1770

²⁶⁸ Q 1785

Corporate governance

121. The Taveta group is characterised by closely related companies, whose boards comprised overlapping memberships, largely of trusted partners and family members, as indicated in Table 5 below. This personnel set-up makes it all the more important that each company has strong corporate governance to ensure directors make decisions in the interests of the company concerned, as they are required to do. Indeed, Sir Philip asserted that good corporate governance was a priority in his companies.²⁶⁹

122. The main duties of directors are set out in the Companies Act 2006. These apply equally to directors of private and public sector companies and equally to both executive and non-executive directors. A director is required to act “in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.” In doing so they are required to have regard (amongst other matters) to:

- the interests of the company’s employees;
- the likely consequences of any decision in the long term;
- the desirability of the company maintaining a reputation for high standards of business conduct.²⁷⁰

These high level requirements are not clarified by further regulatory requirements, although the common law may apply in any cases brought before the courts. These are relatively rare, in part because of the difficulty in pursuing prosecutions based on the motivations of directors.

Table 5: Company Directors of Green family businesses

	Taveta Investments	Taveta No.2	Arcadia Group	BHS
Karren Brady				
Paul Budge				To March 2015
Richard Burchill			Since Dec. 2015	To March 2015
Siobhan Forey				
Mary O’raghty				To March 2015
Lord Anthony Grabiner			To Dec 2015	
Ian Grabiner				
Sir Philip Green		To March 2015	To Dec 2015	To March 2015
Christopher Harris				
Gillian Hague		Since Sep 2015	Since Sep 2015	
Brett Palos				
David Shepherd				

Source: Companies House

²⁶⁹ Q 2084

²⁷⁰ Companies Act 2006, s. 172(1)

123. Directors have a duty to exercise reasonable care, skill and diligence when carrying out their duties.²⁷¹ When it becomes apparent that a company may not survive, their duties shift and are then owed to the general body of creditors.²⁷² At that stage, they must take every reasonable step either to avoid insolvent liquidation, or to minimise the losses to creditors. If the directors neglect these duties, they leave themselves open to claims for misfeasance,²⁷³ breach of duty²⁷⁴ or wrongful trading.²⁷⁵

124. The legal position in respect of the Chairman and other members of the Board is that it is permissible for a director to delegate certain functions to other persons. However, if a director allows himself to be dominated, or manipulated by one of their number, he may have gone beyond the boundaries of what is proper. He could be found to be in breach of duty and subject to disqualification.²⁷⁶

125. The non-statutory UK Corporate Governance Code, produced by the FRC, provides further guidance for directors and chairmen as to their duties. It sets out the duties of the board to set the values and standards of the company and its strategic aims. It holds that the chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role. It describes the role of non-executive directors to scrutinise the performance of management and provide constructive challenge. The duties apply only to listed companies and only on a 'comply or explain' basis; they are not enforceable by the FRC. They do not apply to private companies, as was pointed out to us by the non-executive chair of Taveta and Taveta 2, Lord Grabiner.²⁷⁷ Nonetheless, these are well understood principles of good corporate governance and provide useful guidance for the interpretation of the legal duties that apply to all directors. Many of BHS's competitors are public companies and therefore subject to the FRC code.

126. Concerns about corporate governance arose repeatedly during our questioning of the Chairman, Lord Grabiner, and other members of the boards of Green family companies. We were surprised, for example, when Lord Grabiner told us in evidence that he was "not aware of what the reasons were" for having separate Taveta companies but that "[w]hatever structure they had adopted, no doubt there were good reason for it."²⁷⁸ He subsequently told us that the "structure arose from a corporate re-organisation effected on an earlier re-financing of the business"²⁷⁹ which shed little further light.

127. We also considered checks and balances on related party transactions within the group. One prominent such deal, the Ealing property sale by BHS shortly before the sale to RAL, took place without board approval and without a pre-sale valuation being

271 [S.174 Companies Act 2006](#)

272 [Section 172\(3\) of the Companies Act 2006](#) and see the common law cases.

273 [Section 212 of the Insolvency Act 1986](#)

274 [Section 172\(3\) of the Companies Act 2006](#)

275 [Section 214 of the Insolvency Act 1986](#)

276 See *Re Westmid Packing Services Ltd* [1998] 2 BCLC 646 and *Lexi Holdings v Luqman* [2009] 2 BCLC 1. In law, non-executive directors are not entitled to place "unquestioning reliance upon others to do their job". It is the role of the Chairman to "preserve order, and to take care that the proceedings are conducted in a proper manner". The Chairman is "responsible to a greater extent than any other director for the performance of the board as a whole and each member of it. The chairman has the primary responsibility of selecting matters and documents to be brought to the board's attention, for formulating the policy of the board and promoting the position of the company". *Equitable Life Assurance Society v Bowley* [2004] 1 BCLC 180 at [41] and *National Dwellings Society v Sykes* [1894] 2 Ch 159; *AWA Ltd v Daniels* (1992) 7 ACSR 759.

277 [Letter from Lord Grabiner, 6 July 2016](#)

278 [Q 502](#)

279 [Letter from Lord Grabiner, 10 June 2016](#)

obtained. Brett Palos, Sir Philip's step-son, was a director of both the parent company of BHS and the purchasing company, Thackeray Estates. The property was resold within four months for a profit of £3m.²⁸⁰ We consider another related-party transaction, the purchase of Marylebone House by Arcadia, in Box 2.

