Diversity, Merit and Power

in the C-suite of the FTSE100

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I, Eleanore Hickman, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Abstract

This research seeks to contribute to the boardroom diversity debate by examining gender and ethnicity in the c-suite of the FTSE 100, both theoretically and empirically. The research considers the c-suite appointment process through the lens of UK Corporate Governance Code guidance to appoint on merit. From an empirical perspective, the research has two strands. Firstly, it gathers and analyses profile data on the FTSE 100 c-suite, for both 2016 and 2017. Secondly, with reference to the guidance of the Code, it analyses corporate diversity statistics in light of corporate diversity policies provided in the annual reports.

Key findings of the research include support for the theory that homosocial reproduction among the FTSE 100 c-suite is still prevalent, and disadvantages women and ethnic minorities. The findings suggest there are higher barriers to c-suite entry, particularly for women. Analysis of annual reports suggests that the majority of the FTSE100 have managerialised the meaning of diversity and most appointment policies create little to no obligation to genuinely consider diversity. The research argues that it is a mis-use of the merit concept and the distribution of power that is perpetuating the c-suite's lack of diversity.

Impact statement

This research is highly impactful and has the potential for impact at academic, political and business levels.

Academic impact

The research contributes to knowledge in a number of broad research fields such as Corporate Law, Business Management and Sociology. In the more specific area of board diversity, the empirical findings highlight some interesting patterns of c-suite appointment and corporate diversity reporting in ways which had not yet been explored. The findings also provide support for other research in this field. This empirical part of the research will primarily be disseminated via journal articles, one relating to the c-suite demography and another to corporate diversity reporting. The latter article has been drafted and was presented in a UCL staff seminar and a workshop at Paris School of Business.

Some elements of the methodology are novel and may contribute to expanding approaches to methods of analysing profile data and textual data. Having now set up these processes, the project provides an excellent opportunity to continue expanding the data set to create a longitudinal study. This may help to discover whether the approach to diversity and diversity reporting changes over time.

From a theoretical perspective, this research contributes to the ongoing discussion about the meaning and application of merit and the meritocracy myth. It considers and applies theories of human capital and heuristics into this merit discourse. It also researches and applies theories regarding power in new ways, contributing to managerial power literature. The theories developed regarding merit and the distribution of power will be disseminated via separate journal articles. An earlier version of the power article has been presented at the UCL Corporate Law Workshop in 2017.

Policy impact

Much of the findings of this research relate directly to the drafting of the UK Corporate Governance Code (the "Code"), an iterative and constantly evolving piece of soft regulation. A briefing paper will be drafted to highlight the findings of the research and make suggestions on how the Code may be redrafted to improve corporate adherence and encourage more meaningful levels of diversity at the top levels of UK business.

Business impact

The research highlights inconsistencies in the way annual reports are drafted. Dissemination of this element of the research will seek to draw attention to these inconsistencies in the form of journal articles, conferences, blog posts and mainstream media. The topic is currently one which garners significant interest publicly. This may assist in getting some of the key findings of the research to be disseminated more publicly. The hope is that it helps to increase pressure on corporations to think more authentically about the diversity at the top of their business.

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Chapter 1

Introduction

Large corporations play an important yet widely underestimated role in society. Their impact spans people, politics, environment and economics. Yet there is evident inequality at the decision-making level. It is common knowledge that women and people who are of a Black, Asian or another Minority Ethnic background (hereinafter referred to as "BAME") are poorly represented on corporate boards.[1] The aim of this research is to reconsider this lack of diversity, focusing specifically on the key corporate decision makers. In particular this research examines diversity amongst FTSE100 Chief Executive Officers ("CEO"s), Chief Financial Officer ("CFO"s), Chairmen and other board executives ("CXO"s). This group is referred to as the "c-suite". This introductory chapter seeks to lay the foundations for this investigation. It begins in Section 1 by introducing and explaining the subjects of this study i.e. the c-suite of the FTSE100. Section 2 seeks to set out the research, reality and regulatory background into which this research is placed. Section 3 details the thesis objectives and sets out the ways in which it contributes to knowledge. Finally, Section 4 sets out a short roadmap for the rest of the thesis.

[1] For a discussion refer to pages 31-33.

1. The FTSE100 and its boards

The FTSE100 is the UK's most well-known index of shares, comprising its largest 100 companies as listed on the London Stock Exchange.[2] The combined value of the FTSE100 is over £2 trillion, its companies employ over 6.8 million people worldwide and operate in over 150 countries, and many of them are global household names such as BP, GlaxoSmithKline and HSBC.[3] In 2017 these 100 companies contributed 12.6% of all government tax receipts (£82.9 billion).[4] The impact of corporations of this size is vast.

1.1. Who do they serve?

Whatever else may drive them, a key commonality between corporations is that they are driven by profits. The debate about who the boards of large companies are working for often concludes that the board is the agent of the shareholders.[5] More normative concerns are given little attention.[6] But, as Moore states:

> "*Economic-instrumental concerns […] are not teleological 'ends' of corporate governance debate in themselves, but rather form part of a wider discourse aimed - in the last place – at determining the conditions*

[2] 'FTSE' 2013 <https://www.londonstockexchange.com/traders-and-brokers/private-investors/private-investors/stock-markets/ftse/ftse.htm> accessed 15 March 2019; Tommy Stubbington, 'FTSE 100 told by business minister Kelly Tolhurst to improve ethnic diversity on boards' *The Times* (24 February 2019) <https://www.thetimes.co.uk/article/ftse-100-told-by-business-minister-kelly-tolhurst-to-improve-ethnic-diversity-on-boards-xc807jkrv> accessed 6 August 2019; Natalie Ceeney, 'Capable women face bias at every step' *The Times* (21 March 2019) <https://www.thetimes.co.uk/edition/business/capable-women-face-bias-at-every-step-w2z0z80js>

[3] London Stock Exchange Group, '*FTSE100 Stocks listed in London'* (2018)

[4] PriceWaterhouseCoopers, '*2017 Total Tax Contribution survey for the 100 Group'* (2017) 2

[5] Adolph Augustus Berle and Gardiner Coit Means, *The Modern Corporation and Private Property* (Transaction Books 1932)

[6] Marc T Moore, *Corporate Governance in the Shadow of the State* (Hart Publishing 2013) 15

> *under which the possession and exercise of corporate managerial power is rendered legitimate from the perspective of those who are principally subject to it*".[7]

Stakeholder theorists advance this wider discourse by claiming that companies have a responsibility towards those it impacts, including employees, communities and the environment.[8] The list of who and what corporations impact is extensive. Much of their impact is positive: creating jobs, products and services, as well as innovating and paying taxes. But there are negative impacts. Some commentators argue that corporations are key to the making and maintaining of inequality and subordination,[9] that they damage the environment[10] and they wield an influence on politics that is undemocratic and under the radar.[11]

For some time the UK government has been talking about harnessing corporate impact as a force for good in society.[12] The UK Corporate Governance Code 2018 (the "Code,") states that "successful and sustainable businesses underpin our economy and society".[13] This Code is the principle regulatory mechanism guiding the behaviour of the boards of publicly listed

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[7] Ibid

[8] Andrew Keay, 'Stakeholder Theory in Corporate Law: has it got what it takes' (2010) 9 *Richmond Journal of Global Law & Business* 249

[9] Marta B Calás and Linda Smircich, *'Feminist Perspectives on Gender in Organizational Research: What is and is yet to be*' (2009) The Sage Handbook of Organizational Research Methods 246 248

[10] John Madeley, *Big Business, Poor Peoples: How transnational corporations damage the world's poor* (Zed Books 2009)

[11] Michael Useem, *The Inner Circle*, vol 617 (New York: Oxford University Press 1984)

[12] Barnali Choudhury and Martin Petrin, 'Corporate Governance That 'Works for Everyone': promoting public policies through corporate governance mechanisms' (2018) *Journal of Corporate Law Studies* 1 382

[13] UK Corporate Governance Code 2018, Introduction

companies in the UK and is key to this research. At an international level, The Organisation for Economic Co-operation and Development (OECD) have produced guidelines that provide “principles and standards for responsible business conduct in a global context” which acknowledge the connection between corporate actions and society.[14] These guidelines are the only code of conduct for businesses that signatory governments are committed to promoting, and they aim to “encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress”.[15]

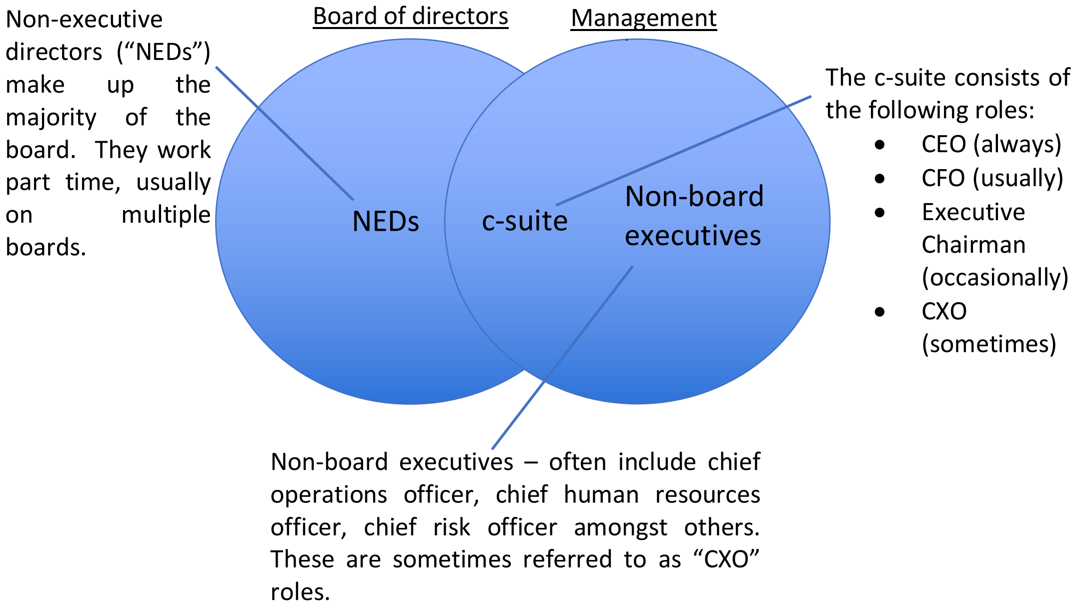
It can be argued that the lack of diversity in leadership is not responsible business conduct. In this respect, the force of corporate impact does not appear to be used for good. This thesis argues that corporate impact on diversity, at leadership and societal levels, is being used as a force for maintaining inequality.

1.2. The structure and significance of corporate boards

By looking at the top echelons of a company, a picture of how the company is managed can be created. Alongside the board there is a team of managers who strategize and implement decisions, which in turn are overseen by the board. Figure 1 below shows the intersection of roles between the board and executive

[14] OECD, *‘Guidelines for Multinational Enterprises’* (2011)
[15] Ibid 15

Figure 1: The intersections of the board and management



The division of responsibilities amongst the board is set out in Section 2 of the Code, which states that there should be an "appropriate combination" of executive and NEDs and a "clear division of responsibilities between the leadership of the board and the executive leadership of the company".[16] The c-suite is where this division of responsibilities overlaps. At a basic level, the board of directors "must provide the intrinsic leadership and direction at the top of the organisation; establish and maintain its vision, mission and

[16] UK Corporate Governance Code 2018, Principle J

values".[17] This is clearly a significant and onerous responsibility, especially when it comes to large businesses. But the purpose of a board of directors is not an immutable truth. Board remit has developed over time and the focus has shifted from strategy towards monitoring.[18]

There are multiple theories about the role of the board but two that dominate are the "agency theory" and the "resource dependency theory" (RDT). Agency Theory centres on the idea that shareholders are the owners of the company and they need the board to keep the managers (who control the company) on track.[19] In this conception it is the board who prevent management from acting in self-interested ways and keep the company working towards a goal of increased shareholder value.[20] In contrast, Resource Dependency Theory suggests that the board is the provider of various resources including advice, legitimacy and linkages.[21] RDT does not see the board as monitors but as resources to be utilized for the company good. A third theoretical paradigm, in direct contrast to agency theory, is "stewardship theory". It claims that

[17] 'Differences between directors and managers' (*Institute of Directors,* 5 October 2018) <https://www.iod.com/services/information-and-advice/resources-and-factsheets/details/Differences-between-directors-and-managers> accessed 20 October 2018

[18] Stephen Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford University Press 2008) 158

[19] Benjamin E Hermalin and Michael S Weisbach, *Board of Directors as an Endogenously Determined Institution: A survey of the economic literature* (National Bureau of Economic Research 2001) 9, also known as the problem caused by the separation of ownership and control (Berle and Means (n 5))

[20] Amy Hillman and Thomas Dalziel, 'Boards of Directors and Firm Performance: Integrating agency and resource dependence perspectives' (2003) 28 *Academy of Management Review* 383 383

[21] Ibid

directors can be trusted to be stewards of company resources and that insiders are better at this than outsiders.[22]

There will always be a variety of answers to the question of what boards do, and what proportion of their work is devoted to any specific objective.[23] Intuitively, boards are neither useful only for monitoring, stewarding or for the provision of resources, but for a combination of these functions. Indeed, a sustained research effort seeking to link performance with both monitoring and with access to board member resources has failed to establish anything consistent or convincing.[24] As such, both RDT and agency theory can be considered to be significant elements of the function of the board.

Boards are required to work together to fulfil their function but operating as a team may be challenging. One reason for this is that the division of c-suite and NEDs is quite stark. The Code requires boards to consist of a majority of NEDs, who, by virtue of their part-time capacity, are not as intrinsically involved with the company as the c-suite. The c-suite (with the exception of the non-executive chairman) work full-time with the company and should

[22] Gavin J Nicholson and Geoffrey C Kiel, 'Can Directors Impact Performance? A case-based test of three theories of corporate governance' (2007) 15 *Corporate Governance: An International Review* 585

[23] There will also be variations in the proportion of focus on certain roles. Research has shown that diversified firms will spend more time monitoring and controlling whereas growing firms will spend more time considering strategy (Barry Oshry, Benjamin E Hermalin and Michael S Weisbach, 'The Role of Boards of Directors in Corporate Governance: A conceptual framework and survey' (2010) 48 *Journal of Economic Literature* 58 36)

[24] Nicholson and Kiel (n 22)

understand it intimately. This is where the vast amount of corporate decision-making power and influence is typically held.[25]

NEDs are required to monitor the executives including the c-suite. The Code sets out the role of the NED as follows:

> "*Non-executive directors should scrutinise the performance of management […] They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning*."[26]

This description places emphasis on monitoring as a key responsibility of the NEDs. They are expected to hold the executives to account. It is this part of their role that leads some to described them as "policemen".[27] Their ability to remove underperforming directors and to impact their remuneration has the potential to cause tension in c-suite and NED relations.

The c-suite is the focus of this study because of their place at the top of the corporate hierarchy. In terms of corporate strategy, research has shown that strategies are often formulated by this small group of executives and then presented to the board "almost as a *fait accompli*".[28] According to qualitative research, it is a common view amongst the c-suite that only prescribed actions take place in the boardroom. Board decisions take place elsewhere.[29]

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[25] Stephen Hill, 'The Social Organization of Boards of Directors' (1995) *British Journal of Sociology* 245

[26] UK Corporate Governance Code, Provision A4

[27] Philip Stiles and Bernard Taylor, *Boards at Work: How directors view their roles and responsibilities* (OUP Oxford 2001) 113

[28] Ibid 42

[29] William B Stevenson and Robert F Radin, 'Social Capital and Social Influence on the Board of Directors' (2009) 46 *Journal of Management Studies* 16 18

Research suggests that because the choices of the top leadership are highly based on their own perceptions and interpretations, organizations come to be a "reflection of its top managers".[30] This group (the c-suite) remains stubborn in its lack of diversity.[31]

In light of the impact these companies have, both positive and negative, the fact that corporate boards are dominated by White males is concerning for a variety of reasons. Firstly, it develops and sustains normative associations between leadership, gender and ethnicity. Secondly, it excludes a portion of the population from taking part in decisions of national and international consequence. Thirdly, it disproportionately disadvantages individuals on the basis of their gender and ethnicity. Understanding more about the backgrounds of those who are in the top leadership positions, as this research seeks to do, helps in understanding the extent of the problem.

2. The boardroom diversity landscape: the reality, the research and the regulation

2.1. The reality: gender

It is nearly 10 years since the government commissioned Lord Davies to review the issue of boardroom gender diversity.[32] The Davies Review set a

[30] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116; Donald C Hambrick and Phyllis A Mason, 'Upper Echelons: The Organization as a Reflection of its Top Managers' (1984) 9 *Academy of Management Review* 193; Donald C Hambrick, 'Upper Echelons Theory: An update' (2007) 32 *Academy of Management Review* 334

[31] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019)

[32] Lord Davies of Abersoch, *Women on Boards* (2011)

target of 25% women on FTSE100 boards by 2015.[33] This was achieved.[34] Since the Review, it is commonly thought that gender diversity in the boardroom has greatly improved. Indeed, the number of women on FTSE100 boards has increased from 12.5% in 2011,[35] to 32.1% in 2019.[36] All male boards within this group have been eliminated.[37] Having achieved the target, the goal has now been extended to 33% women by 2020 and includes the board, the executive committee and their direct reports.[38] This target has already been reached in respect of the board, but has not been met in the executive committee and direct reports.[39]

Progress on the wider board has deflected attention away from the much slower progress made in the c-suite. Women accounted for only 9.7% of the FTSE100 c-suite in June 2018, virtually unchanged for the previous 3 years.[40] The situation is similar in the US where research has shown that "82% of the firms with all-male executive officers found places for women on their boards but not at the top of their management teams".[41] This does not suggest a

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[33] Ibid

[34] Anon, 'Davies Report says 'No more all-male boards on the FTSE100"' *BBC* (<https://www.bbc.co.uk/news/business-34663119>

[35] Lord Davies of Abersoch, (n 32) *8*

[36] The Female FTSE Board Report 2019 (n 31)

[37] *The Female FTSE Board Report 2015. Putting the UK Progress into Global Perspective* (Cranfield University School of Management, 2015) 21

[38] Lord Davies of Abersoch, *Women on boards: 5 year summary (Davies review)* (2015) 7

[39] *The Female FTSE Board Report 2019 (n 31)* 10

[40] *Female FTSE 2018: Busy Going Nowhere with the Female Executive Pipeline* (Cranfield University School of Management, 2018) 14

[41] Susan Reed, 'Corporate boards are diversifying. The c-suite isen't' *The Washington Post* (<https://www.washingtonpost.com/outlook/corporate-boards-are-diversifying-the-c-suite-isnt/2019/01/04/c45c3328-0f02-11e9-8938-5898adc28fa2_story.html?noredirect=on&utm_term=.046e745b62e3> accessed 12 February 2019

sincere engagement with the objective of a genuinely diverse corporate leadership. One interpretation could be that companies are willing to address diversity issues for public relations reasons, and as a result of investor pressure, but they do this by appointing NEDs and without diversifying any of the seats of real corporate power.

Some have argued that even diversity figures for NEDs are not as positive as they may initially seem. According to Adams et al, the percentages of female representation provided by the Davies Review did not account for multiple directorships and, if women directors are not counted more than once, the figures in 2010 fall by almost a half.[42] This argument is no longer as forceful as in 2019 14% of women directors hold more than one seat, but this is compared to 10.7% of men.[43]

Given the slow pace of c-suite change, it is arguable that there has been no real change to the hands of power. In the 2017 Cranfield Report, the progress of diversity at CEO level is described as "glacial".[44] Qualitative research indicates that it is the view of those interested in the debate (boards, executive search firms and other related parties) that focus should turn to the number of women executives[45] and to some extent it has.[46] But overall the pace of

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[42] Renee B Adams and Tom Kirchmaier, 'Making it to the top: From female labor force participation to boardroom gender diversity' (2013) papers ssrn com/sol3/papers cfm 4
[43] The Female FTSE Board Report 2019 (n 31) 18
[44] *The Female FTSE Board Report 2017: Women on boards, back on track?* (Cranfield University School of Management, 2017) 15
[45] Ibid *37*
[46] Sir Philip Hampton, 'Hampton-Alexander Review. FTSE Women Leaders' (2018)

change has been an average of only 0.46 percentage points increase in diversity per year since 2015.[47]

The situation is also bleak among those companies in the FTSE350.[48] Research in 2018 found there to be no more women CEOs than there were ten years earlier in 2008.[49] In the FTSE 250, the proportion of female executive directors dropped from 7.7% to 6.4% between 2017 and 2018.[50] The UK is not alone in this lack of leadership diversity. The situation in Australia is similar[51] and in the US, just 14.2% of board seats are held by women, significantly lower than the UK.[52] The percentage of women chairs in the US was marginally better than the UK at the time of the study, at 3.7% compared to 3.1% in the UK.[53] The European Women's Lobby has stated: *"*we are in danger of creating a two-speed system, where one half of the boards meet demands for greater gender balance and the other half run the company*".*[54]

47 The Female FTSE Board Report 2019 (n 31) 10

48 The FTSE 350 is an index of the largest 350 companies in the UK, as listed on the London Stock Exchange.

49 Urwin Rosamund, 'Drive for more female chief executives stalls' *The Times* (<https://www.thetimes.co.uk/article/drive-for-more-female-chief-executives-stalls-v8wsn7zwz> accessed 16 January 2019

50 The Female FTSE Board Report 2018 (n 40)

51 Alice Klettner, Thomas Clarke and Martijn Boersma, 'Strategic and regulatory approaches to increasing women in leadership: Multilevel targets and mandatory quotas as levers for cultural change' (2016) 133 *Journal of Business Ethics* 395

52 Deloitte, '*Women in the Boardroom. A Global Perspective'*, (2017) 71

53 Ibid

54 Klettner and others (n 51) 16

The UK is among the EU countries that have made the most progress in terms of wider boardroom gender diversity.[55] However, the EU target level for women's representation is 40% which is 7% higher than the UK target of 33%.[56] Seierstad et al suggest that the motivations for change in the UK stemmed from European pressure to change and a "desire to get the EU off their backs".[57] The advent of Brexit may have implications for the pace of change in corporate diversity as the EU may no longer be able to exert such pressure. The possibility of a downturn in the number of women appointed post Brexit has been raised on the basis that industries may face turmoil, and leadership will want to take fewer perceived risks (i.e. by continuing to appoint White men).[58]

Norway is often cited as an example of boardroom diversity success since it was the first to introduce a 40% quota in 2006.[59] Quotas have also been put in place in Columbia, India, Malaysia, Kenya, Austria, Belgium, France, Germany, Greece, Iceland, Italy, Spain, Sweden and Israel.[60] Other measures to tackle the issue include Germany's government sponsored cross sector initiative "Chefsache",[61] Japan's year of paid paternity leave for both

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[55] Deloitte, '*Women in the Boardroom a Global Perspective'*, (2014) 41
[56] Ibid 58
[57] Cathrine Seierstad and others, 'Increasing the Number of Women on Boards: The role of actors and processes' (2015) *Journal of Business Ethics* 1
[58] Kalyeena Makortoff, 'Retail Boss fears for boardroom diversity in post Brexit downturn' *The Independent* (<https://www.independent.co.uk/news/uk/home-news/post-brexit-downturn-raises-fears-for-boardroom-diversity-a7625371.html> accessed 13 February
[59] Silke Machold and others, *Getting Women on to Corporate Boards: A snowball starting in Norway* (Edward Elgar Publishing 2013), The Norwegian quota is discussed in more detail in Chapter 9.
[60] *Deloitte (n 52)*
[61] 'Chefsache' <https://initiative-chefsache.de/en/initiative-chefsache/about-the-initiative/> accessed 3 August 2019

parents[62] and corporate disclosure based regulations, as in the UK and New Zealand.[63] But even in Norway and other jurisdictions where diversity progress seems positive, there remain questions about the authenticity of progress. In France, for example, the percentage of women on the board in 2017 was 40%, but there were only 2.7% women chairs.[64] This is up just 0.2% on the 3 previous years.[65] In comparison to some jurisdictions, Europe is a haven for board diversity. In Japan, for example, in 2017 only 4.1%[66] of board seats were occupied by women and in the UAE this figure stands at just 2.1%, with no women chairs.[67]

2.2. The reality: ethnicity

In recent history gender has been more of a barrier to work than ethnicity.[68] Research suggests that in the US, from 1950 to 2000, occupational segregation by ethnicity declined more than gendered occupational segregation.[69] While this may be the case, in terms of the top business jobs, there appears to be little improvement in the representation of BAME individuals. Ethnic diversity is poor in the upper echelons of the FTSE 100. A study conducted by Engage (a board-level networking and support platform

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[62] Vsudha Gupta and others, 'Accelerating Gender Parity: What can governments do?' (2019) McKinsey & Company
[63] 'New Zealand's Exchange: diversity statistics' <https://www.nzx.com/regulation/diversity_statistics> accessed 3 August 2019
[64] Deloitte *(n 52) 76*
[65] Deloitte *(n 55) 49*
[66] Ibid
[67] Deloitte (n 52*)*
[68] Irene Padavic and Barbara F Reskin, *Women and Men at Work* (Pine Forge Press 2002) 73
[69] Ibid

for ethnic minorities) reported that 71% of those surveyed felt their ethnicity had impacted their career.[70] Unfortunately, there is a scarcity of research on this issue, especially when compared with the abundance of gender-based research. This may be because the scarcity of BAME individuals in the top jobs makes any detailed analysis difficult.[71] However, attention to this topic has increased and, in a similar vein to the Davies Review, a 2016 report by Sir John Parker (the "Parker Report") has been carried out into ethnic diversity on UK corporate boards. The Parker Report recommended that FTSE 100 corporate board have at least 1 minority ethnic director by 2021.[72]

Research shows that in 2018 there were just 10 BAME individuals that held c-suite positions in the FTSE100; this amounted to just 3.3% of the total possible positions.[73] In the most recent UK census, 19.5% of the population self-identified as an ethnic minority.[74] In the 50-64 age bracket (the age range many board executives are likely to fall into) the population percentage falls to 8%.[75] This disparity is likely to grow as the minority ethnic portion of the

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[70] 'Engage Survey Reveals Boardroom Ethnicity Gap' 18 July 2016) <https://www.harveynash.com/engage/news-and-events/news/engage-survey-reveals-boardroom-ethnicity-gap.asp> accessed 9 July 2018

[71] Business in the Community, '*Race to the Top: the place of ethnic minority groups within the UK workforce'* (2008) 11

[72] Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016) 8

[73] Green Park, '*Leadership 10,000'* (2018) 4

[74] Office for National Statistics*, '2011 Census analysis: Ethinicity and the Labour Market, England and Wales*' (2014) <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> accessed 9 April 2019

[75] Scarlett Brown, Elisabeth Kelan and Anne Laure Humbert, '*Opening the Black Box of Boardroom Appointments: women's and men's routes to the boardroom'* (KCL and Sapphire Partners Report, 2015) 6

population exhibits the highest rate of growth in a growing population.[76] It is estimated that the UK population in 2017 exceeded 66 million people, an increase of around 10 million people since 2011.[77] According to Business in the Community, "by 2051, 1 in 5 people in the UK will be from an ethnic minority background, representing a scale of consumer spending and political voting power that business and government alike cannot afford to ignore*".*[78] This shortfall in the representation of BAME individuals shows no sign of abating.[79] Research suggests that for BAME candidates, the prospects of improvement at executive level are actually declining.[80]

Minority women appear to suffer the greatest disadvantage.[81] This is true of the boardroom and of occupations more generally. In the US in 2017, July 31st was Black Woman's Equal Pay Day, marking the amount of days into 2017 a Black woman needed to work in order to be paid the same amount as a White male counterpart (based on 2016 figures).[82] This is after controlling for education, years of experience and location. Yap describes this as the

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76 Policy Exchange, '*A Portrait of Modern Britain'* (2014) 26

77 Office for National Statistics, '*2011 Census: Population Estimates for the United Kingdom* (2011)', Office for National Statistics, *'Population estimaes for the UK, England and Wales, Scotland and Northern Ireland: mid-2017'* (2018)

78 Business in the Community 'Race for Opportunity, *Race at the Top: a review of BAME leadership in the UK'* (2014)

79 Business in the Community (n 71) *5*

80 Green Park (n 73) 4

81 Margaret Yap and Alison M Konrad, 'Gender and Racial Differentials in Promotions: Is there a sticky floor, a mid-level bottleneck, or a glass ceiling?' (2009) *Journal of Industrial Relations* 593 609

82 Economic Policy Institute, *'Black women have to work 7 months into 2017 to be paid the same as white men in 2016'* (28 July 2017) <https://www.epi.org/blog/black-women-have-to-work-7-months-into-2017-to-be-paid-the-same-as-white-men-in-2016/> accessed 7 August 2018

"sticky floor" problem, in contrast to the well-known "glass ceiling" issue commonly associated with gender more generally.[83]

2.3. The research

There is a vast amount of research in the field of boardroom diversity. The majority of this research relates to gender. This includes government reviews, industry reports and academic research. One research series influences all of these categories and can be considered the cornerstone of boardroom diversity research in the UK. These are the Cranfield School of Management Female FTSE Reports, published almost every year between 2005 and 2019.[84] These reports contain information on the gender makeup of the boards of the FSE100 and FTSE350 as well as increasing research into FTSE100 executive committees. The name, age, tenure, position and number of directorships of each woman director is collated and analysed for the purposes of commenting on and making recommendations about progression of the issue of boardroom gender diversity. Most government reports rely on the Cranfield reports, and it is referred to widely by academics and industry specialists.

Government and industry research

The Davies Review, commissioned by the Government and published in 2011, can be considered to be a catalyst for the attention boardroom diversity has

[83] Yap and Konrad (n 81)

[84] All of the Female FTSE reports can be found at https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index (accessed 3 August 2019)

received in recent years because of its target of 25% women on boards by 2015.[85] This target was achieved and later supplemented and updated by the Davies Review, Five Year Summary.[86] Further government sponsored reports into boardroom diversity include the Hampton-Alexander Review which set a new target of 33% women in senior leadership positions by 2020.[87] The most recent report suggests that the FTSE100 is on target to meet this.[88]

In 2016, the Parker Report was published, which provides information at a high level of abstraction on the ethnic diversity of the FTSE 100.[89] It provides some analysis and a recommendation for at least 1 ethnic minority director on FTSE 100 board by 2021.[90] Not specifically board related, but relevant none-the-less, is the McGregor-Smith Review, which discusses race in the workplace.[91] Importantly, in both the gender and BAME reports, there is limited analysis of the difference between executive and NED roles. That is a gap this research seeks to fill.[92] As part of a look at FTSE100 engagement with diversity issues, Chapter 7 empirically analyses the extent to which these reports are referred to in the annual reports of the FTSE100.

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[85] Lord Davies of Abersoch (n 31)
[86] Lord Davies of Abersoch (n 38)
[87] Sir Philip Hampton and Dame Helen Alexander, *Hampton-Alexander Review. FTSE Women Leaders* (2016)
[88] Sir Philip Hampton, (n 46) 7
[89] Parker and Committee, (n 72) *8*
[90] Ibid
[91] Ruby McGregor Smith, '*Race in the workplace: The McGregor-Smith Review'* (Department for Business, Energy & Industrial Strategy, 2017)
[92] Detail on the distinctions between this research and other research in this field can be found in Section 3 'Thesis Objectives, below.

A number of executive search firms (ESFs) have produced reports that look closely at diversity. ESFs play an important role in the process of boardroom diversity change and have even been labelled “accidental activists” because of the impact they have or could have on the pace of change.[93] There is some pressure on ESFs to commit to diversity as part of their culture and recruitment processes. Producing reports on diversity may go some way to establishing this commitment. A key report is the Green Park Leadership Report surveying the gender and ethnicity of Britain’s top 10,000 leaders.[94] Another ESF, Egon Zehnder (popular with the FTSE100[95]) published a high-level report into European Board Diversity. This report provides comparative information on the gender and ethnic diversity of boardrooms in 350 of the largest companies (defined by market capitalization) in 17 European countries and compares this further with a study of 550 of the largest companies globally.[96]

In addition to ESF reports, there are also industry reports from consultancy firms. Deloitte produced a study in 2017 (its fifth edition) in which it reported on the gender diversity initiatives of 44 different countries worldwide, analysed in conjunction with the diversity profiles of 7000 companies across those

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[93] Elena Doldor, Ruth Sealy and Susan Vinnicombe, 'Accidental Activists: Headhunters as marginal diversity actors in institutional change towards more women on boards' (2016) 26 *Human Resource Management Journal* 285. Executive search firms are discussed in greater detail in Chapter 3.

[94] Green Park, ‘*The Green Park Leadership 10,000 - Spring 2015’* (2015)

[95] As part of this research, an analysis of the annual reports of the FTSE100 was carried out. Note was taken of the specified recruitment consultants for each company where available.

[96] Egon Zehnder, ‘*European Board Diversity Analysis’* (2014)

countries.[97] McKinsey & Company produced an interesting study in 2016 focusing on women directors in America and the state of the talent pipeline.[98] The report used data from 132 companies to analyse the promotion and career paths of women in comparison to men.

A report published by The Pipeline (a company set up in 2012 to help companies promote women executives) and supported by the 30% Club[99] provides information relating to the role and value of women executives of the FTSE 350.[100] Research focusing solely on executives is rare and this report provides some useful information about the roles women executives tend to find themselves in. Qualitative research in this field is also rare but in 2016 KPMG produced a report in which senior women in business talk about their board experiences.[101]

Academic research

Academic boardroom diversity research is abundant in many jurisdictions, including the UK. The US is especially prolific. Much of this research contains an empirical element, typically of a quantitative nature. Qualitative research is relatively rare, presumably because it is difficult to gain access to board members particularly in the top echelons of business, such as the FTSE100 or the Fortune 500. There have been some qualitative studies, such as the

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[97] Deloitte, '*Women in the Boardroom. A Global Perspective'* (2016)
[98] McKinsey and Company, '*Women in the Workplace: Corporate Pipeline'* (2016)
[99] The 30% Club is a collaboration of CEO and Chairman of FTSE listed companies and other business leaders committed to better gender balance on boards)
[100] The Pipeline, '*Women Count 2017'* (2017)
[101] KPMG, '*Changing Places: Women on Boards'* (2016)

interviews Seierstad conducted with 19 women on Norwegian boards,[102] and the exercise in gathering board member perceptions of the "glass cliff"[103] conducted by Ryan and Haslam.[104] In Australia, Fitzsimmons conducted interviews with men and women CEOs of large Australian companies;[105] it sought to gain a Bourdieusian understanding of how their childhoods affected their value as measured by the CEO job market. Gaining this sort of access to CEOs is extremely rare. Kanter's important work from 1977 takes an in depth empirical look at the many different roles, challenges and powers assumed by the men and women of one pseudonymous US company and is often cited by research in this field.[106] In the UK there has been a multi-year project involving interviews with 30 women and men aspiring to the boardroom and detailing their experiences.[107]

The quantitative research is considerably more extensive. Through gathering of data regarding board demography and corporate performance, a number of theories seek to establish links between diversity and specific indicators of

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[102] Cathrine Seierstad, 'Beyond the Business Case: The need for both utility and justice rationales for increasing the share of women on boards' (2015) *Corporate Governance: An International Review*

[103] The glass cliff is the terminology used to represent the practice of appointing women to senior positions that are highly precarious or when the company is in crisis and with a higher than typical likelihood of failure.

[104] Michelle K Ryan and S Alexander Haslam, 'The Glass Cliff: Evidence that women are over-represented in precarious leadership positions' (2005) 16 *British Journal of Management* 81

[105] Terrance W Fitzsimmons, Victor J Callan and Neil Paulsen, 'Gender Disparity in the C-suite: Do male and female CEOs differ in how they reached the top?' (2014) 25 *The Leadership Quarterly* 245

[106] Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977)

[107] Brown and others (n 75)

performance. Links are claimed between diversity and firm value[108], corporate reputation[109], stock price[110], risk taking[111] and corporate responsibility.[112] There is quantitative research that attempts to establish differences between the behaviour of both women and BAME directors compared with White male directors[113] and/or what they can contribute to the corporation or the board.[114] An important strand of research discusses the similarities and differences in the backgrounds of directors.[115] Still further there are empirical research

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[108] David A Carter, Betty J Simkins and W Gary Simpson, 'Corporate Governance, Board Diversity, and Firm Value' (2003) 38 *Financial Review* 33; Claude Francoeur, Réal Labelle and Bernard Sinclair-Desgagne, 'Gender Diversity in Corporate Governance and Top Management' (2008) 81 *Journal of Business Ethics* 83

[109] Stephen Bear, Noushi Rahman and Corinne Post, 'The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation' (2010) 97 *Journal of Business Ethics* 207

[110] Peggy M Lee and Erika Hayes James, 'She'-e-os: gender effects and investor reactions to the announcements of top executive appointments' (2007) 28 *Strategic Management Journal* 227

[111] Vathunyoo Sila, Angelica Gonzalez and Jens Hagendorff, 'Women on Board: Does boardroom gender diversity affect firm risk?' (2016) 36 *Journal of Corporate Finance* 26

[112] Christine A Mallin and Giovanna Michelon, 'Board Reputation Attributes and Corporate Social Performance: an empirical investigation of the US Best Corporate Citizens' (2011) 41 *Accounting and Business Research* 119; Taïeb Hafsi and Gokhan Turgut, 'Boardroom Diversity and its Effect on Social Performance: Conceptualization and empirical evidence' (2013) 112 *Journal of Business Ethics* 463

[113] Renée B Adams and Patricia Funk, 'Beyond the Glass Ceiling: Does gender matter?' (2012) 58 Management Science 219; Renee B. Adams and Daniel Ferreira, 'A theory of friendly boards' (2007) 62 *The Journal of Finance* 217, Nancy M Carter and Christine Silva, *Pipeline's Broken Promise* (Catalyst New York 2010), Alice H Eagly and Mary C Johannesen-Schmidt, 'The Leadership Styles of Women and Men' (2001) 57 *Journal of Social Issues* 781; Sabina Nielsen and Morten Huse, 'Women Directors' Contribution to Board Decision-making and Strategic Involvement: The role of equality perception' (2010) 7 *European Management Review* 16

[114] Adams and Kirchmaier (n 43); Morten Huse and Anne Grethe Solberg, 'Gender-related Boardroom Dynamics: How Scandinavian women make and can make contributions on corporate boards' (2006) 21 *Women in Management Review* 113

[115] David H Zhu, Wei Shen and Amy J Hillman, 'Recategorization into the In-group The Appointment of Demographically Different New Directors and Their Subsequent Positions on Corporate Boards' (2014); *Administrative Science Quarterly* , Amy J Hillman, Albert A Cannella and Ira C Harris, 'Women and Racial Minorities in the Boardroom: how do directors differ?' (2002) 28 *Journal of Management* 747; Val Singh and Susan Vinnicombe, 'Why So Few Women Directors in Top UK Boardrooms? Evidence and theoretical explanations' (2004) 12 *Corporate Governance: An International Review* 479; Heather A Haveman and Lauren S Beresford, 'If You're So Smart, Why Aren't You the Boss? Explaining the persistent vertical gender gap in management' (2012) 639 *The Annals of the American Academy of Political and Social Science* 114

strands investigating the circumstantial similarities when women obtain board appointments, from both an institutional perspective[116] as well as an organizational perspective.[117]

The theoretical research can largely be divided into research either supporting a business case for boardroom diversity[118], or taking a more social justice orientated perspective.[119] There is also a considerable amount of theoretical

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[116] Siri Terjesen and Val Singh, 'Female presence on corporate boards: A multi-country study of environmental context' (2008) 83 *Journal of Business Ethics* 55, Johanne Grosvold and Stephen Brammer, 'National institutional systems as antecedents of female board representation: An empirical study' (2011) 19 *Corporate Governance: An International Review* 116

[117] David A Matsa and Amalia R Miller, 'Chipping away at the glass ceiling: Gender spillovers in corporate leadership' (2011); Kathleen A Farrell and Philip L Hersch, 'Additions to Corporate Boards: the effect of gender' (2005) 11 *Journal of Corporate Finance* 85; Alison Cook and Christy Glass, 'Diversity Begets Diversity? The Effects of Board Composition on the Appointment and Success of Women CEOs' (2015) *Social Science Research*

[118] Orlando C Richard, BP Murthi and Kiran Ismail, 'The impact of racial diversity on intermediate and long-term performance: The moderating role of environmental context' (2007) 28 *Strategic Management Journal* 1213 ; Robin J Ely and David A Thomas, 'Cultural Diversity at Work: The effects of diversity perspectives on work group processes and outcomes' (2001) 46 *Administrative Science Quarterly* 229; Orlando C Richard, Thomas A Kochan and Amy McMillan-Capehart, 'The Impact of Visible Diversity on Organizational Effectiveness: Disclosing the contents in Pandora's black box' (2002) 8 *Journal of Business and Management* 265; Jose Apesteguia, Ghazala Azmat and Nagore Iriberri, 'The impact of gender composition on team performance and decision making: Evidence from the field' (2012) 58 *Management Science* 78

[119] Lisa M Fairfax, 'Board Diversity Revisited: New Rationale, Same Old Story' (2010) 89 *North Carolina Law Review* 855; Daniel Ferreira, 'Board Diversity: Should We Trust Research to Inform Policy?' (2015) 23 *Corporate Governance: An International Review* 108; Mike Noon, 'The Fatal Flaws of Diversity and the Business Case for Ethnic Minorities' (2007) 21 *Work, Employment & Society* 773; Cliff Oswick and Mike Noon, 'Discourses of diversity, equality and inclusion: trenchant formulations or transient fashions?' (2014) 25 *British Journal of Management* 23; John Wrench, 'Diversity management can be bad for you' (2005) 46 *Race & Class* 73

research into the causes of the lack of diversity[120], as well as some research focusing on the effect this diversity deficit creates.[121]

2.4. The regulation

A number of jurisdictions have turned to forms of regulation to address the issue of board diversity.[122] Regulation seeking to moderate corporate behaviour can be considered a form of "regulatory capitalism", a theory of for-profit companies that are legally and socially accountable.[123] The approach taken by the UK government to increase board diversity is set out in the principles and provisions of the Code. The Code is semi-regulatory in nature, which means that, as with the rest of the Code, the diversity elements are formulated as guidance, and companies are required by law to either comply with them or to explain why they have not.[124] This is what is known as "comply or explain" regulation. Seidl et al elaborate as follows:

> *"companies sustain their legitimacy through the appearance of compliance with Code, provisions which are themselves based upon perceptions of what are best practices […] Legitimacy of the company*

[120] Susan Athey, Christopher Avery and Peter Zemsky, 'Mentoring and diversity' (1998) , Patricia Gabaldon and others, 'Searching for Women on Boards: An Analysis from the Supply and Demand Perspective' (2015) *Corporate Governance: An International Review* , Judith G Oakley, 'Gender-based barriers to senior management positions: Understanding the scarcity of female CEOs' (2000) 27 *Journal of Business Ethics* 321; Siri Terjesen and Val Singh, 'Female presence on corporate boards: A multi-country study of environmental context' (2008) 83 *Journal of Business Ethics* 55; Charlotte Villiers, 'Achieving Gender Balance in the Boardroom: is it time for legislative action in the UK?' (2010) 30 *Legal Studies* 533

[121] Michelle K Ryan and others, 'Getting on Top of the Glass Cliff: Reviewing a decade of evidence, explanations, and impact' (2016) *The Leadership Quarterly*; Amy J Hillman, 'Board diversity: Beginning to unpeel the onion' (2015) 23 *Corporate Governance: An International Review* 104

[122] See page 30

[123] David Levi-Faur, 'The Global Diffusion of Regulatory Capitalism' (2005) 598 *The Annals of the American Academy of Political and Social Science* 12 as referred to in Iris HY Chiu, 'An Institutional Theory of Corporate Regulation' (2018) 71 *Current Legal Problems* 279 280

[124] Listing Rule 9.8.6 (6)

rests heavily on communication between the organization and its various audiences. Companies who do not comply are expected to see an illegitimacy discount to their share price".[125]

Against the background of gender[126] and, latterly, ethnicity targets[127], the Code guides relevant companies to take account of diversity in their appointment policy, and the Listing Rules require companies to report on how they have done this in their annual reports.[128] There have been a number of iterations to this guidance, but in the latest version, companies are guided to make appointments on the basis of merit and objective criteria, which 'should promote diversity of gender, social and ethnic background'.[129]

Non-compliance with the Code is acceptable provided it is identified and justified in the annual report. This provides companies with a number of options: true compliance, false compliance, non-compliance with sufficient explanation and non-compliance with deficient explanation. This form of soft law is popular in many jurisdictions because of its flexibility.[130] The idea behind a comply or explain system is that it is iterative and adaptive, changing to improve its fitness for purpose.[131] This is evidenced in part by the fact that

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[125] David Seidl, Paul Sanderson and John Roberts, 'Applying the 'Comply-or-explain' Principle: discursive legitimacy tactics with regard to codes of corporate governance' (2013) *Journal of Management & Governance* 17(3) 791 795

[126] Lord Davies of Abersoch (n 31), Sir Philip Hampton (n 87)

[127] Parker and Committee (n 72)

[128] UK Corporate Governance Code 2018, 4, Listing Rule 9.8.6(6)

[129] UK Corporate Governance Code 2018 Principle J

[130] *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States* (RiskMetrics Group Brussels, 2009) 18, Andrew Keay, 'Comply or explain in corporate governance codes: in need of greater regulatory oversight?' (2014) 34 *Legal Studies* 279 303

[131] Paul Sanderson, David Seidl and John Roberts, 'The Limits of Flexible Regulation: Managers' perceptions of corporate governance codes and comply-or-explain'' (2013) 14

since its inception in 1998, there have been eight revisions to the Code.[132] The effectiveness of these guidelines in impacting upon diversity and the manner of corporate compliance is central to this research, it is addressed throughout the thesis with particular attention paid to its future use in Chapter 9.[133]

3. Thesis objectives

In light of the research that has been done and the gaps that have been identified, this research seeks to contribute to the boardroom diversity debate examining gender and ethnicity in the c-suite, both theoretically and empirically. From a theoretical perspective, the research considers the c-suite appointment process through the lens of Code guidance to appoint on merit. This involves a consideration of merit, human capital and power theories, and engages with sociological, management, economic and legal literature.

