

The Pensions Regulator

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

13 June 2016

Dear Mr Field

Further to the Work & Pensions and Business, Innovation & Skills Committee's evidence session on 8 June 2016, I am writing to you in order to correct several points of fact in statements made by witnesses in that session regarding the role of the Pensions Regulator (TPR) with respect to the acquisition of BHS Ltd by Retail Acquisitions Ltd (RAL) in March 2015 and our subsequent engagement with BHS regarding the BHS pension schemes.

The sale of BHS and Project Vera

1. As stated in our evidence to the Committee on 9 May 2016 and our subsequent written evidence, TPR learned of the confirmation of the sale on 11 March 2015 of BHS to RAL when it was made public the following day, 12 March 2015. Whilst we had discussions with Chris Martin, the chair of the trustees and had met Arcadia on 4 March ahead of the sale, we had been given very limited information about the possible sale and TPR was not informed about the completion of the sale in advance. In terms of our discussions with Chris Martin at this time and as set out in our timeline provided to you on 20 May, we were informed of the potential purchaser being Swiss Rock on one occasion and were provided with no details of Mr Dominic Chappell or any of the other parties involved.
2. There were some initial, high-level discussions with BHS about 'Project Vera' in the period after the sale on 11 March. Project Vera was the beginnings of a proposal for a Regulated Apportionment Arrangement (RAA). However, TPR was never provided with a formal application for an RAA. We received some high level documentation from Grant Thornton about Project Vera in the second half of 2015 but this was insufficient to consider whether it would meet the criteria for an RAA and we made this clear. We would also make clear that despite Mr Chappell's assertion, TPR had no contact with any of RAL's advisers prior to the sale. It is not reasonable, as Mr Michael Hitchcock suggested in his evidence, to suggest that TPR's approach is not "commercial" simply because BHS did not get the outcome they

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wanted from these discussions. All parties were aware in advance of the legal requirements and the recognised process for us to consider an RAA¹ as well as the information that would need to be provided to the trustees and TPR, and these were discussed with TPR, however ultimately no application was made. Where such information is provided in a manner which satisfies the legal criteria we can and do move swiftly to provide clearance. This includes clearance as part of an RAA, where employer insolvency must be shown to be inevitable in the short term.

3. It was suggested by Mr Bourne and Mr Chappell that TPR was in “broad agreement” with Project Thor or a similar proposal, such as the subsequent Project Vera, around the time of the sale of BHS to RAL. Whilst we cannot speak for what may have been said to RAL or Grant Thornton by Deloitte or any other party, for the avoidance of doubt we can confirm as per the timeline provided to the Committee on 20 May 2016 that there was no such agreement from TPR at this or any other time as no formal proposal was received. At the urgent meeting with Arcadia called by TPR on 4 March 2015, we learned of some high level points regarding a possible restructure but this was again insufficient to consider. That meeting is covered in the timeline provided to the Committee on 20 May 2016, along with the letter of 5 March 2015 to Sir Philip Green where we set out clearly what further information would be required.

Section 72

4. In his evidence, Mr Chappell referenced a meeting with TPR shortly after the sale of BHS prior to the receipt of section 72 notices from TPR. We would highlight for the avoidance of doubt that TPR’s attendance at that meeting was insisted upon by us, having initially been informed it was a meeting between the trustees and BHS/RAL. We attended this meeting on 18 March 2015 and made it clear to all parties that if there was to be any RAA proposal put forward there was considerable information which would be required both by TPR and the trustees.
5. With regard to the section 72 notices, as previously advised to the Committee, we opened an anti-avoidance investigation immediately after we became aware the sale had taken place. Section 72 is a very important power that we have to obtain information and ensure the preservation of records. We had been provided with very little information about the sale before its completion and, as part of our investigation, needed to ascertain the impact upon the BHS pension schemes. As a result we issued a section 72 notice to BHS (amongst others) in order to obtain certain documents and determine what had transpired. In view of

¹ [Regulated Apportionment Arrangements and employer insolvency](#)

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the lack of information provided ahead of the sale this notice was wide-ranging. Whilst we appreciate that this creates some burden on recipients we would also expect that any recipient would readily have the knowledge and documentation to hand. We do not accept that the issuing of section 72 notices would have been so problematic for BHS management as to be a contributing factor in the eventual failure of the business. Additionally, in relation to Mr Chappell's claims that the existence of these section 72 notices presented them with difficulties raising funds, I should make clear that we did not and typically do not make public the fact that we have exercised this power at the time of doing so.

6. It should also be made clear that a section 72 notice does not preclude finding an alternative solution while an anti-avoidance investigation is ongoing. It would be perfectly possible for us to consider a solution such as an RAA at the same time as investigating whether a better outcome for members might be achieved using our powers. Again, no formal proposal was made to TPR at any stage after the sale of BHS and our investigation is ongoing.

Post-sale engagement with BHS

7. TPR met with BHS on five occasions after the sale to RAL on 11 March 2015. From the beginning of our involvement in this case we have endeavoured to ensure only the people appropriate to the matters discussed have attended meetings. There were seven members of TPR staff in attendance at the first two meetings and this number reduced to four for the latter meetings. It should be highlighted that at those meetings, BHS always had as many or more people in attendance. It was necessary at early meetings for several members of the case team, with different areas of expertise (including lawyers, business analysts and actuaries) to attend, in order to ascertain the details of the acquisition as TPR had been provided with little information prior to the sale. It was not necessary for as many people to attend later meetings.
8. Mr Chappell said in his evidence that TPR would not "negotiate or deal with [BHS] separately from [Sir] Philip" after the sale. This is not the case and we do not accept that there are grounds to make this claim. As Mr Chappell acknowledged earlier in his evidence, we asked Deloitte, who were engaged and acting on behalf of Taveta, to leave the 18 March 2015 meeting in order for us to be able to deal directly with BHS and its new owners, and we also had other meetings and interactions with BHS management and their advisers. At no stage did TPR say or indicate to Mr Chappell, RAL or BHS that we would not "release BHS" until the situation with Sir Philip Green was resolved.
9. Mr Chappell argues in his evidence that TPR should have "agreed a solution" for BHS separately to our anti-avoidance investigation. To reiterate, no formal proposal for a solution was ever put to TPR and so we were never given the opportunity to agree to any solution.

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As BHS was the sponsoring employer for the schemes it would also be wholly inappropriate for TPR to “leave them alone” as Mr Chappell suggests. It is also wholly incorrect to say that BHS was being “held to ransom” by TPR. In the circumstances TPR would not have been performing its role correctly if we had merely agreed to a solution without being presented with any concrete details. We have a number of statutory responsibilities and would be acting negligently by agreeing to any proposal without sufficient information to judge its affect upon pension scheme members and PPF levy payers. This would have represented preferential treatment for BHS and not been consistent with our approach to companies and schemes in this situation.

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lesley Titcomb', with a long horizontal flourish extending to the right.

Lesley Titcomb
Chief Executive