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Author: Pleayo Tovarantonite

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Ethnic and Cultural diversity in Boards of Directors of Public Companies in the United Kingdom and New Zealand

Pleayo Tovaranton¹

Abstract

Board diversity has been more than a buzzword in the corporate world and it has increasingly had a huge impact in the wake of the “#MeToo” and “Black Lives Matter” social movements. The advantages of ethnic and cultural diversity have been well-recognised, but the uptake has been sluggish world-wide. This article asserts the importance of board diversity, and extends the definition of “culture” to include the rainbow community. It also offers the most up-to-date analysis with the latest statistics in the United Kingdom as published in the Parker Review and explores barriers to implementation. New Zealand is chosen for comparison because it has a long history of women’s suffrage and bi-culturalism. Methods to improve the ethnic and cultural diversity in public company boards have been suggested, including the role of “soft law”, as per the Corporate Governance Code, which appears a sufficient legal mechanism to improve our diversity targets.

Introduction

Ethnic and cultural diversity may be viewed as a cliché in the corporate world of the twenty-first century. It is not only a catchword repeatedly uttered in the wake of the “#MeToo”² and the “Black Lives Matter”³ movements, but it is also a vital element that every board of directors of public companies should incorporate and embrace. Many cite the word “diversity” as a core value as part of their company cultures, but it is questionable whether boards have full

¹ LLB (Hons) (Essex), LLM (Medical Law & Ethics) (Edinburgh), MBChB (Otago)

² Tarana Burke, ‘History & Inception of the #MeToo Movement’ (*Me Too*, 2006) <<https://metoomvmt.org/get-to-know-us/history-inception/>> accessed 10 April 2021.

³ Black Lives Matter Global Network Foundation, ‘About’ (*Black Lives Matter*) <<https://blacklivesmatter.com/about/>> accessed 10 April 2021.

insight into the rationale and whether they also suffer from “diversity fatigue”. When speaking of culture, one must not be confused with or limited to the term “corporate or organisational culture” which often refers to the beliefs and behaviours that determine how a company’s employees and management interact and handle outside business transaction.⁴ Organisational culture is not expressly defined, and is often implied through evolution of traits and interactions amongst successive leaders and staff within that organisation over time. On the other hand, board diversity, which largely deals with gendered, ethnic and cultural aspects, is now heralded as a means to make board decision-making capacity more effective, improve corporate’s social responsibility, and optimise financial performance. There are many dimensions to diversity, of which ethnicity is one. Culture itself signifies a myriad of other dimensions including, *inter alia*, sexual orientation, religious background, and socio-economic status. Since globalisation provides a pool of talents and wider market access, cultural differences and divergent expectations at the leadership levels become necessary. Companies must reimagine the diversity of their boards of directors and leadership, creating a safe, welcoming, and inclusive environment.

In this paper, I will explain why diversity is vital in corporate governance. The current states of affairs in the United Kingdom (UK) and New Zealand (NZ) will be illustrated as examples. NZ is chosen because it has had a long history of progressive minority representation. Apart from being the first self-governing country in the world in which women had the right to vote in parliamentary elections, we take pride in our bicultural landscape emerging since the signing of the Treaty of Waitangi in 1840.⁵ I will attempt to convince that an ethnically and culturally diverse board creates an environment where collaboration, discussions, and innovation are valued. I will then explore factors that prevent cultural diversity in major categories, which are ethnicity and sexual orientation and expression. Furthermore, I will critically discuss the lessons learnt and the problems when appointing directors on merit. Finally, I will conclude by suggesting ways to improve ethnic and cultural diversity within boards of major companies in the UK.

⁴ Evan Tarver, ‘What Is Corporate Culture?’ (*Investopedia*, 20 February 2021) <<https://www.investopedia.com/terms/c/corporate-culture.asp>> accessed 1 August 2021.

⁵ Janine Hayward, ‘Biculturalism’ (*Te Ara - the Encyclopaedia of New Zealand*, 20 June 2012) <<http://www.TeAra.govt.nz/en/biculturalism>> accessed 11 February 2021.

I. Background

The rise of several significant social movements in the last decade has made ethnic and cultural diversity even more relevant in the corporate governance world. One such movement was “#MeToo”, launched by Tarana Burke in 2006,⁶ but spread through social media more virally in 2017.⁷ The objective was to raise awareness about the high prevalence of sexual harassment and bullying towards women in the workplace within many male-dominated corporates across various industries around the world. The rise in focus on gender equality, diversity of leadership, ethics and corporate social responsibility are seen as critical components of the board of directors’ responsibilities to repair these systemic issues. Previously the scope for board diversity was too narrowly focussed on gender and it lacked its wider perspective on other aspects of diversity. Research on this topic has come into the limelight amidst increased scrutiny by governmental authorities over companies’ reporting, disclosure, and business practices following a series of large company collapses.⁸ Amongst those was Carillion, one of the UK’s leading integrated support services companies that deals on a substantial portfolio of Public Private Partnership projects, extensive construction capabilities and a sector-leading ability to deliver sustainable solutions, according to its Annual Report at year-end 2016.⁹ The UK House of Commons Joint Select Committee’s Report on Carillion¹⁰ has exposed the failures due to its corporate governance despite all the regulatory efforts already in place to improve such disastrous consequences following the Global Financial Crisis in 2008. The Report summaries that, “Carillion’s rise and spectacular fall was a story of recklessness, hubris, and greed”.¹¹ People start asking: what if these boards are composed of diverse members, would their voices prevent such unacceptable social behaviour which could lead to corporate failures? How effectively a board performs its fiduciary duty for the company and its shareholders depends to a greater extent on the

⁶ Burke (n 1).

