

# The British Home Stores pension scheme: privatised looting?

Ian Clark 

## ABSTRACT

On entering administration, British Home Stores owed its pension scheme £571 million—a significant employment relations issue of historical wage theft by investor–owner managers. The article locates ‘lawful’ looting of business assets in a framework that builds on Akerlof and Romer’s theory of bankruptcy for profit and connects this to an empirical narrative on business re-structuring at British Home Stores towards administration.

---

## 1 INTRODUCTION

In May 2000, the Arcadia group headed by Phillip Green bought British Home Stores (BHS) for £200 million. After sustained re-structuring of the business in March 2015, Green sold BHS to Retail Acquisitions for £1. At this date, BHS was carrying a pension fund deficit of £345 million. By April 2016, when BHS was wound up by Her Majesty’s Customs and Revenues, the pension fund deficit had grown to £571 million, that is, BHS owed its pension funds £571 million. A parliamentary inquiry into the collapse of BHS by the Department for Work and Pensions found that Green and his investment partners hollowed out BHS to the value of £423 million in dividends and charges paid to Arcadia and associated businesses. Similarly, the inquiry found that during its 13-month ownership of BHS, Retail Acquisitions extracted £11 million from the business in charges, dividends and salary payments for its leadership team. Prominent observers of BHS under Phillip Green have described how the business was ‘looted’ (Shah, 2018: 282).

In a BBC radio interview, Frank Field MP, who chaired the Department of Work and Pensions inquiry, went further than Shah.

He is worse than Maxwell, he plundered BHS and must now pay out at least £571 million to fund the pension hole. (BBC Radio 4 Today programme, 25 July 2016)

Field later concluded that it might be a coincidence that the numbers extracted from BHS approximate to those of the BHS pension fund deficit. Field’s statements and observations raise two research questions; first, in this case as in many others, the pension fund deficit and associated corporate debt pile are not the result of an amorphous ‘pensions crisis’. Rather, they result from the demands of investor value, the Friedman doctrine on the aims of the firm and in the contemporary period the financialisation of businesses. Therefore, how does firm level re-structuring come to

□ Ian Clark, Nottingham Trent University, Nottingham, UK. Correspondence to: Ian Clark, Professor of Work and Employment, Nottingham Business School, Nottingham Trent University, Nottingham, UK. E-mail: [ian.clark@ntu.ac.uk](mailto:ian.clark@ntu.ac.uk)

enable the lawful diversion of employer contributions to final salary pension funds to other recipients? Second, fundamental defects in the regulation of incentive arrangements for investor–owner managers enable them to raise debt and borrow against pension fund contributions in order to pay dividends and fees. So why is this diversion and the manner in which it unravelled at BHS an employment relations issue? Both questions are timely and thrown into sharper focus for workers as policymakers, and key stakeholders consider issues around implementation of the defined benefit pension’s white paper (Department for Work and Pensions, 2018). The white paper focusses on worker protections therein and makes proposals around the regulation and the consolidation of pension schemes. More critically, the article comes as the Department of Work and Pensions is consulting on proposals to expand The Pensions Regulator’s powers. Specifically, reporting and anti-avoidance of employer liabilities come under scrutiny with discussion on effective and persuasive imposition of civil and criminal sanctions on those who oversee negligent schemes (The Pensions Regulator, 2017, 2018). As part of this process in February 2019, the Work and Pensions secretary unveiled jail terms of up to seven years for managers who oversee wilful or reckless mismanagement of a firm-level pension scheme.

To address the two research questions, the article proceeds through four parts. Part one makes a first contribution to new knowledge and methodological innovation by locating ‘lawful’ looting of business assets in a theoretical framework that builds on Akerlof and Romer (1993), who outlined the idea of bankruptcy for profit. This formulation generates new knowledge by outlining how moral hazard provisions provided by the state insulate investor–owner managers of a business from the social harm consequences of innovative uses of employer contributions to pension funds. By further developing these theories and applying them to the winding-up and administration of BHS, it is possible to theorise how business owners have an incentive to collapse a business into liquidation or administration. Part two outlines why the appropriation of employer contributions to final salary pension schemes is an employment relations issue. To connect the theoretical argument with empirical material, part three grounds the theoretical framework in a narrative that details business restructuring at BHS towards administration under the ownership of Arcadia and Retail Acquisitions. The narrative provides a further (empirical) contribution to new knowledge by revealing how lawful uses of employer pension fund contributions enable owner–investors to extract value from a business and the deferred incomes of its workers. Lastly, part four provides a discussion of the two research questions and a conclusion on the potential for the re-politicisation of pension fund contributions in the wake of the collapse of BHS and other more recent pension fund collapses such as that at Carillion. Before moving to part one, the remainder of the introduction contextualises the BHS case during a period when ‘financialisation’ dominated the management of many businesses and associated approaches to profit and surplus. A brief definition of final salary or defined benefit pension schemes and the status these schemes have in the UK follows this discussion.

## **1.1 Financialisation**

The term financialisation refers to a pattern of accumulation where profit making occurs increasingly through financial channels rather than through trade and commodity (Krippner, 2005: 181). More recently, Thompson (2013: 475) has summarised the literature on financialisation as a growth or macroeconomic regime whose source of

profits is increasingly through financial channels and financial engineering rather than production and product markets. Financialisation represents a process in which 'economic activity in general has become subject to the logic and imperatives of interest-bearing capital and corresponds to an increasing scope and prevalence of interest bearing capital in the accumulation of capital' (Fine, 2010: 99, 2014: 55). Therein, financialisation involves three processes. First, the ascendancy of shareholder value prioritises the interests of investors at the expense of other firm-level stakeholders (van der Zwan, 2014). Second, the emphasis on shareholder value legitimises a more aggressive management of corporate assets to prioritise financial objectives, for example, high stock prices and maximising the release of cash flows to investors, at the expense of other stakeholders (Thompson, 2011). Third, it popularises a range of financial techniques whereby investors extract the gains from corporate restructuring and divestment rather than reinvesting savings in the firm or sharing the gains with other stakeholders.

