

**Report of the Comptroller and Auditor General on the 2008-09 accounts of the Equality and Human Rights Commission.**

## **Introduction**

1. The Equality Act 2006 established a new Commission for Equality and Human Rights. On 1 October 2007, this Commission took up its new powers and took on the responsibilities of 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. In my report of 18 June 2009 to the House of Commons on the accounts of the Commission for Equality and Human Rights (the Commission) for the period ending 31 March 2008, I noted that I had qualified my audit opinion on the accounts. This was because the Commission had 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. I subsequently issued a Supplementary Memorandum to the Committee of Public Accounts on 27 October 2009, which provided further details of the problems faced by the Commission before it took on its powers on 1 October 2007 and updated the Committee on some more recent issues with the Commission's controls over staffing and staff costs. The Committee of Public Accounts considered my Report and Supplementary Memorandum at a hearing on 4 December 2009 and issued its report on 4 March 2010.

3. The statement of accounts on the following pages represents the results of the Commission for the period from 1 April 2008 to 31 March 2009. I have qualified my audit opinion on these accounts.

## **Purpose of Report**

4. The purpose of this Report is to explain the background to the qualification of my audit opinion.

## **My obligations as Auditor**

5. Under the Equality Act 2006, 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**

#### **Irregular Expenditure on Re-engaged Consultants**

6. In my report on the 2006-08 accounts, I set out the details of the Commission's re-engagement of staff from the former Commission for Racial Equality as consultants and the fact that this was done without the authority of the Government Equalities Office, as the Commission's sponsor Department, or the Treasury. My report stated that the Commission therefore incurred irregular expenditure of some £308,434 during 2006-08, but that further amounts were paid to the consultants during 2008-09. The amount paid to the re-engaged

consultants in 2008-09 was some £30,274, and as the Commission paid these amounts without the appropriate Treasury authority, I have deemed them to be irregular and qualified my audit opinion in this respect.

### **Irregular Expenditure as a Result of a Breach of Pay Remit**

7. In my Supplementary Memorandum to the Committee of Public Accounts of 27 October 2009, I noted that the Commission had breached its pay remits for 2007-08 and 2008-09.

8. All non departmental public bodies, such as the Commission, are required to agree annual pay remits with their sponsor Department and the Treasury, which set out the maximum level of pay increases for permanent employees. The Commission agreed its first pay remit with the Treasury in September 2008, using estimates of the number of permanent staff who were expected to be in post by the end of the remit period. The agreed remit allowed a maximum pay increase of 4.65% for permanent staff in post in the last six months of 2007-08 and a maximum increase of 4.45% for 2008-09, which assumed that the Commission would recruit sufficient permanent staff to fill existing vacancies. The Commission has, however, breached these limits.

9. Following the September 2008 agreement, the Commission and the Government Equalities Office agreed a phased harmonisation of pay within the limits. The Commission made the first backdated pay increase in December 2008 and paid the final element in June 2009. However, in March 2009, the Commission revisited its baseline pay calculations to reflect the actual number of permanent staff in post, rather than the estimated number used in the initial calculations. As the Commission had fewer permanent employees in post during 2007-08 and 2008-09 than it had anticipated when agreeing the pay remit, it actually paid average increases for staff in post of 6.81% for the last six months of 2007-08 and 4.8% for the twelve month period of 2008-09. Whilst the total cash increase paid was in line with the pay remit and phased harmonisation plan, the average percentage increases were above the maximums agreed with the Government Equalities Office and the Treasury. While this breach of the pay remit was not intentional and reflects the unexpected lack of permanent employees referred to earlier, it does mean that the Commission has incurred expenditure on staff pay without proper authority. As a result I am qualifying my audit opinion in respect of this irregular expenditure.

10. I note that the Government Equalities Office and the Treasury have considered what action they should take against the Commission for this breach. The Government Equalities Office agreed the Commission's calculation that the 2008-09 breach was 2.51% of the Commission's total pay bill in that year, and has therefore imposed a financial penalty equal to that. This equates to £508,000. The Government Equalities Office therefore reduced the Grant in Aid that it paid to the Commission by £508,000 for the 2009-10 financial year.

### **Insufficient Evidence to Support the Regularity of Expenditure on Grants**

11. In 2008-09 the Commission operated a programme to provide some £10.7 million of grants to various local bodies providing equality related activities. The Commission had a process of monitoring recipients' use of these grants to ensure that the funds were used for the purposes that they were granted. One of the principal elements of this monitoring was to require grant recipients to provide a year end report setting out how the funds were used. The Commission retained 10% of each grant until it had received these year end reports. The Commission experienced difficulties in getting all these reports in on a timely basis, and the year end reporting process took far longer than was expected.

12. Eventually, the Commission was able to obtain year end reports from the majority of grant recipients and in most cases was able to obtain appropriate assurances that recipients had used the funds for the purposes intended. Where it was not able to gain full assurance over the use of the grants, the Commission did not pay over the retained 10%. In some cases the grant recipients had ceased to exist by the time the Commission finalised the year end monitoring process, and in these small number of cases the Commission was not able to obtain any assurances over how these recipients had used some £62,800 of grants. The lack of assurances over the use of this £62,800 of grant expenditure means I have been unable to conclude on the regularity of the application of these grant payments.

### **Irregular Expenditure on Single Tender Procurement Actions**

13. The Commission, as is common with all non departmental public bodies, has agreed a formal Framework Document with its sponsor Department. The Commission's original Framework Document was agreed in April 2008 and sets out, amongst other things, the financial authorities that the Government Equalities Office has given to the Commission. One of these is that the Commission is required to seek the Government Equalities Office's approval for any Single Tender Procurement Actions (STAs) above £50,000.

