House of Commons

Treasury Committee

Oral evidence: Appointment of Tim Parkes as Chair of the Regulatory Decisions Committee, HC 735

Wednesday 13 January 2016

Ordered by the House of Commons to be published on 13 January 2016

Watch the meeting

Members present: Andrew Tyrie (Chair); Mr Steve Baker, Mark Garnier, Stephen Hammond, John Mann, Chris Philp, Mr Jacob Rees-Mogg

Questions 1-36

Examination of Witness

Witness: **Tim Parkes**, Chairman of the Financial Conduct Authority's Regulatory Decisions Committee, gave evidence.

Q1 Chair: Thank you very much for coming to see us this afternoon for this hearing. We just have a few questions we would like to put to you, before we form a view and publish a short report. As I am sure you know, that is the system. Thank you for coming forward for consideration for this job.

The Parliamentary Commission on Banking Standards, which as you know I chaired and of which Mark was a member, recommended that the RDC should be chaired by someone with senior judicial experience. Do you think you are going to be able to fill the shoes of that recommendation?

Tim Parkes: Yes, I do.

Q2 Chair: Can you explain why?

Tim Parkes: The experience that I can bring from many years of private practice, as a lawyer whose job has been to look at and sift evidence, come to views and make recommendations, will allow me to, first of all, engage in what I call the nuts and bolts of the job. In terms of chairing the RDC, if your question is directed at the ability to promote the independence and robustness that a committee of that nature requires—

Chair: It is.

Tim Parkes: —then I have no hesitation in saying that I will be able to do that.

Q3 Chair: Why do you think it does require independence?

Tim Parkes: The way in which the RDC is set up is a function of the view expressed in the Strachan report of 2005 that it seemed to be too close to the enforcement section of the Authority. The separation that was introduced at that stage and the separate support that the RDC receives from its own secretariat—together with the way in which it now follows a particular type of procedure, dealing with subjects—allow for someone who is subject to a disciplinary process that gets to the RDC to recognise and see, in practice, that there is an objectivity being brought to the process at that stage, which will mean that any decision made by the RDC will be taken on its merits and not be one that is just rubber-stamping what the enforcement section may have decided.

Chair: I think that is what I was half-hoping to hear, but I will have to wait for the transcript to be absolutely sure, because it was such a perfectly formed sentence with a lot of sub-clauses. I think I have a rough gist.

Q4 Mark Garnier: Carrying on with this, given the fact that the banking commission made it pretty clear that it felt that the chairman should be a judiciary type, do you not think that this slightly undermines your appointment, in the fact that the FCA has gone against what we recommended?

Tim Parkes: I do not think so. The proof of the pudding will obviously be in the eating, so you will need to see how I get on in the job.

Q5 Mark Garnier: None the less, you are starting off slightly on the back foot.

Tim Parkes: I do not see it like that, and I do not see it like that because the committee clearly is an administrative decision-maker, not a judicial decision-maker. The judicial part of the process really occurs at the upper tribunal stage, where a judge does preside. What is required for the RDC is somebody who can bring to bear, as well as the attitude of mind, which is one of robustness and independence, skills that are to do with getting a committee to reach a fair and objective decision, based on the evidence in front of it.

Q6 Mark Garnier: Do you think there is a disadvantage that you are a solicitor, as opposed to a judge, taking over this role?

Tim Parkes: No, I do not, and I say that because, having been in practice as a litigator for very many years, I have spent a lot of my time in and out of court, in front of judges. Although I have not sat as a judge, I have a pretty clear knowledge of the way in which the judicial mind works. In that sense, I do not feel that I should be seen as being at a disadvantage.

Q7 Mark Garnier: Fair enough. Can I just turn to the fact that you are also the chairman of the Payment Systems Regulator's Enforcement Decisions Committee? You said you are going to spend 75% on the RDC and 25% on the EDC. Do you see the two of them creating a full-time post, as it were? Is this 75% and 25% of a five-day week?

Tim Parkes: At the moment, it is 75% and 25% of the time that I devote, which is a three-day-a-week job. Will that be enough? The answer is—

Q8 Mark Garnier: Sorry, just to be clear, you are allocating three days a week to do these two roles.

Tim Parkes: Correct; that is right.

Mark Garnier: "Will that be enough?" is where you were going.

Tim Parkes: Truthfully, it is very early to say at the moment. To start with, it almost certainly will be, because the Payment Systems Regulator has only been up and running since the beginning of April of last year. For there to be matters that will need to come before the EDC, it is likely that there will be a time lag, frankly, between the publication of directions or issues relating to the fee interchange rules, and so on and so forth. I cannot see that there is likely to be an issue in terms of timing for that role, in the immediate future. In two or three years' time, it may need looking at.

