

Business, Innovation and Skills Committee with the Work and Pensions Committee

Oral evidence: The sale and acquisition of BHS, HC 54

Wednesday 25 May 2016

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Members present: Rt Hon Frank Field (Chair), Iain Wright, Karen Buck, Richard Fuller, Richard Graham, Craig Mackinlay, Steve McCabe, Amanda Milling, Jeremy Quin, Amanda Solloway, Michelle Thomson

Questions 602 - 910

Witnesses: 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, gave evidence.

Q602 Chair: May I ask you to identify yourselves for the sake of the record, starting with you, Jason? I have a general question to ask each of you and then we will be into the main part of the questioning.

Jason Hyde: My name is Jason Hyde. I used to work for BHS. I do not work for BHS any more.

Mike Lymath: I am Mike Lymath. I am a director of MGL Corporate Services Ltd, which is an independent trustee on the BHS scheme.

Chris Martin: I am Chris Martin. I am Managing Director of Independent Trustee Services and chair of the two BHS defined-benefit pension schemes.

Phil Kitchen: I am Phil Kitchen. I am a member-nominated trustee.

Q603 Chair: To begin with, starting with you, Jason—we are clearly interested in the roles of trustees—could you tell me how you came to be a trustee? When was it from and to, who appointed you, who approached you and so on?

Jason Hyde: I was a member-nominated trustee. I worked for the trustees for just under four years. I was a store manager of one of the stores, at Cribbs Causeway in Bristol, and I was approached because I had been for the role a few years ago and then the position became available again, so I put myself forward and was member-nominated. People had to vote for me to become part of the board.

Q604 Chair: Did you go on a training scheme before you became a trustee?

Jason Hyde: I did a training scheme just after I joined, and then there were a number of schemes that came up during that time as well—small meetings for me to go off to learn bits and pieces to do with the role. But my role was more a supporting role as I was learning more about what was expected.

Mike Lymath: I joined the trustee panel in April 2014. I was approached by the trustees because there was a vacancy for an independent trustee, and I joined at that time.

Chris Martin: It might help the Committee if I say a couple of words of background about this trustee board, which is slightly unusual in its composition. The board has to have two professional independent trustees and the third trustee is actually a corporate trustee, BHS Pension Trustees Ltd. Jason and Phil are directors of that corporate entity.

Q605 Chair: Chris, when you say professional trustees, what do you mean by “professional”?

Chris Martin: Professional trustees are trustees who practise and act as trustees across a number of different pension schemes in different situations. That is the composition of the board and its structure. We actually have three corporate trustees, of which—we are all respectively directors of different entities. I was first approached in May 2013 by one of the professional advisers to the two BHS pension schemes to see whether I would be interested in submitting my CV and attending for interview.

Q606 Chair: Could we ask who that was, Chris?

Chris Martin: It was one of the advisers from Towers Watson as was, and I was subsequently appointed chair of the trustees in January 2014.

Chair: We will come back to that in a moment.

Phil Kitchen: I was appointed in late 2010 as a member-nominated trustee. I had an interview with two members of the trustee board at that time—Arthur Walford and Ian Alkins—and I was subsequently appointed.

Q607 Chair: Chris, you were approached. You presumably did some due diligence yourself before you wanted to take on the job. What did you think you were taking on once

you started to look at the state of the scheme and the companies and its ownership structure and so on?

Chris Martin: I did some background due diligence, which I would do ahead of any interview for a prospective appointment. The details of the 2012 valuation were not at that point in the public domain, because it was still in the process of being signed off. I could tell from a fairly high-level search of the available information that there was certainly some distress in relation to both the schemes and the sponsoring company.

Q608 Chair: Right. Anything more?

Chris Martin: Not particularly from that high-level search of information, no.

Q609 Chair: Given your portfolio of work, Chris, did this strike you as one of your more challenging pieces of work? How many schemes do you chair?

Chris Martin: I chair a small portfolio—sorry, I don’t chair all the appointments. I lead seven or eight schemes, which are ongoing schemes. There is no distress and they have strong covenants and are well funded. I then have a small number from time to time—two, three or four schemes that are in more challenged circumstances, such as the two BHS schemes. I believe the Committee may have seen my CV, so it probably has the background to some of those cases. So the fact that I was identified by Towers Watson as a possible candidate for chair did not surprise me, given that I had identified there was some stress in relation to the sponsor and the schemes.

Q610 Chair: May I ask Phil and Jason this? When Chris took over, did the temper of the meetings change; did the nature of the agendas change; did the subjects you were looking at change; and did some urgency about the survival of the scheme begin to feature or not?

Phil Kitchen: I would not say that it changed in that sense. I think the circumstances certainly changed and therefore our response to those circumstances required some urgency.

Q611 Chair: Such as?

Phil Kitchen: Clearly, in 2014, we had the restructuring opportunity through Thor, and as we went through 2014, with a business that seemed to be trading with more difficulty as time went on, those were the circumstances that really forced us into—

Q612 Chair: Jeremy will come in on Thor in a moment, but I want to ask about when you were meeting as trustees. You talked about the difficulties of—let’s call it for the moment the parent company. Was that information you gleaned from reading the papers, or did you actually have briefings as trustees that it was getting more dicey for BHS?

Phil Kitchen: We would have had an annual assessment of the business. Working with the business myself, I understood what the current performance was, because I could see that on a day-to-day basis.

Q613 Chair: You brought that knowledge in with you.

Phil Kitchen: Yes, I could provide that knowledge for the—

Q614 Chair: Jason, do you want to add anything?

Jason Hyde: I would say exactly the same as Phil. Because of working in stores and within the regional management team, I was aware of how the business was performing. Then, when we got the information and feedback from our advisers and support company, it all made sense as to where the business was up to at that point.

Chair: Richard, you asked on Monday about the portfolio of assets the company had and how one might manage the risk. Could you pick that up for us, please?

Q615 Richard Graham: Chris, may we start by clarifying a little bit your role as a professional trustee? This is a remunerated role, is it?

Chris Martin: It is, yes.

Q616 Richard Graham: Could you tell the Committee what you receive from your duty as chair?

Chair: And how many hours, please.

Chris Martin: I was first approached to be appointed on the basis of a fixed number of meetings per annum and I agreed a fee to cover those. It was four trustee meetings per annum. For reasons which I suspect we will come on to talk about in a moment with Project Thor, the four meetings per annum were soon overtaken by events. So I then moved on—or, sorry, my company moved on; it is my company that deals with this—to a per hour charge, for the work undertaken. I couldn't tell you, but I can write to confirm to the Committee, the number of hours I have spent on BHS schemes in the last two years and five months since I was appointed. The total cost to date is in the region of £250,000.

Q617 Richard Graham: You have received around £250,000.

Chris Martin: My company has, yes.

Q618 Richard Graham: From the scheme, or from the corporate?

Chris Martin: We were paid by the scheme.

Q619 Richard Graham: And what would you describe as the main priorities of being chair of a pension scheme?

Chris Martin: Clearly, as trustees we have the interests of members as our central obligation. Protecting those interests is central to everything that as trustees we try to do. As chair, I take responsibility for leading the board, for trying to set its agenda and for being at the centre of some of the more challenging and difficult negotiations that were required.

Q620 Richard Graham: In terms of the responsibilities to the members, how high on your list of priorities would you put making sure that the assets were being managed successfully?

Chris Martin: That would be one of our primary objectives: to make sure that the investment strategy was very much aligned with the strength of the sponsoring covenant and also with the funding level of the scheme. The three elements come together.

Q621 Richard Graham: When you became chairman, what was your analysis both of the strength of the covenant and of the success of the investment strategy?

Chris Martin: Almost immediately after I became chairman, the Project Thor proposal was introduced, but in that short window between 1 January and 29 January, my initial views were that the level of investment risk being taken in the scheme perhaps was a little higher than I would have expected, given the implied strength of covenant.

Q622 Richard Graham: And it had proved disastrously unsuccessful over the previous six or seven years, would you say?

Chris Martin: I am not sure the investment strategy itself had proved disastrous. There had been difficulties around 2009, I believe—clearly these events predate my appointment—but then 2009 was a challenging time for most investment markets. The deficit had increased over that period quite significantly, but that was as much to do with the increase in the liabilities as it was to do with the asset performance.

Q623 Richard Graham: During that period, and in the lead-up to when you became chairman, was Towers Watson the adviser throughout that period?

Chris Martin: I believe that is correct, yes.

Q624 Richard Graham: But they were also responsible for effectively introducing you to the job as trustee, and then you became chairman.

Chris Martin: Their contact with me was an initial phone call to see if I would be interested and then, if I was interested in taking on the appointment, sending a CV to them. There was no further contact with Willis Towers Watson in relation to the appointment process.

Q625 Richard Graham: But none the less, their introduction was responsible for effectively generating £250,000 of revenue to your company.

Chris Martin: Willis Towers Watson were the people who contacted me and I believe contacted other candidates to take on this role.

Q626 Richard Graham: Did you consider a review of your investment strategy and your advisers, and did you have one?

Chris Martin: Again, the period between my appointment on 1 January and Project Thor being presented to the trustees was very short. I didn't, in those 28 days, consider any formal review process. Once Project Thor was presented to the trustees, then we did go through a process of considering the appropriateness of our advisers for the challenges faced—

Chair: Richard, would you ask just one more question and then we'll move on?

Q627 Richard Graham: So you thought that there was too much risk in the portfolio and that the deficit on the scheme had ballooned out, but did you actually trigger a review of your investment strategy and your advisers?

Chris Martin: I did not trigger that review in the limited period before Project Thor. Immediately that Project Thor was being considered by the trustees, we initiated that review.

Q628 Richard Graham: What would you say if someone suggested that there was a possible conflict of interest between your appointment on the recommendation of the adviser of the scheme, the quarter of a million pounds that your company had generated from that appointment, and not really looking into whether their investment advice had been successful in the period during which they were advising the scheme?

Chris Martin: Willis Towers Watson contacted my firm to see whether I would be interested in acting as chair, and I understand it also contacted a number of others. The incumbent trustee board then ran an interview and selection process, with which Willis Towers Watson had no involvement at all.

Q629 Richard Graham: How many people were on the trustee board?

Chris Martin: On the selection panel I sat in front of, or the entire board?

Richard Graham: On the selection panel.

Chris Martin: I was interviewed by the incumbent chair, Dr Downes, Arthur Walford, the other professional trustee at that time, and the secretary to the trustees.

Q630 Craig Mackinlay: This is a question to you all. During the period we are discussing, what was your working relationship? How much contact did you have with Sir Philip Green and Paul Budge? To what extent did you get involved with the regulator, which would have had an interest in what was going on in such a scheme?

Chris Martin: I will take that first, because in my role as chair I was front and centre in most of those discussions, so perhaps it would be easier for me to give an overview. Other than having an introductory meeting just before I assumed the role as chair, my initial contact with Paul Budge was at the point that Project Thor was put to the trustees. Through that same meeting I was introduced to Arcadia's advisers, who had put together Project Thor. It is probably fair to say that as Project Thor was being developed over the following five to six months, most of the contact was between our respective professional advisers. There was limited contact between the trustee board and the company over that period.

Personally, I had only very limited contact with Sir Philip Green in that period. There was more contact in advance of the sale of the business and in the subsequent period, but that was just because the parties were working much more closely together. After my appointment in January 2014, my initial contact with the Pensions Regulator was when in mid-January they sent us some questions on the actuarial valuation, which we answered in short order. We then had some follow-up questions in May 2014. The period of quite close working with the Pensions Regulator was initiated at the meeting on 7 July when Project Thor was discussed.

Q631 Craig Mackinlay: Okay, so from January onwards Project Thor was in its early phases.

Chris Martin: Absolutely, yes.

Q632 Craig Mackinlay: But it hadn't really got to an advanced enough stage to be mentioned to the regulator until a bit later on. Do you think there was a case for mentioning it to the regulator at an earlier stage? Why wasn't that done?

Chris Martin: Project Thor was presented to me as the chair of trustees on 29 January. I then shared it with our incumbent advisers and the trustee board.

Q633 Craig Mackinlay: That was Deloitte at the time, wasn't it?

Chris Martin: No, Deloitte was advising Arcadia. I shared it with the trustee board on 6 February at a specially convened trustee meeting. One of the decisions coming out of that meeting was that the trustee board needed to make sure it had the right level of specialist advice. We already had Eversheds, who I believe the Committee met the other day, as our

legal advisers. Central to the Project Thor proposition was a consensual, solvent restructuring of the business, alongside the pension scheme and other stakeholders as well. Because it had that restructuring aspect to it, we needed specialist accounting and covenant advice.

At that point, the meeting decided to consider CVs from two specialist accounting firms and we decided to appoint KPMG to give that high-level advice. From that point onwards, a lot of the work around the covenant issues—the sponsor issues—were between KPMG and Deloitte reporting back to their respective clients.

Q634 Craig Mackinlay: Mr Hyde, you said you had some training during the early time after your appointment. Did you feel fairly aware of what the Pensions Regulator was there for: its powers and advice-giving? Did you feel quite comfortable with the amount of information you had been given?

Jason Hyde: Yes, I was comfortable with the information I was given. If I wasn't, I would speak to my secretary or either of the chairmen to understand what else was required. Because I did the role unpaid, for me it was about taking training as and when I was able to because I had a store to run. I was involved as and when I was asked to be. I did not have as much involvement as everyone because I live in Bristol so I was unable to attend some meetings, but when I was there, I made sure I had feedback and the information I needed to enable me to carry out the role. Everything was explained to all of us very well so there were never any concerns.

Q635 Craig Mackinlay: Perhaps from someone else. What work did you do as a trustee board to consider Thor as the best available option? What sort of work did you do among yourselves? What sort of advice did you get about whether it was do-able or “the best we can do”?

Mike Lymath: When I joined in April 2014, Project Thor was on the table and for me it was certainly a key reason for joining because it was pretty clear that the pension scheme was in trouble. There needed to be a solution in the best interests of the members—hopefully, better than the alternative of PPF. Certainly when I joined, I looked at that carefully and, I think having spoken to Chris—I met Paul Budge at that time as part of my due diligence to understand the company's point of view—concluded that Project Thor was a viable proposition and in fact in many ways gave the members benefits equivalent to those they would have got normally. Other than the inflation-linked increases, they would pretty much come out whole. It looked very do-able, so on that basis it was a good thing and the right thing to follow up.

Q636 Chair: Chris, what was the date when you first learned about the recovery plan for the pensioners?

Chris Martin: Project Thor? I was asked to attend a meeting on 29 January 2014.

Q637 Chair: Right, and when did you first tell the regulator?

Chris Martin: About Project Thor? The middle to late part of June when we had done much of the work that Mike just talked about. So when I first received the presentation on Project Thor, it was a slide pack which clearly quite a lot of work had gone into because quite a lot of analysis had been prepared by Deloitte.

Q638 Chair: Sure, so it was June.

Chris Martin: Yes.

Q639 Chair: Had you had any correspondence, any phone calls, any emails or anything from the regulator once you took up as chairman that they were worried about the scheme?

Chris Martin: We had the email in the middle of January asking questions about the 2012 valuation and recovery plan that had been submitted the September before. They were asking questions predominantly around the investment strategy that was being adopted and the extent to which the trustees had considered the covenant of the sponsoring employer and asked for some documentary evidence around the steps the trustees had taken. That was provided.

