# Report of the Comptroller and Auditor General on the 2009-10 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 8 July 2010 to the House of Commons on the accounts of the Commission for Equality and Human Rights (the Commission) for the year ending 31 March 2009, I noted that I had qualified my audit opinion on the accounts. The Commission had incurred expenditure in respect of consultants' fees (£30,274), pay costs (£508,000) and procurement of goods and services (£487,937), which I concluded was not in conformity with the authorities which governed it, and was therefore irregular. In addition, the Commission was unable to provide me with sufficient evidence to support the regularity of £62,800 of grants paid to a small number of recipients providing equality related activities. I was therefore unable to conclude on the regularity of the application of this £62,800 of grant expenditure.

3. Previously, I had also qualified my opinion on the Commission's first set of accounts for the period ending 31 March 2008. This was because the Commission had re-engaged seven former employees of the former Commission for Racial Equality on short term consultancy contracts 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 the Report and Supplementary Memorandum at a hearing on 4 December 2009 and issued its report on 4 March 2010.

4. The statement of accounts on the following pages represents the results of the Commission for the period from 1 April 2009 to 31 March 2010. I have qualified my audit opinion on these accounts.

## Purpose of Report

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

## My obligations as Auditor

6. 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 as a Result of a Breach of Pay Remit**

7. 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. In my Report on the Commission's 2008-09 accounts, I noted that the Commission had breached its pay remits for 2007-08 and 2008-09.

8. At the date of certifying these accounts, the Commission has not agreed a pay remit for 2009-10 or beyond with its sponsor Department, the Government Equalities Office (GEO), and the Treasury.

9. Nevertheless, the Commission has incurred expenditure on staff pay in 2009-10 that the GEO and the Treasury consider to be increases above the pay baseline agreed in 2008-09. This relates to the following two specific sets of payments.

- In June 2009 the Commission incurred in year expenditure of £386k in respect of 179 staff who transferred to the Commission from the legacy commissions. This expenditure was designed to harmonise the amounts paid by the Commission to those of its staff who were previously employed by the legacy commissions on varying terms and at differing pay rates.

  While accepting that the Commission had made a contractual commitment to make harmonisation payments to these staff, the GEO noted that the Commission had not sought the GEO's approval before making the payments, was concerned they breached Treasury guidance on pay and therefore classified them as novel and contentious within the guidelines of the Treasury's *Managing Public Money* document. The GEO and the Treasury thus ruled that this expenditure should be considered as breaching the 2009-10 pay remit guidance.

- In April 2009 the Commission transferred former employees of a private sector firm that had previously provided disability advice for the Commission's Helpline into the Commission under TUPE arrangements. In September 2009, the Commission incurred in year expenditure of £184k in transferring these staff on to the Commission's terms and conditions, as well as its pay scales.

  The GEO considers that the Commission again failed to seek the necessary approvals before implementing a change that led to an increase in staff salaries. It has therefore refused to issue retrospective approval for the expenditure and considers the payments to breach the 2009-10 pay remit guidance.

10. It is possible that the GEO and the Treasury could provide retrospective approval for both these amounts, if and when they approve the Commission's 2009-10 pay remit. However, as noted above, there is not yet any such remit in place. I am concerned that some twelve months after the end of the period to which the remit will apply, the responsible parties have not been able to agree a pay remit. While much of the initial delay appears to have been caused by the need for the Commission to properly reflect the impact of the major structural changes that it went through in its creation, further delay and complication was added in

trying to retrospectively design a pay remit, which is a document that is designed to be agreed before the period to which it relates, not after. One of the key problems thus caused was that the Commission initially worked on the assumption that it would be able to increase permanent staff salaries by up to 4%, which was the original Treasury guidance. However, this maximum limit was reduced to 2.5% in March 2010, after the Commission had incurred the additional expenditure referred to above. While this may help explain some of the reasons for the Commission's delay in preparing a compliant pay remit, it does not change the fact that the Commission should not have made payments that increased staff salaries without first obtaining the GEO's approval. Formally, the responsibility for the delay in agreeing a pay remit lies with the Commission, which is charged with preparing a remit in a form, and with content, acceptable to the GEO and the Treasury. I understand that discussions over the remit have now moved forward, and that the expectation of both the Commission and the GEO is that an agreed remit will be shortly put to Ministers.

**Irregular Expenditure as a Result of Breaches of Procurement Delegations**

11. The Commission has agreed a formal Framework Document with the GEO, as its sponsor Department. This sets out, amongst other things, the financial authorities that the GEO has given to the Commission. One of these is a requirement that the Commission seek the GEO's approval for any Single Tender Procurement Actions (STAs) above £50,000.

12. In November 2009, the Commission reviewed its use of Single Tender Procurement Actions (STAs) and its compliance with the requirements set out in the Framework Document. The review found total expenditure of £488k in 2008-09 where the Commission had entered into STAs for amounts greater than £50,000 without seeking the approval of the GEO. The review also found that the Commission had incurred £251k of expenditure in 2009-10 in respect of the same procurements. The Commission decided not to seek retrospective approval for any of this expenditure, which rendered it irregular. As a result, I qualified my audit opinion on the Commission's 2008-09 accounts.

