Report of the Comptroller and Auditor General to the House of Commons

Introduction

1. The Equality Act 2006 established a new Commission for Equality and Human Rights. Under the Act, the House approved Commencement Order No. 1 with effect from 18 April 2006, at which point the new Commission formally came into existence. On 1 October 2007 the Commission took up its new powers and took on the responsibilities of the three legacy equality Commissions; the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission, as well as taking responsibility for protection against discrimination on the grounds of age, religion or belief, sexual orientation and the promotion of human rights in the United Kingdom.

2. The new Commission, which is now known as the Equality and Human Rights Commission, has a role to;

- challenge prejudice and disadvantage, and promote the importance of human rights,
- enforce equality legislation on age, disability, gender, gender reassignment, race, religion or belief, and sexual orientation, and work on compliance with the Human Rights Act,
- use its influence and authority to ensure that equality and human rights remain at the top of agendas for Government and employers, media and society,
- stimulate debate on equality and human rights by acting directly and by fostering partnerships at local, regional and national levels,
- give advice and guidance to businesses, the voluntary and public sectors, and also to individuals, and
- develop an evidence-based understanding of the causes and effects of inequality for people across Britain.

3. The statement of accounts on the following pages represents the results of the Commission for Equality and Human Rights (the Commission) for the period from 18 April 2006 to 31 March 2008.

Purpose of Report

4. The purpose of this Report is to explain the background to the qualification of my audit opinion and to note the steps taken by the Commission to improve its internal control environment.

My obligations as auditor

5. Under the Equality Act 2006 (the Act), I am required to examine, certify and report on each statement of account that I receive. I am required, under International Standards on Auditing (UK and Ireland), to obtain evidence to give reasonable assurance that the Commission's financial statements are free from material misstatement. In forming my opinion I examine, on a test basis, evidence supporting the disclosures in the financial statements and assess the significant estimates and judgements made in preparing them. I also consider whether the accounting policies are appropriate, consistently applied and adequately disclosed.

Audit Opinion
Qualified opinion owing to irregular expenditure on re-engaged consultants

6. During the accounting period the Commission incurred expenditure of some £11,136,000 in relation to the voluntary early severance and voluntary early retirement of former employees of the three legacy equality commissions. Such employees mostly ended their employment at 30 September 2007, when the legacy commissions ceased to exist.

7. The new Commission had little influence over which of these former employees applied for, or received, voluntary early severance and voluntary early retirement. Along with delays in recruiting new staff, this meant that the Commission had insufficient senior staff in place properly to take up its responsibilities on 1 October 2007. In attempting to resolve these problems, the Commission subsequently re-engaged seven former employees of the former Commission for Racial Equality on short term consultancy contracts, but did so without obtaining the requisite Treasury authority. This has led to the qualification of my opinion.

8. In various letters to its sponsor Departments, the Commission discussed re-engaging up to nine staff from the legacy commissions, but in the event appears to have only re-engaged seven; all of whom were former employees of the Commission for Racial Equality. These seven staff had left the Commission for Racial Equality under the early exit scheme at a cost of £629,276, and were then paid a total of £323,708 in consultancy fees by the Commission. Some £308,434 of this related to the 2006-08 period covered by these accounts, with the remainder falling into 2008-09. The amount paid per individual varied between £2,702 and £105,216, in line with the contracts given to these individuals by the Commission. Five of these staff were re-engaged from 1 October 2007 without a competitive procurement process, and all their contracts had ceased by 31 March 2008. The other two staff were re-engaged in 2008 after breaks in service. One of these was employed on a casual basis at a total cost of £2,702 and the other was re-engaged after a competitive procurement process, and worked from January to June 2008.

9. The total amount of time for which the Commission employed each of these contractors, and the amounts paid, are summarised in the table below.

Period of time employed	**Number of individuals**	**Severance costs**	**Consultancy fees**
Under three months	2[1]	231,259	21,102
Three to six months	4[2]	293,892	197,390
Over six months	1[3]	104,125	105,216
Totals	**7**	**629,276**	**323,708**

[1] One individual included in this category provided several days of casual support to the Commission between May and September 2008.
[2] One individual included in this category was appointed in January 2008 and was employed to June 2008.
[3] The individual in this category was appointed in June 2007 by the Transition Team, and was then employed directly by the Commission from 1 October 2007 to 31 March 2008. As the full costs have been correctly accounted for by the Commission, the full cost is disclosed here.