Box 2: Case study: Marylebone House

Under proposed terms of the sale of BHS to RAL, RAL was to purchase Marylebone House from Wilton Equity Limited, a Green family company registered in the British Virgin Islands,²⁸² for £35 million²⁸³ and sell it on for £45 million. We were informed that Marylebone House was not in the event sold as planned because a higher offer had been received.²⁸⁴ On 16 July 2015 Arcadia bought Wilton (in effect, Marylebone House) for £53 million, a profit of £21.85 million to Lady Green since the property was bought for £31.15 million in August 2013.²⁸⁵

This decision, a related party transaction, was taken at a board meeting at which only executive directors were present.²⁸⁶ Though Arcadia's accounts state that the transaction proceeded after "advice received from a third party valuer",²⁸⁷ a claim reiterated by Sir Philip Green in oral evidence,²⁸⁸ it is apparent that no third party valuation was received to support the purchase price. The board minute notes that "the Property team of the Company has received offers for the Target in the range of £50m to £55m over the past six months".²⁸⁹ These offers were not circulated to the board. It is also perhaps telling that offers were received by Arcadia for a company unrelated except for its ultimate ownership by Lady Green.²⁹⁰ Chris Harris, Arcadia Property Director, noted "We worked very closely as a tight-knit team".²⁹¹

It is not clear that the decision to purchase Marylebone House was a bad one for Arcadia. It was, however, taken without adequate checks for a large related-party transaction, especially given Arcadia has many thousands of employees and a large pension deficit.²⁹²

128. The evidence we took did nothing to dispel the impression that serving the interests of the Green family was the over-arching objective of the directors of the companies in his business empire. Yet these branches have different interests: some have employees and pension funds in deficit, others, registered offshore, do not. The directors' duties are to serve the interests of the company but they are also required to have regard for proper process, insofar as the interests of stakeholders and the reputation of the company may be affected. Related party transactions such as the sale of Marylebone House and the Ealing property should have been subject to rigorous due process. They were not. What is more, rather than being an exception, these examples are symptomatic of what we have learnt about Taveta group governance over the course of this inquiry.

²⁸⁰ Qs 3107–30

²⁸¹ [Share Purchase Agreement between GH One Ltd and Arcadia Group Ltd, 16 July 2015](#)

²⁸² [Points of Principle](#) document signed by Sir Philip Green and Dominic Chappell, 16 February 2015

²⁸³ [Q1315](#) (Mark Tasker); [Q1445](#) (Dominic Chappell)

²⁸⁴ Land Registry records. On sale to Arcadia the freehold of the property was combined with the head lease.

²⁸⁵ [Arcadia Group Ltd board minutes, 16 July 2015](#)

²⁸⁶ [Arcadia Group Ltd, Annual report and financial statements for the year ended 29 August 2015](#), note 25

²⁸⁷ [Q 2149](#)

²⁸⁸ [Arcadia Group Ltd board minutes, 16 July 2015](#)

²⁸⁹ [Q 3010](#)

²⁹⁰ [Q 3018](#)

²⁹¹ [Arcadia Group Ltd, Annual report and financial statements for the year ended 29 August 2015](#), note 28

Agreement to the sale of BHS

129. The most worrying insight into the exercise of corporate governance was obtained in examining the decision to sell BHS itself, in which the Chairman of the selling company, Lord Grabiner, played no effective part. On 29 January 2015, the board appointed a sub-group from Arcadia to oversee the possibility of disposing of BHS,²⁹² comprised of directors with relevant knowledge.²⁹³ However, this group was given no parameters within which to work by the board and no requirement to report back with a recommendation, as one might expect a board to stipulate when delegating a significant function such as the sale of a major company.²⁹⁴

130. In Lord Grabiner's view, the delegated powers of the sub-group were understood "implicitly" and, he said, it should not be "remotely surprising" that the non-executive Chairman "played no hands-on role in the sale transaction".²⁹⁵ The Chairman and board as a whole took no steps to challenge the work of the sub-group, nor did this group keep any minutes of meetings detailing its discussions. The full board was only informed of the fact that discussions were taking place, but not the identity of potential buyers or the scope of a potential deal.²⁹⁶ Incredibly, Lord Grabiner told us that, whilst aware of ongoing negotiations, he never heard the name Dominic Chappell and only learned of the buyer's previous bankruptcy from the press after the completion of the transaction.²⁹⁷

131. The decision to approve the sale of BHS to RAL was taken, after a long day of negotiation on its terms, by a hastily convened meeting of four members of the Taveta Board. The Chairman was not invited to the meeting nor made aware that it was taking place.²⁹⁸ The only non-executive director present was Brett Palos, step-son of Sir Philip, whose stated brief was to look after the interests of the majority shareholder, Lady Green.²⁹⁹ While Chris Harris told us that "in an ideal world, we would have invited Lord Grabiner to the meeting",³⁰⁰ neither Sir Philip nor Lord Grabiner had any such concerns about the sub-group taking this decision without the consideration of the full board. Lord Grabiner asserted that the presence of all the non-executive directors would not have made any difference to the decision as he "would not be in a position to second guess the views of the negotiators".³⁰¹ Had he been there, he said, he may have asked whether the buyer had a credible business plan to implement a turnaround of BHS and he would have been satisfied by the answer.

132. This is a remarkably docile attitude for a Chairman of the board, particularly one whose long experience of mergers and acquisitions and legal expertise were presumably a strong factor in his £125,000 per year employment in that role. Had he been present, he may also have asked what the criteria were for finding a buyer; why these criteria were ignored; what evidence underpinned the belief in a successful business plan; what safeguards were

292 [Q 3054](#)

293 Membership was Sir Philip Green, Paul Budge, Chris Harris and Gillian Hague.

294 [Q 490](#), [Qs 3076–83](#)

295 [Letter from Lord Grabiner, 6 July 2016](#)

296 [Q 481](#)

297 [Written statement from Lord Grabiner, 16 May 2016](#)

298 [Letter from Lord Grabiner, 6 July 2016](#)

299 [Q 3060](#)

300 [Q 3050](#)

301 [Letter from Lord Grabiner, 6 July 2016](#)

in place for the creditors and pension scheme members; and what was the background of the buyer? Regardless of what he might have contributed, it is difficult for the Chairman to demonstrate leadership of the board when he is unaware of what is going on in its name.