13. In my accompanying report on the 2008-09 accounts, I stated that this review was not a comprehensive analysis of all possible breaches of the STA delegation, and noted that the Commission was not certain that the £487,937 represented all the breaches of the STA delegation.

14. Subsequently, the Commission has carried out further detailed reviews of all its procurement activity to determine how far it had complied with the STA delegation rules. As a result the Commission has developed a more comprehensive and complete analysis of all procurement activity that was not in accordance with the delegations. Through this exercise it has identified a further 18 cases, where it procured goods and services of more than £50,000 using Single Tender Procurement Actions that were not authorised by the GEO, as was required under the terms of the Framework Document.

15. The total value of this procurement activity is some £2,377k, of which £808k was incurred in 2009-10. Some £1,138k of this total was incurred in the two prior financial periods, with a further £431k relating to committed expenditure in 2010-11 and 2011-12.

16. The Commission has sought retrospective approval from the GEO for £2,245k of this expenditure. The GEO has declined to provide such approval because it considered that it was not given sufficient justification to approve such STAs. The Commission has yet to seek retrospective approval for the remaining £138k of this expenditure, and as such does not have the appropriate approval for it. Consequently the Commission has incurred total expenditure of some £1,059k (£251k plus £808k) in 2009-10 without the appropriate approval. As the Commission has incurred this expenditure without obtaining the proper approval from its

sponsor department, I have qualified my audit opinion in respect of the regularity of the £1,059k STA expenditure relating to 2009-10.

17. In my Report on the Commission's 2008-09 accounts, I commented that the Commission's procurement review noted many other serious failings in its management of procurement. Many of these problems appeared to stem from a basic lack of understanding amongst staff of the Commission's procurement procedures. I also welcomed the fact that from April 2010 the Commission made significant changes to its procurement processes.

18. Since then the Commission has revised its procurement guidance, and formalised the restriction introduced in April 2010 that only Directors or above can authorise purchase orders. All purchase orders over £5,000 must now be reviewed by the Procurement team, while all procurements over £20,000 will be directly managed by the Procurement team. All Directors and above have now been trained in the proper processes and procedures to be followed when procuring goods and services.

19. Furthermore, the Procurement team now provides regular reports on procurement activity to the weekly meetings of the Senior Management Team, and has introduced a programme of contract management reviews to ensure that procurement activity is in accordance with the Commission's guidance, as I recommended in my report on the 2008-09 accounts.

20. While I welcome the considerable improvements that the Commission has made in its controls over procurement, there are still areas where it needs to make improvements. In particular, up to 35% of the Commission's purchase orders are not raised until after the Commission has received an invoice for goods and services. This means that Commission staff are committing funds without going through proper processes and are avoiding some of the checking processes. Consequently the Commission does not have an accurate understanding of its committed expenditure at any one point in time. The Interim Chief Executive has recently instructed all members of the Senior Management Team to set out plans to improve performance in this area, and I welcome the fact that the Board will be monitoring progress against these plans.

**Irregular Expenditure as a Result of a Breach in the Losses Delegations**

21. In accordance with its Framework Document, the Commission is required to seek the GEO's approval to write off total losses of over £100,000 in any one financial year.

22. In May 2009 the Commission's transition website experienced serious technical difficulties and, in the opinion of the Commission, could not be restored or used further. The Commission decided, therefore, to write off the remaining net book value of the website. Both the Commission and the GEO agree that this write off constitutes a loss under the definitions of *Managing Public Money*, and that the Commission should have sought approval from the GEO. Unfortunately, the Commission did not seek such approval at the time of the write off.

23. The Commission has decided not to seek retrospective authority for the write off of total losses of £874k, of which £866k related to the net book value of the website. The Commission has disclosed the full £874k in its Losses Note in the 2009-10 draft accounts. As the Commission has written off a loss of £874k in 2009-10 without the appropriate approval, I consider the write off to be irregular, and have qualified my audit opinion in this regard.

24. In discussions between the Commission and the GEO on this matter, the GEO has commented that the website suffered from much ambition but poor specification, and that the understanding of what went wrong was not helped by incomplete documentation.

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

25. I limited the scope of my audit opinion on the Commission's 2008-09 accounts as the Commission was not able to obtain any assurances over how a small number of organisations to which it had paid grants had used some £62,800 of grants provided to them.

26. The Commission changed the nature of its grant programme for 2009-10, and disaggregated it into separate components. While the Commission made improvements to the control regime over many of the grants paid, it did not do so for the 2009-10 legal grants programme.