⁷ Joy Lillis, ‘Reimagining the Diversity of Leadership Through the #MeToo Movement’ (*Ellig Group*, 9 March 2018) <<http://elliggroup.com/2018/03/09/reimagining-diversity-leadership-metoo-movement/>> accessed 10 April 2021.

⁸ Nina Trentmann, ‘Britain’s Largest Companies Fail to Boost Diversity on Boards, Regulator Finds’ *Wall Street Journal* (5 February 2020) <<https://www.wsj.com/articles/britains-largest-companies-fail-to-boost-diversity-on-boards-regulator-finds-11580860860>> accessed 1 August 2021.

⁹ Carillion Plc, ‘Annual Report and Accounts for 2016’ (2016) <<https://www.online-report.com/report/carillion-annual-report-and-accounts-2016/>> accessed 27 February 2021.

¹⁰ Business, Energy and Industrial Strategy and Work and Pensions Committees, *Carillion* (HC 2017–18, 769).

¹¹ *ibid* 3, para 1.

composition of the board. To change the culture of a corporate, a board of directors as a governing body needs to be comprised of ethnically and culturally diverse individuals who can work together as a team.

II. Defining ethnic and cultural diversity

Ethnic and cultural diversity can be a powerful machinery for shaping and invigorating a company. It is important then to define what a company culture means. Ethnic and cultural diversity is broader than commonly perceived. The Review, led by Sir John Parker,¹² which was created to tackle the obstacles to ethno-cultural diversity in the boards of Britain's largest companies, observes that references to ethnicity are not uniformly applied. Many companies refer ethnicity to culture, nationality, and geography interchangeably,¹³ thus its inconsistency is difficult to translate to meaningful research. Cultures encompass shared, implicit, enduring, and pervasive behaviours and norms that permeate a company.¹⁴ The concept of cultural diversity considers human differences in many different dimensions which can be broadly divided into two categories. First, "inherent diversity" which is traits we are born with (such as gender, gender identity, sexual orientation and expression, ethnicity, indigeneity, and congenital disability).¹⁵ Second, "acquired diversity" which is traits gained through life, environment, and experience (such as education, cultural fluency, language skills, technical skills, geographical mobility, acquired disability, religious background, and socio-economic status).¹⁶ It is important to note that the inherent traits are more conspicuous and measurable, hence they are often the focus of companies keen to embrace diversity. However, a combination of inherent and acquired diversities really form a way of life which becomes a

¹² The Parker Review Committee, 'Ethnic Diversity Enriching Business Leadership: An Update Report from the Parker Review' (2020) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/news/2020/02/ey-parker-review-2020-report-final.pdf>.

¹³ *ibid* 51.

¹⁴ J Yo-Jud Cheng and Boris Groysberg, 'How Corporate Cultures Differ Around the World' [2020] *Harvard Business Review* <<https://hbr.org/2020/01/how-corporate-cultures-differ-around-the-world>> accessed 10 April 2021.

¹⁵ Global Women, 'Increasing Board Diversity' (2019) 1 <<https://globalwomen.org.nz/diverse-boards/factsheet-how-to-increase-board-diversity/>> accessed 20 April 2021.

¹⁶ *ibid*.

specific culture. Each board member can and will often belong to multiple cultures simultaneously.

III. Current state of affairs

A. In the United Kingdom (UK)

In the 2020 review by the Financial Reporting Council (FRC),¹⁷ it was found that over half of the UK's Financial Times Stock Exchange (FTSE) top 250 companies (52%) according to the highest market capitalisation did not mention ethnicity in their board diversity policy, and most of the FTSE 350 companies¹⁸ did not have measurable ethnicity goals. Less than 15% of FTSE 100 companies¹⁹ set measurable targets for board ethnic diversity and this dropped to 2% in FTSE 350 companies.²⁰ Though some objectives were set, the progress reports have been non-existent. Since the UK Corporate Governance Code was updated,²¹ it has included provisions for companies to report on board diversity policy, with measurable targets, and progress towards meeting them. It mandates that there should be a formal, rigorous, and transparent procedure when appointing new directors to the board, backed by its justification that the search for such candidates and appointments should be made on merit, against objective criteria and with respect for the benefits of diversity on the board, including gender, ethnicity, and culture.²²

As of February 2020, 59% of the companies reviewed by the updated Parker Review did not have at least one director of colour on those boards.²³ In addition, 70% of FTSE 250 companies did not meet the target set in the Parker Review and 11% of those do not have a policy on

¹⁷ Financial Reporting Council, 'Most UK Companies' Approach to Board Ethnic Diversity Is Unsatisfactory' (5 February 2020) <[https://www.frc.org.uk/news/february-2020-\(1\)/most-uk-companies%E2%80%99-approach-to-board-ethnic-diversity](https://www.frc.org.uk/news/february-2020-(1)/most-uk-companies%E2%80%99-approach-to-board-ethnic-diversity)> accessed 10 April 2021.