133. The failure of these basic questions to be asked, never mind answered, was indicative of a prevailing culture in which a dominant personality at the top of a private limited company was able to get his way with little if any internal challenge. When asked, board members failed to articulate any convincing examples of instances in which Sir Philip was successfully overridden by the rest of the board or indeed challenged at all.³⁰² In a lengthy oral evidence session, we saw and experienced for ourselves the aggressive reaction of Sir Philip to courteous and reasonable challenge. We do not underestimate the difficulties that a board of trusted directors might have when questioning his decisions. But absolute power, in business as in politics, is a dangerous thing, and is the reason why the law requires certain minimum standards of governance.

134. The sale was only approved by the full board after it had been agreed with the buyer. Following the agreement of the board on 10 March and completion of the transaction the next day, the Taveta 2 board met on 16 March to “ratify” the transaction. Paul Budge chaired this meeting and Lord Grabiner was the only other attendee. It is not clear what legal effect any decision not to ratify the decision would have had, but as Lord Grabiner explained, there was “no basis on which we could properly have disregarded the views of the board of TI2L’s sole shareholder and refused to ratify the sale”.³⁰³ A company can hardly be unsold. The terms of the sale were only reported to the full board of Taveta on 25 March, two weeks after the completion of the transaction. Again, this demonstrates a remarkably relaxed attitude to formal decision making, particularly in respect of the sale of a major company with 11,000 employees and 20,000 pension scheme members.

135. **Sir Philip chose to run these companies as his own personal empire, with boards taking decisions with reference to a shared understanding of his wishes rather than the interests of each individual company. Boards had overlapping memberships and independent non-executive directors did not participate in key decisions. We saw meagre evidence of the type of constructive challenge that a good board should provide. These weak governance arrangements allowed the overarching interests of the Green family to prevail and facilitated the flow of money off shore to the ultimate beneficial owner of the parent company, Lady Green.**

136. **The complacent performance of Lord Grabiner as the non-executive Chairman of the Taveta group boards represented the apogee of weak corporate governance. In that position it was his responsibility to provide independent challenge and oversight. Instead he was content to provide a veneer of establishment credibility to the group while happily disengaging from the key decisions he had a responsibility to scrutinise. For this deplorable performance he received a considerable salary.**

137. **These weaknesses in corporate governance contributed substantially to the ultimate demise of BHS including: the failure to address the pension deficit; the failure to challenge effectively RAL’s proposal to buy BHS; the hurried agreement of the deal in the absence of the Chair; and its subsequent rubber stamp ratification. All members of Taveta group boards have serious questions to answer about their performance as directors in allowing Sir Philip Green to sell BHS.**

³⁰² Qs 3062–9

³⁰³ [Letter from Lord Grabiner to Committees, 10 June 2016](#)

6 RAL ownership of BHS

The business plan

138. When RAL purchased BHS it agreed to implement a business plan put together by BHS's management and Sir Philip Green's finance team.³⁰⁴ This plan aimed to revitalise the long-struggling business. BHS's management claimed that the plan was achievable and realistic—a claim repeated unequivocally by Sir Philip Green.³⁰⁵

139. The business plan was the evolution of work that had commenced while BHS was still owned by Sir Philip Green.³⁰⁶ Prior to the company's sale BHS's management had stabilised the losses the company was making but had been unable to reduce them. One of the key factors that was constraining the turnaround of BHS was that it held leases for a number of loss-making stores at uncompetitive rates. Sir Philip's high-profile wealth acted as a barrier to convincing landlords that BHS could not afford the rents. "Stepping away from Arcadia" was intended by BHS management to provide an opportunity to address these leases by making clear that the company was no longer financially supported by Sir Philip.³⁰⁷

140. The business plan's aim was to return BHS to profitability over two years. This ambition relied on the company achieving £26.7m of property related savings, through closing loss-making stores and other rent reductions, and achieving £23.9 million of improvements through trade initiatives.³⁰⁸ Despite his lack of retail experience, Dominic Chappell did not commission advice on the deliverability of the BHS turnaround plan from consultants with specific retail expertise prior to purchasing the company, but chose to rely on the judgement of the existing BHS management team. That said, Grant Thornton did provide high-level observations in which they noted "potential contradictions" between delivering different retail initiatives, highlighted the need for "clarity on the financial implications" of the plan and noted that work on consumer expectations was already "dated".³⁰⁹

304 [Q 2229](#)

305 [Q 2046](#): "If the business plan that was laid down had been followed, it would not have gone out of business. It would not be in liquidation."

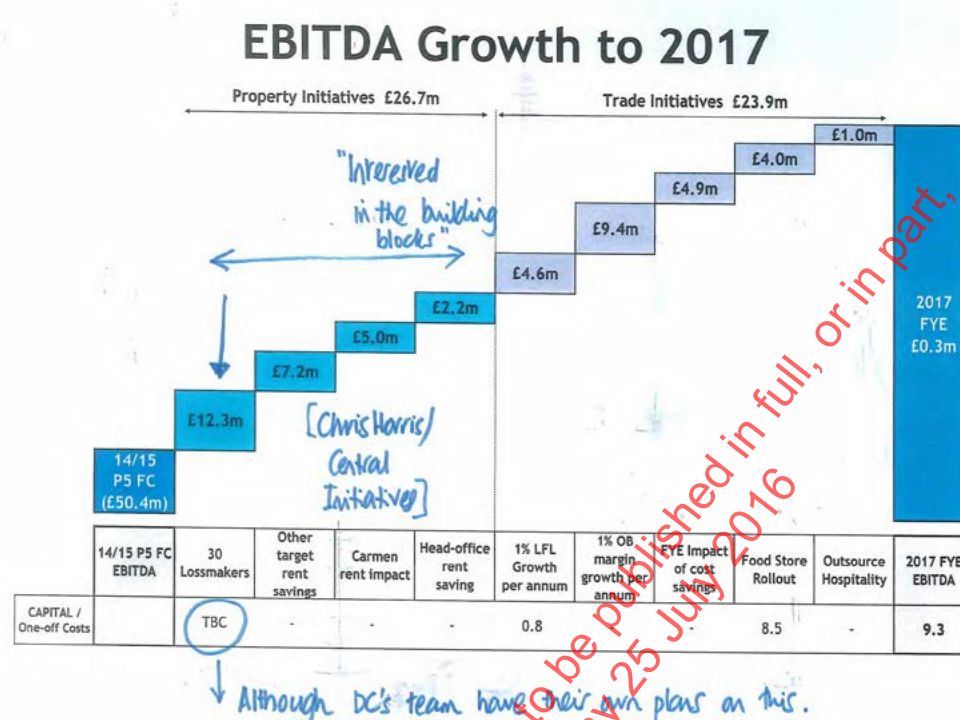
306 [Q 1137](#)