From an empirical perspective, the research has two strands. Firstly, it gathers and analyses profile data on the FTSE 100 c-suite, for both 2016 and 2017.[134] Secondly, with reference to the guidance of the Code, it analyses

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[132] Joyce M Bell and Douglas Hartmann, 'Diversity in Everyday Discourse: The cultural ambiguities and consequences of "happy talk"' (2007) 72 *American Sociological Review* 895

[133] In 2016, the UK implemented new disclosure rules in the FCA's Disclosure and Transparency Rule 7.2.8A(R). These rules are more specific in the stipulated requirements regarding what needs to be disclosed in terms of diversity in board appointments. The main effect is to make the diversity policy requirement regulatory in nature as opposed to semi-regulatory. It does not require detail as to the basis for the appointment decisions, referring only to diversity policy and therefore it thought to have minimal impact for the purposes of this reseach. The changes came into effect after the majority of annual reports in the study had been published and therefore the impact has not been studied.

[134] Much of the data is gathered from annual reports and as 2018 annual reports were only beginning to be published at the time of writing, 2018 data is not considered.

corporate diversity statistics in light of corporate diversity policies provided in FTSE100 annual reports from 2016 and 2017.

This combined theoretical and empirical approach seeks to add to the boardroom diversity debate in four ways. It provides (1) a narrowing of scope from the wider board to focus on the c-suite, (2) a widening in scope to focus on gender and ethnicity, (3) a textual analysis of diversity according to FTSE100 annual reports and (4) theoretical development regarding the meaning and usage of merit and power.

3.1. C-suite focus

The focus of boardroom diversity research is typically on the wider board. The Hampton-Alexander Review has shone more light on senior leadership roles, but by aggregating the board, executive committee and their direct reports, the c-suite manages to escape much direct attention.[135] While there is benefit to examining general board diversity, the stagnant nature of diversity in the c-suite has been masked under the glow of NED progress. The board, as a unified group, does oversee the decisions of management, but they have limited input into those decisions. It is the executive or management committee that make the decisions and then seek approval from the board, who tend to grant it. The c-suite are the top of the hierarchy in both the board and the executive and their power is considerable. The Chairman is not typically included within a standard understanding of c-suite, given their non-

[135] Sir Philip Hampton (n 46)

executive status. However, they are included within the definition used here due to their significant power and influence over the board and the CEO.[136]

The diversity of the c-suite matters for at least three reasons. Firstly, their decisions impact the lives of most people, yet at present the c-suite members only represent part of the population. Secondly, a less tangible but potentially more problematic issue is the picture this presents to the world about who does and can have power. Thirdly, at an individual level, opportunities for men, women and minority ethnics are unequal. Empirical research in this field can be challenging, with the scarcity of women and BAME individuals making comparisons difficult.[137] However, the research conducted here looks at sufficient numbers of individuals as well as sufficient variables beyond gender and ethnicity to enable it to distinguish other avenues of similarity and difference in order to make a unique and meaningful contribution to the debate.

3.2. Scope of diversity

As already discussed, a large proportion of the research on boardroom diversity focuses solely on gender. To the extent research does consider any wider diversity issues, it is typically in a broader context, such as the

[136] The roles of the Chairman and CEO are discussed in more detail in Chapter 3.

[137] SA Zelechowski and Diana Bilimoria, 'Characteristics of CEOs and Boards with Women Inside Directors' (2006) 2 *Corporate Board: Roles, Duties and Composition* 14. This research focused on executive directors but expressly excluded CEOs on the basis that the gender samples were not comparable.

workplace.[138] Both gender and ethnic diversity is considered here, as well as age, nationality, education, family and personal life.[139] It is thought that considering the issue more broadly will help to produce a more complete picture, which is necessary when considering how to make progress on this issue. It is important to note that gender and ethnicity are not the only categories of diversity worthy of attention There are many other protected characteristics which are likely to disadvantage potential applicants. However, other aspects of diversity are not considered in depth by this research because of the lack of available information. Information regarding sexuality, disability or religiosity, for example, is not immediately obvious or publicly available. In some cases, likely size of such samples would also prevent the drawing of viable conclusions.

Although currently there is much more literature to draw from in terms of gender diversity, this may be in the process of change as it is now well recognized that there are many questions to be answered in relation to other types of diversity.[140] However, many of the issues women and BAME individuals face may be comparable, and the extent to which they are will be considered here. For instance, 81% of senior women felt their gender had

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[138] James R Elliott and Ryan A Smith, 'Race, Gender, and Workplace Power' (2004) 69 *American Sociological Review* 365

[139] A report published by the ICSA, The Governance Institute in July 2019, '*A View at The Top*', goes into detail about the background of directors of the FTSE100, looking at many of the issues considered as part of this research. There is much to corroborate what has been found here but there remain some differences, such as its focus on executive director instead of the c-suite, as considered here, and many of the background factors are considered from differing perspectives.

[140] Hillman (n 121) 106

been a barrier to their career,[141] and research shows all BAME groups are "more likely to be overqualified than white ethnic groups but white employees are more likely to be promoted than all other groups".[142]

3.3. Textual analysis of annual reports

When this research started there were no examples of research into corporate policies on diversity as set out in the corporate annual reports required under the Code. This was a significant gap in which analysis could be conducted to provide insights into corporate approaches to diversity and the effectiveness of the Code. This part of the research commenced in 2016 and set out to address this gap. In 2018 the Financial Reporting Council (FRC) issued a report which provides information on how FTSE350 companies address the diversity requirements of the Code in their annual reports.[143] While the research in this thesis also seeks to address this identified gap in knowledge, it takes a different approach. The FRC research breaks down the Code into a series of diversity requirements and measures the extent to which companies apply all requirements.[144] In contrast, a more interpretive approach is taken here where investigation is made into how companies choose to define and frame their commitment to diversity. This is the first time this approach has been taken to analysing corporate diversity. When it is combined with c-suite profile data, it provides a unique insight into how well a

[141] Singh and Vinnicombe (n 115) 480
[142] Ibid *6*
[143] Ruth Sealy, 'FRC Board Diversity Reporting 2018' (2018)
[144] Ibid

company's official position on diversity tallies with the requirements of the Code and the reality of corporate c-suite diversity.

3.4. A new theoretical approach

Merit is central to the Code's guidance on diversifying appointments to the board which specifies they "should be made on merit".[145] There is limited research that considers the meaning of merit in this context and its application is problematic for a number of reasons. This is considered in detail in Chapter 4. An analysis of what constitutes merit can help to further our understanding of who is appointed to boards and why. An assessment of merit has several facets. Firstly, there is the flexibility of its application, due to the nature of human decision making. This is considered in light of behavioural economic research.[146] Secondly, the concept of "human capital" is often used as a measurement of merit, and this thesis considers the flaws in this approach. Research by Terjesen et al goes into depth about the backgrounds of corporate directors for the purposes of assessing their human capital.[147] But Terjessen's focus is on NEDs; as an empirical study it samples all the available women and only a small proportion of the available men, which arguably produces a picture that is skewed and unreliable. A study in France

[145] UK Corporate Governance Code 2018

[146] Eleanore Hickman, 'Boardroom Gender Diversity: A behavioural economics analysis' (2014) 14 *Journal of Corporate Law Studies* 385

[147] Siri Terjesen, Val Singh and Susan Vinnicombe, 'Do women still lack the ''right'' kind of human capital for directorships on the FTSE 100 corporate boards' (2008) *Women on Corporate Boards of Directors: International Research and Practice* 152

on the legitimacy profiles of women on the board also has the same limitations.[148]

While merit has an important role to play in obtaining appointments, power has a critical role in retaining them. This research will also apply the theories of Finkelstein relating to power measurement[149] for the purposes of identifying differences in power levels between c-suite board members. This appears to be the first time this approach had been used in the context of boardroom diversity. It is thought that the combination of the application and analysis of these theories will make a unique contribution to the boardroom diversity debate.

4. Structure of the thesis

The thesis proceeds as follows. Chapter 2 examines some of the more prominent theories on the causes of and reasons for addressing the board diversity issue. Chapter 3 begins by exploring the role of the corporate board and, in particular, the responsibilities and expectations of the c-suite; it goes on to examine board appointment processes and what is expected of appointees at this level from a human capital perspective. Chapter 4 considers the concept of merit as one of the key considerations set out by the Code for making a c-suite appointment; the Chapter then discusses how board appointments are retained, and the need for a consideration of relative power

[148] Val Singh and others, 'Legitimacy profiles of women directors on top French company boards' (2015) 34 *Journal of Management Development* 803

[149] Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505 506

in relation to this issue. Chapter 5 sets out the methodology for both of the empirical studies in this thesis. This includes the process of data collection and analysis. Chapter 6 presents the empirical findings in relation to the profile data gathered on c-suite directors. Chapter 7 presents the empirical findings from the analysis of corporate annual reports and their positions on diversity. Chapter 8 analyses the key findings of both empirical studies in light of the theoretical perspectives discussed in Chapters 2, 3 and 4. Chapter 9 concludes with a discussion of the possible ways in which c-suite diversity could be tackled in light of the problems identified by the research.

Chapter 2

Boardroom diversity: theories of cause and motivations for change

There are an abundance of theories and suppositions on the causes of the lack of boardroom diversity and the rationales for seeking change. The causes can be grouped into three key themes: cultural, practical and environmental. Research examining the rationales for improving boardroom diversity are often categorised according to whether they apply a business-based or social-justice-based reasoning. The objective of this chapter is to critically consider the theories of cause and to assess the strength of the arguments given in support of the rationales for change. This chapter argues that some of the most dominant arguments for why boards are not more diverse (and why they should be) are not convincing and are potentially damaging. It argues for change on the basis that diversity of ethnicity and gender will provide diversity of perspectives and this is not only beneficial for decision making but importantly, it is the right thing to do independent of its impact on business.

1. Why do boards exhibit such lack of diversity?

1.1. Cultural barriers

Societies develop over time, creating norms of behaviour and culturally engrained attitudes.[1] This can lead to two forms of discrimination; (1) overt, taste-

[1] Kenneth J Arrow, 'What has economics to say about racial discrimination?' (1998) The Journal of Economic Perspectives 91 96; Cass R Sunstein, *Free markets and social justice* (Oxford University Press 1999)

based discrimination, and (2) statistical discrimination, based upon stereotypes.[2] Both can impact access to opportunities. These norms also lead to a third cultural barrier; that of differences in demand that impact upon participation in opportunities. These three cultural barriers are considered below.

Statistical discrimination and stereotypes

According to the theory of rational choice, employers looking to appoint someone to fulfil a certain role will only consider those most likely to help them achieve their objective.[3] This is likely to be maximization of profits.[4] The theory of statistical discrimination (also known as "second generation bias" [5]) notes that employers do not have perfect information about profit maximization and so they will often rely on beliefs and perceptions to make their decisions.[6] For example, if employers believe men are more productive than women, they will use these observable characteristics in place of any direct or factual information about productivity or efficiency.[7] Research into the usage and impact of these decision making shortcuts (known as heuristics) is considered in Chapter 4.[8] Such discrimination may be unintentional, but that does not make it less damaging.[9]

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[2] Gary S Becker, *The Economics of Discrimination* (University of Chicago Press 2010)
[3] John Scott, *Understanding Contemporary Society: Theories of the present*, vol 129 (2000) 128
[4] Whilst there are nuances to this objective, it remains the main the focus of much of corporate law and related scholarship.
[5] Herminia Ibarra, Robin Ely and Deborah Kolb, 'Women Rising: The unseen barriers' (2013) 91 *Harvard Business Review* 60
[6] Edmund S Phelps, 'The Statistical Theory of Racism and Sexism' (1972) *The American Economic Review* 659
[7] Arrow (n 1) 96
[8] See pages 141-151
[9] Phelps (n 6) 661

Statistical discrimination typically arises from stereotypes.[10] According to social identity theory, because boards are predominantly made up of White males, directors will be defined according to that image "reinforcing group boundaries which exclude non-directors, non-whites and women, who normally only enter the boardroom as service providers".[11] Social role theory suggests that boards are "bound by roles related to gender, derived from consensual societal beliefs about the attributes of women and men".[12] Even though the unconscious intention is to preserve the space for in-group members, the effect is the same as if the intention had been to exclude non-group members.[13] Both women and ethnic minorities feel the impact of this, ethnic minority women especially because they display two non-group characteristics.[14]

On one level the persistent resistance to diversity movements stem from the idea that there are natural differences between men and women, cultures and ethnicities.[15] There are numerous ideas about gender differences including research that suggests women lack certain managerial skills such as task

[10] Stereotypes affect decisions in various ways, a more detailed discussion of which can be found in Chapter 4.

[11] Val Singh and Susan Vinnicombe, 'Why So Few Women Directors in Top UK Boardrooms? Evidence and theoretical explanations' (2004) 12 *Corporate Governance: An International Review* 479 484

[12] Charlotte Villiers, 'Achieving Gender Balance in the Boardroom: is it time for legislative action in the UK?' (2010) 30 *Legal Studies* 533 538

[13] Mark Granovetter, *Getting a Job: A study of contacts and careers* (University of Chicago press 1995) 173

[14] Margaret Yap and Alison M Konrad, 'Gender and Racial Differentials in Promotions: Is there a sticky floor, a mid-level bottleneck, or a glass ceiling?' (2009) *Journal of Industrial Relations* 593

[15] Sabina Nielsen and Morten Huse, 'Women Directors' Contribution to Board Decision-making and Strategic Involvement: The role of equality perception' (2010) 7 European Management Review 1618; Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977), *312*

orientation and aggression,[16] are less confident than men[17] and are more risk averse than men.[18] Research has found that, while the high risk roles may be selected by fewer women than men, those who do select them do not differ from their male counterparts in their risk appetite.[19] This contrasts with research claiming there are natural differences in aversion to risk between men and women who serve on boards.[20] Much of the research supporting the idea of fundamental differences, even that of a scientific nature, is founded on concepts of appropriate roles that have become social norms.[21] Research on CEO's has shown that shareholders respond negatively to the appointment of women CEOs.[22] This was partly attributed to media focus on extraneous information such as family, when appointments were made to women.[23]

Pointing to natural differences deflects responsibility for promoting and engendering diversity away from corporations. For example, in an analysis of the childhoods of Australian CEOs, a number of divergences in the childhood

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[16] Gary N Powell and D Anthony Butterfield, 'The" Good Manager" Did Androgyny Fare Better in the 1980s?' (1989) 14 *Group & Organization Studies* 216

[17] Dale Griffin and Amos Tversky, 'The Weighing of Evidence and the Determinants of Confidence' (1992) 24 *Cognitive Psychology* 411

[18] Paola Sapienza, Luigi Zingales and Dario Maestripieri, 'Gender Differences in Financial Risk Aversion and Career Choices are Affected by Testosterone' (2009) *Proceedings of the National Academy of Sciences* , referenced in Trang Doan and Mai Iskandar-Datta, 'Does Gender in the C-Suite Really Matter?' (2018) *Journal of Accounting, Auditing & Finance*

[19] Renée B Adams and Vanitha Ragunathan, 'Lehman sisters' (2017) Available at SSRN 3046451

[20] Jiekun Huang and Darren Kisgen, 'Gender and Corporate Finance: Are male executives overconfident relative to female executives?' (2013) 108 *Journal of Financial Economics* 822, Maurice Levi, Kai Li and Feng Zhang, 'Director Gender and Mergers and Acquisitions' (2014) 28 *Journal of Corporate Finance* 185

[21] Sunstein, (n 1) *47*

[22] Peggy M Lee and Erika Hayes James, 'She'-e-os: gender effects and investor reactions to the announcements of top executive appointments' (2007) 28 *Strategic Management Journal* 227 237

[23] Ibid 238

habits of men and women were identified, resulting in different levels of human capital.[24] The article suggested that this meant it was for society to address the disparity and not business, thereby absolving corporate responsibility.[25] This perspective fails to address the possibility that there are ways to define and measure human capital that are missed if seeking to identify difference.[26] It is convenient for those who benefit from the status quo to view the status quo as part of the natural order of things.

Stereotypical views of gender roles can also restrict behaviour, such as in the "double bind" scenario.[27] Specifically, the femininity/competence bind, where femininity is associated with incompetence so in order to project competence, non-feminine traits must be exhibited. However, non-feminine traits in women are often negatively perceived. Research shows that women in boardrooms were stereotyped as "men in skirts", "aggressive" or "ineffective" according to how much they spoke up during meetings.[28] Ely examined the effect of gender demography within companies and found that women working in male dominated firms had to choose between changing their behaviour or the possibility of a promotion.[29] Eagly described it as follows:

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[24] Terrance W Fitzsimmons, Victor J Callan and Neil Paulsen, 'Gender Disparity in the C-suite: Do male and female CEOs differ in how they reached the top?' (2014) 25 *The Leadership Quarterly* 245 260

[25] Ibid 263

[26] Human capital is discussed in detail in Chapter 3

[27] Judith G Oakley, 'Gender-based barriers to senior management positions: Understanding the scarcity of female CEOs' (2000) 27 *Journal of Business Ethics* 321, 325

[28] Ibid *27*

[29] Robin J Ely, 'The Power in Demography: Women's social constructions of gender identity at work' (1995) 38 *Academy of Management Journal* 589 625

> *"because of the double bind, people may resist a woman's influence particularly in masculine settings. Sometimes they resist because they think she lacks communion, so they don't like her. Sometimes they resist because they think she lacks competence, so they don't respect her".*[30]

The result is fewer senior women and the reinforcement of notions regarding a supposed deficiency in women's attributes. Such attitudes are not only damaging at a gender relationship level, but between women can also breed resentment where it is thought that those who have been successful have become so by abandoning their own gender.[31]

US research has shown that some black male CEOs may also be subject to a version of the double bind as a consequence of their "baby faces".[32] This is known as the "teddy bear effect", and contrasts with research that suggests a baby face was a liability for White men in positions of leadership.[33] The theory posits that Black males benefit from a baby face because it acts as a disarming mechanism. Supposedly this "mitigates feelings of anger, envy or resentment among whites who might otherwise feel threatened by powerful black men".[34] These double bind theories suggest that, in order to get ahead, women have to appear more like men and Black men have to appear more like White men.[35] One difference

[30] Alice Hendrickson Eagly and others, *Through the Labyrinth: The truth about how women become leaders* (Harvard Business Press 2007) 102

[31] Ely (n 29) 626

[32] Robert W Livingston and Nicholas A Pearce, 'The Teddy-bear Effect: Does having a baby face benefit black chief executive officers?' (2009) 20 *Psychological science* 1229

[33] Leslie A Zebrowitz and Joann M Montepare, 'Appearance DOES matter' (2005) 308 *Science* 1565

[34] Livingston and Pearce (n 32) 1234

[35] It is not known whether other minority groups face further double-bind obstacles. This presents an interesting avenue for future research.

being that women may be restricted when they do but there is no evidence of this for Black men.

Taste-based discrimination

Becker labels the differential treatment of individuals for reasons that concern particular characteristics, such as race or gender as “taste discrimination”.[36] Such discrimination appears prevalent at many levels. For example, US public opinion polls from 1953 to 2006 showed that every year male bosses were preferred to women by a very large margin.[37] Discrimination extends far beyond the appointment process into everyday work-life experience. These experiences include fear of negative stereotypes or judgements about their interactions[38] and the need to work hard to counter these judgements.[39] Discrimination can be considered taste-based even where the tastes are indirect. For example, an employer who is acting on the tastes of his other employees in not appointing ethnic minorities is inflicting taste-based discrimination.[40] Research suggests that this discrimination particularly impacts Black women.[41]

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[36] Becker (n 2) *14*

[37] Eagly and others (n 30)

[38] Claude M Steele, Steven J Spencer and Joshua Aronson, 'Contending with Group Image: The psychology of stereotype and social identity threat', *Advances in Experimental Social Psychology*, vol 34 (Elsevier 2002) referred to in Robin J Ely, Irene Padavic and David A Thomas, 'Racial diversity, racial asymmetries, and team learning environment: Effects on performance' (2012) 33 *Organization Studies* 341

[39] Laura Morgan Roberts, 'Changing Faces: Professional image construction in diverse organizational settings' (2005) 30 *Academy of Management Review* 685

[40] R Øystein Strøm, 'Gender discrimination before mandated quotas? Evidence from Norway: 1989–2002' (2015) 31 Scandinavian Journal of Management 303 305

[41] James R Elliott and Ryan A Smith, 'Race, Gender, and Workplace Power' (2004) 69 *American Sociological Review* 365376

Whether direct or indirect, taste-based discrimination can be distinguished from statistical discrimination because of its overt reliance upon personal characteristics as a cause for differential treatment. In contrast, statistical discrimination is subconscious and often stems from a desire to preserve opportunities for members of one's own ethnic and gender group. Arrow questions the existence of such discrimination in corporations at all, on the basis that attributing 'taste' to a non-human entity is problematic.[42] However, it is argued here that the actions of corporations are the aggregation of the actions of individuals associated with that corporation and as such, taste-based discrimination is possible.

Taste-based discrimination is hard to eliminate because it is easy to disguise. A company may choose to hire John Smith over Jane Smith because of their gender but the reason claimed may be 'merit' or 'fit'. This is not helped by appointment processes being typically very opaque. In investigating discriminatory intent cases in the US, Edelman discovered that organizational processes and structures such as appointment policies and procedures or unconscious bias training "become proxies for non-discrimination because discriminatory intent is unobservable and difficult to prove".[43] On this basis, it is arguable that the appointment of women to precarious "glass cliff" positions is an example of taste-based discrimination.[44]

[42] Arrow (n 1) 195
[43] Lauren B Edelman and others, 'When Organizations Rule: Judicial deference to institutionalized employment structures' (2011) 117 American Journal of Sociology 888
[44] Michelle K Ryan and S Alexander Haslam, 'The Glass Cliff: Evidence that women are over-represented in precarious leadership positions' (2005) 16 *British Journal of Management* 81

Taste-based discrimination has been uncovered on a wide scale. Research in which almost identical job applications were sent out (the only difference being in the name of the applicant) found that the applicants with White sounding names received a significantly higher response rate.[45] Such experiments have been repeated several times and in different jurisdictions - all with similar results.[46] Taste-based discrimination may also be in operation within the financial markets as research suggests that investors devalue companies with women on the board.[47] Specifically, research found that "companies with at least one woman on their board were valued at 121% the book value of their assets, while those with all male boards were valued at 166% the book value".[48] In contrast, research on the Italian stock market on the day board gender quotas were mandated, revealed increases to the value of firms who would need to add more women in order to comply.[49] This was despite no information as to the identity of the women to be appointed. Clearly discrimination is highly context dependent.

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[45] National Bureau of Economic Research, *'Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination'* (2003)

[46] See for example: Magnus Carlsson and Dan-Olof Rooth, 'Evidence of ethnic discrimination in the Swedish labor market using experimental data' (2007) 14 *Labour Economics* 716; John L Cotton, Bonnie S O'neill and Andrea Griffin, 'The "name game": affective and hiring reactions to first names' (2008) 23 *Journal of Managerial Psychology* 18 and Leo Kaas and Christian Manger, 'Ethnic discrimination in Germany's labour market: a field experiment' (2012) 13 *German Economic Review* 1

[47] S Alexander Haslam and others, 'Investing with prejudice: The relationship between women's presence on company boards and objective and subjective measures of company performance' (2010) 21 *British Journal of Management* 484 486

[48] Ibid 492

[49] Christopher Groening, 'When do investors value board gender diversity?' (2018) *Corporate Governance: The International Journal of Business in Society*

Differences in demand

Norwegian research claims that the difference between the participation of men and women in the boardroom, prior to the implementation of the 2006 quota in Norway, was not attributable to discrimination.[50] The difference was attributed to women "self-selecting" careers that ruled them out of the running for the boardroom. There are thought to be numerous ways an individual may self-select away from top jobs. One argument is that women choose not to seek out high profile jobs because they are naturally more risk averse than men.[51] The support for this claim is limited.[52] Another self-selection argument is premised on gendered appetite for competition. Nierderle et al found that women were less likely to put themselves forward for jobs in a competitive selection scenario.[53] However, if these self-selection issues are gender-based, BAME women should not be more disadvantaged than White women in terms of promotion prospects. Evidence strongly suggests that they are.[54]

Self-selection decisions are often based upon social norms that perpetuate the diversity problems, and they do not constitute a reason to merely accept a difference in demand between genders and ethnicities. For women and BAME individuals, experience of discrimination (statistical or taste-based) is likely to

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[50] Strøm (n 40) 310

[51]Sapienza and others (n 18), Renee B Adams and Tom Kirchmaier, 'Making it to the top: From female labor force participation to boardroom gender diversity' (2013) papers ssrn com/sol3/papers cfm 42,

[52] Renée B Adams and Patricia Funk, 'Beyond the Glass Ceiling: Does gender matter?' (2012) 58 *Management Science* 219 220

[53] Muriel Niederle, Carmit Segal and Lise Vesterlund, 'How Costly is Diversity? Affirmative action in light of gender differences in competitiveness' (2013) 59 Management Science 1 2

[54] Yap and Konrad (n 14) 612

affect choices from very early in their lives. Where the likelihood of achieving certain careers is minimal, there may seem little point in investing the time and effort into the relevant education. Research suggests that self-selection of careers is an issue that affects women more than BAME individuals.[55] It claims that the BAME response to discrimination in appointments is to cast their net wider in their job search but that women have a relatively narrow pool of job types to which they will apply.[56]

It is unlikely to be a coincidence that where employers are male dominated with few women role models, women's level of ambition is lower.[57] If women or BAME individuals were able to identify with or recognize their own values in what they see above them, their career progression may be more swift.[58] According to Sealy et al, "women express a need to see 'someone like me' above them, in order to believe in their own chances".[59] Relatedly, empirical research shows that the presence of influential women on a board significantly affects the appointment opportunity of other women.[60] This supports the idea that the board appointment process depends on a variety of factors, including the availability of

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55 Devah Pager and David S Pedulla, 'Race, Self-Selection, and the Job Search Process' (2015) 120 *American Journal of Sociology* 1005 1030

56 Ibid

57 Ruth Sealy and Val Singh, 'The Importance of Role Models and Demographic Context for Senior Women's Work Identity Development' (2010) 12 *International Journal of Management Reviews* 284

58 Alice Klettner, Thomas Clarke and Martijn Boersma, 'Strategic and regulatory approaches to increasing women in leadership: Multilevel targets and mandatory quotas as levers for cultural change' (2016) 133 *Journal of Business Ethics* 395 404

59 Ruth Sealy, B Hawkins and R Searle, 'Precarious Selves: Women's leadership identity emergence.'

60 Alison Cook and Christy Glass, 'Diversity Begets Diversity? The Effects of Board Composition on the Appointment and Success of Women CEOs' (2015) *Social Science Research*
143

mentors and role models, but also that "diversity begets diversity".[61] Far from being purely theoretical, this can be seen in practice. Donald Arnold an ethnic minority and the CEO of Carnival corporation (listed on both the FTSE100 and the NYSE), replaced "7 out of 9 senior leaders, 4 of which were replaced by women and one BAME individual"[62].

Another prominent self-selection argument relates to family norms. Swedish research indicates that women directors have fewer children than is typical of women in the general population.[63] In the US, across industries and professions, motherhood does not reduce women's participation in the workforce, but it does impact women's position.[64] This has been described as "society's failure to accommodate to the realities of its workforce rather than a signal of mothers true preference".[65] When viewed from a father's perspective, their available choices regarding childcare have a big impact on themselves and on women. Even if parental leave is available to them, a working culture that frowns on taking it may well prevent them from sharing these duties. Japan has the "most generous paid paternity leave in the world" but this does not prevent it from being vastly

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[61] Ibid

[62] Carmine Gallo, 'The Nine Words That Took This CEO from Poverty to the Top of a $48B Company' *Forbes* (<https://www.forbes.com/sites/carminegallo/2018/05/13/the-nine-words-that-took-this-ceo-from-extreme-poverty-to-uncommon-success/#18b2cbb6135f> accessed 19 Feburary 2018

[63] Adams and Funk (n 52) 228

[64] Heather Boushey, '"Opting out?" The effect of children on women's employment in the United States' (2008) 14 *Feminist Economics* 1

[65] Ibid 254

underutilised by men because it is felt to be unacceptable.[66] In the UK, shared parental leave is an option but the uptake of this is around 2%.[67]

Framing the statistical career differences between genders as based on preference is unhelpful if both genders are not faced with the same choices. It disregards the evidence showing that the opportunity to choose paths leading to a particular type of career are less available[68], more restricted[69] and less supported[70] for women and BAME individuals. Preference terminology is only helpful in so far as it relates to their disempowered preferences. This is something to be rectified, not accepted. The preference discourse was considered in US research examining gender discrimination cases where the court found the woman's exclusion from non-traditional jobs was a matter of choice and not discrimination.[71] The research argued that the preferences attributed to women by the courts excluding them from non-traditional jobs, were the courts validation of sexist views and an inaccurate portrayal of women.[72] On that basis "if women's work orientations are attributable not to their individual

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66 Vsudha Gupta and others, *'Accelerating Gender Parity: What can governments do*?' (McKinsey & Company, 2019) 2

67 'New 'Share the Joy" Campaign Promotes Shared Parental Leave Rights for Parents' 2018) <https://www.gov.uk/government/news/new-share-the-joy-campaign-promotes-shared-parental-leave-rights-for-parents> accessed 3 August 2019

68 Amy J Hillman, Albert A Cannella and Ira C Harris, 'Women and Racial Minorities in the Boardroom: how do directors differ?' (2002) 28 *Journal of Management* 747 750

69 Vicki Schultz, 'Telling stories about women and work: Judicial interpretations of sex segregation in the workplace in Title VII cases raising the lack of interest argument' (1990) *Harvard Law Review* 1749 1830

70 Elliott and Smith (n 41)

71 Schultz (n 69)

72 Ibid 1840

characteristics but rather to the structure of mobility and rewards attached to jobs, then the solution is to change the work structures”.[73]

1.2. Practical barriers: pipelines and networks

Pipeline

The pipeline of talented women and BAME individuals is commonly referred to as the main barrier to their greater representation in the boardroom.[74] Prima facie, there is a 9% gap in the number of employed working age women when compared with working age men in the UK.[75] Self-selection issues aside, the pipeline concern cannot be justified on the basis of this 9% gap. The gender gap in the c-suite and the board is considerably larger. The Chair of the Institute of Directors, has called the claim that it is difficult to appoint women and ethnic minorities to boards “a lie”.[76]

The pipeline concern is typically framed as a threat to meritocracy, i.e. if the pipeline of talent (be that woman or ethnic minority) is not of the right standard, appointees may end up replacing competent men with mediocre women and BAME individuals. There is little evidence to support the threat to meritocracy argument (this is explored in more detail in Chapter 4’s discussion of

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[73] Ibid 1831

[74] Villiers (n 12) 539

[75] Womens Business Council, ‘*Maximising women's contribution to future economic growth’* (2015) 18

[76] Jasper Jolly, 'Big firms lying about female and minority direcors, says top business chief' *The Guardian* (<https://www.theguardian.com/world/2019/mar/08/exclusive-iod-chair-charlotte-valeur-firms-lying-about-appointing-women-improve-diversity> accessed 8 March 2019

meritocracy). In contrast, some argue that lack of diversity is helping mediocre men remain in positions over more competent, more diverse candidates.[77]

According to the 2015 Davies Review there are “plenty of credible, experienced women willing and capable of serving on British boards. The big hurdle to overcome was getting them appointed*”.*[78] Similarly*,* a US survey shows that there are many women, “ready, eager and capable of serving as effective board members”.[79] In order to help counteract the perception of the struggling pipeline, Cranfield School of Management report annually on “100 Women to Watch”, and describe the “broad and deep female talent pool”.[80] Similarly, the Davies Review group also produce a report that showcases a selection of women serving on boards or ready for appointments, from a variety of career paths.[81] For ethnic minorities, there are projects aimed at promoting and supporting BAME professionals and providing access to suitable candidates, such as the Network for Black and Asian Professionals,[82] the Black British Business Awards[83] and Race for Opportunity.[84]

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77 Institute of Industrial Economics Working Paper, *Gender Quotas and the Crisis of the Mediocre Man: Theory and evidence from Sweden* (No 985, 2013)

78 Lord Davies of Abersoch, *Women on Boards* (2011), *18*

79 Hugh MJ Colaco, Paul Myers and Mindell Reiss Nitkin, 'Pathways to leadership: board independence, diversity and the emerging pipeline in the United States for women directors' (2011) 8 *International Journal of Disclosure and Governance* 122 140

80 Cranfield University School of Management, *‘100 Women to Watch 2015’* 1; Cranfield University, ‘*Cranfield 100 Women to Watch supplement’* (2018)

81 Davies Review, ‘*Inspirational Women in Business’* (2015)

82 'Network for Black and Asian Professionals' <http://www.nbp.org.uk> accessed 12 Novermber 2018

83 'The Black British Business Awards' <https://thebbbawards.com> accessed 27 July 2019

84 'Race for Opportunity' <https://race.bitc.org.uk> accessed 27 July 2019

Empirical evidence also casts doubt upon the pipeline argument. A 2010 study of 4,143 MBA graduates who were, at that time, employed in for-profit companies, reported that women lagged behind men in advancement, compensation and career satisfaction despite being equal to and sometimes surpassing men in graduation.[85] In the UK in 1994 there were more women than men graduates from business and administrative studies courses.[86] A 1994 graduate or post graduate would likely be in their early to mid 40s in 2016, arguably a suitable c-suite age. From a US perspective, in 1986 31.1% of MBA's were awarded to women, almost 20% higher than a decade before.[87] Given the evidence against the pipeline argument, and the many statements refuting it as an issue, it should no longer be used as a justification for lack of diversity.

Networks and mentors

Networks are a more convincing reason for the lack of board diversity. Networks are key to career progression and this applies widely, not just at board level. Granovetter's classic work on the impact of social networks in finding jobs demonstrates that those who have broader and deeper networks have more career choices and achieve more desirable positions.[88] In 2013, Gaughan found that those gaining their first FTSE100 appointment, invariably had a large network of connections indicating they were well known and with an established

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[85] Nancy M Carter and Christine Silva, *Pipeline's Broken Promise* (Catalyst New York 2010), *3*; Womens Business Council (n *75)*

[86] D Scott DeRue and Susan J Ashford, 'Who will lead and who will follow? A social process of leadership identity construction in organizations' (2010) 35 *Academy of Management Review* 627

[87] Craig A Peterson and James Philpot, 'Women's roles on US Fortune 500 boards: Director expertise and committee memberships' (2007) 72 *Journal of Business Ethics* 177 194

[88] Granovetter (n 13) *95*

reputation.[89] A US study found that women believe that the development of a network is the single most important factor in attaining a board position.[90] Unfortunately, there remains what is often described as the "old boy's network" at the top echelons of UK business.[91] Some argue that its presence serves to "preserve and enhance rewards for males at the top".[92] Social cohesion theory suggests appointment to board positions is influenced by a candidate's ability to contribute to the network and while that network remains dominated by white men it is hard for women and ethnic minorities to penetrate it.[93] Research by Ibarra suggests that the problem is partly due to gender difference as women split their friendships and their work resource networks, whereas men combine them, and men are simply better at developing useful professional contacts.[94] Ibarra's research does not consider whether these findings would be replicated if men and women were equally represented in senior positions.

There are processes designed to combat the 'old boy's network'. The UK Corporate Governance Code (the Code) requires boards have nomination committees, constituted mainly from independent non-executive directors (NEDs). However, a study found that, despite the presence of nomination committees, 55% of board members felt that it was the CEO who had the most

[89] Mary Gaughan, 'A conceptual framework for reputational capital development: An exploratory study of first-time FTSE 100 NED appointees' (2013)
[90] Colaco and others (n 61) 124
[91] Oakley (n 27) 328
[92] Ibid
[93] Val Singh and Susan Vinnicombe, 'Why So Few Women Directors in Top UK Boardrooms? Evidence and theoretical explanations' (2004) 12 *Corporate Governance: An International Review* 479 485
[94] Herminia Ibarra, 'Homophily and differential returns: Sex differences in network structure and access in an advertising firm' (1992) *Administrative Science Quarterly* 422

influence on nominations, with the committee having limited impact.[95] This study is over 25 years old, but more recent research continues to support the existence of the old boy's network and its impact on the nomination process.[96]

Beyond the boardroom, networks serve as forums in which race and gender are used to rank network members.[97] This is due to the underrepresentation of women and BAME individuals in certain fields of employment. Studies have shown that, because they are concentrated in lower status jobs, this impacts upon their ability to access the necessary networks to improve their job status and reinforces the stereotypes regarding what these groups want and can achieve.[98] According to Granovetter:

> *"Blacks are at a disadvantage in using informal channels of job information not because they have failed to develop an informal structure suitable to the need, but because they are presently underrepresented in the structure of employment itself. If those presently employed in a given industry or firm have no black friends, no blacks will enter those settings through personal contacts".* [99]

Mentors are also considered important in gaining a board position. Research on Australian CEOs has shown that mentors appear to be more instrumental for

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[95] Jay W Lorsch and Elizabeth MacIver, 'Pawns or Potentates: The reality of America's corporate boards: Harvard Business School Press' (1989) Boston, MA cited in Cranfield University School of Management, The Equality and Human Rights Commission, '*Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms'* (2012) 22

[96] For example, Annie Pye, 'The importance of context and time for understanding board behavior: Some lessons from social capital research' (2004) 34 *International Studies of Management and Organization* 63; and Annie Pye and Andrew Pettigrew, 'Studying board context, process and dynamics: some challenges for the future' (2005) 16 *British Journal of Management* S27

[97] Elliott and Smith (n 41) 368

[98] Alexandra Kalev, 'Cracking the glass cages? Restructuring and ascriptive inequality at work' (2009) 114 american Journal of sociology 1591 1592

[99] Granovetter (n 13) *133*

women than men.[100] Lloyds Banking Group introduced a sponsorship programme in 2017, pairing women with influential leaders.[101] These women were 5 times more likely to get promoted than women who weren't on the programme.[102] However, UK research suggests that 40% of men have mentors compared to only 11% of women.[103] It has been claimed that men are more comfortable mentoring men and that the mentoring relationship is more effective where the parties have things in common.[104] Research following the Harvey Weinstein scandal, and resulting #MeToo movement, suggests that "almost half of male managers are uncomfortable participating in a common work activity with a woman, such as mentoring".[105] When men do mentor women, it is thought they offer less psychosocial support than when mentoring men.[106] Sticking to mentors and mentees of the same gender or ethnicity is known as type-based mentoring.[107] It may perpetuate the current level of diversity in the upper ranks of business.

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[100] Fitzsimmons and others (n 24) 261

[101] Sir Philip Hampton, 'Hampton-Alexander Review. FTSE Women Leaders' (2018) 19

[102] Ibid. The success of this programme must be tempered by an understanding that the women who were sponsored had been those identified as talented. This raises questions as to who does the identifying and what criteria they use. It is also worth considering whether these 'talented' women may have been promoted anyway.

[103] Scarlett Brown, Elisabeth Kelan and Anne Laure Humbert, '*Opening the Black Box of Boardroom Appointments: women's and men's routes to the boardroom'* (KCL and Sapphire Partners Report, 2015) 19

[104] Susan Athey, Christopher Avery and Peter Zemsky, 'Mentoring and diversity' (1998) 766

[105] 'What men and women are feeling in the wake of the widespread media reports of sexual harassment' (*LeanIn,* January 2018) <https://leanin.org/sexual-harassment-backlash-survey-results/#key-finding-1> accessed 24 April 2018

[106] Patricia Gabaldon and others, 'Searching for Women on Boards: An Analysis from the Supply and Demand Perspective' (2015*) Corporate Governance: An International Review*

[107] Athey and others (n 104) ; Gabaldon and others (n 106)

Many companies have mentoring programs, but research questions how effective they are.[108] More senior men than women, combined with a male reluctance to mentor women, results in a bottleneck. Resolving this reluctance seems unlikely while the media continue to frame women as intentionally victimizing innocent men. Tarana Burke, the founder of the #MeToo movement (intended to empower and support women) claims it is being framed as a gender war, or a witch hunt against men.[109] This growing atmosphere of fear is detrimental to male-female mentoring relationships.

1.3. Environmental factors

There is a body of research exploring the effect of institutional systems on change in boardroom diversity levels. Terjesen and Singh found that, globally, "countries with higher levels of female representation in legislature, senior officials and managers, are more likely to have women on their corporate boards".[110] A negative correlation was found between a longer history of elected women officials and women on boards, suggesting that time could breed complacency when it comes to diversity.[111] Research comparing 36 countries claims women in politics is an antecedent to, and has a strong correlation with, women on boards

108 Alexandra Kalev, Frank Dobbin and Erin Kelly, 'Best Practices or Best Guesses? Assessing the efficacy of corporate affirmative action and diversity policies' (2006) 71 *American Sociological Review* 589

109 'Me Too is a Movement not a Moment' (*TEDWomen,* 2018) <https://www.ted.com/talks/tarana_burke_me_too_is_a_movement_not_a_moment/transcript> accessed 4 November 2018

110 Siri Terjesen and Val Singh, 'Female presence on corporate boards: A multi-country study of environmental context' (2008) 83 *Journal of Business Ethics* 55 57

111 Ibid 59

in that country.[112] US research has found that companies with headquarters in states considered more progressive, with policies intended to protect women's freedoms of choice and from discrimination, have more women on their boards.[113]

At a more general level, research suggests that up to 50% of the variation between nations regarding the proportion of women on boards is attributable to national institutional systems, by which they mean national economic, legal and cultural systems.[114] Culturally, occupations are segregated according to gender and despite increases in women's workforce participation, the lines of segregation remain robust. According to Padavic et al:

> *"despite World War II, the women's liberation movement, antidiscrimination laws and affirmative action, the most common occupations for women at the turn of the twenty first century were almost identical to those that employed women in 1940".*[115]

Seierstad et al found that the chances of a successful "women on boards" initiative, depended upon the existence of political support from several political factions.[116] Success is most likely when political support is combined with a

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[112] Rey Dang, L'Hocine Houanti and Marie Josee Scotto, 'How do Institutional Factors Shape the Representation of Women on Corporate Boards? Cross Country Evidence' (2019) (*Forthcoming*)

[113] Yannick Thams, Bari L Bendell and Siri Terjesen, 'Explaining women's presence on corporate boards: The institutionalization of progressive gender-related policies' (2018) 86 *Journal of Business Research* 130

[114] ohanne Grosvold and Stephen Brammer, 'National institutional systems as antecedents of female board representation: An empirical study' (2011) 19 *Corporate Governance: An International Review* 116118

[115] Padavic and Reskin (n 38) *65*. The occupations referred to are secretary, office worker, food preparation, school teaching and cashiering or bookkeeping.

[116] Cathrine Seierstad and others, 'Increasing the Number of Women on Boards: The role of actors and processes' (2015) *Journal of Business Ethics* 1

discourse based on both business and societal interests. Similarly, Iannotta et al found that institutions were highly determinative of the level of boardroom diversity. In particular welfare, labour and cultural institutions reinforce or undermine gender equality progress.[117] It is of little use making changes to the labour market that aim to increase the number of women in the workplace if no concomitant changes are made to welfare and cultural institutions.

From an economic perspective it is clear that monetary incentives are different between genders and ethnicities. UK research shows that women stop earning for their work on the 4th of November each year, when compared to the year-round wages of men.[118] A 2014 report suggests male directors took home an average of £21,084 per year more than women directors and on top of this is a bonus gap of over £10,000.[119] I n the US women are not only paid less but receive fewer perks, such as leave for training and education, and this applies not just to women at the top but throughout the business.[120] According to Catalyst, differences in salary cannot be ascribed to differing aspirations between genders or to parenthood.[121]

The gender pay gap persists through all levels of work and business. Adams et al use it as a proxy for the discrimination within the labour market.[122] Research

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[117] Michela Iannotta, Mauro Gatti and Morten Huse, 'Institutional Complementarities and Gender Diversity on Boards: A configurational approach' (2016) *24 Corporate Governance: An International Review* 406 13

[118] Fawcett Society, *Equal Pay Day Report* (2014) 4

[119] Ibid 7

[120] Oakley (n 27) 324

[121] Carter and Silva (n 85) *3*

[122] Adams and Kirchmaier (n 51) 8

has shown that countries with a smaller pay gap fared well in terms of women's representation on boards.[123] One potential cause for this could be the correlation between pay and perception of ability. Where individuals are paid the same for the same work, there may be a perception of parity of ability that will be reflected in promotion prospects and could therefore filter upwards towards the boardroom. An analysis of the remuneration of the FTSE100 c-suite can be found in Chapter 7.[124]

There is less data on the ethnicity pay gap because companies are not currently required to report on it.[125] It is a complex issue due to the range of ethnicities and the categorisation of people. At a workforce level, it is reported that "Bangladeshi and Pakistani households earn about a third less on average than the median for White families".[126] For Black African families the difference is about a fifth less than the median White family.[127]

2. Rationales for change

Discussion about the normative reasons for improving board diversity is prolific. There is clear division between advocates of the business case for diversity and

[123] Terjesen and Singh (n 110) 59
[124] See pages 201 - 204
[125] At the time of writing this was under consultation: https://www.gov.uk/government/consultations/ethnicity-pay-reporting accessed 19 July 2019
[126] Jim Pikard, 'How Big is Britains Ethnic Pay Gap' *The Financial Times* (<https://www.ft.com/content/df660814-cd40-11e8-9fe5-24ad351828ab> accessed 25 February 2019
[127] Ibid

advocates of more social justice focused reasoning. Below is a consideration of both categories from the perspectives of gender and ethnicity.

