SECTION 3: COMPOSITION, SUCCESSION AND EVALUATION

COMPOSITION AND DIVERSITY

There is clear evidence that diverse boards make better decisions and avoid behavioural biases such as groupthink or herding, enhancing board effectiveness. Although there is evidence of progress on UK boards regarding gender and ethnic diversity, more work remains to be done. Investors must continue to press companies to maintain momentum, set clear timescales, and assess company disclosures on diversity carefully.

The FTSE Women Leaders Review,[17] which sets recommendations for Britain's largest companies to improve the representation of women on boards and in leadership positions, and carries on the work from the Hampton-Alexander and Davies Reviews, found that women's representation on FTSE 100 Boards increased from 39.1% to 40.5% between 2021 and 2022, and from 36.8% to 40.1% for FTSE 250 Boards during that same time. Great progress was made by FTSE 350 Boards, which reached the 40% goal for women on boards three years ahead of the target date of 2025. Progress is still needed on other objectives, such as women occupying at least one of four roles of Chair, Senior Independent Director, CEO and Chief Financial Officer, with 43 of the FTSE 100 companies meeting this target.

According to the latest March 2023 report from the Parker Review[18] on the ethnic diversity of UK boards, a key target was nearly met, with almost each FTSE 100 Board having at least one Director from a minority ethnic group by the end of 2022. In the FTSE 250, progress is also being made towards the 2024 target, with 67% of companies that responded meeting the target in 2022, up from 55% last year. Two new targets were also set for December 2027, with each FTSE 350 company being asked to set a percentage target for senior management positions that will be occupied by ethnic minority executives, and 50 of the UK's largest private companies have been set the target of having at least one ethnic minority director on the main board.

SUCCESSION AND BOARD PERFORMANCE REVIEW

Continuous board refreshment and succession planning are vital to ensure diversity on boards. It is critical that appropriate and sufficiently flexible succession plans are in place for the CEO and Chair.

An effective board performance review process will use an independent external facilitator at least every three years.

[17] FTSE Women Leaders 'FTSE Women Leaders Review: Achieving Gender Balance', FTSE Women Leaders (2023), <https://ftsewomenleaders.com/wp-content/uploads/2023/02/2022-ftse-women-leaders-review-final-report.pdf>.

[18] David Taylor & The Parker Review Committee 'Improving the Ethnic Diversity of UK Business: An update report from the Parker Review' (2023) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/topics/diversity/ey-parker-review-report-2022.pdf>.

EVIDENCE BASE

While it is particularly difficult to obtain concrete metrics in this area, investors should look for progress over time and evidence that the company's approach is improving diversity.

Company disclosures on succession planning tend to use boilerplate reporting. Investors should look at the Annual Report with an eye towards assessing how bespoke the narrative on succession planning is, including how well it is linked to the company's overall strategy, values and mission.

Best practice disclosure on this issue includes:

- A board succession planning and nomination policy
- A rationale for re-election of each Director
- Disclosure about the principles and process, including clearly defined parameters for and expectations of new appointments
- Disclosure regarding the diversity of the board on a "comply or explain basis," including a clearly defined process for developing diversity. A clear discussion regarding the outcome of the board effectiveness review, including how the findings impact upon broader company value.

WHAT DOES GOOD COMPANY BEHAVIOUR LOOK LIKE?

- The board has a clear vision about its optimal composition and a structured plan and timescales to achieve this. This should include: the ideal mix of experience and skills; gender, ethnicity and other forms of diversity including but not limited to those protected characteristics detailed in the Equality Act 2010;[19] and the proportion of the board that should consist of Non-Executive Directors.
- Clear disclosure on succession plans. While some allowance should be made for the confidential or sensitive nature of some succession planning issues, disclosures should cover as much material information as possible including:
    - Any identified skills shortages or obstacles/delays to achieving diversity goals
    - A focus on the Chair and CEO
    - An approach which looks out over multiple years.
- Ownership of the succession planning approach by the company. The board should – through the Nomination Committee – retain ownership over the succession planning and recruitment strategy for both the board and for the Senior Management Team. Although the company may use external consultants, the board should ensure it remains actively involved.
- A well-balanced Nomination Committee. This should include the Non-Executive Chair of the board, given the vital role they play in Director performance evaluation.
- A clear and convincing rationale for board Director re-election in the Annual Report. Such a statement should present shareholders with a full picture of the relevant and diverse skills and experience that a Director is bringing to the board. It should also include:

[19] Equality Act 2010, The Stationary Office <https://www.legislation.gov.uk/ukpga/2010/15/section/4>.

