Frank Field MP  
Work & Pensions Select Committee  
House of Commons  
LONDON  
SW1A 0AA

Dear Mr Field

Thank you for your letter of 31 May requesting further information on the Pensions Regulator’s interactions with the BHS pension schemes, to support the Work & Pensions and Business, Innovation & Skills Select Committees’ inquiry.

I note that your requests are made on the proviso that they can be met without damaging our ongoing investigation into whether it would be appropriate to use our anti-avoidance powers into the BHS pension schemes. We have endeavoured to meet your requests as fully as possible. However, you will appreciate that the information in this letter is limited to what we feel we are able to share at this stage, as some of the information you have requested is relevant to our ongoing investigation or is information which is restricted under section 82 of the Pensions Act 2004.

Project Thor

1. TPR received a draft Clearance and RAA application on 17 July 2014 and subsequently requested further information. In September 2014 TPR asked that the application be formally withdrawn.

   a. Why was it necessary for the application to be formally withdrawn if it was only in draft?

Any RAA application should reflect the facts at the time of the application. As the applicants took the decision to pause their July 2014 application in September 2014 with the intention of possibly revisiting it in January 2015, TPR’s view was that not only would over six months have elapsed since the application was made in July, but as the reason behind the applicants pausing was to focus on Christmas trading, this would almost certainly have meant that at least some of the facts relevant to an RAA application would have changed. In addition, the applicants had not provided enough information in the July 2014 application to enable us to
make a decision, which we had made clear to them. In the circumstances TPR felt that the application should be withdrawn but made it clear that any new application made in the new year would be considered in the normal way.

b. Did Arcadia resist TPR’s request that the application be withdrawn?

Arcadia stated that they were happy to withdraw the application on the basis that this would not cause any delays if there was then a new application in January.

c. Did TPR consider at any point using its s.72 powers to demand the information it was requesting?

This was an application for Clearance and an RAA made to TPR. Clearance is a voluntary process for obtaining a Clearance statement from TPR and similarly an application for an RAA is a process initiated by the applicant. As a result, given that this is something that the applicants are asking for, the onus is on the applicants to provide the necessary information. In these circumstances TPR would not typically look to use its s72 powers to compel the disclosure of information and we did not do so in respect of these applications. Further, a considerable amount of the information that was being requested needed to be provided to the trustees rather than TPR.

d. Did the Clearance application cover the RAA only or did it have wider ramifications for a potential moral hazard investigation?

The RAA application came as part of a Clearance application which is in line with the statement that TPR has on its website on RAAs in which it states “We expect RAA applications will be accompanied by Clearance applications, though the regulator should have already been involved in earlier discussions around the possible options.”¹ A Clearance statement gives assurance that, based on the information provided, the Regulator will not use its anti-avoidance powers to issue to the applicants either contribution notices or financial support directions in relation to a defined benefit occupational pension scheme and a particular event. Any Clearance statement issued by the Regulator will only apply to the circumstances described in the Clearance application.

e. Did TPR receive any indication at any point during 2014 that a sale of BHS was being considered in parallel to Project Thor?

TPR received no indication during 2014 that a sale of BHS was being considered in parallel to Project Thor.

¹ “Regulated Apportionment Arrangements and employer insolvency”
2. I would be grateful for some statistics on combined Clearance/RAA applications, including:

   a. how long, on average, they take to clear; and
   b. what proportion have been (i) paused and (ii) abandoned.

We are in the process of collating statistics on combined Clearance/RAA applications as requested, and these will be provide to the Committee as soon as possible.

3. I would be grateful if could also please provide the following documents relating to Project Thor:

   a. TPR notes of the call with BHS pension fund trustees and their advisers on 7 July 2014;

      Whilst TPR has an internal note of the call with the BHS pension fund trustees and their advisers on 7 July 2014 we are not able to provide this note as it is relevant to our investigation.

   b. TPR notes of the call with Adam Goldman and Arcadia advisers on 10 July 2014;

      Whilst TPR has an internal note of the call with Adam Goldman and Arcadia advisers on 10 July 2014 we are not able to provide this note as it is relevant to our investigation.

   c. the TPR email to Deloitte on 28 July 2014 detailing the “gaps in the information provided that would normally be expected in an RAA application”;

      A copy of this email is disclosed with some redaction to remove restricted information and personal details.

   d. TPR notes of its conference call with BHS trustees on 22 August 2014;

