



How to  
improve  
board  
diversity:

a six-step guide  
to good practice



Equality and  
Human Rights  
Commission

## About this publication

### What is the aim of this publication?

This publication aims to provide guidance for companies and executive search firms on improving the diversity of company boards within the frameworks set out by the Equality Act 2010 and the Financial Reporting Council's UK Corporate Governance Code.

### Why has the Equality and Human Rights Commission produced it?

The Equality and Human Rights Commission's statutory role is to provide authoritative guidance on equality and human rights law and good practice, and to help organisations understand what lawful steps they can take to promote fairness and diversity.

A full explanation of equality law in the workplace can be found in our Employment Statutory Code of Practice.

A full explanation of equality law in relation to board appointments can be found in our legal framework document, 'Appointments to Boards and Equality Law'.

The Financial Reporting Council is the UK's independent regulator responsible for promoting corporate governance and reporting. The UK Corporate Governance Code sets out effective practices for board appointments in UK listed companies. Its principles and provisions are referenced in this guide.

# Introduction

Increasing diversity at board and senior management level is acknowledged as a priority by business, governments and regulators, as well many shareholders and customers. Research suggests that more diverse boards are associated with improved financial performance, enable good corporate governance and facilitate better decision making by bringing different perspectives to support constructive and challenging dialogue. Companies with a diverse workforce operate more effectively and innovatively by understanding their customers, being more open to change and recruiting the best talent.

This guide sets out the practical steps companies can take when making board appointments to improve diversity and ensure that the best candidates for non-executive and executive director roles are appointed on merit. It also recommends ongoing action companies can take to increase diversity across their entire workforce, in particular to ensure a pipeline of diverse talent for future board appointments.

Equality law places the same requirement on all companies, in all sectors and of all types and sizes, to recruit without discriminating. This guide explains what is required by law and recommends effective good practice.

Terms in bold are explained at the end of the guide. All text highlighted in pale orange relates to law or is a legal requirement.