27. In 2009-10 the Commission incurred expenditure of approximately £2,621k on providing legal grants. The Commission introduced a process whereby the legal grant recipients provided returns to the Commission setting out how they spent the money and what the funded projects had delivered. However, the Commission adopted an ad hoc and partial process of checking the information in the returns. There was little evidence of checking to supporting evidence, or visiting of grant recipients to check how they used the Commission's funds or to validate the outputs claimed. We have invited the Commission to go back to the recipients and obtain the necessary evidence to validate the use of these legal grants, but it has declined to do so on the grounds that it considers it unlikely that it would now be able to obtain this information from grant recipients and that such an exercise would not be an effective use of its resources.

28. Our findings were supported by the Commission's Internal Auditors, who found that the Commission had no formal procedures for monitoring legal grant outcomes or making payments. The Internal Auditors also found that the Commission did not have any process in place for an end of grant review of outcomes and expenditure. In response, the Commission commissioned an independent lessons learned review to better understand the reasons for these failings and to make recommendations on what further actions should be put in place. Furthermore, in November 2010 the Commission strengthened its oversight of these grants by changing the internal management arrangements. This included the development of a detailed project plan to deliver improved administration and enhanced controls. Progress against this plan is now regularly reported to both the Audit and Risk and the Resources Committees.

29. I consider that the Commission did not have a sufficiently rigorous programme of monitoring or assurance gathering for legal grants in 2009-10, and cannot now assure itself that approximately £2,621k of grants were used for the purposes intended. I cannot, therefore, confirm that there is sufficient appropriate audit evidence for me to confirm the regularity of these legal grants.

**Conclusions**

30. In my Report on the Commission's 2008-09 accounts, I expressed concern that the scale of the weaknesses described therein reflected 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. Most of the problems described above in relation to 2009-10 stem from these same weaknesses.

31. Since I last reported on the Commission's accounts in July 2010, the Commission has made improvements to its financial controls. In particular it has made considerable efforts to introduce more effective control and management of its procurement, and its transactional controls more generally. It has also introduced significantly better financial reporting with more detailed and comprehensive management accounts. This information is now prepared on a timely basis and is reviewed by both the Commission Board and the Senior Management Team.

32. While the Commission has made improvements in these financial controls, it has continued to struggle in other areas. In particular, I regard it as unacceptable that the Commission has not agreed a pay remit some twelve months after the end of the period to which it is supposed to relate. I am also concerned that the Commission did not properly manage or oversee its legal grants during 2009-10. While I welcome the new controls and proper system of documentation that that the Commission put in place over these grants from late 2010, I am concerned that they were introduced so long after the programme was started.

33. Furthermore, the Commission still has difficulty in budgeting and forecasting effectively, and this prevents it from exercising full control over its resources. Many of these difficulties, especially around forecasting, result from the continuing problem of Commission staff not raising purchase orders on a timely basis. If the Commission does not have a clear idea of its spending commitments at any point of time, it is difficult to accurately forecast its future expenditure.

34. Many of the improvements that the Commission has put in place have been delivered by interim staff brought in by the Commission. In general the Commission continues to be over-reliant on interim staff. Four out of the seven members of the Senior Management Team and eight of the 19 Directors are interim appointments, including the Finance and IT Directors. Other key staff in Corporate Services, such as the Head of Procurement and the Finance Project Manager, are also interim appointments. I am concerned that once these interim staff depart, there is a risk that the improvements in controls that they have delivered will lapse. The Commission will need to ensure that not only does it appoint properly qualified and experienced staff to fill these posts, but it will also need to ensure a proper transfer of knowledge.

35. One of the key posts occupied on an interim basis up to June 2011 was the Chief Executive. The Commission was without a substantive Chief Executive from May 2009 to June 2011. In its 15th Report of 2009-10 (issued February 2010), the Committee of Public Accounts recommended that the Commission seek to appoint a permanent Chief Executive as soon as possible, having followed a rigorous competitive appointment process. While recognising that the Commission has now made a permanent appointment from late June 2011, I am disappointed at the time it has taken to get to this point and am concerned that the Commission's ability to drive forward improvements has been restricted by the lack of a permanent appointment.

36. I remain concerned, too, about the culture of the Commission with regard to financial and administrative controls. It is clear that there is little general financial understanding or competence in the organisation, and that many managers have limited experience of the effective management of public money. In such circumstances it is imperative that the Commission Board and the Senior Management Team are clear and unequivocal in their expectations that staff will comply with the laid down financial procedures and manage public funds effectively, and that such expectations are reflected through active performance management. The Chief Executive should also consider appointing the Finance Director as a full member of the Senior Management Team, as this would provide the Team with greater financial awareness and expertise, and also send a clear message to the organisation of the importance the Senior Management Team gives to financial control and management.

37. In my Report on the Commission's 2008-09 accounts, I commented that the weaknesses in the Commission's controls were deep seated and longstanding, and that it would take time for the Commission both to put in place rigorous controls and to ensure that staff comply with them. As this report indicates, these problems did indeed extend into 2009-10. While the Commission has made improvements in its financial controls, it still needs to embed a culture of compliance with administrative procedures and to ensure that the

Commission Board and senior management actively take responsibility for the proper governance and effective administration of the Commission.

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