Non-financial businesses in general and manufacturing and service providers in particular, for example, General Electric, General Motors, BHS and Carillion, are increasingly freed from just producing goods or supplying services and began to 'act more like financial market players' (Stockhammer, 2004: 720). Therein, profits derive from ownership, debt funding, divestment and downsizing of a business rather than in investment in expanded production. Therefore, at firm level, a business may become subordinate to finance by relying upon internal financial dealings as a major source of profits (Fine, 2014). For example, the financialisation of a firm, by debt loaded onto it by its new owners or the extraction of value from its asset base by a failure to maintain firm level financial commitments, can make a firm a financial asset to its investor-owners often within a larger investment portfolio. Accordingly, incentive structures within financialised businesses align with those who own and manage the portfolio and debt owners who are the portfolio investor-managers. For investor-owner managers, the incompatibility between short-term value extraction and longer term business viability is frequently not problematic. This is so because investor business models associated with financialisation such as private equity and hedge funds or investor strategies that mimic these models frequently use divestment of a business to avoid longer term commitments. It is here that final salary pension schemes are problematic; they compete for capital with dividends, and the overall cost of a final salary scheme may be an impediment to the sale of a business in terms of merger and acquisition liquidity.

## 1.2 Defined benefit and final salary pension schemes

A defined benefit pension scheme relates a pension benefit to a member's salary in advance independent of investment returns secured by pension scheme investments. A final salary variant of defined benefit provides a pension based on the number of years of pensionable service, an accrual rate and final earnings as defined by the scheme. This is often the best three or the last three years of service. Due to the UK's ageing population, the prolonged period of low interest rates since the financial crisis and the associated low level of projected future earnings resulting from these developments most defined benefit schemes are closed to new members. However, 14,000 employers support these schemes and there are over 10 million members of such schemes with £1.5 trillion of assets (Department of Work and Pensions, 2018: 4). Although there are only a few schemes where owners make irresponsible decisions, the impact of

these on a pension scheme is considerable, and in the light of the BHS case, the pension regulator has recently specifically identified the current risks to final salary pension schemes. These risks include deliberately poor stewardship of a scheme, business owners who decide to avoid their responsibilities and those who decide to obfuscate over the requests made by the regulator and or fail to comply with these requests (The Pension Regulator, 2017, 2018).

## 2 A THEORETICAL FRAMEWORK FOR LAWFUL LOOTING

Under certain conditions, business owners may decide that they can secure a greater level of profit if they 'loot' a business to extract value in this way rather than seeking a sustainable route to growth and prosperity. The presence of certain conditions incentivise some investor-owner managers to pay themselves and associated businesses considerable rewards and if necessary default on debts and liabilities.

In a contribution that examines the savings and loans crisis in the 1980s, Akerlof and Romer (1993) develop a theory of lawful looting. Their theory centres on the presence of incentives that encourage investor-owners to go broke at society's expense whilst maximising current extractable value out of a business. This part of the article outlines Akerlof and Romer's theory and then applies it to the demise of BHS. By association, it is necessary to point out that Akerlof and Romer suggest that the presence of government guarantee schemes are likely to enable the realisation of their theory; in this case, the pension protection fund is the relevant guarantee scheme. The pension protection fund is a government brokered private levy on all final salary pension funds what Akerlof and Romer (1993) term a protection against social harm. Trustees of the pension protection fund transfer the deficit and liabilities of one pension scheme to all other solvent schemes, that is, other schemes meet these debts, which effectively privatise them to individuals (rather than the state) in other schemes. By further fleshing out their model, it is possible to establish a link between looting and moral hazard provisions. Application of this link to BHS will illustrate how guarantee schemes such as the pension protection fund can act as an incentive to loot in terms of moral hazard. However, an inappropriate use of funds that theoretically allocated to firm-level pension scheme contributions derives from the incentive structures within the broader process of financialisation; this connection creates the incentive for debt creation and the closure or collapse of such schemes. The protections provided by the UK's pension protection scheme may encourage some business owners to act recklessly, but the incentive schemes and structures associated with financialisation operate independently to these protections.

The model of Akerlof and Romer (1993) contains three components. For each of these, they provide empirical examples of looting. First, the presence of limited liability. Limited liability protects all equity holders by limiting their exposure to the whole debts of a business, but in some situations, for example, where there is a dominant shareholder, it also provides these investor-owners with the potential to exploit creditors and possibly loot the business. It is possible to fund looting through a rights issue of shares that will dilute the ownership value of all individual shareholders. This is particularly the case where the accrual of dividends to these shareholders is behind those of debenture holders or owners of voting shares in a firm. The monies provided by a rights issue frequently fund interim payments to management, dividend recapitalisations or loans to associated businesses that extract value from the business rather than using these monies for more sustainable business development.

The exploitation of creditors can occur in numerous other ways, for example, the value of a business can be boosted by an inflated net worth value created by the use of artificial accounting entries which exaggerate the value of business goodwill. Not only will this encourage creditors to feel confident about their investment in a business but it also enables investor–owners to ‘ride’ the yield curve. For example, they can invest in high yield assets such as property in high cost cities. In stable economic conditions where asset prices are rising but inflation is low, many business liabilities such as pension funds and deficits and surpluses therein appear as low yield liabilities or assets particularly if interest rates are low. In these circumstances inflated good will and apparently high yield assets owned by a business boost creditor confidence in the short to medium term.

The second component of Akerlof and Romer’s theory focuses on the presence of a significant level of debt. Debt may become significant due to a failure of a business model or following changes in business methods in a particular sector. For example, the way in which internet shopping has de-stabilised ‘bricks and mortar’ retailing significantly affect the profitability and sustainability of many high street retailers. In these situations or even in cases where a business model is not flawed, investor–owners may choose to drive a solvent firm into administration if an investor–owner knows they are unable to repay debts that have been loaded on a business. They can do so by continuing to extract money from high yield assets and investments and returning this money to investors rather than investing in the longer term sustainability of a business. Frequently referred to as ‘taking money out of a business’ this practice enables business owners to recapitalise, that is, add debt to, the balance sheet of a business by using property assets as collateral on debt. In turn, the incurred debt meets interim dividends to specific groups of investors or funds management bonuses. Appelbaum *et al.* (2013) provide empirical support for this argument, detail four cases where investor–owners acquired businesses and then extracted value from them to the extent that in three of the four cases, the businesses entered administration. In one case, they did so by selling property assets, for example, all the stores owned by a business, and using that revenue to pay interim dividends to investors. The operating businesses then leased back the stores adding a new cost to the business. The collapse of Carillion, the British multinational construction and facilities management firm in 2018 provides further empirical support for the argument. The cross-departmental parliamentary inquiry into Carillion’s collapse found that