14. In November 2009, the Commission initiated a review of its procurement activity for the two years up to October 2009. The review focussed particularly on the Commission's use of STAs, and as a result the Commission identified seven cases where it had entered into STAs for amounts greater than £50,000 without seeking the approval of the Government Equalities Office. The Commission incurred total expenditure of £739,421 on these seven contracts. £487,937 of this amount was incurred in 2008-09, with the remainder being incurred in 2009-10. The Commission has decided not to seek retrospective approval from the Government Equalities Office for these STAs. Consequently, the Commission has incurred this expenditure without obtaining the proper approval from its sponsor department, and I have qualified my audit opinion in respect of the regularity of the £487,937 STA expenditure relating to 2008-09.

15. The Commission designed this procurement review to examine a sample of procurement exercises. As it is a sample, it is not a comprehensive analysis of all possible breaches of the STA delegation, and the Commission cannot be certain that the £487,937 noted above represents all the breaches of the STA delegation in 2008-09.

16. The Commission's procurement review noted many other serious failings in the Commission's management of its procurement activity. Of particular concern are the weaknesses in procurement documentation. The Commission spent over £30 million on the procurement of goods and services in 2008-09, and its procurement procedures make it clear that all key records of the procurement process must be retained on individual project files. However, there were only a limited number of instances where this was done and the review concluded that there were few instances where contracts were procured in full compliance with the laid down procurement procedures. These problems were amplified by the Commission's inability to access comprehensive financial information on contracts entered into and paid for. In many cases the review found different amounts recorded at the project initiation stage, in the purchase order, in the contract and in the final payment, without sufficient explanation of the reason for the differences or evidence of contractual amendments or variations. Furthermore, there have been frequent examples where the Commission has received goods and services without having first raised a purchase order and where the delivery of goods and services have not been recorded on the Commission's procurement system. These problems reflect concerns that my staff have raised previously with the Commission about the adequacy of its procurement system and the quality of the information recorded on it.

17. The review also identified inadequate processes for planning procurement activity across the Commission. In particular, little thought was given to the procurement route that would be used until too late in the process, leading to rushed procurement actions and an over reliance on urgent procurement routes, such as STAs. The review also found evidence that in some cases suppliers were appointed and work commenced before the procurement process was completed. It also noted a number of failures to comply with internal delegated limits, so that expenditure was approved by people who did not have the appropriate authority to do so. Furthermore, the review found that the Commission's procurement activity was often inadequately specified or scoped, which has in turn led to contractual disputes. This is linked to concerns about the adequacy of the Commission's monitoring of contractors' activity, as the review found limited evidence of formal reviews of contractors' performance or other post procurement reviews.

18. Many of these problems appear to stem from a basic lack of understanding amongst staff of the Commission's procurement procedures. The Commission does have procurement procedures in place, but there is no comprehensive Procurement Manual, in some cases incorrect information has been made available to staff on procurement processes and there has been an inadequate level of training for staff involved in procurement activity. The Commission does also have central procurement and corporate law teams, but to date their role has been mostly advisory and there has been no requirement for procurement actions to be passed through them. As a result, these central teams have often been unsighted on procurement activity or have been consulted at far too late a stage in the process.

19. The problems outlined above expose the Commission to considerable risks, in terms of its non compliance both with procurement rules and law (including European Union procurement rules) and the Framework Document. Furthermore, the Commission breached the requirement in its Framework Document to notify the Government Equalities Office of any significant operational, finance and personnel issues as soon as they became apparent. This restricted the ability of the Office to properly monitor the activity and expenditure of the Commission.

20. I am concerned that the scale of these systemic weaknesses reflects a culture of inadequate forward planning in the Commission, a lack of focus on compliance with procedures and insufficient review and oversight of expenditure by the senior management of the organisation. I welcome the fact that, as a result of this review, the Commission has made immediate and significant changes to its procurement processes. The Commission has now removed delegated authorities to incur expenditure from all staff except Directors and above, has restricted the number of people authorised to raise requisitions to no more than two per cost centre and is now requiring all purchases above £5,000 to be authorised both by the relevant Director, but also by the Director of Finance and the Head of Procurement. This will provide an important additional check that higher value procurements are compliant with procedures and are value for money. Action is also being taken to ensure that all staff within the Commission understand the procurement rules and comply with them, and new procurement procedures have been issued with relevant training being provided to all Directors. The Head of Procurement has also been tasked with providing a monthly report to the Board on procurement activity, which will be supported by the development of a new format for the monthly management accounts that aims to improve accountability for all items of expenditure. I have also suggested that the Commission consider initiating a regular programme of procurement compliance reviews across the organisation to ensure that problems such as those set out above do not recur.

21. I also welcome the steps the Government Equalities Office has taken to strengthen the control environment at the Commission. The Office has, among other things: agreed with the Treasury a strategy for the improvement of financial and operational management at the Commission; concluded a revised Framework Document with the Commission; and

appointed nine new Commissioners, with the recruitment highlighting the importance of Commissioners having governance experience.

22. A number of the weaknesses outlined above are deep seated and longstanding, and it will take time for the Commission both to put in place rigorous controls and to ensure that staff comply with them. I think it likely that these problems may have continued beyond 2008-09, and, until it develops fully effective financial and management controls, the Commission will face serious and continuing risks to its ability to manage properly its expenditure. The improvements being made by the Commission and the Government Equalities Office, as set out above, are a good start, but the Commission will need to be vigorous in implementing the changes it has proposed and actively monitor compliance as it goes forward.

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