We then had a follow-up email from the Pensions Regulator in May again asking further questions. Information again was provided. In parallel with those two email exchanges, we were obviously working on analysing the Project Thor proposal with KPMG, with Eversheds, to see whether it was something from the trustees' perspective that would give a better outcome to members than insolvency of the company.

Q640 Craig Mackinlay: Where was the brainchild of Thor? When did that first start on the table? It was obviously before your time.

Chris Martin: Before my time, yes. That was a proposition put together by the advisers to Arcadia. I don't know when it was proposed formally, but the slide presentation I mentioned, at the meeting on 29 January, was quite well developed, so there clearly had been some time and effort spent on getting it to that stage. I would have thought it had taken some months to get to that point.

Q641 Chair: Before I go to Michelle, when you were being—Richard got you explaining that there was a formal way you were approached. So that we try to understand the power structure within this whole organisation, before you became chairman did you meet Mr Budge or Sir Philip? Did they smell you out—whether you were going to be the proper guy for this—or did you only meet them afterwards?

Chris Martin: I went through an interview process, initially with the incumbent two professional trustees. I then attended a briefing meeting with the secretary of the trustees, to

give me more factual background. I was then invited to meet Sir Philip and Paul Budge, on the basis that I was either the preferred candidate or one of two preferred candidates.

Q642 Chair: Were they together when they met you?

Chris Martin: They were.

Q643 Chair: How long did you spend with them?

Chris Martin: It was a very brief meeting: less than 15 minutes.

Q644 Jeremy Quin: May I come back on that point, Chris? You were coming into a scheme with a 23-year recovery plan. I know you have a lot of experience in the sector. That must have struck you as a recovery plan of extraordinary length and, as you have said, you knew it was in a distressed situation. As you would have been aware from the BHS accounts, they were placing some reliance on the wider group for a going concern basis.

I am curious about the amount of time you spent. It was quite a brief meeting with Philip and Paul Budge, but did you try to assure yourself about the ongoing support for BHS from the top co? There would still have been a pension fund there to manage, I appreciate that, but what was your thought process?

Chris Martin: The interview process had been with the two professional trustees. The context that I gave earlier about the composition of the trustee board is important. There are three trustees and two must be professionals independent of the business at all times. The power to remove and appoint those two independent professionals is vested in the trustees; it is quite an unusual structure for a trustee board. The sponsoring employer cannot decide to appoint or remove trustees, so my meeting with Paul Budge and Sir Philip Green was a courtesy meeting and not a meeting for them to decide whether I could be appointed. That power was with the trustees, and as far as I was concerned they had already concluded that I was either the candidate they wanted to appoint, or one of two.

Q645 Jeremy Quin: It was not for them to appoint you; I appreciate that. This is not a negative remark, almost to the contrary, but you were prepared to take on the role without receiving assurances as to the longevity of the support that the group would be giving to BHS—it is clear from the BHS accounts that you would be in trouble without it.

Chris Martin: Yes, we did not discuss the degree of Arcadia support or the longevity of that support in that meeting. It was a brief introductory meeting.

Q646 Jeremy Quin: That is very clear; thank you. You could not have been happy with a 23-year recovery plan. Were you working through ideas that you could take back to BHS and, through them, to the group, as to how that period of time could be shortened?

Chris Martin: Again, I was appointed on 1 January 2014 and Project Thor was launched to the trustees on 29 January, so there was a very short window. I did not actually get to chair a trustee board meeting in that period—we did not convene—so I did not have an opportunity to formulate those plans before Project Thor was put in front of us. Had I started to have that thought process, I would very much have focused on the available cash to support the recovery plan. I had had access, by that time, to the covenant report that the previous trustee board had received. That covenant report made it very clear that the BHS entity, the legal entity that was the sponsoring employer of the two schemes, could not support the schemes without Arcadia’s intercompany support—hence the amount of free cash available to fund the schemes was determined by that support, and its willingness to carry on supporting.

Q647 Jeremy Quin: Had Thor not been forthcoming—I just wonder, Chris, because you have been in many situations—what would you have done? I ask because, clearly, you have got the covenant report. Would you have spoken to the regulator? Would that have been part of your process to try to secure a better deal for the pensioners, other than 23 years? What would you have done under normal—other—circumstances?

Chris Martin: As professional trustees, our priority is absolutely the protection of members’ benefits and so our focus would be on that. Engagement with the regulator would have happened here as a matter of course, because they were already looking at the 2012 valuation and had it engaged with us. Project Thor then overtook that engagement, but I am fairly confident that one of the first steps we would have taken with our normal engagement with the regulator would be to think about what steps we could take to get a stronger long-term commitment to the covenant and/or take some of the risk out of the investment strategy, because the two of those elements sit side by side and getting that balance right is absolutely key to trying to deliver a better outcome for members.

Q648 Jeremy Quin: Yes, but you didn’t need to go down that route because Thor was put on the table by the end of January. What did you believe was the genesis of Thor? What was the driver of the proposition that was put to the pension trustees?

Chris Martin: The position was very clearly put to the pension trustees that Arcadia Group had built up a very significant intercompany debt in supporting BHS—several years of poor trading and losses had given rise to that intercompany debt—and that Arcadia Group was no longer willing to support BHS, which of course is the only entity that we as trustees had a legal recourse to, unless there was a consensual, solvent restructuring of the group and of the pension obligations, and that would require the four main stakeholders to share in that restructuring.

Q649 Jeremy Quin: You have made the point that the advisers went through the process of determining how Project Thor would work and the impact on pensioners—is that the process? What was the process you went through to ensure that pensioner benefits were protected in the advent of Thor?

Chris Martin: We received the Project Thor proposal. We appointed KPMG as our specialist covenant advisers. We engaged with our scheme actuaries and our legal advisers, Eversheds, to analyse some of the thinking behind Project Thor. The proposal put to us was quite well developed and quite a lot of actuarial work had gone into it, particularly around the outcomes for members, from paying wind-up lump sums and what the residual schemes' solvency level and strength would be. So we were looking at all the different aspects of Project Thor and it took us four months to analyse those to a point where we were confident, as a board of trustees, that Thor would deliver a better outcome to members than inevitable insolvency, which was the alternative.

Q650 Jeremy Quin: Did it occur to you, at any stage in that, that it might have been helpful to go to the regulator, to have them as a friend on-side, to have them in a supportive capacity? Or is it more, "We finalise our plans, we have our plans, we go to the regulator with a finished entity and get their blessing"? What is the relationship with the regulator?

Chris Martin: Developing and exploring what was behind Project Thor was more important to us at that point, to test whether it was something the trustees could support to deliver better outcomes to members. It took us several months to do that; Thor is quite a complex proposition. Having got to the point where the trustees were going to support it and say that it was going to deliver the best outcome, we then engaged with the regulator.

Q651 Jeremy Quin: How was it communicated to you, then? You finally went through, you did all the work and were happy it could proceed; that was in the interests of the pensioner benefits. How were you then told that it had collapsed and it wasn't going to proceed?

Chris Martin: We engaged with the regulator in early July, at the regulator's request, and at that point the regulator had seen a briefing pack on Project Thor and some of the sponsor covenant analysis, which is referred to as the EOS—the estimated outcome statement—on Project Thor. We had an initial conversation with the regulator and we talked them through our understanding of Thor and through the work we had done to test Thor—

Q652 Jeremy Quin: And at that stage it was a draft proposal that went into the regulator, was it not, on Thor? It was a draft letter for approval, rather than a final—?

Chris Martin: Yes, it was a draft clearance application put in, I think, slightly after that first call, but it was submitted by Arcadia Group. Clearance is a sponsor activity; it is not a trustee activity. Trustees can't benefit from clearance, but it was not unusual to put it in draft. Thor itself was a well-developed concept but there were still elements of it that needed to be finalised, including at that stage the estimated outcome number, which was a key component in terms of the cash that we paid into the scheme.

Q653 Jeremy Quin: How was the relationship with the regulator through that? Was it helpful and productive? They asked you for information, but they weren't getting the

information. Was that simply because it wasn't there? They never used section 72 powers. What was the nature of the relationship with the regulator at that point?

Chris Martin: That particular period of regulator dialogue spanned approximately two months from the beginning of July to the beginning of September. We had a number of calls between the trustee board, its advisers and the regulator. Where the regulator asked us for information, we endeavoured to supply it. Where the information was available to us, we supplied it straightaway. In other instances there was information that they wanted the trustees to gather on their behalf, so that they could consider Project Thor. Some of the information they were asking for was not necessarily that surprising because part of Project Thor involved something called a regulated apportionment arrangement, where the regulator has particular obligations to consider issues in relation to past transactions. The information wasn't entirely surprising. We were trying to gather it on behalf of the Pensions Regulator, and in parallel to our discussions—the trustee, adviser and TPR discussions—I believe there were also discussions between Arcadia Group and TPR. All the parties were working together to try to provide that information.

Q654 Jeremy Quin: That is what I am trying to get to. In your view, as an experienced trustee, were all parties working together? You could ask whether this was just the sponsor trying to bounce the regulator into something, and you could say that the regulator was being very slow and should have been using section 72 powers to gather information swiftly. From your perspective, were all parties working constructively together at that stage to try to get to the right outcome on Project Thor?

Chris Martin: In the two months from the beginning of July to the beginning of September there was what I would describe as an intense period of activity. Everyone was working very quickly to consider and analyse Thor and to gather the additional information that was required to properly analyse it. Our advisers, in the backdrop to those aspects of Thor, were trying to put together legal documents to give effect to it, had it progressed at that time.

Q655 Jeremy Quin: It must have come as a bombshell in September when you were told that the whole thing was off.

Chris Martin: From the point at which the trustees first considered Thor and thought that it represented a better outcome for our members than PPF, we had been working to deliver it. It was very, very disappointing when we first heard that it was going to be paused.

Q656 Jeremy Quin: How was that communicated, and what was the reason given?

Chris Martin: The communication to the trustees and our advisers was by way of a conference call on 5 September with Arcadia and its advisers, in which they communicated the decision to put Project Thor on hold—I think “pause” was the word that was used—until after the Christmas trading period.

Q657 Jeremy Quin: Was a reason given?

Chris Martin: They wanted to carry out a full strategic review, with all options available, after the Christmas trading period.

Q658 Jeremy Quin: Okay, so it wasn't that they were saying, "We really want to do this, and we are committed to doing this, but right now it is quite difficult because we would be having to go to our landlords at a peak time in the run-up to Christmas, or we would be talking to our suppliers about cutting margins at a difficult moment," but just that they were doing a strategic review and wanted to have a look at the outcome of that?

Chris Martin: At a high level it was presented to the trustees as a strategic review. The timing in relation to landlords and suppliers was part of that discussion, but it was more presented to us as, "This is on pause. We want to consider our options, and we'll come back in the new year."

Q659 Jeremy Quin: What was your gut instinct? Was it that this was going away and wasn't going to come back because they had other irons in the fire? Or was it that you would be back engaged in five months' time and that all would be well?

Chris Martin: Our understanding was that we would be back engaged. It was a strategic review, with all options being considered. As part of that conversation, having told the trustees that Arcadia would no longer support BHS if it was not restructured—this was a point I had to make quite clearly to Arcadia—it was very difficult for the trustees to then place any reliance on future support. As a consequence, we had to behave as though we had no covenant—BHS itself could never support the scheme on its own. A consequence of reaching that conclusion was that the trustees then initiated a significant de-risking of the scheme's investment strategy. That was the point at which, with no prospect of Thor being transacted quickly, we then de-risked the investments.

Q660 Jeremy Quin: "Strategic review" is two ominous words. It often means closure or sale. Did you consider going even further? I know you would not necessarily have acted to the contrary of the pensioners' benefits, but you must have considered, "Where are we going to end up with this? Is BHS going to go? Should we be taking even more stringent action?" Did you consider anything beyond de-risking the portfolio?

Chris Martin: The conversation we had with the company around its strategic review was clear that all options were available. I am sure that my colleagues who worked in the business picked up speculation from time to time. The key power available to the trustee was to deal with the investment strategy and to de-risk. Our other powers are very limited in those circumstances.

By de-risking, we were putting the scheme in a better place to deal with whatever the outcome of the strategic review was, without closing off any options. As part of the de-risking, while we significantly reduced our growth asset exposure and hence took risk out of

the strategy, we also effected some equity options effectively to pay a premium to keep open the upside from equity performance in case Thor did come back on the table.

Q661 Jeremy Quin: Chris, thank you. One last thing on Thor: is there anything that the regulator and yourselves could have done to have kept this on the table and to have made it work at that stage?

Chris Martin: Sorry?

Q662 Jeremy Quin: At that stage in September when the whole thing was pulled, was there anything that you or the regulators could have done to have got Thor executed and over the line and to have got that result, which would have been better for the PPF and better—

Chris

Martin: The July to September period was when Thor was being considered. We were asking questions of the company. The regulator was asking questions of us. Those were all the sorts of questions and answers that would normally have to be dealt with as part of a regulated apportionment arrangement. There was nothing unusual in that period.

Q663 Jeremy Quin: There was nothing further that the regulator or yourselves could have done to make this work.

Chris Martin: Arcadia reached its conclusion based on discussions it had had with the regulator.

Q664 Amanda Solloway: You mentioned that there were several months when you were discussing Project Thor. How did you increase your intensity as a board of trustees in order to quicken that process?

Chris Martin: From the point at which we engaged together as a board of trustees on 6 February and appointed our specialist covenant advisers and engaged with Eversheds in terms of some of the legal aspects of Thor, we met more frequently. We had conference calls on a regular basis. We were exchanging email updates via the scheme secretary on a very regular basis. It was a period of very intense activity for the trustees.

Q665 Richard Graham: Chris, in July 2014 the Pensions Regulator got a call from the trustees about Project Thor. Later the same month, it also got an application for clearance for a regulated apportionment arrangement—that is, looking for potential entry into the PPF. Presumably you were involved in the first of those, but the second one was done by the corporate, was it?

Chris Martin: It might help the Committee if I spend one minute explaining Project Thor, because it hopefully answers that question.

Chair: No, just deal with this question.

Richard Graham: Given the time, could you just be precise and simple?

Chris Martin: Part of Project Thor was that members who did not consent to taking a wind-up lump sum or to transferring to the new scheme would enter the PPF.

Q666 Richard Graham: So that application came from the trustees or from the court?

Chris Martin: No, the application for clearance would have come from the sponsoring employer.

Q667 Richard Graham: Perhaps you did not know what corporate was talking separately to the Pensions Regulator about, but did it occur to you during that time that the corporate might be pursuing Project Thor with the trustees, but also pursuing a dual-track strategy, which might mean that at some point it wanted to drop Project Thor and simply pursue the PPF option? To what extent did you have confidence and trust in what the corporate was telling you?

Chris Martin: At the initial meeting I had on 29 January, when Project Thor was presented to me, and in subsequent discussions with our advisers, we tested the point about whether other options were being considered. While no specific planning for a corporate insolvency event was being carried out, we were made aware that those options had been considered as part of the estimated outcome work, so as trustees, we were aware that Arcadia recognised that that might be a consequence of withdrawing support, but we had no evidence in front of us that that was a twin-track approach with Project Thor.

Q668 Richard Graham: When Project Thor was removed, may I ask you all whether at that stage, in a word, you lost confidence in the corporate support for the pension scheme?

Chris Martin: At the time Project Thor was put on pause, I became very concerned about the corporate support for the scheme, given the message that had been delivered earlier in the process.

Phil Kitchen: Yes.

Richard Graham: Phil said yes; Mike?