Directors rewarded themselves and other shareholders by choosing to pay out more in dividends than the company generated in cash despite increasing borrowing ... and a growing pension deficit. [House of Commons (HC), 2018]

Carillion financed its debt by borrowing against the value of its pension scheme. Limited liability benefits shareholders where a firm borrows £10 million to pay £10 million in dividends—that is, take money out of the firm. However, the costs of any administration or bankruptcy fall on lenders and pension fund members, both those in receipt of pensions and those currently paying into any final salary scheme. The HC report also found that senior manager investor–owners at Carillion acted purely in their own self-interest and in alignment with their personal incentives to test the checks and balances on corporate conduct (HC, 2018: 86). To summarise, interest payments that a firm makes to its creditors are allowable as a deduction against earnings and liability to taxation but payments a firm makes to shareholders

are not. This encourages investor–owner managers to take advantage of limited liability provisions and take a firm private, delisting its share capital. ‘Going private’ further encourages these owners to raise finance in the form of debt rather than equity.

A third component in Akerlof and Romer’s theory of looting centres on the significant social harm that looting, administration and bankruptcy frequently creates. To make this point, they use the comparative example of how looters do so in a riot causing total losses that are far greater than the private gains they may capture for themselves and their co-looters. This behaviour is particularly prevalent where the state via its regulators provide explicit guarantees, for example, deposit insurance. Application of this component of the model enables further illustration how the regulatory framework of contemporary British capitalism allows investor–owners the opportunity to use employer contributions to firm level pension funds in a financially creative way. Investor–owners are able to do so by taking a firm and its creditors, including its employee pension scheme, private and using monies earmarked for employer contributions to a pension fund in different ways. Limited liability enables businesses to take on board significant levels of debt, where in the contemporary period terms such as dividend recapitalisations and interim dividend payments disguise debt. By association, debt enables investor–owners to ride the yield curve using property assets as collateral for debt re-capitalisations. However, ownership of property assets whilst nominally in one business is often more complicated than it appears by the use of sale and leaseback arrangements. In particular circumstances, the fusion of limited liability, disguised debt levels and business models derived from the market for corporate control can result in looting and the transfer of pension fund liabilities to the pension protection fund.

What connects the three components of Akerlof and Romer’s theory is how the potential for moral hazard provisions, derived from incentive structures associated with the process of financialisation in business level assets, enable some employers to lawfully loot a business. In economic theory, moral hazard describes those situations where the behaviour of a first party may change to the detriment of a second because of a particular decision or transaction by the first party. For example, where once they have secured house contents insurance, homeowners become more relaxed about security. Moral hazards also arise in employment relationships, for example, when managers are unable to observe all actions taken by their employees where as a result shirking may be commonplace. More pertinently, for this discussion, the Carillion case and that of BHS witness moral hazard at managerial level because dispersed minority shareholders are unable to observe the actions of smaller groups of or even individual investor–owner managers. That is, a tension between what owners want; the best return for their money and what their agents want and how both follow self-interested behaviour to secure this unfolds. The best way to solve this problem is to incentivise managers to act like owners by paying them in stock options but make them subject to the performance requirements of the market for corporate control (Jensen and Meckling, 1976). However, as the BHS case will demonstrate, a problem occurs where investor–owners are also managers and have self-determined incentive structures that have the potential to reverse the principal-agent problem and create an investor–owner moral hazard. Superficially, this position appears to derive from protections enacted by the state and its regulators; however, the incentive structures associated with financialisation make the moral hazard.

### 3 EMPLOYER PENSION FUND CONTRIBUTIONS: AN EMPLOYMENT RELATIONS ISSUE?

Whilst Akerlof and Romer (1993) describe their theory of looting at an abstracted level, other contributions to the literature connect the three components they outline to work and employment. At firm level, these include higher levels of job insecurity, increased wage inequality and the dismantling of collective representation, see, for example, Appelbaum and Batt (2014: 193). To ground these connections further, it is necessary to make clear theoretical connections to employment relations. A first connection to employment relations and the broader political economy of labour flows from the 'Friedman doctrine'. First espoused by Milton Friedman in 1962, the doctrine takes what is now termed a shareholder value approach to social responsibility (Friedman, 1962, 1970). This approach views investors, shareholders and investor-owners as economic engine rooms in the firm and the only stakeholders to whom the firm must be socially responsible. From this, the goal of profit maximisation is to return a portion of these profits to investors as a reward for the risk they took in investing in the firm.

Now embedded for over 50 years, the principle that the sole purpose of the firm is to produce profit is a core feature of liberal market economies such as those in the British and American business systems. The principle emerged in the American and then increasingly in the British economy as market-oriented actors began to seize control of firms. This first emerged in the form of mergers, then in the form of hostile takeovers and management buyouts and then through the rise of investor-owner, acquisitions backed by investor activism in hedge funds and private equity funds (Greenspan and Woodridge, 2018: 332–348; Gilligan, 2019). Therein and beyond, the use of financialised business models are now generalised techniques in the market for corporate control where the relentless search for investor value ruptures established reciprocal relations between capital and labour.

By the time of Britain's City 'Big Bang' in 1986, the growing size of the financial sector positioned the British economy centre stage in global capitalism. New financial actors such as global asset management for hedge funds, private equity firms and sovereign wealth funds now dominated the City of London. The presence of support services for these intermediaries in the city witnessed the new Labour Government from 1997 further remove regulatory obstacles to international capital movements and foreign ownership of British firms (Pendleton and Gospel, 2014: 88; Clark, 2019). The now fully embedded principle of profit maximisation and its distribution to investors legitimised the central concern of those who invest in and manage capital markets—the market for corporate control—to exert discipline on managers at firm level to maximise shareholder value (Münnich, 2016: 285). This further embedded the Friedman doctrine not only in business practice but also in government policy approaches to regulation, so-called light-touch regulation or deregulation and flexibility as legal and social norms (Mayer, 2019: 131).

