

Written evidence submitted by Rt Hon Frank Field MP, Chair of the Work and Pensions Committee (SCC0007)

1. I welcome this inquiry, which is timely given the several recent high-profile tests of the appropriateness and adequacy of select committee powers. I approach it with the question ‘what failure is the review trying to address?’ In summary, I support the view that “the House’s powers, while exercised sparingly, remain effective”.¹ Indeed, a codification or apparent extension of powers could paradoxically weaken select committees by making a political process more legalistic.

BHS inquiry and public pressure

2. The Work and Pensions Committee conducted an inquiry with the Business, Innovation and Skills Committee into the collapse of BHS between April and July 2016.
3. The Committees were confident in asserting their expectations of cooperation from those involved in the failure of BHS. This confidence was reinforced by public and media support for our approach.

Oral evidence

4. Several people invited by the Committees to give evidence expressed reluctance to attend. In particular Sir Philip Green repeatedly threatened his non-attendance unless I stood down as co-Chair.²
5. All those individuals identified by the Committees as high-priority witnesses attended, including Sir Philip, Dominic Chappell, Lord Grabiner and senior executives of Goldman Sachs. The Committees were content to receive written submissions from a few lower-priority witnesses who were reluctant or had good reasons for not attending. Despite press reports of “summons”, no formal orders to attend were issued.
6. I never doubted that Sir Philip would attend. The reputational damage to him, already huge given his actions and the revelations over the course of our inquiry, would have been far greater had he not done so.
7. A *Lombard* column in the *FT*, while acknowledging that formal powers of summons were at best untested in recent years, said that three senior executives of Goldman Sachs had a “duty” to take up the Committees’ invitation:

If you live in a society, both contributing to and benefiting from it, you have a duty to face its elected representatives. Mike Ashley, the boss of Sports Direct, did it. Sir Philip is likely to follow suit, despite a threat to stay away. Kraft boss Irene Rosenfeld, a citizen of the US who was resident there, has been the only business figure to snub MPs in recent years. Her name accordingly became mud in the UK. It is a fate Messrs Sherwood, Gutman and Casey would be wise to avoid.³

¹ Clerk of the House of Commons (SEL0001), para 2.3

² For example, Daily Mail, 13 June 2016, [Stand-off as Sir Shifty defies MPs over BHS grilling: I'll snub probe unless chairman quits, says Green](#), by Hugo Duncan and Jack Doyle

³ *Financial Times*, 13 June 2016, [Goldman Sachs trio must face MPs' inquisition over BHS](#), by Jonathan Guthrie

8. This pressure is to some extent self-correcting. If a committee was widely perceived to be behaving unreasonably towards a potential witness, whether in demanding his or her attendance or in the general conduct of its inquiry, or if the public interest in the evidence was less clear, it would be unlikely to receive the same public and media support.
9. It is difficult to conceive of a sanction administered by Parliament that would be both reasonable and act as a substantial additional deterrent to reluctant witnesses who are either personally very wealthy or represent wealthy organisations.
10. In a high-profile inquiry such as BHS, the conduct of the MPs involved as public representatives is itself subject to considerable scrutiny. We were well aware that Parliament's reputation could be affected, positively or negatively, by how our work was perceived.

Papers and records

11. The Committees requested a wide range of documents and records relating to BHS. The vast majority were forthcoming. Though this was partly due to implicated parties perceiving benefit in revealing the conduct of the others, an implicit test of reasonableness similarly applied.
12. It is clear that parties felt compelled to cooperate with the Committees. The *FT* reported:

The committee has also obliged witnesses to disgorge written evidence promptly. For instance Goldman Sachs has handed over nearly 100 emails between the bank and Sir Philip's organisation. Given the public anger of the length of time that the Chilcot inquiry has taken to publish its report into the Iraq war, this speedy uncovering of evidence is especially welcome.⁴

Fairness

13. Throughout the BHS inquiry, Sir Philip Green and his lawyers maintained that he was being unfairly treated by the Committees. This allegation was founded on my supposedly pre-determined views and Sir Philip not being given fair opportunity to put his side of the story. This position was reasserted by a legal Opinion, prepared by lawyers including Lord Pannick QC, published by Green's company Taveta Investments in the response to our Report.⁵ Lord Pannick, on behalf of Sir Philip, asserted:

if this Report had been produced by any statutory body or other public law authority which did not enjoy Parliamentary privilege, a court would conclude that the hearing before the Committees was unfair and the court would set aside the Report for apparent bias by reason of pre-determination.⁶

14. Gabriel Moss QC, our Specialist Adviser, countered that the Opinion "operates on the hypothesis that the Inquiry and Report are a different type of process from that

⁴ *Financial Times*, 13 June 2016, [Parliamentary power and Sir Philip Green](#), editorial

⁵ [Taveta Investments Ltd response to the BHS Report](#), 18 October 2016

⁶ [Taveta Investments Ltd response to the BHS Report](#), 18 October 2016, para 6

which they actually are and makes criticisms based on this hypothesis”.⁷ Whether the Committees operated fairly was ultimately a value judgement and there was a strong contrary case:

The Inquiry and Report in question deals with matters relating to a de facto billionaire employing teams of high-powered City lawyers and well able to hire and deploy specialists in public relations, as evidenced by the Press Release. As against that, those who are suffering immediate financial harm from the collapse of BHS are relatively powerless employees and pensioners. In my view, a politician could reasonably consider that his role included taking steps to try and look after the interests of workers and pensioners in order to try to achieve some balance and justice for these powerless groups. The value judgments made by outside parties in relation to the mode of conducting the Committees’ Inquiry could well be different from the value judgments advocated by the first half of the Opinion.⁸

Mr Moss further noted that the Committees had given Sir Philip “the fullest possible opportunity to explain his position both in oral evidence and in writing”.⁹

15. The remainder of the Taveta response is an arid account of company law which entirely misses the point of the Committees’ judgements. For example, it asserted that a director of a parent company of BHS has no duties towards BHS, its employees or pensioners.¹⁰ The Committees did not act, or purport to act, as a court of law. Though we made strong moral judgements in our Report, we made no accusations of illegality or recommendations of sanction. We did not speculate, sticking to findings we could clearly demonstrate based on the evidence we had heard. None of those findings have subsequently been refuted. An important part of a select committee’s role is, of course, to identify deficiencies in legislation and recommend remedies. Both Committees have subsequently conducted detailed policy inquiries, using the case study of BHS as a foundation.

Conclusion

16. It is not apparent that any select committee has failed to carry out its work because witnesses refused to appear. Should that day arrive I would be among the first to express a wish to revisit this area.
17. The prospects of statutory processes and court proceedings threaten the distinct functions of select committees. Select committees are accountable to the House, and by extension the public, in conducting their work in a reasonable manner.

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⁷ [Note from Gabriel Moss QC](#), published 12 December 2016

⁸ [Note from Gabriel Moss QC](#), published 12 December 2016

⁹ [Note from Gabriel Moss QC](#), published 12 December 2016

¹⁰ [Taveta Investments Ltd response to the BHS Report](#), 18 October 2016, pp33-81