307 [Q 1140](#)

308 [BHS Business Plan - March 2015](#)

309 [Grant Thornton Due Diligence Report](#)

Figure 5: The building blocks of the BHS business plan inherited by RAL (annotated by Paul Budge)



141. Delivering the £23.9 million of trade initiatives was primarily predicated on a 1 per cent like-for-like growth in sales, 1 per cent improvement in margins from retail improvements, cost savings, and a roll-out of food stores. The plan identified £8.4 million of further initiatives to improve profitability related to concessions, websites and low-cost store modifications. However, following the acquisition of BHS, like for like sales reduced by 0.2 per cent (1.2 percentage points below forecast), placing additional pressure on an already distressed company that was struggling to raise enough working capital.

142. Likewise, BHS and RAL's performance on the property related savings was disappointing. Grant Thornton had originally indicated that RAL would need to dispose of its Oxford Street store by September to inject cash into the company, but this disposal was not made until April 2016. Furthermore, the plans to renegotiate rents—critical to the viability of the business—were pursued slowly. Rent reductions were not agreed until March 2016 following the implementation of a Company Voluntary Arrangement (CVA), which was too late to save the company. The CVA reduced BHS's rent bill by around £30 million, significantly above that originally forecast in the business plan,³¹⁰ and had first been proposed by BHS management in August 2015.³¹¹ Had it been delivered sooner than it was, it would have left BHS in a stronger financial position.

143. The business plan developed by the BHS management team and approved by the Arcadia board contained over-optimistic assumptions on future sales and margins. The plans for renegotiating rents and disposing of properties in order to support ongoing losses were not delivered fast enough, given that BHS was a company clearly in distress.

³¹⁰ Letter from Mark Sherwood, 12 July 2016

³¹¹ Letter from Darren Topp, 24 June 2016

Project Vera

144. A CVA would have precipitated the pension schemes entering a PPF assessment period. One of the conditions of the sale was that RAL would use “reasonable endeavours” to seek a Project Thor-style restructuring of the pension schemes.³¹² There was no doubt at that stage that resolution of BHS’s pension problem was fundamental to the medium-term survival of the company. Discussions over the restructuring, developed by Grant Thornton and known as Project Vera, began in earnest in November 2015. Notes of a meeting between Chris Martin, Darren Topp and Michael Hitchcock make it clear that, by that stage, the short-term survival of the company was under threat:

- the proposed refinancing of the company, via an asset-backed loan from Gordon Brothers, was dependent on “a credible pensions solution”;
- the refinancing could facilitate the restoration of credit insurance, which would have a very significant positive effect on cash balances;
- Project Vera was dependent on a lump sum contribution to the pension scheme in the range of £100 million to £200 million; and
- the only credible source of that lump sum was Sir Philip Green.³¹³

145. On 21 January 2016 Chris Martin asked Sir Philip if he would join a round table meeting with the trustees and TPR to discuss a potential contribution of £120 million. He indicated he would not unless he was given assurances that TPR’s moral hazard investigation would be discontinued as a result.³¹⁴ Though the only alternative was insolvency, no settlement was reached.³¹⁵ On 17 February, Neville Kahn relayed to Chris Martin the message that Sir Philip was unwilling to meet the lump sum cost of a Project Vera settlement.³¹⁶ **The failure of BHS to agree a restructuring of the pension fund under RAL precipitated the collapse of BHS. Such a restructuring would have required a substantial contribution from Sir Philip Green, one he was not prepared to make while TPR’s moral hazard investigation of his companies continued.**

Financing of BHS

146. Failure to address BHS’s expensive leases, coupled with disappointing trading figures, meant that RAL needed to raise additional working capital to fund BHS. There were two ways in which RAL sought to raise funds, firstly through property sales, and secondly through attracting external finance.

147. Beyond the sale of the Oxford Street store in April 2016, and other disposals that had been arranged prior to RAL’s acquisition of BHS, RAL sold properties to the value of approximately £40 million. However, with the exception of £8.4 million that went in to

312 [BHS Sale and Purchase Agreement, 11 March 2015](#), Schedule 8

313 [Chris Martin’s notes](#) of a meeting with Darren Topp and Michael Hitchcock, 9 November 2015 (recorded in email of 10 November)

314 [Chris Martin’s notes](#) of a call with Sir Philip Green, 21 January 2016

315 See [PPF log](#) of 27 June 2016 for a record of pension scheme discussions in 2016

316 [Chris Martin’s notes](#) of a call with Neville Kahn on 16 February 2016 (recorded in email of 17 February)

BHS as new capital following the sale of BHS's Atherstone distribution centre, the rest of the proceeds from sales went to paying down secured debts and did not release new funds in to BHS.³¹⁷

148. In the absence of other funding, RAL took out a number of loans at extremely high interest rates—both to fund its purchase of BHS and to then fund the ongoing working-capital needs of the company. Some lenders made significant amounts of money from these arrangements with limited risk, given that they were secured against valuable BHS properties (see Box 3, below).