2.1. Business performance

The business case for board diversity refers to a performance driven motivation for change and has been championed by government, academics, industry and businesses alike. It has been the position of the Davies Review since its inception in 2011, and reiterated in the 2015 five-year summary, which stated "the business case is even stronger today" and says it is no longer as necessary to refer to it.[128] The Hampton-Alexander Review have claimed the business case is 'well-known' amongst business leaders, and the lack of diversity that is incongruent with this knowledge is the "Knowing-Doing Gap".[129] The Institute of Directors listed boardroom diversity as a key priority for corporate governance in 2015 for the sake of business performance.[130] A study of FTSE350 companies claims to show that profit margins are doubled when the executive committee is at least 25% women, when compared to all male executive committees.[131] Helena Morrissey, co-founder of the 30% Club, calls boardroom diversity "a business issue, not a women's issue".[132] And in 2019 the rhetoric is still going strong. According to Carolyn Fairbairn, Director General of CBI

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[128] Lord Davies of Abersoch, *Women on boards: 5 year summary (Davies review)* (2015) *9*
[129] Sir Philip Hampton, 'Hampton-Alexander Review. FTSE Women Leaders' (2018) 28
[130] Institute of Directors, *Key Priorities for Corporate Governance* (2015)
[131] The Pipeline, '*Women Count 2017'* (2017)*6*
[132] Gordon S, 'The 30% Club: How women have taken on the old boys' network' Financial Times (4 December 2015) <http://www.ft.com/cms/s/0/43177e48-8eaf-11e5-8be4-3506bf20cc2b.html#slide0> accessed 13 Janaury 2015

> *"the case for workplace equality is water tight: companies with diverse boards perform better. Embracing diversity is one of the greatest opportunities available to business today – bridging the gender gap alone could add £150 billion to the UK economy by 2025".*[133]

Despite all the talk, many researchers have found no link between the presence of women on boards and firm performance.[134] These conflicting positions have led the EU Select Committee to recommend the link between profitability and gender be discarded.[135] Yet there seems an indirect but irrefutable business imperative to improve diversity because of investor pressure. A recent report from the Investment Association (the trade body for investment managers, who together manage over £7.7 trillion assets)[136] have publicly shamed a large number of companies for not having sufficiently diverse boards.[137]

An empirical study of US management literature in the mid 1980s to mid 1990s revealed that profit was the most frequently cited reason for improving organizational diversity.[138] Some believe that profit based reasons are relied

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[133] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019) 13

[134] Haslam and others (n 47), Susan M Adams, Atul Gupta and John D Leeth, 'Are Female Executives Over-represented in Precarious Leadership Positions?' (2009) 20 *British Journal of Management* 1

[135] Barnali Choudhury, 'Gender Diversity on Boards: Beyond quotas' (2015) 26 *European Business Law Review* 229 232

[136] 'The Investment Association: about us' <https://www.theia.org/about-us> accessed 3 August 2019

[137] Kayleena Makortoff, 'Investor group warns almost 100 firms over lack of gender diversity' *The Guardian* (<https://www.theguardian.com/business/2019/may/13/investor-group-warns-almost-100-firms-over-lack-of-gender-diversity> accessed 3 August 2019

[138] Lauren B Edelman, Sally Riggs Fuller and Iona Mara-Drita, 'Diversity Rhetoric and the Managerialization of Law' (2001) 106 *American Journal of Sociology* 1589 1619

upon because social arguments are not accepted.[139] Transforming what are primarily legal ideas into managerial concepts can be referred to as managerialisation.[140] The process weakens legal ideas but makes them more easy to incorporate into organisations.[141]

Business performance reasoning can be subdivided into two categories of reason: agency theory and stakeholder theory.[142]

Agency

Agency theory reasoning in the board diversity context is based upon the perception of "outsideness" that women or BAME individuals bring to the board. "Outsideness" is supposedly beneficial because it brings different perspectives, ideas or independence to the board.[143] This category of reasoning typically seeks to quantify the value added by diversity or link it directly to firm financial performance, often using maximums or minimums.[144] For instance, there is research which claims that the link between diversity and performance is curvilinear.[145] It argues that there will be a negative effect in groups that are

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[139] Silke Machold and others, *Getting Women on to Corporate Boards: A snowball starting in Norway* (Edward Elgar Publishing 2013),

[140] Edelman and others (n 138)

[141] Ibid 1633

[142] Eleanore Hickman, 'Boardroom Gender Diversity: A behavioural economics analysis' (2014) 14 *Journal of Corporate Law Studies* 385 ; Claude Francoeur, Réal Labelle and Bernard Sinclair-Desgagne, 'Gender Diversity in Corporate Governance and Top Management' (2008) 81 *Journal of Business Ethics* 83 84

[143] Jeffrey L Coles, Naveen D Daniel and Lalitha Naveen, 'Boards: Does one size fit all?' (2008) 87 *Journal of Financial Economics* 329 331

[144] Hickman (n 142) 387

[145] Orlando C Richard, Thomas A Kochan and Amy McMillan-Capehart, 'The Impact of Visible Diversity on Organizational Effectiveness: Disclosing the contents in Pandora's black box' (2002) 8 *Journal of Business and Management* 265

balanced in terms of diversity “because neither group is dominant and both are struggling for control”.[146]

It is helpful to drill down into the sub-categories of agency-theory-based reasons in order to understand what specific benefits are purported to arise from outsideness.

Some research suggests that it is the independence of women directors that adds value to a board.[147] This independence stems from their underrepresentation and therefore could be extended to BAME individuals. Some argue that genuine diversity of race, gender and other dimensions could be an effective proxy for the independence of a board.[148] It is thought that more diverse boards are **tougher monitor**s than less diverse boards, perhaps because diversity mitigates the likelihood of the CEO having a board full of friends. This theory is supported by research finding direct evidence that more women on boards lead to a greater level of accountability for the CEOs to stock price performance.[149] However, this reasoning does not necessarily provide grounds for increasing the diversity of the c-suite, as they are not required to be independent.

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[146] Ibid 273
[147] Renee B Adams and Daniel Ferreira, 'Women in the Boardroom and their Impact on Governance and Performance' (2009) 94 *Journal of Financial Economics* 291 308
[148] Colaco and others (n 61) 122
[149] Adams and Ferreira (n 147) 292

The Parker Report cites the avoidance of groupthink as one of two internal benefits of increased ethnic diversity in companies.[150] It is thought that a diverse group of individuals make **higher quality decisions** on the basis that they bring a greater variety of perspectives and a broader knowledge and expertise base to this decision making.[151] This may be a consequence of the interaction between decision making and social categorisation, as found by Van Knippenberg et al.[152] The impact of this interaction is thought to be dependent on there being enough of those from under-represented groups for them to speak up. For women the critical mass is thought to be three.[153] In contrast, there is research suggesting that where the proportion of women on executive management teams exceeds 20% of the total, there is a negative impact on firm performance.[154] Whether critical mass theories can be applied to ethnic minorities is unclear and requires further research.

There is also research suggesting diversity hampers decision making. This is sometimes referred to as the social categorization perspective.[155] Hambrick found that, although heterogenous groups were better at making decisions, this

[150] Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016) *6*
[151] L Richard Hoffman, 'Homogeneity of Member Personality and its Effect on Group Problem-solving' (1959) 58 *The Journal of Abnormal and Social Psychology* 27 31
[152] Daan Van Knippenberg, Carsten KW De Dreu and Astrid C Homan, 'Work group diversity and group performance: an integrative model and research agenda' (2004) 89 *Journal of applied psychology* 1008
[153] Alison M Konrad, Vicki Kramer and Sumru Erkut, 'Critical Mass:: The Impact of Three or More Women on Corporate Boards' (2008) 37 *Organizational Dynamics* 145 154
[154] Sridhar Arcot and Stefan Gröschl, *Gender Compositions in Executive Management Teams and their Impact on Firm Peformance* (Zagreb: Governance Research and Development Centre (CIRU) 2019)
[155] Sadi Boĝaç Kanadlı, Mariateresa Torchia and Patricia Gabaldon, 'Increasing Women's Contribution on Board Decision Making: The importance of chairperson leadership efficacy and board openness' (2018) 36 *European Management Journal* 91 92

came at the expense of slower and less responsive decision making.[156] Mannix et al claim that improved decision making may only be achievable if the group can overcome the difficulties that diversity presents in terms of social processes.[157] This is reflected in the board appointment policy of United Utilities (a FTSE100 company) 2017:

> *"board directors need to work together effectively for the good of the company and, in short, they need to get on with each other, clashes of personality are to be avoided as they do not facilitate constructive debate and challenge or effective communication."*[158]

This perspective argues that diversity presents barriers to communication and information dissemination that not only prevent better decision making, but lead to increased conflict and turnover; this draws groups ever back towards homogeneity,[159] echoing Kanter in her 1977 research.[160] Granovetter describes the problem as a trade-off between higher productivity due to group solidarity and the perpetuation of systematic inequalities.[161]

Increased creativity and innovation are predicated on increased information exchange resulting from non-homogenous groups. According to Arnold Donald, CEO Carnival plc,

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156 Donald C Hambrick, Theresa Seung Cho and Ming-Jer Chen, 'The Influence of Top Management Team Heterogeneity on Firms' Competitive Moves' (1996*) Administrative Science Quarterly* 659 663

157 Elizabeth Mannix and Margaret A Neale, 'What Differences Make a Difference? The promise and reality of diverse teams in organizations' (2005) *6 Psychological Science in the Public Interest* 31 42

158 *Annual Report* (United Utilities, 2017)

159 Mannix and Neale (n 157) 40

160 Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977), *316*

161 Granovetter (n 13) *176*

"innovation, by definition, is thinking outside of the box. If you bring people together from different backgrounds and different cultural experiences who are organised around a common objective, you're far more likely to create breakthrough innovation than a homogenous group".[162]

This idea seems sensible, but research shows that groups tend to focus on commonly held information and are reluctant to share new information.[163] This issue may be exacerbated where the group is constructed of outsiders who do not feel comfortable enough within the group to further highlight their "outsideness".

It has been argued that a temperance in **risk taking**, particularly in the financial industry, would be a positive change.[164] This was one of the motivations put forward by the Davies Review, possibly influenced by the media pressure following the financial crisis of 2008.[165] Since that period, the media have often presented a negative image of male boardroom domination and its links to the financial crisis.[166] However, it is far from obvious that women do actually impact upon risk taking in a categorizable way. Adams and Funk found that empirical evidence does not support the conclusion that women make boards more risk

[162] Gallo (n 62)

[163] Mannix and Neale (n 157) 46

[164] Tim Adams, 'Testosterone and high finance do not mix: so bring on the women' *The Guardian* (<https://www.theguardian.com/world/2011/jun/19/neuroeconomics-women-city-financial-crash> accessed 22 January 2019

[165] Lord Davies of Abersoch (n 78)

[166] For example Michel-henry Bouchet and Robert Isaac, 'Is the financial crisis a male syndrome' *Bloomberg* (http://www.bloomberg.com/bw/europe/is-the-financial-crisis-a-male-syndrome-11292011.html); Marie Dejevsky, 'Testosterone to blame for banking crash, say Tory MPs' *The independent* (<http://www.independent.co.uk/news/uk/politics/testosterone-to-blame-for-banking-crash-say-tory-mps-2348912.html> accessed 27 January 2016, John Gapper, 'Men alone should no longer run finance' *The Financial Times* (<http://www.ft.com/cms/s/0/56f28696-7949-11e4-9567-00144feabdc0.html#axzz3ySp7lYKW> accessed 27January 2007

averse.[167] Similarly, research on US board diversity and decision making over a 14-year period, established no link between gender and risk.[168] There is no research into an ethnicity and risk association.

Some suggest that the proportion of women on boards relates positively to improved **corporate social responsibility**.[169] The suggestion is that women directors exhibit more sensitivity towards others, which results in better consideration of wider issues. Research also suggests that women are more conscientious about attendance at board meetings than their male counterparts.[170] However, this may have more to do with the level of scrutiny that women directors are under, forcing them to toe the line more carefully. There appears to be no ethnicity focused research into either ethical performance or conscientiousness.

Stakeholder

Reasons for improved diversity pertaining to stakeholder theory are those that focus on the board composition as a whole and how it relates to the company's stakeholders. It does not look at what minority directors, as individuals, can do for the board. From the stakeholder position it is thought that more diverse

[167] Adams and Funk (n 52) 234

[168] Vathunyoo Sila, Angelica Gonzalez and Jens Hagendorff, 'Women on Board: Does boardroom gender diversity affect firm risk?' (2016) 36 *Journal of Corporate Finance* 2645

[169] Christine A Mallin and Giovanna Michelon, 'Board Reputation Attributes and Corporate Social Performance: an empirical investigation of the US Best Corporate Citizens' (2011) 41 *Accounting and Business Research* 119139; Kathyayini Rao and Carol Tilt, 'Board composition and corporate social responsibility: The role of diversity, gender, strategy and decision making' (2016) 138 *Journal of Business Ethics* 327

[170] Adams and Ferreira (n 147) 292

boards are good for business on the basis that they are more representative of their stakeholders and from this they gain a better reputation and reduced workforce cost.

One key strength of this perspective is that it does not require a link between diversity and performance. Having a diverse board is thought to benefit a company's reputation on the basis that diversity indicates good corporate governance.[171] Brammer et al have shown that this is particularly the case in consumer-led sectors.[172] This emphasis on the importance of diversity is reflected throughout the business world. For example, law firms are beginning to encounter clients who have instigated a "diversity holdback", whereby client companies withhold a proportion of pay from the law firm if that firm does not meet its diversity requirements.[173]

The Parker Report cites "brand value" as being a key external benefit of having a more ethnically diverse board.[174] Irrespective of the validity of the claimed link between number of women and corporate social performance[175], reputational benefits from appearing more socially responsible are clear because of the robust link between firm value and a positive corporate social responsibility

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[171] Stephen Brammer, Andrew Millington and Stephen Pavelin, 'Corporate Reputation and Women on the Board' (2009) 20 *British Journal of Management* 17 18

[172] Ibid 26. Reputation in this context refers to the perceptions of senior managers about their peer organisations on matters such as management quality, retention of staff and quality of products

[173] Monidipu Fouzda, 'GCs tell firms: diversify or lose out' *The Law Society Gazette* (4 February 2019) <https://www.lawgazette.co.uk/practice/gcs-tell-firms-diversify-or-lose-out/5069127.article?utm_source=dispatch&utm_medium=email&utm_campaign=%20GAZ141016> accessed 4 February 2019

[174] Parker and Committee (n 150) *6*

[175] Mallin and Michelon (n 169) 124

reputation.[176] The reality of whether more diverse boards are more socially responsible seems, at this stage, to be irrelevant to its reputational benefits.

From a corporate culture perspective, a board that does not reflect the diversity of its employees may result in demotivation of the workforce because they do not see their needs being met or any long-term career prospects. A study conducted by Ernst & Young revealed their women employees to be "less satisfied than our men in our people survey and our ethnic minorities were less satisfied than our white people".[177] A portion of the workforce with such an attitude may impact negatively on the remaining workforce. Side effects of this dissatisfaction are increased turnover, increased absenteeism and poorer efficiency and output levels. In contrast, firms that are more visibly diverse are likely to be considered more attractive places to work and consequently may benefit from reduced costs of recruitment, absenteeism and increased efficiency.[178] Indeed, empirical research has found a significant positive relationship between the number of women on boards and employee relations.[179]

Issues with the business case

Many view the business case for diversity as insufficiently evidenced.[180] One of its most significant problems is the representation that visible characteristics such

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[176] Stephen Bear, Noushi Rahman and Corinne Post, 'The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation' (2010) 97 *Journal of Business Ethics* 207 209

[177] Parker and Committee (n 150) *45*

[178] Amy J Hillman, 'Board diversity: Beginning to unpeel the onion' (2015) 23 Corporate Governance: An International Review 104 105

[179] Mallin and Michelon (n 169) 139

[180] Sabina Nielsen and Morten Huse, 'Women Directors' Contribution to Board Decision-making and Strategic Involvement: The role of equality perception' (2010) 7 *European Management*

as gender and race are adequate and acceptable predictors of behaviour, values and competency.[181] Labelling these issues the “congruence assumption”, Lawrence argues that focusing on demographic attributes as explanations for various organisational outcomes, overlooks the subjective concepts that may more accurately determine those outcomes.[182] She states that:

> *“the congruence assumption probably masks elaborate relationships between demographic variables and outcomes. This is ‘paper’ parsimony, parsimonious only because the complicated interactions are assumed away”.*[183]

Using demography to explain the way boards behave or perform, skims over the detail and arrives at conclusions that may be spurious and are poorly supported. Yet there remains a significant stream of research investigating gender differences: for example, the surveys of CEOs and chairman in Norway investigating perceptions of differences in the contributions and values of women on boards.[184] Perceptions do not provide reliable evidence upon which justifications for or against more diverse boards should be formulated.

The business case relies on value judgements. It seeks to quantify the benefits that diverse perspectives can bring to business. On this reasoning, if different perspectives were demonstrated not to support business success, all white male

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Review 1618, Daniel Ferreira, 'Board Diversity: Should We Trust Research to Inform Policy?' (2015) 23 *Corporate Governance: An International Review* 108 , Adams and Ferreira (n 147) 291, Lisa M Fairfax, 'Board Diversity Revisited: New Rationale, Same Old Story' (2010) 89 *North Carolina Law Review* 855

[181] Mannix and Neale (n 157) 44

[182] Barbara S Lawrence, 'Perspective-The Black Box of Organizational Demography' (1997) 8 *Organization Science* 1 14

[183] Ibid

[184] Nielsen and Huse (n 180)

boards would be justified. The business case, according to Calas and Smirich; "includes a certain commodification of 'valuable women' whose talents are needed, making all women potentially disposable when no longer needed".[185] Research shows that racial diversity negatively impacts upon corporate performance when the corporations learning environment is not viewed as supportive.[186] But when the environment is viewed by both White people and ethnic minorities, to be supportive, performance is enhanced.[187] It is argued here that the diversity discourse places too much focus on performance and not enough on the underlying causes, such as creating the supportive environments in which all can flourish. Instead of seeking to justify diversity with reference to performance, the "contingent nature of the diversity performance link"[188] should be appreciated and the focus should be placed on recreating the conditions under which diversity enhances performance.

2.2. Social justice

If the causes of unbalanced board demography were clearly a matter of discrimination, a social justice argument for change would seem relatively easy to make. Difficulties arise because interested parties point to a variety of causes and consequences of the lack of diversity. This calls into question whether it is a matter of equity or justice at all. In contrast, judicial diversity research typically

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[185] Marta B Calás and Linda Smircich, 'Feminist Perspectives on Gender in Organizational Research: What is and is yet to be' (2009) *The Sage Handbook of Organizational Research Methods* 246 253
[186] Robin J Ely and David A Thomas, 'Cultural Diversity at Work: The effects of diversity perspectives on work group processes and outcomes' (2001) 46 Administrative Science Quarterly 229 341
[187] Ibid 355
[188] Ibid 342

focuses on social justice reasons, including democratic legitimacy and signalling equality of opportunity.[189] There is a justice imperative for diversity of the judiciary because it "goes to the heart of the question of fairness in the judicial system".[190] In a business context this fairness argument holds less weight. On the other hand, the business case for judicial diversity is that a diverse judiciary increases public perception of fairness and it is almost as important as the justice argument.[191] A lack of faith in the judiciary, even if actually fair, would be highly detrimental. For companies, the business case dominates because the importance of public confidence in the fairness of their decisions is not critical. The social justice argument for businesses is only indirectly related to justice, in respect of equality of opportunity.

Social justice reasons are rarely drawn upon in respect of UK corporate boards.[192] Reference to social goods can even attract scorn.[193] Seemingly more acceptable is to talk to business in the language of performance as the Secretary of State confirmed in 2013 when he said "this is not about equality, this is about good governance and good business".[194] This again arguably demonstrates the

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[189] Rosemary Hunter, 'More Than Just a Different Face? Judicial diversity and decision-making' (2015) 68 *Current Legal Problems* 119

[190] Cheryl Thomas, 'Judicial Diversity in the United Kingdom and other Jursidictions' (2005) The Commission for Judicial Appointments 30

[191] Ibid

[192] Cathrine Seierstad, 'Beyond the Business Case: The need for both utility and justice rationales for increasing the share of women on boards' (2015) *Corporate Governance: An International Review* 9

[193] In discussing the appointment policy of Penguin Random House, Lionel Shriver writes "*Drunk on virtue, Penguin Random House no longer regards the company's raison d'être as the acquisition and dissemination of good books. Rather, the organisation aims to mirror the percentages of minorities in the UK population with statistical precision*" Lionel Shriver, 'Great writers are found with an open mind' *The Spectator* (9 June 2018).

[194] 'Vince Cable: Boardrooms need more women' 2013) <http://www.bbc.co.uk/news/uk-politics-21249330> accessed 3 August 2019

managerialisation of law. Or perhaps, it is not the performance language that makes the business case attractive, but the avoidance of difficult issues such as ingrained bias.[195] However, there is some evidence of a shift towards arguments that are more inclusive of social justice reasons. For instance, the Parker Report talks of a “need to earn our licence to operate in society”,[196] although this comes alongside a multitude of business-related reasons.

Thus far it is arguable that the business case has proved insufficiently persuasive as an impetus for change. Fairfax argues that the stagnation of boardroom diversity calls for the incorporation of more social justice reasoning.[197] Ferreira takes the view that “it is better to focus on potential benefits to society that go far beyond narrow measures of profitability”.[198] Research has shown that, in jurisdictions where the focus is less on narrow business performance concerns and more on wider societal concerns, change is more likely to be successful.[199] What social justice is calling for is a question of fairness for the individual and society. The fairness argument is well received in a judicial diversity context but in contrast, fairness to individuals and society from diverse corporate c-suites has less obvious implications or social urgency. Even so it remains important.

[195] Fairfax (n 180) 884
[196] Parker and Committee (n 150) *3*
[197] Fairfax (n 180) 885
[198] Ferreira (n 180) 111
[199] Seierstad and others (n 116)

For the individual

Villiers frames the social justice argument as one with roots in international standards of human rights.[200] These standards provide support for a right of equality of opportunity. Khaitan argues that equality of opportunity is a requirement for access to an "adequate range of valuable opportunities", which is one of four key requirements for human flourishing that should be protected by the state.[201] While at first glance, access to board appointments may seem to surpass the adequacy requirement, that becomes less obvious when you consider that the requirement is relative to the opportunities available to others.[202]

It is perhaps questionable whether framing the debate in in the language of rights is helpful. For one reason, the international standards have not taken the individual very far in the boardroom and there is little reference to them when the issue is discussed at state level, at least within the UK.[203] Secondly, pointing to a right undermines the necessity for taking action on the basis of what is fair and equitable. If fairness is protected only by rights, it becomes hard to know where to turn when those rights are not helping.

At a practical level, businesses receive a significant cost benefit from the long-term undervaluing of women's labour and the exploitation of the cheaper and

[200] European Court of Human Rights (ECHR), Universal Declaration of Human Rights and The Convention for the Elimination of Discrimination Against Women (CEDAW)
[201] Tarunabh Khaitan, *A Theory of Discrimination Law* (OUP Oxford 2015)
[202] Ibid 113
[203] This becomes even less probable in light of BREXIT.

more flexible labour provided by women and ethnic minorities.[204] There is a lack of bargaining power that goes hand-in-hand with long-term discrimination that necessarily means women and ethnic minorities are less likely to receive fair value for their work. Being consistently undervalued is likely to affect an individual's self-worth and a general perception of their worth within society. A more just society would seek to rectify this as a matter of fairness.

For society

The broader argument for more diverse boards is based on it being a requirement of a fair society. It expands the individualist argument to recognize the effects of lack of board diversity on everyone. Societies in which genders and races are segregated into specific jobs, creates and perpetuates social norms that place limitations on the expectations, aspirations and achievements of sections of the population. These effects may trickle down to other potential career and education choices, to the point where there is an element of self-fulfilment to the limitations placed upon those members of society. According to Padavic and Reskin:

> *"separating groups into different places or different roles facilitates unequal treatment. In addition, it implies that treating groups differently is appropriate. Because people's jobs place them in the status system, provide income and confer prestige, segregating the sexes into different jobs contributes to women's lower pay and authority, at work, in their families and in the larger society".*[205]

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[204] Mike Noon, 'The Fatal Flaws of Diversity and the Business Case for Ethnic Minorities' (2007) 21 *Work, Employment & Society* 773, 778

[205] Padavic and Reskin (n 38) *56*

While c-suite positions remain dominated by White men, a disproportionate amount of power and wealth remains in the control of that section of society. The largest corporations exercise a great deal of undemocratic power due to their high level of discretion over many things that impact society.[206] For example, corporations have a high degree of control over the price of commodities, thereby exercising a level of control over societies resources. They influence consumer preferences through clever and manipulative marketing, and they have control over the skills and geographical distribution of the country's workforce. At a more direct level, they influence government decisions through overt lobbying as well as more covert business meetings and networking. More diverse boards would help to redistribute this control of power and the wealth that goes with it. Again, this may cause a trickle-down effect whereby the needs of different sections of society are better reflected. Some argue that women don't necessarily have differing interests and perspectives to men and to argue that they do is to essentialise the issue and perpetuate gender stereotypes.[207] This may be true but it does not follow that power should remain in the hands of the few who currently hold it.

3. Conclusion

This chapter has discussed the potential causes for the lack of boardroom diversity, ranging from intentional taste-based discrimination to institutionalized environmental factors that form part of the background to society. Some

[206] John E Parkinson, 'Corporate Power and Responsibility: Issues in the theory of company law' (1995) OUP Catalogue 13

[207] Aileen McHarg, 'Quotas for Women! The Sex Discrimination (Election Candidates) Act 2002' (2006) 33 *Journal of Law and Society* 141 155

arguments are unconvincing (such as the pipeline of talent) and without reliable empirical evidence. These should be abandoned. The multitude of other potential causes makes it impossible to pin-point anything; there are many contributing factors. This should be reflected in how the problem is tackled and is suggestive of a multifaceted approach. Changes made by corporations in their approach to boardroom diversity may spill over into wider social and institutional norms over time.

This chapter argues that reliance upon the “business case” for boardroom diversity is both unconvincing and potentially damaging to women and ethnic minorities. However, the justification that diversity of gender and ethnicity brings diversity of perspectives (which benefits decision making) is persuasive. Not just because this may improve decision making but because that is the right thing to do for a more just society and more representative businesses. This remains the case whether or not it makes decision making more difficult. Perhaps a side effect will be that people who are skilled at mediating become more valuable to boards, as the necessity to resolve board conflict increases. Either way, change should be founded upon social justice reasons if it is to be sustainable.

Chapter 3

Board constituents and the human capital of the c-suite

Despite abundant research on the role and function of the corporate board, little is known about what goes on inside the boardroom. To outsiders the boardroom is mysterious and opaque. It has been described by many as a “black box”.[1] Drawing on a review of research in this field, Section 1 of this chapter sets out what is understood about this black box. In particular, what is expected of boards, their directors and each of the members of the c-suite. In light of these expectations, the procedure for making c-suite appointments is considered in Section 2, together with the role of the Executive Search Firms (ESFs). Section 3 analyses, from a human capital perspective, what attributes are deemed suitable and necessary for the CEO, CFO, Chairman and CXO roles. The approach is designed to paint a picture of what the c-suite is expected to look like in terms of demography, skills and human capital. The thesis later compares the expected demography of the c-suite with its reality, based on the empirical findings reported in Chapter 6. Having considered board appointments from a procedural perspective here, Chapter 4 will go on to consider the basis upon which appointments are made.

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[1] Economic and Social Research Council, ‘Opening the Black Box of Board Appointments: women’s and men’s routes to the boardroom’ (2015); Morten Huse, 'Women directors and the ‘black box’of board behavior' (2009) *Women on corporate boards of directors: international research and practice* 140, Richard Leblanc and Mark S Schwartz, 'The Black Box of Board Process: Gaining access to a difficult subject' (2007) 15 *Corporate Governance: An International Review* 843

1. The Board of Directors

Before looking at the process of board appointments, it is necessary to understand what boards do. The following section will look first at the role of the board in general and then focus on the executive board i.e. the c-suite, in individual detail. Knowing what these roles entail will enable a more informed analysis of the process and basis for appointment.

1.1. The role of the board

The function of a corporate board has evolved from a group of senior corporate officials whose focus was corporate strategy, to a more independent group with a greater concern for monitoring.[2] There are multiple theories about the role of the board, but two that dominate are the "agency theory" and the "resource dependency theory" (RDT). Agency theorists suggest that boards are a market solution to the agency problem that derives from the division of ownership and control.[3] The idea is that those who control the company (the managers) have diverging interests from the company owners (the shareholders), thus creating an agency problem. It is therefore critical to have the board to monitor the managers.[4] In contrast, RDT takes the view that the board is there to provide a

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[2] Stephen Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford University Press 2008) *158*

[3] Benjamin E Hermalin and Michael S Weisbach, *Board of Directors as an Endogenously Determined Institution: A survey of the economic literature* (National Bureau of Economic Research 2001) *9*. For the roots of the separation of ownership and control theory, refer to Michael C Jensen and William H Meckling, 'Theory of the firm: Managerial behavior, agency costs and ownership structure' (1976) 3 *Journal of Financial Economics* 305, Eugene F Fama and Michael C Jensen, 'Separation of Ownership and Control' (1983) 26 *Journal of Law and Economics* 301

[4] Amy Hillman and Thomas Dalziel, 'Boards of Directors and Firm Performance: Integrating agency and resource dependence perspectives' (2003) 28 *Academy of Management Review* 383. A sustained research effort seeking to link monitoring with performance and access to

number of different resources including advice, networks and legitimacy.[5] A third theory, labelled "stewardship theory", claims directors can be trusted to be stewards of the company's resources.[6] Trusting directors to always navigate situations in another's interest, even when it conflicts with their own, seems overly optimistic and in direct contrast with agency theory.

Although these theories often run counter to each other, there is a body of research adopting a multi-theoretic approach to considering the actions and composition of boards.[7] Following this tradition, this research adopts the position that boards are neither useful only for monitoring or for the provision of resources, but for a combination of both. Even stewardship theory contributes an important trust aspect which, although not relied upon from a regulatory perspective, must form part of the company board dynamic.

The UK Corporate Governance Code ("Code") 2018 talks broadly about boards having wide ranging responsibilities that include both agentic and resource-based responsibilities. It is clear from an analysis of the Code that the balance favours agency. It focuses on monitoring the progress of the company to keep it in line with its purpose and values. Stiles and Taylor construct three categories of responsibility that include both agentic and resource-based activities;

board member resources with performance has failed to establish anything consistent or convincing and has been called into question: Gavin J Nicholson and Geoffrey C Kiel, 'Can Directors Impact Performance? A case-based test of three theories of corporate governance' (2007) 15 *Corporate Governance: An International Review*; Renee B Adams and Daniel Ferreira, 'Women in the Boardroom and their Impact on Governance and Performance' (2009) 94 *Journal of Financial Economics* 291 308

[5] Hillman and Dalziel (n 4)

[6] Nicholson and Kiel (n 4)

[7] Winfried Ruigrok and others, 'The Determinants and Effects of Board Nomination Committees' (2006) 10 *Journal of Management and Governance* 119 121

gatekeeping, control and service.[8] These categories are adopted here and considered in turn below.

Control

A board's control function involves the reviewing of financial information, company progress and director performance. It provides the board with the power to remove directors who are not performing.[9] Control is weaved into many of the Code's Principles but is described most clearly in Principle C which states that the board should "establish a framework of prudent and effective controls, which enable risk to be assessed and managed".[10] The control function also involves the setting of executive compensation. This is challenging, given the difficulties in accurately distinguishing the company's performance from individual performances, especially when combined with external factors such as market conditions. It might also be challenging, from an internal politics perspective, when it requires the board to set the pay of the powerful and influential.[11]

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[8] Philip Stiles and Bernard Taylor, *Boards at Work: How directors view their roles and responsibilities* (OUP Oxford 2001) 113*4*. Similarly, Bainbridge describes boards as a "production team" for the provision of advice, supervision and the management of crises.[8] (Bainbridge (n 1) *161)*

[9] There is no statutory power for directors to remove other directors, but this is commonly found in the company's articles of association and, to the extent it is not, case law permits majority directors to require another to resign (Lee v Chou Wen Hsien [1984] WLR 1202)

[10] UK Corporate Governance Code 2018

[11] Sir Martin Sorrell's remuneration was £70million, despite a fall in the share price during that year, Madison Marriage and Matthew Garrahan, 'Martin Sorrell's downfall: why the ad king left WPP' *The Financial Times* (June 11, 2018)

Gatekeeping

The gatekeeping function of the board relates to the extent to which boards are involved in strategy. According to Van Den Bergh et al, boards must:

> *"have insight into the company's strategy and stimulate management in strategy formulation and implementation. Therefore, they must be able to estimate the evolution of the socio-political environment and to apprehend the complexity and uncertainty involved".*[12]

Ability to make strategic decisions corresponds closely with the distribution of power within a company. Strategic decisions are intrinsically ambiguous and un-structured and they necessitate the use of power in order to bring them into effect.[13] Some say that it is the balance of power amongst the board that determines how effective it is.[14] The 2018 Code makes minimal references to strategic decision making but does state that "the board should establish the company's purpose, values and strategy".[15] Even though boards see their roles as strategic[16], research shows that in fact the role is better described as a screening process whereby strategic proposals, which are already polished by the executive committee, get the rubber stamp of board approval.[17] Surveys have shown that boards only spend 27% of their time on strategy.[18]

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[12] Lutgart AA Van den Berghe and Abigail Levrau, 'Evaluating boards of directors: what constitutes a good corporate board?' (2004) 12 *Corporate Governance: an international review* 461 466

[13] Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505 506

[14] John A Pearce and Shaker A Zahra, 'The Relative Power of CEOs and Boards of Directors: Associations with corporate performance' (1991) 12 *Strategic Management Journal* 135

[15] UK Corporate Governance Code 2018

[16] Barry Oshry, Benjamin E Hermalin and Michael S Weisbach, 'The Role of Boards of Directors in Corporate Governance: A conceptual framework and survey' (2010) 48 *Journal of Economic Literature* 58 6

[17] Stiles and Taylor (n 8) *42*

[18] *The Board Perspective: A collection of McKinsey insights Focusing on Boards of Directors, Number 2* (McKinsey & Company, 2018) 49 as referred to in Martin Petrin, 'Corporate Management in the Age of AI' (2019) *UCL Working Paper Series*

An important though indirect influence that boards have on strategy relates to the power to appoint the directors and managers who develop the strategies of the company. This includes the appointment and removal of the CEO. According to research, many directors consider this to be their most important role, “the board doesn’t run the company but it has to make sure that the people who do are the best that are available”.[19] In light of the evident balance of power in favour of the c-suite, the focus on the wider board, from a boardroom diversity research perspective, seems misplaced.

Service

The service aspect of a board’s role has quite a broad scope. Boards are responsible for the institutional face of the company and its internal and external relationships. This means it is the job of the board to liaise with investors and develop the relationships that keep them wedded to the company, as well as to consider the needs of the other stakeholders, such as employees, contractors and government, on behalf of society. The 2018 Code states “in order for the company to meet its responsibilities to shareholders, the board should ensure effective engagement with, and encourage participation from, these parties”.[20] This responsibility has taken on more prominence in the 2018 Code than in

[19] Jay W Lorsch and Andy Zelleke, 'Should the CEO be the Chairman?' (2005) 46 MIT Sloan management review 71 64
[20] UK Corporate Governance Code 2018

previous iterations. It introduces guidelines for ensuring the interests of other stakeholders are accounted for, in particular employees' interests.[21]

1.2. Directors

The Code advises that there should be at least 50% independent non-executive directors (NEDs) on the board.[22] In the FTSE100 in 2016 and 2017, all companies exceeded this requirement. In line with the Higgs Report, the proportion of executive directors to NEDs has been falling in recent years.[23] It has gone from 49% executives in 1996 to 26% executives in 2017.[24] As mentioned in Chapter 1, the c-suite and NEDs differ in the responsibilities and time commitments to the company. This can lead to tension. By virtue of their part-time capacity, NEDs will not be so intrinsically involved with the company as the c-suite. The frequency of interaction amongst the NEDS will be lower than amongst the c-suite. As a consequence, the relationships developed will differ in strength.[25] And, given that a significant part of the NED role is to monitor executives, this can lead to the perception that NEDs are corporate policemen.[26] Or even, occupying a "private office imbued with public responsibility".[27] Research in the US indicates that NEDs view the assessment of CEO succession as one of their

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[21] Ibid 1.5

[22] Ibid 2.11

[23] Derek Higgs, *Review of the Role and Effectiveness of Non-Executive Directors* (2003)

[24] ICSA The Governance Institute, *A View at the Top: Boardroom trends in Britain's Top 100 Companies* (July 2019) 11

[25] Stiles and Taylor (n 8) *113*

[26] Hermalin and Weisbach (n 3) *14*

[27] Daniel P. Forbes and Frances J. Milliken, 'Cognition and Corporate Governance: Understanding boards of directors as strategic decision-making groups' (1999) 24 *Academy of Management Review* 489 502

most important jobs.[28] When their power of monitoring and control over the c-suite is carried out diligently, it is easy to see how this could lead to strained relationships. Less diligently carried out duties (perhaps for reasons of powerful or intimidating CEOs) is likely to make board relationships more pleasant. Arguably WPP plc provided a good example of a supine board when under the leadership of Sir Martin Sorrell.[29]

1.3. C-suite

In addition to their boardroom responsibilities, the c-suite have strategic responsibilities as part of the "management committee".[30] As a consequence of this dual role it is the c-suite where the majority of corporate decision-making is typically held.[31] Unsurprisingly, research indicates top management are usually the most influential in the company, whether or not they are on the board.[32] Hambrick and Masons "Upper echelons" theory takes this further by arguing that the organization becomes a reflection of its top management.[33] What is expected of these roles is examined below.

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[28] Rakesh Khurana, *Searching for a Corporate Savior: The irrational quest for charismatic CEOs* (Princeton University Press 2004) 90

[29] 'How the WPP board bungled Martin Sorrell's departure' (*London School of Economics and Political Science Business Review,* 7 June 2018) <http://blogs.lse.ac.uk/businessreview/2018/06/07/how-the-wpp-board-bungled-martin-sorrells-departure/> accessed 14 February 2018

[30] For a diagrammatic representation of their overlap in roles please see page 22 in Chapter 1.

[31] Johnson SG, Schnatterly K and Hill AD, 'Board composition beyond independence: Social capital, human capital, and demographics' (2013) 39 *Journal of Management* 232

[32] Mark S Mizruchi, 'Who Controls Whom? An examination of the relation between management and boards of directors in large American corporations' (1983) 8 *Academy of Management Review* 426

[33] Donald C Hambrick and Phyllis A Mason, 'Upper Echelons: The Organization as a Reflection of its Top Managers' (1984) 9 *Academy of Management Review* 193

CEO

Although the CEO serves on the board of directors, many of the functions of the board do not apply to him/her and can more accurately be described as being directed at him/her. From an agency theory perspective, explaining why the CEO sits on the board is challenging. However, from an RDT approach, there is much that a CEO can add to the board in areas such as knowledge, networks and legitimacy. It is thought that CEO attributes, such as firm shareholdings and external directorships, provides signals to the market regarding firm credibility.[34] Historically, the CEO also acted as the Chairman of the board, but following Code recommendations, devised to balance the power of the CEO, this role has been divided.[35] However, this can create power struggles, particularly when the Chairman "has strong views, a persistent taste for the limelight and recent experience as a successful CEO".[36] In the US, there remains CEO and chairman role duality which, it is argued, prevents these struggles and makes accountability clearer.[37] The risk of combining these roles is the creation of too much power in one individual.

There are no Code provisions detailing what the role of the CEO should entail. Day-to-day, CEOs have a broad array of tasks. Mintzberg established 10 categories of CEO function: figurehead, leader, liaison, monitor, disseminator, spokesperson, entrepreneur, disturbance handler, resource allocator and

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[34] Yan Zhang and Margarethe F Wiersema, 'Stock Market Reaction to CEO Certification: The signaling role of CEO background' (2009) 30 *Strategic Management Journal* 693 694
[35] Stiles and Taylor (n 8) *107*
[36] Jay W Lorsch and Andy Zelleke, 'Should the CEO be the Chairman?' (2005) 46 *MIT Sloan Management Review* 71 72
[37] Ibid

negotiator.[38] At board meetings, CEOs will typically begin the meeting by presenting details of company progress and strategic plans.[39] This provides an opportunity for the CEO to frame the company situation as they see it.[40]

With responsibility for, and influence over so many functions, it is unsurprising that CEOs are typically the single most powerful person in a company. They are considered to be central to the group who "make choices on the basis of their own highly personalized interpretation of problems options and outcomes".[41] The source of CEO power is not necessarily clear. Some suggest it is a natural consequence of their position in the corporate hierarchy.[42] Others view CEO power as emanating from their enhanced knowledge of the company, relative to the NEDs.[43] The most powerful CEOs would likely have a combination of both, in addition to high levels of share ownership and prestige.[44] Powerful CEOs are expected to directly impact the utilization of board member capabilities.[45]

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[38] Henry Mintzberg, *The Nature of Managerial Work* (1973); Lance B Kurke and Howard E Aldrich, 'Note—Mintzberg was right!: A replication and extension of the nature of managerial work' (1983) 29 *Journal of Management Science* 975. According to later work by Mintzberg, the research in this field is sparse, and consequentially "our understanding of managing has not advanced", Henry Mintzberg, *Managing* (Berrett-Koehler Publishers 2009) 3

[39] Stiles and Taylor (n 8) *73*

[40] Lorsch and Zelleke (n 19) 82

[41] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116*116*

[42] Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505 508

[43] Lorsch and Zelleke (n 19) 80

[44] Finkelstein (n 42) 508. Power is discussed in more detail in Chapter 4.

[45] Katalin Takacs Haynes and Amy Hillman, 'The Effect of Board Capital and CEO Power on Strategic Change' (2010) 31 *Strategic Management Journal* 1145 1149

Despite their position of power, there remains some debate as to whether CEOs have a significant impact on company performance.[46] Research suggests that top management may be responsible for only 5% of the variance in return on assets.[47] Khurana claims that society wants to believe in a causal relationship between CEOs and firm outcomes because of social, cultural and psychological forces, but the evidence of such a causal link is sparse.[48] Crystal views the ideology as a debate about:

> *"whether great men, like Napoleon, really can change the course of history or, alternatively, whether history unfolds in a mysterious process that is only marginally influenced by the Napoleons of this world".*[49]

The tendency to seek human explanations for what happens has been described as a "fundamental attribution error".[50] If this is true, and CEO impact upon performance is marginal, it becomes harder to explain why women and BAME are so poorly represented within their number. Justification for the compensation packages of these individuals becomes impossible.

Still many would argue that their impact on performance is great. Research demonstrating a negative link between golf played and corporate performance would be less convincing were it the case that CEOs had little impact on their

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[46] Khurana (n 28) *22*

[47] Marianne Bertrand and Antoinette Schoar, 'Managing with Style: The effect of managers on firm policies' (2003) 118 *The Quarterly Journal of Economics* 1169; Paul DiMaggio and Walter W Powell, 'The Iron Cage Revisited: Collective rationality and institutional isomorphism in organizational fields' (1983) 48 *American Sociological Review* 147

[48] Khurana (n 23) *23*

[49] Graef S Crystal, *In Search of Excess: The overcompensation of American executives* (WW Norton 1992) 159

[50] Finkelstein and others (n 41) *38*

companies.[51] Hambrick asserts that once one accounts for contextual conditions, the impact of CEOs is considerable.[52] His view is that the firms allowing CEOs more managerial discretion see more of their CEO reflected in the firm's strategy and consequential performance.[53] Research demonstrates that some jurisdictions (such as the US) have CEOs with a greater impact on their companies than others (such as Japan).[54] To the extent that companies do begin to reflect their CEOs, it is understandable why so much is invested in finding the right person for the job.

Chairman

Chairmen are not usually considered members of the c-suite as they are typically non-executive. A UK study of FTSE listed company Chairmen found the majority to be non-executive, independent and part-time.[55] However, they are of such importance to the board and the executives that they are often described as being part of the "inner circle".[56] According to the Code, the Chairman "leads the board and is responsible for its overall effectiveness in directing the company" part of this entails "facilitating a culture of openness and debate".[57] The preface to the

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[51] Lee Biggerstaff, David C Cicero and Andy Puckett, 'FORE! An analysis of CEO shirking' (2016) 63 *Management Science* 2302 5

[52] Donald C Hambrick, 'Upper Echelons Theory: An update' (2007) 32 Academy of Management Review 334 341

[53] Ibid 335

[54] Craig Crossland and Donald C Hambrick, 'How National Systems Differ in their Constraints on Corporate Executives: A study of CEO effects in three countries' (2007) 28 Strategic Management Journal 767

[55] Terry McNulty and others, 'The Role, Power and Influence of Company Chairs' (2011) 15 *Journal of Management & Governance* 91 106

[56] Stiles and Taylor (n 8) *49*; James D Westphal and Ithai Stern, 'The Other Pathway to the Boardroom: Interpersonal influence behavior as a substitute for elite credentials and majority status in obtaining board appointments' (2006) 51 *Administrative Science Quarterly* 169 170

[57] UK Corporate Governance Code 2018

Code describes the role of the Chairman as “absolutely key” in getting the board to comprehensively consider its tasks and their implications. Research describes them as “pivotal”.[58] It is clear that Chairmen shoulder a significant level of responsibility. A good Chairman should steward the company to ensure it is on track, legally, morally and commercially.[59]

One of the Chairman’s typical roles is to chair the nominations committee. Through this role they have the ability to shift the boards focus onto diversity. From an RDT perspective, the role of the nominations committee is to ensure the composition of the board matches its internal and external needs. Being at the helm of such a committee is a key opportunity for ensuring a board is sufficiently diverse. This may be an opportunity being missed because empirical research from Switzerland demonstrates that companies with nominating committees are not more diverse, either in terms of gender or education.[60] The Cranfield 2017 report indicates that some Chairmen see diversity from a compliance perspective, and some from such a broad perspective that the diversity objectives of the Code may be obfuscated.[61]

Chairmen play a key role in the appointment and dismissal (where necessary) of the CEO and, partly by doing this, they act as “the best safeguard to executive dictatorship”.[62] They are responsible for ensuring a harmonious board

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[58] Andrew Kakabadse and Nada Kakabadse, 'The Return of the Chairman' (2007) 18 *Business Strategy Review* 62 60
[59] Ibid
[60] Ruigrok and others (n 7)
[61] Ibid *27*
[62] Kakabadse and Kakabadse (n 58) 62

environment in which all the voices of the directors can be heard.[63] This can be critical for board minorities as, according to Huse, "the use of the knowledge and skills of the women on boards will highly depend on the board chair and the chairs leadership styles and attitudes".[64] Kanadli et al argue that, instead of quotas, boards should be looking at ways to enhance chairperson efficacy and board openness in order to improve board diversity.[65] Evidently, women and BAME individuals depend heavily on the Chairman in obtaining roles and, once obtained, for being heard and having the opportunity to be effective.

Chairmen often have a close advisory relationship with the CEO. Research has shown that many CEOs find this to be invaluable.[66] Susanne Thorning-Lund of Odgers Berntsen (instrumental in several chairmanship appointments on the FTSE100 and internationally) says that it is very important that the style of the Chairman fit with that of the CEO, as they need to work so closely.[67] From an external perspective, it is the Chairman to whom the stakeholders will turn when they are seeking reassurance about the state and direction of the company.[68]

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[63] Stiles and Taylor (n 8) *111*

[64] Morten Huse, *Value-Creating Boards: Challenges for Future Practice and Research* (Cambridge University Press 2018) 52

[65] Sadi Boĝaç Kanadlı, Mariateresa Torchia and Patricia Gabaldon, 'Increasing Women's Contribution on Board Decision Making: The importance of chairperson leadership efficacy and board openness' (2018) 36 *European Management Journal* 91 92101

[66] Stiles and Taylor (n 8) *107*

[67] Meeting between the author and Susanne Thorning-Lund at Odgers Berntsen on 20 August 2018

[68] Kakabadse and Kakabadse (n 58) 62

Considering the significant responsibilities undertaken by the Chairman, it is surprising that so many hold multiple chairmanships and other roles.[69] It is also surprising how many are aged 70 or over. This raises the question of whether they are always the best available option and whether someone with more time to commit might not be better able to serve the company. From a diversity perspective it is concerning that the person with the most pivotal role in diversity and its success, is not only highly likely to be a white man but is also likely to be the oldest member of the board, with potentially more entrenched traditional views.

