

Response of the Equality and Human Rights Commission to the Consultation: UK Board Succession Planning

Consultation details

Title:	UK Board Succession Planning
Source of consultation:	Financial Reporting Council (FRC)
Date:	January 2016

For more information please contact

Name of EHRC contact providing response and their office address:	
Anne Madden, Inquiry Manager, Women on Boards	
Telephone number:	
Mobile number:	
Email address:	Anne.Madden@equalityhumanrights.com

The Commission's submission is based on the findings of its formal Inquiry into the appointments of directors to the boards of FTSE 350 companies. The Inquiry is conducted under section 16 of the Equality Act 2006 and requires the Commission to report on the Inquiry's findings.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more at www.equalityhumanrights.com.

Consultation response

The Commission's response is based on the findings of our Inquiry launched in July 2014 into the appointment of directors to the boards of listed FTSE 350 companies. The Inquiry has examined how these companies carry out recruitment for board director roles. Our objective was to assess whether their appointment practices were transparent and fair, resulted in selection based on merit and improved the representation of women on their boards. (The terms of reference are in Annex 1).

To gather data we surveyed FTSE 350 companies and executive search firms, and conducted interviews with these two groups and with successful and unsuccessful candidates for board roles. The company survey achieved a 92% response rate. Our data provides comprehensive evidence about recruitment and talent development among this group.

The Commission is planning to publish the Inquiry report and complementary guidance on making board appointments in late Spring 2016. We will recommend a range of improvements to the board appointment process to encourage greater diversity in the board room. We will share the report with the FRC and would welcome the opportunity to work with the FRC to consider how to build improvements identified by the Inquiry into board appointment practice.

Our Inquiry focussed on the appointment of men and women as board directors. However, the recommendations and good practice are also relevant to increasing the diversity of other protected groups on boards.

1. Business strategy and culture

By what practical methods can the development of business strategy and company culture be linked to succession planning?

How best can the link between strategic planning and effective succession planning be reported?

FTSE 350 companies provided data on appointments in the twelve month reporting period between 2012/2013 and 2013/2014. We found that:

- 84% of companies reported that they had no female executive directors.
- 9.3% of companies reported they had no female non-executive directors.
- Men outnumbered women in senior management positions by a ratio of 4:1.

It is evident that too few women are progressing to senior executive roles. Our data shows that increases in the number of women on boards has been achieved almost exclusively through an increase in women in non-executive rather than executive director roles. Companies said one of their greatest challenges to improving the representation of women on their boards was the limited pool or pipeline of suitable female candidates with the required skills and experience.

Tackling this issue requires companies to link their succession planning to their strategies about talent development and company culture and the operational processes that shape this.

We found that companies with a higher proportion of women on their boards were more likely to have included diversity as part of their succession and development plans for executive roles. Companies described how their corporate diversity policies were linked to their efforts to create a future pipeline of female leaders. Their development programmes included: talent attraction and development across an employee's career, high potential acceleration programmes, training and mentoring, and encouragement to join other boards. Companies said these programmes were open to men and women, but in some cases they also provided specific female leadership programmes to encourage more women into senior roles and to develop a more balanced pipeline. Companies also described activities that supported women managing family and caring responsibilities or improved awareness across a company about equality issues. These activities included: retention and flexible working programmes to retain employees balancing work and family or caring responsibilities and programmes aimed at women returning to work after maternity leave.

We also found that most companies considered gender diversity as part of the board evaluations however this did not necessarily translate into targets, policies or objectives. We recommend that companies describe their approach to succession planning setting out their targets and metrics in their annual report, and that this should cover both their approach to diversity on the board and to company policy and approach to building a talent pipeline.

2. Role of the Nomination Committee

How can Nomination Committee reporting be enhanced to provide sufficient information about the committee's work, including its focus on succession planning and talent management?

The FRC's Corporate Code of Governance recommends that the Nominations Committee should lead and report on the appointment process and consider diversity during this. However several FTSE representatives, search firms and business organisations described the nomination committee as the 'poor relation' of board committees: the disclosure expectations on Nominations Committees are less rigorous than those required of Audit and Remuneration Committees.

The Inquiry identified where companies should make improvements to meet the Equality Act 2010 and the FRC Code to enable fair and merit based appointments. For example, board evaluations and skills audits should identify skills and experience required by a board, and this should form the basis of the role requirements; the role requirements should be measurable and not disadvantage or exclude under-represented candidates, and should form the basis of selection criteria through the appointment process. The Nominations Committee should set and report on standards in all aspects of the appointments process.

Our evidence also shows that companies provide very little training to board members on avoiding discrimination during the appointment process. Panel

members were sometimes reliant for guidance on third parties but this was only provided by a few companies.

We recommend that the FRC should clarify the role and reporting requirements of the Nominations Committee and that this should include how the committee carries out its role in leading non-executive and executive director appointments, succession planning and holding company officers to account on developing a talent pipeline and ensuring diversity in board and executive appointments. Nomination Committees should also be responsible for ensuring selection panels have guidance or training on avoiding unlawful discrimination in making board appointments.