Box 3: notable Loans arranged by Retail Acquisitions Ltd

(1) A £5m loan from ACE taken out by RAL on 10 March 2015, immediately prior to the purchase of BHS. This loan was secured against a BHS property — Atherstone. £2m was due to be repaid a week after the sale, and the remaining £6m within two months. These terms were varied and ultimately £7.2m was repaid for this and associated loans (see para 102).³¹⁹

(2) A three month £25m loan facility for BHS from ACE in June 2015. Total repayment of £31m made in September 2015.³²⁰

(3) A £62m 12-month secured loan with Grovepoint in September 2015. Total amount repayable would have been £73m. This loan was arranged to replace the £25m ACE loan on a more competitive basis.

(4) A 60-day £9.4m secured loan with Gordon Brothers arranged at the end of February 2016 with an implied APR of 38 per cent.

Source: [Letter from Michael Hitchcock, 12 June 2016](#)

149. As outlined by Michael Hitchcock, who was effectively BHS's Chief Financial Officer from July 2015 to March 2016, RAL took £6 million of fees in total for arranging loans and property transactions, despite the fact that BHS was desperately short of capital and borrowing at punitive rates.³²⁰

150. **The inability of Mr Chappell and his team to inject long term capital into the business was highlighted by their securing a series of high cost short term loans as a means to solve growing cash flow problems, further weakening the financial position of BHS. Even when arranging loans for their struggling company on extraordinary terms they could not resist taking a substantial cut for themselves.**

The financial relationship between RAL and BHS

151. We have already established that RAL brought none of their own money to BHS. They were, however, content to remove significant sums from the company. Not only did they take fees from BHS for the property sales and loans they arranged on behalf of BHS, they also financially weakened the company by taking loans out of BHS at a time when it could ill-afford to tie-up capital. These included a £7 million loan taken out on the day that

³¹⁷ [Letter from Michael Hitchcock, 12 June 2016](#)

³¹⁸ [Letter from Alexander Dellal, 6 June 2016](#)

³¹⁹ [Letter from Alexander Dellal, 6 June 2016](#), which describes the loan in more detail. His letter indicates that in fact the majority of the loan was repaid in September 2015, but that the remainder - which was linked to the sale of BHS's Oxford Street property - was renegotiated, and paid back in January 2016.

³²⁰ [Letter from Michael Hitchcock, 12 June 2016](#)

RAL purchased the company, which was used to pay advisers and RAL board members for the transaction fees, plus further salary costs and management fees post transaction. In total, Mr Hitchcock estimated that RAL took a total of £11 million in fees from BHS in the 13 months prior to administration, and an additional £12 million in loans, of which only £6m was repaid. At the time that BHS went into administration, the inter-company balance sheet demonstrated that RAL still owed BHS approximately £6 million.³²¹

152. RAL also incurred fees of £0.3 million on behalf of BHS (paid to Grant Thornton) in developing a plan (“Project Herald”) to separate the profitable elements of BHS—its digital and international operations—out of the BHS Group and directly in to RAL ownership through forming a new company, BHS Global. In addition, the plan envisaged RAL setting up a new company “BHS Services”, which would provide services to BHS via a services agreement—in return for fees.³²²

Box 4: Fees payable from BHS Group to Retail Acquisitions Limited for Management Services

In addition to salaries taken by RAL Directors from BHS, an (unsigned) Management Services Agreement shared by Dominic Chappell outlined the following fee arrangements:

- (1) A 25 per cent uplift on the cost of delivering a wide range of services during the first year of ownership, followed by delivery of services to an agreed budget thereafter.³²⁴
- (2) 2 per cent of total funds available from each financing agreement arranged by RAL.
- (3) 10 per cent of transaction proceeds for properties where proceeds were at least 25 per cent above the fair market value of the relevant property, with special arrangements for fees in relation to the sale of Atherstone and Oxford Street.

Source: BHS/RAL Management Services Agreement

153. Dominic Chappell received a total of £2.6 million in salary and fees relating to BHS.³²⁴ Chappell’s family also benefited from a £1.5 million interest-free loan, secured against his father’s house, none of which has been repaid.³²⁵ In total, he has received £4.1 million. We were also told that he still owes £75,000 of a £150,000 short-term personal loan from ACE which was due in February 2016.³²⁶

154. There was also a series of extraordinary one-off transactions between RAL and BHS:³²⁷

- The transfer of £1.5 million by RAL from BHS to a company called BHS Sweden, which was not part of the BHS Group. BHS Sweden was owned by Mr Chappell’s fellow-Director and long-standing friend, Lennart Henningson. This money was returned (initially minus around £50,000) after BHS’s Chief Executive intervened and the Board demanded the repayment.

³²¹ [Letter from Michael Hitchcock, 12 June 2016](#)

³²² [Project Herald draft report, 29 January 2016](#)

³²³ [Letter from Darren Topp, 21 June 2016](#)

³²⁴ [Letter from Dominic Chappell, 10 June 2016](#). In an [interview with the BBC](#) on 4 July 2016, Mr Chappell described this as a “drip in the ocean”.

³²⁵ [Letter from Dominic Chappell, 10 June 2016](#); [letter from Edward Parladorio, 14 July 2016](#). There were three directors present at the meeting to approve it: Dominic Chappell, Lennart Henningson and Eddie Parladorio. Mr Parladorio told us he voted against the transaction.

³²⁶ [Letter from Alexander Dellal, 6 June 2016](#)

³²⁷ [Letter from Darren Topp, 21 June 2016](#)

- Dominic Chappell attempted to buy a set of family holiday flights in December 2015 on the company travel budget. He then sought to take his December 2015 salary early to pay for the holiday, a payment granted by BHS HR on the basis of ‘hardship’.
- A personal loan from BHS to Dominic Chappell of £90,000, authorised by fellow-Director, Aidan Treacy, in January 2016.³²⁸
- A £25,000 advisory fee paid to Kevin Lyon retrospectively by RAL from BHS funds, despite the fact that no formal work was carried out or fees expected.³²⁹
- RAL also sought a £500,000 ‘success fee’, for completion of the CVA — essentially this would be tantamount to paying the directors a fee for having left BHS on the verge of insolvency. Aidan Treacy also sought a £250,000 bonus in relation to the CVA.³³⁰