Mike Lymath: Without doubt yes, because it sent a message.

Q669 Richard Fuller: May I ask each of you on what day and how you learned about the pending sale of BHS to Retail Acquisitions, or Swiss Rock?

Jason Hyde: I personally cannot remember the actual date—

Richard Fuller: And how?

Jason Hyde: Through conversations with Chris and the rest of the trustees.

Mike Lymath: I cannot remember the date precisely, but I believe that we had a conference call with Chris, and he explained what was going on.

Chris Martin: A sale was first mentioned in the press. The trustees were then asked to sign non-disclosure agreements. The first time that Swiss Rock was mentioned to me was in a conference call on 2 February.

Phil Kitchen: Yes, apart from the press, which was speculative, I would say early February.

Q670 Richard Fuller: So about 2 February, and the sale was concluded on 11 March, I think.

Chris Martin: Yes, that's right.

Q671 Richard Fuller: So just about five weeks. What inquiries did you undertake to look at the capacity of the acquirer? As a set of trustees, did you agree a process to evaluate the acquirer who was potentially taking on the obligations? Or did you do it individually?

Chris Martin: Yes. If people are happy for me to answer, we signed the non-disclosure agreements, which allowed some initial details to be shared with the trustees. I had a subsequent briefing meeting with Paul Budge and Deloitte, advising the company, and their short list of potential acquirers had reduced to Swiss Rock being the preferred likely acquirer. That was on 9 February. I was then introduced to three members of the Swiss Rock acquisition team at a meeting on 19 February. We engaged KPMG very rapidly; our priority was to understand what impact the acquisition might have on the covenant that supports the scheme, and hence on the outcome for members. We engaged KPMG to start some work assessing what the covenant might look like at that point, so that post-acquisition, it could assess whether the covenant had been weakened as a result of the sale.

Q672 Richard Fuller: In your due diligence, did you think that your responsibilities to assess the acquirer were fulfilled by hiring KPMG to look at the covenant?

Chris Martin: Our priority as trustees is very much to understand and assess the impact on the covenant for the sponsoring employer. It is that covenant that the members rely on for the funding of the scheme, so that was our point of focus.

Q673 Richard Fuller: What sort of points would KPMG have looked at? Would those have been financial issues only? Would they have looked at the background and experience of the acquirer, or their credibility?

Chris Martin: KPMG's analysis was focused very much on the impact on the strength of the covenant—the financial impact of the acquisition.

Q674 Richard Fuller: So, from the point of view of trustees, there was no requirement for you to look at the calibre of the new acquiring team?

Chris Martin: As trustees, we do not have a power to veto an acquisition or a sale process.

Q675 Chair: You could make a comment, though, couldn't you?

Chris Martin: We were in regular engagement with the Pensions Regulator throughout that period. We were sharing the work we were doing and the questions we were asking; in particular, we were seeking assurance from the Swiss Rock acquisition team that they had sufficient working capital lined up to continue trading the business. So I think we were in open dialogue, sharing our concerns and our thoughts with the Pensions Regulator.

Chair: Sorry, Richard.

Q676 Richard Fuller: No, I think that is very useful, from our point of view. Obviously the financial analysis produced something, but the best projections do not say that the financial team may not be particularly competent in doing it; they may decide to veer off, they may be irrational. Mr Martin, I think you met with three of the directors of the acquiring company, didn't you? Did you make any assessment of their capabilities? Did they pass your sniff test as the right sort of people to run this company?

Chris Martin: I had a brief meeting with three of the directors of Swiss Rock on 19 February. They introduced themselves and gave a very high-level overview of their professional backgrounds. I spent some time talking to them about the working capital point, which was critical to the trustees' view on whether it was viable for the business to carry on trading on the other side. I asked them about their plans for the business; they talked to me about how the business already had a turnaround plan, which had been put together relatively recently, and they were going to trust the incumbent management to deliver that. They talked about hiring in a senior retail figure to lead the business.

We then had a discussion on the pension scheme as well—perhaps the meeting was dominated by that. At that point, they had not done much due diligence on the pensions issues. I told them about the scale of the pensions challenge, and the meeting concluded with a recognition from the Swiss Rock team that the pension scheme would need to be addressed, in the same way as Thor had recognised the pension scheme would need to be addressed, and that we would carry on discussing what proposals could be implemented for that.

Q677 Richard Fuller: The company was sold three weeks from that date. Looking back now, do you think that when they met you, they were ready to buy the company three weeks later?

Chris Martin: After that meeting, we sought written assurances that, from a financial perspective, they were ready to take on the business, and in particular that they had sufficient working capital to trade the business. That assurance was provided.

Q678 Richard Fuller: Just to be clear, may I ask your colleagues? Did you meet with the management team of Swiss Rock prior to their acquiring the business?

Phil Kitchen: No.

Mike Lymath: No.

Jason Hyde: No.

Q679 Richard Fuller: So your judgment on them as credible buyers was essentially from the analysis that KPMG would have provided, but you had not met them. You would not have known them from Adam.

Jason Hyde: I met them from store visits—they had actually been to my shop before they bought the business—but I had not physically met them.

Q680 Richard Fuller: Did any of you conduct any due diligence searches or executive searches to check on their credibility and credentials?

Phil Kitchen: I did a Swiss Rock search, which came up with very little.

Q681 Richard Fuller: Subsequently, of course, Swiss Rock and Retail Acquisitions became the owners of British Home Stores, and I think for a period of time both Mr Chappell and Mr Henningson became trustees and then they left. Could you explain to the Committee what happened there?

Chris Martin: Our understanding is that when Retail Acquisitions acquired the BHS group, they changed the directorships across all group companies. The company that Jason and Phil represent is BHS Pension Trustees Ltd, which happens to be a group company, so when that change was put through, the directorships filtered through. As soon as we became aware of it, we spoke to RAL or BHS and they removed the two of them as directors.

Q682 Richard Fuller: Did you speak to them because they shouldn't do that, or—

Chris Martin: Absolutely; it was totally inappropriate to have them on the trustee board.

Q683 Richard Fuller: So it was just a clerical error, was it, on their part?

Chris Martin: It was a clerical error. It was a Companies House filing issue, I think, where they filed on all the companies at once, and this happens to be one of the group companies.

Q684 Richard Fuller: What is your assessment, gentlemen, of Retail Acquisitions, and your relationship with them since they acquired the business, regarding their responsibilities to the pension funds? Are they regular inquirers? Do they show keen interest? Do they care about the employees and the pensioners?

Phil Kitchen: Yes. I would say that the money that we required on a monthly basis was paid. In other words, the financial requirement was delivered into the pension scheme. I think the only issue we had was with the delay in levy towards the end of the year, but as far as engagement was concerned, you will understand that once we were taken over, we were then in a situation where we were into a further review, which turned out to be Project Vera. That was another proposal, very similar to Thor. But in terms of the relationship—

Mike Lymath: I have little to add. I have not had much to do with RAL, but it was business as usual so far as the trustees were concerned in pursuing the best outcomes we could for the members, including in what became Project Vera.

Q685 Michelle Thomson: Just to pick up on a point that Richard made and so I am clear for the record, given what you have clearly described about your accountabilities as trustees, am I correct in quoting back, Chris, that they had not done much due diligence in the meeting you had with them on 19 February, and there was then a completed purchase date of 11 March, with a £20-million-a-year pension liability?

Chris Martin: To clarify what I said—apologies if I did not say it correctly the first time—they had not done much pensions due diligence at that point. I think they were doing other due diligence around the business, but at that point they had not done much pensions due diligence.

Q686 Michelle Thomson: I do not know if that makes things any better, to be honest, because it was still a 20—

Chris Martin: I just wanted to be clear in my answer.

Q687 Michelle Thomson: Okay; thank you. To probe a little more, if all four of you were to pick three adjectives to describe your impressions of what you met, albeit briefly,

from RAL, what three adjectives would you pick? Confidence? Lack of confidence? Fear? Apprehension? What would they be?

Jason Hyde: I have probably met them on a different level from everyone else. I met them on store visits. They were professional, they were courteous and they were aware of how the business was performing.

Mike Lymath: I did not meet them directly, so my issues would be about concern that the pension scheme would be in at least as good a shape as it had been before, and that concern remained with me.

Chris Martin: They presented themselves as confident. There was clearly some uncertainty around the pensions issues. Those would be my two takes on it.

Phil Kitchen: I never met them prior to the sale, so the only thing I would say is the concern about the pension and support for the pension. That would be my only position.

Q688 Michelle Thomson: So if concern and apprehension were in place, was there anything further that you did after the meeting on 19 February where you expressed the £20 million per year pensions liability—particularly you, Chris?

Chris Martin: After that meeting we wrote to Arcadia's advisers, who were between us and the Retail Acquisitions and Swiss Rock team at that time, asking for confirmation on their funding, and also, importantly, how that funding was going to be secured; because that then goes to the heart of whether the covenant and business would be impacted by the acquisition. So that was our key priority and our key focus—understanding that impact on the covenants. We shared that information with the regulator; we engaged openly with the regulator; and the regulator was supportive in the work we were doing.

Q689 Michelle Thomson: In terms of sponsor representatives on the board, once Dominic Chappell and Lennart Henningson had moved on, am I correct that there was no sponsor representation on the board after they had moved on?

Chris Martin: That's right. It was agreed in discussion between our lawyers, Eversheds, and Olswang, who were representing RAL and the business, that it would not be appropriate, given that the pension scheme was still a very significant issue for the business, and hence there was going to need to be some negotiation—it wouldn't be appropriate to put senior management on the trustee board.

Q690 Jeremy Quin: Lessons we can learn for other circumstances: in response to Richard's questions—indeed, we heard it from KPMG yesterday—you went in with a series of questions to the would-be inquirers as to their financial going concern basis, how much working capital they would have and how long the business would be sustainable. You wanted reassurance on that point. Had they come back and said, "Actually, we've only got six months' working capital," and clarified, there's nothing you could actually do in those circumstances, is there? Is there anything you could have done? If the answer that had come

back was completely unsatisfactory and the covenant was going to be weakened—you hadn't confidence that they would last more than six months as a going concern—is there anything, as trustees, that you could have done to stop or slow the transaction?

Chris Martin: As trustees, we did not have the power to veto that transaction.

Jeremy Quin: Is there anything you could have done to slow it, maybe involving the regulator, to try and ensure further time and effort were spent on the pensions?

Chris Martin: Throughout that period we were engaged with the regulator, sharing all the information we had, culminating in the 4 March meeting, which I think the Committee has heard about, where the regulator attended. It would be a question for the regulator whether it had any additional powers it could have used; but this was a set of circumstances where pre-clearance was not being sought.

Q691 Jeremy Quin: Yes; so they would have been required to sign off on Project Thor. The regulator are not required to sign off on this acquisition. Therefore, from your perspective, you didn't have powers to stop it; and as far as you are aware the regulator didn't have powers to stop the transaction, but they could say, "We're going to look back on past events, anti-avoidance"—along those lines.

Chris Martin: The regulator has a wide range of powers. It has one other power, which is to trigger a winding up of the scheme. As far as I am aware, it uses it very rarely, if ever. Had it triggered a winding up of the scheme, the members would have fallen into the PPF immediately, so whether it would have been a sensible—

Q692 Jeremy Quin: You mentioned that post the acquisition you went immediately into son of Thor, the new project: Project—

Chris Martin: Project Vera.

Jeremy Quin: Thank you very much. So you went straight into that new project. Was that a requirement in any way? Was that part of an undertaking given by the acquirers to the vendors, or was it something the trustees had asked for? Did you manage to get an undertaking that they would look to a reshaping of the scheme as part of the deal?

Chris Martin: As part of our limited discussions pre-sale, both parties had recognised the need to deal with the pension scheme and to restructure the pension scheme liabilities, in the same way as it was recognised as part of Thor. So Project Vera was spun out of those discussions. The initial Project Vera proposal was put to us in July 2015, but then took some months after that to develop into something that was fully formed, although when it did it looked very similar to Project Thor.

Q693 Chair: The last question is to you, Chris. You have been explaining to us the formal legal structures through which power can be exercised, and your role in the pension scheme fitting within that. May I take you back to the—almost the apostolic blessing that you

got from Sir Philip and Mr Budge. When you were with them—despite what the law says or what our powers are, and all the other things that you have really helpfully explained to us today—did you get the sense that when push came to shove, the two people who would decide the fate of the pension scheme were those you were meeting, at that meeting with Sir Philip and Mr Budge?

Chris Martin: We did not discuss the future of the pension scheme.

Q694 Chair: No, but did you feel that nothing would go through without those two approving?

Chris Martin: My understanding prior to the meeting, in the briefings I had had, and also from that meeting, was that both would be central decision makers.

Chair: Thank you very much, all of you, for your time.

Examination of Witnesses

Witnesses: **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, gave evidence.

Q695 Chair: Margaret, might you introduce yourself? I will ask Siobhan and Richard to do the same and then we will begin our questioning.

Dr Margaret Downes: I am Margaret Downes. I was chairman of the two BHS pension funds from the beginning—from 2000—until I retired in 2013.

Siobhan Forey: Good morning. I am Siobhan Forey. I was a company-appointed trustee and I covered the period from November 2009 to March 2015.

Chair: Both schemes?

Siobhan Forey: Yes.

Richard de Dombal: I am Richard de Dombal. I am also a company-nominated trustee. I was on the board between 1 January 2012 and 11 March 2015.

Q696 Chair: Margaret, might you begin by telling us, when you were appointed, where the appointment came from?

Dr Margaret Downes: I had previously been on the board of Storehouse and one of the subsidiaries of Storehouse was BHS. I had been appointed to the pension funds, not as

chairman, but I was a member of the board for a few years before BHS was sold and then I continued into that.

Q697 Chair: Who approached you to be chairman?

Dr Margaret Downes: I am just trying to think. I perhaps was chairman—I beg your pardon—before 2000 and then I continued as chairman. I think I was probably chairman—yes, that’s correct; I hadn’t given any thought to that—for a couple of years before 2000 and so I came through as chairman.

Q698 Chair: Margaret, when you became a trustee, but then particularly as chairman, what did you see as your main duties?

Dr Margaret Downes: My fundamental main duty was to look after the interests of all the members of the pension funds and to lead the group of trustees who were part of my team.

Q699 Chair: To what objective, though, Margaret?

Dr Margaret Downes: I beg your pardon?

Chair: You said you were leading them, but what was your objective as chairman and as trustees?

Dr Margaret Downes: The objective was to get the best possible deal, always, for our members—to care for our members. We were always concerned about looking after our members. That would be our objective, and, through caring for them, to see we had a robust investment strategy in place and a clear assessment of what the liabilities were.

Q700 Chair: Siobhan and Richard, you were both employed as trustees. How did you settle this—as all of us as MPs would see it, because we have it ourselves—conflict of interest? How do you in these meetings put your duty as trustee maybe above your duty as an employee?

Siobhan Forey: Conflicts are managed quite proactively. Ahead of any agenda that is given for any meeting—conflicts are the first thing that is tabled at the beginning of any meeting, so you are expected to declare a conflict. We get training on conflicts through Eversheds, our legal advisers. You are just very clear, as a trustee, on how to separate that role from your employment role.

Q701 Chair: Margaret said that her main duty, quite properly, was to get the best possible deal for the pensioners, but you are an employee and you know what is happening to the company. Doesn’t that act as a restraint on you? If Margaret gets her way and gets the best possible deal, there might not be any company.