Chief Financial Officer

While 100% of the FTSE100 in 2016 and 2017 had a Chief Financial Officer (CFO), the role has not always been prominent. US research shows that, even though most firms now have a CFO, in 1964 none did.[70] Such a dramatic rise is attributed to the shareholder movement.[71] Today the role of the CFO is considered to be critical to business. Despite this, academic research on the topic is limited, particularly in the UK.

According to US research the CFO is ultimately responsible for the "design and implementation of the policy decisions related to the company's financial

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[69] For the results of the empirical investigation into this please see Chapter 7.

[70] Dirk M Zorn, 'Here a Chief, There a Chief: The rise of the CFO in the American firm' (2004) 69 *American Sociological Review* 345 346

[71] Ibid 345

performance".[72] According to Deloitte, the role has expanded from the traditional remit of steward of the company's assets and operator of an efficient finance function, to strategist and catalyst of a firm-wide financial approach.[73] The development of the role is reiterated by the Institute of Chartered Accountants in England and Wales (known as ICAEW), who describe CFOs as having "redefined" their roles to include strategy and organizational system rationalizing.[74] The ICAEW reviewed industry surveys on the CFO role and created a list of what it entails: accounting, compliance, management and control, strategy and risk, and funding.[75]

A CFO typically has specific technical abilities. Most CFOs will have an accounting qualification, but some argue it is not necessary. Simon Dingemans, CFO of GlaxoSmithKline, ex-chair and current member of the 100 Group who "represent the views of finance directors of the FTSE100 and several large UK private companies"[76], says:

> *"If the question is: "do you need to be an accountant to be a CFO?", I would clearly argue you don't. […] Increasingly CEOs are looking for more of a partnership with their CFOs, and that brings a requirement for a broader and more engaged skillset and approach".*[77]

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[72] Shehzad Mian, 'On the Choice and Replacement of Chief Financial Officers' (2001) 60 *Journal of Financial Economics* 143 144

[73] 'Four faces of the CFO' <https://www2.deloitte.com/us/en/pages/finance/articles/gx-cfo-role-responsibilities-organization-steward-operator-catalyst-strategist.html> accessed 12/12/2017

[74] ICAEW, '*Finance Function. A Framework for Analysis'* (2011) 55

[75] Ibid 3

[76] The 100 Group 'About Us' <https://the100group.co.uk/> accessed 17 Dec 2019

[77] Peter Williams, 'The Business Man' *Accounting and Business* (June 2015) 17

On top of these skills there is also the need for competency in interpersonal, situational and political skills.[78]

Other board executives

The c-suite does not typically extend beyond the CEO, CFO and Chairman.[79] When there are other executive directors on the board, the roles are often undefined or given regional or divisional relevance such as Chief Executive, Land[80] or Chief Executive for North America.[81] There are also a number of Chief Operating Officers, though research suggests that this is a trend that has been phased out over the last couple of decades.[82] CXO roles are often seen as the new route to the CEO job so the level of female and BAME diversity within this group may have implications for the diversity of the CEO role going forward.[83]

Research on board executives in the UK is scarce, so it is not clear why some companies have more executives than others. As mentioned above, Code guidance states that at least half of the board should be non-executive.[84] US research has suggested that sometimes executive directors are added to the

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[78] Jane Baxter and Wai Fong Chua, 'Be (com) ing the Chief Financial Officer of an Organisation: Experimenting with Bourdieu's practice theory' (2008) *19 Management Accounting Research* 212 216

[79] For the proportion of companies with other board executives, see Chapter 6.

[80] John Davies, Babcock International < https://www.babcockinternational.com/who-we-are/leadership-and-governance/board/john-davies/> accessed 17 December 2019

[81] Gary Green, Compass Group < https://www.compass-usa.com/officer-bios/gary-green/> accessed 19 December 2019

[82] Silviya Svejenova, José Luis Alvarez, 'Changing the C-suite: New chief Officer Roles as Strategic response to Institutional Complexity' New Themes in Institutional Analysis. Edward Elgar Publishing (2017)

[83] For the results of the empirical investigation into CXO gender and BAME diversity please refer to Figure 3 page 201.

[84] UK Corporate Governance Code B.1.2

board so that they can be evaluated for the CEO role.[85] Perhaps more commonly, executive directors may be added to better align the interests of the shareholders and the board where those executive directors are heavily invested in the company.[86]

2. The appointment procedure

The board appointment process, as specified by the Code, can be divided into two parts; the procedure for appointment and the basis for appointment. The Code states that the procedure should be "formal, rigorous and transparent" and should be based "on merit, against objective criteria and with due regard for the benefits of diversity, including gender".[87] The procedure will be considered here, and the basis of the appointment will be the subject of Chapter 4.

The nomination committee is tasked with leading the board appointment process and they are responsible for board recruitment.[88] They are required to analyse what skills, experience, independence and knowledge the board is missing, and prepare a briefing paper for presentation to the board.[89] Research suggests that, as a committee, it is subject to less scrutiny than either of the other two

[85] Stuart Rosenstein and Jeffrey G Wyatt, 'Inside Directors, Board Effectiveness, and Shareholder Wealth' (1997) 44 *Journal of Financial Economics* 229 230

[86] Ibid 249

[87] Supporting principle to the Code B.2. Details of how the company has fulfilled this function must be contained in the annual report (Schedule B to the UK Corporate Governance Code). The wording of the diversity requirement has changed in the 2018 version of the Code (see pages 41 for a description of the up to date wording). This version did not apply to the companies forming part of this study. The change is not substantial and not expected to have a dramatic effect, though that remains to be researched.

[88] UK Corporate Governance Code 2016 Provision B.2.1

[89] Ibid Provision B.2.2

committees (audit and remuneration), although it arguably has greater impact.[90] Perhaps part of the diversity issue relates to the importance nominations committees place on "informal, one-to-one and 'corridor' discussions".[91] Little additional guidance is provided by the Code, other than the use of ESFs and open advertising for Chairman and non-executive appointments.[92] There is nothing explicit in relation to executive appointments.

Financial Reporting Council guidance states that executive directors may be recruited externally, but companies should also develop internal talent and capability.[93] A company may benefit from both types of appointment. Promotion utilizes the skills, knowledge and networks that the company has helped to form, whereas external appointments bring in new perspectives, fresh knowledge and untapped networks. ESFs are significantly involved with both internal and external appointments.

Transparency in the appointment process (as required by the Code[94]) is often absent, particularly with CEOs. A CEO appointment is necessarily highly confidential for both parties because candidates are likely to be in other companies and would not want to alert them of their job search, until their position is secure. Public awareness of a candidate being "in the running" for a prominent role may not only affect a person's professional image from a commitment

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[90] ICSA The Governance Institute, *The Nomination Committee - coming out of the shadows* (2016)
[91] Ibid 8
[92] The UK Corporate Governance Code 2016, Provision B.2.4
[93] Financial Reporting Council, '*Guidance on Board Effectiveness'* (2018)
[94] UK Corporate Governance Code 2018, Principle J

standpoint, but it can also be very damaging if they are not chosen. These factors can affect the share price of all companies involved. While the need for secrecy is understandable, one consequence is a lack of empirical research into the process.[95] One concern is that with secrecy comes a lack of formality, and with a lack of formality there is increased potential for biased decision making.

2.1. The external route

US research suggests that the external process for finding a new CEO is typically used in response to a company crisis.[96] In such circumstances the perception may be that internal candidates are insufficient to effect the change necessary for the company. As Lou Gerstner, former CEO of IBM said "you don't see many examples of internal candidates getting to the top of the system and then laying waste to the existing culture"[97], which may be what is expected or desired by the shareholders in a company crisis scenario. Appointing externally is a significant decision and often sends a clear message that the board wants to move away from the strategic direction of the outgoing CEO.[98] According to Khurana, the choice of selecting an external candidate typically follows a script that begins with a decline in performance, the forcing out of the incumbent CEO followed by an external search for a "saviour".[99] This view is supported by US research which robustly demonstrates that poor company performance is an antecedent to CEO

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[95] Terrance W Fitzsimmons, Victor J Callan and Neil Paulsen, 'Gender Disparity in the C-suite: Do male and female CEOs differ in how they reached the top?' (2014) 25 *The Leadership Quarterly* 2453

[96] Khurana (n 28), *xi*

[97] Ibid 65

[98] Finkelstein and others (n 41) *188*

[99] Khurana (n 28) *20*

departure.[100] This may not be quite the same in the UK. According to Sarah Galloway (a FTSE 100 executive search consultant at Russell Reynolds) CEO appointments in the UK are changing: external appointments are not rare, but consideration of the appointment typically begins around 1 – 1.5 years ahead of the planned change so that all options can be considered.[101]

Research suggests there is a typical external appointment process.[102] The process begins by establishing the relationship between the company and ESF. For a CEO appointment this is likely to involve discussion with all the board members to determine what is desirable and required.[103] The company must then provide the ESF with their requirements. Research has found that the specifications provided by boards are typically a rehash of what society perceives makes a good CEO, focusing largely on personal traits and with very little to suggest proper consideration of the needs and requirements of the company.[104] Armed with these specifications, the ESF narrows down a pool of candidates, some of which they will select for interview. Interviews may involve "granular" scoring of the candidate along pre-ordained criteria developed by the ESF, followed by extensive psychometric testing.[105] In contrast, other ESFs use a more intuitive system allowing greater flexibility for discussion.[106] What is clear

[100] Finkelstein and others (n 41) *168*

[101] Meeting between author and Sarah Galloway at Russell Reynolds on 13 August 2018

[102] Janne Tienari and others, 'And then there are none: on the exclusion of women in processes of executive search' (2013) 28 *Gender in Management: An International Journal* 43 49

[103] Meeting between author and Sarah Galloway at Russell Reynolds on 13 August 2018

[104] Khurana (n 28) *99*

[105] Meeting between author and Sarah Galloway at Russell Reynolds on 13 August 2018

[106] Meeting between the author and Susanne Thorning-Lund at Odgers Berntsen on 20 August 2018

is that there is no set procedure or interview standard. The process contains an inherent flexibility, making it difficult to control for bias, subconscious or otherwise.[107]

Doldor et al classify ESFs as “accidental activists” in the boardroom diversity discourse, qualifying their commitment to change as “precarious and opportunistic”.[108] Their key role has been recognized for some time and, since 2013, there has been a voluntary code of conduct which considers diversity and has been signed by the vast majority of ESFs.[109] The code includes a recommendation to provide at least 30% female candidates as well as ethnic diversity on longlists and it suggests that training on unconscious bias be arranged.[110] The voluntary code also contains a lot of guidance that is either vague or for which there is no means of establishing compliance. For example, it is hard to see how the diversity goal that the ESF will “explore with the client if recruiting women and/or ethnically diverse individuals is a priority” can amount to more than lip service.[111] Researchers found that ESFs were amused by some of the voluntary code, such as the reference to “intrinsic personal qualities” of candidates, because of its lack of clear meaning.[112] Although there have been improvements in NED diversity since the voluntary code, the lack of change in c-

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[107] Decision making heuristics are discussed in Chapter 4 pages 141-153

[108] Elena Doldor, Ruth Sealy and Susan Vinnicombe, 'Accidental Activists: Headhunters as marginal diversity actors in institutional change towards more women on boards' (2016) 26 *Human Resource Management Journal* 285 298

[109] 'Women on boards: executive search firms signed up to the code of conduct' <https://www.gov.uk/government/publications/women-on-boards-executive-search-firms-signed-up-to-the-code-of-conduct> accessed 27 March 2017

[110] *The Standard Voluntary Code of Conduct for Executive Search Firms*, 2017)

[111] Ibid Goal 3.

[112] Doldor and others (n 108) 295

suite diversity raises doubts about how effective the voluntary code is in relation to the c-suite. Research demonstrates that ESFs treat men and women differently, with mothers receiving fewer recommendations than non-mothers or fathers[113] and a preference for women with accounting qualifications where no such preference exists for men.[114] ESFs need to be considered an intrinsic part of the external board appointments procedure but caution needs to be exercised before assuming that the voluntary code has had any tangible beneficial effect on diversity.

2.2. The internal route

Appointments made from within the company benefit from a reduced information deficit. Having already been an employee, it is highly likely that both the company and the candidate know more about each other than would be the case with an external candidate. Economically it may be prudent to hire a candidate from within, because they may not have as strong a bargaining position as external candidates, when negotiating compensation packages or other demands. In circumstances where the CEO or other c-suite members are moving on voluntarily, and there is no particular market desire for a turnaround or pre-succession scandals, internal candidates are the obvious answer.[115]

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[113] Hazel Mclaughlin and others, 'Women in power; Contributing factors that impact on women in organisations and policitcs; psychological research and best practice' (2018) 47 *Organizational Dynamics* 189 192

[114] Ibid

[115] Finkelstein and others (n 41)*187*

Nomination committees are tasked with handling director succession, but the CEO will frequently have significant input. This is particularly the case when the CEO has a high degree of power, whether through shareholdings or through a board consisting of fewer board outsiders.[116] ESFs are involved in the internal process from a very early stage to help the company formulate an internal succession and development plan.[117] ESFs advise companies that by appointing internally they avoid the transition risk present when appointing externally. Consequently, an external appointment would need to be considered significantly more desirable than an internal candidate to overcome this risk.[118] It is important that the company be perceived to at least be open to internal hires because the knowledge that there is potential for promotion has been shown to be an excellent incentive for potential candidates to remain invested in the company and increase their firm-specific skills.[119]

There are two principal methods of internal recruitment. Firstly, there is Rosen and Lazear's "executive tournament method, whereby the board chooses between comparable candidates on the basis of performance and effort, with the winner gaining the coveted position".[120] Alternatively, c-suite succession may take the form of "heir selection", where one individual is selected specifically and groomed for the role, such as when Microsoft groomed Steve Balmer for 2 years

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[116] Ibid 185

[117] Meeting between author and Sarah Galloway at Russell Reynolds on 13 August 2018

[118] Meeting between the author and Susanne Thorning-Lund at Odgers Berntsen on 20 August 2018 and meeting between author and Sarah Galloway at Russell Reynolds on 13 August 2018

[119] Shawn Mobbs and Charu G Raheja, 'Internal Managerial Promotions: Insider incentives and CEO succession' (2012) 18 *Journal of Corporate Finance* 1337 1338

[120] Nina Smith, Valdemar Smith and Mette Verner, 'Why Are So Few Females Promoted into CEO and Vice President Positions? Danish empirical evidence, 1997–2007' (2013) 66 *Industrial & Labor Relations Review* 380 387

before he took over from Bill Gates.[121] Empirical research claims that the selection process for choosing an internal candidate will often depend on how much the company is reliant upon company specific skills.[122] Companies with high requirements for firm-specific knowledge are typically more suited to the heir selection route, partly because there are fewer eligible candidates but also because the transition involves significant investment in the individual. In such firms, it may be less likely for women to succeed because research has suggested women are less likely to be trained in firm specific skills than men.[123] Where the company requires more generalized skills, the tournament method is better suited because there are more potential candidates. Women may have a greater likelihood of success in such circumstances. This presents an interesting avenue for further research, but classification of skills required by specific FTSE100 firms was beyond the scope of this research.

2.3. The impact of appointment route on diversity

UK research has shown that the appointment of executive directors is usually conducted via the internal route (in contrast with NEDs).[124] US research suggests that there is a move towards more external CEO appointments.[125] One of the questions explored by the empirical research in Chapter 6 is whether there is a similar trend in the UK and whether this has any relevance for boardroom

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[121] Mobbs and Raheja (n 119) 1337

[122] Ibid 1346

[123] Margarita Estévez-Abe, 'Gender Bias in Skills and Social Policies: The varieties of capitalism perspective on sex segregation' (2005) *12 Social Politics: International Studies in Gender, State & Society* 180

[124] Ibid *17*

[125] Khurana (n 28) *49*

diversity. One theory is that women are more likely to access the c-suite via the external route.[126] If that is the case, it would suggest that ESFs have more effective systems in place to bring more diverse candidates forward than when involved with the internal route. The alternative theory is that women and BAME individuals enter more often via the internal route because, once known to the board, they may be judged less by stereotypes and more by their personal attributes. Knowing whether one route or another favours gender or ethnicity will be key to understanding the issue and what can be done to address it.[127]

3. Capital in the boardroom

Although it is clear that much is expected of directors, what is expected of them is less clear. From a review of director literature, Petrovic identified eight requirements associated with all types of directors at an individual level.[128]

1. Understanding the skills of the other directors;
2. Understanding the context in which the company operates;
3. Strategic awareness;
4. Professional reputation;
5. Interpersonal and communication skills;
6. Commitment to the company; and
7. Willingness to tow the company line.

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[126] Fitzsimmons and others (n 95) 18

[127] The empirical findings on the entry route to the boardroom can be found in Chapter 6 pages 214-215

[128] Jelena Petrovic, 'Unlocking the Role of a Board Director: a review of the literature' (2008) 46 Management Decision 1373 1381

Much of this list is unmeasurable, subjective and largely unrelated to knowledge. The Institute of Directors breaks down the requirements of a director into 15 competencies, spanning a framework of knowledge, skill and mindset.[129] Surprisingly, there is minimal overlap with the requirements listed by Petrovic.[130] The difference in perceived requirements suggests either a difference in the practical and theoretic perceptions of what directors need, or a general lack of clarity over what can be expected of a director.

The term "board capital" has been coined for the purpose of describing the sum of competencies, from a human capital perspective, within a board.[131] The competencies discussed above encompass more than a narrow definition of human capital (discussed in detail below) which relates mainly to education and experience. Their lists are much broader in scope, referring also to social capital and, to a lesser extent, cultural capital. Research suggests that it is not always the accumulation of human capital that is most valuable to a board but getting the right combination of human capital, broadly conceived, in order to truly benefit firm performance.[132] It is possible to argue that a search for merit in board candidates is a search for a beneficial contribution to board capital. The following section will describe human, social and cultural capital in an effort to provide

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[129] <https://www.iod.com/training/iod-approach/iod-competency-framework> accessed 7 November 2017

[130] The Institute of Directors 15 competencies are: skills in strategic thinking, analysis, decision-making, communication, leadership and influencing. Knowledge of finance, strategy, leadership, stakeholder relations and corporate governance. An independent, performance orientated, professional and ethical mindset.

[131] Seigyoung Auh and Bulent Menguc, 'Diversity at the Executive Suite: A resource-based approach to the customer orientation–organizational performance relationship' (2006) 59 *Journal of Business Research* 564

[132] Hillman and Dalziel (n 4)

greater clarity over what candidates for c-suite roles are expected to offer in the application process.

3.1. Human capital

Human capital has often been used by economists to denote the productivity of a person and consequently the reason to employ or pay them more.[133] It refers to the skills, knowledge and capabilities in people.[134] Initially conceived by Schultz in the 1950s,[135] it was further developed by Becker, who referred to it as the investment in "activities that influence future income through the imbedding of resources in people".[136] The Organisation for Economic Co-operation and Development (the OECD) defines it as "knowledge, skills, competencies and attributes embodied in individuals that facilitate the creation of personal, social and economic well-being".[137] This broad definition is thought to have narrowed over time to the more limited scope of skills, qualifications and education [138]

It is the economic and not the social aspect of human knowledge and capabilities that is the focus of the term human capital, although many believe this is far from

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133 Erik Olin Wright, 'Understanding Class: Towards an integrated analytical approach' (2009) 60 *New Left Review* 101 105

134 Margaret M Blair, 'An Economic Perspective on the Notion of 'Human Capital'' (2011) *The Oxford Handbook of Human Capital* 49 49

135 Theodore William Schultz, *Investing in People: The economics of population quality* (Univ of California Press 1982)

136 Gary S Becker, 'Investment in Human Capital: A theoretical analysis' (1962) *The Journal of Political Economy* 9 9

137 Janine Nahapiet, 'A Social Perspective: Exploring the links between human capital and social capital' (2011) *The Oxford Handbook of Human Capital* 71 78 referring to Tom Healy and Sylvain cote, *The Well-being of Nations. The role of human and social capital* (Organisation for Economic Co-operation and Development (OECD) 2001)

138 Tom Schuller, Stephen Baron and John Field, 'Social capital: a review and critique' (2000) *Social capital: critical perspectives* 1 24

ideal.[139] Defining knowledge and skills in terms of capital allows economists to insert a human element into analyses of the creation (or otherwise) of economic value. For business this means appointing directors who can contribute the most human capital to the running of the business and thereby increasing its economic value. A distinction can be drawn between general human capital, such as simple math and literacy skills, with specific human capital, such as those skills useful for a particular role or industry.[140] Withers et al include gender and ethnicity (along with business expertise, director status, home firm strategies and other directorships) as part of a director's human capital.[141]

Human capital acts as a value proxy to the labour markets to help them assess different individuals.[142] Unfortunately, unlike other forms of capital such as cash, it is hard to measure and there is no universal formula. Measurements typically include education, qualifications and other recognised achievements. However, these are not easy to compare between people and they do not necessarily correspond to anything of value to employers.[143] Research which grouped individuals according to indicators such as years of education or degree classifications and analysed them according to personal income, revealed almost

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139 Nahapiet (n 137) 77

140 Georg von Krogh and Martin W Wallin, 'The Firm, Human Capital, and Knowledge Creation' (2011) 267

141 Michael C Withers, Amy J Hillman and Albert A Cannella, 'A Multidisciplinary Review of the Director Selection Literature' (2012) 38 *Journal of Management* 243 262

142 Sabina Nielsen and Bo Bernhard Nielsen, 'Why Do Firms Employ Foreigners on their Top Management Team? An exploration of strategic fit, human capital and attraction-selection-attrition perspectives' (2010) 10 *International Journal of Cross Cultural Management* 195 198

143 Amy J Hillman, Albert A Cannella and Ramona L Paetzold, 'The Resource Dependence Role of Corporate Directors: Strategic adaptation of board composition in response to environmental change' (2000) 37 *Journal of Management Studies* 235 240

as much variance within each category as between each category.[144] In other words, there is about as much likelihood of having the highest earners in the category of least educated as in the category of most educated. This suggests that either education or income are not good measures of ability, or perhaps both. What it definitely shows is that measuring ability is exceptionally complicated.

Another issue with the concept of human capital is its link to inequality. Becker describes it as a tool to distinguish between people where one holds "discrimination, nepotism and several other factors constant".[145] As it is impossible to remove discrimination, nepotism and other forms of bias, failure to properly account for them undermines the ability of human capital to helpfully distinguish between people. If human capital means a quantification of the value of a person's skills and capabilities defined in limited terms that embrace problematic social norms, it is highly questionable how much we should rely on it. If the market does not recognize effort and talent from certain categories of people, those people are not incentivized to put in effort. It can be argued, for instance, that because women and BAME candidates have been given little reason to trust that their efforts will be rewarded fairly, there may be little desire to make those efforts in the first place. Epstein argues that the contrary is true; that members of protected groups (referring to those protected by antidiscrimination law in the US), tend not to invest in their human capital because they do not need to.[146] This is self-defeating as the argument could

[144] Blair (n 134) 65
[145] Becker (n 136) 45
[146] Richard A Epstein, 'Standing Firm, on Forbidden Grounds' (1994) 31 *San Diego Law Review* 1 12

more rationally be applied to describe behaviour of middle class white males. The belief that it is the more "able" people who invest in their human capital is problematic when we account for discrimination and bias.[147]

3.2. Social capital

The concept of social capital is related to the discussion (in Chapter 2) of the network issues faced by women and BAME individuals.[148] It can be defined as the value of who you know, an "investment in social relations with expected returns"[149] or "any aspect of social structure that creates value and facilitates the actions of the individuals within that social structure".[150] In career terms it encapsulates the idea that being good at something will not get you as far as being moderately good at something and knowing the right people. As discussed in Chapter 2, women are less likely to have career sponsorship than men and this is a possible factor in their underrepresentation at c-suite level. Research indicates that having social capital corresponds to access to information, resources and career sponsorship, better salaries, more promotions and heightened career satisfaction.[151] A study of professional, technical and managerial workers, found that higher income jobs "are less likely to go to those searching for them".[152] This means that the people occupying such fields of

[147] Becker (n 136) 45

[148] See page 64 onwards

[149] Nan Lin, Karen S Cook and Ronald S Burt, *Social Capital: Theory and research* (Transaction Publishers 2001) 6

[150] Scott E Seibert, Maria L Kraimer and Robert C Liden, 'A Social Capital Theory of Career Success' (2001) 44 *Academy of Management Journal* 219 220

[151] Ibid 232

[152] Mark Granovetter, *Getting a Job: A study of contacts and careers* (University of Chicago press 1995) 173 *32*

employment (including c-suite directors) are most likely to obtain their position through a connection within their network and not through the standard job search process. Consequently, maintenance and upkeep of social networks is taken seriously. The amount of golfing days CEOs of Fortune 500 companies took in recent years (sometimes up to 100 in just one year) stands testament to this.[153]

The importance of networks is problematic because it compounds the injustice faced by those who have not had access to those networks for reasons that are not related to their ability. It is also inefficient, because if the objective of a job search is to select the best candidates, it is nonsensical to limit the size of the selection pool. On top of this, it is self-perpetuating. For c-suite appointments, the value of who you know is clearly very significant. Kanter goes so far as to say that “joining the inner circle is a function of how much external power can be mobilized.”[154]

Johnson et al break down social capital into two types. The first is focused on the value of interconnections and ties with other firms and directors, and the second relates purely to status and the value that can be ascribed to being associated with someone of high “social rank”.[155] In considering the first type of social capital, Stevenson et al state that “the biggest predictors of influence on a board were ties to others, membership in cliques and prior relationships with other

[153] Biggerstaff and others (n 51) 4

[154] Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977), *308*

[155] Scott Johnson and others, 'Antecedents of New Director Social Capital' (2011) 48 *Journal of Management Studies* 1782

directors, not independence from the company or CEO". [156] A persons schooling may be a large factor in determining these memberships and prior relationships. Granovetter found that "far fewer of those who attended college in the top 40% searched for their jobs than those in lower prestige colleges".[157] This was attributed not just to the quality of education but also to who you meet and the contacts you develop when attending these prestigious institutions. Those contacts are likely to be better able to help with a job search because they are well placed in the job market themselves.[158] Personal recommendations of candidates from other directors are a significant element of the director selection process.[159]

Garnering personal recommendations may be linked more with behaviour than intrinsic talent. Research has found that senior managers who behave in an ingratiatory manner towards CEOs are more likely to be appointed on boards with a connection to that CEO.[160] It has also been shown to result in positive outcomes for remuneration and promotion.[161] This type of behaviour has been described as "a set of interpersonal influence tactics" employed to gain favour with another.[162] One obvious ingratiatory tactic is flattery. Research has shown

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[156] William B Stevenson and Robert F Radin, 'Social Capital and Social Influence on the Board of Directors' (2009) 46 *Journal of Management Studies* 16 23, Westphal and Stern (n 56) 184,
[157] Granovetter (n 149) 173
[158] Ibid 32
[159] James D Westphal and Ithai Stern, 'Flattery Will Get You Everywhere (especially if you are a male Caucasian): How ingratiation, boardroom behavior, and demographic minority status affect additional board appointments at US companies' (2007) 50 Academy of Management Journal 267 284
[160] Westphal and Stern (n 56) 169
[161] Westphal and Stern (n 159) 270
[162] Ibid

that people tend to like those who flatter them, and factors such as an extrinsic motive to like the flatterer, a motive to avoid being duped by the flatterer or even enhanced cognitive processing of the flattery, have no noticeable impact on its effect.[163] So, even if it is obviously obsequious to outsiders, the target of the flattery may accept it as true because it supports their self-image or self-esteem.[164] This helps careers because the more a person likes someone, the more willing that person will be to comply with their requests.[165] Being "liked" among people in positions of power is clearly a sensible career move and something evidently not entirely out of one's control.[166]

To conform to someone's opinion is another way to ingratiate yourself with that person. Unfortunately for minorities, the benefits of conforming to opinion are reduced when the opinion conformer is not of the same group as the opinion generator.[167] This self-categorisation theory claims that the social identity of an individual impacts upon how their actions are perceived in a group. Research has found that when the opinion conformer is from an "outgroup" in terms of identity, the individual with whom the opinion is being conformed will either not change their attitude or will move their opinion in the opposite direction.[168] This suggests that in boardrooms, ingratiatory behaviour is more effective for white males than for women or BAME individuals.

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[163] Roos Vonk, 'Self-serving Interpretations of Flattery: Why ingratiation works' (2002) 82 *Journal of Personality and Social Psychology* 515

[164] Robert B Cialdini and Noah J Goldstein, 'Social Influence: Compliance and conformity' (2004) 55 *Annual Review of Psychology* 591 599

[165] Ibid 598

[166] Vonk (n 163) 525

[167] Westphal and Stern (n 159) 272

[168] Cialdini and Goldstein (n 164) 612

In respect of status (the second of Johnson's categories of social capital) research has shown that the perceived status of board colleagues is important to directors.[169] It is thought that this will impact the people boards choose to appoint.[170] For corporate board members, status can be equated with "prestige power", one of the four categories of power devised by Finkelstein to measure power in top management.[171] Prestige power can be measured by calculating the number of corporate boards and non-profit boards a director sits on or has sat on, taking an average board rating (Finkelstein used Standard and Poor) and combining that with an assessment of whether the director had an "elite education".[172] What might be inferred from Johnson's research is that directors have similar levels of prestige and there should be no difference between genders and ethnicities.[173]

3.3. Cultural capital

Cultural capital has become an important consideration in determined a person's value to an organisation. Bourdieu argues that cultural capital is included in the economic concept of human capital,[174] but by and large the human capital definition used by economists does not include cultural capital.[175] It can be

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[169] Johnson and others (n 155)
[170] Ibid 1787
[171] Finkelstein (n 42) 510. For more on this see Chapter 5 page 187 onwards
[172] Ibid 515. The directors studied as part of this research have been categorized using a variation of this method. The methodology and results can be found in Chapter 5 and 6 respectively.
[173] This is considered empirically at Chapter 6 page 229 onwards
[174] Pierre Bourdieu, *The Forms of Capital* vol 1 (Cultural theory: An anthology, 1986) 17
[175] David Throsby, 'Cultural Capital' (1999) 23 *Journal of Cultural Economics* 3 5

described as an individual's understanding of the "norms, values, beliefs and ways of life of the groups to which people belong". [176] Time spent at an elite educational institution will not only bring educational benefits but an understanding of the norms and values of types of behaviour.[177] Research on UK CEOs conducted in the 1970s found that 50% of CEOs had been educated at Oxford or Cambridge.[178] Maclean and Harvey found that in France, directors serving on multiple boards frequently had the same schools and clubs on their CV.[179] According to the Sutton Trust, even though only 7% of UK pupils attend private schools, 42% of university places at Oxford and Cambridge Universities are taken by private school pupils.[180] Private education is a significant indicator of privilege (understood here to mean a person's unearned advantages).[181] When combined with an elite university education, the tendency for privilege to snowball becomes clear. As Sommerland has said, this "transform[s] the meaning of a university degree from a public good into private, individualized benefit of varying value"[182] The theory is that education can imply membership in particular socioeconomic groups and that this membership impacts career prospects.[183]

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[176] Stephen J McNamee and Robert K Miller, *The Meritocracy Myth* (Rowman & Littlefield 2009)

[177] Mairi Maclean, Charles Harvey and Jon Press, *Business Elites and Corporate Governance in France and the UK* (Springer 2005) 39

[178] Derek Channon, 'Leadership and Corporate Performance in the Service Industries' (1979) 16 *Journal of Management Studies* 185; Philip Stanworth and Anthony Giddens, *Elites and Power in British Society* (CUP Archive 1974)

[179] Maclean and others (n 177) *45*. The educational institutions attended by the c-suite of the FTSE100 in 2016 and 2017 are analysed in Chapter 6, see page 207 onwards

[180] The Sutton Trust, '*Oxbridge over recruits from 8 schools'*, (2018)

[181] Alison Bailey, 'Privilege: Expanding on Marilyn Frye's' oppression'' (1998) 29 *Journal of Social Philosophy* 104. For a consideration of the concept of privilege see Michael J Monahan, 'The concept of privilege: A critical appraisal' (2014) 33 *South African Journal of Philosophy* 73

[182] Hilary Sommerland, 'The Social Magic of Merit: Diversity, equity, and inclusion in the English and Welsh legal profession' (2014) 83 *Fordham Law Review* 2325 2341

[183] Hambrick and Mason (n 33) 200,

The value of the right school and university institution is not just in who you come to know (i.e. social capital), it also relates to what is considered to be acceptable or favourable from a cultural perspective. According to McNamee, there is a presumption of merit associated with cultural capital that makes its transmission through the processes of socialization an incredibly valuable and hidden type of hereditary privilege.[184] It is a privilege because of the clear association between academic ability and investment in education, making the talent yield dependent upon the level of time and cultural capital invested by the family.[185] An investment of time on its own would not be enough if the investor does not know how and where it is valuable to invest. Research into ESF processes highlights the role cultural capital plays in the selection of candidates, with some describing the selection process as being determined by a consideration of ability and "key markers of cultural capital". [186]

4. Measuring capital in the boardroom

In addition to the distinctions between human, social and cultural capital, attempts have been made to sub-divide and further categorise capital in order to use the concept for the purposes of measuring and classifying people. Further distinction is made to human capital by dividing it, as Florin et al did, into firm-

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[184] Maclean and others (n 177) *86*
[185] Bourdieu (n 174) *17*
[186] James R Faulconbridge and others, 'The 'War for Talent': The gatekeeper role of executive search firms in elite labour markets' (2009) 40 *Geoforum* 800 805

specific, industry-specific and individual-specific human capital.[187] Hillman et al developed a different category system: that of insiders, business experts, support specialists and community influencers.[188] Previous research has found that women were most likely to make it into the boardroom to fill support specialist vacancies.[189] Terjessen et al have applied the Hillman taxonomy to a study of the FTSE100, in which they found the profiles of the men and women that formed part of the study were significantly different but neither were deficient. [190] Use of the Hillman taxonomy in a study of the c-suite is not likely to yield much information of value because the taxonomy was designed to consider what external board members bring to the board, and as such it is of limited use when considering executive board members who would all be considered insiders.

Another method used to analyse and categorise the capital of board members is that developed by Weber[191] and adapted by Singh et al in their study of female board members in France.[192] This study developed a taxonomy of 5 different categories used to indicate where a director's legitimacy stemmed from: family ties, academic excellence, career experience or representative appointment.[193]

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[187] Juan Florin, Michael Lubatkin and William Schulze, 'A Social Capital Model of High-growth Ventures' (2003) 46 *Academy of Management Journal* 374

[188] Hillman and others (n 143)

[189] Paul Dunn, 'Breaking the Boardroom Gender Barrier: the human capital of female corporate directors' (2012) 16 *Journal of Management & Governance 557* part 6. Chapter 7 shows the results of empirical examination into the roles women assume in executive management.

[190] Siri Terjesen, Val Singh and Susan Vinnicombe, 'Do women still lack the ''right'' kind of human capital for directorships on the FTSE 100 corporate boards' (2008) *Women on Corporate Boards of Directors: International Research and Practice* 152 160

[191] Max Weber, *Economy and Society: An outline of interpretive sociology*, vol 1 (Univ of California Press 1978)

[192] Val Singh and others, 'Legitimacy profiles of women directors on top French company boards' (2015) 34 *Journal of Management Development* 803

[193] Ibid 808

Broadly speaking, this sort of taxonomy incorporates a classic understanding of human capital and social capital. All of these taxonomies are attempts to measure forms of human capital on the board. But, while it is possible to classify directors within these taxonomies, it is inevitably going to be at a very high level and consequently with a limited degree of accuracy.

For women it is arguable that having this focus on measurable qualities is a disadvantage. The perception is that human capital, with all its categories and derivative taxonomies, is measurable. Emotional intelligence or emotional labour is not perceived to be measurable and consequently it is disregarded.[194] It should not be. According to Guy et al, emotional labour "facilitates interaction and elicits a desired response, contributing to productivity from the agency's point of view and achieving the goal of the exchange from the client's point of view".[195] Such ability is clearly valuable, but there is evidence to suggest it is expected in women and goes unrewarded.[196] In contrast, it is not expected in men and handsomely rewarded when it is exhibited.[197] The issue of reward aside, in terms of calculating a person's worth to an organization, it seems unfair and unhelpful to fail to include in the calculation something which women may be good at, simply because it is expected of them.

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[194] Mary Ellen Guy and Meredith A Newman, 'Women's jobs, men's jobs: Sex segregation and emotional labor' (2004) 64 *Public Administration Review* 289 289
[195] Ibid 290
[196] Ibid
[197] Ibid 292

Although it would be very interesting to examine the differences in levels and types of human capital between genders and ethnicities in the boardroom, it is not possible to do so accurately. The attempts to measure this, as described above, have all varied significantly and all have their difficulties, issues or applicability to the c-suite. Above all, measuring someone's worth, whether that be to a board or otherwise, presents normative problems about what should be considered valuable.

5. Conclusion

The focus of this chapter has been at an individual level, starting with what is expected of boards and, in particular, c-suite roles. It went on to consider the appointment process, followed by a human capital-based analysis of board member attributes. It is clear that much is expected of those in the c-suite, especially in comparison to NEDs. But what is expected is not clearly defined. The parameters of the roles are context dependent and exceptionally broad, particularly for the CEO. The Chairman's role has some clarity emanating from the Code, giving them responsibility for the functioning of the board and a key role in the appointment process. What is clear is that each role has significant responsibility and potential impact and they operate closely. Collectively they are likely to have significant control over who they allow into the inner circle that is the c-suite.

An analysis of the appointment process reveals its complexity. Tools and methods need to be employed to sift candidates and these will differ according to whether the appointee will be internal or external and according to which ESF is used. Human capital is one commonly used tool. It ranks individuals in terms of specific attributes; but it is neither accurate nor fair. According to Granovetter, "it is a mistake to regard all potential workers as well defined bundles of human capital attributes, whose productivity is predictably independent of their position in the social structure of the workplace".[198] Taking into account all forms of capital (i.e. human, social and cultural) provides a greater degree of accuracy. But this further highlights the inequalities at the core of the value judgement made about an individual's worth, considered here in the context of the boardroom. It is argued that human capital alone is a highly flawed way to consider whether a person is suitable for a role. An understanding of social and cultural capital makes human capital a more realistic interpretation of a person's employability, but it also highlights the intrinsic inequity of the concept.

[198] Granovetter (n 152) *172*

Chapter 4

The role of merit and power in c-suite appointments

A meritocracy is a society "in which people get success or power because of their abilities, not because of their money or social position".[1] The belief in this idea is commonly used to justify a person's status and their financial and other rewards.[2] In the US it is called "the American Dream".[3] Despite an awareness that reality may fall short of this ideal, there is still a widespread commitment and belief in the concept of meritocracy. This remains the case in relation to board appointments, where merit[4], continues to be the basis for appointments. The preceding chapter considered c-suite roles and how, from a procedural perspective, those roles are filled. This chapter considers the **basis** for decisions on corporate board appointments. This includes a discussion of the concept of merit and its flaws, as well as a consideration of other factors, such as heuristics and power. It is argued these may have a considerable (but largely covert) effect on board appointments.

1. The basis for appointment decisions

As set out in Chapter 3, companies are guided by the UK Corporate Governance Code (the "Code"), to "make appointments on merit, against objective criteria with

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[1] The Cambridge English Dictionary, https://dictionary.cambridge.org/dictionary/english/meritocracy accessed 4 August 2019

[2] Shannon K McCoy and Brenda Major, 'Priming Meritocracy and the Psychological Justification of Inequality' (2007) 43 *Journal of Experimental Social Psychology* 341 342

[3] Robert D Putnam, *Our Kids: the American dream in crisis* (Simon and Schuster 2016) 34

[4] Defined in section 1.1 below

due regard for the benefits of diversity".[5] This qualified support for diversity is not uncommon. In the judicial context, Malleson claims that "almost without exception, official expression of support for proactive measures to encourage diversity have been qualified by a statement of commitment to a strict application of the merit principle".[6] A report by the Financial Reporting Council (the "FRC") has broken down the Code diversity requirements into four elements: a) the board has a clear policy on diversity; b) that policy includes gender; c) there are measurable objectives in line with the policy; and d) the report discusses progress or implementation of the objectives.[7] The research found that 98% of the FTSE 100 complied with element a).[8] However, only 15% comply with all 4 elements, with the vast majority complying with only the first 2.[9] This is surprising, given the high number of companies claiming to be fully compliant with the Code.[10] The implication is that they are not "fully compliant" with the Code, although the FRC report does not state this expressly.[11] Instead it recommends that those companies "need support to develop their approach to diversity".[12] A positive revelation from the study was that 33% of the FTSE 100 refer to ethnicity in their diversity policy despite the lack of specific reference to ethnicity in the

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[5] UK Corporate Governance Code 2016, B.2.2

[6] Kate Malleson, 'Rethinking the Merit Principle in Judicial Selection' (2006) 33 *Journal of Law and Society* 126 131

[7] Ruth Sealy, 'FRC Board Diversity Reporting 2018' (2018) 2. This research was based on the UK Corporate Governance Code 2016. In 2019 the UK Corporate Governance Code 2018 came into force. However, there were no amendments which would impact the relevance and validity of this research.

[8] Ibid

[9] Ibid

[10] See Chapter 7 page 252 (where full compliance with the diversity provisions is discussed)

[11] Sealy (n 7) 16

[12] Ibid 3

2016 Code.[13] This is viewed as an encouraging sign that "companies are increasingly aware of changing expectations and business imperatives around the need for a more inclusive society".[14]

1.1. The concept of merit

Research on boardroom appointment decisions can be grouped into 2 differing perspectives: the rational economic perspective and the social embeddedness perspective.[15] From the rational economic perspective, candidates are appointed to the board based on their ability to serve the interests of the company.[16] From the social embeddedness perspective candidate appointments are a reflection of the preferences and biases of the appointees.[17] Prima facie, the concept of merit, as championed by the Code, accords with the rational economic perspective of board appointments. However, because merit is such a nebulous and subjective concept, it provides room for the social embeddedness perspective to creep in. The prominence of merit, in the context of corporate appointments, is certainly understandable. Corporations are dependent on the market and well-functioning markets are premised on merit, at least ideologically.[18] [19]

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[13] Ibid 9. The 2018 Code now contains a reference to ethnicity in its consideration of diversity.
[14] Ibid
[15] Michael C Withers, Amy J Hillman and Albert A Cannella, 'A Multidisciplinary Review of the Director Selection Literature' (2012) 38 *Journal of Management* 243 262
[16] Ibid 247
[17] Ibid 255
[18] Hilary Sommerland, 'The Social Magic of Merit: Diversity, equity, and inclusion in the English and Welsh legal profession' (2014) 83 *Fordham Law Review* 2325 2346
[19] The proportion of companies referring directly to merit as part of their appointment policy is analysed in Chapter 7.

A meritocracy can be described as a social system in which a combination of talent and effort are the determining factors in an individual's place within the social hierarchy.[20] Some also include attitude and moral character as part of their understanding of merit.[21] Those who subscribe to the meritocratic view use it to "psychologically justify the status hierarchy by viewing members of high status groups as more deserving than low status groups".[22] Given that the Code guides companies to make appointments according to merit,[23] boards are often described as meritocracies or, more realistically, striving for meritocracy.[24] As a question of reality, boards are not meritocratic. The ideology of merit is not a true reflection of reality because, from a pragmatic perspective, "if merit were the sole cause of achievement, one would wonder why the vast amount of meritocratic talent is found in white males".[25] Furthermore, if appointments were solely made on merit, appointing women or BAME individuals to the c-suite would not be a matter that "will take some new courage from those that make the selection".[26] In a meritocratic world, making the selection would not be about courage but about the correct application of the merit principle to the facts.

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[20] Sigal Alon and Marta Tienda, 'Diversity, Opportunity, and the Shifting Meritocracy in Higher Education' (2007) 72 *American Sociological Review* 487 489

[21] Amy Hillman and Thomas Dalziel, 'Boards of Directors and Firm Performance: Integrating agency and resource dependence perspectives' (2003) 28 *Academy of Management Review* 383 383

[22] McCoy and Major (n 2) 342

[23] UK Corporate Governance Code 2018

[24] Merit was the principle basis for many corporate appointment policies in the FTSE100 in 2016 and 2017. For a detailed analysis of this refer to Chapter 7 page 247 onwards

[25] Stephen J McNamee and Robert K Miller, *The Meritocracy Myth* (Rowman & Littlefield 2009)

[25] Mairi Maclean, Charles Harvey and Jon Press, *Business Elites and Corporate Governance in France and the UK* (Springer 2005) 39 *38*

[26] Sir Philip Hampton, 'Hampton-Alexander Review. FTSE Women Leaders' (2018) 13

The core issue with the concept of merit is its inherent flexibility and reliance on flawed concepts such as human capital. Where merit is used to determine appointments, it is arguable that it serves as a tool for justifying the distribution of rewards along preordained lines.[27] Experimental research of appointment decisions, has shown that merit is redefined to "fit the idiosyncratic qualifications of applicants who belong to favoured groups".[28] Considering merit in the judicial appointment process, Sommerland states that:

> *"the essential plasticity of merit enables it to sustain the importance of other (unarticulated) attributes, such as "clubbability", while the centrality of the market encourages notions of personal entitlement, highlighting merits alternative meaning as deservingness".*[29]

The result is not only the predictable distribution of financial rewards but the restriction of opportunities to a certain group of people. This process is described by Weber as "opportunity hoarding".[30] Experimental research on the effect of a belief in meritocracy on the construal of inequality, led them to conclude that merit is actually a mechanism for maintaining inequality.[31]

The flexibility of merit

The first question to consider when using merit in appointments is "what does merit mean?". A pragmatic interpretation of the meaning of merit in a boardroom context might lead to a calculation of a candidate's human capital, combined with

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[27] Emilio J Castilla, 'Gender, Race, and Meritocracy in Organizational Careers' (2008) 113 American Journal of Sociology 1479 1483

[28] Eric Luis Uhlmann and Geoffrey L Cohen, 'Constructed Criteria: Redefining merit to justify discrimination' (2005) 16 *Psychological Science* 474 479

[29] Sommerland (n 18) 2329

[30] Erik Olin Wright, 'Understanding Class: Towards an integrated analytical approach' (2009) 60 *New Left Review* 101 104

[31] McCoy and Major (n 2) 351

an estimate of how they will apply that capital within the framework of the company's requirements. Human capital, as discussed in Chapter 3, includes human, social and cultural capital. Company requirements include the specific needs and desires of the company.