¹⁸ Top 350 companies by free float market capitalisation on the London Stock Exchange.

¹⁹ Top 100 companies by free float market capitalisation on the London Stock Exchange.

²⁰ Financial Reporting Council (n 16).

²¹ Financial Reporting Council, 'The UK Corporate Governance Code' (2018) <<https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF>> accessed 10 April 2021.

²² *ibid* 13, para B.2.4.

²³ Financial Reporting Council (n 16).

board diversity.²⁴ Only 20% of the FTSE 100 companies specifically mentioned ethnic diversity in director succession planning.²⁵ In March 2021, the Parker Review Committee published its update report and highlighted that 81 FTSE 100 companies reported they have a director from a minority ethnic group on their board, compared to 52 in January 2020, showing that the review's target of "one by 2021" is achievable.²⁶ There has been significant progress by FTSE 100 companies in 2022 on improving the ethnic diversity of their boards, despite the COVID-19 global pandemic hampering the recruitment processes.

B. In New Zealand (NZ)

In NZ, there are many historical examples of progressive minority representation. Apart from being the first self-governing country in the world in which women had the right to vote in parliamentary elections, bi-culturalism has emerged as part of NZ's social landscape since the signing of the Treaty of Waitangi in 1840.²⁷ This is a strong recognition between the relationship of native Maori and Pakeha (non-Maori, that is, mostly European at the time) people. However, the initial relationship was distinctly prejudiced, like colonialism in many other countries worldwide, as the settler population grew to outnumber the natives and British traditions prevailed. NZ was the first country to recognise the indigenous people in Parliament, having the Maori Representation Act 1867 establishing 4 Maori seats.²⁸ Bi-culturalism has only emerged since the 1980s, following the Maori "renaissance", based on the partnership model of the Treaty of Waitangi.²⁹ Government agencies later began to recognise the languages, cultures, and traditions of both European and Maori. It is submitted that we should now move towards a multi-cultural society as there are more than two ethnic groups in NZ. Nevertheless, NZ has long believed that diversity should be enshrined in Parliament and in the boardroom of public companies. Since 2016, the Institute of Directors

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Rupa Sudra Bharadva, 'Significant Progress on Improving Ethnic Diversity of FTSE 100 Boards Reveals New Data from the Parker Review' <https://www.ey.com/en_uk/news/2021/03/significant-process-on-improving-ethnic-diversity-of-ftse-boards-reveals-new-data> accessed 7 June 2021.

²⁷ Hayward (n 4).

²⁸ NZ History, 'Maori and the Vote – Setting up the Maori Seats' (*Government of New Zealand*) <<https://nzhistory.govt.nz/politics/maori-and-the-vote/setting-up-seats>> accessed 11 February 2021.

²⁹ Hayward (n 4).

has published some guidance to help improve board diversity, attract and retain a diverse workforce, and embrace an inclusive culture that enables diverse perspectives to thrive.³⁰ The latest NZ Stock Exchange (NZX) Diversity statistics published in 2020 revealed 29% of publicly-listed company directorships are female.³¹ All of the NZX50 companies now have a diversity policy in place. Like the UK and other European countries, the main focus on board diversity at the time was on gender balance, but has recently shifted to wider cultural dimensions such as age, nationality, ethnicity, Maori indigeneity, LGBTIQ+ affinity, and disability. The NZ Diversity Report 2019 showed that while the female representation in boards of the top 39 companies surveyed was rising towards 40%, the Maori and Pasifika representation was minimal (less than 10%) and far less reflective of our population.³² The objective of this report is to measure progress towards the goal of achieving gender balance and ethnically diverse workplaces.

IV. Advantages of diversity

An increasing amount of research has shown that more diverse boards and senior executives are more effective than boards that have members with similar background in making better decisions and outpacing their rivals on a number of key financial indicators.³³ This correlation is observed even outside the Western corporate world.³⁴ Improving the “cognitive diversity”

³⁰ Institute of Directors in New Zealand, ‘Getting on Board with Diversity: A Guide to Getting Diverse Talent on Boards’ (Institute of Directors 2016) <<https://www.iod.org.nz/assets/Resources-insights/Guides-and-templates/Institute-of-Directors-Getting-on-board-with-diversity-v2.pdf>>.

³¹ Institute of Directors, ‘Statement on the Latest NZX Diversity Statistics’ (*Scoop News*, 7 February 2020) <<https://www.scoop.co.nz/stories/BU2002/S00084/statement-on-the-latest-nzx-diversity-statistics.htm>> accessed 11 April 2021.

³² Champions for Change, ‘Diversity Report 2019: Results and Analysis on the Measurement of Gender and Ethnicity at Leadership Tiers in New Zealand Businesses’ (2019) <<https://diversityworks.nz.org.nz/media/3981/champions-for-change-diversity-report-2019.pdf>>.