Siobhan Forey: No, because ultimately you are striving to secure the best deal for your members. You are ultimately, as a trustee, absolutely expected to protect your members' interests. The company relations have to be positive; they have to be constructive; they have to be professional. And you are expected to take part in that dialogue.

Q702 Chair: If you were helping us to devise what we should move to—a different scheme—do you think one ought to eliminate this conflict of interest from pension trustee boards?

Siobhan Forey: No, I think pension trustee boards benefit from having company-nominated members on their scheme, because you can bring something different from what the independents can bring.

Richard de Dombal: Definitely there is an element—when we are in those meetings, we have a pension trustee hat on and we act in those interests in exactly the same way as Dr Margaret here. We act in the interests of the members of the trustee fund. However, we do have that interlink into the company and we can provide information that is not confidential and not conflicting. As Siobhan said, we are trained in these matters, and we provide that information that allows Dr Margaret and other independents to understand a little bit more about, say, the culture in the company or some of the people who are involved in the company—that sort of thing. When there is a conflict situation, which for example in my case was around Project Thor and things, we take action. As Siobhan said, it is proactively looked at in advance, because these things are very difficult. I agree with you, Mr Field, that it's a tightrope you have to walk, but we take it very seriously.

Q703 Chair: We will come on to that in a moment, Richard. How many hours a year do you think you put into your stewardship of the pension scheme?

Richard de Dombal: That would depend very much on what is going on. If it is—

Chair: Just give us a flavour.

Richard de Dombal: There are maybe six to eight meetings of the BHS pension trustee board and its various committees a year—in a typical year. For example, there are two sub-committees. There is an accounts committee that signs off the accounts for the three years involving myself and Dr Downes. There is an investment committee that meets on a regular basis about the investment strategy. So there are maybe six to eight normally. The meetings are for half a day on average, and there is preparation for those meetings. I have not really done the maths, but it's whatever that works out at.

Q704 Chair: Did you ever sit down as trustees and choose who you wanted as your own set of advisers?

Richard de Dombal: I think you have probably had the list of who the advisers have been during my time on the board. We consider whether we have received good advice. We have feedback and we reflect on that informally; I don't think it's minuted anywhere.

Q705 Chair: Did you ever discuss it as trustees? Richard did some questioning earlier. A new chairman arrives from Mount Sinai, and Richard detailed what the fees were. Did you, as trustees, not think, “Gosh this is a mega, mega, mega responsibility, and we need to think seriously about who would advise us, separate from whatever the vested interests are elsewhere”? As Margaret said, you have a duty to make the best deal possible. Did you ever have a discussion about who you wanted to serve you?

Richard de Dombal: I think it is an ongoing review, informally. For example, Towers Watson were our key adviser. They are the actuaries, and they are in the investment—

Q706 Chair: Were you at the meeting when they were appointed?

Richard de Dombal: No.

Q707 Chair: Who appointed them?

Richard de Dombal: I don’t know whether you were there, Margaret.

Dr Margaret Downes: They were appointed in my time.

Q708 Chair: By you, and by a decision of your board only?

Dr Margaret Downes: No, in my time by all the trustees. It was a decision of the three trustees to appoint Roger Urwin as our investment adviser and Paul Burbidge as our actuary, and I have to say, because I have been a chairman and a member of a number of pension schemes, that I have not come across better advisers than those two men in my walk through pension life.

Q709 Chair: Given the way it all turned out, which is really rather pitiful for the pensioners now, the advice wasn’t good enough, was it?

Dr Margaret Downes: I would challenge that, because we debated all the issues that needed to be debated—we took the advice, we listened to our advisers and we debated the issues ourselves—and came to the conclusion that our decisions were the best that could be achieved.

Q710 Richard Graham: Siobhan, you are a director of Taveta Investments Ltd. What is your role there?

Siobhan Forey: I sit on the board and attend the monthly board meetings.

Q711 Richard Graham: Why are you on the board?

Siobhan Forey: Why am I on the board? I was appointed to the board about four years ago as a result of a promotion that I received—I am the group HR director of Arcadia, as I am sure you are aware. I was leading a number of strategic projects, and I was promoted and appointed to the board.

Q712 Richard Graham: What would you describe as the main objective of Taveta Investments?

Siobhan Forey: To protect the shareholders' interests and to govern Arcadia Group Ltd.

Q713 Richard Graham: How do you reconcile looking after the shareholders' interests in Taveta with looking after the members' interests in the BHS pension scheme?

Siobhan Forey: I come back to the conflict point. I declared a conflict in relation to Project Thor.

Q714 Richard Graham: We understand about declaring a conflict of interest, but that isn't the same as actually resolving the conflict of interest. On the one hand, as a director of Taveta, you are there to maximise the returns for the shareholders, and on the other hand, as a trustee of the BHS pension scheme, you are there to protect the interests of the members, which depended for a long time on the capital injections from the corporate. How do you reconcile the two? If you are injecting money from the corporate, it means that the returns to the shareholders of Taveta will go down; if you are increasing the amount from the corporate into the pension scheme, it means that the members' interests will be better protected. Who are you lobbying for when you try to juggle those two totally conflicting responsibilities?

Siobhan Forey: I am not sure I would call it lobbying. Ultimately as a trustee you are absolutely there to protect the members' interests, and I am very clear that my role as a former BHS trustee and director was absolutely to do that.

Q715 Richard Graham: So you were a trustee until 2015.

Siobhan Forey: Yes.

Q716 Richard Graham: When did you become a trustee?

Siobhan Forey: November 2009.

Richard Graham: So between 2009 and 2015 what would you describe as the changes in the relationship between the corporate and the pension scheme? Would you say that the relationship improved because the corporate gave an additional commitment to make

sure that the pension scheme liabilities would be met, come what may, or would you describe it slightly differently?

Siobhan Forey: There was continuous robust dialogue with the trustees and with the group finance director, who was Paul Coackley.

Q717 Richard Graham: Yes, but dialogue is not the same as what actually happened. From 2009 to 2015, what happened to the assets and the liabilities of the pension scheme?

Siobhan Forey: Ultimately, the trustees were actively managing the assets; the trustees were actively managing the liabilities. We went through two different valuations, which has been documented. There was continuous dialogue with the investment managers; there was continuous dialogue and activity with the advisers.

Q718 Richard Graham: After the first of those triennial evaluations in 2009, the recovery plan was for a period of about 12 and a half years. After the second one, while you were still a trustee, it was 23 and a half. That is a massive deterioration in a very short space of time.

Siobhan Forey: Yes, and that's been—ultimately, the trustees took independent covenant advice from Baker Tilly to understand what BHS Ltd could afford in terms of its liabilities. We were advised by Baker Tilly that ultimately the covenant was exceptionally weak and there was no money available from BHS. And the money that was committed, which was £10 million a year, as you know, was actually given by the wider group, which again has been formally documented. So we took advice, we took independent reviews, we had legal advisers, we had covenant advisers and we had investment advice. We managed what we could within the regulatory framework and that was within our remit.

Q719 Richard Graham: When did you know, as a director of Taveta, that Project Thor was going to be withdrawn?

Siobhan Forey: I declared a conflict with Project Thor in July 2014.

Q720 Richard Graham: So you knew it was going to be withdrawn.

Siobhan Forey: No, I declared a conflict in July 2014 as a BHS trustee. I wasn't aware that it was being withdrawn, probably, until September 2014.

Q721 Richard Graham: And when it was withdrawn, what did you feel, as a trustee of the pension scheme?

Siobhan Forey: I declared a conflict, so I wasn't in any—

Richard Graham: Declaring a conflict is neither here nor there. What did you feel? Did you feel that you were able to fulfil your responsibilities as a trustee, knowing that the corporate were withdrawing from Project Thor, which was effectively the last hope of the covenant between the corporate and the pension scheme fulfilling its obligations?

Siobhan Forey: As trustees, we were looking at all the different options. Clearly we wanted to create as many options as available for our members and to try to protect our members' interests. Were we disappointed? Yes, I believe we were.

Q722 Richard Graham: It didn't occur to you to resign as a trustee?

Siobhan Forey: No.

Q723 Richard Graham: Richard, the same question. How did you reconcile that conflict of interest, and at what stage did you realise that surely the pension scheme was actually the loser?

Richard de Dombal: In terms of my conflict of interest, I am obviously not on the main board. I almost declared a conflict the other way, inasmuch as I kept acting on behalf of the pension fund. Management and everyone else knew that I was not involved in the company discussions around Project Thor. I learned nothing about Project Thor through the company. You've talked to Chris Martin; I was obviously working on that board at the time, so every communication I had was through the pension chair. So that's how I resolved it: I was acting purely for the benefit of the members, along with Chris Martin and all of the first panel.

Q724 Richard Graham: So your argument, effectively, is that because you weren't a director of Taveta, the conflict of interest wasn't the same as it was for Siobhan.

Richard de Dombal: It was different. I wasn't party to any of that information. I work in the Leeds accounting centre; I am 200 miles away from head office. And I just made sure that nobody through my company role talked to me about anything to do with what was going on. I acted purely in the interests of the pension fund. Again, that is an example of how we try and manage the conflict. You've got to go one side of the fence. I was on the pension fund side of the fence, working with the trustees, as I had been, and had no company involvement. Siobhan, in her role, couldn't do that; she worked the other way, and had no involvement in the pension scheme for Project Thor.

Q725 Richard Graham: Earlier, when I was quizzing Margaret's successor as chairman, Chris Martin, and asking him whether he saw any conflict of interest in his effective appointment through the advice of Towers Watson, which has subsequently remunerated his company a quarter of a million pounds for his role as chairman of the trustees, you were sitting in the back row and shaking your head. Why was that?

Richard de Dombal: It is not Towers Watson that remunerate. It is the scheme—

Q726 Richard Graham: It is the pension scheme that remunerates, yes, but Towers Watson is both the actuary and the investment adviser to the scheme; therefore as chair of the trustees he—or Margaret as his predecessor—had a responsibility to review the appropriateness of the investment strategy and actuarial advice, which later on in evidence he revealed that he actually wanted to change and de-risk. So I was questioning whether there was a conflict of interest in him reviewing them appropriately, given that they had effectively provided him with that job and remuneration. Why were you shaking your head?

Richard de Dombal: No, it was more to do with the fact that, as Dr Margaret has explained, Towers Watson have been impeccable in terms of their advice, but let us put that aside for the process—

Richard Graham: We might come back to that.

Richard de Dombal: Well, that's fair enough. Also, in the process of appointing Dr Margaret's successor we went through due process to find, as you said, an important person to replace Dr Margaret, who had been on the board for 13 years. Where do you do that as a board of trustees who are not sure about who there is in the marketplace? You might ask your advisers. The advisers came up with many people, I think—I was not in that committee.

Q727 Richard Graham: No, indeed. No one is questioning that. I was just interested in the fact that apparently, from your body language, you saw no possible conflict of interest in the fact that the man who was receiving, directly or indirectly, a quarter of a million pounds might not wish to review very precisely the terms and review of what the advisers are actually performing at that stage. I was just interested. It seems to me that there is an approach to conflict of interest that neither of you have been able to manage very well. I could go on, Chairman, but I suspect that there are others who want to come in.

Chair: It is really good—thank you very much.

Q728 Amanda Solloway: Going back to the recovery plan for the 2009 valuation, the regulator notes that you “secured improvements” over the company's original proposed recovery plan. What were those improvements?

Dr Margaret Downes: The regulator identified three issues that she wished us to observe for the next valuation—the 2012 valuation. They were what payments are possible to achieve, how long the recovery period would be, and the prudence of the assumptions. Those three issues are basic to any valuation.

The prudence of the assumptions was something that we addressed very early on in our 2012 valuation, in so far as the financial situation of our sponsor, BHS Ltd, had deteriorated substantially; losses had continued and therefore it was in a weaker situation than it had been at the 2009 situation. So in the 2012 valuation we increased the prudence that we had adopted in the 2009 valuation, and that will be part of the reason why the liabilities

escalated so much in the 2012 one. That deals with the assumptions that she or he—whoever was the regulator then—asked us to address.

So far as the recovery period is concerned—you were probably aware of this already—from the very beginning of our reviewing, setting, and beginning to work on the 2012 valuation, it was made clear to us that the maximum amount that would be given by the sponsor was £10 million a year. They never veered from that, no matter how much we addressed endeavouring to increase that, either with Philip Green or with Paul Budge. They never moved up; we could not get them to move away from that.

Q729 Chair: Did you have it in writing from Sir Philip or Mr Budge that £10 million was the maximum?

Dr Margaret Downes: I may not have it in writing, but what I do have is my notes and my report to the trustees and also notes from our investment adviser.

Q730 Chair: But did you ever meet Sir Philip or Mr Budge and they told you that £10 million is the limit?

Dr Margaret Downes: Oh, yes. I met Mr Budge on a number of occasions. I met him at least six times during the course of the 2012 valuation.

Q731 Chair: And Sir Philip?

Dr Margaret Downes: Sir Philip I met once. The meeting with Sir Philip—Mr Budge was also present, as was Sir Philip’s son—was to review our investment strategy. That was the meeting’s purpose, but at the very beginning of the meeting he stated categorically that he was not prepared, or the sponsor was not prepared, to give any more money than £10 million a year, but he did commit to give it “into the future”. Those were the words he used.

Q732 Chair: So this was Sir Philip.

Dr Margaret Downes: Yes.

Q733 Chair: And he referred to himself as the sponsor.

Dr Margaret Downes: No, he did not.

Q734 Chair: But you knew he was.

Dr Margaret Downes: I think we appreciated that he was a very important person in BHS Ltd and in Taveta.

Q735 Chair: When you say “very important”, are you being modest, Margaret? Was he not one of these extraordinary people who just ran it all?

Dr Margaret Downes: He is different to most.

Q736 Chair: Please go on, because we are trying to get a flavour of how power operates within the structures.

Dr Margaret Downes: The structures of?

Chair: There is a legal structure in which we are talking to you about your role as trustees and the legal structure of the company, but great wars are won by great generals, and I want to get a flavour of Sir Philip from you. When you walked in that room, was there one person who you knew called the shots?

Dr Margaret Downes: Let me first say that in the entire period of my chairmanship, Sir Philip never attended a trustee meeting.

Chair: Right.

Dr Margaret Downes: So that was absolutely clear.

Q737 Chair: And how many times did you meet him, Margaret?

Dr Margaret Downes: I met him four or five times in the totality of my years there—13 years, finishing in 2013.

Q738 Chair: Did you or he initiate the meetings? Did you ask for the meetings, or did he ask to see you?

Dr Margaret Downes: He asked for the meetings, and he would have his investment advisers with him. He was much more interested in the investment side of the pension funds than in any other side. So far as I and my co-trustees were concerned, that was his interest. He always had advisers with him, as I would have had at the meetings. He might make proposals or have ideas as to what we might include in our investment strategy; we always took those into account. After the meetings our investment adviser and his investment adviser would get together, and if there were any slight amendments to our policy they would be implemented, but we had a very, very clear strategic investment policy and we very seldom had to make any alterations.

Chair: My apologies, I took questioning away from you, Amanda.

Q739 Amanda Solloway: I was going to ask the same questions, because it is intriguing. You said right at the beginning that your interest was in the membership of the

pension schemes, and that has come across incredibly strongly. When you had the meeting with Philip Green, did you believe it was in the interest of the members, or was it more about the investment being made?