155. Not only are these transactions indicative of directors being more interested in their own financial wellbeing than that of the company they had purchased, they also demonstrate an outrageous lack of good corporate stewardship. This was reinforced by the fact that, as the CEO of BHS put it, “the majority of the Board was conflicted,” being comprised of friends and family, including Keith Smith, Dominic Chappell’s uncle and chair of the board.³³¹ Although Mr Chappell has not provided details of the membership of BHS/RAL’s Remuneration Committee to this inquiry, it has been reported that his uncle also chaired this supposedly ‘independent’ panel.³³²

156. It is notable that two of the directors who had facilitated Mr Chappell in purchasing BHS stepped down the day the transaction completed, Mark Tasker and Stephen Bourne. Mark Tasker explained that he had stepped down because he had seen his role as limited to advising on the acquisition and that he could not commit the necessary time to continuing due to his management responsibilities at his law firm, Bates Wells Braithwaite. Much of the detail of the deal remained to be concluded. Stephen Bourne explained that he was uncomfortable continuing in the role because he either didn’t know the remaining board members that Mr Chappell was appointing, or “didn’t think were appropriate for the board” because they were primarily friends and family.³³³ Despite their own contribution in putting BHS on the path to failure, Mr Bourne and Mr Tasker were paid around £400,000 each, including “success fees” for their role in facilitating the transaction.³³⁴

157. It is clear from the advice that RAL received prior to the acquisition of BHS that they were taking on a company that was at high risk of insolvency. In light of this, directors had a duty primarily to the creditors of BHS rather than to its shareholders. While it is not for us to judge whether this duty was breached, ultimately BHS’s creditors were badly let down by the RAL board. We are certain that the Insolvency Service will want to look

328 As Above

329 [Letter from Kevin Lyon, 13 June 2016](#)

330 [Letter from Darren Topp, 23 June 2016](#). We have seen a copy of the ‘Additional Services Material Benefit’ claim for the CVA submitted by RAL to BHS on 2 March 2016. However, we note that, in correspondence dated 14 July 2016, Eddie Parladorio denied knowledge of this.

331 [Letter from Darren Topp, 21 June 2016](#)

332 [ITV News, 10 June 2016](#)

333 [Qs 1361–2](#) (Stephen Bourne)

334 [Letter from Olswang to the Pension Regulator, 1 June 2015](#). Eddie Parladorio, who remained on the board, was similarly paid £460,000.

closely at the loans and fees removed from the company as well as questionable decisions, such as the £2.6 million purchase of the Darlington store arranged at a time when cash-flows were under significant duress.³³⁵

158. RAL Board members exploited BHS for their personal gain and Dominic Chappell was the worst culprit. Their plans included removing the profitable assets from BHS and placing them directly in RAL ownership, and requiring BHS to use central services, such as property advice, provided by RAL. The suspicions of BHS managers that RAL were more intent on taking money from the business than investing in it were well founded, as evidenced by the £11 million charged by RAL to BHS in the form of salaries and fees.

159. The directors of RAL exhibited scant commitment to the successful implementation of BHS management's business plan. Two directors, Stephen Bourne and Mark Tasker, jumped ship on the day that RAL acquired the business with personal financial rewards that it would take many BHS employees decades to earn. The others, Eddie Parladorio, Lennart Henningson, Keith Smith and Aidan Treacy, continued to profit handsomely from their positions without fulfilling their requisite responsibilities.

160. RAL had feeble corporate governance. The presence of Chappell family members on the RAL board, and the overlapping membership with the BHS board, did nothing to clarify relationships and address evident tensions between the managements of the two companies. Mr Chappell's ultimately unsuccessful attempt to siphon off £1.5 million to another company in Sweden owned by a long standing friend and fellow RAL director was the most egregious example of individual greed and, initially at least, corporate governance failure.

The role of Sir Philip Green post-sale

161. The sale of BHS to RAL did not mark the end of Sir Philip Green's involvement in the company. Due to the level of integration prior to the transaction, Arcadia continued to provide services including IT (including web platform), Logistics & Supply Chain, HR, Finance, Treasury, Property Management & Maintenance, Procurement, and Legal Facilities. There was also in excess of £100 million in retail revenues taken by BHS for the Arcadia concessions that operated in the BHS stores, and Taveta retained a £40 million fixed and floating charge secured against BHS assets.³³⁶

162. While in their normal course these would lead to daily operational contact between Arcadia and BHS, Sir Philip Green himself also remained closely in contact with the new management. Dominic Chappell claims they spoke every two to three days and met regularly,³³⁷ and BHS's Property Director, Mark Sherwood, told us that he received several calls from Sir Philip but didn't return them because he didn't want to be "quizzed". He said that Sir Philip, however, "was not very happy about that".³³⁸

163. In evidence to us, Sir Philip said how he gave Mr Chappell advice when he felt he was "going down a wrong path" and tried to "persuade" Mr Chappell to address BHS's

³³⁵ Letter from Michael Hitchcock, 12 June 2016

³³⁶ Letter from Darren Topp, 21 June 2016

³³⁷ Q 1397

³³⁸ Qs 2925–6 (Mark Sherwood)

loss-making rental arrangements earlier.³³⁹ Darren Topp also indicated that both he and members of the RAL board had spoken to Sir Philip throughout 2015 about the BHS pensions issue, and Mr Topp also told Sir Philip that he “did not believe the business could continue successfully” under Dominic Chappell’s ownership³⁴⁰ We note that Sir Philip attempted to reassure Chris Martin in October 2015, with reference to Mr Chappell, that “the bloke is doing ok”.³⁴¹

164. Sir Philip Green was also closely involved immediately prior to BHS going in to administration. Despite the eventual completion of the CVA, RAL failed to raise sufficient funds on commercially viable terms to keep BHS running. Not only had the loan facility put in place with Gordon Brothers proved insufficient, but on 7 April, Olswang advised that the facility meant that in practice Gordon Brothers had the power to force BHS into administration at any time they chose should they wish to gain control of the company.³⁴² Furthermore, on 15 April, BHS was issued with a 7-day winding up notice from HMRC in relation to outstanding payments of £2.7 million that the company could not meet.³⁴³

165. On 18 April, Sir Philip Green invited Philip Duffy, from the administration firm Duff & Phelps, to a meeting at Arcadia’s Office the following day. On arriving, Mr Duffy learned that the meeting was to discuss the future of BHS. In addition to Sir Philip Green, members of the RAL and BHS boards were in attendance, including Dominic Chappell, Darren Topp, Aidan Treacy and Eddie Parladorio. As a floating charge holder, Arcadia were ultimately within their rights to decide who was appointed administrator.³⁴⁴ Duff & Phelps’s appointment as administrator was subsequently approved by the BHS Board on 21 April at a meeting chaired by Mr Chappell.