³³ McKinsey & Company, ‘Women Matter: Ten Years of Insights on Gender Diversity’ (October 2017) 13 <<https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Women%20matter/Women%20Matter%20Ten%20years%20of%20insights%20on%20the%20importance%20of%20gender%20diversity/Women-Matter-Time-to-accelerate-Ten-years-of-insights-into-gender-diversity.pdf>> accessed 15 February 2021.

³⁴ Maran Marimuthu, ‘Ethnic Diversity on Boards of Directors and Its Implications on Firm Financial Performance’ [2008] *Journal of International Social Research* <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.452.6902&rep=rep1&type=pdf>>.

of the board of an underachieving company can further augment that board's ability to oversee its executive with a boarder perspective.³⁵

The study by Hakovirta and others showed that diversity of thought was culminated from several dimensions (age, gender, ethnicity) that create a characteristic for each group of corporates to encourage innovativeness.³⁶ They found that the most striking difference between the companies was their ethnic diversity, where most innovative ones are at least a quarter percent more ethnically diverse.³⁷ Dodd and others found a positive correlation between board cultural diversity and corporate social performance, and the strength of this correlation is particularly strong for companies that have higher needs for stakeholder engagement (such as those with high visibility to consumers).³⁸ Through a policy research perspective, racial / ethnic diversity significantly contributes to diversity in thought and decision-making.³⁹ The significant difference may be due to the wider market area these companies operate and their cultural knowledge of international business operations. Another critical observation may be due to the newer and more innovative companies being established in an era of the recognition of ethnic diversity, as compared with older companies being founded in an era where the board composition was stale.

Research by Catalyst and international institutes has summarised that diversity and inclusion benefits members, teams, organisations, and society in four main areas.⁴⁰ First, diverse boards are more successful at recruiting and retaining talent.⁴¹ Human resources policies and practices that have diversity as their focus are associated with less frequent turnover of employees. Employees of colour who experience inclusion tend to contribute to engagement

³⁵ Jared Landaw, 'Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing' (*The Harvard Law School Forum on Corporate Governance*, 14 July 2020) <<https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/>> accessed 10 April 2021.

³⁶ Marko Hakovirta and others, 'The Importance of Diversity on Boards of Directors' Effectiveness and Its Impact on Innovativeness in the Bioeconomy' (2020) 7 *Humanities and Social Sciences Communications* 1.

³⁷ *ibid.*

³⁸ Olga Dodd, Bart Frijns and Alexandre Garel, 'Cultural Diversity in the Boardroom and Corporate Social Performance' [2019] *SSRN Electronic Journal* <<https://www.ssrn.com/abstract=3389707>> accessed 12 April 2021.

³⁹ Adam D Galinsky and others, 'Maximizing the Gains and Minimizing the Pains of Diversity: A Policy Perspective' (2015) 10 *Perspectives on Psychological Science: A Journal of the Association for Psychological Science* 742.

⁴⁰ Catalyst, 'Quick Take: Why Diversity and Inclusion Matter' (*Catalyst*, 24 June 2020) <<https://www.catalyst.org/research/why-diversity-and-inclusion-matter/>> accessed 12 April 2021.

⁴¹ Juan M Madera and others, 'Top Management Gender Diversity and Organizational Attraction: When and Why It Matters.' (2019) 7 *Archives of Scientific Psychology* 90.

and retention – a fifth of employees surveyed said their desire to stay in a company was linked to feelings of inclusiveness.⁴² Second, diverse teams are critical for innovation and earn a premium for their innovation,⁴³ as board members engage more actively, become creative, and better assess consumer interests in an open inclusive environment. Diversity also reduces “groupthink” and enhances decision-making.⁴⁴ Increased board diversity minimises the potential for entrenchment, which can fill in the gap between the potential board candidates within the company and board appointments. Third, diverse boards boost company reputation,⁴⁵ and have fewer instances of fraud,⁴⁶ through more effective risk-management practices and more honest financial reporting. Fourth, boardroom diversity strengthens corporate social environment responsibility performance.⁴⁷ Board members with diverse backgrounds tend to recognise the interests and benefits of different stakeholders with wider perspectives.

V. Factors preventing ethnic and cultural diversity on boards

A. Ethnic Background

One of the factors preventing ethnic and cultural diversity identified in the Parker Report was the lack of full initiative in actively identifying the existing pool of qualified candidates by

⁴² Catalyst, ‘New Report: Getting Real About Inclusive Leadership’ (*Catalyst*, 21 November 2019) <<https://www.catalyst.org/research/inclusive-leadership-report/>> accessed 12 April 2021.

⁴³ Rocío Lorenzo and others, ‘The Mix That Matters’ (*BCG Global*, 26 April 2017) <<https://www.bcg.com/publications/2017/people-organization-leadership-talent-innovation-through-diversity-mix-that-matters>> accessed 12 April 2021.

⁴⁴ Sarah E Gaither and others, ‘Mere Membership in Racially Diverse Groups Reduces Conformity’ (2018) 9 *Social Psychological and Personality Science* 402.