    - A statement of a Director's other directorships, trusteeships and responsibilities – including those outside the corporate sector
    - The contributions they have made or will likely make to the board, including how their unique background helps shape a diverse board
    - Confirmation that the Director has recently been subject to formal performance evaluation in relation to the fulfilment of their S.172 duties.[20]
- Detailed and considered explanations around Director independence. This should include why the company considers that the Director remains independent despite the existence of any factors which may impair independence. It should also include justification as to why the independent element is sufficiently strong to counter any imbalance that may arise from the presence of one (or more) Non-Independent Non-Executive Directors.
- A transparent and inclusive approach to the nomination process. This should include engagement with key shareholders, or other stakeholders such as employees.
- A consistent approach to board refreshment. This should include appropriate Director mandates in terms of duration, and a clear link between Director performance and re-election.
- Forward-looking and detailed succession and refreshment plans when proposing the re-election of long-serving members. The Corporate Governance Code stipulates that a board should state its reasons if a Director has more than nine years' tenure. This should not be considered to mark a limit on the value offered by an individual, but a detailed plan is particularly vital when the Director chairs an important Board Committee, including the following:
    - There is evidence of a particularly rigorous review and evaluation process in the cases of long-serving members
    - There is particularly clear disclosure as to why a long-serving Non-Executive Director remains independent.
- A clear link between implementation of the succession plan and company strategy. This should include the board's policy on diversity, inclusion and equal opportunities, including its diversity objectives and progress towards achieving them. There should also be clear information regarding the efforts to develop talent internally.
- A clear description of the board's policy on diversity and inclusion, including professional, international, and protected characteristics[21] such as: Sex, race, disability, age, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, and religion or belief. And other non-protected characteristics are also considered such as: Socio-economic background, neurodiversity, veterans and returners to workplace.
- Clear, measurable objectives that it has set for implementing its diversity policy, and its progress against these objectives. This should include the board's policy not just on its own diversity, but also on the diversity of the Senior Management Team. There should be a consistency in the company's strategy, and explanations of the contribution of diversity and its link to corporate value over time. This should include:

[20] Companies Act 2006, The Stationery Office <https://www.legislation.gov.uk/ukpga/2006/46/section/172/2011-04-22>.
[21] Equality Act 2010, The Stationary Office <https://www.legislation.gov.uk/ukpga/2010/15/section/4>.

- Documentation of the gender and ethnic diversity of the board as well as its progress towards meeting minimum gender and ethnic standards as required by the FCA on all UK listed companies[22] on a comply or explain basis. These are:
  - Gender
    - At least 40% of the board are women (including those self-identifying as women).
    - At least one of the senior board positions (Chair, CEO, Senior Independent Director, or Chief Financial Officer) is a woman (including those self-identifying as women).
    - Note: The FTSE Women Leaders Review maintains both these standards and includes additional recommendations on ways to improve gender diversity. We strongly support working towards these additional metrics.
  - Ethnicity
    - At least one member of the board is from a non-White ethnic minority background (as referenced in categories recommended by the Office for National Statistics).
      - Note: The Parker Review maintains this equivalent standard with additional recommendations for improving ethnic diversity, and we recommend using this as a guide as well. Also, it is important to document whether they are a signatory to the Race at Work Charter (or equivalent).
    - Documentation on the board's efforts towards creating an inclusive workplace environment for those with disabilities. This could include whether they are a Disability Confident employer in the UK.
  - Note: In September 2023, the FCA consulted[23] on proposed changes to their approach to diversity and inclusion. The proposed framework would see all firms required to meet minimum standards to carry on regulated activities by embedding rules around diversity and inclusion into fitness and propriety rules, the code of conduct and the threshold conditions. For larger firms, the FCA propose more specific requirements around the development of D&I strategies, target setting and reporting and disclosure.
- External board performance reviews are conducted by a truly independent organisation, which is vital for an independent and rigorous approach. Companies should disclose details of the process – including the name of the firm or individual undertaking the board performance review – and as far as possible the conclusions reached within the review and subsequent actions taken. This should include details on the following:
  - When the review took place and when a subsequent review is planned