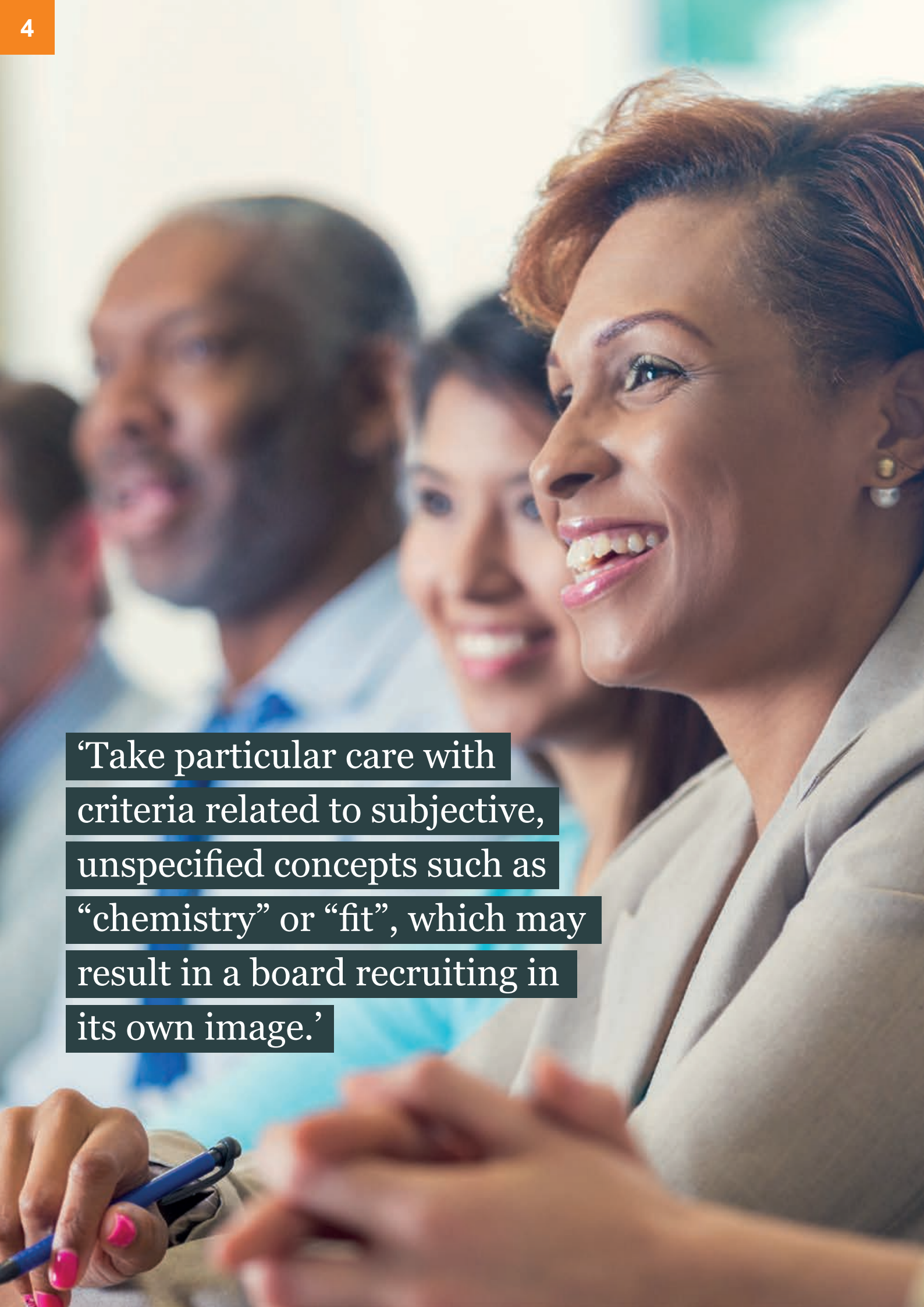
## The six steps

### Making an appointment

- 1. Define the selection criteria in terms of measurable skills, experience, knowledge and personal qualities.**
- 2. Reach the widest possible candidate pool by using a range of recruitment methods and positive action.**
- 3. Provide a clear brief, including diversity targets, to your executive search firm.**
- 4. Assess candidates against the role specification in a consistent way throughout the process.**

### Ongoing action to improve diversity

- 5. Establish clear board accountability for diversity.**
- 6. Widen diversity in your senior leadership talent pool to ensure future diversity in succession planning.**



‘Take particular care with criteria related to subjective, unspecified concepts such as “chemistry” or “fit”, which may result in a board recruiting in its own image.’

# Making an appointment

## 1. Define the selection criteria in terms of measurable skills, experience, knowledge and personal qualities.

There should be a nomination committee which should lead the process for board appointments and make recommendations to the board (FRC, 2014, p.11, B.2.1).

Use a board evaluation to assess the current balance of skills, experience and knowledge on the board and, in light of this, prepare a role description and person specification for each appointment (FRC, 2014, p.11, B.2.2). These should define clear, measurable and objective criteria against which candidates will be assessed. They should be designed to draw out evidence of the skills, experience, knowledge and personal qualities needed for the particular role. This will ensure appointments are made on merit.

The criteria must not place candidates with particular **protected characteristics** at a disadvantage. Specifying that candidates must be, for example, in a particular age range or of a particular sex will almost always be unlawful discrimination. Similarly, imposing requirements which candidates with certain **protected characteristics** are less likely to be able to meet may be unlawfully discriminatory unless they can be **objectively justified**.

Think carefully about how you define the criteria to attract the widest possible pool of suitably qualified candidates. For example, 'previous FTSE experience' may rule out well-qualified candidates from the public or voluntary sector. In addition, this requirement is likely to disadvantage individuals with those **protected characteristics** currently under-represented in FTSE companies, such as women and people from ethnic minorities.

This can lead to unlawful discrimination unless it can be **objectively justified**. Instead, it is good practice to ask for the specific skills or experience needed for the role, such as relevant knowledge of corporate governance or experience of managing shareholder relationships.

Take particular care with criteria related to subjective, unspecified concepts such as 'chemistry' or 'fit', which may result in a board recruiting in its own image. This can lead to judgements based on stereotypical assumptions and to 'group think' among board members, which detracts from good decision making. Instead, identify the demonstrable skills or personal qualities required for an effective board member. For example, 'chemistry' and 'fit' could be described as commitment to company values, experience of developing effective relationships and building trust, or the ability to question in a constructive way.