10. In July 2008, after a standard recruitment process, the Commission also re-engaged as a Commission employee, an individual who had worked at the Disability Rights Commission. This employee had received a voluntary early severance payment of £13,290 in respect of their service at the legacy commission, and then worked as an employee of the Commission until 30 April 2009; receiving a total of some £25,670 in salary payments during their service. Given the break in service and formal recruitment process, the Commission considers it fully complied with Civil Service guidelines when it employed this individual. Nevertheless, the details of this appointment are included to provide full information on all staff re-engaged from the legacy commissions.

The Treasury's Decision

11. The Treasury categorises such payments as special payments. The Treasury requires non departmental public bodies such as the Commission to seek the approval of their sponsor Department, in advance, for any special payments. Departments are advised that they may then need to consult the Treasury. The Treasury's guidance on this subject is contained in *Managing Public Money*, and specifically states that bodies should take care to avoid offering employees consultancy work after severance unless best value can be demonstrated.

12. The Government Equalities Office, which is now the Government Department responsible for sponsoring the Commission, recognised that the Commission's re-engagement of staff from the former Commission for Racial Equality was novel and contentious, and would therefore need Treasury authority. The Office did not formally consult the Treasury on this matter until January 2009, when the Commission provided the Office with full and accurate information. In doing so, the Office advised that it could not endorse the retrospective business case presented by the Commission. Once consulted, the Treasury concluded that it could not grant retrospective approval for the payments, as they did not represent value for money. It gave the following more detailed reasons for this decision;

- the re-engagement salaries were significantly higher than the salaries when the individuals worked for the legacy commission and were also significantly higher than a combination of the salaries offered in the legacy commissions plus an additional three month 'loyalty bonus';

- there was insufficient evidence to demonstrate that re-engaging staff provided value for money compared to other options;

- there was insufficient evidence to support the view that the EHRC fully considered the pension and tax liabilities of re-engaging staff; and

- as it was unclear whether staff had a break in contract terms between working at the legacy commissions and at the EHRC, it was possible that the individual members of staff should have repaid their severance packages as required under the terms of the Civil Service Compensation Scheme.

The Commission's Actions

13. The Commission first raised in writing issues relating to the possible re-engagement of one of these staff with the Accounting Officer of its then sponsor Department (Department for Communities and Local Government) in May 2007. In July 2007 it made a more substantial submission to the Accounting Officer of the Department (Department for Work and Pensions) that was then expected to take over the sponsor role. While these Departments agreed the principle that the Commission could retain

essential staff on a casual basis to support the transition during this period, the Commission accepts that it pursued these matters with an inadequate level of formality and detail. In particular, the Commission did not present a clear business case for either the number of staff involved or the duration of their re-engagement.

14. In mitigation the Commission considers that it had a strong business need, which it did discuss with the sponsor Departments, to re-engage staff from the legacy commissions. In particular, the Commission considered that it;

- needed to retain the expertise and knowledge of these particular staff for part or all of the six month 'build up' period after 1 October 2007;

- had a high number of unfilled senior level posts at 1 October 2007, and needed experienced staff to fill the key posts until recruitment was complete; and

- needed to mitigate the risk of failing to deliver to the timetable set by Ministers.

The Set Up of the Commission

15. The failure of the Commission to follow proper processes in respect of the re-engagement of these staff should be viewed in the context of a difficult and convoluted process of setting up this new body, with delays in making a number of key decisions about the Commission’s policies and staffing.

16. In the period preceding the Commission’s start up on 1 October 2007, there were changes in where responsibility for managing the start up of the Commission lay. Up to July 2007, responsibility lay with the Department for Communities and Local Government. At this point the Government announced that it was setting up a new Government Equalities Office, which would sponsor the Commission. Initially this Office was to be part of the Department for Work and Pensions, but by September 2007 Government had decided that the Office would be a separate Government Department with its own Accounting Officer. Until an individual could be appointed to that post, the Accounting Officer for the Department for Communities and Local Government retained Accounting Officer responsibility for the Office.

17. Despite these changes, many of the staff responsible for sponsoring the Commission, including those at senior levels, remained the same and the Office successfully put in place the legal and statutory framework required to establish the Commission on 1 October 2007. Nevertheless, the changes in responsible Department did create a degree of distraction and confusion to the process of setting up the Commission, which complicated the decision making process at a crucial time. In the Commission’s view, the sponsor Departments were not able to give it the necessary guidance and support to ensure a successful launch on 1 October 2007.