[22] Financial Conduct Authority 'Diversity and inclusion on company boards and executive management', Financial Conduct Authority (2022) <https://www.fca.org.uk/publication/policy/ps22-3.pdf>.

[23] Financial Conduct Authority 'Diversity and inclusion in the financial sector – working together to drive change', Financial Conduct Authority (2023) <https://www.fca.org.uk/publication/consultation/cp23-20.pdf>.

  - ➢ What was specifically reviewed (including the rationale for this decision)
  - ➢ Who conducted the review, whether they were internal or external, appointments and why they were selected
  - ➢ The nature of the process
  - ➢ Key findings and lessons learned, and whether any follow-up is required and if so, in what areas.
- Disclosure of details of any controlling shareholders, including the relationship agreement. The relationship agreement must detail any entitlements to governance arrangements such as board appointments and be made available to investors, barring any commercially sensitive details.

HOW INVESTORS SHOULD CONSIDER VOTING

Holding individual Directors accountable is especially vital if schemes are particularly unhappy with the composition of a board of company, including the plans for succession and methods which have been used to ascertain how 'fit for purpose' an individual board member is.

Although voting against the entire board is usually the most powerful sanction an investor can apply, in this case, it is voting against specific individuals – alongside a clear and timely explanation from the investor as to why the vote is being cast – that can be most effective.

Investors should consider voting against the approval of the Annual Report and Accounts if:

- There is limited or boilerplate disclosure about the board performance review and review of corporate governance arrangements.
- A diversity statement is not disclosed or is considered unsatisfactory based on our above recommendations of what good company behaviour should be.

Investors should consider voting against the re-election of the Chair if:

- Practice does not improve regarding the composition and succession or there is consistently no independent board performance review conducted.

Investors should consider voting against the re-election of the Chair and the Chair of the Nominations Committee if:

- There is no evaluation process.
- There is a failure to disclose a reassuring succession plan, even after engagement with shareholders.
- The board is consistently failing to move closer to the latest FCA requirements on diversity and inclusion – or did not successfully explain the reason for non-compliance – the FTSE Women Leaders Review on gender diversity and the Parker Review recommendations on ethnic diversity.
- The board has not established a diversity and inclusion policy and strategy.

- The board is consistently failing to, or showing lack of effort to, move closer to our above recommendations of what good company behaviour should be regarding board diversity.
- There is a failure to move to annual Director elections and an absence of an acceptable explanation.

Investors should consider voting against the re-election of a Director (including re-election of the Chair) if:

- Previous legitimate investor concerns have not been sufficiently addressed.
- The Director has had significant involvement, whether as an Executive Director or Non-Executive Director, in material failures of governance, stewardship or fiduciary responsibilities at another company or entity.
- Engagement with a Director has resulted in a judgement against their effectiveness and suitability, including with regards to conflict of interest.
- There is no supporting statement from the board.
- There is clear evidence of poor performance or poor attendance at meetings without provision of a satisfactory explanation.
- There is concurrent tenure of a Non-Executive Director with an Executive Director for over nine years and no satisfactory explanation given as to why the Director remains independent.
- The composition of the key Committees or the balance of the board has been compromised by the presence of one (or more) specific non-independent Non-Executive Directors.
- There is failure of a specific aspect of reporting or function (with investors voting against the Director responsible e.g., the Chair of the relevant Committee).
- There is no clear evidence that diversity is being sufficiently considered by the board, or where previously committed timescales are not being met, in the senior board positions.