The connection to employment relations is clear: financial deregulation and international integration, which re-adjusted British capital into a global form, was a pathway to the dominance of activist investor supported investor-owners and the generalisation of the financial techniques they first pioneered. This movement has contributed directly to the decline in wages as a share of national income. The wages share has fallen from over 60 per cent in the 1970s to less than 53 per cent where it has remained since 1982 (OECD, 2015; Haldane, 2015). The wage share includes wages

and non-wage benefits such as pensions and national insurance contributions that represent reproduction costs for labour where part of the broadly defined reduction in the wages share flows from the re-structuring of pension schemes. For advocates of neoliberalism, reducing the labour share is essential because wages, including employer pension contributions, are not components of aggregate demand; rather, they are costs of production. Similarly, employer pension contributions represent longer term financial commitments, which the state and employers seek to externalise to individuals as they re-commodify labour and social welfare (Jessop, 2015: 25).

Throughout the 2000s, activist business models encouraged those who owned and managed listed firms to delist them or re-domicile them and themselves as individuals to offshore territories. In many such territories, for example, Jersey, the British Virgin Islands (where several nominee companies controlled BHS) and Monaco (where Tina Green is domiciled), the absence of comparative transparency in decision making is informed by investor and shareholder value and has the potential for significant underlying effects on employment relations issues (Deakins and Adams, 2018). These strategies highlight the extent to which capital is no longer willing to make continuous reciprocal commitments to labour or even firm ownership as a sustainable going concern (Clark, 2009, 2016).

Therefore, a second connection to employment relations is that sustained restoration of profitability and associated appropriation of value from a business depends on marginalising the collective interests of labour and re-commodifying labour as abstracted precarious individual units beyond the standard employment relationship (Cox and Nilsen, 2014: 141–147; Rubery et al., 2018). In the 1990s, this was achieved by the application of monetary policy which allowed unemployment to fluctuate to retain price stability, by restricting organised labour legally and rationing welfare state expenditure (Glyn, 2006: 27–31; Sikka, 2008: 963–970). In addition to this, the privatisation of water, energy, housing, transport, telecoms infrastructure and education provision has over the past 30 years been one means by which profitability has been pumped back into what became the private sector (Mason, 2015: 278). A third connection to employment relations is that the legal assault on organised labour and its re-commodification laid the ground work for the reform of final salary pension schemes and the diffusion of new business models that strategise uses for employer pension fund contributions which take money out of the firm (Grady, 2013).

These three connections to employment relations confront workers who have paid into organisation-level or sector wide final salary pension schemes for much of their working life when the projected value of their ‘deferred income’ on retirement appears under threat or less than they expected. The reduction in the value of pension incomes may result from a re-calibration of contribution payments and membership rules where a scheme is allegedly in deficit (Universities Superannuation Scheme (USS)), is healthy (British Coal), is healthy but is driven into deficit and administration by employer decision making (MG Rover, BHS through to Carillion). So a fourth connection to employment relations centres on the deferred pay status of employee and employer contributions to final salary pension schemes (The Pensions Regulator, 2014). The connection to employment relations is therefore clear; pension fund members have already earned what is now their deferred income, which they receive as pension entitlements. This includes employer contributions that form part of workers’ deferred pay, paid by employers on behalf of labour. So the use of employer pension contributions is an employment relations issue, but what requires further clarification is how and in what ways government policy enabled the potential for this use?



### 3.1 Financialisation—an (un)intended consequence of pension scheme (de)-regulation?

Grady (2013) outlines the cumulative effects of four pieces of legislation which combine with associated policies enacted by the 1997 Labour Government that enable investor–owners to use monies provisionally allocated to employer contributions to final salary pension schemes to take money out of a firm. First, the Conservative Government’s 1986 Finance Act imposed a 5 per cent cap on the value of assets over liabilities in defined benefit pension schemes where any surplus greater than 5 per cent became subject to significant taxation liability. Second, the 1995 Pensions Act required a sponsoring employer to keep a pension scheme solvent, that is, make-up back payments for pension contribution holidays. Here, employers could effectively over pay their contributions to pay down their contribution arrears or pledge other assets such as property as collateral. Third, under the Pensions Act 2004 and the 2005 financial reporting stand 17 a parent firm balance sheet must clearly account for and report on pension fund assets and liabilities. The 2004 Act introduced a statutory funding objective which requires all schemes to be fully funded to 100 per cent and where this is not the case an employer must devise a recovery plan and report on this every three years. Pension fund trustees must encourage employers to increase their contributions to a fund if it is in deficit. That is, make-up for contribution holidays or at least desist from continuing holidays whilst a scheme is heavily in deficit, but the legislation fell short of making this an enforceable statutory requirement on an employer. The 2004 Act also created The Pensions Regulator, which came into operation in 2005 as a non-departmental public body accountable to parliament under the auspices of the Department of Work and Pensions. Lastly, measures enacted by the 1997 Labour Government budget abolished dividend tax credits for pension funds. Pension funds were able to claim these credits in respect of dividends, which they paid to firms. The logic of the Chancellor, Gordon Brown, was that ‘exempt’ investors had an incentive to persuade firms to pay dividends—extract value—rather than invest in the business. The abolition of these credits posed few challenges at the time of their introduction as the sustained rise in share prices that preceded the dot.com crisis in 2000 enabled pension funds to absorb the losses.

Individually, the design of each measure aimed to increase and further assure the security of pension scheme contributions made by workers and to transmit these into secure pension payments. In contradistinction to this, the measures had unintended consequences and meshed with the motives and instruments of financialisation and financialised investor strategies causing many sponsoring employers to rethink implicit contracts behind their pension contributions to worker schemes. The 5 per cent cap encouraged firms to match pension fund assets to liabilities, a move which guaranteed future fund deficits as longevity projections suggested that scheme members would live longer than previously thought. This potential liability encouraged owners and investors to manage the cap which they did so by taking employer contribution holidays—taking money out of a business. Employer contribution holidays led to fund deficits, a development that encouraged employers to require pension scheme members to work longer to receive previously agreed payouts and close schemes to new members. Simultaneously, the motives and instruments of activist investors and investor–owners led to the financialisation and associated securitisation of employer pension contributions and the use of pension scheme funds as collateral for debt loading. The term dividend recapitalisations that in turn became central to short-term investor–owner strategies disguised these developments. The use of monies