Dr Margaret Downes: The discussions with Sir Philip would have been on investments, but I have to say that I do believe that he had at heart a caring approach towards the 22,000-odd investment members. He appeared to me to be aware that he had so many members and especially that a number of them were lower-paid, and he was conscious of the fact that any impact upon them—that would be my reading of it—would be negative.

Q740 Chair: You talk about the caring side and him saying, “It’s £10 million going into the future.” Do your notes tell you how far into the future the £10 million every year was going to go, Margaret?

Dr Margaret Downes: No. The unfortunate thing was that the outcome of agreeing the assumptions, which our sponsor—the company—did, and the £10 million, was that the third leg of that journey had to be 23 years, but he appeared to commit to that. I cannot say for sure and nor can our investment adviser, because I cannot really recall that clearly, but I had the impression that he was prepared to acknowledge the length of it and appreciate it. His words “into the future” gave us some confidence there.

Q741 Chair: When he was talking about £10 million going on, did he ever say, “This is going to be a long-term rescue scheme and I’m in it for 23 years”? Did he ever talk about 23 years to you, Margaret?

Dr Margaret Downes: I think he mentioned 20 years at that meeting, but also, in the last valuation we did have a statement that, in the event of BHS becoming profitable, we would review the entire funding arrangements. I want to make quite clear that our understanding from all our discussions with Paul Budge over the years and to the very end was that the intention was that BHS was going to continue to be a success—they were moving towards it being a successful company. There was £100 million invested in the last few years, there were new concessions—new inlets—put in the shops, the shops were being renewed and there was a new management team put in place in 2012. We were given no indication that the plan was other than that—he was the great retailer as well, so we felt confident that the turnaround situation was in hand and that they were moving towards that.

Q742 Amanda Solloway: Continuing that, you mentioned the caring side, and I am interested that it was care for the members. I get the £10 million a year, although it does not seem as though that was a large amount given what probably was needed. I also see the 20 years as a commitment to the long term. What else was there that indicated to you that it was a caring side of Sir Philip Green that was wanting to do this?

Dr Margaret Downes: I think he expressed at some stage that, if funds were available and if BHS Ltd was in a position to contribute to the pension funds more than they could contribute, he would be very happy about that happening. As I have already said, it was quite

clear from the very beginning that £10 million was their figure, and we could not move them off that. When we had our covenant assessment, Baker Tilly advised us that, in fact—I think we appreciated that already—unless there was support from the wider group, BHS could not pay £10 million a year.

Q743 Amanda Solloway: Finally, did you hear from the regulator at all from March 2011 to June 2013?

Dr Margaret Downes: No, we had no contact with the regulator, short of statutory, which would be submitted by our manager and by that team. There was no contact between the trustees after this letter that I am aware of.

Q744 Ms Buck: I am just trying to understand exactly how the 23-year recovery plan fitted with that commitment, because it would seem to me that the specificity of 23 years—that is very specific—has to rest on a firm commitment to at least the £10 million contribution, and yet you're saying that this was long-term, it was expressed in sort of general terms and it wasn't specific, the 23 years. Why not?

Dr Margaret Downes: I am not quite clear—

Q745 Ms Buck: I am just trying to understand how it can be that a commitment was not given to a support that would fit with the period of the recovery plan.

Dr Margaret Downes: The commitment was given. Let me be quite clear: the commitment was not only given but given in writing to the Pensions Regulator; the commitment, signed by our main contact—the finance director, Paul Budge—and myself. So there was a commitment to £10 million a year for 23 years.

Q746 Ms Buck: Okay. Sorry, I hadn't quite understood that that matched as firmly as it did. But 23 years, as you know, is an exceptionally long period for a recovery plan. Was that put to him? Was that something that you discussed—that it was an unusually long recovery period?

Dr Margaret Downes: Of course, yes. The traditional extended length was probably 12 years, maybe 15; 20 would have been looked at in any case, but 23 years was an extremely long time and that was put to him. However, as I said earlier, we had two legs of the valuation already fixed: we had the £10 million a year fixed; and we had the valuation fixed. The only way you can calculate the recovery period is dividing one into the other, and that came to 23 years.

Q747 Ms Buck: Was there ever a sense that the company would have preferred a longer period, if it had been able to have one? Was that ever raised?

Dr Margaret Downes: No, that was never discussed.

Q748 Ms Buck: So there was never any other bid? The 23 years was just an arithmetical calculation?

Dr Margaret Downes: Precisely.

Q749 Chair: So there was a triple lock, Margaret, and it was that if the other two parts of the recovery plan did not work, a deficit of about £230 million, £10 million coming in every year—divide one into the other and we get 23 years.

Dr Margaret Downes: Precisely.

Chair: So that is how the figure came about?

Dr Margaret Downes: It was very simple—it's the simplest thing.

Chair: Great.

Q750 Craig Mackinlay: Margaret, very briefly, you mentioned early on that in your meetings with Sir Philip—I think there were only six in 13 years—that he always focused on the investment strategy of the pension fund, and that was then acted upon. Was that acted upon or was it not acted upon? That, I think, is the question. He made suggestions about investment strategy for the pension fund. Were those suggestions actually acted upon by the trustees? I am trying to get to the influence that he was exercising within the—?

Dr Margaret Downes: They were certainly reviewed and given a lot of attention, but in fact we were on that trajectory anyway. At one stage, it was maybe to invest more in property; we were already substantially into property. Another time, he was interested in corporate bonds and we had a substantial percentage of corporate bonds. So when our adviser and his adviser got together, we agreed that we were already there, but if there was any small adjustment that was worthy of incorporating we would have done that.

Q751 Craig Mackinlay: Is it quite normal for the sponsoring employer to have that influence within the pension fund's investment strategy—?

Dr Margaret Downes: I want to make it quite clear: he did not have influence, because we already had our strategy in place and it would take a lot of persuasion to change that. But there is always in any strategy room for improvement. One never eliminates anyone from a good idea, so if there is some very good idea around and it happened to be coming from Sir Philip, we would certainly have taken that into account.

Q752 Craig Mackinlay: Obviously there is no perfect investment strategy—if there were, we would all be sunning ourselves somewhere else—but your successor, Chris Martin,

felt that the investment strategy that he acquired from you, when he took up the chairmanship, was slightly more on the risk side than he was comfortable with.

Dr Margaret Downes: And he would be correct there. We had to lean towards more risk in our investment strategy in order that, hopefully—the performance of the past 10 years indicated that that was so—we could reduce the length of time that we had to implement the recovery period.

Q753 Jeremy Quin: Margaret, I totally understand the rationale, but that gets into quite dangerous territory of moral hazard. You were in a distressed pension fund environment with a 23-year recovery plan and you were increasing the amount of risk that the portfolio was taking on. I understand the objective, which was higher risk, higher returns, and you shrink the period of time, but there is a point here from your members' perspective—I am looking at this from the point of view of the PPF rather than of your members. From your members' perspective, you might be doing the right thing. It was taking a gamble and it might all work out very well for the members; if it did not, they would fall into the PPF and get looked after exactly the same way, whether you had narrowly invested and went insolvent, or whether you had put the entire pension fund on the 3.20 at Doncaster and it hadn't come in. There is a significant moral hazard issue here, and I wondered if you had considered that. Your successor, recognising the distressed nature of the fund, de-risked the portfolio, but you were of the mindset that you would try to take the risk and narrow that 23 years.

Dr Margaret Downes: Actually, we were de-risking on an ongoing basis; every year, we were de-risking. We were moving towards that in our investment strategy, but we were keen to keep some risk in to help towards the recovery.

Jeremy Quin: I am sorry; I must have misunderstood what you said just previously.

Richard de Dombal: Let me add, to be clear, that in the periods when the company was distressed, we did not increase the risk of the pension fund. We may have de-risked slightly less but the profile was downwards, not upwards, as I think maybe you have understood the earlier comments to be. It is not similar, as you suggest, to putting it on the 3.20 at Newmarket. It was de-risking the profile, which was the advice we were getting from our advisers. We needed to leave a little bit of possibility for some upside or some return better than, say, gilts, to try to recover the gap, not increase the risk and hope for the best—

Q754 Jeremy Quin: So the debate was on the speed of the de-risking.

Richard de Dombal: Yes.

Q755 Jeremy Quin: While no one would say it is a bad idea to take advice from any quarter, there is clearly an interest from the perspective of the sponsor here, because if you do manage to succeed, then the £10 million a year would be reduced.

Richard de Dombal: Sorry; again, just to be clear, that is advice from our own advisers, Towers Watson, not what the sponsor might have suggested we do. This is—

Q756 Jeremy Quin: Yes, but to be equally clear, I wasn't referring to that. I take that on board, but there was an earlier comment made that you did receive advice from the sponsor as to ideas for the pension fund. I just want reassurance that you as trustees were very clear in your own mind about the conflict that could exist in that situation.

Richard de Dombal: I totally agree with you, Mr Quin. To set the record straight on what Dr Margaret said, when she had meetings with the company, as relayed back to the board of trustees—although we weren't in the meetings, we obviously heard about what was said—none of the comments were ever to increase the risk, certainly in my tenure. The sponsor might think—as you say, there is more of that moral hazard—“Okay, I'll be alright because it will go into the PPF.” They were not increasing risk necessarily—they were just views from the sponsor of how he might do it, given his concern about the position of the pension fund. Certainly in my tenure, over the last three years, when it was distressed, everything was moving towards a de-risk, which was accelerated.

Q757 Jeremy Quin: A last point to follow on from that question. Siobhan, you mentioned that your role on the Taveta board was to protect shareholders' interests. I think it encompasses something slightly broader than that.

Siobhan Forey: Yes, I am sure it does.

Q758 Jeremy Quin: It is to promote the interests and the success of the company and all its members.

Siobhan Forey: Yes.

Q759 Jeremy Quin: I just wonder how much focus Taveta put in its discussions on the pension funds around the group, including the BHS one. With your HR background that must have been a concern to you, that this was on the agenda, and was being discussed.

Siobhan Forey: It is on the agenda, obviously. It is minuted in the Taveta board minutes what conversations happened. I haven't got details of all of those conversations that have taken place over all of the last four years where I have been on the Taveta board, but obviously the pensions situation is documented and is discussed at the Taveta board meetings.

Q760 Jeremy Quin: Including BHS?

Siobhan Forey: Yes, I believe so.

Q761 Chair: Margaret, before I go to Richard, to end, I want to get a flavour of your meetings with Sir Philip. Did he ask for all the meetings with you?

Dr Margaret Downes: Yes.

Q762 Chair: Here is one of the most successful capitalists in the country. He is coming and giving you advice on investment strategy. We learned from our Monday meeting—we had a huge number of paid advisers and none of them seemed to know anything about what was really going on. The only person who knew anything was the person, on Monday, who hadn't been paid anything, who had got a total grip of the situation. So Sir Philip comes into the room. He is not being paid anything. He is immensely successful as a business person. How well do you think your advisers and their advice were a safeguard for you against this incredibly successful, powerful person, who made money beyond the dreams of avarice, when he is giving you advice about your investment strategy?

Dr Margaret Downes: Our advisers—this was very important—were independent thinkers. They had independence of mind, as had, I believe, all the trustees. I certainly do. Somebody very powerful and very wealthy does not impact on the professional job we had to do. That independence, together with professionalism, I think saw us through pretty clearly and pretty well.

Q763 Richard Graham: Margaret, am I right that you said earlier that you had been a trustee of other pension schemes?

Dr Margaret Downes: Yes.

Q764 Richard Graham: You were describing earlier the meetings you had with Sir Philip Green where you described his main focus being on the investments of the BHS scheme. He was full of good ideas, you always took these into account, and those ideas were discussed after your meetings between his and your—the pension scheme's—advisers. Can you think of any other pension scheme that you served on as a trustee where the owner of the company would have meetings with the chairman of trustees and make investment suggestions to the pension scheme investment?

Dr Margaret Downes: Yes.

Q765 Richard Graham: In your experience that is a perfectly normal occurrence?

Dr Margaret Downes: In my experience, in one particular case, the board met with the trustees to discuss the pension funds, and they had ideas.

Q766 Chair: Which company was this?

Dr Margaret Downes: Well, if you don't mind I would just rather not say that.

Q767 Richard Graham: So, just to be clear, in your experience it is perfectly normal for the owner of the business, who is not in any way directly involved with the pension scheme, to make investment suggestions to the chairman of trustees?

Dr Margaret Downes: My view would be that, because the pension funds have such an impact on the business itself, on the profitability of the business and on their balance sheet, it would not be unreasonable for the board or an individual to express a view.

Q768 Richard Graham: And you always took those views into account, even though earlier you described your investment advisers, Towers Watson, as, in your experience, the best?

Dr Margaret Downes: Yes.

Q769 Richard Graham: You also said that the portfolio was consistently de-risking during your time as chairman, but the analysis done for us by our investment adviser suggests that, effectively, the portfolio during the period you were chairman was roughly 60% invested in equities throughout. Is that correct?

Dr Margaret Downes: I think it was about 40%. I'd have to look this up, and I will come back with this. I think we were about 40%—perhaps one of my colleagues will clear this up—in bonds and 40% in equities, and the rest in other investments.

Q770 Richard Graham: Okay. Perhaps, Chairman, we could hear about that, but let us assume that the portfolio was, as our investment advisers have suggested, broadly invested 60% in equities, which was the classic balance for many portfolios at that time. During 2007 to 2009, when equity markets tanked, what happened? What happened to the value of the scheme's investments during that period?

Dr Margaret Downes: Well, 2009 was the bottom of the market and it was an horrific, bad time to have a valuation because with investments falling the liabilities increased.

Q771 Richard Graham: So during that period 2008 to 2009, what happened to the value of the assets of the pension scheme?

Dr Margaret Downes: In the ensuing two years, the assets came back—

Q772 Richard Graham: No, no. During the period 2007 to 2009, what happened to the value of the assets of the pension scheme?

Dr Margaret Downes: The value of the assets was gradually increasing over those years.

Q773 Richard Graham: Chairman, perhaps we could get some written evidence on that. Perhaps the other trustees will remember. Siobhan and Richard, do you remember what happened?

Siobhan Forey: Neither of us was on the board at the time.

Dr Margaret Downes: Let me come back to you with those figures—

Q774 Richard Graham: Let's leave it at that. What I suggest happened is that the value of the assets decreased very sharply, markets plummeted and the investment advice during that time proved spectacularly unsuccessful. You weren't alone in that, but it did none the less and that was one reason why the triennial valuation was so difficult. Chairman, we can get the facts.

Q775 Chair: Richard, will you bring it to a conclusion in a moment?

Q776 Richard Graham: I will indeed.

Margaret, during your discussions with Paul Budge in particular and the corporate's commitment to providing £10 million a year of funding over a 23-year period, you chose the phrase that Philip Green appeared to commit to this. In retrospect and looking back now, as you do, not long after you stepped down as chairman, Project Thor was launched and then withdrawn, and at the same time the application was made to the regulator effectively to apply to take the pension scheme into the Pension Protection Fund. Given that, do you think you were misled about the degree of commitment by the corporate?

Dr Margaret Downes: I cannot second-guess whether we were misled. All I know is that we—all the trustees—were totally confident that every effort was being made to revitalise BHS, bring it back to profit and continue the business. We never had any indication that there was any other thinking about the future.

Q777 Richard Graham: All the trustees equally believed there was full commitment from the corporate for a recovery plan over the next 23 years?

Dr Margaret Downes: There was never any indication to us, but the trustees can speak for themselves.