      Whilst TPR has an internal note of the conference call with the BHS trustees on 22 August 2014 we are not able to provide this note as it is relevant to our investigation. The matters covered in the note are summarised in the timeline set out in our letter of 20 May.
e. TPR notes of its conversation with Arcadia, BHS and advisers on 28 August 2014;
Whilst TPR has an internal note of its conversation with Arcadia, BHS and advisers on 28 August 2014 we are not able to provide this note as it is relevant to our investigation. The matters covered in the note are summarised in the timeline set out in our letter of 20 May.

f. TPR’s detailed letter to trustees of 4 September 2014;
We are not able to provide TPR’s letter to the trustees of 4 September 2014 as this contains restricted information. If the Committee wishes to obtain this information, we would suggest a request is made to the trustees.

g. the notification of the intention to “pause” Project Thor received from Deloitte on 24 September;
A copy of this notification is disclosed with some redaction to remove personal details.

h. TPR’s request that the application be formally withdrawn;
A copy of this request is disclosed with some redaction to remove personal details.

i. notes of TPR’s subsequent internal meeting in which it agreed to place further work on the BHS funding case on hold; and
Whilst TPR has a note of the internal meeting that took place, we are not able to provide this note as it is relevant to our investigation. In terms of a summary of this note we can confirm that a decision was made to put on hold our review of the funding valuations until we saw what the company proposed in January 2015.

j. TPR notes of its call with Deloitte on 14 January 2015 to discuss Project Thor.
Whilst TPR has a note of the call that took place with Deloitte on 14 January 2015 to discuss Project Thor, we are not able to provide the note as it is relevant to our investigation. The matters covered in the note are summarised in the timeline set out in our letter of 20 May.
The sale of BHS

4. Deloitte contacted TPR on 6 February 2015 to advise of the decision to market BHS. I would be grateful if you could please provide your records of that contact and any immediate steps that you took.

In your letter of 13 May 2016 you asked TPR to provide “the email of 6 February 2015 from Arcadia notifying TPR of the decision to market BHS.” This request came further to the letter that was sent to the Committee by Adam Goldman of Arcadia Group on 11 May 2016. In our reply of 20 May 2016 we stated that we were unable to provide you with that email. However, as set out in the timeline earlier in that letter we made it clear that the communication actually came from Deloitte on behalf of Arcadia. We can confirm that we received no communication directly from Arcadia on 6 February 2015 on this matter. With regard to your request in your letter of 31 May 2016 for the email from Deloitte on 6 February 2015 we are unable to provide you with that information as it is relevant to our investigation. Further to that email, as set out in the timeline provided in our letter of 20 May, TPR contacted the trustees.

5. On 25 February 2015 TPR was emailed by the chair of trustees to say he had met Sir Philip Green and representatives of the proposed purchaser. On 26 February you were informed that the purchaser was Swiss Rock.

   a. What background checks did you perform on Swiss Rock?

When TPR was advised by the chair of the trustees that the potential purchaser was Swiss Rock we attempted to undertake background checks; however, as highlighted by Mr David Clarke of KPMG (the advisers to the trustees) in his evidence to the Committees there was very limited information available publicly at this time.

   b. What concerns, if any, did you convey to the trustees or other parties?

TPR did not convey concerns to the trustees specifically with regard to the nature of the potential purchaser. As is highlighted in our letter of 20 May, TPR has no power to approve or stop corporate transactions such as the sale of a business. In any such process the role of the trustee is central to TPR’s understanding of the situation and throughout this period we were interacting with the trustees. The central element required to gain an understanding of the proposed transaction and the impact it would have on the Schemes was the information that was required by the trustees and, as has been set out previously, this was not being provided

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by the seller. It was ultimately this concern that led to TPR requesting an urgent meeting with Sir Philip Green and Arcadia.

c. Could you please provide the TPR notes of the phone call with the chair of the trustees on 2 March 2015?

Whilst TPR has an internal note of the call held with the chair of trustees on 2 March 2015, we are unable to provide the note to you as it is relevant to our investigation

d. What steps did you take to try to make contact with the proposed purchasers?

As set out in 5b above, the role of TPR is not to approve or stop corporate transactions and it does not have any powers to do so. It can provide Clearance at the request of the parties involved in respect of corporate transactions or scheme-related events which may be materially detrimental to the position of a DB pension scheme. In this case no approach or application was made to TPR for Clearance of the transaction by the seller or the purchaser. TPR continued to work with the trustees over this period and the trustees advised that they had not been provided with the necessary information to complete their analysis. In light of the ongoing failure to provide information to the trustees TPR contacted Arcadia as a matter of urgency. The role of the trustee is central in these circumstances and in this case we had been advised by the chair of the trustees that he had met with the potential purchaser.