‘Avoid relying only on personal networks and word-of-mouth recruitment as this significantly restricts the pool of applicants.’



## 2. Reach the widest possible candidate pool by using a range of recruitment methods and positive action.

Publicising a role widely, including using advertising and channels such as social media, helps widen the pool of potential applicants. This ensures you reach a diverse range of good candidates to assess through a competitive process so you increase the likelihood of finding the best person for the role. Using an executive search firm with a track record of delivering a diverse range of suitable candidates may also help increase diversity at the longlist stage.

When planning how to publicise an appointment, take into account any diversity targets set as a result of a board evaluation or as part of board policy. Consider using **positive action**, including **proportionate** steps to encourage candidates from **groups under-represented** on the board to apply, to maximise the opportunity to meet these targets.

Examples of lawful **positive action** include:

- Companies and executive search firms creating networks for executive women who aspire to non-executive board positions, and using these to identify potential candidates for specific board roles.
- Executive search firms providing development opportunities for **under-represented groups** to help them build and demonstrate attributes companies look for in board candidates.
- Companies and executive search firms looking for potential candidates from other sectors, for example from the professions, such as law or accountancy, or the public, not-for-profit or academic sectors.
- Companies specifying in adverts that candidates from **under-represented groups** are encouraged to apply.

Avoid relying only on personal networks and word-of-mouth recruitment as this significantly restricts the pool of applicants and risks ruling out good candidates with diverse skills and experience. Relying on these methods alone could lead to unlawful discrimination if people with particular **protected characteristics** are effectively excluded from the opportunity to apply and this cannot be **objectively justified**.

Similarly, not advertising a role could lead to unlawful discrimination if people with particular **protected characteristics** are effectively excluded from the recruitment process and the decision not to advertise cannot be **objectively justified**. Cost considerations alone will not justify not advertising a role. However, a genuine concern that publicity about recruitment of a senior executive director or chair role will impact on a company's share price may justify such a decision.

### 3. Provide a clear brief, including diversity targets, to your executive search firm.

If the board decides to appoint an executive search firm, it is good practice to ask them about their track record in delivering diverse candidates in previous searches and how they use **positive action** to secure a diverse pool of applicants. Give the executive search firm a clear brief, based on the criteria included in the role description and person specification.

The board can ask the executive search firm to achieve a diversity target that supports the company's diversity commitments. For example, the company may want to secure a longlist which contains a certain proportion of candidates from **under-represented groups**.

However, when setting such targets, the company must ensure that they are realistic and make clear to the executive search firm that it must not unlawfully discriminate against potential or actual candidates in trying to achieve them. Such diversity targets:

- should be based on a realistic, evidence-based assessment of available talent that could apply for the particular role
- must be supported by a fair selection process where suitably qualified candidates are compared on merit against the criteria set out in the role description, and
- must not lead to candidates from **under-represented groups** being preferred over other better qualified candidates.

Steps executive search firms can lawfully take to try to meet diversity targets include:

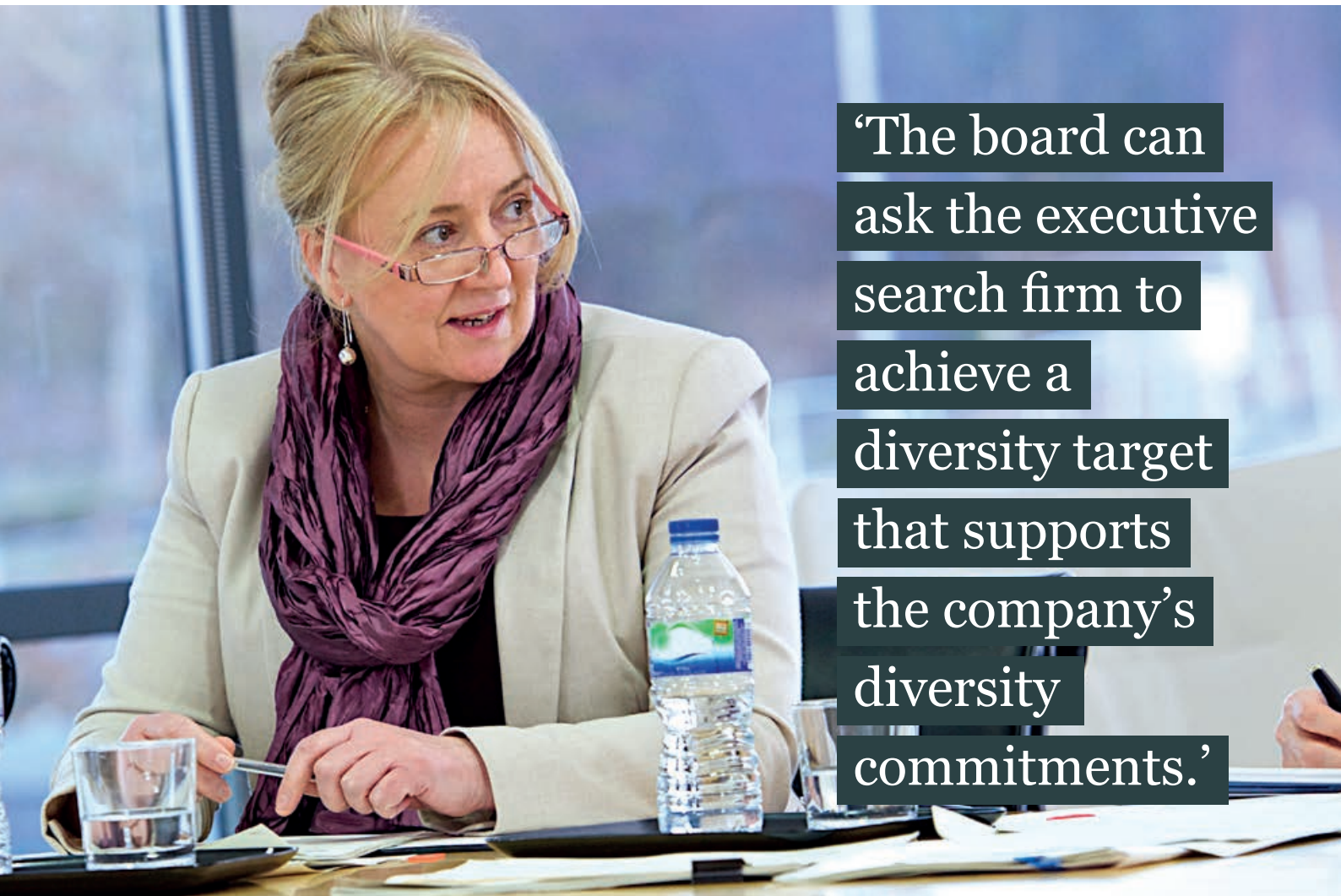
- extending their search into sectors or industries where, for example, women are well-represented in high-level roles
- broadening their understanding of the criteria to include candidates with relevant expertise and experience from less traditional backgrounds, and
- conducting a review process to check the quality of decision making before finalising long and shortlists where candidates from **under-represented groups** have been unsuccessful disproportionately at particular stages of the appointment process.



A company must not automatically sanction an executive search firm purely because it has failed to meet a diversity target, as this could amount to exerting pressure to discriminate if the target could not be met through lawful action. However, if the executive search firm has failed to meet a realistic aspirational target, the company should examine whether the search firm made adequate lawful efforts to meet it. The company can impose a sanction if it decides that this is not the case. To come to this decision, the company should have agreed the target is realistic and asked for evidence of the processes taken by the executive search firm to meet it. This could include the number of men and women who were contacted as part of the search and what lawful **positive action** was taken to try to meet the target.

It would be unlawful for:

- a company to instruct an executive search firm to find a female non-executive director to improve the gender balance on the board, or to provide an all-women shortlist, as this would require potentially discriminating against better qualified men, and
- an executive search firm to include women on a longlist to fulfil a target by treating equally qualified male candidates less favourably, unless there is enough evidence to enable use of the **tie-break provision**.



‘The board can ask the executive search firm to achieve a diversity target that supports the company’s diversity commitments.’