If merit is analysed from the perspective of what it can bring to a firm, resource dependency theory has suggested three categories: legitimacy, advice and networks.[32] This is not unlike a board-specific translation of the wider understanding of human capital (i.e. cultural, human and social capital respectively). Taking resource dependency theory further, each appointment to the board is a "rational organisational response to the conditions of the external environment".[33] Under this view, the context of each firm and its role requirements should define what will be considered meritorious for each appointment. If this were the case, one might expect to see companies seeking a divergence in demographics and backgrounds in their new board members on the basis that heterogenous boards have been found to benefit the firm in terms of strategy.[34] Homogeneity has been shown to result in narrower choices and strategies.[35] As c-suites remain homogenous, the suggestion is that some other factors may be at play in determining merit.

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[32] Paul Dunn, 'Breaking the Boardroom Gender Barrier: the human capital of female corporate directors' (2012) 16 *Journal of Management & Governance 557*

[33] Jeffrey Pfeffer, 'Size and Composition of Corporate Boards of Directors: The organization and its environment' (1972) *Administrative Science Quarterly* 218 226

[34] Katalin Takacs Haynes and Amy Hillman, 'The Effect of Board Capital and CEO Power on Strategic Change' (2010) 31 *Strategic Management Journal* 1145 1149

[35] Ibid

Susanne Thorning-Lund, a FTSE 100 recruitment consultant, argues that merit is a question of how well you can do the job, but that in context this means an assessment of who is able, available, without any “foot faults” and who will be acceptable to investors and the board.[36] How well one can do the job is evidently not nearly enough. This understanding of merit affords it the capacity to extend beyond a person’s ability to do the job and include other factors, such as third-party perceptions and estimations of acceptability. This weaves social norms into an understanding of merit. According to Hambrick et al, the appointment of c-suite executives is often dependent on whether “they have the ‘right’ background or temperament”.[37] What constitutes ‘right” in this context may relate to what is broadly understood to be merit, or as what appointing directors perceive to be merit, or even the likelihood the new appointee will do what incumbent directors want them to do.

It is clear that determining what constitutes merit is incredibly complex. Young argues that it is impossible to determine merit in an unbiased way for four reasons.[38] First, the complexity of jobs makes it impossible to identify with any accuracy and specificity what tasks are involved. This is evident from the discussion in Chapter 3, on the context and skills necessary to fulfil c-suite jobs. Second, Young points out that in many cases it is impossible to identify the contribution made by each individual when they are working in a team.[39] Alchian

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[36] Meeting between author and Susanne Thorning Lund at Odgers Berntsen on 20 August 2018

[37] Donald C Hambrick and Phyllis A Mason, 'Upper Echelons: The Organization as a Reflection of its Top Managers' (1984) 9 *Academy of Management Review* 193 196

[38] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 2011) 202

[39] Ibid

and Demsetz have made a similar argument relating to corporations.[40] Third, Young argues that jobs often require a high degree of discretion in deciding what needs to be done and this is true of the c-suite.[41] Determining whether someone is able to or has performed well in such a job would require an ability to see into the future and alternate historic outcomes. Finally, Young points out that because of the hierarchy of the division of labour, those deciding on what a role should entail and a person's performance or potential performance are not actually familiar with the role themselves.[42] This will often be the case for the c-suite because the appointment decisions are made by those less senior, who are unlikely to have experience of the role and, if they do, they do not have experience of the role in the same context.

If there are no clear criteria for what constitutes merit, it becomes necessary to rely on less scientific qualities such as having the 'right background' which cannot be measured in a value-neutral, non-judgmental way.[43] Accepting that merit is a judgement and not a science would be an improvement on the status quo because it would open the door for a critical analysis of the decision makers partiality. According to Young, impartiality is impossible because:

> *"it is impossible to adopt an un-situated moral point of view, and if a point of view is situated, then it cannot be universal, it cannot stand apart from and understand all points of view. It is impossible to reason about substantial moral issues without understanding their substance, which always presupposes some particular social and historical context".*[44]

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[40] Armen A Alchian and Harold Demsetz, 'Production, Information Costs, and Economic Organization' (1972) 62 *The American Economic Review* 777 779

[41] Young IM (n 38) 202

[42] Ibid 303

[43] Young (n 38) *204*

[44] Ibid 102

To understand the impact of this partiality, Section 2 below takes a closer look at the decision-making process.

Standardised approach to determining merit

If leaving the definition of merit flexible is problematic, standardisation of the meaning also raises issues. Formalised processes that become institutionalized may begin to lack meaning. A US study involving 1,024 employment discrimination decisions found that institutionalized processes such as formal hiring "became symbolic indicators of compliance with anti-discrimination laws, first within organisations, but eventually in the judicial realm as well".[45] With boardroom appointments the is risk that, by pointing to formal processes aimed at increasing diversity, companies are only acting symbolically. Along these lines it is now common for companies to incorporate unconscious bias training in their appointment procedures. The effectiveness of such forms of training have been called into question,[46] and *"*as certain organizational structures or practices become widely accepted, or institutionalized, among organisations, they also become symbolic indicators of rational governance*".*[47] In this way, having unconscious bias training could be unhelpful.[48]

[45] Lauren B Edelman and others, 'When Organizations Rule: Judicial deference to institutionalized employment structures' (2011) 117 *American Journal of Sociology* 888

[46] Alexandra Kalev, Frank Dobbin and Erin Kelly, 'Best Practices or Best Guesses? Assessing the efficacy of corporate affirmative action and diversity policies' (2006) 71 *American Sociological Review* 589

[47] Edelman and others (n 45) 894

[48] See pages for the empirical investigation into unconscious bias provision see page 263

In the field of education it has been shown that reliance on standardised test scores has become the accepted basis for deciding between applicants for the most prestigious university places in the USA.[49] This is despite evidence showing other measures of merit are more predictive of future success and provide greater diversity in successful applicants.[50] At the time of writing, Harvard University was being sued because it allegedly discriminated against Asian Americans by rating them consistently low on personal qualities such as leadership and compassion.[51] This is an example of how merit can be incorporated into allegedly standardized processes which nevertheless include highly subjective concepts, and yet decisions made on that basis are often accepted as truths. Even to the extent that standardization is authentic, it is likely to be detrimental to the minority because the process of comparing everyone against one standard will result in the reconstruction of difference as deviance.[52] Alon and Tienda argue, "the definition of merit that prevails in a given society generally expresses the interests of its dominant group".[53] It also creates the potentially larger issue, as identified by Hayek, that within a merit based system "people are forced to obey other people's judgement of what uses they have made of their opportunities, rather than follow their own".[54]

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[49] Alon and Tienda (n 20) 507

[50] Ibid 491

[51] Nick Anderson, 'Harvard admissions trial opens with university accused of bias against Asian Americans' *The Washington Post* (<https://www.washingtonpost.com/education/2018/10/15/harvard-admissions-goes-trial-university-faces-claim-bias-against-asian-americans/?utm_term=.52f01ca211e7> accessed 23 November 2018

[52] Young (n 38) *209*

[53] Alon and Tienda (n 20) 507

[54] Elizabeth S Anderson, 'What is the Point of Equality?' (1999) 109 Ethics 287 310 referring to Friedrich Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press 1960) 95

1.2. The application of merit

Despite its flaws, merit still presents an ideology that has advantages if applied to appointments consistently. It incentivises people to work hard and maximise their talents and it encourages submission to and cooperation within hierarchies on the basis of desert. There are worse ways to estimate a person's likelihood of success than by looking at their past achievements. But even if the issues with the merit concept are disregarded, its application is inconsistent and problematic. Women and BAME individuals are sometimes treated differently from White men in a way that cannot be explained by reference to the problems with the concept of merit.[55]

Studies suggest that in addition to its inherent bias, merit is also being applied unfairly and inconsistently. Research has shown that ingratiating behaviour has an impact on appointments.[56] One might assume there was no place for such an impact in the meritocratic ideal. Evident skills in board role requirements does not necessarily help either. US research has shown that their director labour market has punished directors who demonstrate skill in monitoring and control, a core component of the board's duty, by making additional board roles harder to obtain for those directors.[57] Oshry et al put it as follows:

> "*a director who develops a public reputation as a poor monitor is hurt with respect to the number of board seats he or she holds. At the same time*

[55] Please refer back to the discussion of statistical and taste-based discrimination in Chapter 2.

[56] James D Westphal and Ithai Stern, 'The Other Pathway to the Boardroom: Interpersonal influence behavior as a substitute for elite credentials and majority status in obtaining board appointments' (2006) 51 *Administrative Science Quarterly* 169

[57] James D Westphal and Ithai Stern, 'Flattery Will Get You Everywhere (especially if you are a male Caucasian): How ingratiation, boardroom behavior, and demographic minority status affect additional board appointments at US companies' (2007) 50 *Academy of Management Journal* 267

> *however, a director who develops a private reputation as a poor monitor – that is, someone unlikely to rock the boat – might be favoured by CEOs who are looking to acquire power at the expense of the board*."[58]

As a consequence, Westphal et al concluded that nomination committees do not fulfil the purpose for which they were intended[59] and overall the "director labour market falls short of the meritocratic ideal".[60]

Studies have shown that organisations presenting themselves as meritocratic, exhibit greater male bias in managerial decision making.[61] An experimental study demonstrated that participants who have previously established themselves as unprejudiced were more likely to exhibit prejudicial attitudes.[62] Castilla calls this the "paradox of meritocracy" and suggests that it may be caused by a tendency to behave in more biased ways once one feels like they have already established themselves as non-biased.[63] This paradox is also evident in other arenas; for instance, experimental research found that one of the unintended consequences of Barack Obama's presidential victory in the US, was that people perceived less needed to be done to achieve racial equality.[64] Where they project themselves

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[58] Barry Oshry, Benjamin E Hermalin and Michael S Weisbach, 'The Role of Boards of Directors in Corporate Governance: A conceptual framework and survey' (2010) 48 *Journal of Economic Literature* 58)

[59] Westphal and Stern (n 57)283

[60] Ibid 284

[61] Emilio J Castilla and Stephen Benard, 'The Paradox of Meritocracy in Organizations' (2010) 55 *Administrative Science Quarterly* 543 543, Eric Luis Uhlmann and Geoffrey L Cohen, 'Constructed Criteria: Redefining merit to justify discrimination' (2005) 16 *Psychological Science* 474 477

[62] Benoit Monin and Dale T Miller, 'Moral Credentials and the Expression of Prejudice' (2001) 81 *Journal of Personality and Social Psychology* 33

[63] Castilla and Benard (n 61) 567

[64] Cheryl R Kaiser and others, 'The Ironic Consequences of Obama's Election: Decreased support for social justice' (2009) 45 *Journal of Experimental Social Psychology* 556 558

as meritocratic, they may then fail to make the necessary efforts to be meritocratic. According to Castilla:

> "*an organisational culture that prides itself on meritocracy may encourage bias by convincing managers that they themselves are unbiased, which in turn may discourage them from closely examining their own behaviour for signs of prejudice*".[65]

Not only may boards applaud themselves for being a meritocracy when in reality they are not, but the very act of doing so may make them less likely to achieve the equality of opportunity goals that underpin the concept of meritocracy.

The inconsistent application of merit has social ramifications. Those who are disadvantaged by the current system (i.e. women and BAME individuals) may refer to merit to justify that disadvantage. In a US experimental study, McCoy et al found that women, when primed with meritocracy, would typically justify the disadvantage faced by their gender by reference to stereotypes that subordinate women to men.[66] For those who benefit from disadvantages of other groups (i.e. White men) the concept of meritocracy allows them to reject the existence of gender or racial inequality and feel comfortable that they have had no help getting to where they are.[67] The suggestion is that, far from being a tool to promote diversity and fairness, merit is more likely to be used as a tool to maintain inequality and lack of diversity.

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[65] Castilla and Benard (n 61) 567

[66] McCoy and Major (n 2) 349

[67] Eric D Knowles and Brian S Lowery, 'Meritocracy, Self-concerns, and Whites' Denial of Racial Inequity' (2012) 11 *Self and Identity* 202

2. Judgement heuristics in merit-based decision making

One of the challenges of making merit-based decisions is measuring merit to ensure the decision is informed. As already discussed, merit, like human capital, is both highly subjective and extremely hard to measure. This leads to high levels of uncertainty, and uncertainty opens the door to unconscious bias. The corporate world is aware of this and training on unconscious bias is commonplace, although it does not necessarily help with the decision making.[68]

Approaches to ensuring appointments are merit based vary widely. Some take a granular approach to the assessment of candidate merit while others take a more flexible approach and base their decision on an assessment of candidate acceptability.[69] Studies have shown that when merit is being measured for the purposes of evaluating performance, the demographic characteristics of both those being measured and those doing the measuring are significant.[70] One study illustrated how people are prepared to bend role criteria for men but are not prepared to do so for women.[71] The experiment involved assessing candidates of both genders for the role of police chief.[72] Participants bent the hiring criteria to fit the characteristics of the applicants only when they were men.[73] According to Kahneman "the voice of reason may be fainter than the

[68] See results of empirical investigation into this in Chapter 7

[69] Discussions between author and recruitment consultants at Russel Reynolds and Odgers Berntsen.

[70] Castilla (n 27)1488

[71] Uhlmann and Cohen (n 61)

[72] Ibid

[73] Ibid 475

loud and clear voice of an erroneous intuition, and questioning your intuition is unpleasant when you face the stress of a big decision".[74] C-suite appointments are certainly big decisions.

Uncertainty in the assessment of merit stems from the measurement of suitability, capability and future performance of the candidates being considered, in the context of the firm's needs (hereinafter collectively referred to as productivity). There are reasons to suggest that productivity cannot even be measured ex post (let alone ex ante), due to the problems of isolating variables and the absence of monitors.[75] Compounding this issue is the fact that the board is responsible for its decisions collectively, making individual accountability low.[76] These uncertainties create the perfect conditions for heuristics to interfere with decision making. The consequence of this is that "the cognitive and social processes of the decision makers themselves will almost invariably become manifested in their strategic choices in such situations".[77]

2.1. Resemblance

Experimental research has shown that, under conditions of uncertainty, decisions about people are made with the unconscious use of representative assumptions

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[74] Daniel Kahneman, *Thinking, Fast and Slow* (Macmillan 2011) 417

[75] Eleanore Hickman, 'Boardroom Gender Diversity: A behavioural economics analysis' (2014) 14 *Journal of Corporate Law Studies* 385

[76] Main principle A.1 UK Corporate Governance Code and *Re Westmid Packaging Services Ltd, Secretary of State for Trade and Industry v Griffiths and Others* [1998] 2 All ER 136. For more on this see Hickman (n 75)

[77] Hambrick and others (n 37) 681

(also known as resemblance heuristics*)* to make decisions easier.[78] One of these representative assumptions is gender. According to Eagly, *"*classifying a person as male or female evokes mental associations or expectations about masculine and feminine qualities. These associations are pervasive and influential even when people are not aware of them*".*[79]

Associations can stem from what we are familiar with, or from what we learn. For example, we learn early on that women are caring and helpful and men are assertive and individualist.[80] Men and women continue to be portrayed along these lines. For a long time, c-suites have been constituted almost exclusively by White men, and this has caused associations to develop. As women and BAME individuals are not representative of the stereotypically masculine notion of the c-suite director, this is likely to impact their levels of appointment. Stereotypes can also have negative implications for men, to the extent that men are not masculine or prepared to exaggerate their masculinity.[81] Empirical research indicates that shareholders react more negatively to the appointment of a woman CEO than a man CEO and more negatively to a woman CEO than a woman appointed to top management.[82] Some believe that institutional investors

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[78] Amos Tversky and Daniel Kahneman, 'Judgment Under Uncertainty: Heuristics and biases' (1974) 185 *Science* 1124 1124

[79] Alice Hendrickson Eagly and others, *Through the Labyrinth: The truth about how women become leaders* (Harvard Business Press 2007) 102, *85*

[80] Ibid 86

[81] Hazel Mclaughlin and others, 'Women in power; Contributing factors that impact on women in organisations and policitcs; psychological research and best practice' (2018) 47 *Organizational Dynamics* 189 194

[82] Peggy M Lee and Erika Hayes James, 'She'-e-os: gender effects and investor reactions to the announcements of top executive appointments' (2007) 28 *Strategic Management Journal* 227 237

also subscribe to this “think manager, think male” phenomenon[83] and react negatively to the appointment of women.[84] Others believe that institutional investors are beginning to buy-into the need for diversity but that there is still some way to escape the presumption that a CEO should be a White man.[85]

Related to resemblance is the phenomenon of categorisation, whereby people tend to place themselves and others into social categories that can include race, gender and class. It is human nature to perceive one’s own category positively and this can lead to a predisposition towards fellow category members.[86] This is where cultural and social capital (discussed in Chapter 3) play an important role. Social ties and connections play a part in who is appointed, irrespective of the independence criteria of the Code. Research has shown that those gaining their first FTSE 100 board appointment “had established personal reputations and built a network of connections that vouched for their reputation in the eyes of the Chairman”.[87] Some suggest that favouring those who fall into the same social categories is based on a conscious or unconscious belief that they will be more pliable.[88] Whether or not it impacts pliability, it seems the categorisation attraction works both ways. The “attraction-selection-attrition theory” suggests

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[83] Virginia E Schein, 'A Global Look at Psychological Barriers to Women's Progress in Management' (2001) 57 *Journal of Social Issues* 675 680

[84] Frank Dobbin and Jiwook Jung, 'Corporate Board Gender Diversity and Stock Performance: The competence gap or institutional investor bias' (2010) 89 *The North Carolina Law Review* 809

[85] Lisa M Fairfax, 'Board Diversity Revisited: New Rationale, Same Old Story' (2010) 89 *North Carolina Law Review* 855

[86] Westphal and Stern (n 56)

[87] Cranfield University School of Management, The Equality and Human Rights Commission, ‘Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms' (2012) 24

[88] Byoung-Hyoun Hwang and Seoyoung Kim, 'It Pays To Have Friends' (2009) 93 *Journal of Financial Economics* 138 155

that certain types of organisations attract certain types of people, and people in turn select those of a similar type as themselves, causing organizational lack of diversity.[89]

Arguably, in the c-suite there is increased inclination to favour one's own group members because of the high level of uncertainty these leadership roles face. To mitigate uncertainty, directors may be more inclined to appoint directors they feel they could trust, and establishing trust is thought to get harder the larger the number of dimensions of difference[90] (this will be considered empirically in Chapter 6 where an analysis of FTSE100 c-suite members backgrounds are compared for similarities and differences).

Mitigating the bias of resemblance and categorisation requires a fundamental cultural shift towards embracing difference in the c-suite. This is where a natural resistance to change or "status-quo bias" presents a problem.[91] Many believe changes to the make-up of the board impacts upon board cohesiveness. Cohesiveness is desired because it is thought to "streamline the process of reaching decisions, lubricate discussion and eliminate unnecessary groundwork-laying".[92] This effect is debatable and, even if true, it may be a price worth paying

[89] Sabina Nielsen and Bo Bernhard Nielsen, 'Why Do Firms Employ Foreigners on their Top Management Team? An exploration of strategic fit, human capital and attraction-selection-attrition perspectives' (2010) 10 *International Journal of Cross Cultural Management* 195 199

[90] Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977), *316*

[91] Richard H Thaler and Cass R Sunstein, *Nudge: Improving decisions about health, wealth, and happiness* (Yale University Press 2008)

[92] Jayne W Barnard, 'More Women on Corporate Boards-Not So Fast' (2006) 13 *William & Mary Journal of Race, Gender and Social Justice* 703

to achieve more authentic diversity of power.[93] However, for the incumbent board, the effect of women or BAME on cohesiveness is unknown and so continuing to appoint people similar to themselves provides comfort in the familiar. This is not necessarily a conscious decision; people simply favour what they know. Empirical research shows that even though boards have shown increasing diversity in recent years, those increases follow predictable lines.[94] The research suggests that boards are comfortable hiring those with differences to the majority provided those differences are mitigated with other similarities such, as “elite educational background” or “functional area of expertise”.[95] The difficulty with this for women and ethnic minorities is that, because they start out with fundamental differences to the majority of the board, the necessity for them to exhibit other similarities (such as education or work experience) is heightened. This is considered empirically in Chapter 6 and the findings are discussed in Chapter 8.

Research has argued that when women have a place on the board they do not perceive a significant difference between genders.[96] The implication is that women should focus on their similarities and that “if she identifies more strongly with other characteristics that she shares with the other directors, she may not perceive to be an outgroup”.[97] This suggests that women should adapt to a male

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[93] Hambrick and others (n 37) 66

[94] David H Zhu, Wei Shen and Amy J Hillman, 'Recategorization into the In-group The Appointment of Demographically Different New Directors and Their Subsequent Positions on Corporate Boards' (2014) *Administrative Science Quarterly*

[95] Ibid 246

[96] Gro Ellen Mathisen, Torvald Ogaard and Einar Marnburg, 'Women in the Boardroom: How Do Female Directors of Corporate Boards Perceive Boardroom Dynamics?' (2013) 116 *Journal of Business Ethics* 87 94

[97] Ibid

norm and it represents an additional hurdle the rest of the board did not need to overcome. White men begin with similarities to the majority of the board that they did nothing to achieve and to which women and BAME individuals need to conform.[98] Alison Cooper, one of only 5 women CEO's in the study has said: "If I didn't wear a skirt, I'd probably be one of the boys".[99] This has been described in a judicial context as "little mermaid syndrome" but could be applied to the c-suite: *"like Anderson's mermaid, [the woman director] is induced to sell her voice in order to walk on land [in the c-suite] with her prince; her dangerous siren call is silenced, and in the silence, difference is lost."*[100]

It seems clear that resemblance, in many varying ways, has an impact on the assessment of a candidate's merit. Research suggests that where candidates for appointments are considered independently, gender becomes an influencing factor.[101] But, where appointments are evaluated jointly, reason displaces heuristics as the decision base and gender is less significant.[102] This could be one of the methods used to overcome some of the bias problems discussed.[103]

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[98] Rosemary Hunter, 'More Than Just a Different Face? Judicial diversity and decision-making' (2015) 68 *Current Legal Problems* 119 127
[99] Jonathan Sibun, 'Alison Cooper: Lighting up Imperial Tobacco' *The Telegraph* (<https://www.telegraph.co.uk/finance/financetopics/profiles/7494521/Alison-Cooper-lighting-up-Imperial-Tobacco.html> accessed 19 February 2019
[100] Erika Rackley, *Women, Judging and the Judiciary: From difference to diversity* (Routledge-Cavendish 2012) 137
[101] Iris Bohnet, Alexandra Van Geen and Max Bazerman, 'When Performance Trumps Gender Bias: Joint vs. separate evaluation' (2015) 62 *Management Science* 1225 16
[102] Ibid 17
[103] This is considered in more detail in Chapter 9 page 340-343

2.2. System justification

A potentially more pernicious group of heuristics can be understood through the theory of system justification (a strand of implicit bias theory), according to which people act "automatically or unconsciously to maintain a structure of social order".[104] This relates to what was discussed above regarding the use of merit to justify the order of things. Doing so is thought to increase the self-esteem of the higher status group and allow them to rationalise the status quo.[105]

Implicit bias research has advanced through the development of the Implicit Association Test (IAT).[106] The IAT measures the speed and accuracy with which participants pair objects; for example, they might be asked to pair a man or woman with the idea of home or career.[107] The IAT has been widely used in racial bias research, some of which has revealed implicit preferences for "white people" over "black people".[108] Experimental research on postal job applications has revealed that implicit bias was significantly linked to the likelihood of a minority candidate being offered interviews.[109] Other experiments have revealed an association between men and judges and women and paralegals[110]; but no

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[104] Justin D Levinson, 'SuperBias: The Collision of Behavioral Economics and Implicit Social Cognition' (2011) 45 *Akron L Rev* 591 622
[105] Ibid
[106] Anthony G Greenwald, Debbie E McGhee and Jordan LK Schwartz, 'Measuring Individual Differences in Implicit Cognition: the implicit association test' (1998) 74 *Journal of Personality and Social Psychology* 1464
[107] Justin D Levinson and Robert J Smith, *Implicit Racial Bias Across the Law* (Cambridge University Press 2012) 16
[108] Ibid 17
[109] Jens Agerström and Dan-Olof Rooth, 'Implicit Prejudice and Ethnic Minorities: Arab-Muslims in Sweden' (2009) 30 *International Journal of Manpower* 43
[110] Levinson and Smith (n 107) *17*

significant association was found between gender and corporations.[111] Other possible associations between gender and specific corporate roles such as director, secretary, senior manager and personal assistant have not been studied.

Justifications for the unbalanced nature of corporate boards tend to imply that it is either not gender-related or it is due to a lack of available talent. Research has shown that people who have knowledge of outcomes have a tendency to be more inaccurate in their estimations of cause than those who do not know the outcome.[112] In other words, since it is known there are few women and BAME individuals in the c-suite, justifications given for this have a tendency towards inaccuracy. Knowledge of an outcome creates what is known as a *narrative fallacy*, a compelling explanation of events or circumstances that takes a biased interpretation of historic events. Taleb describes it as “our vulnerability to over-interpretation”[113] and explains that it is human nature to try to force a logical link where one might not exist and consequently disregard luck, chance and the illogical.[114]

It is hard to view facts objectively without forming judgements or creating explanations about them. Langevoort suggests there is a tendency for boards to

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[111] Justin D Levinson, 'Corporation Law - Biased Corporate Decision Making' in Justin D Levinson and Robert J Smith (eds), *Implicit Racial Bias Accross the Law* (Cambridge University Press 2012) 150
[112] Robert P Agans and Leigh S Shaffer, 'The Hindsight Bias: The role of the availability heuristic and perceived risk' (1994) 15 *Basic and Applied Social Psychology* 439 441
[113] Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (Random House LLC 2010) 63
[114] Ibid 64

look favourably upon the actions of a CEO who they were involved in selecting, because of the way it reflects on them.[115] Unfortunately women are disadvantaged by this propensity to judge, as research shows that poor company performance is more likely to be attributed to the CEO as opposed to environmental factors, when that CEO is a woman.[116] Boards may trust that the way they are currently formulated is optimal and seek to replicate this, despite evidence that might be to the contrary. This may result in bypassing or discarding information that points to candidates outside of the norm.[117] Benabou found that when a person is personally invested in something, for example the housing market, the more likely they are to turn a blind eye to risks.[118] Consequently, if a person feels their job may be at risk if they acknowledge the lack of diversity, they are more likely to turn away from it. This "mutually assured delusion" is infectious and can filter down the entire organisation.[119] Cognitive dissonance compounds the issue as decision makers find ways of reconciling external anomalies with their view of themselves.[120]

All of these heuristics impact upon the way decisions about merit are made. Knowing that the meaning of merit fluctuates, and knowing that uncertainty

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[115] Donald C. Langevoort, 'The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability' (2000) 89 *The Georgetown Law Journal* 797 811

[116] Sun Hyun Park and James D. Westphal, 'Social Discrimination in the Corporate Elite:How Status Affects the Propensity for Minority CEOs to Receive Blame for Low Firm Performance' (2013) 58 *Administrative Science Quarterly* 542

[117] George A Akerlof and Robert J Shiller, *Animal Spirits: How human psychology drives the economy, and why it matters for global capitalism* (Princeton University Press 2010) 12

[118] Roland Bénabou, 'Groupthink: Collective delusions in organizations and markets' (2012) 80 *Review of Economic Studies* 429 452

[119] Ibid

[120] George A Akerlof and William T Dickens, 'The Economic Consequences of Cognitive Dissonance' (1982) 72 *The American Economic Review* 307

initiates the use of heuristics, does not invoke confidence in the effectiveness of the system to appoint on merit alone. Other factors play a part, and the consequence is that appointments are made in the image of the incumbents, a process Kanter refers to as "homosocial reproduction".[121] But the appointment of a c-suite director is not the end of the story. It is not a job for life. It must be retained. And retention is another opportunity for merit to come into question.

3. Retention of appointments

If appointments should be made on merit, the retention of that appointment should also be merit based. One theoretical cause for the perpetuation of the demography of the c-suite is the idea that "once a hierarchy gets established, a number of organisations and psychological processes conspire to create different degrees of opportunity to acquire and maintain power".[122] Once an individual is in a role at this level, they can wield a significant amount of power that may impact their ability to retain that role. This theory is supported by research showing that "boards replace CEOs who shirk their firm responsibilities, but that CEOs with longer tenures or weaker governance environments appear to avoid these disciplinary consequences".[123]

Power is also derived from sources other than tenure. Malmendier and Tate found that award winning CEOs who have obtained celebrity status, exhibit a

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[121] Kanter (n 90) *54*

[122] A notable exception being Joe C Magee and Adam D Galinsky, 'Social Hierarchy: The self-reinforcing nature of power and status' (2008) 2 *Academy of Management annals* 351 23

[123] Lee Biggerstaff, David C Cicero and Andy Puckett, 'FORE! An analysis of CEO shirking' (2016) 63 *Management Science* 2302 28

clear decline in performance after having received their award.[124] In spite of this decline, they still manage to extract greater levels of remuneration from the firm, perhaps through the utilisation of their increased power.[125]

3.1. The meaning of power

There are many definitions of power.[126] Here power is defined as a person's "ability to produce intended effects upon the world around them, to realise their purposes within it".[127] The two requirements of power are resources and freedom; without one the other is less meaningful but together they create power.[128] Resources can be material, e.g. money, or physical e.g. skill. These resources are likely to be finite and this can be problematic. For example, where one group has control over resources and they perceive a rival for that control, disharmony can arise.[129] According to Mannix et al, "perceptions of competition and power threats lead to increasing hostility and discrimination which explains why so called balanced groups may be particularly dysfunctional".[130] In contrast, very powerful individuals are more likely to create dysfunction because their

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[124] Ulrike Malmendier and Geoffrey Tate, 'Superstar CEOs' (2009) 124 *The Quarterly Journal of Economics* 1593 2

[125] Ibid 19

[126] Definitions include: "asymmetric control over a valued resource" (Magee and Galinsky (n 122) 13), "the capacity of individual actors to exert their will" (Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505 506), "the ability to get things done the way one wants them to be done" (Gerald R Salancik and Jeffrey Pfeffer, 'Who gets power—and how they hold on to it: A strategic-contingency model of power' (1977) 5 *Organizational Dynamics* 3 14)

[127] David Beetham, *The Legitimation of Power* (Macmillan International Higher Education 2013) 43 referring to Peter Morriss, *Power. A philosophical analysis. NY: St* (Martin's Press 1987)

[128] Ibid *43*

[129] Elizabeth Mannix and Margaret A Neale, 'What Differences Make a Difference? The promise and reality of diverse teams in organizations' (2005) *6 Psychological Science in the Public Interest* 31 37

[130] Ibid

power over the board could prevent the board from performing its duties, such as monitoring or gatekeeping (discussed in Chapter 3). They may also diminish the benefits of diversity. Hillman et al found that "when a CEO is powerful, he or she acts to limit the effect of board heterogeneity on both strategic variation and deviation".[131]

The second requirement for power; freedom, refers to the space to do what is desired without obstruction. A person may have access to money and skills in abundance, but if they are restricted in their movements and actions completely, then these resources mean little. In many ways the board acts as this freedom restrictor on the c-suite. How effective they are will impact upon the level of power wielded by the c-suite.

While there is limited research into power in the c-suite,[132] their power is derived from "command over corporate resources, over organisational, knowledge, social and symbolic assets of the business".[133] In line with the requirements discussed above, freedom to utilise those resources is also essential. Using these resources, the c-suite must decide upon what is critical to their organisation. As individuals, they are only powerful to the extent they can use those resources without restriction, and this differs between individuals.

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[131] Haynes and Hillman (n 34) 1159

[132] Catherine M Daily and Jonathan L Johnson, 'Sources of CEO Power and Firm Financial Performance: A longitudinal assessment' (1997) 23 *Journal of Management* 97 98

[133] Mairi Maclean, Charles Harvey and Jon Press, *Business Elites and Corporate Governance in France and the UK* (Springer 2005) 39 *32*

Research suggests that an increase in the number of women in top management "provides an increase in women's representation but without the associated prestige, influence and impact".[134] If this is true and one's prestige, influence and impact is closely related to one's degree of power, it follows that women have different levels of power when they reach the c-suite compared to men in similar positions. Women may have command over the same resources and yet, because of the way their background professional experiences deviates from the experiences of men, they have less freedom to use those resources and ultimately have less power to influence the board and decision making.[135] This accords with Kanter's research which found no difference in the leadership styles or aptitudes of women and men but, to the extent there were differences in outcome, this was attributed to power.[136] Kanter argues persuasively that the power difference is a result of a difference in levels of belief in men and women leaders from their subordinates.[137] Other research has proposed that women in positions of power are considered less legitimate than men in comparable positions.[138] Consequently people are more likely to resist a woman's authority, requiring them to assert it more aggressively and with less effect overall.[139] This leads to fewer women seeking these roles because they are socially and economically (in comparison to men) penalised when they obtain them.

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[134] SA Zelechowski and Diana Bilimoria, 'Characteristics of CEOs and Boards with Women Inside Directors' (2006) 2 Corporate Board: Roles, Duties and Composition 14 341

[135] Morten Huse, *Value-Creating Boards: Challenges for Future Practice and Research* (Cambridge University Press 2018) *52*

[136] Kanter (n 90) *202*

[137] Ibid

[138] Andrea C Vial, Jaime L Napier and Victoria L Brescoll, 'A Bed of Thorns: Female leaders and the self-reinforcing cycle of illegitimacy' (2016) 27 The Leadership Quarterly 400

[139] Ibid 5

In contrast to those institutional and societal theories about the creation of power difference, some resort to theorising on causes based in gender-difference. The idea of gender power difference is based on the idea that women are "less power orientated and less power hungry than men"[140] but is not supported by research. A difference in power appetite between genders is more likely to be a reflection of norms of society and conditioning than a true reflection of gender difference.[141] Whether the difference in power levels is due to power appetite or the power bestowed by subordinates as a consequence of their faith in leadership, it all stems from societal norms that portray men as leaders. The danger is that, where women are not as frequently seeking or developing power roles, those in power remain homogenous and the definition of merit remains in their control.

Individually there is a danger posed to women in powerful roles who are not perceived to be legitimate for gender biased reasons. Vial and Napier argue that this could "trigger a precarious psychological state for female leaders and that subordinate cooperation and extra role behaviours might be compromised when the leader is a woman".[142] These issues may also extend to BAME individuals, given their minority representation at top management levels. There is limited research on this but according to empirical evidence by Elliot "men and women of various races and ethnicities experience increasing inequality in workplace

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[140] Patricia Gabaldon and others, 'Searching for Women on Boards: An Analysis from the Supply and Demand Perspective' (2015*) Corporate Governance: An International Review*
[141] See Chapter 2 pages 81 onwards for a more in-depth discussion of the difference discourse in the context of business performance motivations for improving diversity.
[142] Andrea C Vial, Jaime L Napier and Victoria L Brescoll, 'A Bed of Thorns: Female leaders and the self-reinforcing cycle of illegitimacy' (2016) 27 *The Leadership Quarterly* 40011

power, relative to white men".[143] In contrast to the many heightened disadvantages faced by BAME women, there is research to suggest that the penalties women face on the basis of gender in relation to perceived legitimacy of power is attenuated for Black women.[144]

Related to the perception of legitimacy of power, is a question about whether the power women and BAME individuals are given is genuine. According to Kanter:

> *"people who have authority without system power are powerless. People held accountable for the results produced by others whose formal role gives them the right to command but who lack informal political influence, access to resources, outside status, sponsorship or mobility prospects, are rendered powerless in the organization."*[145]

This goes back to resource/freedom dependency, discussed above. Powerlessness in leadership is thought to result in over-controlling, over-monitoring, lack of autonomy for subordinates and, for women leaders at least, the caricature of bossiness.[146] Although equally powerless men behave in the same way, no similar caricatures have attached to male leaders. The caricature serves to further reduce power and, in a circular way, reinforce the stereotypes upon which it is based.

The cycle of power is a challenge to infiltrate because, past a certain level, power tends to snowball. According to Magee "power begets more power because the

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[143] James R Elliott and Ryan A Smith, 'Race, Gender, and Workplace Power' (2004) 69 *American Sociological Review* 365 384
[144] Vial and others (n 142) 8
[145] Kanter (n 90) *186*
[146] Ibid 205

powerful directly capture additional resources for themselves".[147] Furthermore, the more frequently one demonstrates one's power, the less likely it is that others are going to resist that power.[148]

Investigating power empirically presents significant challenges, not least the question of how to measure and rank power. Although the ranking of CEOs is relatively common,[149] the focus tends to be on corporate performance and these have resulted in the creation of "celebrity CEOs".[150] Studies on the impact of their status on firm profitability make the concept quite circular (in that CEOs achieve celebrity status because of firm profitability and then investigation is made into whether those CEOs have an impact on profitability). While c-suite directors who fall into this category may be powerful, it is likely that they do not present a complete picture of what constitutes power. An analysis of power would aim to consider both performance and other factors that constitute an individual's influence and impact.

Studies have looked at other aspects of CEO power, include Zhang et al who found a positive stock market reaction to CEOs with high levels of stock ownership and more external directorships.[151] In a study of power and strategy,

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[147] Magee and Galinsky (n 122) 28

[148] Henrich R Greve and Hitoshi Mitsuhashi, 'Power and Glory: Concentrated power in top management teams' (2007) 28 Organization Studies 1197 1202

[149]'The Best Performing CEOs in the World' 2016) <https://hbr.org/2016/11/the-best-performing-ceos-in-the-world, > accessed 3 August 2019, 'Obermatt CEO of the Year' 2018) <https://www.obermatt.com/en/ceo-of-the-year/home.html> accessed 4 August 2019, 'CEO Today Top 50' 2018) <https://www.ceotodaymagazine.com/top-50-ceos/, > accessed 4 Augus 2019

[150] James B Wade and others, 'The Burden of Celebrity: The impact of CEO certification contests on CEO pay and performance' (2006) 49 Academy of Management Journal 643

[151] Zhang and Wiersema (n 34) 706

Greve et al assessed CEO power through a measure of tenure and the number of senior appointments conferred by the CEO.[152] These factors were deemed to be a mark of credibility. A study into the effect of the Chairman on diversity found a negative association on the tenure of the Chairman and the influence of the women on the board.[153] The suggestion was that this was related to their respective powers and that the chairman's power increases with tenure. While all studies provide interesting insights, there is a key distinction between possessing power sources and utilizing them.[154] Measuring the utilization of power is more challenging and less rewarding. Power can be utilized explicitly (e.g. discounting the views of others) or implicitly (e.g. influencing strategic decision-making norms).[155] Any measure of power usage is likely only to pick up on perceived usage and therefore only explicit power. Measuring power sources does not make such a distinction and is therefore plausibly more complete. An analysis of the sources of c-suite power has been undertaken as part of this research and the methodology and results can be found in Chapters 5 and 6 respectively.

3.2. The relationship between merit and power

Even if it could be shown that only the very powerful retain their appointments, it does not follow that they do not merit the retention of the appointment. Many

[152] Greve and Mitsuhashi (n 148)

[153] Sadi Boĝaç Kanadlı, Mariateresa Torchia and Patricia Gabaldon, 'Increasing Women's Contribution on Board Decision Making: The importance of chairperson leadership efficacy and board openness' (2018) 36 *European Management Journal* 91 92 102

[154] McNulty and others (n 55) 94

[155] Jianyun Tang, Mary Crossan and W Glenn Rowe, 'Dominant CEO, Deviant Strategy, and Extreme Performance: The moderating role of a powerful board' (2011) 48 *Journal of Management Studies* 1479 1480

sources of power stem from merit. For example, expertise and experience can be sources of both merit and power. Of concern are the sources of power that do not, or no longer, stem from merit. This may be the case where a CEO exerts control over the board for their own ends by virtue of their position and personality. A pertinent illustration of this can be seen in the controversy surrounding CEO remuneration. The 2018 Code advises that remuneration should be linked to performance and companies would have us believe this is true.[156] In reality performance may have little to do with it.[157] Research suggests that boards with weak governance structures have a tendency to pay their CEOs more.[158] According to Maclean et al, corporate remuneration levels seem "to be driven by the greed and personal ambition of powerful individuals".[159]

Also concerning is the use of power to exclude other types of merit from entering this sphere of employment, or to "opportunity hoard".[160] This occurs when the criteria for merit is defined in terms of the meritocratic class and consequently perpetuates their power.[161] Power used in this way is likely to be derived, at least in part, from privilege. These privileges may be, for example, a combination of the network developed during an education at elite institutions, the hierarchical privilege of being the CEO or the privileges associated with being White and

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[156] UK Corporate Governance Code 2018

[157] Marc T Moore, 'Corporate Governance, Pay Equity, and the Limitations of Agency Theory' (2015) 68 Current Legal Problems 431 462

[158] Benjamin E Hermalin and Michael S Weisbach, *Board of Directors as an Endogenously Determined Institution: A survey of the economic literature* (National Bureau of Economic Research 2001) 9*16*

[159] Maclean and others (n 133) *19*

[160] Wright (n 30) 104

[161] Ruth Sealy, 'Changing Perceptions of Meritocracy in Senior Women's Careers' (2010) 25 *Gender in Management: An International Journal* 184 185

male, for whom this power will typically benefit. Research indicates that minority ethnics who reach senior positions are "hyper aware of privilege" and have found ways to adapt in response.[162] Because merit is undefined, differences in background can impact upon corresponding power not due to a lack of merit but perhaps due to a lack of appreciation of difference, or understanding of other perspectives. Huse et al found that "when women directors have different professional experiences than the men on the board, this may create significant barriers for women to influence the board decisions".[163] In other words, they are less powerful simply because they are different. This contrasts with the argument that diversity prevents power from replacing merit.[164] There may be truth in this, but the c-suite presents such little diversity that the theory cannot be supported by evidence yet. Meanwhile power still maintains a stronghold.

Power which is no longer entirely related to merit, and which is wielded predominantly by White men, should be carefully considered. The exploitation of positions of power which remain unchallenged by the board may be the result of a belief that the power is legitimate, or because of a self-interested fear, or simply because of norms of board behaviour.[165] A prerequisite of legitimate power is belief in its legitimacy.[166] Where a board does not believe power to be

[162] D. Atewologun, and Ruth Sealy, 'Experiencing privilege at ethnic, gender and senior interesctions' (2014) *Journal of Managerial Psychology* 423 427
[163] Huse (n 134) *52*
[164] This argument was raised in the UCL Corporate Law Workshop June 2018 following presentation of an earlier version of this work.
[165] Jay W Lorsch and Andy Zelleke, 'Should the CEO be the Chairman?' (2005) 46 *MIT Sloan Management Review* 71 96
[166] Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie: mit einem Anhang Die Rationalen und soziologischen Grundlagen der Musik*, vol 2 (Mohr 1956) as referred to in Beetham (n 127) *8*

legitimate they would be required to make efforts to challenge that power.[167] Even if the board does genuinely believe the power to be legitimate, that does not mean that it necessarily is. As Beetham points out "a given relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs".[168] In other words, the CEO has legitimate power when those the CEO has power over can justify that power according to their beliefs about what is best for the company. Belief in the CEO's power for any other reason, be it fear or social norms of board behaviour, makes it illegitimate. Failing to hold a CEO accountable for fear of losing one's own position is illegitimate power. To the extent those power holders are mainly White men, this will adversely affect women and ethnic minorities.

4. Conclusion

The concept of merit frequently arises when discussing board appointments. We are led to believe that boards are appointed on the basis of merit and that this explains the lack of diversity. People like the merit ideology because it suggests that anyone can achieve great things if they have talent and work hard. Unfortunately, talent and hard work are not the only constituents of the definition of merit. There is no universal definition of merit. Merit is in the eye of the beholder, and the beholders tend to be a homogenous group who define it in their own image.

[167] Principle I of the UK Corporate Governance Code 2018 requires NEDs to "provide constructive challenge" and to "hold management to account".
[168] Beetham (n 127) *11*

Merit in boardroom appointments is impossible to define and measure. This is due in part to the issues with determining candidate human capital, but also because merit in the context of each board and each company will mean very different things. Consequently, merit can be used to disguise other factors that are taken into consideration when making board appointments. Using merit as a tool to justify appointments that maintain the status quo is dangerous because it becomes a platform upon which institutional inequality is built. This is despite the reality of meritocracies being considered by some to be "demonstrably false".[169]

The issues with the concepts of merit and human capital combine to create conditions of severe uncertainty. This creates considerable limitations on human decision-making about boardroom appointments and provides even more space for discriminatory bias to creep in. The problems are compounded when the power of individuals in those positions allows them to retain those appointments on bases that do not only relate to merit but also to privilege.

This is not to say that those who obtain and retain appointments do not have sufficient merit. The c-suite of the FTSE100 is rich in exceptionally talented individuals. The board and the executive want people beside them who are able to do well, not just to present the right kind of CV. The question is whether those who are considered are the *only* people worthy of consideration, and are those who are appointed the most-worthy of appointment?

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[169] McNamee and Miller (n 25) *19*

In sum, we are faced with a threefold problem. Firstly, as discussed in Chapter 3, determining human capital is difficult, flawed and has unfairness woven into its roots. Second, our understanding of merit is unclear at best, and this provides ample room for bias which disproportionately affects women and BAME individuals. Third, once a person is in the c-suite, power (which is in part derived from privilege) can make it very hard for them to be removed. Thus, inequality is perpetuated and prolonged.

Chapter 5

Empirical research methodology

Having considered boardroom diversity theoretically in the previous chapters, this chapter sets out how boardroom diversity has been examined empirically. There are two strands to the empirical part of this research into the FTSE100 c-suite in 2016 and 2017. The first strand involves the gathering and analysis of profile data on the sample c-suite. The findings for this can be found in Chapter 6. The second strand involves an analysis of the diversity statistics and policies from each company's 2016 and 2017 annual report. These findings are set out in Chapter 7. This chapter sets out the methodological approach and data gathering process. It begins in Section 1 by discussing the research plan and objectives. Sections 2-4 explain the methodology of the research and discusses each of the director and company variables included in the study. Section 5 deals specifically with the methodology of the power part of the empirical study (also found in Chapter 6). Section 6 considers the limitations and challenges of the research methods.

1. Research plan

1.1. Objectives

Broadly, this research seeks to better understand the realities of diversity at the top level of UK business. To do so a portfolio of information about the background characteristics of the individual members of the FTSE100 c-suite, together with specific information about those companies, was collected and analysed. The data gathered was designed to demonstrate the demography of the c-suite across a two-year period and present a picture of the approach taken to board diversity across the FTSE100 during this period. Through descriptive inferences[1], an analysis of the extent to which boards appoint people in their own image and how companies present themselves in relation to diversity could be undertaken.