6. Was your letter on 3 March 2015 to Adam Goldman your first direct contact with Arcadia regarding the proposed sale?

Our letter of 3 March 2015 to Adam Goldman was TPR’s first direct contact with Arcadia regarding the proposed sale.

7. You wrote to Sir Philip Green on 5 March 2015 following up your meeting of the evening of 4 March 2015.

a. Did you receive a response?

As set out in our letter of 20 May, Sir Philip Green telephoned TPR on the morning of 5 March 2015, the day after the meeting. He was advised that a letter would be sent out to him shortly. No response was received to TPR’s letter of 5 March 2015.

b. Did you have any further contact with Sir Philip, Arcadia or its representatives before the sale went ahead?
Other than the short telephone call with Sir Philip Green as set out above, the only other contact was an email from TPR to Deloitte setting out all the contact details for the case team and advising that we were writing to Sir Philip Green and that we had suggested that the trustee also write to confirm their position and the further information that they still required. No other contact was had with Sir Philip Green, Arcadia or its representatives before the sale concluded on 11 March 2015.

c. What further information did you intend to request in the letter you were “working on” as the sale took place?

The draft letter to Sir Philip Green that was being worked on by TPR at the time of the sale was a follow up to TPR’s letter of 5 March, highlighting the fact that we had received no reply to that letter. The draft letter went on to express our disappointment at the ongoing failure to provide information to the trustees and the lack of engagement with them. We then set out that we required an understanding of what would be provided for the Schemes as part of any transaction.

8. In February 2015 you cautioned trustees that “a sale can take time”. On Friday 6 March the chair of trustees informed you that he expected the sale to proceed on Monday 9 March. Did the speed of the sale take TPR by surprise?

The comment regarding the speed of the sale that was made to the chair of the trustees in TPR’s email of 12 February 2015 was a general statement specifically in relation to the work that TPR would be expecting the trustees to continue with during any ongoing sale process. The statement was not made with any knowledge of how long a sale might take. Having met with Sir Philip Green on 4 March 2015 and written to him on 5 March 2015, TPR was surprised not to have received any contact from Arcadia or its advisers before the sale took place given that we had made it clear what our position was in terms of the Schemes.

9. Did TPR consider using its s.72 powers to demand information at any point prior to the sale?

As noted earlier in this letter and also in our letter of 20 May, TPR does not have the power to approve or stop a corporate transaction. The Clearance process is in place in the event that parties make an application for Clearance and Parliament has given TPR anti-avoidance powers to take action where we believe that an employer or individual has taken steps to avoid their obligations to a pension scheme. Section 72 of the Pensions Act 2004 provides that TPR may require any person (as defined in the legislation) to produce any document or provide any information which is relevant to the exercise of TPR’s functions. The issuing of s72 Notices at that point in time would not have had any effect on whether or not the sale took place as TPR
The Pensions Regulator

has no power to control such a sale. Further, as set out earlier in this letter the information that was being requested of Arcadia at that time was primarily for the trustees so that they could undertake their work on analysing the position of the Schemes and any impact there might be on them. As soon as TPR became aware of the sale we opened an anti-avoidance investigation and then issued s72 Notices to a wide range of targets.

The 2009 and 2012 valuations

10. TPR opened a funding case into the 2009 valuation in June 2010. That case was closed in March 2011.

a. What, specifically, were TPR’s concerns about the technical provisions assumptions?

As the information relating to the technical provisions is restricted information we are not in a position to provide that to you. If the Committee wishes to obtain this information, we would suggest a request is made to the trustees.

b. What improvements had the trustees secured over the company’s original recovery plan proposal that persuaded TPR to close the case?

As above, we will not be able to provide this information to you. If the Committee wishes to obtain this information, we would suggest a request is made to the trustees.

c. What comments did TPR pass to the trustees for them to focus on for the next valuation?

TPR generally feeds back to trustees during the valuation process and in this case TPR highlighted issues in relation to the next valuation. These specifically related to the level of technical provisions with regard to the covenant, the length of the recovery plan and considering additional security when negotiating a ‘back end loaded’ recovery plan.

d. Did TPR monitor whether these comments were acted upon?

As set out in the timeline provided in our letter of 20 May during the period after the closure of the 2009 valuation case in March 2011 TPR did not have significant engagement with the trustees or sponsoring employer. In September 2013 a funding case was opened in relation to the 2012 valuation and discussions commenced with the trustees. The comments made in relation to the 2009 valuation were considered as part of the 2012 valuation discussions.
11. TPR received the 2012 valuation in September 2013 and opened a funding case.

a. What reasons were given to TPR for the valuation being late? Why did TPR choose to take no regulatory action provided it was submitted by the end of September, given we understand 15 months is a statutory deadline?