⁴⁵ Bureau for Employers’ Activities (ACT/EMP), ‘Women in Business and Management: The Business Case for Change’ (2019) Report <http://www.ilo.org/global/publications/books/WCMS_700953/lang--en/index.htm> accessed 12 April 2021.

⁴⁶ Aida Sijamic Wahid, ‘The Effects and the Mechanisms of Board Gender Diversity: Evidence from Financial Manipulation’ (2019) 159 *Journal of Business Ethics* 705.

⁴⁷ Cristina Banahan and Gabriel Hasson, ‘Across the Board Improvements: Gender Diversity and ESG Performance’ (*The Harvard Law School Forum on Corporate Governance*, 6 September 2018) <<https://corpgov.law.harvard.edu/2018/09/06/across-the-board-improvements-gender-diversity-and-esg-performance/>> accessed 12 April 2021.

executive search firms.⁴⁸ This short-sightedness is partly attributable to a narrow outlook in strategic ambitions within boards. There is a general lack of recognition and awareness of the increased ethnic diversity within local communities of general consumers by UK companies.⁴⁹ The FRC's Chief Executive Officer recognises the UK's poor record on board ethnic and cultural diversity.⁵⁰ Companies fail to institute appropriate policies on board ethnicity, set targets, or monitor their progress against policies. In order to make advancement in this area, the Parker Review recommends each FTSE 100 company to have at least one director of colour by 2021 and for each FTSE 250 company by 2024.⁵¹

B. Rainbow Community

Unlike other well-established characteristics such as age, gender, race, and ethnicity, a person's LGBTIQ+ affinity is not always visible. The term "rainbow" refers to people who identify as Lesbian, Gay, Bisexual, Transgender, Queer (Questioning), Intersex, Asexual, and others (LGBTIQ+).⁵² Despite the rainbow representatives having made a significant contribution to public companies, the obstacles to career progression and degree of discrimination have often been striking, according to the report commissioned by the FRC.⁵³ The findings revealed that current corporate culture has seldom been a welcoming ambience for LGBTIQ+ people to be themselves.⁵⁴ They often faced discrimination and made personal sacrifices in order to progress to the higher rung of the corporate ladder, therefore, their sexual orientation and expression status was often concealed until late into their careers. Besides, not being "out" at work creates a huge psychological stress and reduces productivity.⁵⁵ In spite of their struggles, these LGBTIQ+ leaders who are well supported by their allies (individuals

⁴⁸ The Parker Review Committee, 'A Report into the Ethnic Diversity of UK Boards' (2017) 12 <https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/news/2020/02/ey-parker-review-2017-report-final.pdf>.

⁴⁹ *ibid* 27.

⁵⁰ Financial Reporting Council (n 16).

⁵¹ The Parker Review Committee (n 47) 11.

⁵² The Good Side, 'Building More Open Business: Supporting the Progression of LGBTQ+ People to Senior Leadership Positions through Inclusive Company Policies' (The Financial Reporting Council Ltd 2020) 1 <<https://www.frc.org.uk/getattachment/19f3b216-bd45-4d46-af2f-f191f5bf4a07/The-Good-Side-x-Financial-Reporting-Council-Buidling-more-open-business-2011.pdf>>.

⁵³ The Good Side (n 51).

⁵⁴ *ibid*.

⁵⁵ *ibid* 10.

outside the rainbow community who support equality and rights of the LGBTIQA+ people)⁵⁶ have managed to progress and inspire future generations of employees to ensure they will not experience similar barriers to career progression. One advantage of gender-diverse boards is that they view sexual harassment and discrimination through a different pair of eyes, at the very least because of what has shaped their identity through their experiences.⁵⁷

While progress is being made, many companies need to actively foster LGBTIQA+ inclusion in the next governance boards and make those changes last in order to dispel stereotypes, and unconscious biases. Boards are much more optimistic as a new generation of executives, company leaders, shareholders, stakeholders, and consumers realise that LGBTIQA+ inclusion makes a lot of business sense.⁵⁸

VI. Disadvantages of diversity and lessons to be learnt

According to a Harvard Business Review, the most determining factor in a board's effectiveness is not how the board is comprised *per se*, but "a virtuous cycle of respect, trust, and candor" amongst the board members.⁵⁹ Often diversity and inclusion are mentioned interchangeably and assumed to convey the same message. As Myers put it,⁶⁰ "[d]iversity is being invited to the party, whereas inclusion is being asked to dance" – diversity is about representation and inclusion is about involvement, unlocking the power of diversity. Though this analogy gives a graphic representation, it is criticised as an oversimplification of complex ideas and does not authentically represent what inclusion really could be – that is more strategic rather than merely celebrative.⁶¹ Boards with female and/or ethnically diverse directors, who are present not merely for "tokenism" or compliance checklists, should be taken seriously and respected.

⁵⁶ *ibid* 1.

⁵⁷ Patricia Lenkov, 'Male-Dominated Governance and #MeToo' <<https://iveybusinessjournal.com/male-dominated-governance-and-metoo/>> accessed 10 April 2021.

⁵⁸ The Good Side (n 51) 11.

⁵⁹ Jeffrey A Sonnenfeld, 'What Makes Great Boards Great' (2002) 80 Harvard Business Review 106, 110.

