# BHS: Failures and follow up

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# What we will cover

- Political context
- BHS ownership structure
- The sale and its consequences
- The role played by the board
- The regulatory response
- Balancing controlling interests

# Political context in 2016

- Low public opinion of business.
- Partly the aftermath of the financial crisis:
  - The ‘age of austerity’ created economic difficulties for many…
  - While those who caused it appeared to escape punishment.
- There were also other examples of companies ‘behaving badly’ to different stakeholders (Sports Direct, Tesco).
- Long-running public criticism of executive pay (in particular so-called ‘rewards for failure’.
- Shareholders also criticised for putting dividends above long-term health of the company.

# BHS: the history

- Founded 1928 as British Home Stores.
- At time of its collapse in 2016 had 160 UK stores and 11,000 employees.
- Had been a publicly listed company until 2000 when acquired by Sir Phillip Green and taken private.
- In 2002 Green acquired the Arcadia Group stores and brands and became the second largest clothing retailer in UK.
- BHS was profit making until 2008, loss making thereafter.
- In 2009 BHS was sold to Taveta Investments No 2, another company in the Green family group.

# BHS: Ownership structure

- Holding company: Taveta Ltd (sole director Tina Green, registered offshore).
- Three levels of subsidiaries: Taveta Investments, which owned Taveta Investments No 2, which owned BHS and the Arcadia Group as separate subsidiaries.
- Philip Green was on the board of all companies (except the holding company).
- The CFO also sat on all four boards, and there were others with overlapping directorships.
- Lord Grabiner chaired both Taveta Investments and No. 2, but was not on the board of BHS.
- Evidence emerged of a series of financial transactions between BHS and other companies controlled by the Green family.

# The sale and collapse

- Taveta Investments No. 2 sold BHS to Dominic Chappell in 2015 for £1.
- Chappell had no retail background, and had twice between declared bankrupt.
- Philip Green wrote off £200m of inter-company loans within the group to enable the sale to go through…
- But Chappell still inherited significant pension and other liabilities, as well as a loss-making business.
- BHS went into administration twelve months later leading to job losses at the company and suppliers, and significant deficit in pension fund.
- Chappell was accused of asset stripping.

# Questions asked about the board

- Who took the decision to sell?
- What due diligence was undertaken?
- What consideration was given to impact on employees, pension holders, suppliers etc?

# Extracts from the UK Parliamentary report

“Sir Philip chose to run these companies as his own personal empire, with boards taking decisions with reference to a shared understanding of his wishes rather than the interests of each individual company. Boards had overlapping memberships and independent non-executive directors did not participate in key decisions. We saw meagre evidence of the type of constructive challenge that a good board should provide. These weak governance arrangements allowed the overarching interests of the Green family to prevail”.

“The non-executive Chairman of the Taveta group [failed] to provide independent challenge and oversight, disengaging from the key decisions he had a responsibility to scrutinise… All members of Taveta group boards have serious questions to answer about their performance as directors”.

# Regulatory response

- Dominic Chappell banned from being a director; Philip Green was only reprimanded – it was concluded he acted “immorally but not illegally”.
- Proposed legislation to “ensure greater accountability of directors in group companies when selling subsidiaries in distress” and “enhance existing recovery powers of insolvency practitioners in relation to value extraction schemes” (this has not yet happened).
- Director’s legal duties to different stakeholders were reviewed.
- Reporting requirements on corporate governance was extended to private companies.

# Section 172 of the Companies Act 2006

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

# New reporting requirements

- All public and private companies are to report on how they apply Section 172 (unless classified as small or micro-businesses).
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- Companies with 250+ employees have additional reporting requirements about how they have engaged with employees.

- Large private companies (2000+ employees or over £200 million turnover) must report publicly on their corporate governance arrangements, including stating which corporate governance code, if any, has been applied and how.

# Wates Principles

- Business-led group developed a set of voluntary governance principles for large private companies.

- Endorsed by regulators who say the principles are a suitable framework for public reporting.

- Six principles:
  - Purpose and leadership.
  - Board composition.
  - Director responsibilities.
  - Opportunity and risk.
  - Remuneration.
  - Stakeholder relationships and engagement.

# Balancing controlling interests

**All companies:**

- Independent directors (particularly in key positions such as chairing the board and audit committee).
- Shareholder agreement or equivalent - between the shareholders and the company; and where needed between shareholders.
- Operational autonomy.
- Robust processes for managing conflicts of interests and related party transactions.

**In public companies**:

- Absence of ‘golden shares’ or similar voting structures.
- Equal treatment of shareholders in terms of e.g. access to information.

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