What is your experience of public advertising for non-executive roles?

Our evidence indicates that almost all FTSE 350 companies (91%) used executive search firms to search for suitable candidates and did not rely on open advertising of board roles. Companies and search firms believed that advertising was not cost effective, would attract the 'wrong' candidates and were unenthusiastic about publicising roles more widely. As some roles drew on a global talent pool they believed there was little benefit in advertising in UK outlets.

Our survey findings indicate that most companies did not take any specific actions to encourage applications from women for senior or board level appointments other than asking their search firms for a list including male and female candidates. Taking action to encourage applications is lawful where a company is aware that women are under-represented at senior or board levels and wishes to remedy this (In legal terms this is called positive action).

A few companies had used targeted advertising with positive results. For example, one company wished to widen the candidate pool for a non-executive board appointment and their search firm recommended advertising on an external appointments website. The company was satisfied that this had produced a good range of candidates.

Advertising opens the candidate pool to applicants who may be unknown to search firms. We found that companies that relied on personal networks to identify potential candidates were most likely to have the lowest number of women on their boards. We also interviewed individuals who had been successful and unsuccessful in applying for board roles. Some candidates said that they were only considered by search firms after their names were put forward by board members. This suggests that targeted search may exclude potential candidates with relevant skills and experience from consideration for the candidate pool.

We recommend that companies consider how best to widen the candidate pools to ensure they select from the best candidates. They should consider how to publicise roles more widely on the sites of search firms. Companies should also consider targeting advertising at women, as permitted under positive action under the Equality Act 2010, to tackle the under-representation of women and the barriers women face in putting themselves forward for board roles.

Should the details of the objective criteria used in the search for board candidates be set out in the nomination committee report and if not, why?

The role requirement and person specification provide the criteria for assessing candidates' suitability for board roles. Setting out brief details of the role requirements in the Nomination Committee report might add to the transparency of the recruitment process and support good practice in creating and applying appropriate requirements.

To what extent do you agree with the assertion that those who challenge are sifted out during the recruitment process?

Our inquiry has gathered evidence on the selection, interview and appointment process to assess whether these allow for objective assessment of candidates' skills, expertise and experience. Many companies demonstrated that they used sound assessment criteria throughout the recruitment process. However, companies also reported that they considered 'chemistry or fit' when deciding whether candidates fit into the current board culture. Some companies had translated 'chemistry and fit' into measurable criteria that allowed for comparison of candidates and consideration of the personal qualities and experience which demonstrated a candidate might work constructively and effectively with the existing board. More often, companies left chemistry and fit loosely or undefined. In the absence of such criteria boards might select candidates with a similar background and mind set so contributing to 'group-think' and the absence of individuals who might provide constructive challenge of assumptions.

In an effort to increase the numbers of women on boards, companies and search firms said they were concerned that appointments might be opened to less experienced candidates. They viewed candidates without previous board experience as 'a gamble' or 'risky' and so selected candidates with board experience to take through the appointment process. However a few companies stated that prior experience on a listed company board or other non-executive experience was not a requirement and they would consider candidates without board experience. For example, if current non executives had experience working in listed companies, a company might consider candidates without this, providing they had other appropriate skills.

To ensure boards select candidates based on merit, we recommend that role and person specifications address skills, experience and knowledge, and that personal qualities (chemistry and fit) are translated into criteria that are assessed in the selection process.

3. Board evaluation

What practical changes could help ensure boards fully consider succession planning within the annual evaluation exercise?

Evaluations of board effectiveness should inform succession planning. Evaluations help companies identify when new board appointments may be needed and the types of skills that may be required to maximise board effectiveness. They are also an opportunity for boards to assess the composition of their boards and build targets for improving representation of different groups into succession planning for future board roles.

The FRC Code recommends that company board evaluations should consider the balance of skills, experience, independence and knowledge of board directors, its diversity (including the proportion of men and women), how the board works together as a unit, and other factors that will support its effectiveness. We assessed whether companies had carried out board evaluations that identified skills and knowledge gaps and assessed the balance between men and women.

Our survey found that most companies (82%) carried out skills or competency audits to identify skill, knowledge and experience requirements for director appointments. Most companies (62%) also considered the gender composition of their boards during the evaluations. Some of these companies used evaluations to consider existing board composition in terms of working culture, operations, skills and knowledge gaps and balance between men and women and to inform subsequent appointments and job specifications. Some of these companies used evaluations to develop aspirational targets for improving the number of women on their boards.

Over a third of companies (38%) did not consider the gender composition of their boards during the evaluations. These companies did not recognise the role that evaluations can play in identifying and targeting under-representation of women as part of board succession planning.

We recommend: that FRC considers how best to monitor the way that companies carry out board evaluations, and shares examples of good practice including on identifying skills and diversity needs with the wider cohort of listed companies.

4. The pipeline

How do companies review their internal talent and what development practices do they use in support of succession planning?