in this way re-made some firms as mineable assets rather than sustainable going concerns. The first high-profile example of this strategy was the manner in which the 'Phoenix 4' managed MG Rover and its subsequent collapse into administration (Bailey et al., 2010: 375). Just after the collapse of MG Rover, a National Audit Office report found that in March 2005, its pension schemes had substantial shortfalls of up to 50 per cent. Further, in the event of a collapse, this deficit would require significantly lower pension payouts than scheme members anticipated on retirement. The Phoenix 4 who had made no payments into the schemes knew this and that the government would extend a one-week loan to the firm to enable it to continue until the new pension protection fund became operational in April 2005. A more recent example is the collapse of Carillion (HC, 2018). At both MG Rover and Carillion, investor-owners diverted employer pension fund contributions (i.e. declined to make payments to the pension fund) to other uses such as dividend recapitalisations or interim dividend payments to themselves. The next part of the article on BHS shows how financial and organisational manipulation returns these revenue streams to investors, senior management teams or associated consultants via the charges they levy on a firm.

#### **4 BRITISH HOME STORES UNDER GREEN AND RETAIL ACQUISITIONS: A POUND STORE STORY OR A £363 MILLION POUND STORE STORY?**

This part of the article connects the theoretical framework derived from Akerlof and Romer, and its connection to contemporary financialisation to a narrative on the acquisition and then sale of BHS by the Arcadia group. In addition, micro level insights and macro level insights provide further development of the Akerlof and Romer framework. The former focus the effects of looting on employees, whereas the latter focus on the manner in which looting 'appears lawful' because of the frailties of the regulatory framework. To summarise, investor-owners are able to extract value for themselves by running a business into the ground by taking advantage of the principle of limited liability and use of debt. Creative uses of limited liability and debt underpin the potential for significant social harm far greater than the private benefits that accrue to business owners. The narrative develops this framework and shows how limited liability enables the application of sophisticated financialised business models and related forms of debt funding to disguise debt levels. The social harms that potentially flow from these disguises centre on pension payment write-downs or wage theft suffered by workers because there is a disconnection between these disguises and investor-owner actions. This is so because the trustees of the pension protection fund actually make the decisions. The narrative draws on primary sources from the HC (2018, 2016), the pension regulator (2014, 2017), the National Audit Office (2018), BHS annual reports (2013, 2014) and Parliament live TV (2016). The narrative also draws on insights provided by an authoritative narrative on Phillip Green and the collapse of the high street (Shah, 2018).

##### **4.1 British Home Stores under Phillip Green—limited liability**

British Home Stores (BHS) was bought by Phillip Green for £200 million in May 2000 and immediately sold to Taveta number two investments, an offshore nominee holding vehicle, for the same amount of money in a transaction which was 100 per

cent leveraged over an eight-year deal. That is, Taveta that was majority owned by members of the Green family put no money into the deal. Over the next four years until 2004, the BHS group paid £423 million in dividends and leaseback deals for property to Arcadia and Taveta; £307 million of this went directly to the Green family (HC, 2016: 5). Ten years later in 2014, BHS was in a financially precarious position and effectively kept in business by loans from the Green family totalling £250 million.

Green made a strategic choice to appropriate considerable value from BHS in its earlier profitable years and made no attempt to increase investment in the firm to sustain its competitive edge, for example, sell BHS and Topshop products on platforms such as ASOS (as seen on screen). More specifically, Taveta number two investment was a 100 per cent leveraged offshore investment vehicle created specifically to reduce taxation and transparency liability, which combined with another offshore firm—Carmen, owned by the Green family significantly reduced taxation liabilities on its revenues from leases on BHS properties. For balance, the Bank of England's post crisis policy of quantitative easing negatively affected the valuation of all final salary pension schemes. The policy centred on the creation of large numbers of government bonds or gilts. The problem for pension funds is that gilt yields measure the value of a fund, the lower the yield—significantly affected by quantitative easing—the higher the liabilities. A creative use of limited liability by delisting in combination with these structural developments enabled an equally sophisticated use of debt by management at BHS. The latter took money out of the firm funded by monies nominally allocated to employer pension fund contributions (Shah, 2018: 150).

#### **4.2 British Home Stores under Phillip Green—debt**

Arcadia via Taveta and Carmen extracted and appropriating value from BHS by loading the business with debt. Instruments, which facilitated this strategy included sale and leaseback arrangements, securitisation of firm level assets and off shoring of holding and nominee companies to reduce transparency. BHS's holding and nominee companies were under the control of trusts on behalf of individual owners, many of whom whose domicile was in low or zero income taxation territories (Sikka, 2018: 89–93). More significantly though, and without much scrutiny, under Green's leadership as an employer, BHS declined to make the necessary employer pension contributions to retain the sustainability of the pension fund. Instead of this, he took monies out of the firm to load it with debt. On acquisition, the two BHS pension funds had 20,000 members and operated with a £43 million surplus. By 2009, the deficit on the two pension schemes was £166 million and as the deliberations in the Department of Work and Pensions inquiry into the collapse of the BHS reported Green sought to avoid these payments (HC, 2016, paragraph 25: 12). Moreover, some of the monies, which should have gone into the pension schemes, went into dividend payments, management charges, sale and leaseback payments and associated charges, inter firm loans and use of BHS shares as collateral for loans to fund company purchases. The pension regulator asked for information on what charges Arcadia was levying on BHS, but Green and his managerial colleagues declined to provide this information (HC, 2016: 16). The pension scheme deficit prevented the sale of BHS to an appropriate and credible buyer, for example, Sports Direct declined to buy the firm for precisely these reasons. By 2012, the BHS pension scheme deficit was £233 million, and Green began seeking a buyer for the business. The Pensions Regulator calculated a deficit recovery plan for BHS stating that it would take 12.5 years to fully fund the

scheme if appropriate employer contributions were made, and by 2013, this had grown to 23 years nearly three times the recovery plan length for all schemes in deficit which was eight years (HC, 2016, paragraph 26: 13).