As discussed in Chapter 1, there has been a great deal of data collected in relation to corporate boards over the last couple of decades. Typically, this research focuses on the wider board[2], i.e. including non-executive directors (NEDs). Furthermore, where boards have been empirically studied, the focus has often been on US firms.[3] In contrast with the vast majority of research in this area, the focus of this study is the c-suite i.e. the CEO, CFO, Chairman and any other executives who are members of the board (referred to as CXOs). This focus should provide a clearer picture of who obtains and holds the most powerful roles in the UK's biggest companies without being diluted or skewed by changes happening at the NED level. Although drawing on a number of earlier research methodologies and theories,[4] it is thought that the data gathered (and its

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[1] Lee Epstein and Andrew D Martin, 'Quantitative approaches to empirical legal research' (2010) 509

[2] *The Female FTSE Board Report 2010: Opening up the appointment process* (Cranfield University School of Management, 2010); *The Female FTSE Board Report 2012: Milestone or Millstone?* (Cranfield University School of Management, 2012); The Female FTSE Board Report 2013: False Dawn or Progress for Women on Boards? (Cranfield University School of Management, 2013)

[3] Donald C Hambrick, 'Upper Echelons Theory: An update' (2007) 32 *Academy of Management Review* 334 339

[4] Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505; Yael Levy Ariel, 'Judicial Diversity in Israel: an Empirical Study of Judges, Lawyers and Law Students', PhD Thesis (University

subsequent analysis) provides a unique approach and new insights into the boardroom diversity debate.

1.2. Research questions

In relation to directors, the research seeks to investigate the question originally posed by Terjesen and Sealy: "what are the most salient aspects of individuals privileged identities (seniority, gender, ethnicity) that help or hinder their paths to the boardroom".[5] This investigates here by exploring the following questions:

1. What are the differences in **representation** of gender and ethnicity in the FTSE100 c-suite in terms of numbers, roles and remuneration?
2. What are the similarities and differences in the **personal characteristics** of the individuals who make up the c-suite of the FTSE 100 (education, age, honours, experience, commitments, marital status, number of children, hobbies)?
3. Are there any identifiable differences between genders and ethnicities in the sample in relation to their **professional characteristics** (experience, method of appointment, service length, external appointments)?
4. Are there any differences in the **power levels** of the sample directors by gender and ethnicity?

College London) 2018), The Female FTSE Board Report 2013 (n 2); David H Zhu, Wei Shen and Amy J Hillman, 'Recategorization into the In-group The Appointment of Demographically Different New Directors and Their Subsequent Positions on Corporate Boards' (2014) *Administrative Science Quarterly* 139

[5] Siri Terjesen and Ruth Sealy, 'Board Gender Quotas: Exploring Ethical Tensions From A Multi-Theoretical Perspective' (2016) 26 *Business Ethics Quarterly* 23 45

In relation to companies, the research seeks to review the effectiveness of the Code provisions on diversity, by looking at how companies report on diversity and how this is reflected in their actual diversity. This study investigates this by exploring the following two key questions:

5. **Diversity statistics**: what do the figures presented by each company say about the reality of diversity within that company and, when viewed collectively, within the FTSE 100?
6. **Diversity reporting**: how do the companies present their position on diversity; how does this compare with other companies and how does this correspond with their statistics?

2. Methodology

2.1. Research sample

In the UK, the largest companies by market capitalization are those listed in the FTSE 100. Reports suggest it is here that the greatest level of diversity change has occurred.[6] FTSE 100 companies are closely monitored by investors, the media and the general public and they have come under scrutiny from reports such as the Davies Review[7], the Hampton and Alexander Review,[8] the Parker Report,[9] and the McGregor-Smith Review.[10] They set an example and, to a

[6] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019)
[7] Lord Davies of Abersoch, *Women on Boards* (2011)
[8] Sir Philip Hampton and Dame Helen Alexander, *Hampton-Alexander Review. FTSE Women Leaders* (2016)
[9] Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016)
[10] Ruby McGregor Smith, '*Race in the workplace: The McGregor-Smith Review'* (Department for Business, Energy & Industrial Strategy, 2017)

certain extent, trail blaze for smaller companies. As such, it is important to see what they are doing in terms of diversity, partly because of the example they are setting, but also as a check on how effective the scrutiny and pressure of the reports has been.

The research sample therefore focused on the FTSE 100. Consideration was given to extending the data gathering process to include the FTSE 350, but given the governmental focus on the FTSE100, the limited additional women and BAME candidates[11] encompassed in the FTSE350 and the scarcity of biographical information for lower profile individuals, this idea was rejected. However, the research covered the FTSE 100 across two years: in 2016 and in 2017. This served to increase the pool of c-suite directors and mitigate the possibility of errors because it required going over the data gathering process twice to fill in additions, changes and removals.

Each of the companies in the FTSE100 have boards of typically 8-10 members, the majority of which are NEDs. Typically, 3-4 members will be considered c-suite. For the FTSE 100 this presents a population of 398 people across the two years studied, all of whom were included in the sample. Occasionally, more than one individual may occupy a single role jointly. In such cases, both individuals are accounted for. In a small number of companies there was a non-standard board set up, such as Scottish Mortgage, which only had one executive director. A number of companies had multiple CXO's, all of whom were included.

[11] A report produced by the Pipeline indicates only 8% of the executive directors in the FTSE350 were women (The Pipeline, '*Women Count 2017'* (2017))

Due to the nature of the sample group, it was likely that the constituents of the FTSE100 and their c-suite would fluctuate from 2016 to 2017. Companies fall in and out of the FTSE100 and directors leave, retire and new ones are appointed. This issue was overcome by determining that the annual reports would dictate which directors fell into the study in each year and the official list on the London Stock Exchange as of 17 March 2017 would determine which companies were included (this date related to the 2016 annual reports most of which were published by this time). For consistency, this list was used for the data gathering process in both 2016 and 2017.

2.2. Data sources: FTSE 100 directors

Ideally, a study into the diversity and characteristics of the corporate board would involve a survey directly with the individuals of interest. However, given the high-profile nature of these individuals and the difficulties in gaining access to them, it was determined that there was not a realistic possibility of gaining data that were sufficiently comprehensive to enable a reliable analysis. A common alternative in research of this nature is to use a facility called BoardEx, a database of global board members.[12] There were two reasons why this database was not used in this study: the cost was prohibitive and it did not contain all of the data needed (such as family details, educational institutions, not for profit memberships and hobbies).

[12] BoardEx is used by the Female FTSE Board Reports

As a result, a unique dataset on the personal background characteristics of c-suite directors in the FTSE100 was created for this study. Most of the information collected was from publicly available biographies, CVs and reports. The principal source for each individual was their biographies on the websites of the companies on whose board they sit. The level of information provided on each individual website varied but many of the directors also sat in non-executive positions on other boards, where their biographies could be cross checked and updated if necessary. Publicly accessible records on the Companies House website also provided a lot of helpful information in relation to age, tenure, nationality and other board experience. A high proportion of directors had public profiles on LinkedIn where data, particularly in relation to education, could be obtained. In relation to more personal information, a very useful source was the Who's Who database, that collates information gathered directly from high profile individuals.[13] Unfortunately, not all the FTSE100 c-suite were included within that database.

Table 1 below sets out the sources used in the data gathering process, categorized as either primary (externally verified or self-reported) or secondary.

- Primary externally verified sources were those compiled by third parties who have a vested interest in the accuracy of the data, and which are widely relied upon.
- Primary self-reported sources are those which provide information directly from the individual in question.
- Secondary sources are indirect sources which were less reliable and ideally required corroboration.

[13] *Annual Report* (International Consolidated Airlines, 2016)

Table 1: Sources of director data categorised by reliability

Data source type	Source	Reliability
Primary - Externally verified	Annual reports Corporate websites London Stock Exchange Companies House	Data obtained from these sources provided a high level of certainty. Annual reports are necessarily accurate to a high degree because of legal disclosure and accuracy requirements. They are externally verified by auditors. The London Stock Exchange must also ensure their information is accurate and they update their company information on a monthly basis.
Primary – Self-reported	Who's Who LinkedIn	Who's Who publish data collected directly from the individuals it features. LinkedIn provides data about individuals that the individuals choose to publicly disclose through the LinkedIn website.
Secondary	Media reports[14]	Media reports are indirect because they provide information through a secondary source. Because of this, every attempt was made to have a minimum of two media sources for the data gathered via this route. Once data were verified from multiple media reports it was considered to have a high enough degree of reliability to be included in the dataset.

Despite the efforts at data gathering, gaps in the data remained. Where gaps existed, attempts were made to fill these gaps through secondary media sources. This was most frequently necessary in relation to marital status, family and

[14] Including; The Times, The Financial Times, The Wall Street Journal, The Telegraph, The Irish Post, Bloomberg, Reuters, The Guardian, thisismoney.com, The Irish Times.

hobbies. Because this information is not direct from the individuals or externally verified by formal institutional sources, there is a lower level of reliability with this information. Ideally, secondary source data would have been externally verified through direct contact with each director, but due to time and resource constraints this approach was not adopted with this dataset.

2.3. Data sources: FTSE100 company reports

Data gathered in relation to diversity for each company was obtained from annual reports for the company both in 2016 and 2017. 200 reports were analysed, 100 in each year. Each report was searched for the words: diversity, gender, BAME, ethnic, female, woman, Davies, Hampton, Parker, McGregor, bias, UK Corporate Governance Code and compliance. The corporate governance report and chairman’s statement were read in full as well as the director’s (and, where available, the executive committee) biographies. More general information about each company was obtained from the London Stock Exchange website, such as market capitalization, industry sector and date of listing.

The benefits of relying on annual reports is that they are produced to a high degree of accuracy and are externally verified. Annual reports of public companies are required to comply with International Financial Reporting Standards.[15] These standards “set out recognition, measurement, presentation and disclosure requirements dealing with transaction and events that are important in general purpose financial statements”.[16] The Companies Act 2006

[15] Regulation (EC) No 1606/2002 Article 4.
[16] Preface to IFRS 10

requires directors approve the annual accounts only if they consider them to give a “true and fair view” of the company.[17] This ensures that the contents are consistent across companies and reliable. It also means that each of the directors in the sample are responsible for the statements in the annual reports studied for their company. However, demonstrating that something descriptive, such as an appointment policy, is not true and fair is challenging.

The data were collected and then coded according to codes developed either in advance of collection (e.g. director roles or company sector), or subsequently through a process of inductive coding (e.g. descriptive variables on diversity approach).[18] This meant a coding scheme was developed once all the data had been collected. This was particularly important for the descriptive variables relating to the company diversity approach. In total, 41 categories of variable were collected of which 21 relate to directors and 20 variables in relation to the companies.

3. Analytical variables: directors

The standard variables that are considered in most diversity studies include gender, age and ethnicity. These formed a starting point that was expanded upon in order to create a much more in-depth and nuanced picture of c-suite diversity including: nationality, age, board experience, role, remuneration, family, hobbies, education amongst others.

[17] The Companies Act 2006 s 393

[18] Lee Epstein and Andrew D Martin, 'Quantitative approaches to empirical legal research' (2010) 511

Each variable is in Table 2, together with the source, and, where relevant, how complete, in percentages, the data set is in relation to each gender.

Table 2: FTSE 100 Director data variables

Variable	Data source	Source Type	% total complete	% men complete	% women complete
Company name	Company website	Externally verified	100	100	100
Director name	Company website	Externally verified	100	100	100
Gender	Company website	Externally verified	100	100	100
Nationality	Companies House	Externally verified	98		
Ethnicity	Company website picture/ media search	Secondary	100	100	100
Age	Annual report or Companies House	Externally verified	100	100	100
Honours	Company website	Externally verified	100	100	100
Job title	Company website	Externally verified	100	100	100
Internal/external hire	Company website	Externally verified	100	100	100
Duration of service	Company website	Externally verified	100	100	100
University institution	Company website/LinkedIn/Who's Who/ Bloomberg	Direct	80	78	92
Higher education attainments	Company website/LinkedIn/Who's Who/ Bloomberg	Direct	90	91	89
Schooling	LinkedIn/Who's Who/Media search	Self-reported or Secondary	20	20	19

Variable	Data source	Source Type	% total complete	% men complete	% women complete
Other current board roles	Company website	Externally verified	100	100	100
Historic board roles	Company website	Externally verified	100	100	100
Remuneration	Annual report	Externally verified	96	96	92
Vested Shareholding	Annual report	Externally verified	88	87	95
Non-profit boards/ senior positions	Company website	Externally verified	Unclear[19]	Unclear	Unclear
Marital status	Who's Who/Media search	Self-reported or Secondary	55	55	62
Number of children	Who's Who/Media search	Self-reported or Secondary	53	53	62
Hobbies	Who's Who/Media search	Self-reported or Secondary	47	47	46

The data collected on the directors can be categorised as either personal or professional characteristics.

Personal Characteristics

Personal data on directors was considered an important aspect of the study, helping develop a richer understanding of the subjects. This data would enable a more convincing analysis about the similarities and differences between

[19] It is unclear how complete the data collected in relation to non-profit positions are because there is no requirement for directors to disclose these. Where no non-profit positions are disclosed it may be that the director has none or that they do but have not disclosed them.

subjects that extended beyond the professional. A large variety of publicly available information about personal characteristics was collected for each of the directors in the sample. Information relating to the gender and ethnicity of the subjects of this study was clearly important. However, ethnicity data was not easy to ascertain. The photographs of the subjects provided on corporate websites helped with identification of ethnicity but only to a very general level. The difficulty of finding specific and accurate information, combined with the very small numbers of non-white subjects led to the binary categorization of White or BAME. However, given the small number of ethnic minorities, this level of detail is thought sufficient.

Education data formed an important part of the personal data collected. As discussed in Chapter 4, privilege is thought to be a key aspect to success. Educational institution with no reference to subject or degree is important here because there is an abundance of research linking elite education and social class.[20] Those elite institutions, theoretically, feed the high-powered and well-paid jobs.[21] Data on attendance at higher education institutions was gathered, but in order to assess the privilege associated with this, the ranking of the educational institution needed to be considered. To do this, data was obtained

[20] James D Westphal and Ithai Stern, 'The Other Pathway to the Boardroom: Interpersonal influence behavior as a substitute for elite credentials and majority status in obtaining board appointments' (2006) 51 *Administrative Science Quarterly* 169 170; Mairi Maclean, Charles Harvey and Jon Press, *Business Elites and Corporate Governance in France and the UK* (Springer 2005) 39

[21] Maclean and others (n 20) *38*

from well-known national and global university and business school ranking publications.[22]

Some of the personal characteristics data proved the most challenging to ascertain of all the variables. Sometimes it was necessary to resort to indirect sources for this data. Despite extending the sources for these variables, there remain a large number of absent data in certain areas such as hobbies[23] and public/private schooling. The extent to which the data set was complete for each variable can be seen above in Table 2.

Professional characteristics

Professional characteristics include details of professional experience, education and qualifications. In terms of current position, after noting tenure and role, investigation was also made into the individual's path to that position i.e. whether through an internal or external route. Any appointees under 1 year in the role before promotion to their current role were considered to be external hires. This categorization was thought to be a more accurate reflection of reality, after considering Finkelstein et al's insider/outsider continuum.[24]

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[22] Keay ;Reggy Hooghiemstra, 'Corporate communication and impression management–new perspectives why companies engage in corporate social reporting' (2000) 27 *Journal of Business Ethics* 55

[23] A US study of CEOs managed to gain interesting data in respect of CEO golfing habits from the United States Golf Association website, providing detail on how frequently and how well the members played. Unfortunately, no such database exists in the UK. Lee Biggerstaff, David C Cicero and Andy Puckett, 'FORE! An analysis of CEO shirking' (2016) 63 *Management Science* 2302

[24] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116 *192*, This categorized directors into 8 levels of insider or outsider in which a director whose tenure had been under one year was considered an outsider and a director from a different industry was considered an extreme outsider

In terms of qualifications all higher education and professional qualifications were noted. However, training programs and other forms of semi-formal education not internationally recognized or certified, was not included.[25] Two education variables were coded: higher education and professional education. A novel methodology was devised for measuring higher education labelled 'education merit'. This was coded as an ordinal variable with each individual's education assessed according to the following criteria: one point for each Bachelor and Masters degree, two points for every PhD, MBA or professional qualification and three points for professorship. The scores were then added up to produce a total education merit score for each individual. Professional education was coded categorically with the following six categories of qualification: accounting, legal, engineering, other, none and unknown.

4. Company data

The focus of the second part of the study, on the FTSE 100 companies and their position on diversity, required the collection of a number of details from the annual reports and elsewhere. Data on the company was gathered to help build a picture of how diversity is presented and approached in the FTSE 100. Table 3 sets out each of the main variables collected in respect of each company, the source, source type and its percentage completeness.

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[25] For example, one individual listed 'senior executive training programme' on their CV, such training may be firm specific and there is no indication of wider recognition. This form of training is assumed as encompassed within what is expected of a role at this level.

Table 3: Company data variables

Variable	Source	Source type	% complete
FTSE sector	London Stock Exchange website	Externally verified	100
Date admitted to trading	London Stock Exchange website	Externally verified	100
Market capitalization	London Stock Exchange website	Externally verified	100
Compliant with CODE	Annual report	Externally verified	100
Policy on diversity	Annual report	Externally verified	100
Measurable objectives on diversity	Annual report	Externally verified	100
Reference to Davies report, Hampton Alexander review, parker review, McGregor report.	Annual report	Externally verified	100
Description of board diversity	Annual report	Externally verified	100
Stated benefits of diversity	Annual report	Externally verified	100
Membership of 30% club	30% club website	Self-reported	100
Unconscious bias training provided	Annual report	Externally verified	unclear[26]
CEO statement discuss diversity	Annual report	Externally verified	100
Number of women c-suite	Annual report	Externally verified	100
Number of BAME in c-suite	Annual report	Externally verified	100
% women on board	Annual report	Externally verified	100

[26] It is unclear how complete the data collected in relation to unconscious bias training is because there is no requirement for companies to disclose this. Those that have not mentioned unconscious bias training in their annual report may still provide it.

Variable	Source	Source type	% complete
% BAME on board	Annual report	Externally verified	100
% women in senior management	Annual report	Externally verified	88
% women in workforce	Annual report	Externally verified	95
Number and % women on executive committee	Annual report	Externally verified	78
Women in executive committee roles	Annual report	Externally verified	78
Gender pay gap data (mean and median of hourly and bonus pay)	Annual report or gov.co.uk	Externally verified	77

The data collected on company diversity can be divided into two categories: textual data and statistical data.

4.1. Textual diversity reporting

Under the Code, companies are required to provide information on their diversity policies.[27] The reporting requirements mean that this information is presented descriptively, so in order to gather specific information it was necessary to conduct a textual analysis of all FTSE100 company reports for the years 2016 and 2017. This analysis gathers information on 3 key variables from each report: (1) the definition of boardroom diversity, (2) the board appointment policy in relation to diversity and (3) any described benefits to boardroom diversity.

[27] UK Corporate Governance Code 2018

Research using textual analysis of company annual reports is rare. After the data for this study had already been gathered and analysis was nearly complete, a report by the Financial Reporting Council (FRC) was released in which a textual analysis of diversity reporting in the FTSE 350 was carried out.[28] Although the methodology for data gathering is similar between that study and this one, this study differs in its focus and method of analysis. The FRC study sought to establish a company's level of compliance with a specific break down of the diversity provisions of the Code.[29] In contrast, this study focuses on an analysis of each board appointment policy in conjunction with their definition of diversity, reliance upon merit and diversity statistics.

When designing this study, previous textual analysis methods were considered. One method that has been successfully used involved counting words dedicated to a specific topic in each report.[30] This method was rejected on the basis that the context within which key words were used was very important and would be missed using such an analytical approach. However, a key word search was used. Other studies of annual reports have created check box indices to process whether an annual report discloses or refers to a particular item or topic.[31] This system of analysis would be inappropriate here because the values obtained from the search were too varied and did not become clear until after the research had been conducted. Another study, seeking to identify causal reasoning in annual

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[28] Ruth Sealy, 'FRC Board Diversity Reporting 2018' (2018)

[29] Ibid 6

[30] Dean Neu, Hussein Warsame and Kathryn Pedwell, 'Managing Public Impressions: environmental disclosures in annual reports' (1998) 23 *Accounting, Organizations and Society* 265 275

[31] Surendra S Singhvi and Harsha B Desai, 'An Empirical Analysis of the Quality of Corporate Financial Disclosure' (1971) 46 *The Accounting Review* 129

reports, involved researchers identifying instances of causal reasoning and then coding them in a binary way (e.g. favourable or unfavourable, internal or external).[32] None of these methods were entirely appropriate for this study but elements of each were drawn upon.

Definition of boardroom diversity

The first part of the textual analysis was to review each nomination committee's definition of diversity. It quickly became apparent that there were a wide variety of definitions used by FTSE100 companies, which covered personal and professional characteristics. These are summarised in Table 4.

Table 4: Diversity characteristics mentioned in company definitions of diversity

Protected characteristics	Professional characteristics
Gender Ethnicity Race Religious or political beliefs Marital status Sexual orientation Age Disability Culture Background	Skills Experience Geographic experiences relevant to business Industry experience Educational background Professional background Knowledge

Categories were developed that gave some indication of the emphasis placed on protected characteristics as opposed to much broader business-related characteristics. Definitions were categorized according to whether they were

[32] James R Bettman and Barton A Weitz, 'Attributions in the Board Room: Causal reasoning in corporate annual reports' (1983) *Administrative Science Quarterly* 165 173

purely focused on protected characteristics or included more business focused descriptions as set out in Table 5 below.

Table 5: Definition of boardroom diversity categories

Definition of diversity category	Category
Protected and professional characteristics	0
Protected characteristics only	1
Diversity in its broadest or widest sense	2
Unspecified	3

Appointment policy

According to the Code 2016, companies should describe in their annual reports their board appointments policy in relation to diversity, including gender.[33] The description from each annual report was noted and then a process of identifying types of policy began. Four groups were devised to create a good indication of the variety of diversity policies without giving too much room for subjectivity. The objective was to identify the extent to which diversity and merit were key considerations for the policy and whether they were considered jointly or separately. This led to the 4 diversity policy categories set out in Table 6 below.

[33] UK Corporate Governance Code 2016 Provision B.2.4.

Table 6: Appointment policy categories

Categories	Description
Merit Only	Appointments based explicitly on merit, not diversity
Merit Dominant	Appointments based on merit with regard to diversity
Merit and Diversity	Appointments based on an understanding of merit that includes diversity
Unspecified	Unspecified or unclear

Measurable objectives

The Code encourages companies to include measurable objectives to help them achieve better diversity. Those measurable objectives are included in the annual report. Each annual report was searched in order to find any measurable objectives the companies may have had in place. For the purposes of this study, companies have been categorized binarily into those that have and those that do not have measurable objectives in place.

Benefits of diversity

Annual report text was also captured relating to the perceived benefits of board diversity. There is no Code requirement to provide information on what the company perceives to be the benefits of board diversity. However, on reading multiple annual reports, it became clear that many companies chose to report on this. All the stated benefits of diversity were collected from the annual reports and from this several categories became apparent. Many companies listed more than one benefit to diversity. The described benefits of diversity are categorised as:

1. Diversity of thought and or perspective

2. Improved performance or success
3. Greater innovation
4. Better service for stakeholders
5. Greater effectiveness
6. Good practice
7. Better decisions
8. The attraction and retention of talent

Instances were also noted where companies made no mention of diversity benefits or (as was common) the company recognized benefits of diversity without being specific about what those benefits were.

Commitment to diversity

There is much research linking the appointment of individuals who reflect the race, gender and class of the appointee with unconscious bias.[34] This is now a recognized phenomenon and companies are starting to react to it in the form of training. US research indicates that, in terms of diversity initiatives, which include 1) assigning diversity responsibility to an individual or group, 2) addressing networking issues for minority groups and 3) providing training on bias, the latter (3) is the least effective in improving managerial diversity.[35] Every company that reported conducting unconscious bias training was recorded. A limitation to this

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[34] Equality and Human Rights Commission, '*An inquiry into fairness, transparency and diversity in FTSE 350 board appointments'* (2016), Mairi Maclean, Charles Harvey and Jon Press, *Business Elites and Corporate Governance in France and the UK* (Springer 2005) 39, Amy J Hillman, Albert A Cannella and Ira C Harris, 'Women and Racial Minorities in the Boardroom: how do directors differ?' (2002) 28 *Journal of Management* 747 759

[35] Alexandra Kalev, Frank Dobbin and Erin Kelly, 'Best Practices or Best Guesses? Assessing the efficacy of corporate affirmative action and diversity policies' (2006) 71 *American Sociological Review* 589

is that it does not mean that companies who do not report on this training do not provide it, or that those who provide it do so to a high standard. What it does give is some indication of the popularity of the concept of unconscious bias training and therefore the significance of unconscious bias itself.[36]

4.2. Statistical diversity reporting

Each annual report provided the percentage of **gender diversity in the overall workforce, the senior management and on the board**. This data was collated and analysed. A minority of companies also provided some data relating to ethnicity, but this was so infrequent as to be unhelpful and therefore was not collected. However, BAME information was recorded in relation to the c-suite, board and, where available, the executive management team.

Other data collected, where possible, were the **roles assumed by women in the executive management team**. Research into judicial diversity has revealed that women often assumed certain types of roles.[37] This has been labelled the "caring role effect".[38] This research seeks to establish whether there are common roles for women in the executive management team, and if so, what they are.

In 2018, FTSE100 companies were required to publish **gender pay data** and many companies also provided this in their 2017 annual report. Other companies

[36] See https://www.theguardian.com/uk-news/2018/dec/02/unconscious-bias-what-is-it-and-can-it-be-eliminated accessed 6 August 2019
[37] Cheryl Thomas, 'Understanding Judicial Diversity. A Research Report for the Advisory Panel on Judicial Diversity' (2009) 4
[38] Ibid

provided this data in separate reports. Reports were then collated by the Government.[39] The data includes mean and median figures for both the difference in hourly pay and bonus between men and women. This data has been collected, but snags in the first year of reporting put questions over its reliability.[40]

5. Assessing FTSE 100 c-suite director power

Considered econometrically, the data collected in relation to each director can be used to analyse the sources of power and levels of privilege for each director. Finkelstein developed 4 constructs to measure power: structural power, ownership power, expert power and prestige power. These were used as a schema to represent where power comes from in top management in US companies.[41] Finkelstein found strong empirical support to indicate these constructs were valid representations of power in US companies.[42] Udeuni utilized this study in research on UK top management and again found the constructs to be “reliable, valid and stable” estimates of power on the board.[43] Tang et al used the structural and ownership constructs in an interesting study

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[39] 'Gender pay gap service' <https://gender-pay-gap.service.gov.uk> accessed 20/7/2019

[40] For details on these snags, see pages 240-242

[41] Comparisons between US and UK corporate boards and corporate governance structures are common due to the converging nature of their corporate processes (Michael Useem, *The Inner Circle*, vol 617 (New York: Oxford University Press 1984) 7). However, adaptations are necessary due to jurisdictional differences such as role duality and access to information.

[42] Finkelstein (n 4) 530

[43] Henry Udueni, 'Power Dimensions in the Board and Outside Director Independence: Evidence from large industrial UK firms' (1999) 7 *Corporate Governance: An International Review* 62 70

on CEO dominance[44] and Daily and Johnson used the method to analyse the connection between CEO power and firm performance.[45] The power constructs employed in the study are set out in Table 7.

Table 7: Power constructs used in the study

Power construct	Description	Included variables
Structural	The power associated with an individual's position in the corporate hierarchy	• Corporate role • Remuneration • Any role duality (e.g. CEO chairman) • Board tenure
Ownership	The power associated with level of ownership of company and any associations with the founding of the company	• Founder member • Relative of a founding member • Share ownership
Prestige	The power associated with a person's reputation and privilege.	• University institution • Prior board experience ranking (FTSE 100, Fortune 500) • Count of prior board experience • Count of non-profit experience

Expert power was excluded from this study. Obtaining this information to any appropriate degree of accuracy was not realistic. Publicly available Curriculum Vitae's are not always complete and not at all explicit about skills. Udeuni and Tang et al come to a similar conclusion.[46] Also, measuring expert power in this

[44] Jianyun Tang, Mary Crossan and W Glenn Rowe, 'Dominant CEO, Deviant Strategy, and Extreme Performance: The moderating role of a powerful board' (2011) 48 *Journal of Management Studies* 1479 1487

[45] Catherine M Daily and Jonathan L Johnson, 'Sources of CEO Power and Firm Financial Performance: A longitudinal assessment' (1997) 23 *Journal of Management* 97

[46] Udueni 66 (n 43), Tang and others (n 44)

way makes no account for depth of expertise. A director who was a 'Jack of all trades' (i.e. with skills in a variety of areas but expertise in none) would receive a higher expert power score than a director whose expertise in one area was outstanding. Without some measurement of depth of expertise, any expert power score must be of limited value. Furthermore, Finkelstein found that of all the 4 power constructs, expert power received the least support from the data in terms of demonstrating validity and reliability.[47]

What follows is a description of all the power constructs used in this study to create a measure of power for the constituents of the FTSE 100 c-suite.

5.1. Structural power

Structural power is an assessment of the power of individuals within their organisation. Finkelstein includes title(s) and remuneration as part of this assessment. This study has also included board tenure on the basis that, early on in a board career, executive board positions can be tenuous given the reliance upon the knowledge and insights of other board members.[48] It is far from certain that increased tenure is linked to improved performance, for example, Swiss research has linked the advanced age of the Chairmen with negative comparative performance.[49] What seems more likely is that with increased tenure often comes increased power. A study of CEO shirking found that longer tenured CEOs were

[47] Finkelstein (n 4) 530

[48] James G Combs and others, 'The moderating effect of CEO power on the board composition–firm performance relationship' (2007) 44 *Journal of Management Studies* 1299 1307

[49] Urs Waelchli and Jonas Zeller, 'Old Captains at the Helm: Chairman age and firm performance' (2013) 37 *Journal of Banking & Finance* 1612 1612

more likely to avoid disciplinary action for shirking.[50] Daily and Johnson also included an assessment of percentage of independent directors on the board to give an indication of the capture of the CEO.[51] This is not considered to be appropriate here given the study extends beyond the CEO.

Another indicator of structural power is dual CEO/Chairman roles given the potential for that individual to dominate the board.[52] However, in the UK this is contrary to the Code, to prevent one individual wielding too much power.[53] Consequently there are very few dual roles still remaining in the FTSE 100. There remain a few executive Chairman on boards, often they are founders. Where this is the case the individuals are scored the highest score in relation to their role.

5.2. Ownership power

The Code suggests that companies set minimum shareholding for directors[54] to ensure they have shareholdings significant enough to tie their interests to the interests of shareholders. One potential consequence of this increased shareholding is an increase in their power base.[55] Ocasio found that it is easier for CEOs with low levels of ownership, to be removed from their positions.[56] Similarly, MacEachern found that where CEOs had large shareholdings and their

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[50] Biggerstaff and others (n 23) 28
[51] Daily and Johnson (n 45) 101
[52] Ibid
[53] UK Corporate Governance Code 2016, A.2.1,
[54] UK Corporate Governance Code, Schedule A,
[55] Daily and Johnson (n 45) 101
[56] William Ocasio, 'Political dynamics and the circulation of power: CEO succession in US industrial corporations, 1960-1990' (1994) *Administrative science quarterly* 285

company was performing poorly, they were less likely to be removed than if they had small shareholdings.[57] In this light, share ownership can be viewed as a buffer against poor performance.[58] To calculate ownership power in relation to shareholdings, the number of shares each director owned was used in combination with the outstanding share capital in order to find a percentage of company ownership.[59] The greater the % of the company's share capital held by one person, the greater the ownership power that individual has on the basis that "a top manager with significant shareholding in an organization will be more powerful than a manager without such a base of control".[60]

An arguably more significant measure of ownership power is the power that comes from being a founder or related to a founder of the company. According to Daily, this power stems from the relationships that they have had time to build up with board members as well as other key stakeholders.[61]

5.3. Prestige power

According to Finkelstein, "managerial prestige promotes power by facilitating the absorption of uncertainty from the institutional environment both informationally

[57] William Archibald MacEachern, *Managerial control and performance* (Lexington Books 1975)

[58] Warren Boeker, 'Power and managerial dismissal: Scapegoating at the top' (1992) *Administrative Science Quarterly* 400 404

[59] https://markets.ft.com/data/equities accessed 22 June 2018. The outstanding shareholding figure obtained here referred to the amount outstanding on the 28 May 2018, which is later than the date of the director shareholding information provided in the annual report. However, large listed companies do not often issue new shares and by checking on the London Stock Exchange website (http://www.londonstockexchange.com/statistics/new-issues-further-issues/new-issues-further-issues.htm) it was possible to verify that no further shares had been issued between the date of the annual report and the 28 May 2018

[60] Finkelstein (n 4)

[61] Daily and Johnson (n 45) 101

and symbolically".[62] Broadly this means having a person with high levels of prestige in the c-suite provides comfort to investors and other stakeholders which benefits the company and corresponds to a degree of power for the individual. The Oxford English Dictionary defines prestige as "influence or reputation derived from achievements, associations or character or from past success". Finkelstein's calculation of prestige includes an assessment of the number and ranking of the corporate boards sat on, the number of non-profit boards sat on and whether or not the education institution attended was considered elite.[63] While these could be considered indicative of achievements and past success, they are extremely unlikely to be complete in this regard and they do not speak at all to a person's "character or associations", also considered by the Oxford English dictionary to be part of prestige.

Measuring influence is particularly hard as it is forward looking and dependent upon others. Tang et al excluded prestige power entirely from their study of CEO dominance. They reasoned that any judgement of power based on variables like education would be more uncertain than the structural and ownership variables discussed above.[64] On a more positive note, Hambrick et al described educational background as a "muddy" indicator of "socio economic background, cognitive styles, risk propensity and other underlying traits" but felt that, should empirical testing reveal any findings, those findings would have been put through

[62] Finkelstein (n 4) 510

[63] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116; Finkelstein (n 4)

[64] Tang and others (n 44)1488

a more “stringent” test because of this muddiness and be stronger as a consequence.[65]

It may be argued that factors such as education institution and boards sat on (as a measure of a person’s network) may not give a good indication of prestige but instead measure privilege. This may be particularly the case in the US, where universities operate a legacy system that favour alumni and amounts to an “informal quota system” which disproportionately and undemocratically benefits the rich and the White.[66] It is arguably more accurately a measure of privilege because it is a measure of someone’s background, not a measure of the effect of someone’s background on others, as with prestige. However, whilst it is believed that privilege forms an important aspect of prestige, privilege is omnipresent in all the measures of power and cannot be separated out here.

The number of external engagements a director is involved with is important here as an indicator of prestige power. A study of high profile CEO’s found that “superstar CEOs are more likely to accept outside engagements that enhance personal wealth and utility, including book writing and serving on multiple boards and that this corresponds to declining firm performance”.[67] In other words, they may receive these positions as a consequence of the privileges they have been bequeathed. Whether or not those advantages would not more effectively have been utilized by others is open to debate, especially when you consider the more

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[65] Donald C Hambrick and Phyllis A Mason, 'Upper Echelons: The Organization as a Reflection of its Top Managers' (1984) 9 *Academy of Management Review* 193 196

[66] Tom Leonard, 'The Ivy League’s Dirty Secret' *The Spectator* (17 November 2018)

[67] Ulrike Malmendier and Geoffrey Tate, 'Superstar CEOs' (2009) 124 *The Quarterly Journal of Economics* 1593 (2009) as referred to in Biggerstaff (n 23) 8

positions a person takes on, the greater the likelihood of distraction and underperformance in their corporate role.

6. Methodological limitations

In addition to the absences in data leaving some variables incomplete, as set out in Table 3, there were some variables which may include some unknown absences. Companies do not follow a prescribed format for the information they provide in relation to their directors. Biographies can be detailed or very brief. The difficulty is then determining whether, for example, a director chooses not to disclose all or some charitable board appointments and affiliations in his or her biography or is simply not on any charitable boards. The issue is mitigated through the data validation process but, as sources are limited, it cannot be fully removed.

The limitations in the methodology relating to the textual analysis must also be highlighted. Coding of the textual data was essential in order to be able to analyse it. However, for a number of the variables, determining the codes was a matter of interpretation and as such there is scope differences in interpretation. The most contentious variables in terms of coding was the description of the company board appointment policy. However, this limitation was minimized as far as possible by ensuring the categories were suitably distinct, so there was little risk of overlap. The process was also repeated blind on two occasions. Through this process discrepancies were highlighted and could be given careful attention.

With any data set there is the possibility for human error to occur in the inputting of data and the translating of data from source to category. Care was taken to minimize this during the initial data input stage, but random spot checks were also carried out on the dataset before analysis began.

From a source reliability perspective, much of the data gathered in relation to the companies themselves was taken from the annual reports. While this is beneficial because it is a direct source, this is the information that the company knows will be public and so it is the information the company wants the public to see. Therefore, one can not necessarily say the annual report position on diversity is a true reflection of the diversity environment of the company. There is certainly the significant risk that information has been selectively disclosed so that it places a company in the most favourable light.[68] Choudhury and Petrin suggest the possibility that disclosure rules aren't wholly effective because *"even where negative information is disclosed, the disclosed information is marginalized or abstracted in such a way that the focus is on altering stakeholder's perceptions rather than changing corporate behaviour"*.[69] Although this was highly likely, it was felt that there remains value in examining how companies position themselves in terms of diversity, even if only to see whether it has any connection to their reality, when looking at the statistics and the director data gathered.

[68] Barnali Choudhury and Martin Petrin, 'Corporate Governance That 'Works for Everyone': promoting public policies through corporate governance mechanisms' (2018) Journal of Corporate Law Studies 1 408
[69] Ibid 409

Theoretically, there are a number of reasons to be cautious when considering the data gathered in relation to the power constructs. These include the overlap in merit, power and privilege. None of these concepts are distinct, they relate and interfere with each other in a variety of differing ways. There are also a number of factors that would be very informative, but which could not be measured here, such as expertise.

Chapter 6

Analysis of FTSE100 c-suite population

This chapter is the first of two empirical findings chapters. It analyses the data gathered about FTSE100 c-suite directors in 2016 and 2017. Chapter 7 analyses the data gathered about the diversity of the companies they work for. There are 398 individuals making up the sample. This represents the entire population of the FTSE 100 c-suite in 2016 and 2017. The research focuses on the c-suite because they represent the most powerful individuals in the largest organisations in the UK and yet their diversity is lagging significantly behind the progress made in wider boardroom diversity. Data on a wide array of c-suite member characteristics has been gathered through a range of primary and secondary data sources.[1]

The data has been analysed according to three overarching categories: **personal characteristics, professional background** and **power indicators**. The categories were chosen because they each provide a different lens through which the differences and similarities of the c-suite can be assessed. The first category, personal characteristics, speaks to the diversity of the group in a wide sense. It may give an indication about the depth and authenticity of diversity, not only of gender and ethnicity, but also in the experiences and perspectives that the group represents. The second category, professional background, provides an indication as to whether the skill level expected for each role, gender and

[1] Table 2 page 174 sets out all the director data variables

ethnicity differs in any significant way. This may give insight into the respective hurdles that need to be overcome in order to attain board room membership. Finally, the results have also been analysed according to a calculation of power based upon the information gathered in respect of personal characteristics and professional background. This provides a way of looking at the data in a more unified way; it is also based on the premise that there are differences in power levels within c-suite roles, and this power can be represented, to a degree, by an amalgamation of certain characteristics. It is hoped that this analysis will contribute to a richer understanding of the realities of diversity in the c-suite, as well as providing an indication of the relative hurdles to be overcome for c-suite appointment and retention of appointments.

1. Gender and ethnicity

It is already well known that corporate boards are overwhelmingly White and male: there are significantly more men than women[2] and more white individuals than BAME[3] individuals on the wider corporate boards. This study adds to the knowledge in this field by focusing on the c-suite of the FTSE100 in 2016 and 2017. The study sample includes 398 individuals, which represent the entirety of the FTSE100 c-suite in 2016 and 2017.

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[2] As discussed in Chapter 1, there has been a multitude of articles on this topic and a variety of reports. The most prominent in the UK is the Female FTSE Reports series published by Cranfield School of Management, these can all be found at: https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index

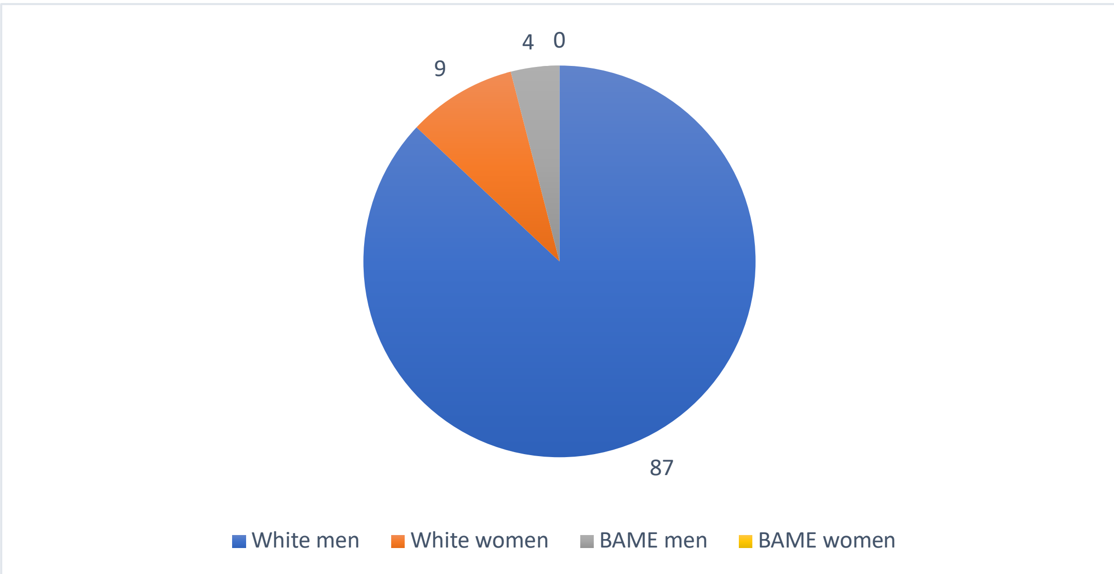
[3] Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016)

This study seeks to examine diversity beyond gender and ethnicity, whilst retaining an overall gender and ethnicity framework. This is important partly because diversity has come to represent much more than these two characteristics. Going beyond gender and ethnicity enables a consideration of the extent of variety in the backgrounds of the influential c-suite population and, consequently, whether c-suite appointments are being made in the image of those who are already there.

1.1. Representation

As shown in Figure 2, of the entire c-suite membership in 2016-17, 87% (336) were White men. As set out in Table 8, 9% (36) of the sample were White women, 4% (16) BAME men and less than 1% (1) BAME women.

Figure 2: Gender and ethnic distribution of the FTSE100 c-suite in 2016 and 2017 (%)



UK population data estimates that White women account for 44% of those aged 24-64 who are in employment, a similar figure to that of White men.[4] There are also significantly more BAME in employment between ages 25-64 when compared to the c-suite employment proportions, but it is much more pronounced for BAME women than BAME men. At a high level the data suggests that, proportionally, women are more underrepresented than BAME individuals. This is consistent with the views of Padavic and Reskin who found, in their empirical work into occupations more generally, that “there remains a great deal of sex segregation and a moderate amount of occupational race segregation”.[5] At the point where gender and ethnicity intersect, the underrepresentation is at its most extreme. There was only 1 BAME woman in the sample, and while little information of value can be extrapolated from a sample size of one, it is clear that there is significant underrepresentation[6] amongst this group. This corroborates research indicating it is ethnic minority women who are most affected by unequal job opportunities.[7]

The average age for both white and BAME men in the c-suite is the same (58). This is 6 years older than the average c-suite woman’s age. This might suggest that women are appointed at an earlier age.

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4 Office for National Statistics, ‘*2011 Census: Population Estimates for the United Kingdom’*

5 Irene Padavic and Barbara F Reskin, *Women and Men at Work* (Pine Forge Press 2002) 73 *69*

6 The only BAME woman in the sample was Manjit Wolstenholme who was chairman of Provident Financial. She died in November 2017.

7 Margaret Yap and Alison M Konrad, 'Gender and Racial Differentials in Promotions: Is there a sticky floor, a mid-level bottleneck, or a glass ceiling?' (2009) *Journal of Industrial Relations* 593 609

Table 8: Comparison of c-suite demography with working population demography

	White men	White women	BAME men	BAME women
FTSE100 c-suite	87% (336)	9% (36)	4% (16)	0.3% (1)
Average age	58	52	58	52
Population aged 25-64, economically active[8]	44%	45%	6%	5%
Population age 25-64[9]	43%	44%	7%	7%

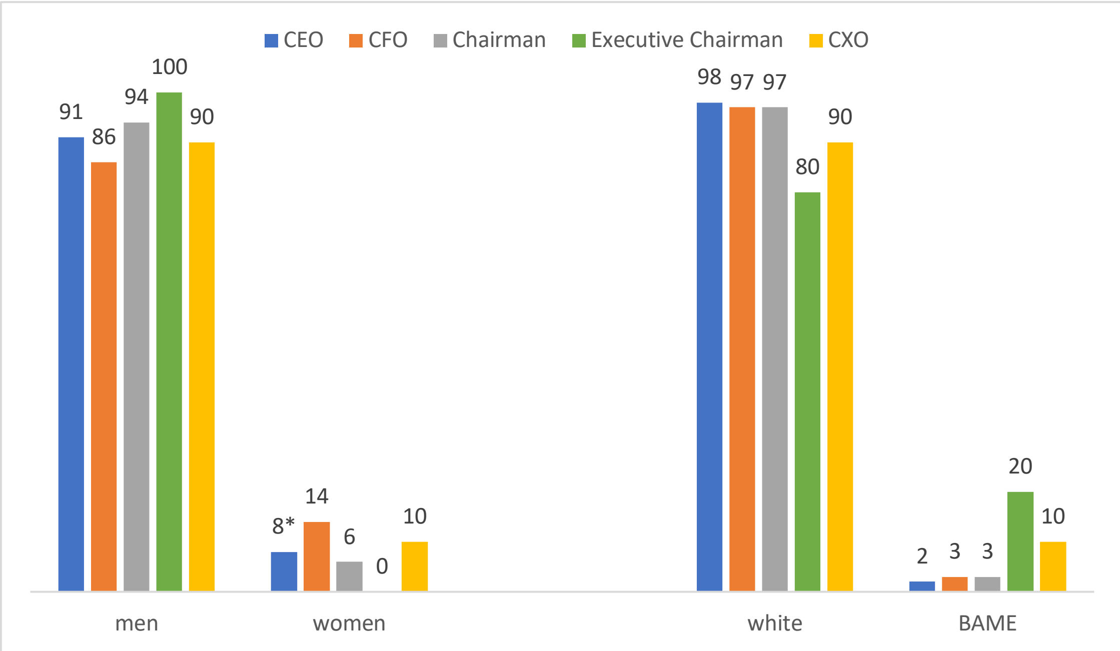
1.2. C-suite roles

Figure 3 sets out the distribution of c-suite roles by gender and ethnicity. There is a clear trend for women to occupy CFO roles and for BAME individuals to occupy CXO roles. In contrast, the majority of men are relatively evenly split between Chairmen, CEO and CFO roles with a slight increase in numbers of Chairmen corresponding to the lack of women Chairmen. BAME individuals represent 20% of the total number of Executive Chairmen but this role is rare in the FTSE100.