18. As a result, some key policy documents were not put in place sufficiently early. For example, while the sponsor Departments had made the Commission aware of the funds that would be available to it, the Government Equalities Office did not formally approve the Commission’s budget until November 2007. Furthermore, the Framework Document, which sets out the Commission’s managerial responsibilities and the Department’s delegations to the Commission, was not formally approved until April 2008.

19. On the particular issue of the re-engagements, the Commission informed the Department for Work and Pensions in July 2007 that it was intending to re-engage certain staff from the legacy commissions to fill critical shortages. At the time, the

Commission did not provide the Department or its successors with a full business case, and did not provide full and accurate information setting out the staff to be re-engaged or the cost or duration of these re-engagements.

The Staffing of the Commission

20. A major weakness was that the Chief Executive and senior management team were not put in place early enough to properly plan the start up of the Commission.

21. The Chief Executive only took up post on 5 March 2007, and was appointed as Accounting Officer on 24 May, with the Commission expected to start on 1 October. When the Commission did start operations on 1 October, it did so with only 10 out of the agreed complement of 25 Directors in post. Indeed, the majority of the management team who were in place at that date only took up post in the two months immediately before 1 October. Furthermore, while those senior managers who were appointed before 1 October had considerable specialist skills, they had insufficient time to develop as a team before the Commission started operations. The delays in appointing the senior staff was a crucial failing, as a newly created organisation needs to have a senior management team in place sufficiently early to prevent a decision making vacuum, ensure effective operational management is in place from the beginning and to develop a business strategy and transition plan.

22. These staffing problems were mirrored throughout the organisation. The legacy Commissions offered all their staff voluntary early severance in July 2007, and some 180 people elected to leave through this scheme. The new Commission had virtually no influence over which staff agreed to take the severance, and lost staff who filled key roles in the legacy bodies. Furthermore, the number of staff who accepted severance meant that as at 1 October 2007, the new Commission started operations with a shortfall of some 140 staff against a complement of 525. Of the staff who did transfer, the new Commission did not have sufficient time to finalise an organisation design, job descriptions or complete job evaluations before starting operations. Consequently, the Commission was unable to job match people to roles or confirm the content of individual jobs. Understandably, this had a negative impact on the morale of the staff in post, and matters were worsened further because of an unresolved pay remit, leading to ongoing uncertainty about staff terms and conditions. Indeed, the pay remit was not finally agreed by the sponsor Department and the Treasury until Autumn 2008.

Identifying and responding to problems

23. The problems with setting up the Commission were first properly identified by an Office of Government Commerce Gateway review in May 2007, which reported serious concerns about the readiness of the new Commission to deliver the transition to the new programme. The report identified that six months before going live the Commission had no business strategy, no agreed organisational design, no clear understanding of what the Commission would do, and was missing important elements of effective programme management. In particular, the report identified that the programme needed to bring in sufficient expert resource quickly to manage the transition.

24. While the Commission's new Chief Executive acted promptly on the report's recommendations, there was insufficient time to rectify all the identified problems fully before 1 October. Consequently, while the Chief Executive did quickly recruit some expert consultants, including a Programme Director to lead the transition, the Commission still recognised that it would face a range of skills gaps at 1 October 2007. It considered that it needed to put interim arrangements in place to minimise the risks

to the start up, including the temporary recruitment of specific former staff from the legacy Commissions.

25. Following recognition of these weaknesses, the Commission also initiated a phased programme for going live. Instead of a full launch on 1 October, the Commission went from transition to a build up phase on 1 October 2007, with a full operational launch from 1 April 2008. This phased process followed best practice, as it allowed the Commission to focus on achieving basic operational readiness on 1 October and to present a "business as usual" face to stakeholders. The Commission accepted that achieving full integration could only be achieved over a longer timescale.

Improvements in the Commission's Controls

26. In the period since the issues covered by this report occurred, the Commission has developed its financial and performance reporting, reviewed and strengthened its governance arrangements, strengthened procurement arrangements, developed financial guidance to staff and worked to enhance the budget and business planning framework.

27. The Commission and its Audit and Risk Committee have also continued to enhance internal control processes. In particular, they have agreed and delivered a programme of internal audit reviews, which particularly focused on the set up of the systems and framework of delegated authorities, governance, procurement and staffing. Work has also gone on to develop a Strategic Risk Register for the Commission and to cascade it through to Group Directorates. Further information on improvements in controls is provided by the Commission's Accounting Officer in the Statement on Internal Control.

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