Q9 Mark Garnier: You are also the trustee of a charity and you have talked about adding maybe one or two other not-for-profit roles. That is very altruistic of you but, again, do you think you would have the time and would you change that in the future, should you find the EDC and the RDC taking up more of your time?

Tim Parkes: I am completely clear that the main priority for me is to fulfil the role that I have taken on for the FCA. Everything else works around that.

Q10 Mark Garnier: Just one final question: in your questionnaire, you said that, should the need arise in the future, a separate EDC chair may be appointed. In what circumstances do you think that might be?

Tim Parkes: Volume of work.

Q11 Stephen Hammond: Clearly, if one looks at the composition of the board at the moment, there is a great deal of experience there or expertise in certain areas. Do you think there are any areas of expertise that are lacking on the board and need to be boosted? Are you happy with the balance of expertise or do you see areas that, in your period of tenure, you would wish to improve?

Tim Parkes: It is early days for me to be able to answer that question with any confidence. You have, in the membership of the committee—in fact, the membership of both committees—a mixture of people who come with backgrounds in financial services and some who do not. You have lawyers; you have accountants. You have, with Dame Elizabeth Neville, a very senior former police officer.

Two things have struck me. I would like very much to be able to give further consideration to this over time. The first is that, with the authority having taken on responsibility for consumer credit, I am told that there are quite a few cases that will make their way through to the RDC in that area. I am not completely confident that we necessarily have enough expertise from that sector of financial services. That is the first thing. The second thing is that it would be nice if we could get a bit more representation from somebody with direct experience of consumer issues. We are light on that.

Q12 Stephen Hammond: That was interesting, thank you. One of the key points that was picked up by the banking commission was the balance between expertise in financial services and lay members. What you did not mention, and I just wonder, is whether you have any view on how lay members could or could not contribute to the board. Do you see a need for more? You will obviously have read the Parliamentary Commission on Banking Standards's view of the need for lay members. I just wondered if you could fill the Committee in with your views on that matter.

Tim Parkes: Again, I really need a bit more experience on the ground of seeing how the panels work and where lay membership would help. At the moment, the sense is that individual members will bring obviously relevant expertise to the table, when you have your panel of three or five people. When you put a panel together, you would tend to look at a number of things, but one is the expertise of the individuals and how relevant that would be to a particular case.

If you are looking for lay representation, in my mind, that equates a little more to people who would more directly associate themselves with the interests of consumers. That comes back to what I said before. I think that would be helpful. If by "lay" we mean somebody like that, then I would certainly like to look at it.

Q13 Stephen Hammond: Given your last two answers, have you yet had a chance or is it too early for you to have formed a view on the difficulty you are likely to have in attracting people on to the board and the level of support you get from the FCA? What level of support do you think you need and are you getting it?

Tim Parkes: I am afraid it probably is a bit too early, and I have not been involved in the latest round of recruitment. Indeed, I was part of the latest round of recruitment, so I was not involved in the recruitment of the most recent members into the committee. I cannot in truth really answer that.

In terms of support, everything I have heard to date would suggest that the FCA is completely supportive of trying to make sure that we have the right mix of members. Certainly, if I feel that there is any lack of support in that direction, I shall be quite loud in making representations to the board about that.

Q14 Stephen Hammond: I am sure that we will see you again, but perhaps it might be helpful for the Committee if maybe, after three months, you could inform us of how you find some of these questions. I recognise it is early to ask, but it would be useful for us to have some insight, particularly on your reflection, because of what the commission said, on the balance between lay members. That is important for us to keep a watchful eye on.

Tim Parkes: I would be very happy to do that.

Chair: It would be very interesting if you could, as soon as you feel reasonably able and have got your feet under the desk, give us a view on how you can entrench demonstrable independence. The expertise point is equally important, both going together. An early report of that in writing to the Committee would be of value. Thank you very much for agreeing.

Q15 Mr Rees-Mogg: May I begin by making reference to my declaration of interests, because I am the chairman of Somerset Capital Management, which is regulated by the FCA, so there is some connection. One of the things that I am interested in is that 40% of cases that come to the RDC are then referred up to the upper tribunal. Do you think that that is about the right proportion or is that quite high?

Tim Parkes: Again, I am really doing this from publicly available information, which seems to suggest that around 40% of decisions are taken forward to the upper tribunal. As I read the Treasury review, it does not suggest that the industry has a problem with that sort of level. The other thing that I have noted is that it seems that, on the whole, on substantive issues, the upper tribunal comes to the same decision as the RDC—not on everything but mainly on substantive things. Again, it is really just an observation on the information that I have read. Does it seem too high or too low? I am not sure.