166. Following the 21 April board meeting, Dominic Chappell entered in to discussions with Mike Ashley, the owner of Sports Direct, in a last ditch attempt to sell BHS as a going concern. Sir Philip spoke with Mr Ashley over the weekend of 23 and 24 April but a deal was not agreed and BHS entered into administration on Monday 25 April.³⁴⁵ On 27 April, Sir Philip hosted a meeting at Arcadia’s offices attended by Mike Ashley and the administrator, Philip Duffy, at which Mr Ashley offered £10 million for BHS, but with the pension scheme removed from his responsibility. Sir Philip offered to contribute a further £5 million. However, after further consideration the administrator concluded that the proposed deal was not in the interests of BHS’s creditors.³⁴⁶

167. Throughout the period of RAL’s brief ownership of BHS, Sir Philip Green continued to demonstrate an unusually keen interest in a former business, albeit one in which he still had a financial stake. Whether he could simply not bring himself to let it go or because he thought he could direct it successfully from the outside, his continued involvement proved insufficient to save the business.

339 Qs 2240–2242 (Sir Philip Green)

340 Q 1177, Q 1150 (Darren Topp)

341 [Chris Martin’s notes of a call with Sir Philip Green](#), 7 October 2015 (in email of 11 October)

342 [Letter from Darren Topp, 9 June](#)

343 BHS Minutes of 21 April 2016

344 [Letter from Philip Duffy, 14 June 2016](#)

345 [Mike Ashley Letter of 13 June 2016](#)

346 [Philip Duffy letter to Sir Philip Green, 14 June 2016](#).

7 Conclusions

168. The evidence we have received over the course of this inquiry has at times resembled a circular firing squad. Witnesses appeared to harbour the misconception that they could be absolved from responsibility by blaming others. The worst example was Sir Philip Green, despite his protestations to the contrary. Sir Philip adopted a scattergun approach, liberally firing blame to all angles except his own, though he began his evidence by saying he would do the opposite. The truth is that a large proportion of those who have got rich or richer off the back of BHS are to blame. Sir Philip Green, Dominic Chappell and their respective directors, advisers and hangers-on are all culpable. The tragedy is that those who have lost out are the ordinary employees and pensioners. This is the unacceptable face of capitalism.

169. The sale of BHS did not have to proceed as it did. The potential checks, however, proved to be inadequate. Regulatory concerns were circumvented. Advisers were heavily incentivised to progress the deal. Dominic Chappell, his friends and associates were enticed by the personal rewards on offer without having to take any of the personal risks. The Taveta group, run as a personal fiefdom by a single dominant individual, failed to provide a semblance of independent oversight or challenge.

170. Sir Philip Green drove the deal forward. He sought to sell a chain that had become a financial millstone and threatened his reputation. He knew that Dominic Chappell was a wholly unsuitable purchaser but overlooked or made good each of Chappell's shortcomings and proceeded with a rushed sale regardless.

171. Dominic Chappell was out of his depth. He was over-optimistic to the point of arrogance. He failed to recruit a retail expert despite his own lack of experience; failed to secure funding on commercial terms; failed to address BHS's property leases in a timely way; and failed to address the company's long-term underperformance. Mr Chappell has referred to the rewards for risk that are the foundations of entrepreneurship, but he was taking no risks. The rewards that he took, on the other hand, were lavish. In putting his 'home team' first, he and his fellow directors were personally enriched as BHS failed around them. In effect, he had his hands in the till. His description of £2.6 million that he personally took, in addition to an outstanding £1.5 million family loan, as "a drip in the ocean" is an insult to the employees and pensioners of BHS that he let down.

172. The Green family benefited significantly from BHS. In his early years of ownership, Sir Philip cut costs, sold assets and paid substantial dividends offshore to the ultimate benefit of his wife. He failed, however, to invest sufficiently in stores or reinvent the business to beat the prevailing high street competition. We found little evidence to support the reputation for retail business acumen for which he received his knighthood.

173. It is true these are private companies holding Green family money. BHS, however, was a major employer and the sponsor of a large and ailing pension fund. Arcadia, another Green company, is in a similar position. Sir Philip gave insufficient priority to the BHS pension scheme over an extended period. His failure to resolve its problems by now has contributed substantially to the demise of BHS. Sir Philip owes it to the BHS pensioners to find a resolution urgently. This will undoubtedly require him to make a

large financial contribution. He has a moral duty to act, a duty which he acknowledges. We still do not doubt that Sir Philip has heartfelt affection for BHS. To an extent it created him; it could also bring him down.

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in any form before 00.01 a.m. on Monday 25 July 2016

8 Ongoing inquiries

174. The demise of BHS was the result of a series of bad business decisions and personal greed. We fear, however, that some the failures which allowed this to happen are not unique to BHS. Its lessons merit broader consideration of the framework in which companies operate. We will do so from a pro-capitalist perspective. We want entrepreneurs to be encouraged and accept that business failure is an inevitable part of the process. Reputable businesses are, however, appalled by events at BHS. Those events set out a path of further investigation for the two Committees.

