

BHS/Pensions Joint Committee – in response to questions from Martin Adams via e-mail on June 9th 2016

Q1 - Duff & Phelps were formally appointed by the respective boards of BHS on Thursday 21st April at 11am. The board minutes signed by Dominic Chappell state that “it was unanimously agreed to pass the following resolutions” It was resolved that;

- 1 The company should file for administration
- 2 Philip Duffy & Benjamin Wiles of Duff & Phelps be appointed as the administrators of the company
- 3 Dominic Chappell, or Dominic Chandler in the alternative, be authorised to take such action as is necessary to appoint administrators of the company including signing the Notice of Intention to Appoint and the signing of Notice of Appointment of Administrators and to file the relevant forms at court

The potential appointment was discussed at a meeting of the Arcadia Board, BHS Board and RAL Board on Monday 18th April 2016. When discussing who the administrators would be in the event of no further funding coming forward, I had discussed with Dominic Chappell the appointment of KPMG who we worked with on the CVA, Dominic Chappell was clear that he had agreed through a side letter that they could not act as administrators. A general discussion took place at the meeting about alternatives, many however were conflicted in some way. Sir Philip Green then suggested Duff & Phelps, who he said he knew from some time ago. At this point Sir Philip Green and Dominic Chappell left the meeting. Dominic Chappell then came back to the BHS and RAL Boards and said ‘We are agreed, it’s Duff & Phelps if everyone else is happy’ Duff & Phelps were therefore agreed. It is worth noting that my understanding is that as floating charge holder, Arcadia could choose the administrators without the approval of either BHS or RAL

Q2 – I understand that Michael Hitchcock has provided a detailed breakdown of all transactions, however in summary the net property proceeds directly attributable to RAL and received for the benefit of BHS was £6m. The total net financing achieved by RAL (secured against property) incurring an implied APR ranging from 132% - 19% and received for the benefit of BHS was £77m. Any suggestion that RAL injected cash in to the business other than £10m share subscription is simply not true.

Q3 - Enclosed are the relevant pages from the section 72 response from Olswang on 1st June 2015. The regulator asks (Q2) “Details of any financial benefit, if any Dominic Chappell has personally received, or have been received from an entity which Dominic Chappell is associated and connected from the sale of BHS to RAL”

- The response was “RAL which is now the 100% owner of BHS Group since completion of the acquisition of BHS, Dominic Chappell has received a total of £1,789,250 (net)
- £69,250 of which was paid by BHS by way of remuneration as an employee since March 11th 2015

- The remainder is in relation to sums due from RAL to Dominic Chappell or his associated company by RAL with the benefit of inter-company loans from BHS or BHS Group companies to RAL

I only became aware of these payments when the responses to the section 72 were sent, as they occurred on transaction before I became CEO or a BHS Director

Q4 - I did speak regularly with Sir Philip Green. Our conversations centred around the performance of the Arcadia concessions in BHS, how we were getting on with the separation of the 'back of house' facilities, and general discussions around competitors, the market-place and competitor performance.

Q5 - The ABL facility was in essence an asset backed lending facility, the asset being stock. Michael Morris (a Corporate Finance consultant to RAL) ran the negotiations with Gordon Brothers for a number of months to bring this facility to BHS. The reason why I believe this facility was 'Just not workable, practical and expensive' are,

- My finance team were clear with me that this facility was very difficult to administer due to the way it operated. In essence we have to produce a loan certificate every Monday to access the facility, in effect, a weekly drawdown of cash. However, between the weekly drawdown of cash, all cash coming into the business was held in a Gordon Brothers Account, the effect of this was that a £30m facility (drawdown) was £28m (£30m - £2m fee), less £2.5m minimum headroom leaving £25.5m on day one. All our sales of c.£10m in a normal week were held by Gordon Brothers resulting in the facility in real terms being £25.5m on day 1, and £15.5m by day 7. The truth is the business cash flow requirement was for £30m
- The ABL Facility was from Gordon Brothers and was a three tier facility secured against stock. The key commercials of the deal were:
 - £60m facility drawn in 3 phases. Tier 1 = £30m, Tier 2 = £10m, Tier 3 = £20m.
 - It attracted an upfront fee of £2m and Interest was charged at 11% on phase 1, 12% on phase 2 and 14% on phase 3. Interest rates above Libor.
- Olswang, our lawyers on this transaction gave the following advice in a letter to directors on the 7th April 2016

"Therefore, following the occurrence of any Event of Default, Gordon Brothers would have the ability if it so chose to appoint an administrator to each Obligor company

Accordingly, each board should understand that this power arises on the occurrence of any Event of Default, whether material or not. Despite trying to negotiate such, Gordon Brothers have been unwilling to agree any materiality threshold for Events of Default and have only agreed limited grace periods for certain defaults before an Event of Default

Furthermore, notwithstanding the significant work that has been undertaken to mitigate the risk, it is likely that if Gordon Brothers chose to do so, in the real world they could identify any Event of Default at any time as a basis for enforcing their security and appointing an administrator

Thus, the commercial reality is that if Gordon Brothers wishes to work with the Obligors as a responsible lender, then it will do so and will not look to enforce on the basis of minor Events of Default but only where there are genuine concerns in making a full recovery (usually in the case of non-payment or insolvency). However, if Gordon Brothers motive is to gain control of the BHS business then, as mentioned above, as it is difficult to ensure there are no defaults outstanding, it would be difficult to prevent them. “

Q6 - I haven't seen these minutes, however under Arcadia's ownership BHS was paying rent for a number of properties, the landlord of which, was Carmen. Carmen, I understand was a company owned by The Green Family. Arcadia helped to secure a very advantageous interest rate on a loan to purchase the properties in Carmen. The effective rate was 1.6% above Libor, however this was due to Arcadia underwriting the debt. The net impact on the P&L account of this transaction was that it effectively reduced the rent on 10 properties from c.£10m to c.£1.5m. I see no reason why this transaction could not have occurred outside the sale of BHS.