[8] Data from Office for National Statistics, *Population census by economic activity, sex and age* (2011). There has been an increase in employment levels since 2011 but latest statistics do not provide analysis by ethnicity. Statistics from 2019 show that the percentage of women over the age of 16 in the workforce is 56.9% compared to 52.7% from the same period in 2011. For men these figures are 66.4% and 64.1% respectively (Office for National Statistics, *People in Work* (2019)).

[9] Ibid

Figure 3: Gender and ethnicity percentages for each c-suite role



* *Of this number, one individual, Carolyn McCall is counted twice, as CEO of EasyJet in 2016 and CEO of ITV in 2017.*

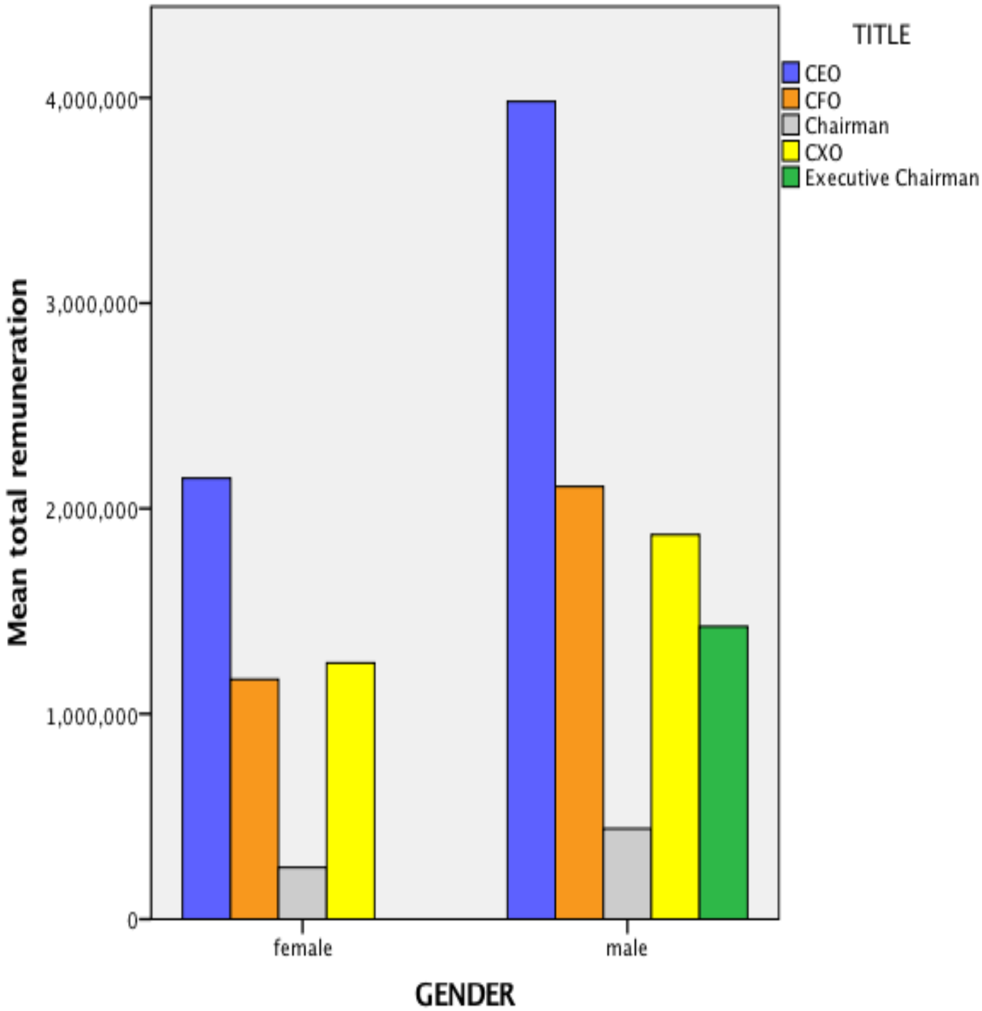
1.3. Remuneration

As can be seen in Figure 4, in every role the mean total remuneration is substantially higher for men than for women. This is most pronounced in relation to CEO roles where the mean is almost double for male CEOs than women CEOs. To provide context to this difference, the stock price performance of the companies with women CEOs during this period was reviewed. There were five companies with a woman CEO during the 2016 and/or 2017 period and stock prices during that time show a slight overall decline in the share price for Kingfisher plc, Imperial Brands plc and Severn Trent plc.[10] For EasyJet plc there

[10] Stock price information obtained from London Stock Exchange website https://www.londonstockexchange.com/exchange/prices-and-markets/stocks/ (accessed 15 March 2019)

was an overall increase and for Whitbread plc the overall share price performance was relatively stable.[11]

Figure 4: Total remuneration by role and gender

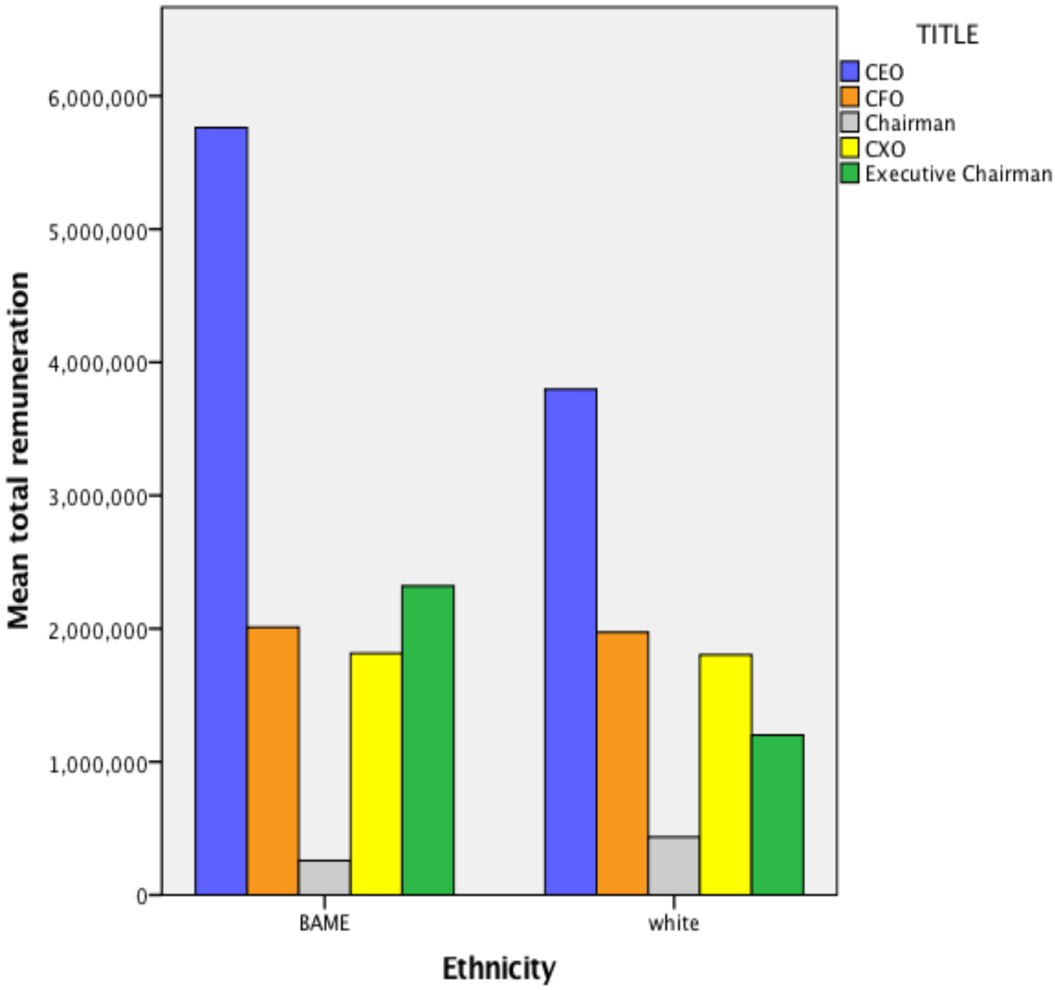


The remuneration picture is different for ethnicity. The salaries of BAME individuals match or exceed white individuals in all roles except that of the chairman as set out in Figure 5. Much of this difference may be attributable to the relative size of the samples. There are only 3 BAME CEOs in the sample, of

[11] Ibid

which the largest remuneration for one individual (averaged across 2016 and 2017) was £13,544,735. For white CEO's, the comparable figure was £41,560,000. Due to the numbers of white individuals in the sample, outliers have less impact on the data overall than they do in relation to BAME individuals. Notably, a review of outliers reveals that there are no women outliers.

Figure 5: Total remuneration by role and ethnicity

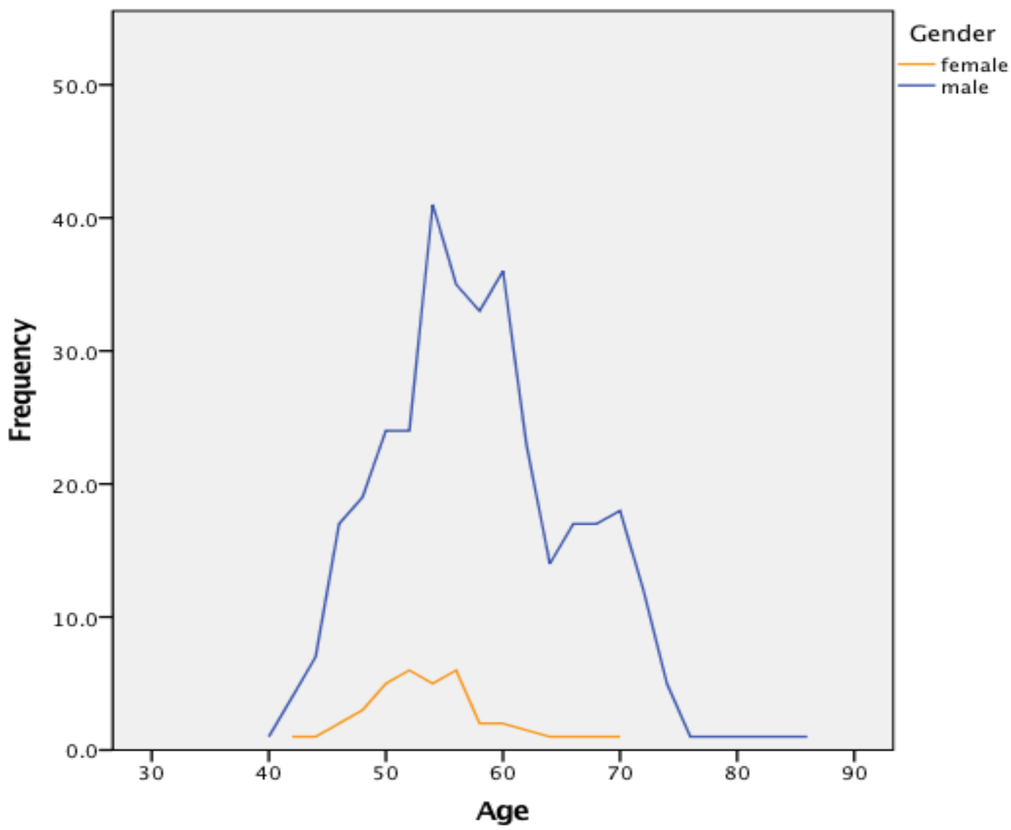


2. Personal Characteristics

2.1. Age

Figure 6 shows that there is a similar pattern of age distribution for both genders, but the range is significantly broader for men, and women tend to be younger. In both cases, a wide range of ages are represented.

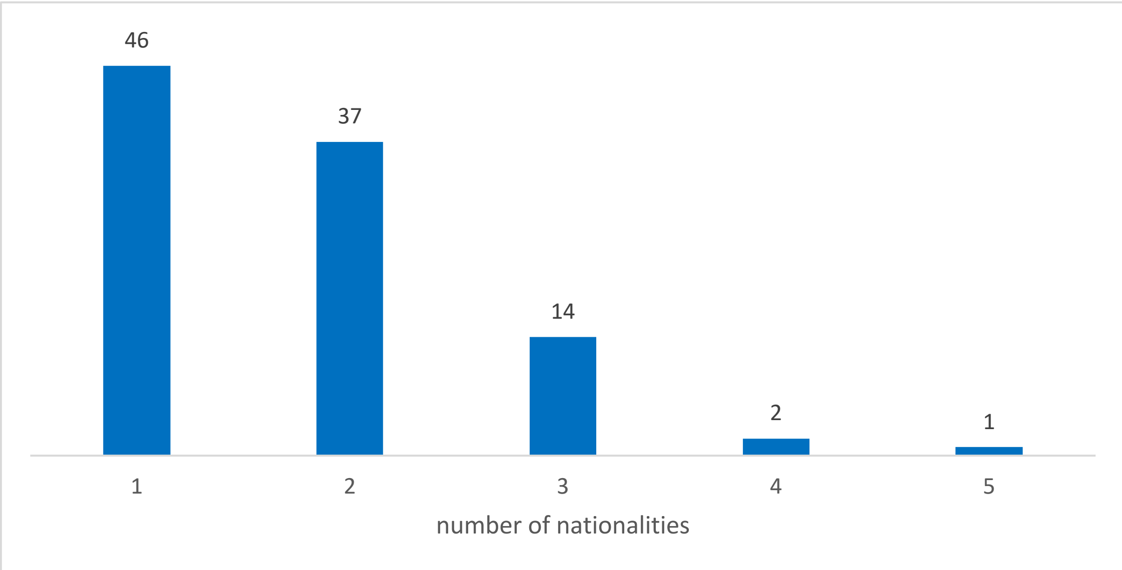
Figure 6: Age distribution of c-suite members



2.2. Nationality

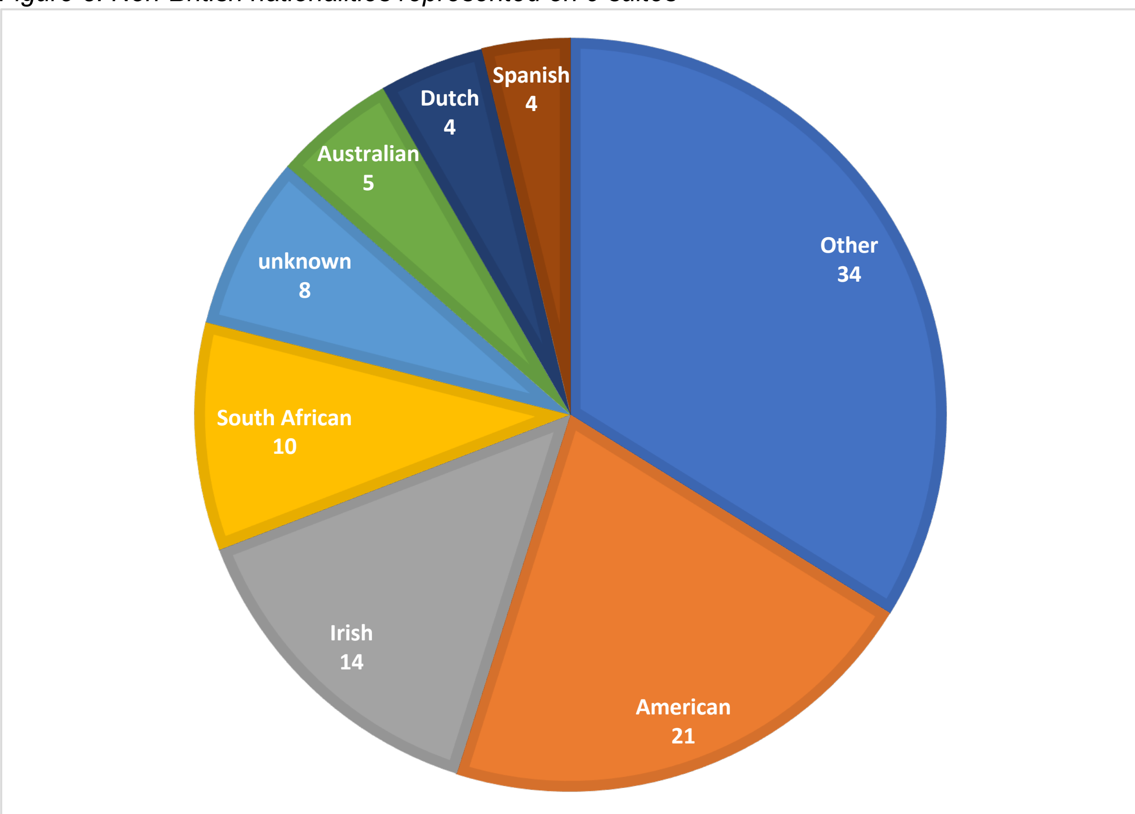
A closer look at the nationalities dominating the c-suite reveals that 64 of the companies in the sample have a c-suite in which British is the dominant nationality. A nationality is considered dominant for these purposes if it outnumbers all other nationalities in the c-suite of that company. There are 25 more companies that have a different dominant nationality. Only 11 companies have no dominant nationality and can therefore have some justification in a claim to having a diverse c-suite from a nationality perspective. Figure 7 shows that nearly half of the companies in the study have just one nationality in the c-suite and 17 with 3 or more.

Figure 7: Count of companies according to number of nationalities in the c-suite



As this study is of FTSE100 companies it is unsurprising that 65% (252) of the sample are British. A variety of other nationalities make up the remaining 35% (118). Figure 8 shows the split of non-British nationalities. There is a prominence of American nationals, which may be explained by the language and similarities between British and American governance systems and the breadth of prominent companies from which c-suite members can gain experience. There are two non-English-speaking nationalities among the most represented: Spanish and Dutch. Many of the most common nationalities can be found grouped together within companies. For example, the Irish companies CRH plc, DCC plc and Smurfit Kappa plc have only Irish nationals on their c-suite and the Mexican company Fresnillo plc has only Mexican c-suite members. Less intuitive concentrations of nationalities include Anglo American plc where the dominant nationality of c-suite is Australian. Anglo America plc is a mining company and, whilst some of its projects and operations are in Australia, it is headquartered in the UK and it has offices in India, China and Singapore only.[12] Most of its mining operations take place in South Africa. Another example is Royal Dutch Shell plc, whose c-suite is dominated by Americans despite the company being an English-Dutch company, with projects not only based out of the Gulf of Mexico but also Malaysia, Philippines, Norway and the UK.[13]

Figure 8: Non-British nationalities represented on c-suites



[12] *Annual Report* (Anglo-American plc, 2017)

[13] 'Major Projects' <www.shell.com/about-us/majorprojects.html > accessed 10 October 2018

2.3. University institution attended

As discussed in Chapter 3, social networks form a distinct part of the capital a director can be considered to bring to a role and, as discussed in Chapter 4, university institution can be an indicator of the networks to which a person has been exposed. It is also an indicator of privilege. It would be expected that a high proportion of the c-suite would have attended a small proportion of universities, representing the most elite. What the data shows is that there is a high concentration of elite universities but also that both elite and non-elite universities are often grouped together.

Figure 9 shows the numbers of c-suite members attending the most popular universities within the sample alongside their university ranking. Only those universities with at least 5 different attendees from among the sample were included. The most popular universities are unsurprising. The University of Cambridge and the University of Oxford are at the top, perhaps reflecting their position at the top of global university rankings.[14] But the subsequent most popular universities show limited correlation with university ranking. The University of Manchester (ranked 54 in the world[15]) is the fifth most popular university, following INSEAD which is unranked in this index (but as a business school is highly relevant)[16] and Harvard ranked 6th.

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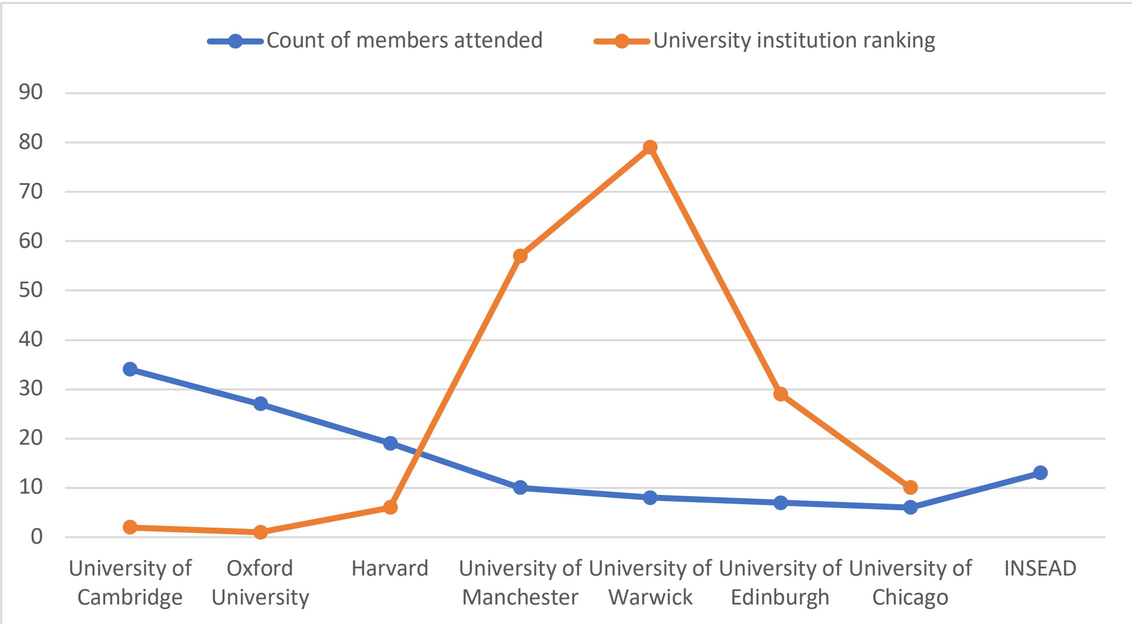
[14] Marc Galanter and Simon Roberts, 'From Kinship to Magic Circle: the London commercial law firm in the twentieth century' (2008) 15 *International Journal of the Legal Profession* 143

[15] 'Times Higher Education World University Ranking' (*The Times,* <https://www.timeshighereducation.com/world-university-rankings/2017/world-ranking#!/page/0/length/25/sort_by/rank/sort_order/asc/cols/stats> accessed 19/07/18

[16] INSEAD is a business school and in 2019 was ranked number 3 globally for its MBA (http://rankings.ft.com/businessschoolrankings/insead accessed 22 June 2019)

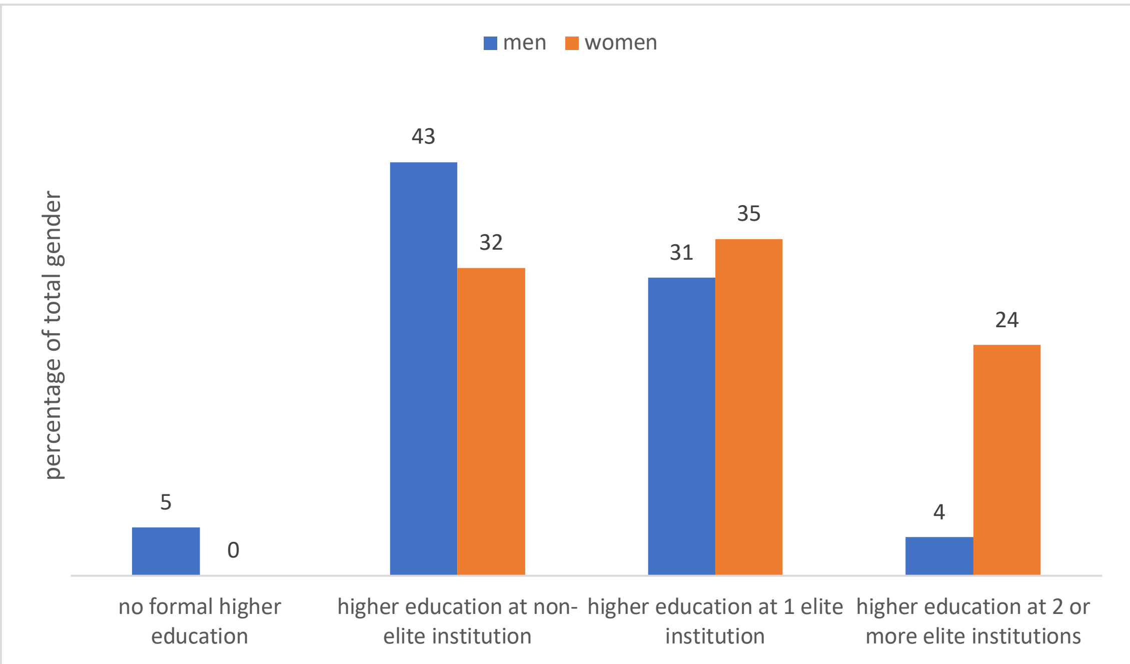
Further analysis of the data revealed that 21 of the FTSE 100 companies had directors who shared an alma mater. Whilst frequently the common university was Oxford or Cambridge, other connections of note include the CEO and CFO of AstraZeneca both attending HEC Paris, the CEO and Chairman of Land Securities both attending the University of Reading and the CFO and Chairman of Rentokil Initial both alumni of the University of Manchester.

Figure 9: Most common universities



Looking specifically at Oxbridge from the perspective of gender revealed that 30% of the sample of women went to Oxbridge universities compared to 15% of the men. A more high-level analysis of university attendance and prestige is also revealing. Grouping universities in terms of their status and ability to confer or indicate privilege is not novel. Finkelstein did this in a study of power, by attributing scores to individuals according to whether or not they attended elite institutions.[17] Universities are categorised as either elite or non-elite. Scores for each individual are calculated by counting the number of elite and non-elite institutions attended.[18] The findings are set out in Figure 10. The results show that while 5% (14) of men in the c-suite have attended no formal higher education institution, there are no women without formal higher education. Also, most c-suite men have a graduate degree from a non-elite institution, whereas the majority of women c-suite members have a graduate and postgraduate degree from an elite institution.

Figure 10: Attendance at elite institutions by gender



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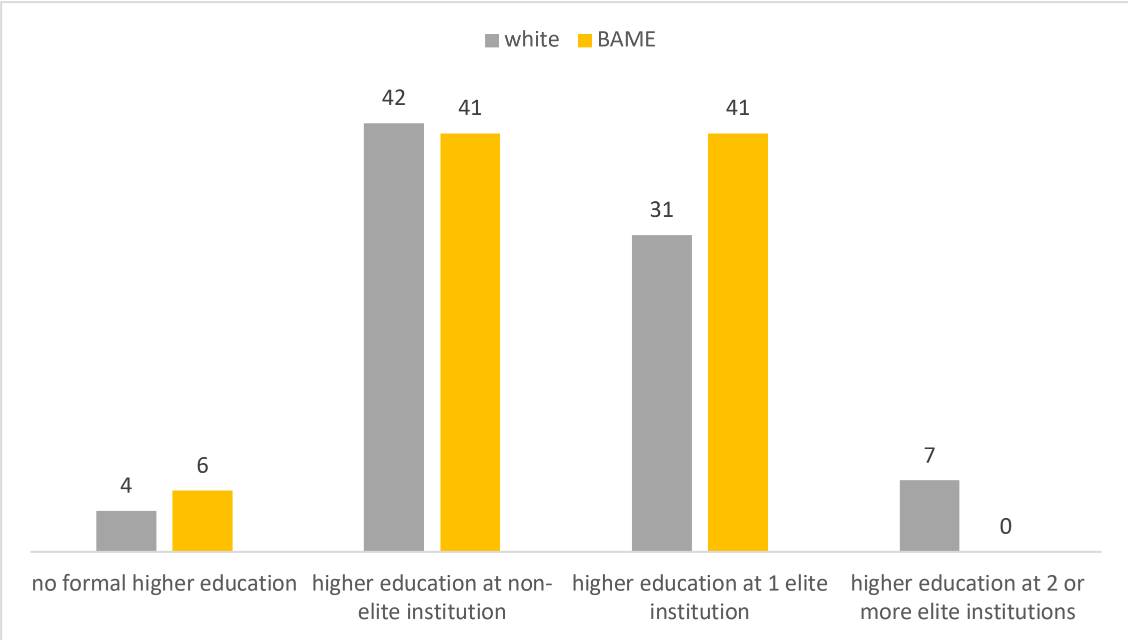
[17] Sydney Finkelstein, 'Power in Top Management Teams: Dimensions, measurement, and validation' (1992) 35 *Academy of Management Journal* 505

[18] Elite institutions were compiled by combining of the 2018 Times Higher Education UK Top 10, World top 20 and the Financial Times World Business School rankings top 10. This constituted a list of 29 institutions as follows: Oxford University, University of Cambridge, Imperial University, University College London, London School of Economics, University of Edinburgh, Kings College London, Manchester University, Bristol University, Glasgow University, California Institute of Technology, Stanford University, Massachusetts Institute of Technology, Harvard, Princeton, University of Chicago, ETH Zurich, University of Pennsylvania, Yale, Johns Hopkins, University of Colombia, University of California LA, Duke, University OF California Berkeley, Cornell, Northwestern, INSEAD, Wharton, London Business School.

From an ethnicity perspective (see Figure 11), there are no BAME c-suite members with attendance at 2 or more elite institutions but, proportionally, there are more BAME individuals educated at one elite institution than white individuals.

Figure 11: Attendance at elite institution by ethnicity



2.4. Family life

As set out in Table 9, of the 398 c-suite members in the sample, at least 55% (217) of them are or were married. The status of the other 45% (181) was unknown.

Table 9: Marital status by gender

Marital status	Women	Men	Total Sample	UK Population[19]
Married, divorced or widowed	57% (21)	54% (196)	55% (217)	65%
Unknown	38% (14)	45% (164)	43% (173)	0%
Unmarried	5% (2)	0% (2)	0% (4)	35%

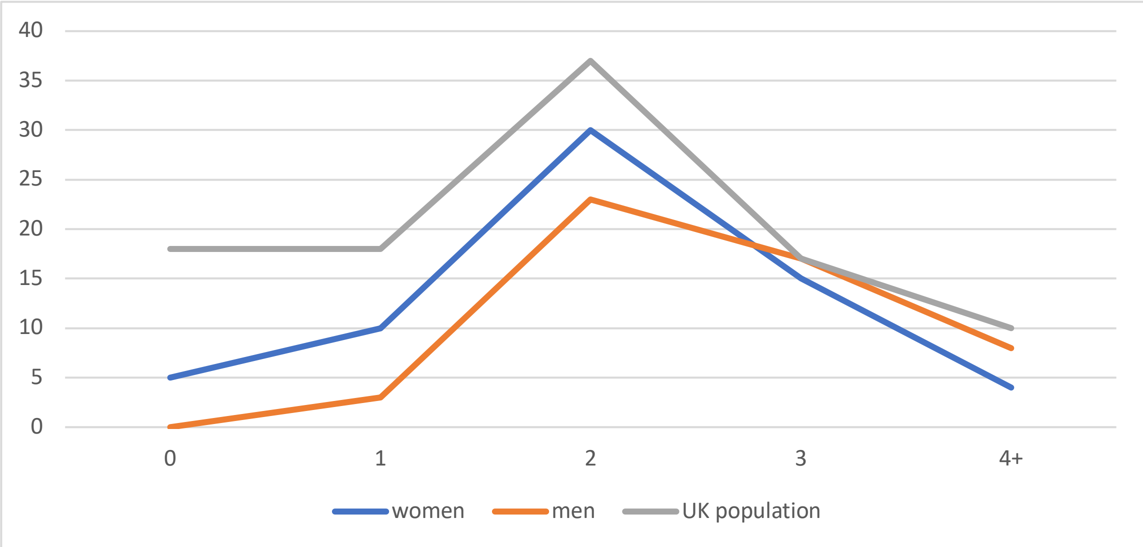
Of those that were known to be married, 93% (202) were known to have children, the average number of children being 2.7. This is substantially higher than the number of children in the average UK family, the latest data calculating this to be 1.9 children per woman.[20] However, the UK statistics figure accounts for everyone, while the c-suite figure accounts only for those for whom there was publicly available information. When this is added to the likelihood that data about the presence of children is more readily available than the absence of children in an individual's life, it must be assumed that the c-suite figure is likely to be skewed towards a higher number of children and may have a low degree of accuracy.

On an individual level, there are two men in the sample who have 7 children and one who has 8. Figure 12 below shows the percentage frequency of number of children amongst the sample, broken down by gender, for whom data was available (it was not available for 46% (170) of men and 38% (13) of women). It shows that a greater proportion of women have 0-2 children and the opposite is true for having 3 children and over. There are more directors who have four

[19] Office for National Statistics, *Population estimates by marital status and living arrangements* (2016)
[20] Office for National Statistics, *Childbearing for women born in different years, England and Wales: 2016* (2016)

children than those who have 1. However, given that the number of children is unknown for a large proportion of this sample, it is not possible to place much significance on this information.

Figure 12: Number of children by gender and UK population[21]



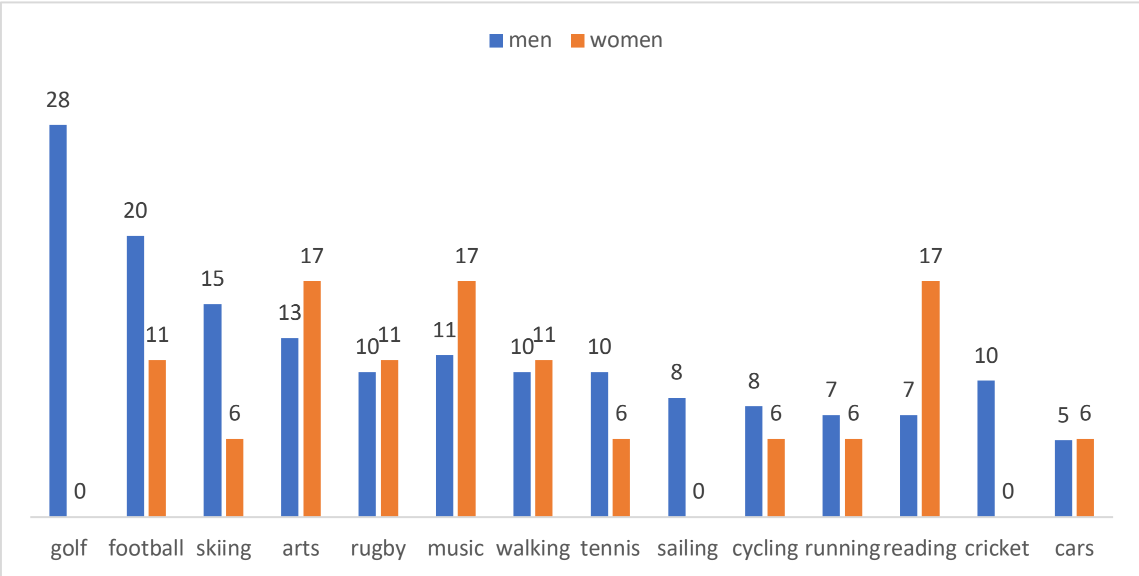
2.5. Hobbies/personal interests

Analysis of how c-suite spend their personal time was limited because data was only available on 47% (184) of the sample. There was insufficient data on the BAME individual's hobbies for them to be included in this analysis. However, based on the information available, and as Figure 13 below shows, the most popular pastime was golf, with 28% (42) of men claiming it to be a hobby. In contrast, 0% of the women for whom data was available reported golf as a pastime. For women, the most popular pastimes were music, reading and the

[21] The UK population data was taken from Office for National Statistics, '*Childbearing for women born in different years, England and Wales: 2017*', (2017) and relates to average family size and estimated family size distribution for women born in 1972 who have completed their childbearing

arts in equal proportion. Music and the arts were both in the top five hobbies for men also.

Figure 13: Most common hobbies



2.6. Name

Table 8 below sets out some interesting characteristics of the 3 most common names in the sample for each gender. According to the Office for National Statistics, John was the most popular boys name in England and Wales for several years until about 1950, about 67 years before the census date of this research.[22] The most common names for women do not correspond as well with the most popular names data from the Office for National Statistics report. There are more people in the c-suite group named John than the total number of BAME c-suite members in the entire FTSE100.[23]

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[22] 'Baby names since 1904' (*The Office for National Statistics,* <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/articles/babynamessince1904howhasyoursperformed/2016-09-02> accessed 12 October 2018

[23] Similar research has been reported in the media in recent years, such as: Jennifer Rankin, 'Fewer women leading FTSE firms than men called John'(The Guardian 6 March 2015)

Table 10: Demography of c-suite

Name	John	David	Andrew	Anne	Alison	Jessica
Total number	6% (23)	3% (13)	4% (14)	1% (5)	1% (3)	1% (2)
Average age	62	59	55	55	56	49
Most common role	Chairman	CEO	CFO	CFO	CEO	CFO
Percentage with titles	18% (4)	8% (1)	(0)	(0)	33% (1)	(0)

3. Employment background

3.1. Entry route to the c-suite

As set out in Figure 14, there is no substantial difference between the entry routes to the c-suite by gender. In terms of ethnicity, a greater portion of BAME individuals gain appointments via the internal route. There are no women founding c-suite members, but 12% (2) of BAME individuals are founder owners and 3% (9) of men are.

<https://www.theguardian.com/business/2015/mar/06/johns-davids-and-ians-outnumber-female-chief-executives-in-ftse-100> accessed 21 August 2018, Josie Cox, 'More people called David and Steve lead FTSE 100 companies than women and ethnic minorities' *The Independent* (8 March 2018) <https://www.independent.co.uk/news/business/news/women-ftse-100-gender-discrimination-pay-gap-board-representation-chief-executive-a8244361.html> accessed 21 August 2018, Claire Zillman, 'Men named ‘David’ outnumbered all of Britains Top Women CEOs last year' *Fortune.com* (4 August 2017) <http://fortune.com/2017/08/04/ftse-100-ceo-pay-women/> accessed 21 August 2018

Figure 14: Entry route to the c-suite by gender and ethnicity

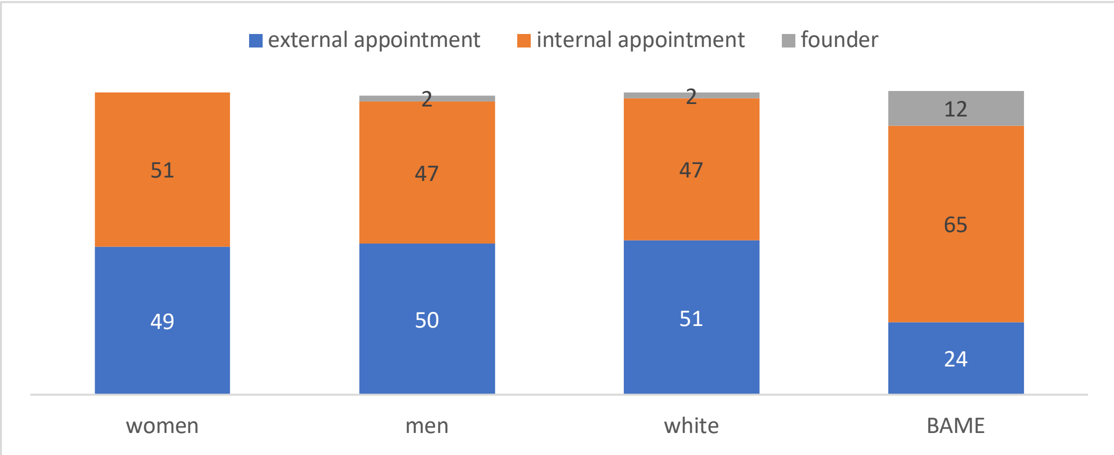
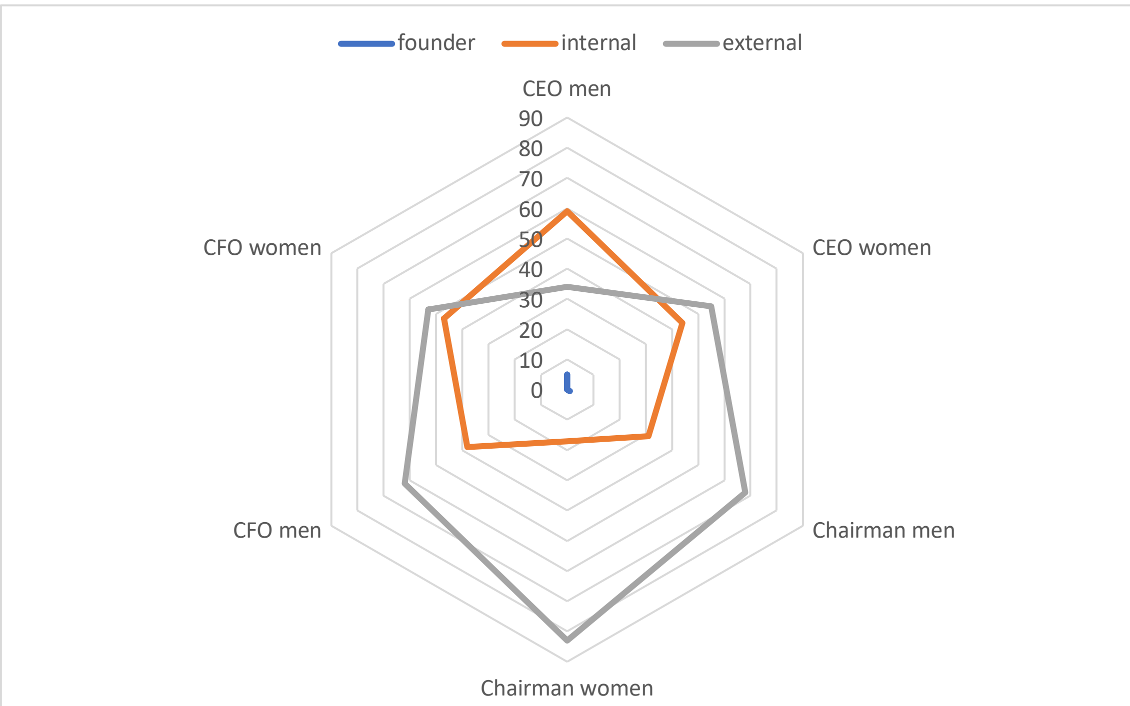


Figure 15 below shows that while the majority of male CEOs obtain their position via the internal route, most women CEOs get there through the external route. For Chairmen the opposite is true, and the difference is much more pronounced. The data shows that the vast majority of male Chairmen obtain their roles via the external route, whereas almost all women Chairmen obtain those positions internally.

Figure 15: Entry route by role and gender



3.2. Education merit

In a novel approach to the study of education levels, the data was coded to score each individual on their level of educational attainment. Each sample member was graded according to number and level of higher education achievements obtained according to criteria devised as part of this study.[24] This approach was developed to enable better comparison of the backgrounds of the c-suite sample. No adjustments were made on the basis of the institutions from which the qualifications were obtained.[25] The total scores were calculated, and the results are set out in Figure 16. C-suite member scores are similar for both genders, the most common score is 3 (which could correspond to a BA plus an MBA, for example). However, for men there is a substantial number with a score of 1 (which will likely correspond to a BA), whereas the proportion of women with such a score is lower. Overall, women appear to be proportionally more likely to have scores of 3 and above than men. This must be considered alongside the fact that the vast majority of women are in CFO roles, where professional accounting qualifications are the norm, although not a requirement.

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[24] More detail on this can be found in Chapter 5 page 176

[25] University institution is considered in relation to privilege discussed at page 274. However, it is acknowledged that institution relates to much more than just privilege and there will be a difference in educational attainment according to the institution from which the qualification was obtained. However, without much more information such as subjects taken, university speciality, grades obtained and teaching it was felt an attenuation of qualification score according to institution could not be effectively achieved here.

Figure 16: Percentage of each gender according to education merit score

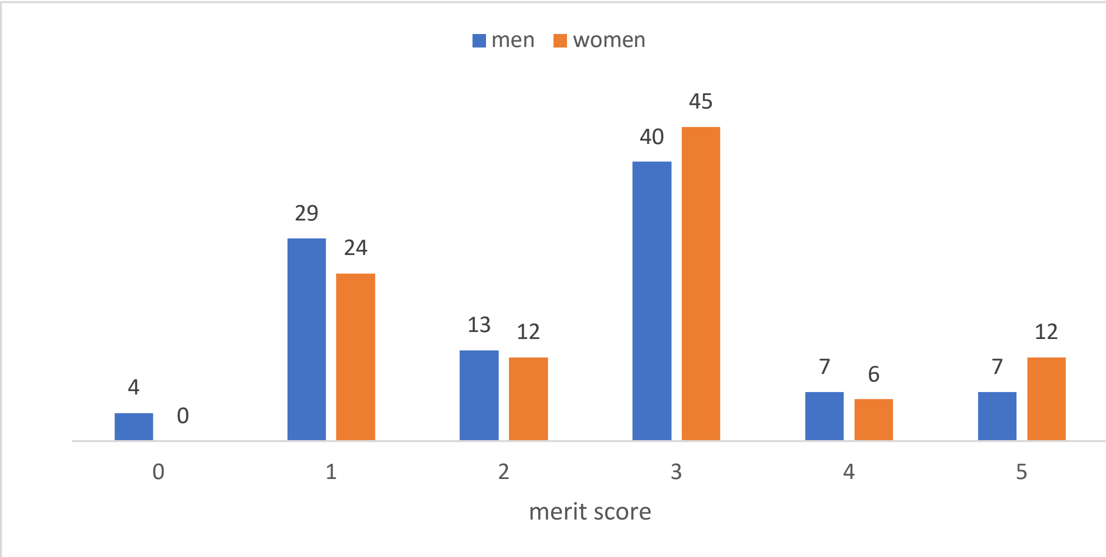


Figure 17 shows education merit scores from an ethnicity perspective and shows a notable increase in the proportion of BAME individuals with a score of 3 than for White individuals. White individuals are proportionally more likely to have a score of 2 or below.