### **4.3 British Home Stores under Phillip Green—the potential for social harm**

Throughout 2013 and 2014, Arcadia sought to re-structure the BHS pension scheme, but the pension regulator refused to sign-off the re-structuring plan termed project Thor. Project Thor proposed significantly reducing the value of pension income for shop floor workers. This was particularly the case for any BHS pensioner whose pension income was to be greater than £35,000. This is the cap number where write-downs begin on transfer of a scheme to the pension protection fund. The pension regulator took the view that project Thor contained serious moral hazard implications; essentially, if the project failed and or BHS went into administration, BHS pension liabilities would be transferred to the pension protection fund which Green and his colleagues knew to be the case. Accordingly, they had no incentive to make the re-structuring plan work; this was the position taken by the pensions' regulator (HC, 2016, paragraph 31: 14). However, by selling BHS as a going concern, Green and his colleagues thought they had absolved themselves of any liability. The Department of Work and Pensions identified the potential for moral hazard when the pension protection fund was unveiled in 2004 similarly BHS pension fund trustees did so in 2005. However, the pension regulator and the pension protection fund failed to act decisively in this case where it was common knowledge that a financialised moral hazard was unfolding which Green sidestepped by selling BHS as a going concern (HC, 2018: 10; Shah, 2018: 7, 151, 160).

### **4.4 Retail Acquisitions—limited liability, debt and social harm**

In January 2015, Green terminated the discussion of project Thor blaming the regulator for continuing problems with the BHS pension schemes and after several abortive attempts, including the one with Sports Direct Retail Acquisitions bought BHS for £1. Arcadia and Phillip Green sold the business as a going concern, which had financial support from the Taveta investment group, and as the 2013 and 2014 BHS annual reports outline was allegedly capable of trading without threat of liquidation for 12 months (BHS, 2013, 2014). To establish credibility, Retail Acquisitions had to provide £35 million of equity to secure working capital. The leadership of Retail Acquisitions attempted to do so by negotiating a deal with Farallon capital management, an American investment firm. On the basis that Retail Acquisitions had both the equity and the working capital, the sale from Arcadia to Retail Acquisitions went ahead because the pension regulator had no power to stop the sale of BHS as a going concern (HC, 2016: 55–56). In reality, Retail Acquisitions had neither equity nor working capital. Chappell alleged that the £35 million was available from the sale of the BHS headquarters building in Marylebone, central London, but this failed to transpire (Parliament live TV 1, 2016). Rather than a firm offer of funding Farallon Capital issued only a non-binding term-sheet offer to Retail Acquisitions setting out the details of a possible loan that was subject to satisfactory resolution of BHS pension liabilities with the pension regulator, this too failed to transpire (Parliament live TV 1, 2016). In fact, Chappell ignored this term in the proposed deal. In any event, the funding deal was in fact three £40 million loans each of which was payable after the repayment of the previous loan. The only working capital that Retail Acquisitions

was able to secure was a £25 million loan facility from Green who via Arcadia and Taveta investments remained BHS's biggest creditor. Despite the failure to secure funding, Retail Acquisitions appropriated £7 million on its first day of ownership to pay advisers, its board, associated salary costs and transaction management fees. Moreover, Retail Acquisitions removed all profitable assets from BHS transferring these to its separate ownership and appropriated £11 million in fees and salary costs in its 13-month ownership of BHS. Retail Acquisitions assumed full responsibility for the BHS pension scheme deficit but made no payments into the scheme, and by April 2015, when BHS was wound up by Her Majesty's Revenues and Customs, the deficit stood at £571 million. The 20,000 BHS employees who were members of the schemes and former employees who received payment from the schemes faced an uncertain future. On transfer of the BHS pension scheme, liabilities to the pension protection fund its trustees proposed write-downs on pension payouts of up to 31 per cent where the average across the BHS schemes was 25 per cent (HC, 2016: 31–35).

There was a furious media reaction with the Daily Mail ('Sir shifty') and the Independent ('what's the real story') newspapers leading the charge of personal abuse and vilification against Green and his business methods. The resulting Department of Work and Pension's inquiry was more furious still with several of its parliamentary sessions witnessing acrimonious exchanges between its chair, Frank Field MP and witnesses (Parliament live TV 2, 2016). More intensely, still, Green threatened to sue Field for defamation unless he withdrew remarks made both within and beyond parliamentary privilege. In summary branded a crook and a spiv, Green assumed the role of a Ronald 'Tiny' Rowland unacceptable face of capitalism and much more. Field demanded that Green return the monies that should have gone into employer pension fund contributions which had been taken out of the firm and distributed to investor-owners. Green stated that he had no responsibility for these in a personal capacity that was the case. However, after due consideration on behalf of BHS's investor-owners in May 2016, Sir Phillip Green agreed to pay £363 million to the two insolvent BHS pension funds. The proposal saw staff receive on average 80 per cent of full benefits. The 9,000 scheme members with pension pots of less than £18,000 were offered cash settlements, and the other 10,000 members receive top-ups (to between 80 and 88 per cent of original entitlements) in a new scheme.

The acrimony between Field and Green continued in 2018 when Green's investment vehicle Taveta sought an injunction to prevent full publication of a Financial Reporting Council report into the collapse of BHS that also implicated Price Waterhouse Coopers (PWC), BHS's auditors, fining them £6.5 million for the shortcomings in BHS audits under Green and Chappell (Financial Reporting Authority, 2018). Field said he would publish the report under parliamentary privilege if the Taveta injunction succeeded, which in the end it do not (Times, 23 June 2018).

## **5 DISCUSSION AND CONCLUSION THE RE-POLITICISATION OF PENSIONS?**

Recent contributions to the employment relations literature examine the impact of state-led austerity (Heery *et al.*, 2018), welfare retrenchment (Yates, 2017), the potential for deepening inequalities at work (Wolfson, 2018) and subsequent increases in precarious work and precarious employment status (Vershina *et al.*, 2018). Pensions and appropriation of value from pension schemes have been largely lacking from this analysis, but as demonstrated in this article, investor-owner use of employer pension

fund contributions to take money out of a firm and borrow against a pension scheme represents significant historical wage theft. This does occur in only a small minority of cases (Department of Work and Pensions, 2018: 12; Pensions Regulator, 2017: 11, 2018: 4). However, as in the BHS example, these cases frequently reveal employers deliberately seeking to avoid responsibility and failing to comply with the requests from the pension's regulator. More significantly, at BHS, the deliberate actions of owners knowingly failed to strike a balance between business need and the reduction of a pension scheme deficit.