Q16 Mr Rees-Mogg: In terms of your general role—I know that there is a question of independence from the FCA, and it ties in with all of that—where do you see yourself? Do you see yourself as part of an enforcement system running down from the FCA or are you there to ensure justice, in a broad sense?

Tim Parkes: Structurally, the RDC is there at the end of a process, the immediately prior bit of which lies within enforcement. The RDC is making administrative decisions on behalf of the FCA. In that sense, it is not a separate body, but it is absolutely clear that it is there to ensure that justice is done based upon the evidence brought forward to it and the recommendations made to it by enforcement. I would expect that my committee or the panels that deal with cases will properly review the evidence brought to them, decide whether or not they think it is sufficient for the conclusions or recommendations that enforcement has made and that the penalties are appropriate. In that sense, yes, it is doing justice, but not quite like the upper tribunal, because we do not have powers to summon witnesses or hear cross-examination of evidence, for example.

Mr Rees-Mogg: I will just conclude by saying that it is very nice to see you in front of us. I hope I never, in my professional capacity, come in front of you.

Tim Parkes: I am not sure that I can say anything in response to that.

Q17 Chair: You do not need to. Giving us confidence that that work is done will also help the industry, particularly the smaller firms, feel relatively protected from what they may feel—whether it is the case or not is another matter—to be, if not a conspiracy, a very close relationship between the FCA and the enforcement arm in their decisions. That is a major problem for the way we are running regulation at the minute, and of course it is why Strachan made the recommendation he did and it is why the banking commission recommended statutory autonomy. Did you agree with everything I said there? Of course, it should have been a question and was not.

Tim Parkes: It is a very high priority for me, coming into this job, to make sure that the RDC provides the highest quality of decision-making that it can do. It operates within certain constraints and one has to understand that, but the point that you make about separation and independence seems to me to be fundamental to the job that it is meant to do.

Chair: Absolutely, and I think that is how the Committee sees it too.

Q18 John Mann: In your view, what has the FCA got wrong in its approach to enforcement action over the last three or four years?

Tim Parkes: I am not sure I can really answer that, but let me have a go. The FCA necessarily has to be selective about what it does. It does not have the resource to do absolutely everything, and there must be some legitimate questions that could be asked about its focus and the selection of matters that it has pursued. I cannot say, sitting here, whether they have got the balance right, but I can understand there may be some proper questioning about whether it has done.

Q19 John Mann: You will need to have some impression of that in this role. Let me put the question at a very different angle. Let us take what Hector Sants wrote for the British Bankers' Association, published in November, "Winning the Global Race". He, and the BBA therefore, had a lot to say on regulation. Do you agree with what Mr Sants said in that report?

Tim Parkes: He was quoted—not in the report, because the report that I read did not attribute to him any particular remarks—as saying, after the event and commenting on the report, that he thought, rather as the Parliamentary Commission on Banking Standards did, that it would be right to separate out the enforcement function, and thus the RDC, from the rest of the FCA.

Q20 John Mann: You disagree with him on that.

Tim Parkes: I cannot say that I agree or disagree, at this stage. I have read the arguments for and against.

Q21 John Mann: That report has quite a lot else to say about the FCA and its approach to regulation. Do you agree with the general tenor in that BBA report?

Tim Parkes: The report was more angled towards ensuring that the banking industry in the UK is fit for purpose and, in a very competitive global market, is going to be able to achieve what it needs to to be continuingly successful. Regulation is a part of the framework that Parliament has established over the industry and it is, to my mind, very much for Parliament to decide how it wants that to be organised.

Q22 John Mann: The FCA is looking at itself at the moment and setting its priorities. Mr Sants was a key author of that report, and of course he knows the FCA from the past, as it was in essence part of the FSA, very well. That report has a lot of detail—and it was published in November, so it is contemporary—on behalf of the banks as to what regulation should be about and precisely what the FCA should and should not be doing. I am just trying to get an impression of whether you agree with the general tenor of the report in terms of the FCA.

Tim Parkes: You would have to help me in terms of what you mean when you say "general tenor".

Q23 John Mann: A lot of external commentators would suggest, or have suggested, that the FCA needs to loosen up somewhat, that it has been too hard-line on the banks and that this is endangering British competitiveness. Not surprisingly, the BBA is fairly in tune with that approach. There is a lot of detail in that report, a remarkable amount of detail, as to what the FCA should be about. With you chairing this important body, I am trying to get a feel for where you stand in terms of the FCA, whether it has been fit for purpose or whether it has been too hard-line on the banks over the last few years.