The Commission supports the principles, outlined in the FRC's discussion paper, that companies should develop an internal pipeline of diverse candidates, ready for consideration for board or other senior appointments, by a process of continuous identification, evaluation, development and preparation.

Effective succession planning and talent development should develop all employees with potential and also be flexible enough to take into account that women may have

different career progression timelines to their male colleagues because, for example, they take time out to have children. Where women are under-represented in parts of the workforce, companies can use positive action under the Equality Act 2010 to set themselves aspirational targets for improvement and monitor their progress towards reaching the targets. They can also open up the pool of candidates for senior roles by using advertisements that specifically call for applications from women for executive roles.

Companies most frequently identified internal promotion as the action taken to attract and develop female talent. Companies with a high proportion of women on their boards were more likely to offer flexible and part-time working at senior levels, networking opportunities, mentoring and sponsorship programmes.

Some companies also described development programmes to support women's progression into senior roles, sometimes linked to succession plans. These included:

- unconscious bias training for all staff to enable non-discriminatory recruitment or appraisal practice
- accelerating the development of high-potential women through mentoring, leadership programmes for women, or providing operational experience required for more senior roles
- employing executive search firms with a track record of open and inclusive recruitment processes drawing from an appropriately diverse pools of candidates.
- management and leadership development programmes for all suitable staff
- group talent and succession planning for top managers which explicitly reviewed and monitored progress of female talent.
- monitoring diversity of nominations to senior leadership development programmes and actively ensuring female representation on each course.
- ensuring the diversity of the intake for graduate and management training programmes
- offering flexible career paths to complement life cycle choices
- encouraging staff to seek non-executive director role in other companies as part of their personal development

5. Diversity

How should a succession plan incorporate and deliver diversity objectives?

What more can be done and by whom to encourage greater diversity in the board room?

Our evidence shows that:

- 75% of FTSE 350 companies have boardroom diversity policies of which only 40% set aspirational targets to improve the number of women board directors.
- 42% of companies have a senior management diversity policy, of which only 38% set gender diversity targets
- Men outnumber women in senior positions by a ratio of 4:1.

Many companies reported that they did not set targets because they believed targets were incompatible with appointments on merit and undermined their commitment to equal opportunities for all. Other companies gave instructions to their search firms for percentages of long or shortlists to be reserved for female candidates or stated preferences for a female appointment.

The Commission is drafting guidance to explain how using targets, policies, and reporting on progress can lead to more diverse boards.

Our evidence shows that companies that set targets to improve the diversity of their executive and senior management teams, and report on their progress are more likely to have a higher proportion of women on their boards. To encourage greater diversity in the board room and incorporate diversity into succession planning, our evidence suggests that companies can:

- Set aspirational targets, objectives and policies at board and senior management level
- Review progress towards achieving these targets
- Identify the barriers to improving diverse representation at board level or in the internal pipeline and take action to remedy these
- Consider how to widen the candidate pool, for example, by
 - advertising or targeted publicising of appointments through suitable networks in addition to search activities to encourage applications from suitable candidates;
 - considering candidates from sectors outside the FTSE350 who may have the relevant skills, knowledge and experience that fit the role description;
 - ensuring the role description for executive and non-executive roles contains objective measurable criteria against which to assess potential candidates

Lord Davies' regular review and reporting of boardroom diversity against the 25% target has been very effective. We hope this continues with a renewed focus on increasing diversity in executive director roles and in the talent pipeline. Over time this will lead to sustained improvement in the diversity of boards.

4 February 2016

Annex 1

Terms of reference for the Inquiry

The Equality and Human Rights Commission will examine how FTSE 350 companies carry out recruitment and make decisions on suitability for board director roles in light of the provisions of the Equality Act 2010 and the Financial Reporting Council's Corporate Code of Governance (as amended September 2012). The Commission will:

- use evidence of appointments made in the past 12 months to examine how the FTSE 350 listed companies and their agents make decisions about the appointment of board directors including examining the key decision points and the roles and practices of decision makers and their agents throughout the process.
- examine whether those recruitment practices are transparent and fair and result in selection based on merit
- identify where improvements to recruitment practice are needed to ensure recruitment practices utilise to best effect the provisions of the Equality Act 2010, and the equality requirements in the Financial Reporting Council's Corporate Code of Governance (as amended September 2012) with the aim of achieving better representation of women at board level

Definitions

For the avoidance of doubt we have defined FTSE 350 companies as those companies listed on the [London Stock Exchange website](#) on 24 July 2014.

This Inquiry is conducted in accordance with Schedule 2 to the Equality Act 2006 the effect of which is:

- a. To require the Commission to publish the terms of the reference of the Inquiry and give notice of them to any persons specified in them (paragraph 2);
- b. To require the Commission to make arrangements to give persons, particularly those specified in the terms of reference, the opportunity to make representations (paragraph 6)
- c. To empower the Commission to serve a notice on any person or organisation requiring the production of information, documents or evidence in their possession (paragraphs 9 and 10);
- d. To require the Commission to report on the Inquiry's findings (paragraph 15); and
- e. To empower the Commission to address recommendations to any party (paragraph 16).