The research questions posed by this study reconnect work and political economy by further developing the Akerlof and Romer 'privatised looting' framework for private gain at public expense. The study does so by examining the deliberate appropriation and financialisation of employer contributions to the BHS final salary pension schemes by its investor-owners. In terms of the first research question on how BHS's investor-owner managers were able to do this, the article makes three contributions to new knowledge by further developing the Akerlof and Romer (1993) framework empirically. First, on limited liability, it is the case that any type of firm can take advantage of limited liability protections by diverting or securitising employer pension fund contributions or entering administration. However, as this study illustrates in some cases, managers who are also owner-investors strategise 'taking money out of a business' to re-distribute it to investor-owners. The recent Department of Work and Pensions inquiry into the collapse of BHS also makes this point. Therefore, a second contribution to new knowledge flows directly on from the collapse of BHS which demonstrates that in this case like many others, pension fund deficits and corporate debt piles are not the result of a 'pension crisis'. Rather, much of the debt pile and fund deficits result from the demands of investor value, its antecedence in the Friedman doctrine which has become normalised as a firm level objective in profit maximisation above all others and its contemporary manifestation in the financialisation of firm level assets. The pursuit of investor value and returns to investors demonstrates our second development of Akerlof and Romer whereby debt levels either within or beyond publicly accountable limited liability can be disguised and financialised by sophisticated accounting terms which under play or ignore the debt component. A third contribution to new knowledge is the dissection of Green's voluntarily repayment of employer contributions to the pension scheme. The offer to make these payments represents social harm reputational damage limitation associated with and flowing from inappropriate use of pension fund contributions that diverted monies to investors and owners, that is, blatant historical wage theft or looting.

So turning to the second research question, this is why the permissive diversion of employer contributions to a pension scheme and money owed to these schemes are an employment relations issue. Historical wage theft is a significant social harm; its effects on those concerned are of much greater significance to them as individual workers and society collectively than the additional private gain secured by the Green family. So why does lawful diversion of employer pension fund contributions remain an employment relations issue? Managers acting on behalf of capital can appropriate, sell or take contribution holidays both before and after pension schemes are re-structured—effectively going back in time to extract the previously earned-deferred income of labour. As this study shows the diversion of employer contributions to firm level final salary pension schemes represents a strategic choice for an owner to either appropriate value from a business and

return it to investors and new owners in interim dividends and payments or invest the money in developing the business.

A strength of the Department of Work and Pension's report on BHS was the exposure of these types of business practices and the impact of them on labour. However, the report has substantial weaknesses. For example, it remains lawful to sell a firm as a going concern despite the pension regulator having moral hazard concerns on any proposed re-structure of a pension scheme by financialised methods that take money out of a business (HC, 2016, paragraph 44: 19). That is, at BHS, Green knew that the pension regulator would find what came out in the Department of Work and Pensions inquiry and subsequently Financial Reporting Council report but sought to sell out to Retail Acquisitions to absolve his investment vehicles of any legal responsibility. Accordingly, in this voluntary arrangement, BHS pensioners still lose at least 12 per cent of their deferred income. That is, this deal which is better than that proposed by the pension protection fund still costs BHS workers and former workers 12 per cent of their (deferred) income, the spoils of which other stakeholders have been able to appropriate.

The acquisition of BHS by Sir Phillip Green and the Taveta Investment Group followed by its sale to Retail Acquisitions illustrates multiple frailties in the contemporary regulation of British capitalism and within this the now embedded pattern of financialisation associated with its workings. In particular, these owners used permissive governance in private investment vehicles that have resulted in significant implications for the regulation of defined benefit pension schemes. The looting then collapse of BHS, particularly the money owed by its owners to the pension scheme, is not just a case of greedy investor-owners, incompetent regulators and collusive auditors conspiring to oversee the collapse of a major business. Instead, the BHS story is one of fundamental defects in the incentive arrangements that drive investor-owners to raise debt, financialise it and borrow against pension fund contributions credits in order to pay dividends, fees investor-owners and associated investment vehicles.

## References

- Akerlof, G. and Romer, P. (1993), 'Looting: the economic underworld of bankruptcy for profit' *Brookings Papers on Economic Activity* number 2.
- Appelbaum, E. and R. Batt (2014), *Private Equity at Work—When Wall Street Managers Main Street* (New York, Russell Sage).
- Appelbaum, E., R. Batt and I. Clark (2013), 'Implications for employment relations research: evidence from breach of trust and implicit contracts in private equity buy-outs' *British Journal of Industrial Relations*, **51**, 3, 498–518.
- Bailey, D., I. Clark and A. De Ruyter (2010), 'Private equity and the flight of the Phoenix 4—the collapse of MG Rover', *Cambridge Journal of Regions, Economy and Society*, **3**, 3, 1–15.
- British Home Stores Annual Report (2013), BHS, London.
- British Home Stores Annual Report (2014), BHS, London.
- Clark, I. (2009), 'Owners not managers: disconnecting managerial capitalism? Understanding the take private equity business model', *Work, Employment and Society*, **23**, 4, 359–378.
- Clark, I. (2016), 'Financialization, ownership and employee interests under private equity at the AA, part two', *Industrial Relations Journal*, **47**, 3, 328–353.
- Clark, I. (2019), 'The political economy of finance-led capitalism: connecting financialization, private equity and employment outcomes', in M. Wright, K. Amess, N. Bacon and D. Siegel (eds), *The Routledge Companion to Management Buyouts—Routledge Companions in Business, Management and Accounting* (London, Routledge).