⁶⁰ Verna Myers, 'Diversity and Inclusion Training' (*The Verna Myers Company*, 2020) <<https://www.vernamyers.com/>> accessed 12 April 2021.

⁶¹ Daniel Juday, 'Inclusion Isn't "Being Asked to Dance"' (*LinkedIn*, 4 May 2017) <<https://www.linkedin.com/pulse/inclusion-isnt-being-asked-dance-daniel-juday/>> accessed 12 April 2021.

Care must be taken when selecting individuals who differ in ethnic and cultural characteristics while assuming that they will bring new perspectives into a boardroom. This outcome may fail if new, ethnically and culturally diverse directors have similar backgrounds to those of existing board members, or if they were selected because they get on well with the rest of the board. On the contrary, their voices may be muted because of their diverse backgrounds if they do not conform with the rest of the board, and their perspectives may not become part of the decision-making process.⁶² The ones that are not compatible with the rest often select themselves out of the group. Sonnenfeld observes that directors are undoubtedly accomplished, intelligent, and comfortable with power, but if they are put into a boardroom that discourages disagreement, they will most likely start to conform.⁶³ This implies that demographic diversity is not necessarily equal to “cognitive diversity”. Likewise, a director with a similar background to other board members who serves as a director on many other company boards may show cognitive diversity through her experiences.

An increase in cognitive diversity can lead to longer periods for board meetings and the amount of time taken to make decisions. However, this is not necessarily a hindrance as one potential explanation is that cognitive diversity translates to “cognitive conflict” in the boardroom,⁶⁴ resulting in a rigorous debate in order to reconcile differences in perspectives and reaching a consensus. Another reason for the increased time for decision-making may be that the board becomes more detached from the executives, requesting for additional information and exploring more options during the decision-making process, thus attempting to fulfil their board responsibilities more seriously.

VII. The problems with appointment on merit

Appointing board members through diversity does not mean jeopardising the skills, qualifications, and experience of those being selected. It is about choosing people on merit who also bring diversity of perspective to complement board decision-making. This will better ensure a company’s future outcomes, and lasting success.

⁶² Landaw (n 34).

⁶³ Sonnenfeld (n 58).

⁶⁴ Landaw (n 34).

It is believed that the primary objective in appointing board members should always be made on merit and that diversity characteristics become secondary. However, Hickman argues that it can be more harmful than helpful to use the meritocratic idea in the context of board member appointment.⁶⁵ Human capital when measured in this way fails to account for structural and demographic inequalities. When boards implement a merit-based appointment as echoed in the UK Corporate Governance Code, without sufficient focus on outcomes, they will continue to lack diversity of gender, ethnicity, culture, and socio-economic background.⁶⁶

VIII. Ways to improve the ethnic and cultural diversity of UK Boards

In spite of much effort being put into addressing the issue over the last decade, McKinsey & Company confesses that more work needs to be achieved.⁶⁷ Fortunately, there are many companies who take the issue of the lack of board diversity seriously and acknowledge that efforts made to address this issue are both moral and financial necessities to gain success in the modern corporate world.

The Parker Review, first published in 2017, attempted to address the problems of the lack of ethnic and cultural diversity in the boards of the UK's public companies.⁶⁸ The UK Corporate Governance Code (last updated in 2018) states that "constructive debate can be encouraged...through having sufficient diversity on the board",⁶⁹ acknowledging that diversity is more than variances of approach and experience. Ethnic and cultural diversity is also vital in ensuring effective management in order to execute business plans and sustain the company's goals. There are a number of ways to achieve this, as outlined below:

⁶⁵ Eleanore Hickman, 'The Problems with Appointing on Merit. A Human Capital Analysis' (2021) 21 *Journal of Corporate Law Studies* 109.

⁶⁶ *ibid.*

⁶⁷ McKinsey & Company (n 32) 6.

⁶⁸ The Parker Review Committee (n 47).

⁶⁹ Financial Reporting Council (n 20).

A. Create an inclusive culture. Recognise and address unconscious bias.

First, the board needs to understand problems created by the internal company culture in order to rectify them. The white male-dominated boards can trivialise certain norms, attitudes, and behaviours that allow issues to perpetuate and become unconscious biases. Companies should create cultural awareness throughout all levels and increase visibility of genuine role models from a wide range of ethnic and cultural backgrounds. The board should establish the company's overall purpose to support the values and drive the correct behaviours. Company statements on values and ambitions should include careful consideration of how ethnic and cultural diversity impacts their business.⁷⁰ As per the NZ Institute of Directors' guide,⁷¹ it is vital that the Board sets the correct "tone from the top" and leads by example. The role of the Chair is critical in creating an inclusive environment where everyone is comfortable and confident expressing their opinion in order to have robust conversations. Nevertheless, all board directors should be responsible for creating an inclusive culture that embraces every contribution with respect. Having younger and more tolerant generations on the board may also reduce these prejudices, as there seems to be evolutionary changes in the generational understandings about our society.⁷²

B. Review board composition, policies and procedure.

The board should conduct a review of board composition, policies, and procedure. The company may use a skills matrix which helps to identify the core skills, competencies, diversity, and experience of existing and potential candidates required for the board to achieve its long-term goals. The review should evaluate if the board fulfils its duties proficiently, in particular whether it has improved reporting and insight into certain areas including leadership, talent, diversity, and succession planning. An annual vulnerability analysis should be conducted to evaluate human-capital risk as part of the overall risk management. These risks may cover areas such as shortage of critical skills within the

⁷⁰ The Parker Review Committee (n 47) 34.