Q778 Richard Graham: Both the other trustees here today were of course also working with the corporate at that time. Siobhan, you were, and I believe still are, a director

of Taveta Investments. At what stage did you realise that that commitment for 23 years simply wasn't worth the paper it was written on?

Siobhan Forey: The valuation process was ultimately agreed. There was a £10 million contribution over a 23-year period. That was clearly evident, that was submitted to the regulator, that was fully documented, and that is something the trustees agreed with the corporate and absolutely believed in. On Margaret's point, we did believe in that.

Q779 Richard Graham: But you were a director of the company that owned BHS, and when Project Thor was withdrawn and the company put up for sale. Are you saying you didn't have any idea at all that was going to happen and that therefore the 23-year commitment to refunding the pension scheme was simply a dream?

Siobhan Forey: No. We did not have any idea that that was going to happen. Ultimately, we sat there in 2012 agreeing a valuation, a recovery period and a contribution from the wider group of £10 million a year. That is what we sat there and absolutely agreed.

Q780 Richard Graham: As trustees?

Siobhan Forey: As trustees.

Q781 Richard Graham: And as Taveta Investments, you absolutely sat round a board and decided to sell BHS?

Siobhan Forey: We did.

Q782 Richard Graham: And you did not see any contradiction at all in the fact—

Siobhan Forey: You are talking about a different timeline period. That timeline period was two, three years later on.

Q783 Richard Graham: Margaret was chairman until the end of 2013, and she has described that all of you as trustees signed up to this and believed in it.

Siobhan Forey: Absolutely.

Q784 Richard Graham: But by the summer of the next year, Project Thor was being withdrawn and an application was being made to the Pensions Regulator about going into the Pension Protection Fund. Does that show a 23-year commitment?

Siobhan Forey: What—

Q785 Richard Graham: That is six months later.

Siobhan Forey: There was a different proposal on the table. It was Project Thor that was being proposed, and that was what was on the table. That was being positioned.

Richard de Dombal: Again, as far as I was aware, at that point in time Project Thor was being paused, not withdrawn. I take it that technically it was withdrawn, but with a view to revisiting it in January. I was on the board of the pension scheme throughout 2014 and early 2015. The first I knew that there was a sale was through the discussions from Chris Martin, my then chairman.

Q786 Richard Graham: So neither of you see any contradiction at all between believing as trustees that there was a 23-year recovery plan to be funded by BHS and sitting in your case on the board of the holding company, deciding that the business should be sold and therefore that the recovery plan was never going to happen.

Richard de Dombal: If I may, I will add something just in terms of that 23 years. If you are asking whether I, as a professional accountant, looked at the BHS balance sheet and thought, “Well, that is fine for 23 years”, then no, you cannot look at that and say it is a fantastic business. We saw elements of recovery and commitments from the company, but you would have to be pretty optimistic to think, “Oh yes, you are getting that for 23 years.”

Returning to Margaret’s point, what we were getting from the wider group, outside of the affordability of BHS, was a commitment to £10 million a year and the maths, as we have explained, means that it is a 23-year recovery. Otherwise, the alternative is that it just goes into the PPF if there is no support from the wider group.

Q787 Chair: Siobhan, could you answer? Then we can conclude on this high note.

Siobhan Forey: I agree with Richard’s point. Ultimately, we did an independent covenant review with Baker Tilly. The £10 million was the commitment that was to be received from the wider group. That was what was agreed. Subsequently, Project Thor was tabled as an alternative solution by the company. Those are the facts.

Dr Margaret Downes: Post-December 2013.

Siobhan Forey: Yes.

Dr Margaret Downes: I think that is a very important point that is not coming across.

Chair: You have been really helpful with what has come across. Thank you all very much for coming today.

Mr Iain Wright took the Chair.

Examination of Witnesses

Witnesses: **Stephen Hermer**, Partner, Olswang, **Andrew Frangos**, Chief Executive, Cornhill Capital, and **Mark Byers**, Head of Advisory, Grant Thornton, gave evidence.

Q788 Chair: Gentlemen, thank you for coming in this morning. I understand that Retail Acquisitions Ltd has decided not to waive legal professional privilege in relation to your evidence this morning, but I know that you will try to be helpful to the Committee and provide as much information as you possibly can. Can you start by introducing yourselves and outlining the nature of your role and the nature of the advice that you gave with regard to the sale and acquisition of BHS?

Stephen Hermer: I am Stephen Hermer. I'm the Olswang general counsel and a corporate lawyer by training. The firm was engaged by Retail Acquisitions to provide legal advice in relation to the acquisition.

Andrew Frangos: Hello. My name is Andrew Frangos. I'm the CEO of Cornhill Capital. My firm was engaged by Swiss Rock plc, predominantly to source funding for the company post-acquisition and pre-acquisition.

Mark Byers: Hello. I am Mark Byers. I'm a partner in Grant Thornton; I am head of their advisory services. Grant Thornton's role in the acquisition of BHS by RAL was limited to providing financial due diligence services for that acquisition.

Q789 Chair: When did you start giving advice to Swiss Rock, RAL and Dominic Chappell? When did the gig start?

Stephen Hermer: From our perspective, it started in November 2014.

Andrew Frangos: We were formally engaged in December 2014. There were discussions regarding this potential transaction for possibly 10 months prior to that.

Mark Byers: Yes, I think we attended meetings in November 2014, and we were engaged to begin the due diligence in February 2015.

Q790 Chair: How did you get the gig? Were you introduced to the directors by somebody? Was it a tender process? What happened with that introduction to allow you to be commissioned for this advice?

Stephen Hermer: We were asked to make the case, with a number of other law firms, for the mandate.

Q791 Chair: Who asked you?

Stephen Hermer: A contact at a law firm whom we knew who I thought was too small—that they thought was too small for the job.

Q792 Chair: Which law firm?

Stephen Hermer: I prefer not to give the name publicly; I will be happy to give it to the Committee afterwards.

Chair: Okay.

Andrew Frangos: The relationship initially was with a view to a different transaction, not in the retail space. That client subsequently changed their name to Swiss Rock, and then BHS came on to the agenda.

Q793 Chair: But you are a long-standing adviser to the personnel involved. Is that fair to say?

Andrew Frangos: No. I wouldn't describe us as a long-standing adviser. My business is predominantly a stockbroking business. Dominic Chappell was a stockbroking client—one of thousands—of the firm's.

Q794 Chair: For how long?

Andrew Frangos: I would need to check, but I would estimate maybe six months.

Mark Byers: We were approached by Mark Tasker, who is a partner in a City law firm called Bates Wells Braithwaite. He was also a director of Swiss Rock and RAL. He asked us whether we were interested in undertaking a due diligence exercise on a large retailer—an unnamed retailer at that point. He asked us to provide credentials. We did that and then we attended a meeting to discuss what our approach would be. Then we learnt that they wanted to hire us. I am unaware of whether there was a formal tendering process. We were given the impression there—

Q795 Chair: But you were part of that beauty parade.

Mark Byers: Yes.

Q796 Chair: When did the advice stop?

Stephen Hermer: From our perspective, when the completion happened on 11 March.

Andrew Frangos: In our case, Retail Acquisitions believed that we were not engaged, so we had a dispute with Retail Acquisitions, given that we were appointed by a parallel

vehicle with similar shareholdings and similar directors. Retail Acquisitions did not recognise our engagement.

Mark Byers: Yes, our work was concluded on the acquisition on 11 March.

Q797 Chair: In terms of the advice that you provided, who were you dealing with? Was it a team of people? Was it a particular individual you reported to? What was the nature of the advice and where did that go?

Stephen Hermer: Would it be helpful if I explained the nature of the advice that we would give generally in these circumstances, because—

Chair: It would help if you answered my question.

Stephen Hermer: Okay. We would have interfaced with a number of people at the client.

Q798 Chair: On this occasion, was it a particular team, a particular individual?

Stephen Hermer: I can't get into the details of exactly who we interacted with; I'm sorry.

Chair: Okay.

Andrew Frangos: Dominic Chappell was the main contact.

Mark Byers: Our interaction with RAL would have been relatively limited because of the role that we were performing, which was to undertake financial due diligence on BHS and then provide a report that would identify the key risks and issues that RAL would need to consider before they actually acquired BHS. So we were not involved in recommending that they buy BHS; nor were we involved directly in the negotiations—

Q799 Chair: But who would your report go to? You will be identifying the key risks. Will it go to the directors?

Mark Byers: The report would go to the board of RAL.

Q800 Chair: Okay. Mr Byers, I will start with you. I have worked for an accountancy firm. Due diligence for a new client is an important part of the steps. What due diligence did you undertake for this new client?

Mark Byers: As you will be aware, we have a duty of client confidentiality. RAL has not waived that confidentiality, so I am unable to go into any significant detail in relation to the work, but what I can say is that the scope of the work was extensive in relation to looking at BHS and the key financial issues that BHS faced.

Q801 Chair: You were confident that your new client was of reputable character and wouldn't damage the reputation of your firm?

Mark Byers: When we make a decision to act for a new client we have a formalised, detailed take-on process, and the take-on process that we undertook on RAL and Swiss Rock was a normal take-on process. I have reviewed what happened, and I am satisfied that it was a properly run process.

Q802 Chair: Mr Frangos, in terms of due diligence for this commission, what did you do?

Andrew Frangos: The standard anti-money-laundering checks—verification of address, passport and that sort of documentation—rather than any documentation regarding historical activity or expertise.

Q803 Chair: So it was purely just to say that this is the person?

Andrew Frangos: Yes.

Q804 Richard Graham: Cornhill Capital were doing those checks on Swiss Rock, rather than RAL. Is that correct?

Andrew Frangos: Correct.

Q805 Chair: Was this focused purely on Mr Chappell?

Andrew Frangos: I believe that the two directors at the time were Dominic Chappell and Joseph Chappell.

Q806 Chair: That is father and son, is it not?

Andrew Frangos: I think so. I didn't meet the father, so all of our relationship was with Dominic.

Stephen Hermer: Our processes involved doing customer due diligence, and we satisfied our obligation to do that by doing online searches against risk intelligence databases. In cases that seem to be high profile we sometimes do additional searches. The searches that we did here indicated that Mr Chappell had two insolvency-related incidents in his history. We discovered the 2009 bankruptcy and the administration in 2009 of a company of which he had been a director.

Q807 Chair: Mr Hermer, I will continue with you but this is a question to you all. In the nature of the due diligence, did the name Paul Sutton come up at all?

Stephen Hermer: It did not, no.

Andrew Frangos: Not in the due diligence, but we had met Paul Sutton prior to meeting Dominic Chappell.

Q808 Chair: What was the nature of that introduction and meeting?

Andrew Frangos: Paul Sutton was appointed power of attorney on a stockbroking account that we held, and he introduced a transaction of which Dominic Chappell was the CEO, Containasuite. He was the introducer to Dominic Chappell.

Mark Byers: No, Paul Sutton did not come up, and we had no knowledge of any relationship that Chappell may have had with him.

Q809 Chair: May I move on briefly to the nature of your fees? Literally how big a deal was this for your firm? Was it a big transaction? Was it a relatively small one? I am not asking about numbers as such, but I am wondering in terms of the overall scheme of things. How big a deal was it?

Mark Byers: For Grant Thornton the due diligence work was a reasonably-sized fee. It was certainly nowhere near the biggest fee that Grant Thornton would have in due diligence, but it was a meaningful fee.

Q810 Chair: It was worth your while to carry this out?

Mark Byers: It was worth our while to carry it out, and it was worth our while to carry it out properly.

Q811 Chair: I have been looking on the Grant Thornton website, and there is a document about transactions that the firm have done with regard to M&A and corporate finance—I think it is called “Leading the Way”—in respect of 2015. That was published on 24 February 2016. BHS and Retail Acquisitions Ltd are not mentioned at all. Why is that?

Mark Byers: I am unaware of the part of the website you are referring to.

Q812 Chair: This is a good shop window, in terms of good M&A and good corporate finance, and this was—by your own words—a reasonable transaction, but it’s not included in your promotional literature. I just wanted to know why that was the case.

Mark Byers: I can find out why. Was it on there, originally, are you saying, or you weren’t sure whether—?

Q813 Chair: There is a document—

Mark Byers: I am happy to give you a written response on that—

Chair: That would be helpful.

Mark Byers: —as to whether it was on previously, and what the reasons were, if we took it off.

Q814 Chair: How big a deal was this, Mr Frangos?

Andrew Frangos: We didn't receive any fees on the transaction. Our fees were all success-based. Had those fees been paid—

Chair: I am sorry to interrupt. So, all contingent upon the actual sale going through?

Andrew Frangos: Yes.

Q815 Chair: You have very kindly given us your engagement letter and I just wanted to mention a number of things. There is a success fee on completion—that is, the sale of the business. It also says there is a “2% (two per cent.) fee on all property sales” with regard to this. So, as part of your discussions with Dominic Chappell, was part of the realisation of value coming out of this that a lot—“a lot” is too much of an emotional term—some property disposals could take place and you could be a beneficiary of that? Is that fair?

Andrew Frangos: That was a potential route to them accessing funds for the business, yes.

Q816 Chair: Your engagement letter says, “Subject to the completion of the Transaction and the subsequent acquisition of the Arcadia Group”. Now, is that a mistake, or was the intention for Retail Acquisitions Ltd at some point not just to buy BHS but to buy Arcadia?

Andrew Frangos: It was a very ambitious transaction when it came through the front door in the first place as a BHS acquisition. There were lots of different transactions also discussed along the way and the engagement was considered to be a bit of a catch-all, rather than a definition of what was intended.

Q817 Chair: I just want to press you on this, as this is important, because Arcadia is a big company. Did Dominic Chappell come in and say, “BHS is good, but it's only a start. I want to buy Arcadia”?

Andrew Frangos: He indicated that it could go on to do other deals, including other retail brands.

Q818 Chair: Thank you. That's very helpful. The same question to you, Mr Hermer.

Stephen Hermer: For us too, this would have been a meaningful role; there would have been a lot of work required and therefore there would have been a meaningful fee attached to it.

Q819 Chair: Mr Hermer and Mr Byers, were any fees contingent upon the actual sale, or was it a flat fee—a one-off—that would be paid regardless?

Mark Byers: Grant Thornton's fee was structured in the way that these sort of due diligence fees would often be structured, in that the fee itself was a fixed fee but it was based very substantially on the amount of time and the number of hours that we anticipated we would work. We had a team of 25 people working for almost four weeks on the assignment.

There is a discounted fee in the event that the deal doesn't complete. If the deal's aborted, the reason there's a discounted fee is that Grant Thornton's risk profile is quite different. So we are no longer on risk in relation to the due diligence report, as we would be if the deal completed, and therefore anything that had been missed we may be liable for.

Chair: Craig, do you want to come in on that point?

Q820 Craig Mackinlay: Mr Byers, just on the depth of the due diligence report that you did, I suppose it depends on the client—whether they want a very, very in-depth one or more of a lightweight one. It would be whatever they wanted; there isn't a standard. I suppose it is trimmed to whatever the client might want.

You mentioned, very helpfully, 25 people for four weeks. What would that be—would that be a heavy due diligence, a lightweight one, a medium one, a standard one? It's quite a lot of hours, I must admit, but then we are talking about a very big entity. Was this a normal due diligence that Grant Thornton and other professional firms would have done in this type of size of institution?

Mark Byers: Yes. It was a fairly extensive piece of due diligence. I think there were some constraints in relation to the diligence, in terms of the availability of information in certain respects, but in general terms it was a fairly extensive piece of diligence.