As set out in our letter of 20 May, the trustees advised TPR in June that the submission of the BHS Scheme’s 2012 valuation and recovery plan would be delayed. The trustees advised that they had recently taken independent advice on the strength of the employer covenant and the most recent financial information was only recently available, and this was the reason for the late submission. Whilst the 15-month period to complete a valuation and agree a recovery plan is a statutory timescale and TPR cannot waive the requirements of the law, when we are notified of a breach we have the discretion to judge whether a breach is materially significant and to decide whether it is reasonable to take, or not take, action. In this case and in view of the explanation for the delay, TPR judged that it would be reasonable to take no action provided the valuation was submitted by the end of September 2013.

b. Did TPR allocate greater and more senior resource to the BHS case following receipt of the 2012 recovery plan?

Following receipt of the 2012 recovery plan a case was opened and the case team considered the recovery plan and information provided. As the case progressed and Project Thor was introduced more senior staff were involved in advising and consulting with the case team and the normal routes of escalation were in place to ensure senior staff were involved and making decisions on the case. Once the matter progressed to the sale and an anti-avoidance case was opened, the case team included a number of senior staff across a range of specialities as well as additional resource at an operational level. Whilst this was and still is a significant and complex case it is also necessary to highlight the fact that TPR has a considerable number of such cases and a range of other responsibilities. There are considerable constraints on TPR’s resources and these have to be managed carefully, with careful prioritisation between the various demands.

c. Did TPR request any additional information regarding the valuation from the trustees between September 2013 and January 2014?

As is normally the case when TPR receives valuation documents, the case team spends time undertaking an internal review of those documents. From September 2013, and as noted in the timeline provided to the Committee on 20 May, a detailed internal review was undertaken of the BHS valuation documentation. It is not unusual that during this period there is not an immediate request for information from the trustees. Once the review was completed TPR went back to the
trustees to request further information.

d. What information did TPR request in January 2014? Was this information forthcoming?

On 7 January 2014 TPR sent an email to the secretary to the trustees setting out a range of information required. This included details of the process adopted by the trustees in assessing the employer covenant and affordability of deficit recovery contributions and how this was reflected in the level of prudence incorporated in the Technical Provisions; an explanation of how the various elements of the Recovery Plan serve to fully address the funding deficit and copies of the trustees’ analysis regarding covenant and documented conclusions, plus any third party analysis commissioned.

A request was also made for a copy of the full Actuarial Report; information relating to how to the discount rate(s)/investment return(s) assumed in the Recovery Plan were linked to the scheme’s investment strategy; information relating to how the trustees have assessed the level of investment risk and linked this to the ability of the covenant to underwrite the level of risks and a Statement of Investment Principles.

We also requested management accounts for all statutory employers since the last available statutory accounts as well as future investment strategy plans and profit and loss cash flow forecasts.

Documentation was provided by the secretary to the trustees on 23 January 2014 with a follow up email response on 24 January 2014. TPR is unable to provide this information to the Committee as it contains restricted information and would ask that if the Committee wish to obtain this information a request is made to the trustees.

e. What further information did TPR request in early-mid 2014? Was it forthcoming?

TPR was continuing to engage with the trustees during this period and was seeking to obtain further information to understand better both the investment plan that was being developed/implemented by the trustees as well as the financial position of the employer. TPR did not receive substantive responses to those requests, with the trustees requesting further time to respond. As set out in the timeline provided in our letter of 20 May a meeting was therefore requested; however, due to trustee and adviser availability this could not be arranged until July.
f. TPR was advised that no meeting was possible before July 2014 because of “trustee and adviser availability”. Did this delay concern TPR? What steps did TPR take to investigate the valuation in the interim?

In view of the nature and length of the delay TPR took the view that it was prepared to accommodate the availability of the trustees and advisers in this case. The nature of our work on scheme funding is that we seek to speak with the trustees and the employer to understand the recovery plan they have agreed and work with them to come to an appropriate solution. As TPR had completed its initial review of the valuation and other information, the next key step was to discuss this with the trustees – we did not take any further investigatory steps whilst awaiting this contact.

I hope that this information and the disclosed documents will provide further clarification for the Committee.

If the Committee has any further questions, please do not hesitate to contact me.

Yours sincerely

Lesley Titcomb
Chief Executive