## 4. Assess candidates against the role specification in a consistent way throughout the process.

A formal, rigorous and transparent procedure for the appointment of new directors to the board will ensure appointments are made on merit (FRC, 2014, p.11, B.2).

- Assess every candidate in a consistent – but not overly prescriptive – way to limit any potential bias based on irrelevant factors.
- Assess candidates against the measurable requirements in the role description for skills, experience, knowledge and personal qualities, rather than more subjective factors.
- Avoid questions which may be based on stereotypical assumptions, for example about a female candidate's work and family life balance.
- If relying on one-to-one interviews then selectors should meet to discuss their individual assessments to ensure consistent standards. This will reduce the risk of bias based on irrelevant factors or stereotypes when making a final decision on the appointment.
- Consider including external independent experts on your selection panel to ensure it is balanced and provides for different perspectives.
- Keep a paper trail explaining how each decision was reached to help demonstrate what objective and lawful steps have been taken to meet any diversity targets and to deal with any potential challenge from unsuccessful candidates.

The appointment process must not treat one candidate less favourably than another, or unjustifiably put candidates who share a **protected characteristic** at a disadvantage.

You may decide to use the **positive action 'tie-break provision'** contained in the Equality Act 2010. This allows you to treat a candidate from an **under-represented group** more favourably at any stage of the recruitment or promotion process, from longlisting to selection. However, it can only be used if two or more candidates are equally qualified. It will be more difficult to satisfy yourself of this at the earlier stages of the recruitment process.



Provide those involved in selection with training on complying with equality legislation, unconscious bias and use of the **tie-break provision**. Training can help selectors:

- identify where they are making stereotypical assumptions about people
- apply a scoring or other assessment method objectively
- prepare questions which will test the criteria in the role description and person specification, and
- avoid questions that are not relevant to the requirements of the role.



‘Where the board reasonably thinks that a protected group is under-represented or faces disadvantage it can set aspirational targets to improve diversity and inclusion in the company.’

# Ongoing action to improve diversity

## 5. Establish clear board accountability for diversity and targets.

The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management (FRC, 2014, p.11, B.2).

The board should have strategic oversight of diversity across the company. Where it reasonably thinks that a **protected group is under-represented** or faces disadvantage it can set aspirational targets to improve diversity and inclusion in the company. For example, a company might set a target to increase the percentage of people from ethnic minorities at board level or in senior management by a set date, or to improve the retention of women returning to work after maternity leave by a percentage and set date. The board should seek assurances from the executive team on performance in meeting diversity policy and targets.

Monitor and report on progress in meeting diversity policy and targets, including by:

- ensuring annual reports describe the work of the nomination committee, including the process it has used in relation to board appointments. This should include a description of the board's policy on diversity, any measurable objectives that it has set for implementing the policy and progress on achieving the objectives (FRC, 2014, p.12, B.2.4), and
- being accountable to shareholders on how the board is meeting its aspirational diversity targets, for example by reporting on it at Annual General Meetings and in individual meetings with shareholders.

## 6. Widen diversity in your senior leadership talent pool to ensure future diversity in succession planning.

Companies should regularly review diversity in the company's recruitment, development and retention strategy. Monitoring can help identify barriers preventing employees from progressing to senior roles in the company and identify when and where employees in **groups under-represented** at senior levels in the company are being lost.

Consider using **positive action** measures to encourage individuals from **under-represented groups** to apply for roles or to help them gain skills which will enable them to compete on merit on an equal footing with others. These could include:

- reserving places on leadership and training courses to prepare individuals to apply for leadership roles
- providing programmes for people in particular **under-represented groups** to help individuals manage the specific barriers faced by that group
- providing opportunities for individuals to observe board meetings or to join networks that might expose them to board opportunities, and
- offering flexible working at all levels of the company and flexible career paths to help retain people from **under-represented groups**.

‘Monitoring can help identify barriers preventing employees from progressing to senior roles in the company.’

## The Equality Act 2010 – a summary

The underlying principle of the Equality Act 2010 ('the Act') is that everyone should be treated fairly and have equal opportunities to fulfil their potential. This means that selecting people for jobs and roles must be on merit, demonstrated through fair and transparent criteria and procedures. The Act prohibits discrimination based on nine '**protected characteristics**': age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. People sharing particular **protected characteristics**, such as older people, women or disabled people, who are under-represented on boards or in companies are referred to in this guide as '**under-represented groups**'.