Q821 Chair: Mr Hermer, in terms of the nature of your fee, was it contingent upon BHS actually being sold?

Stephen Hermer: No, it wasn't. There was a small piece of work that was done at the beginning of the transaction, for which we would not have got paid had the deal not happened. Otherwise, the fee was calculated by reference to the number of hours, with a small abort arrangement and a small success arrangement, but fundamentally it was an hours-related deal.

Q822 Chair: I want to bring in Amanda on further work in terms of the nature of the deal, but my final question to you all on the advice you provided is this: what led you to believe that Dominic Chappell and Retail Acquisitions Ltd could turn around BHS in a way that Philip Green couldn't?

Mark Byers: One of the things that is quite important when thinking about the opportunity to turn around BHS outside the Arcadia Group—I think this was referred to by Paul Budge earlier in the week and in the CVA document that was issued earlier this year—is that one of the key challenges for BHS was that it needed to exit a number of unprofitable stores and fundamentally restructure a number of the leases in relation to those stores. You may be familiar with a number of retailers that have run through CVAs or have ended up renegotiating leases with landlords rather than running a CVA, which has considerably reduced their operating costs.

As I understand it, the perception that was presented by Mr Budge earlier in the week was that while BHS remained part of Arcadia, it was very difficult to renegotiate those leases, even though Arcadia was not a guarantor of any of them. Essentially, the dynamic of a negotiation with a landlord is to say, “We can't afford to pay you this level of lease. The other alternative is that we may become insolvent.” Clearly that indication is less believable when it is part of a larger group and being supported by that group than when it is stand-alone. That would be one major part of it.

The other observation I would make that is quite important is that when we were hired by RAL, RAL was not just Dominic Chappell; the RAL board had four primary people on it. It had Stephen Bourne, who was a former head of corporate finance at BDO, and it had two lawyers. They were talking about extending that team. They had an appetite and an idea that they wanted to do this deal. I have referred to the fact that it was important in one particular aspect of any turnaround strategy for this business for it to be outside Arcadia. That was the basis of it, I think.

Q823 Chair: Mr Frangos, do you have anything to add?

Andrew Frangos: Nothing to add, no.

Q824 Chair: Mr Hermer, what would you think?

Stephen Hermer: We would not, as a law firm, expect to get involved in the business plan review process. From our perspective, we were engaged to provide legal services, which is what we did. We wouldn't be expected to make a judgment on the future viability of the business.

Q825 Amanda Milling: Mr Byers, can I ask you a question? I picked up on a point where you said that you were not necessarily getting the information that you were asking for. Can you just explain that in a bit more detail, please?

Mark Byers: Let me clarify that. The context was, “Was this a normal piece of due diligence?”. Clearly, the business we were doing due diligence on was a distressed business, as has already been discussed, and one of the major challenges was the status of the pension scheme and what was going on with it. What I would say is that the information we were provided with on where things had got to with the pension scheme was relatively limited and we weren’t given access to speak to the trustees of the pension scheme.

Q826 Amanda Milling: In terms of the information that you were getting on the pension scheme, you were not getting access to the pension scheme, but were you getting anywhere near the right level of data about the pension scheme over that 10-year period?

Mark Byers: We were provided with some information on the pension scheme. Can I just say that I would like to help the Committee in this inquiry as much as possible, but I am very cognisant of the duty of confidentiality? What I don’t want to end up doing here is stepping over the line. I am happy to reflect on this particular question on scope, as to whether we can go any further and give you a written response, but I am concerned that the line we will end up going down here is that I will be saying more and more about the work we did. I really don’t think I can do that.

Q827 Amanda Milling: Can I ask it in a different way?

Mark Byers: You can ask it in a different way, but the response might be the same.

Amanda Milling: An easier way. Was it unusual compared with other purchases that you have done, when you have been doing due diligence for other clients—the level of information you were getting?

Mark Byers: Let me just be really clear; I think generally, in terms of the level of information, Arcadia was very responsive. So Arcadia ran a carefully controlled process, and they were responsive, generally, to need. I am just saying that in that area, we would probably have expected more; but that is as far as I think I can go, realistically.

Q828 Craig Mackinlay: Mr Byers, sorry to probe a little bit more on an area that you probably don’t want to discuss, but I will just imagine that you have looked at the recoverability of the value of stock; you have looked at debt and creditors; you have looked, perhaps, at the supply chain and whether there were robust processes, whether the prices paid were right and if there was any artificiality in there; and, of course, you have looked at the big liability in the pension fund—you have already discussed the difficulties you had with that.

You say that on the RAL team, there was somebody from BDO. Had they put together a business plan, or were they asking you to put the business plan together? Obviously, people like Cornhill Capital would want this type of business plan. Did you look at that, did you assess it and did you give an opinion on it, or was that outside the scope of your work and being done by others?

Mark Byers: I am pleased you asked that question, because there was an incorrect statement made by—I can't remember which gentleman it was—Arcadia earlier this week to the Committee. There was an inference or a direct observation that Grant Thornton were working on developing a business plan during the course of the diligence. That is incorrect. Grant Thornton did not do any work in formulating the business plan during the course of due diligence. We were acting independently, looking at the available information. I think the primary source of, if you like, the business plan, was in fact a turnaround plan that had been developed by BHS management; and that is what we reviewed.

Q829 Richard Fuller: So you did not do the business plan. Obviously, in the work you are doing around it, the legals and so on, at the core of what you have must be a credible business plan. I think you said, Mr Byers, the primary source was the existing British Home Stores management.

Mark Byers: Yes, that's correct.

Q830 Richard Fuller: So why had they not done that under the ownership of Arcadia?

Mark Byers: Why had they not done what?

Q831 Richard Fuller: Done the turnaround plan.

Mark Byers: Oh—why did Arcadia not do it?

Q832 Richard Fuller: The British Home Stores management board were in place. They were managing British Home Stores. They had a plan. Why did they have to come outside their existing management ownership structure to do that?

Mark Byers: I think I made a reference earlier to one of the reasons.

Q833 Richard Fuller: So really it was basically to shaft the landlords.

Mark Byers: I think that is—

Richard Fuller: The connection we had, from Mr Budge and yourself, was that landlord's rents couldn't be restructured while it was in Arcadia group. That is what Mr Budge said last week. You have referenced that today and said it again. Was there anything else in the business plan than that?

Mark Byers: Clearly, I am subject to client confidentiality, so I cannot go into detail. I was trying to help by indicating that that would be one of the reasons. I think your language about shafting landlords is your language. Clearly, the issue is whether or not a particular property is over-rented, because lease terms extend over a long period of time.

Q834 Richard Fuller: Mr Frangos and Mr Hermer, were you aware of the business plan? Did that form part of your work?

Stephen Hermer: It didn't form part of our work, no.

Q835 Richard Fuller: But were you aware of it?

Stephen Hermer: We knew that there was a turnaround plan which had been prepared by management, yes.

Q836 Richard Fuller: Mr Frangos, obviously in looking for funding, I would have thought that it was quite important for you to know that.

Andrew Frangos: A lot of the funding that we were in discussions about was predicated on securing against property, so most of the information that we had access to was property-related.

Q837 Richard Fuller: And how much money was it assessed was needed to secure the business under the new owners?

Andrew Frangos: The funding required was a moving target. At various stages, the numbers that were mentioned were anywhere from £30 million to £200 million sterling.

Q838 Richard Fuller: That is quite a wide range, isn't it?

Andrew Frangos: Yes.

Q839 Richard Fuller: And what sort of variables would affect whether it was £30 million or £200 million?

Andrew Frangos: I guess the question about variables is more one for management. We were simply requested to go and source investment and told, "This is what's available as security." We were requested at one point to go and source a £100 million working capital facility, and we did some work around how that might be structured and what it might need security over. Ultimately, none of these discussions ever evolved beyond the discussion point and we were told that they had sourced the funding elsewhere, so they would not be taking our conversations any further forward. That was sort of when the relationship fell over.

Q840 Richard Fuller: Mr Hermer, at the point of creating the legal documents for the sale—the transaction—what was your understanding of the finance that was available to the acquiring company?

Stephen Hermer: I have to be careful here, again, not to stray into areas where there are client confidentiality issues, so that is not something that I can comment on.

Q841 Richard Fuller: Would it be fair for us to assume that you would have to have known, in a transaction to acquire a company of the size of British Home Stores, that there was financing available to complete the transaction?

Stephen Hermer: Had there been a financing arrangement in place, yes, we would have been involved in documenting it.

Q842 Richard Fuller: You say if there had been a financing arrangement, so it is possible to complete a transaction such as British Home Stores without a financing—

Stephen Hermer: Yes, it would indeed be possible. Certainly, had there been a financing arrangement, we would have been aware of that as well.

Q843 Richard Fuller: In what circumstances would there not be a financing arrangement for an acquisition by a special purpose vehicle such as RAL of a company that is losing £60 million and has a significant pension liability? When would there not need to be a financing arrangement?

Stephen Hermer: As a matter of law, you could buy the company if the purchase price was £1 without actually having financing in place. Whether that would be a prudent thing to do would be a different matter, but it would be possible.

Q844 Richard Fuller: If I can press you again, to be clear, it is possible to take a company that the vendor is prepared to give you for £1 but that has annual losses in its operations of tens of millions of pounds and obligations to its pensioners of hundreds of millions of pounds—it is possible for that sale to take place for the price of £1 and then for the new owner to go round and try to find out whether he or she can get the financing.

Stephen Hermer: As I say, that would technically be possible. Whether there would be any question of breach of fiduciary duty—we would have to look at the attitude of the buyer's board, but as I say, I cannot comment on exactly what happened here.

Q845 Richard Fuller: You cannot say whether that happened in this specific case.

Stephen Hermer: I cannot, no.

Q846 Richard Fuller: Okay. You said earlier—I just want to clarify this—that Olswang's relationship with Retail Acquisitions, Mr Chappell and British Home Stores ended in March of this year.

Stephen Hermer: I am saying that the transaction ended in March of this year, and so our work on the transaction ended.

Q847 Richard Fuller: But you remained as advisers.

Stephen Hermer: We carried on working for BHS after the transaction; that is right.

Q848 Richard Fuller: That was all the way up to the point of administration.

Stephen Hermer: That is correct.

Q849 Richard Fuller: In the run-up to administration, I understand there were efforts to sell British Home Stores. There were certainly reports of last-minute attempts by Mr Chappell to sell British Home Stores. Is that correct? Were you involved in those discussions?

Stephen Hermer: Again, to the extent that we were doing work after completion, that would be subject to client confidentiality.

Q850 Richard Fuller: So, for example, you could not comment on the reports of a sale to Sports Direct.

Stephen Hermer: That is correct. I could not comment on that.

Q851 Richard Fuller: Have you other gentlemen continued your relationships with RAL and British Home Stores subsequent to the transaction? I presume not, Mr Frangos, because you are in disagreement.

Andrew Frangos: That is correct, yes.

Mark Byers: Post acquisition, Grant Thornton's role predominantly was one of advising BHS and providing a range of consulting services aimed at assisting BHS management in addressing some of the issues that were identified in the due diligence report.

Q852 Richard Fuller: In that engagement, were you then looking at the business plan? Now that Retail Acquisitions had hold of the company, was Grant Thornton giving advice on the actual operation plans for the business as a whole?

Mark Byers: Yes. We provided a variety of services, including that.

Q853 Frank Field: May I ask each of you a question? We know that the person you were selling to was bankrupted, maybe a number of times. That may just be unfortunate.

What I want to get clear in my head is what the law says about this. Have you heard of other examples where someone has sold for £1 a business with huge debts to someone who has not been discharged as a bankrupt? Is that normal, or should they go through the courts and get themselves discharged before they are a suitable person to whom you should sell?

Stephen Hermer: There are obviously many well documented cases of people who have been bankrupt and gone on to develop successful business careers, but there is, in this case, a significant question—

Q854 Frank Field: Before you go on Stephen, we know people are bankrupted and make good and so on, and that they get themselves discharged as bankrupts through the courts. Is there no legal barrier to being able to buy a business with all these worries and debts when the courts have not declared you non-bankrupted?

Stephen Hermer: It is not legally impermissible, even as an undischarged bankrupt, to make an acquisition. I think that in this context there was clearly a question mark over Mr Chappell's business acumen raised by the bankruptcy history, and in the context of a rescue bid for a large retail chain there was a judgment call that needed to be made on how much weight to put on that background.

Q855 Frank Field: So you can be a bankrupt and you can acquire another business while you are still bankrupt?

Stephen Hermer: Yes. There are some technicalities around how you would do it, but in principle, yes, you can as a bankrupt make an acquisition.

Frank Field: That is the answer. Thank you.

Q856 Chair: In correspondence that we have seen, Mr Hermer, you have said that there could be question marks over Mr Chappell's business acumen, but actually the only fault he has is that he is an eternal optimist. Is that a fair summary of his character?

Stephen Hermer: I could not as I stand here now make a judgment about his character, because that would not be the right thing for us to do as a professional advisory firm, but—

Q857 Chair: You were talking to another law firm and saying, "Do you know what? We've done rigorous checks on him, and yes we understand that he has been made bankrupt, but actually he has seen himself as an entrepreneur and he is optimistic. He is also a stable family man—he won't run off with the cash."

Stephen Hermer: What we won't do and don't do as a law firm is give references about clients' probity and about their business competence. What we can do is confirm to people, if they ask—it is an unusual occurrence, but it did happen here—what due diligence

checks we have done. What we do not do is give references on people's probity and competence.

Q858 Richard Fuller: That is helpful to us. We have just gone through the fact that someone can purchase a company for £1, and people find that the debt can come later. We know that someone providing debt would do extensive due diligence on the acquirer to make sure that they are of good character. You have said that in your role you do not provide assessments of character. Do you think that in the regulations under M&A transactions there is an issue of too much reliance on caveat emptor—that a seller can essentially give to anyone, without anyone checking, a very substantial set of assets, on the hope that they will be a good chap?

Stephen Hermer: I think that the principle of caveat emptor is generally qualified by the due diligence process, which allows people on either side of the transaction to look at the risks that apply, to try to assess the risks, and to work out how to mitigate them. Fundamentally, the answer to that question is that it is due diligence that helps you to make the assessment.

Q859 Richard Fuller: That is the core of the question. For some of us it looks as though all of those due diligence brakes, in this particular instance, did not end up with the outcome that many people feel comfortable with. I am just asking your opinion: do you think this is an area of further inquiry that we should undertake?

Stephen Hermer: I think you have heard that there was a due diligence process. The due diligence is then only part of the process, because the risks identified can be mitigated through the contract. So there are ways of mitigating risks post the due diligence. I do not think fundamentally, at a process level, that what happened here was an atypical process, in the sense that there was a due diligence exercise and a contract. In and of itself, I do not think that what you see here is an atypical process; it is clearly a very significant high street chain, but the process itself was a fairly standard one in that sense.

Q860 Amanda Solloway: Following on from Richard's point, I know that you cannot comment on particular assets, but if you are looking at long-term business survival and long-term business success, one of the first ways is clearly to look at where you can cut costs—it could be around rent, around people, around lots of different things. For the future and for longevity, you really have to look at rebranding, promotion activities and marketing and so on. What confidence did you have in RAL, who had very little retail experience, to deliver that?