- Cox, L. and A. Nilsen (2014), *We Make Our Own History—Marxism and Social Movement in the Twilight of Neo-Liberalism* (London, Verso).
- Deakins, S. and Z. Adams (2018), 'Corporate governance and employment relations', in J. Gordon and R. Wolf-Georg (eds), *The Oxford Handbook of Corporate Law and Governance* (Oxford, Oxford University Press).
- Department of Work and Pensions (2018), *Protecting Defined Benefit Pension Schemes* (London, HMSO) Cmnd. 9591.
- Financial Reporting Authority (2018), <https://www.frc.org.uk/getattachment/433f3df8-d0ef-456b-8a26-aeb55f65489b/BHS-Particulars-of-Fact-and-Acts-of-Misconduct.pdf>
- Fine, B. (2010), 'Locating financialisation', *Historical Materialism*, **18**, 97–116.
- Fine, B. (2014), 'Financialisation from a Marxist perspective', *International Journal of Political Economy*, **42**, 4, 47–66.
- Friedman, M. (1962), 'The social responsibility of business is to increase its profits' *The New York Times Magazine* September 13<sup>th</sup>
- Friedman, M. (1970), *Capitalism and Freedom* (Chicago, University of Chicago press).
- Gilligan, J. (2019), 'A brief history of private equity' in Wright et al. op. cit.
- Glyn, A. (2006), *Capitalism Unleashed* (Oxford, Oxford University Press).
- Grady, J. (2013), 'Trade unions and the pensions crisis: defending member interests in a neoliberal world', *Employee Relations*, **35**, 3, 294–308.
- Greenspan, A. and A. Woodridge (2018), *Capitalism in America—A history* (London, Penguin press).
- Haldane, A., (2015), Labour's share. Speech to Trade Union Congress, 12 November. Available at: <https://www.bis.org/review/r151203a.pdf>
- Heery, E., D. Hann and D. Nash (2018), 'Trade unions and the real living wage: survey evidence from the UK', *Industrial Relations Journal*, first published on-line September 2018, **49**, 4, 319–335.
- House of Commons (2016), BHS: First Report of the Work and Pensions Committee and the Fourth Report of the Business, Innovation and Skills Committee Session, 2016-2017, House of Commons, Work and Pensions, Business, Innovations and Skills Committee, HC54. July 25<sup>th</sup> London.
- House of Commons (2018), Carillion Business, Energy and Industrial Strategy and the Work and Pensions Committees. HC 769 May 9<sup>th</sup> 2018 London.
- Jensen, M., and Meckling, W. (1976), 'Theory of the firm: Managerial behavior, agency costs and ownership structure'. *Journal of Financial Economics*, **3**, 4, October 1976, 305–360.
- Jessop, B. (2015), 'Variegated capitalism and the political economy of austerity', in R. Westra, D. Badeen and R. Albritton (eds), *The Future of Capitalism after the Crisis—The Varieties of Capitalism Debate in the Age of Austerity* (London, Routledge frontiers of political economy, Routledge).
- Krippner, G. (2005), 'The financialization of the American economy', *Socio-Economic Review*, **3**, 173–208.
- Mason, P. (2015), *Post Capitalism—A Guide to Our Future* (London, Allen Lane).
- Mayer, C. (2019), *Prosperity—Better Business makes the Greater Good* (Oxford, Oxford University Press).
- Münnich, S. (2016), 'Re-adjusting imagined markets: morality and institutional resilience in the German and British bank bailout of 2008', *Socio-Economic Review*, **14**, 2, 283–307.
- National Audit Office (2018), *Investigation into the government's handling of the collapse of Carillion*, report by the comptroller and auditor general—the cabinet office. National Audit Office, London.
- OECD (2015), 'The labour share in G20 economies', Employment Working Group, February, OECD, Paris.
- Parliament live TV1 (June 7<sup>th</sup> 2016), accessed February 13<sup>th</sup> 2018 see 12 minutes and 38 seconds + various and Chappell. <https://www.parliament.uk/business/committees/>



- committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/bhs-pension-fund-joint-evidence4-16-17/
- Parliament live TV 2 (June 15<sup>th</sup> 2016), accessed February 14<sup>th</sup> 2018. <https://www.parliamentlive.tv/Event/Index/e81170bd-19b1-4a53-a96b-874b0cdc2f7f>
- Pendleton, A. and H. Gospel (2014), 'Financialization, new investment funds and weakened labour: the case of the UK', in H. Gospel, A. Pendleton and S. Vitols (eds), *Financialization, New Investment Funds and Labour* (Oxford, Oxford University Press).
- Pensions Regulator (2014), *Regulating defined benefit pension schemes*. Consultation Document, TPR, London.
- Pensions Regulator (2017), *Protecting workplace pensions TPR review of the way we work*. TPR, London.
- The Pensions Regulator (2018), *Making workplace pensions work TPR Future—our new approach*. TPR London.
- Rubery, J., D. Grimshaw, A. Keizer and M. Johnson (2018), 'Challenges and contradictions in the "normalizing" of precarious work', *Work, Employment and Society*, **32**, 3, 509–527.
- Shah, O. (2018), *Damaged Goods: The inside story of Sir Phillip Green, the collapse of BHS and the death of the high street* (London, Portfolio Penguin).
- Sikka, P. (2008), 'Corporate governance: what about the workers?' *Accounting, Auditing & Accountability Journal*, **21**, 7, 955–977.
- Sikka, P. (2018), 'Corporate governance and family-owned businesses', in C. Driver and G. Thompson (eds), *Corporate Governance in Contention* (Oxford, Oxford University Press).
- Stockhammer, E. (2004), 'Financialisation and the slowdown of accumulation', *Cambridge Journal of Economics*, **28**, 5, 719–741.
- Times newspaper (2018), 'MP threatens to publish full BHS report' *The Times* June 23<sup>rd</sup> page 47.
- Thompson, P. (2011), 'The trouble with HRM', *Human Resource Management Journal*, **21**, 4, 355–367.
- Thompson, P. (2013), 'Financialization and the workplace: extending and applying the disconnected capitalism thesis', *Work, Employment and Society*, **27**, 3, 472–488.
- van der Zwan, N. (2014), 'State of the art'. Making sense of financialization', *Socio-Economic Review*, **12**, 99–129.
- Vershina, N., P. Rodgers, M. Ram, N. Thodorakopoulos and Y. Rodionova (2018), 'False self-employment: the case of Ukrainian migrants in London's construction sector', *Industrial Relations Journal*, **49**, 1, 2–18.
- Wolfson, C. (2018), 'The "Singapore scenario": the uncertain prospects for labour standards in post-brexit Britain', *Industrial Relations Journal*, **48**, 5-6, 384–402.
- Yates, E. (2017), 'Reproducing low-wage labour: capital accumulation, labour markets and young workers', *Industrial Relations Journal*, **48**, 5-6, 463–481.