The Act applies to recruitment of employees and to appointment to personal offices, such as non-executive directorships. Therefore, the Act applies to board appointments in the same way as it does to appointments to any other roles within companies.

**Direct discrimination** means treating a person worse than another person because of a protected characteristic. For example, not appointing someone because they are Black, gay or a woman.

**Indirect discrimination** may occur where an organisation applies a practice or rule which on the face of it treats everyone the same, but in fact puts people with a particular protected characteristic at a disadvantage compared with others. For example, including a requirement for previous FTSE board experience in the person specification for a role could indirectly discriminate against women or those from ethnic backgrounds who are under-represented on current FTSE boards. This requirement would be unlawful unless it could be **objectively justified**. To be **objectively justified**, the requirement would have to be a **proportionate** way of meeting a legitimate aim—for example, because the role required skills, knowledge or experience which could only be gained through previous FTSE board experience.

The Act protects everyone from discrimination—for example, men as well as women, and heterosexual people as well as lesbians, bisexual people and gay men. For this reason, giving someone preferential treatment or recruiting them on the basis of any protected characteristic, including because they are in an **under-represented group**, is generally unlawful unless it relates to disability.

Under the Act it is not unlawful to treat a disabled person more favourably than a non-disabled person because of their disability. For example, it is lawful to treat disabled people more favourably in a recruitment process by offering a guaranteed interview to disabled applicants who meet the minimum criteria for the post. In addition, there is a legal duty to make reasonable adjustments for disabled people, for example by providing the recruitment packs in an accessible format.

The Equality Act 2010 allows the use of **positive action** measures to encourage people in under-represented or disadvantaged groups to apply for roles or to help them gain skills which will enable them to compete on merit on an equal footing with others. The aim is to widen the pool of suitable applicants so that you can select the best talent. You can use **positive action** measures before, or at any stage of, the recruitment process – from providing development opportunities for potential candidates to setting a strategy for advertising and search.





There is no limit on the sort of action that can be taken, but to be lawful:

- it must not involve preferential treatment at the point of selection (at longlisting, shortlisting or appointment stages) unless you are using the **‘tie-break provision’** explained below
- it must be reasonable to think that the particular group is **under-represented** or disadvantaged, and
- the action taken must be proportionate.

To be **‘proportionate’** you must balance the need for action against its impact on people with other **protected characteristics**, taking into account factors like:

- how long the under-representation has lasted
- the type of barriers experienced by the **under-represented group**
- the success or failure of other action taken to tackle those barriers, and
- whether there are any alternative ways to address the under-representation which are less likely to disadvantage other protected groups.

The **‘tie-break provision’** is a specific form of **positive action** which can be used in recruitment or promotion where there are two or more candidates who are equally qualified. In these circumstances, a person from an **under-represented group** can be selected if doing so is a proportionate way of addressing under-representation or disadvantage. What is proportionate should be based on up-to-date information which indicates the scale of under-representation, what other action has been taken to address it and any progress made.

The **‘tie-break provision’** can be used at any stage of the recruitment or promotion process— at longlist, shortlist and selection stage. However, care should be taken at the earlier recruitment stages so that sufficient information is known about the candidates’ ability to meet the job specification, competence, professional experience and formal qualifications to assess whether they are of equal merit. It is not lawful to adopt artificially low thresholds to allow more candidates into a tie-break position.



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## Contacts

This publication and related equality and human rights resources are available from the **Commission's website**.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Website **[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)**

Telephone **0808 800 0082**

Textphone **0808 800 0084**

Hours **09:00 to 20:00 (Monday to Friday)**

**10:00 to 14:00 (Saturday)**

Post **FREEPOST Equality Advisory Support Service FPN4431**

Questions and comments regarding this publication may be addressed to: **[correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)**.

The Commission welcomes your feedback.

## Alternative formats

This guide is available as a PDF file and as a Microsoft Word file from the **Commission's website**. For information on accessing a Commission publication in an alternative format, please contact: **[correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com)**

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