Mark Byers: To be clear, our role was a limited role in relation to the acquisition of BHS. We were undertaking financial due diligence on BHS; we were not being asked to assess the synergistic benefits of RAL as an acquirer. We would have made an assessment in relation to the business plan that BHS presented, which would have included some repositioning of the business and would have involved some rebranding and some changes in marketing, and clearly you will take a view on that—but we were not asked to then say, "Is

RAL bringing something on top of it?” There was a really competent management team at BHS.

Q861 Amanda Solloway: Who had been unsuccessful in changing the success of BHS.

Mark Byers: I think you heard from Paul Budge on Monday about a number of the initiatives that were being developed. It is not up to me to give you an analysis of whether under Arcadia management BHS was being run effectively. Did they have a capability and a line of sight to get this business from losing £35 million a year on a cash basis, to a break even? It looked like they did.

Q862 Richard Graham: Mark, if we can turn to you. When were you appointed to do the due diligence on BHS?

Mark Byers: I believe the due diligence started around about 16 February. I think it was about three and a half weeks from start to finish—just under four weeks.

Q863 Richard Graham: Right. In general terms, has Grant Thornton done due diligence on businesses before with defined-benefit pension schemes?

Mark Byers: I believe so, yes.

Q864 Richard Graham: Reasonably frequently?

Mark Byers: Grant Thornton, as you may know, has a pretty significant pension advisory capability. Interestingly, the two schemes referred to on Monday by the gentleman from Deloitte that had had similar restructurings and funding proposals developed—I think he referred to Kodak and Uniq—were both schemes that Grant Thornton managed.

Q865 Richard Graham: So it would be fair to assume that Grant Thornton has considerable knowledge of pension schemes in general, defined-benefit ones in specific, and has done due diligence before on businesses with defined-benefit pension schemes.

Mark Byers: Yes.

Q866 Richard Graham: How important is the assessment of the potential liability to a new purchaser of a company with a defined-benefit pension scheme, in your experience?

Mark Byers: I think it is quite critical that the acquirer understands what the position is with that pension scheme and understands what the options are in terms of being able to develop a funding solution for it.

Q867 Richard Graham: What typically would be the key things that you would be looking at? Would they be, for example, the size of the liabilities, or the strength of the covenant with the corporate? What are the key issues that you would be looking at?

Mark Byers: My background is as an insolvency practitioner; I am not a pensions expert nor am I a provider of due diligence. I am very happy to identify those matters with my colleagues and give you a written response on that, but I cannot give you a detailed response on that right now.

Q868 Richard Graham: But you would surely have a general understanding that those are the sorts of issues—the likely commitment of any future buyer, the size of the liabilities and the strength of the covenant. Surely you would agree?

Mark Byers: Yes, sure. The strength of the covenant on a business that is losing money is clearly very weak—as was indicated earlier, the strength of the covenant was zero effectively—so the challenge is to see whether there is a funding solution to the pension situation. Clearly we were made aware of Project Thor.

Q869 Richard Graham: So in general this would form an important part of your due diligence and therefore you would normally expect to have access to the trustees and to the advisers to the pension scheme?

Mark Byers: Precisely.

Q870 Richard Graham: And in this case, what access were you given?

Mark Byers: We met with the advisers, but we did not meet the trustees.

Q871 Richard Graham: With Towers Watson?

Mark Byers: No, we met with Deloitte.

Richard Graham: You met with Deloitte.

Mark Byers: Sorry, I misunderstood the point. We did not meet with the advisers to the scheme; we met with the advisors to Arcadia.

Q872 Richard Graham: You met with the advisers on the pension scheme to Arcadia—to the corporate. Did you believe that that gave you a clear view of the pension scheme and its potential importance to any potential buyer of the business?

Mark Byers: No, I would say there was a gap in our understanding and that was reflected in our diligence report.

Q873 Richard Graham: So the due diligence report that you were able to provide to the purchaser did not really have anything very much on the pension scheme in it.

Mark Byers: No, there was some content on the pension scheme, but I am not able to give you the detail of that because of client confidentiality.

Q874 Richard Graham: Right. Why do you think that BHS and its owners were so reluctant to give you access to trustees and the trustees' advisers?

Mark Byers: I do not know the answer to that question. I think your question should be directed elsewhere.

Q875 Richard Graham: Do you think that it would be reasonable for the Committee to assume that it would have come as a significant surprise to the trustees had they realised that the corporate owner was already in discussions with future purchasers?

Mark Byers: I am not able to answer that question, I'm afraid.

Q876 Richard Graham: Well, you are able to answer it because it is just taking a view as to whether you think it would be reasonable for this Committee to assume that that was the case.

Mark Byers: I don't think I have enough information to be able to make that judgment; that is a judgment the Committee will make.

Q877 Richard Graham: Do you think it would be reasonable for the Committee to assume that the purchaser did not know a great deal about the pension scheme when they bought the company for £1?

Mark Byers: I think that answering that question will breach client confidentiality because it will indicate what the content of the report was.

Q878 Richard Graham: Would it be reasonable to assume that a purchaser of a company for £1 that does not know much about the pension scheme does not necessarily care very much about the pension scheme?

Mark Byers: It would depend on whether the purchaser had received assurances about the pension scheme from the vendor.

Q879 Jeremy Quin: On that point, we are given to understand that undertakings were given by your client to Arcadia in respect of the pension scheme. That is the understanding that we were given earlier in these hearings. It is your understanding, too, I assume, Mark.

Mark Byers: Again, we are venturing into areas where I am going to end up breaching client confidentiality. You have heard others give indications on that.

Q880 Jeremy Quin: Understood, but it is fair to say that when we speak in later proceedings to your client, one area that we could probe is about acquiring a company where there is an ongoing discussion with the regulator about the recovery plan lasting 23 years and is a large commitment and a substantial amount of liabilities. The acquirer has a plan in place to improve the profitability of the company, which includes dealing with landlords. Those dealings with landlords, that appeared in Project Thor; I assume it appeared in Project Vera, which is after your time; but it is a fair question for us to put to your client as to how they expected to allocate the benefits of those improvements. There is a significant liability out there, so one thing that we could do is ask: in the business plan, in the financial projections that you reviewed, what was the share of the spoils from the discussions with landlords and how is that going to be allocated between the pension fund and the new shareholders? That is all a legitimate area of inquiry.

Mark Byers: That is one of many questions you could ask, yes.

Q881 Jeremy Quin: Was that area touched on in your work?

Mark Byers: I am not able to answer that question.

Q882 Chair: Mr Frangos, can I come back to you on the raising of capital? My understanding is that you were commissioned to provide that, but then Retail Acquisitions Ltd/Swiss Rock did not take up that offer. Do you know why that was the case?

Andrew Frangos: The only logical conclusion would be that they had alternative funding in place.

Q883 Chair: Were you told that? Was somebody from the company saying, “We’ve got it elsewhere; thank you for your efforts”?

Andrew Frangos: Sometimes. Other times—

Q884 Chair: Sometimes. What does that mean in this context?

Andrew Frangos: There were various different points during the relationship when we were making proposals and introducing potential investors. In certain of those cases, we were told that funding had been secured elsewhere; in other cases, the company just did not respond.

Q885 Chair: Could you give us as much as you recollect on the timeline for that? I don't want to put words in your mouth or lead you, but was it a case of, "Don't worry Andrew, we've got the funds that we need," and then subsequently, "Actually, can we come back to you? We're not sure we do have it"? What happened? How did the lines of credit, the working capital requirements and whatever else was required come about?

Andrew Frangos: It was very stop-start. Mainly in the lead-up to the transaction closing, from around the middle of 2014—that is when we first initiated discussions with potential investors. As I said, they were stop-start, and when the transaction actually went through—in the four weeks prior to that, we were getting very little feedback or information. People were not turning up to meetings. We were arranging appointments with ultra-high net worths who had an interest in either property or investment, and they were not being followed up.

Q886 Chair: Do you know where they got the cash from? Were you ever told, "We've gone with X"?

Andrew Frangos: I believe that the £35 million that came in—I forget the name of the entity, but I read in the press and was told by Dominic as well that they had secured £35 million.

Q887 Chair: And you do not know who it was from?

Andrew Frangos: Allied Commercial, I am told.

Q888 Frank Field: Andrew, can I ask you one question? As MPs—I suppose this goes for people in all walks of life—we meet a range of people, from those who you judge as very serious to those who you just think are all mouth and no trousers. When you were meeting Mr Chappell and he was talking to you about his future ambitions, what sort of empire was sketching for you that he hoped this purchase would lead on to?

Andrew Frangos: I am probably the most biased person you can ask that question of. My relationship with Dominic is poor—

Q889 Frank Field: That is why we want it from you.

Andrew Frangos: The starting point is that when we are interacting with Dominic, we are thinking, "This is hugely ambitious. Is this real? Does it have any realistic chance of success?" For us, it is a success-only engagement. It is a bit of a punt.

Q890 Frank Field: But Andrew, when he was talking to you, was he talking about other things that he was going to plan beyond this? What other names was he suggesting might become part of his empire?

Andrew Frangos: I do not want to be specific, but a Swiss retailer was mentioned. A small UK retailer was also mentioned. The plans, as I say, were ambitious. As time passed, they seemed to gather credibility because they appeared to become more and more real.

Q891 Frank Field: Right, but before you first met him, did you know he was a bankrupt?

Andrew Frangos: I don't think I was aware of that fact, no.

Q892 Frank Field: But you had a gut instinct about him?

Andrew Frangos: No. I would say that the relationship initially was okay. I say the plan was ambitious because he did not have a CV and it was a large acquisition he was planning to make. As you rightly said, many entrepreneurs have big ambitions and big egos, and sometimes things that do not seem plausible on day one turn out to work subsequently.

Q893 Chair: Mr Byers, before I pass on to Richard, BHS was obviously bought for £1, but working capital was essential for being able to trade to some degree of success. What work did you do to ensure that working capital was available to allow BHS to continue to trade?

Mark Byers: We did not do any work to identify whether the working capital was available. What we did do was look very carefully at the trading and cash-flow projections, and we identified what the working capital need was.

Q894 Chair: Do you know whether anybody carried out any work to ensure that working capital was in place?

Mark Byers: I am unaware of whether anybody did that.

Q895 Chair: We heard on Monday from Mr Budge, the finance director of Arcadia, who said that some degree of guarantees was provided to Retail Acquisitions Ltd to allow BHS to continue, certainly into the medium term, as a successful company. Were you aware of that? Did you look into any guarantees, both in terms of cash and in terms of guarantees for credit lines or supplier concessions, that could have been given to Retail Acquisitions Ltd? Did your work involve any of that?

Mark Byers: No, it didn't. As I said earlier, the work we did was limited to very specific financial due diligence. One of the products of that work would have been to identify what was important and what was needed. As Mr Budge indicated to you on Monday—

clearly we were not involved with or aware of those discussions—Arcadia were attempting to provide some form of dowry, whether cash, guarantees or funding, to ensure that BHS had the working capital and the support to go forward. That was what he was saying. We were not involved when we were doing the diligence.

Q896 Chair: And you did not check that? You didn't see whether some sort of dowry was available?

Mark Byers: It was not part of the work that we were doing. We were not a lead adviser in this role; we were providing due diligence.

Chair: Okay. Thank you.

Q897 Richard Fuller: Mr Frangos said that the financing need range was £30 million to £200 million when you were putting the assessment together. Is that the same range that you had?

Mark Byers: Due to client confidentiality, I cannot provide a response to that question. Sorry.

Q898 Richard Fuller: In putting together the numbers for working out what the financing need was, was there a line item for fees to be paid from British Home Stores to Retail Acquisitions?

Mark Byers: Again, we are getting into areas of detail that are subject to client confidentiality, I'm afraid.

Q899 Richard Fuller: I appreciate that, but it has been reported that £25 million was taken out by Retail Acquisitions from British Home Stores subsequent to their acquisition and prior to its going into administration. £25 million is a lot of money. I was just wondering—perhaps not in this specific example, but in general in the work that Grant Thornton does—do you have discussions about what fees may come out from a trading entity into a shareholder entity, in terms of management fees or dividend payments, to work out what the cash needs of the business might be?

Mark Byers: From time to time we may do that. Whether we did in this situation—I'm subject to confidentiality, so I can't disclose these sort of details. I am trying to be as helpful as possible, but there are limitations.

Q900 Richard Fuller: Mr Byers, just to be clear, you are being very helpful. I understand the constraints that you are under. We appreciate it very much.

Mr Hermer, in putting together the documents for closing, did Olswang put together a management services agreement between Retail Acquisitions Ltd and British Home Stores, and the structures for that?

Stephen Hermer: Before I answer that, Mr Fuller, can I double check that I did not inadvertently mislead the Committee before? On Mr Field's questions about the powers of a bankrupt to buy and sell, when I said that that was possible and legally permissible, I was referring to a discharged bankrupt. I hope that that is what the question was aimed at. Clearly, there are issues in terms of the ability of undischarged bankrupts to buy and sell because there is a trustee at bankruptcy.

Q901 Frank Field: What was his status in these negotiations? Was he discharged?

Stephen Hermer: He was a discharged bankrupt, yes.

Q902 Frank Field: And that means what?

Stephen Hermer: That means that an order has been made to discharge the bankruptcy order, so he is free and able to carry on business as before.

Q903 Frank Field: So the court sets him free.

Stephen Hermer: Effectively, yes.

Frank Field: Thank you. Sorry, Richard.

Q904 Richard Fuller: Not at all. So did you put together a management service agreement?

Stephen Hermer: If there had been an agreement of that sort, we would have put it together. I cannot comment on whether there was or was not.

Q905 Richard Fuller: Often in transactions, there are closing fees that are paid out to various parties—not to advisers, but to other participants. Would there have been closing fees in the documentation you put together?

Stephen Hermer: Again, if there had been fees, they would have been provided for in the documents.

Q906 Richard Fuller: Finally from me, Mr Frangos, I think you are the only one of the three people here today who was there when Mr Sutton was involved. Is it fair to say that this was really Mr Sutton's deal? He has been reported as perhaps being in a situation in which he couldn't go on with the deal, so he handed it to his friend Mr Chappell.

Andrew Frangos: Certainly, when we first started discussing the transaction, it was being discussed with Paul Sutton. During the course of the relationship, Paul Sutton stepped back and Dominic stepped forward. To what extent he may or may not have been involved thereafter, I could not say, but our involvement with him discontinued at that point.

Q907 Richard Fuller: But you are not aware that Mr Sutton remained involved subsequently.

Andrew Frangos: No.

Q908 Richard Fuller: To the other gentlemen, did you have any dealings with Mr Sutton in this transaction?

Stephen Hermer: I don't believe that Mr Sutton was involved.

Richard Fuller: Mr Byers?

Mark Byers: No.

Q909 Chair: Mr Frangos, my final question is to you. You mentioned how you tried to raise finance for this venture—it could be £30 million or it could be £200 million. You mentioned that there were meetings with ultra-high net worth individuals. Was there difficulty in trying to raise finance? How did you pitch this? Again, I don't want to put words in your mouth, but was it a case of, "Do you want to buy a stake in BHS?" or were you talking about the expertise, acumen and experience of the people involved? How did you try to sell this?

Andrew Frangos: It was never based on the expertise of the people. It was always based on the assets within the business.

Q910 Chair: And the feeling was that you would be able to realise some of those assets into cash by property disposals?

Andrew Frangos: There was a need on the company side to raise funds, and there were assets there that they could put forward as security, whether that was a disposal of an asset or whether it was by borrowing money secured against those properties. Both were options.

Chair: Okay. Any final questions? Gentlemen, thank you very much for your time. It has been very helpful.