⁷¹ Institute of Directors in New Zealand (n 29) 5.

⁷² Jan G Janmaat and Avril Keating, 'Are Today's Youth More Tolerant? Trends in Tolerance among Young People in Britain' (2019) 19 *Ethnicities* 44.

workforce, regulatory and compliance issues, succession planning as well as discrimination and harassment risks, for instance.⁷³

C. Have action plans.

The lack of progress in gender and ethnic diversity calls for a controversy as to whether companies view creating diversity policies as an easy alternative to compliance through implementation. Many companies have a “cookie cutter” template approach to these diversity policies.⁷⁴ Companies can overcome the lack of ethnic and cultural diversity or inclusion if the boards transition from a “positioning” approach to an “actioning” approach.⁷⁵ This requires the company to proactively put effort into outlining actions to improve ethnic and cultural diversity rather than just describing it in their board policies. This links back to the quote⁷⁶ that differentiates the idea of “inclusivity” from “diversity”. The action plans should be individualised for each company, aligned with the company’s values, and implemented with the whole board involvement rather than by a designated diversity director alone.

D. Identify and appoint diverse talent.

Many Annual Reports failed to give information on how they planned to increase ethnic and cultural diversity throughout the pipeline.⁷⁷ Diversity should infuse through all levels of a company. Using operative hiring practices, a company can guarantee that a certain number of employees represent each aspect of minorities. However, there is more to creating an inclusive workforce than just ticking off boxes. The NZ Diversity Report suggests that each corporate should rely on an evidence-based approach to allow them to fully comprehend what the current board leadership compositions are and where the talent pipeline needs immediate attention.⁷⁸ By hiring a diverse pool of talents, the human resources department

⁷³ Lenkov (n 56).

⁷⁴ Divina Paredes, ‘Diversity Policies Rise, but Actual Diversity Stalls in NZ Boards - Report’ (*CIO New Zealand*, 18 November 2019) <<https://www2.cio.co.nz/article/668769/diversity-policies-rise-actual-diversity-stalls-nz-boards-report/>> accessed 13 April 2021.

⁷⁵ The Parker Review Committee (n 11) 55.

⁷⁶ Myers (n 59).

⁷⁷ The Parker Review Committee (n 11) 52.

⁷⁸ Champions for Change (n 31).

should take steps to eliminate unconscious bias that can inhibit inclusivity, bearing in mind that a genuinely diverse workforce should have those who bring different personalities, backgrounds, and viewpoints.

E. Set targets and measure progress.

The board should consider how to improve ethnic and cultural diversity by setting out goals with timeframes to reflect the company's vision, employee engagement, and wider communities. The 2020 Parker Review suggests that instead of the use of constructs as proxies for ethnicity in Annual Reports, companies should report diversity of race, culture, and geography, together with ethnicity by using unambiguous language.⁷⁹ The board must be careful to avoid a risk of "diversity fatigue", which can set in as the company struggles to achieve their diversity goals. The board should monitor key performance indicators of diversity strategies across the operation. Reporting on diversity progress in a transparent and meaningful way that goes beyond box-checking is viewed as good governance. Separate sections of the annual report should then include a description of the board's policy on diversity, encompassing any measurable goals, and information on progress in achieving those goals.

F. The role of "soft law".

The purpose of the UK Corporate Governance Code is to promote gender, social, cultural, and ethnic diversity in UK boardrooms.⁸⁰ The current "soft law" approach, which implies that non-compliance to the above guidelines is not punishable, appears to be working to incentivise better ethnic minority representation, albeit slowly. This "comply-or-explain" approach is widely recommended by some legal scholars as an appropriate framework used by regulators to enhance board diversity.⁸¹ Many companies in the UK have expressed their commitment to enhancing diversity within their corporates. Besides, it is evident that the

⁷⁹ The Parker Review Committee (n 11) 51.

⁸⁰ Financial Reporting Council, *The UK Corporate Governance Code* (n 20),

⁸¹ Rita Goyal, Nada Kakabadse and Andrew Kakabadse, 'Achieving Gender Balance on British Boards with the Soft-Law Approach: Directors' Perspective' (2018) 18 *Journal of Business Diversity* 29.