Tim Parkes: I cannot answer that question in my capacity as the chair of the RDC. If you would like me to answer in that capacity, it would be more difficult. Decisions about what thematic reviews and investigations are brought are not things for the Regulatory Decisions Committee. The Regulatory Decisions Committee is there to deal with the back end of the process, which results in a decision being contested or a recommendation being made that disciplinary sanctions should be levelled against either an approved person or an authorised firm. That is the stage at which the RDC comes in.

If you stick with that for a moment, I can assure you that the job the RDC will do is to look, objectively and dispassionately, at the evidence brought forward and the recommendations made for sanctions, and that it will do the best job it can to make sure those are robust, proportionate and fair.

Q24 John Mann: You are more than sitting on the fence, if I may politely say so. There is no secret that there are people, not least the Chancellor, who are saying that things have gone too far and we need to ensure that the banks are able to continue without so much encumbrance to their competitiveness. That message is coming through very strongly. It comes through in the BBA report, in detail, very powerfully. There has been a lot of discussion about the culture within banking, but the culture within the FCA and the regulator is equally important. Some people suggest that that culture is shifting, that we will have light-touch regulation and that that is a good thing. I am trying to get your impression of whether you think that is a good thing.

Chair: Form a view on the extent to which you feel able to answer that, bearing in mind the rather specialised role that you have been asked to play here. That should be added as a line to that question.

Tim Parkes: I have to say that, as chair of the RDC, views one way or the other do not make a blind bit of difference to what we do. Our job is to look at cases that are brought to us and deal with them on the evidence on which they are based. It is not to take a view as to whether we are being too tough or too lenient on the banks.

Q25 John Mann: Do you see your role in any way as being a defender of the FCA and of its staff?

Tim Parkes: No, I do not.

Q26 Mr Baker: I would just like to pick up some aspects of that. Occasionally, FCA action or possibly inaction in relation to cases will be of such intense public interest that we will debate it at some length in Parliament—off the top of my head: PPI, Libor, interest rate swap mis-selling and, last night, there was a well attended debate about the Connaught Income Fund. I do not want to draw you into expressing a judgment on any particular case, but have you given any thought to your role or your committee's role in the public interest in particular cases or particular classes of case, and how that should inter-relate with the expression of interest that comes before Parliament?

Tim Parkes: It is not something that I have personally thought about. It is an interesting feature, which I have detected, that, for pretty well all the matters you have referred to, where there have been disciplinary sanctions levied, they have been reached as a result of an agreement with the subject bank. Those are matters that never get as far as the RDC, because they are dealt with by agreement. We only deal with contested matters. The answer to your question was that I have not.

Q27 Mr Baker: Do you think that you should do? One of the complaints that Members of Parliament articulate is that the FCA has not been tough enough or has not acted effectively enough. Do you think there might be a case that, when these classes of misconduct are so high-profile, they ought to be brought to you and your committee as a matter of course, just to ensure that the right actions have been taken and that the agreement was appropriate?

Tim Parkes: The point about reviewing settlements has been taken by the FCA, in the sense that there is already a system whereby the RDC will review after the event settlements that have been reached. That is more to allow a joined-up approach, so that the RDC can understand why a particular sanction may have been agreed to by the FCA and a particular penalty levied. That is as far as it goes. I do not think it deals with your point, which seems to be more about whether or not the settlement itself may have been appropriate.

Q28 Mr Baker: Yes, indeed, and whether or not the FCA is satisfying the public appetite to deal robustly with either a particular case or a particular class of case. Do you think your committee could do more in those areas?

Tim Parkes: I would very much like to take that as something to consider. Again, I have not been there long enough to know what the practicalities of dealing with that are and what the implications would be if we went down that route. A greater involvement in respect of the settlement process within the FCA could be healthy.

Q29 Mr Baker: You made some suggestions for how to improve the section of the FCA annual report relating to the RDC. What changes do you think we might expect in next year's report?

Tim Parkes: It is easy for me, in a sense, coming in from the outside, because I have not really been privy to why things have been done in the way they have been done in the past. It is pretty clear that the amount of transparency through the reporting system, with respect to the activities of the RDC, is small. There is not very much at the moment contained in the material that is made public by the FCA about what the RDC does. Composition is fine—that is on the website—but the statistics that currently appear in the annual report about speed, cost, effectiveness in terms of how many decisions are being reversed by the upper tribunal and so on, are either not there or, if they are there, are buried in other statistics, which makes it difficult to follow.

I think—and this of course is a recommendation made by others, including the parliamentary commission, picked up by the Treasury—that it does make sense, whether it is a separate report or a separate section of the annual report, which gives more transparency to the RDC.