175. This inquiry has exposed how capitalism can be worked to the advantage of directors, financiers and advisers at the expense of employees and the wider public interest. This deeply concerning example of corporate governance brings into question the adequacy of existing company law and corporate governance regulation, particularly in relation to large private companies. That private companies are not subject to the same transparency requirements and codes of conduct as their public counterparts in no way absolves them of their wider responsibilities. Parliament is rightly cautious about imposing onerous new duties on our companies; but if large public or private companies do not behave in accordance with the ethical standards that society expects, further regulation may need to be considered. Ultimately business has a moral responsibility to operate within a framework which enjoys the confidence of the nation. These are issues to which the Business Select Committee will look to return.

176. The future of occupational pension schemes is perhaps the greatest challenge facing longstanding British businesses. In an environment of rising longevity, interest rates close to zero and intense international competition, defined benefit pension liabilities accumulated in a different age can appear burdensome and unaffordable. It should not be forgotten that these liabilities are promises of deferred pay to employees. It is imperative that the regulatory framework does not allow sponsor companies to evade those responsibilities and, in doing so, pass the burden onto other schemes that pay the PPF levy. There may be a case for stronger and more proactive regulation. It is equally important, however, that a balance is found to enable otherwise viable companies to continue to operate. The jobs of those currently in employment are inevitably in some competition with the pension entitlements of their forebears. Investigating how to secure a fair and sustainable settlement will be at the centre of the Work and Pensions Committee's ongoing inquiry.

Formal Minutes

Wednesday 20 July 2016

Work and Pensions Committee

Members present:

Frank Field, in the Chair

Ms Karen Buck	Craig Mackinlay
Richard Graham	Jeremy Quin
Steve McCabe	

Draft report (*BHS*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 176 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 7 September at 9.15 a.m.]

Business, Innovation and Skills Committee

Members present:

Mr Iain Wright, in the Chair

Richard Fuller	Michelle Thomson
Amanda Milling	
Amanda Solloway	

Draft report (*BHS*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 176 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 6 September at 9.00 a.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committees' websites.

Monday 9 May 2016

Question number

Alan Rubenstein, Chief Executive, Pension Protection Fund [Q1–91](#)
Lesley Titcomb, Chief Executive, The Pensions Regulator, and **Nicola Parish**,
 Director of Case Management, The Pensions Regulator [Q92–197](#)

Monday 23 May 2016

Ian Greenstreet, Partner, Nabarro, **Tony Clare**, Partner, Deloitte, **David Clarke**, Partner, KPMG, **Richard Cousins**, Partner, PwC, and **Emma King**,
 Partner, Eversheds [Q198–387](#)

Owen Clay, Partner, Linklaters, **Steve Denison**, Partner, PwC, and **Anthony Gutman**, Co-Head, EMEA Investment Banking Services, Goldman Sachs [Q388–475](#)

Ian Grabiner, Chief Executive Officer, Arcadia, **Lord Grabiner**, Board member, Taveta Investments Ltd, **Paul Budge**, Finance Director, Arcadia Group, Director Taveta Investments Ltd, **Gillian Hague**, Director, Arcadia Group and Taveta Investments (No. 2) Ltd, and **Chris Harris**, Group Property Director, Arcadia Group [Q476–601](#)

Wednesday 25 May 2016

Chris Martin, Chair, BHS Pension Fund Trustees, **Mike Lymath**, BHS Pension Fund Trustee, **Phil Kitchen**, BHS Pension Fund Trustee, and **Jason Hyde**, BHS Pension Fund Trustee [Q602–694](#)

Dr Margaret Downes, former Chair, BHS Pension Fund former Trustees, **Siobhan Forey**, former BHS Pension Fund Trustee, and **Richard de Dombal**, former BHS Pension Fund Trustee [Q695–787](#)

Stephen Hermer, Partner, Olswang, **Andrew Frangos**, Chief Executive, Cornhill Capital, and **Mark Byers**, Head of Advisory, Grant Thornton [Q788–910](#)

Tuesday 7 June 2016

Robin Saunders, Managing Partner, Clearbrook Capital Partners LLP [Q911–1002](#)

Nicolas Giauque, Managing Member: London, Farallon Capital LLP, and **Joseph Dryer**, Capital Markets and Advisory, RiverRock [Q1003–1133](#)

Wednesday 8 June 2016

Michael Hitchcock, Former Finance Consultant, BHS, **Richard Price**, Former Chief Executive, BHS, and **Darren Topp**, Chief Executive, BHS [Q1134–1270](#)

Mark Tasker, Former Director, Retail Acquisitions Ltd, **Eddie Parladorio**, Former Director, Retail Acquisitions Ltd, **Stephen Bourne**, Former Director, Retail Acquisitions Ltd, and **Aidan Treacy**, Chief Financial Officer, Retail Acquisitions Ltd

[Q1271–1380](#)

Dominic Chappell, Chief Executive, Retail Acquisitions Ltd

[Q1381–1739](#)

Wednesday 15 June 2016

Sir Philip Green, Taveta Investments Limited

[Q1740–2333](#)

Tuesday 28 June 2016

Alex Dellal, Director, Allied Commercial Exporters Ltd

[Q2334–2483](#)

Paul Sutton

[Q2484–2640](#)

Neville Kahn, Managing Partner, Financial Advisory, Deloitte

[Q2641–2779](#)

Wednesday 29 June 2016

Michael Sherwood, Vice Chairman, Goldman Sachs, **Anthony Gutman**, Co-Head, EMEA Investment Banking Services, Goldman Sachs, and **Michael Casey**, Managing Director, Goldman Sachs

[Q2780–2889](#)

Mark Sherwood, former Property Director, BHS

[Q2890–2956](#)

Paul Budge, Finance Director, Arcadia Group, and Director, Taveta Investments Limited, **Chris Harris**, Group Property Director, Arcadia Group, and **Brett Alexander Palos**, Director, Taveta Investments Limited

[Q2957–3141](#)

Published written evidence

A large volume of written material has been accepted as evidence by the Committees and is published on the [Committees' websites](#).