Davies Review⁸² had a very positive impact on gender balance in this regard, and the board and executive compositions in the UK companies have changed dramatically as a result. However, it is debatable whether this “soft-law” approach is sufficient to ensure effective, desirous outcomes of board diversity. Terjesen and others warn that introducing non-binding quotas for board compositions in their respective governance code or public listing policy may achieve a significant change, and government may need to introduce harsher penalties or more prescriptive measures.⁸³ They also anticipate that countries which have the aforementioned governance practices, debates, and reporting initiatives in terms of the diverse board composition will be more likely to move towards formally legislating quotas.⁸⁴ To predict the future of the UK’s legislative stance, one may resort to the Path Dependence theory, postulated by Bebchuk and Roe,⁸⁵ which describes a phenomenon where a country’s pattern of ownership structures or legal rules governing it at any point in time depend partly on the patterns it had earlier. Accordingly, it is unlikely that the UK will move towards hard law (statutory impositions with penalties for violation) in the near future, whereas for NZ with a long history of universal suffrage and recognition of bi-culturalism, it is predicted that legislation for board quota may be in place sooner. NZ is currently taking the same stance as the UK and has devised its own NZX Corporate Governance Code 2017.⁸⁶ It prescribes some recommendations to encourage issuers to adopt the NZX Code but do not force them to do so. Recommendation 2.5 states that the company should have a written diversity policy which includes requirements for the board or a relevant committee to set measurable objectives for achieving diversity (which, at a minimum, should address gender diversity) and to assess annually both the objectives and the progress in achieving it.⁸⁷ Under the NZ Listing Rule, an issuer is required to provide a quantitative breakdown of the gender composition of the

⁸² Lord Davies, ‘Women on Boards Davies Review - Five Year Summary October 2015 - Improving the Gender Balance on British Boards.’ (2015)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482059/BIS-15-585-women-on-boards-davies-review-5-year-summary-october-2015.pdf>.

⁸³ Siri Terjesen, Ruth V Aguilera and Ruth Lorenz, ‘Legislating a Woman’s Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors’ (2015) 128 *Journal of Business Ethics* 233.

⁸⁴ *ibid* 13.

⁸⁵ Lucian Arye Bebchuk and Mark J Roe, ‘A Theory of Path Dependence in Corporate Ownership and Governance’ (1999) 52 *Stanford Law Review* 127.

⁸⁶ New Zealand Stock Exchange, ‘NZX Corporate Governance Code 2017’ (2017)

<<https://www.russellmcveagh.com/getmedia/cde028c5-f77e-41cd-81bb-841133fb4d6c/257864.pdf>> accessed 20 April 2022.

⁸⁷ *ibid* 9.

company's directors and officers in its annual report, including comparative figures with previous annual reports. Recommendation 4.2 advises that the diversity policy should be published on the company's website.⁸⁸ NZ's Financial Markets Authority (FMA) has also written a handbook for directors, executives, and advisors, in which its second principle states that "there should be a balance of skills, knowledge, experience, independence, and perspectives" to ensure an effective board.⁸⁹ The FMA only made a passing comment that to have a range and variety of relevant attributes which complement each other, the board should include a diversity of gender, ethnicity, cultural background, age, and skills.⁹⁰ An initiative such as the Diversity Reporting Framework⁹¹ (which applies to listed and non-listed companies, partnerships, and public sector organisations) provides a set of guidelines for surveying employees and presenting results in a cohesive manner. The guidelines even go beyond what is currently required by law of different types of organisation through listing rules or public sector requirements, focusing on both gender and ethnic minority representation at all levels of the organisation. For instance, it reported on management sub-categories such as board, key management personnel, other executives, or senior managers by adapting from the Australian Workplace Gender Equality Act 2012.⁹² Recognising that the decision for a government to legislate ethnicity board quotas may also depend on structural and socio-economic factors, each country should devise its own plans towards a gradual transition of a more inclusive corporate culture without the need of law.

Conclusion

This paper demonstrates that while corporate leaders may suffer from "diversity fatigue" in the wake of recent global socio-political movements, ethnic and cultural diversity is becoming more relevant in boards of directors of public companies. Culture in the broadest sense covers many attributes and characteristics of a person. The public discourse around board diversity

⁸⁸ *ibid* 19.

⁸⁹ Financial Markets Authority (NZ), 'Corporate Governance in New Zealand: Principles and Guidelines' (2018) 10 <<https://www.fma.govt.nz/assets/Guidance/180228-Corporate-Governance-Handbook-2018.pdf>> accessed 20 April 2021.

⁹⁰ *ibid* 11.

⁹¹ Champions for Change (n 31).

⁹² *ibid* 10.

cannot be based around gender or ethnicity alone, but should specify other aspects including but not limited to gender identity, sexual orientation and expression, indigeneity, disability, education, cultural fluency, language skills, religious background, and socio-economic status mentioned above. The current states of affairs in the UK and NZ have been described, where there is room for improvement. Numerous research suggests that diverse ethnic and cultural backgrounds on the board bring divergent opinions, views, and perspectives into the company, resulting in more effective decision-making, optimal financial performance, increased innovativeness, less staff turnover, reduced risk of fraud, strengthened social responsibility and better reputation. Lessons learnt from misconception and erroneous implementation, including problems when appointing directors on merit, have been discussed. Furthermore, this paper explores various ways to improve board diversity from changing attitudes through to measuring progress. It affirms the *status quo* of having “soft law” measures to tackle this issue. The current Corporate Governance Code is sufficiently clear and concise which enables companies to “comply or explain” without the need for penalty. Besides, it is acceptable to allow the younger, more tolerant generations, who are more inclusive and open-minded in their attitudes to ethnic and cultural differences, to naturally replace the older generations.