Q30 Mr Baker: Would it make sense to have a regular review and are there plans to have that regular review?

Tim Parkes: It depends what you mean by a "regular review". In terms of operational matters as opposed to why a particular decision was reached, I will be attending one of the board committees to report on that at least three times a year, if not more. If, as I hope, we move to greater transparency, probably through the annual report, then that process will effectively require an annual review within the RDC, which will then form the basis for publishing something in the report.

Q31 Mr Baker: You have just mentioned your report to the board. Do you think that that accountability to the FCA board leaves you with sufficient scope for your own independence?

Tim Parkes: Yes, I do. It has been made very clear to me. I should say that I have not yet attended a meeting of the External Risk and Strategy Committee of the FCA board, but it has been made clear to me by my predecessors that the interest the board takes is predominantly in operational matters, whether resourcing is sufficient, and so on and so forth. I have heard of no interference whatsoever in terms of decision-making.

Q32 Chair: On the first of those two types of question, the settlement review, to clarify what I thought was a very interesting exchange, it seems to me that there is a need to protect small firms that may feel coerced into settling when perhaps they might not had they the resources to protect themselves, on the one hand. Then there are some big firms, for which the FCA may conclude, "We do not want to struggle on for three years on this one. Let's get to a settlement as quickly as we reasonably can, move on and get the legal costs down." It seems to me that, in both those types of cases, review of settlement procedures from someone outside the system, but with an intimate knowledge of the operational environment as you would acquire—and you probably have a good deal of it already—might have some value. Do you agree with that?

Tim Parkes: There could be value in greater involvement from my side with the whole process of settlement.

Chair: Perhaps when you drop us a line in a few months' time—and, within reason, you can decide when you think that should be, let us know and discuss it through the staff of the Committee and me if you want to—you might develop some thoughts on that issue as well. Before we finish, Chris Philp has a quick question he wants to ask.

Q33 Chris Philp: I do. It just really develops the theme that Steve Baker was pursuing initially. Very specifically, if I understand correctly, your panel only looks at recommendations made positively by the FCA, where they want to proceed in a particular matter. Equally, a decision not to proceed or not to investigate a particular matter might be equally important. I am thinking, for example, of the decision not to investigate Andy Hornby, which Andrew Green QC very strongly criticised in a report published a few weeks ago. Do you think that your committee should also look at decisions not to investigate, because often they are as important as the decisions that are positively made to investigate?

Tim Parkes: Structurally, it is set up so it does not. That is not something that we do.

Chris Philp: I know that. That was not my question.

Tim Parkes: No, but one needs to start with the context. That is the current position. The committee would turn into a rather different animal if it was not only dealing with contested matters that were brought to it for decision, but also being asked to review decisions made within enforcement not to proceed with something. I will say immediately that I do not know, sitting here, at what level those decisions are reached.

Q34 Mark Garnier: I have one question in general about the overlap between what the RDC does and the legal process. Do you think that there is any possibility that what you come up with on the RDC may have an influence on, for example, SFO investigations into things such as Libor in particular? Do you think that there is that potential conflict or do you think it is going to be a problem? If you do, how would you mitigate it?

Tim Parkes: My understanding is that the general approach, on matters where the SFO is involved, has been for the RDC to park or stay proceedings until the SFO has come to a decision or the end of a prosecution.

Mark Garnier: They hold back making a decision.

Tim Parkes: Yes, so one would wait for the SFO process to have reached its end and then the RDC would do whatever it was going to do, rather than the other way round.

Q35 Mark Garnier: That is quite an interesting potential conundrum, because the SFO could take quite a long time, first of all. Would you necessarily always know which files are being investigated by the SFO in the RDC?

Tim Parkes: The answer is I do not know.

Q36 Mark Garnier: There is a great sense out there that we have not had too many people being prosecuted by this. Clearly, what we do not want to happen is for the RDC to be bumping into the SFO and spoiling their pitch. The bottom line is that, potentially, the RDC could queer the pitch of the SFO if it was not handled right.

Tim Parkes: That is what lies behind the view that, where the SFO is involved, you wait. You do not proceed for that very reason, so you do not queer the pitch. In the hierarchy of actions, criminal proceedings go first and the rest follow.

Mark Garnier: You just have to be careful, but this is something you are experiencing.

Tim Parkes: Yes.

Chair: Thank you very much for coming in to give evidence. It has been helpful. You have answered directly and very succinctly questions that you feel that you know the answer to. You have been equally clear on the ones that you do not feel you yet are able to provide answers on, and that has made the session not only shorter but also, in its way, more effective. Thank you very much for coming to give evidence.