Figure 17: Percentage of each ethnicity according to education merit score

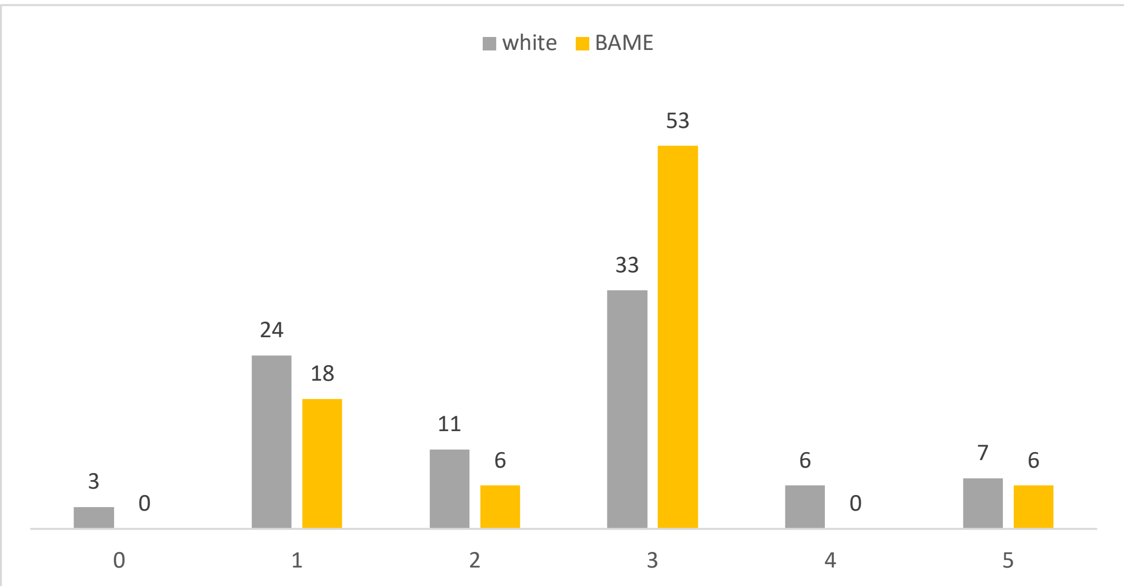
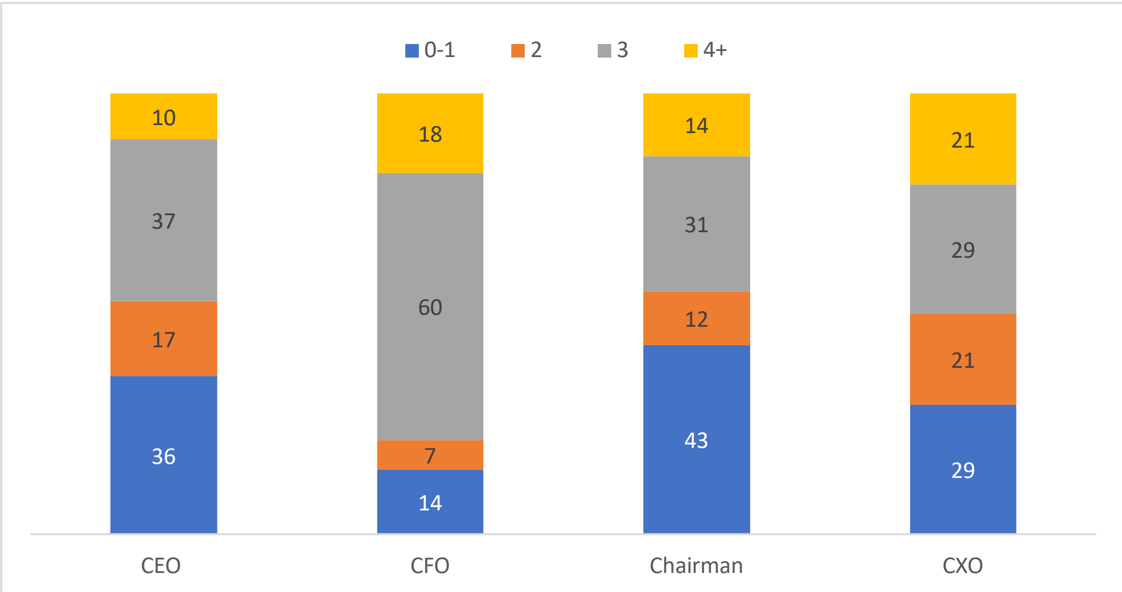


Figure 18 shows an analysis of qualification scores by role. It reveals that Chairmen have the lowest education merit scores amongst the key roles, closely followed by CEOs. For CFOs, qualifications are more common, with over 75% (71) (for which information was available) having a score of 3 or above. While the total number of Executive Chairman is small (and for this reason they are not included in Figure 18), they have the largest proportion of low education merit scores, with 75% (3) having a score of 0 or 1.

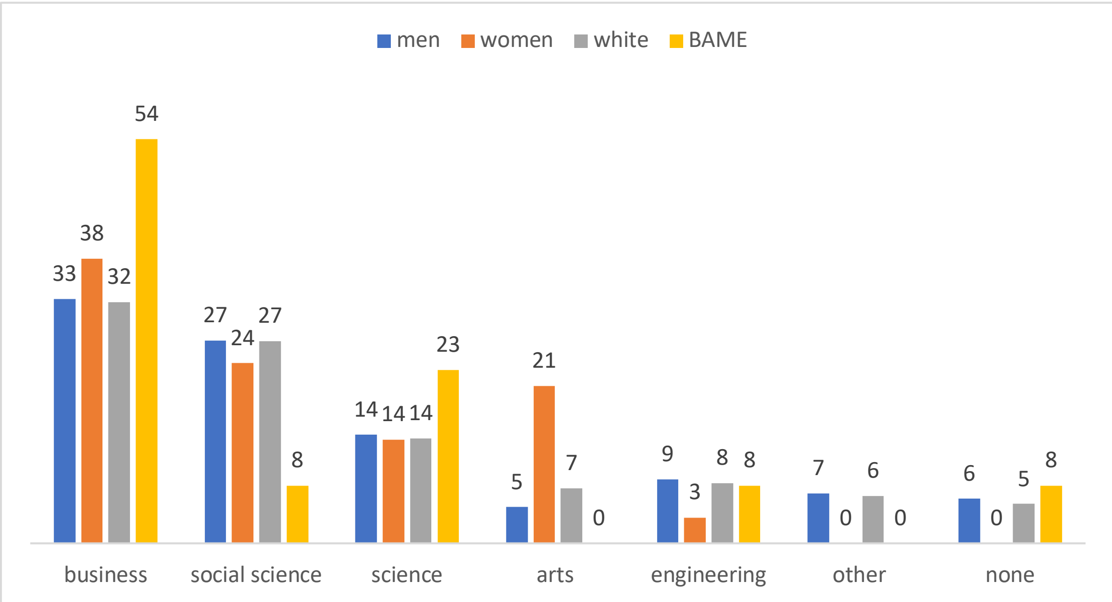
Figure 18: Percentage of each merit score by role



3.3. Education – subject choice

Figure 19 details the subject choices for the highest educational attainment of each individual in the sample, where this information was available. It sets out the percentages of each gender and ethnicity grouping by each subject area. Business related subjects are the most common for each category of individual. Social sciences are the second most common for all but BAME individuals, whose second most common subject is science. The percentage distribution is remarkably similar for both genders across most subjects except that the proportion of women with arts qualifications is considerably higher than for men. In contrast, men are much more likely to hold engineering or other qualifications, as well as none at all.

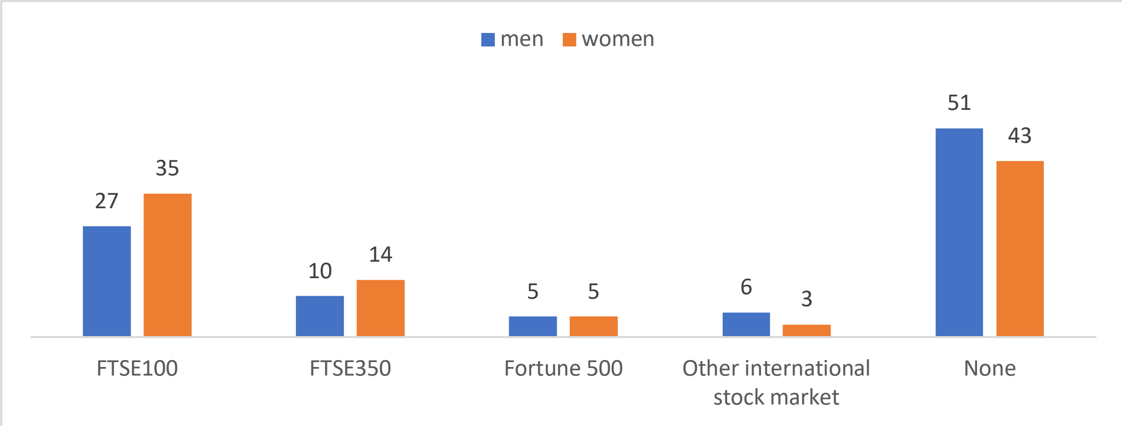
Figure 19: Percentage of gender and ethnicity by subject choice



3.4. Previous board experience

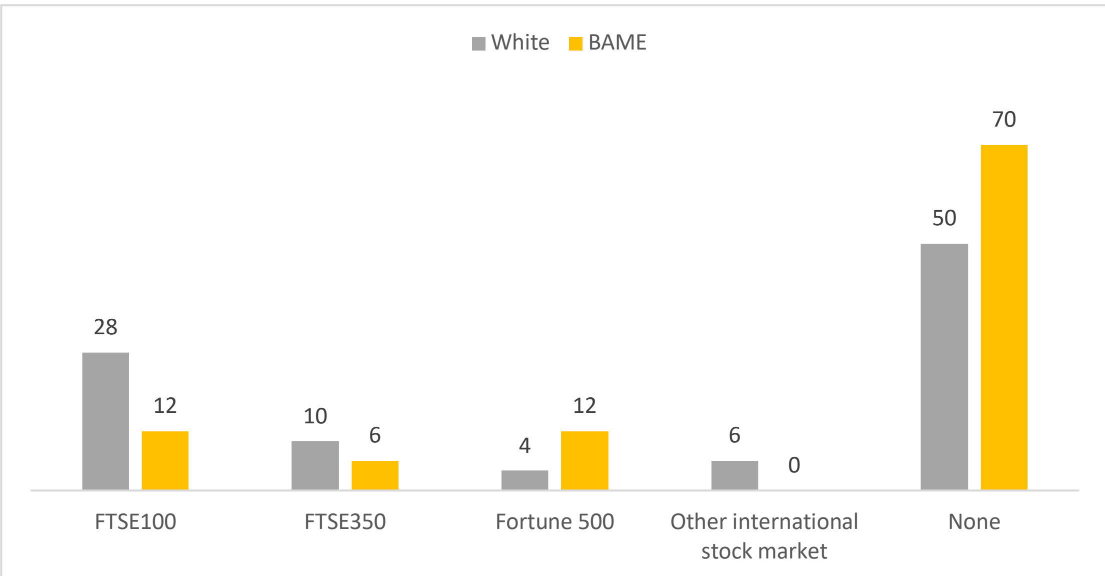
Figure 20 sets out the previous board experience of c-suite members by gender. The data shows 7% more women c-suite members have FTSE 100 experience than men. Women also have proportionally more FTSE350 experience. In contrast, 8% more men than women have no prior board experience in any of these categories.

Figure 20: Percentage of gender with different categories of board experience prior to current role



Looking at the data from an ethnicity perspective, Figure 21 shows that a higher proportion of White c-suite members have FTSE100, FTSE350 and other international stock market experience than BAME c-suite members. Whereas there are proportionally more BAME c-suite members than White c-suite members with Fortune 500 experience. The most substantial difference is in relation to those with no prior board experience in these categories, of which there are 20% more BAME individuals than White individuals. Again, the paucity of BAME individuals in the sample means little can be concluded from this.

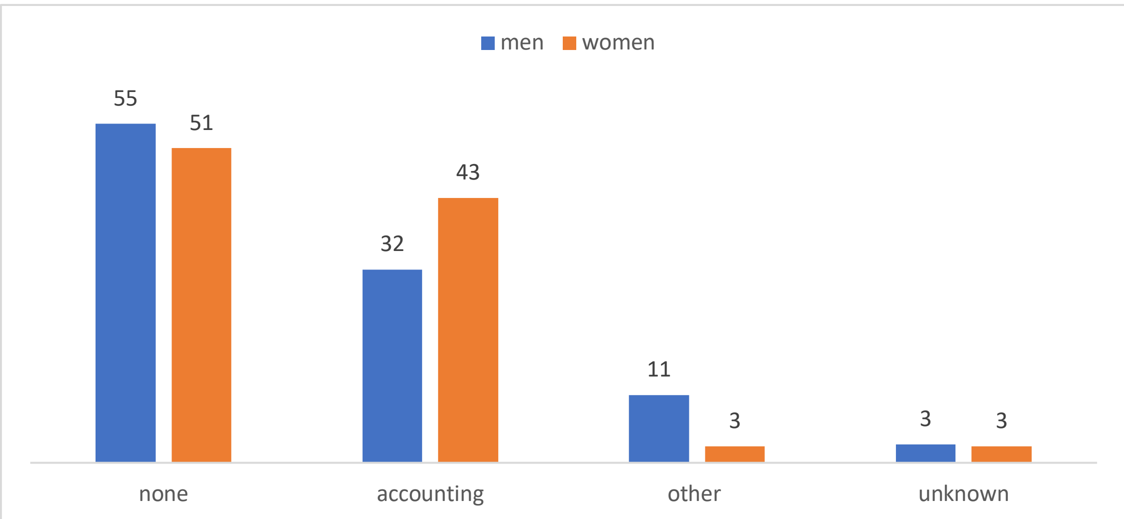
Figure 21: Percentage of ethnicity with different categories of board experience prior to current role



3.5. Professional qualifications

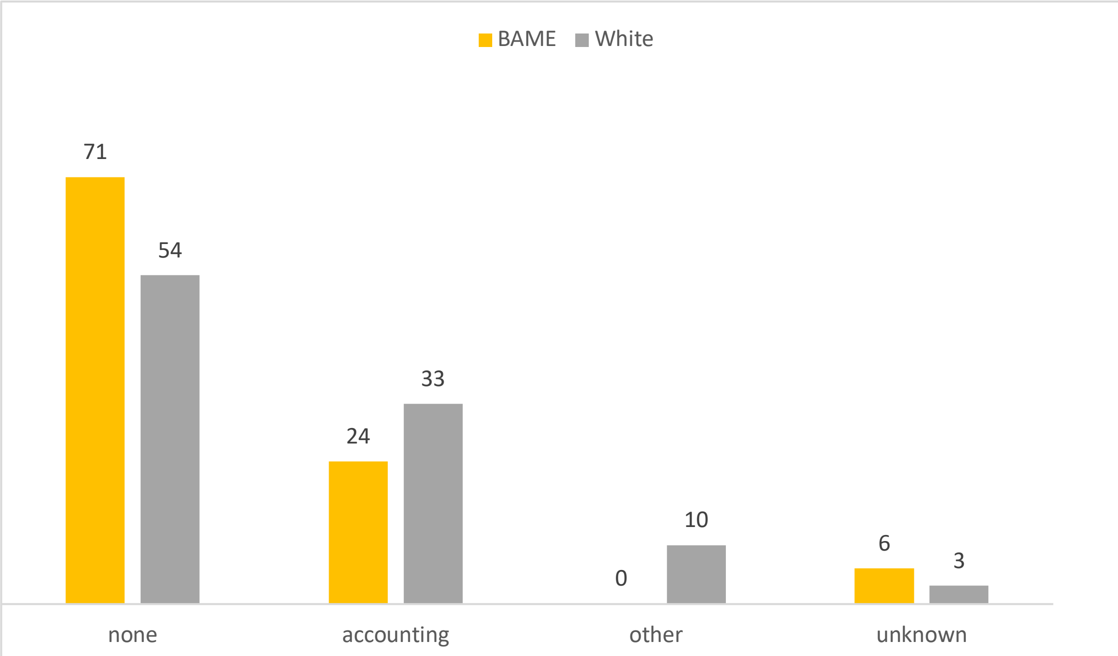
Figure 22 below shows the number of directors holding the most common types of qualifications. The majority (55%) of c-suite members have no professional qualifications. There is little gender difference, with 51% (19) of women having no professional qualifications compared to 55% (200) of men. The most common type of qualification is an accounting qualification. This is unsurprising given the relevance of this knowledge to the role of the CFO. Looking at the sample of women there is a higher proportion of CFOs than there is within the sample of men, as such it is also unsurprising that a larger proportion (43%) of women have accounting qualifications than men (31%). The data shows it is less common for women in the c-suite members to hold professional qualifications that are classified as "Other" than it is for men. Only one woman holds a qualification in something other than accounting whereas men hold engineering, legal, actuarial, surveying and a number of other professional qualifications.

Figure 22: Percentage of each gender by professional qualifications



As Figure 23 shows, there are more BAME individuals with no professional qualifications than White individuals, with about 10% fewer BAME c-suite members holding accounting or other qualifications respectively.

Figure 23: Percentage of each ethnicity by professional qualifications



3.6. External appointments

The Code states that "full-time executive directors should not take on more than one non-executive directorship in a FTSE100 company or other significant role".[26] An analysis of the number of external appointments by gender and ethnicity reveals that the distribution of number of external for-profit appointments by gender for CFOs is comparable. This is not the case the for the CEO, Chairman and CXO positions where there is a greater proportion of women who have one or more external appointments (Figure 24). There are only 2 BAME c-suite members who exceed this Code recommendation, one of whom is a Chairman. As Chairmen are typically part-time non-executives, this provision does not apply to them and there are no specific requirements in the Code related to the number of boards they can sit on. However, ISS (Institutional Shareholder Services) states that Chairmen should not hold another executive position, more than one additional chairmanship or more than three non-executive directorships.[27]

[26] UK Corporate Governance Code 2018 (2.15)

[27] Institutional Shareholder Service, '*Director overboarding (UK & Ireland)'* (2018). ISS are a service that make recommendations to institutional shareholders in order to improve corporate governance for their financial benefit. As such, boards may pay attention to their recommendations in order to keep their institutional shareholders happy.

Figure 24: Percentage total of each gender in each role with 0, 1, 2 and 3+ current external appointments

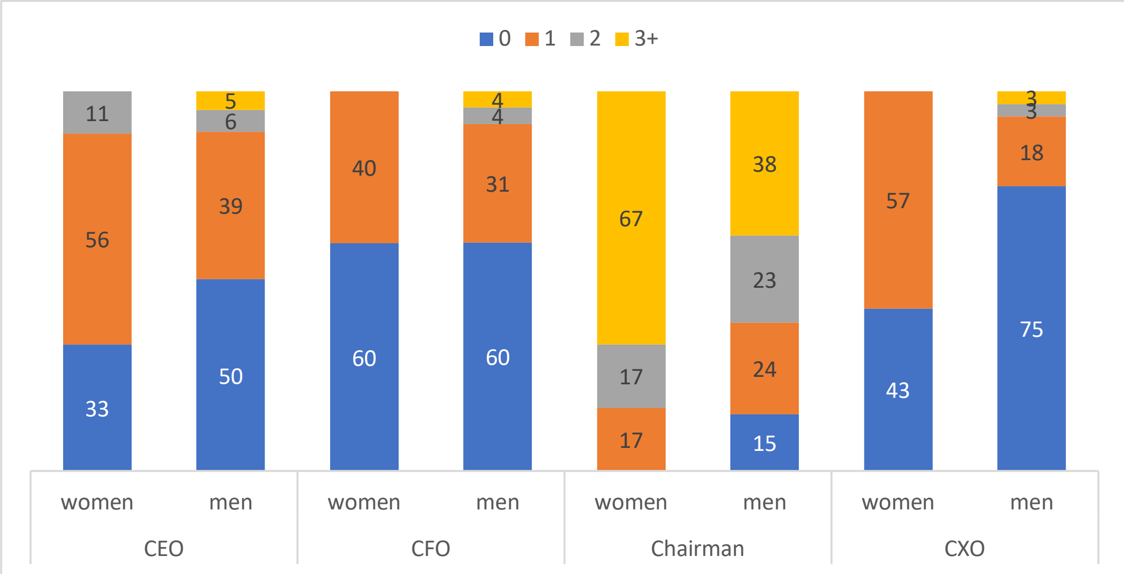


Figure 25 shows that BAME individuals have proportionally fewer appointments than white individuals across all roles except that of CXO.

Figure 25: Percentage total ethnicity in each role with 0, 1, 2 and 3+ current external appointments

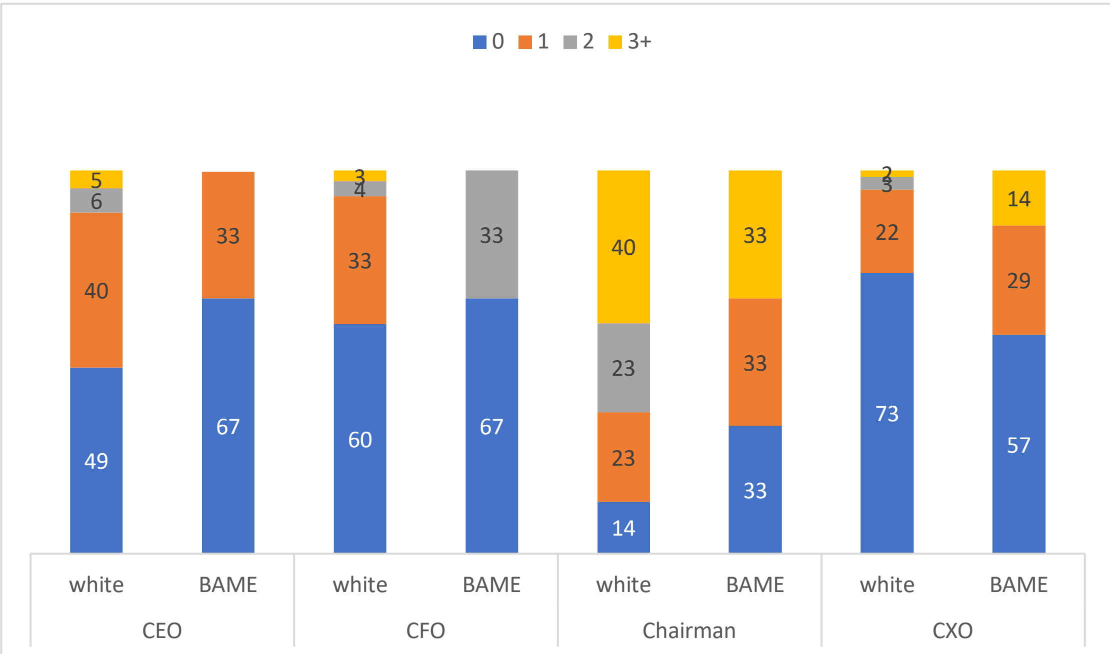
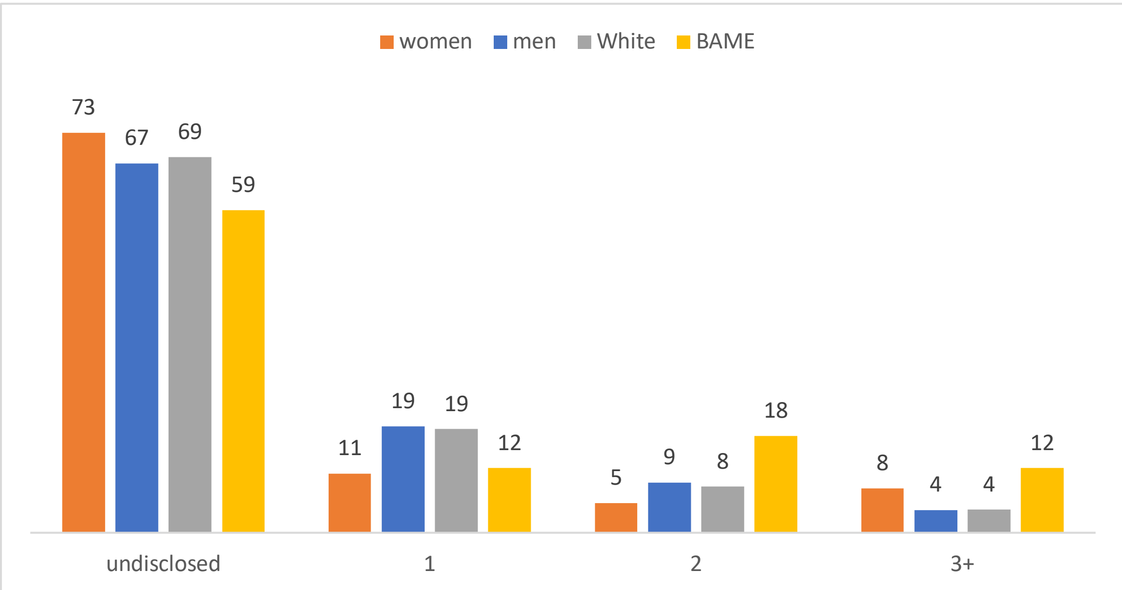


Figure 26 relates to non-profit external appointments and reveals that the majority of c-suite members have not disclosed that they sit on any non-profit boards. Of those that have disclosed non-profit roles, proportionally, there are more BAME men with 2, 3 or 4 external non-profit appointments than women or White men. Women have proportionally the lowest number of members with 1 or 2 appointments. Women also show the highest proportion of undisclosed non-profit experience but double the proportion of members with 3 or more non-profit engagements than men.

Figure 26: Proportion of non-profit engagements by gender and ethnicity



3.7. Public profile

Many of the individuals in this study are quite well-known. Who's Who, a database of influential people in the UK, features 27% (107) of the individuals in the sample. Gaining entry into this database is a closely guarded secret but,[28]

[28] Anon, 'How to get in Who's Who' *BBC* (<http://news.bbc.co.uk/1/hi/uk/1119959.stm> accessed 6 August 2019

according to the publisher, its objective is “to hold up a mirror to show an up-to-date image of the people of influence or distinction and interest in contemporary British society”.[29] As set out in Table 10, of those c-suite members in Who’s Who, 94% (101) are White men. There are 6 women from the sample in the database, accounting for 16% of the total sample of women. There are no BAME individuals from this sample in Who’s Who. Given the uniqueness of their position, their lack of membership in Who’s Who is surprising. It is also surprising that so few women are featured. However, what we do not know from this statistic is whether any of this sample were asked to be included but declined.

Table 11: Entries in Who's Who by gender and ethnicity

	Men	**Women**	**White**	**BAME**
Percentage of total in Who’s Who	94% (101)	6 % (6)	100% (107)	0 % (0)
Percentage of class	30% (101)	16% (6)	28% (107)	0% (0)

4. Power

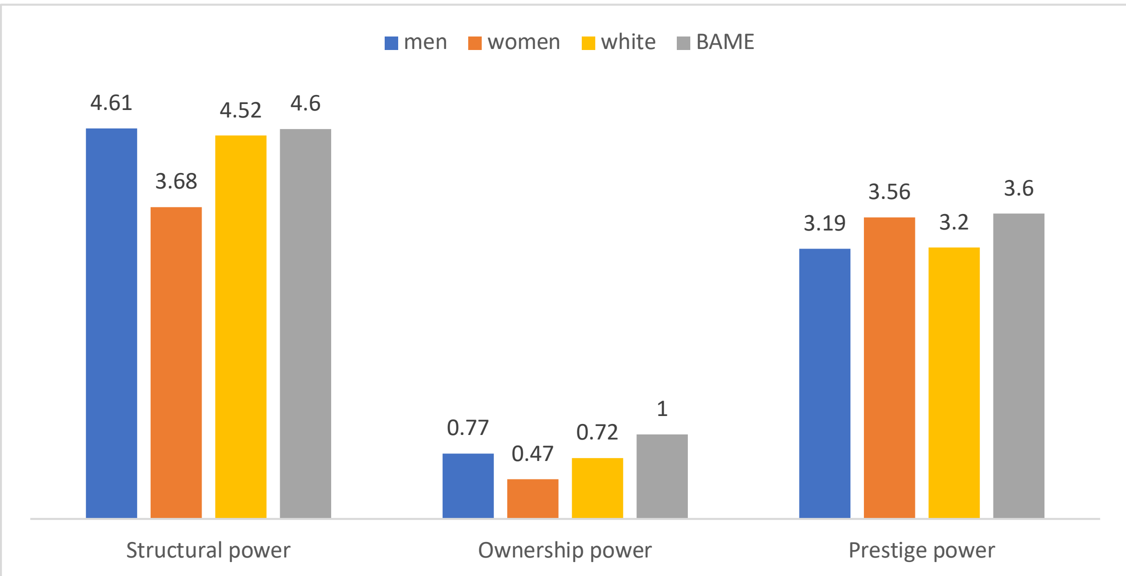
An analysis of the dataset also involved an assessment of the levels of power of each individual in the FTSE100 c-suite using a system of scoring across a variety of factors from an individuals’ background and CV.[30] These scores were then totalled and used to compare power levels across the c-suite and identify if there

[29] Neil Tweedie, 'Who’s Who and Why oh Why?' *The Telegraph* (1 December 2008) accessed 26 October 2018
[30] Details of this process can be found in Chapter 5, page 187 onwards

were any trends in the distribution of power. Three types of power were examined: structural, ownership and prestige power.[31]

The first level of analysis was to compare the distribution of each type of power by gender and ethnicity. This was done by taking an average score for each group. As can be seen in Figure 27 women have lower levels of structural and ownership power when compared to men. BAME individuals have higher levels of all three types of power, but the difference is most pronounced in respect of prestige power. This may be influenced by the fact that there are a small number of BAME individuals who are very powerful, for example the Darwazah family who control and run Hikma plc.[32]

Figure 27: Overall power scores



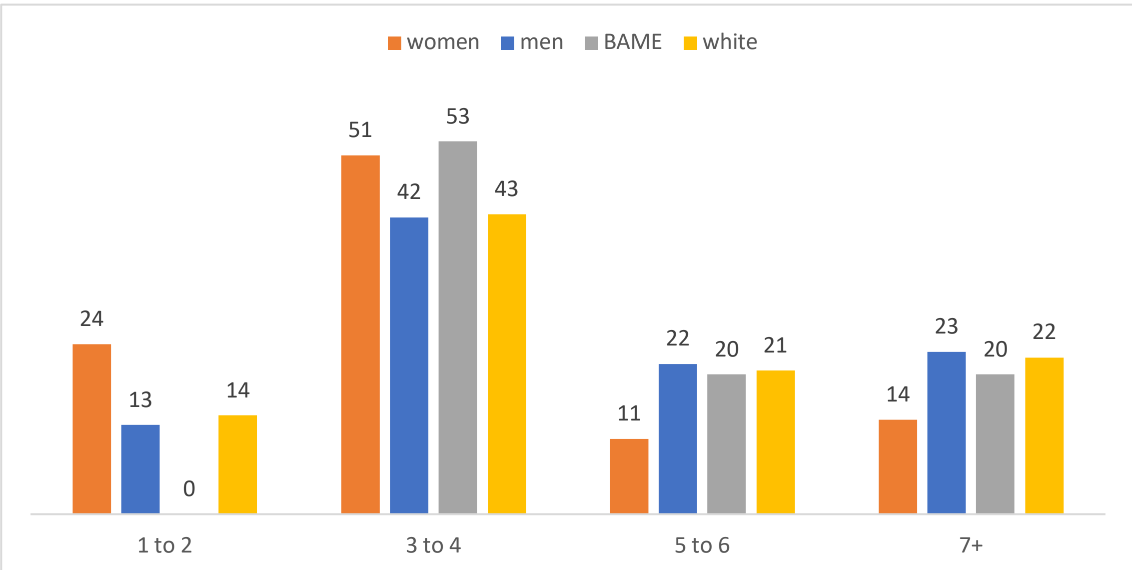
[31] More details on this can be found in Chapter 5. A total power score has not been calculated for two reasons: 1) there are types of power which have been excluded from this study, such as expertise (see page 188) ; and 2) the weight of the different powers varies considerably, e.g. ownership power may be more valuable than power associated with attendance at elite institutions. Any attempt to calculate a total power score would likely be misleading.

[32] *Annual Report* (Hikma plc, 2017)

4.1. Structural power

Figure 28 considers structural power in the c-suite in more detail. Proportionally, more women than men have scores in the lower half of the spectrum (a score of 1, 2, 3 and 4). In contrast and at every increment, a greater proportion of men than women c-suite members have scores of 5 and above. This may be unsurprising given women c-suite members consistently rank lower in the hierarchy of the c-suite than men. Figure 28 also shows that, proportionally, BAME individuals largely reflect White individuals in their scores of 5 or above, but there are 14% of White individuals with a score of 1 to 2, compared to no BAME individuals with such a score. The greatest proportion of BAME c-suite members have scores in the low-middle of the range.

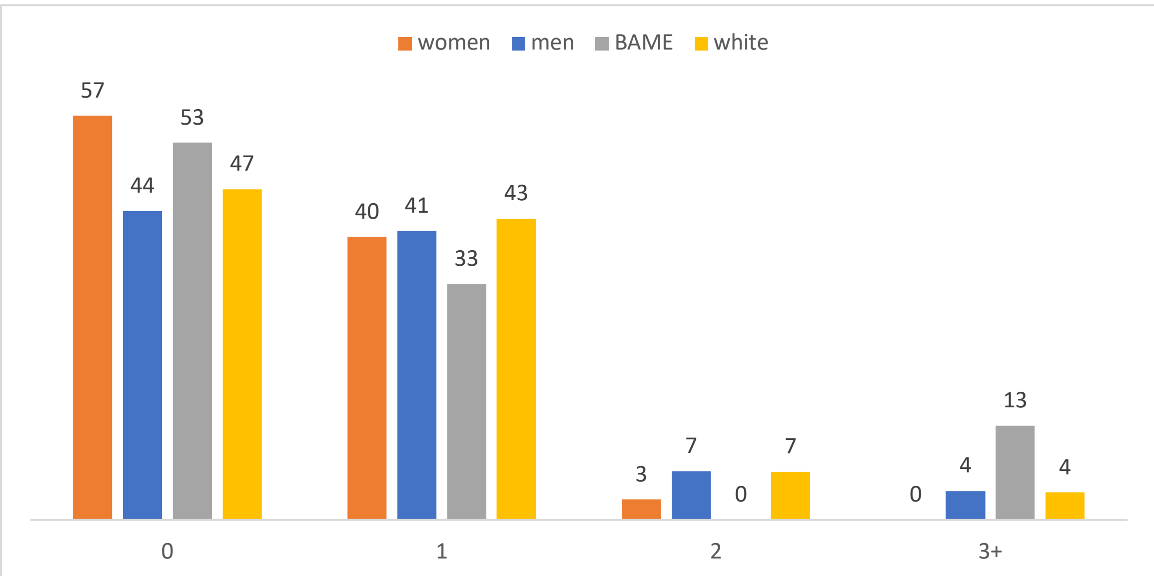
Figure 28: Percentage of each gender and ethnicity by structural power score



4.2. Ownership power

Ownership power not only represents whether or not a person is a founder or related to a founder, but it also signifies the level of ownership in terms of shareholding. As seen in Figure 29, it is proportionally more common for women to have ownership power scores of 0 than it is for men, who have a higher proportion of scores of 2 and above. There are no women founders. Carolyn McCall who owns 0.1% of the shares in EasyJet plc[33] is the only woman c-suite member in the FTSE100 to own more than 0.09% of their company. There is a substantial proportion of BAME individuals with high levels of ownership power, this relates again to the Darwazah family (founders of Hikma plc). The size of the BAME sample precludes any reliable conclusions being drawn in this respect.

Figure 29: Distribution of ownership power



[33] *Annual Report* (Easyjet plc, 2017)

4.3. Prestige power

Prestige power is a score given to each director according to the elite (or otherwise) nature of their university institution, their prior board experience (in both count and FTSE or other ranking) and a count of their non-profit experience. As can be seen in Figure 30, the greatest concentration of prestige power for men is 3 points, after which the proportion of men in the higher brackets' declines. In contrast, women have a peak at 2-3 prestige points and another peak at 6+ points. There is a greater proportion of men with prestige scores of 0-1 than with scores over 6. The opposite is true of women. The largest proportion of BAME men have over 6 points.

Figure 30: Distribution of prestige power

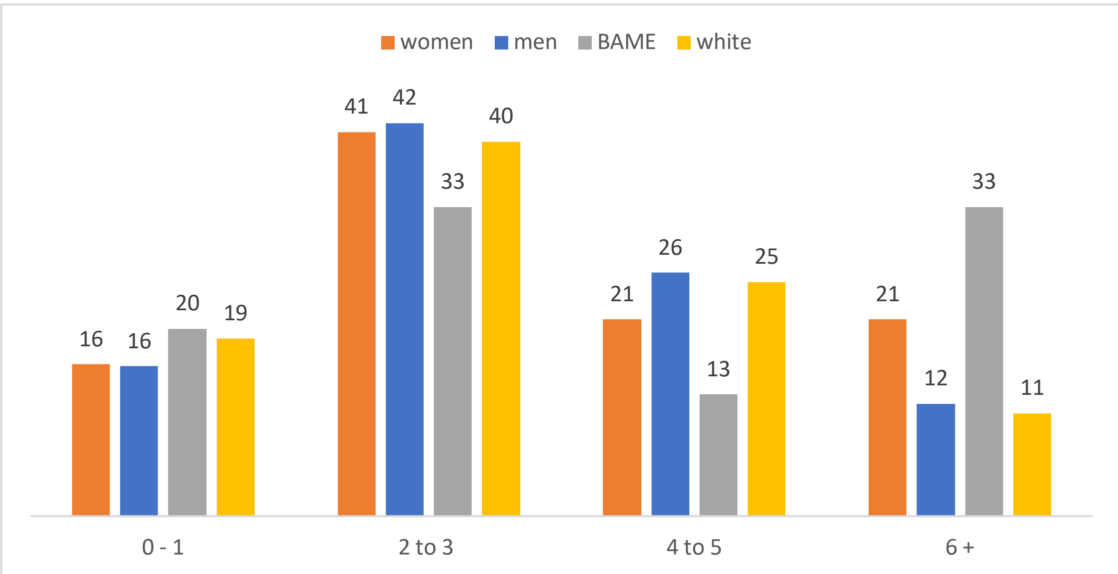
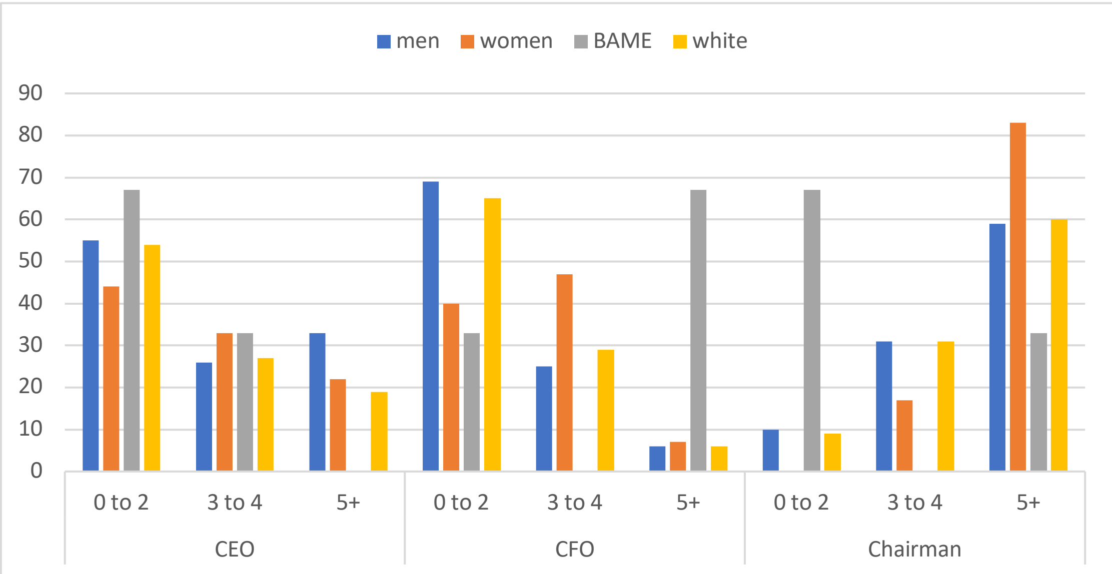


Figure 31 shows prestige data split by role.[34] The data shows that Chairmen are likely to have the largest proportion of high prestige scores, except in relation to BAME individuals in which category the Chairmen most commonly score between 0 and 2. For CFOs, the largest proportion of White individuals can be found with lower prestige scores. In contrast, the highest proportion of BAME individuals are in the high prestige CFO grouping or the low prestige CEO and Chairmen groups. The largest proportion of women can be found in the high prestige Chairman category whereas the highest proportion of men are in low prestige CFO roles.

Figure 31: Percentage prestige score of each gender and ethnicity according to role.



[34] Executive Chairmen have been excluded from this analysis as there are too few of them. CXOs have also been excluded because of the high proportion of individuals in this group for whom the information was unavailable.

5. Summary

This Chapter has reviewed the data gathered about the FTSE100 c-suite members in 2016 and 2017. The findings show a number of interesting similarities and differences in the background of the individuals studied. Within the sample there are trends according to gender and ethnicity. These findings are analysed and discussed in detail in Chapter 8.

The following chapter will review data gathered about the FTSE 100 companies, focusing particularly on boardroom diversity statements and statistics in order to see how these align with the Code guidance. It will also enable a comparison between c-suite diversity and corporate diversity positions, according to the relevant annual statements.

Chapter 7

Analysis of FTSE 100 company diversity information

This Chapter presents the findings of the second part of the empirical study carried out in relation to FTSE100 c-suite diversity. This research shifts the focus from the individual to the company level, examining company diversity statistics and public diversity statements, declared in accordance with the guidance of the UK Corporate Governance Code (the "Code"). There are 100 companies in the sample, representing the entire population of the FTSE100 as listed on the London Stock Exchange in March 2017. Both statistical and textual data on each of the companies has been collected for two separate periods, primarily from annual reports in both 2016 and 2017. The individuals studied in Chapter 6 constitute the members of the c-suites of the annual reports studied in this Chapter. Therefore, the diversity provisions to which they refer, are those over which the individuals in Chapter 6 are responsible.

Company annual reports are a direct source of information relating to each company, much of which is required by a variety of laws and regulations. However, complying with disclosure rules does not necessarily correspond to compliance with the spirit of these rules. A substantial amount of information can be gathered from comparing the way corporations make disclosures in annual reports. Data was gathered from each FTSE100 report in 2016 and 2017 relating to their diversity policy, their definition of diversity and their diversity statistics.[1] The data was found through a process of text mining whereby the reports were searched for the same words and the hits from each search were reviewed for relevance. Codes were then developed for the data. The textual data required interpretation in order to categorise it. This process enabled the data to be compared.

Through comparison and analysis, the objective of this chapter is to better understand the diversity positions presented by the FTSE100. The authenticity of the claims made in annual reports has been considered by comparing their diversity statistics with the analysis of their diversity policies. The diversity findings from Chapter 6 have also been applied to this annual report data in order to produce a more complete picture of actual and projected diversity in the FTSE100.

The analysis in this chapter is divided into two parts: an analysis of the corporate statistics on diversity, followed by a textual analysis of the officially published corporate diversity policy.

1. FTSE 100 company diversity statistics.

The Companies Act 2006 requires FTSE100 companies to disclose gender statistics in relation to the entire workforce, the senior management and the

[1] For a complete list of variables gathered and a more detailed description of the methodology, please refer to Chapter 5

board.[2] The purpose of the requirement is to reveal any disparities in the gender diversity of those who work for the business and those who control it. The requirements did not extend to data on ethnicity, but there are calls for ethnicity data to be included in annual reports in the same way in future.[3] There are no requirements to disclose c-suite gender composition but, given the prominence of these individuals as heads of the company and the small group size (usually 3), this information was easily gathered manually from the annual reports.

Statistics provided in relation to the board and the workforce are reliable because they relate to specific and well-defined groups. In contrast, statistics relating to senior management are unreliable because the term "senior management" was not well defined in the regulations.[4] Some companies interpreted the term as relating to those directly below the board, whereas others included all those with a title of senior manager. Consequently, these numbers vary widely and are of limited use. Nevertheless, the statistics were collected for the sake of completeness.

1.1. Female and BAME c-suite presence

Table 12 sets out some of the key, high level diversity statistics from the research period. In 2016, 78% of all FTSE100 companies had all male c-suites. This decreased to 74% in 2017. In terms of ethnicity the picture is going the other

[2] Companies Act 2006 s 414C

[3] Ruby McGregor Smith, '*Race in the workplace: The McGregor-Smith Review*' (Department for Business, Energy & Industrial Strategy, 2017)

[4] This issue has been identified and "senior management" has now been more clearly defined in the 2018 Code

way and in 2016 86% of the FTSE100 had all White c-suites, increasing by 2% in 2017. Where women and BAME individuals are present in the c-suite they are almost always in the minority. Kingfisher plc is the only FTSE100 company during this period in which women outnumber men in the c-suite.[5] There are 2 companies in which there were an equal number of men and women in the c-suite: Severn Trent plc and Whitbread plc. Hikma plc is the only FTSE100 company in which there are more BAME individuals than White individuals in the c-suite, two of whom are founders and are related.[6]

Table 12: FTSE 100 c-suite diversity profile

% companies with	2016	2017
1 or more men in the c-suite	100% (100)	100% (100)
1 or more women in the c-suite	22% (22)	26% (26)
1 or more BAME individuals in the c-suite	14% (14)	12% (11)
Men outnumber women in the c-suite	97% (97)	97% (97)
White executives outnumber BAME in the c-suite	99% (99)	99% (99)

Figure 32 below sets out a comparison of the number of women in the c-suite by industry sector in both 2016 and 2017. Only the technology sector has been entirely male during the study period, but the sector size is small with just 2 companies making up this category. The industry sectors demonstrating the

[5] In 2017 the Kingfisher plc c-suite consists of Veronique Laury (CEO), Karen Witts (CFO) and Andy Cosslett (Chairman). *Annual Report* (Kingfisher plc, 2016)
[6] The c-suite of Hikma plc consists of Said Darwazah (Executive Chairman), Mazen Darwazah (Executive Vice Chairman) and Siggi Olafsson (Chief Executive Officer). *Annual Report (Hikma plc 2017*

highest proportion of women in the c-suite are Financials, Consumer Services and Consumer Goods. There is little change year on year.

Figure 32: Number of companies in each industry with 0, 1 or 2 women in the c-suite

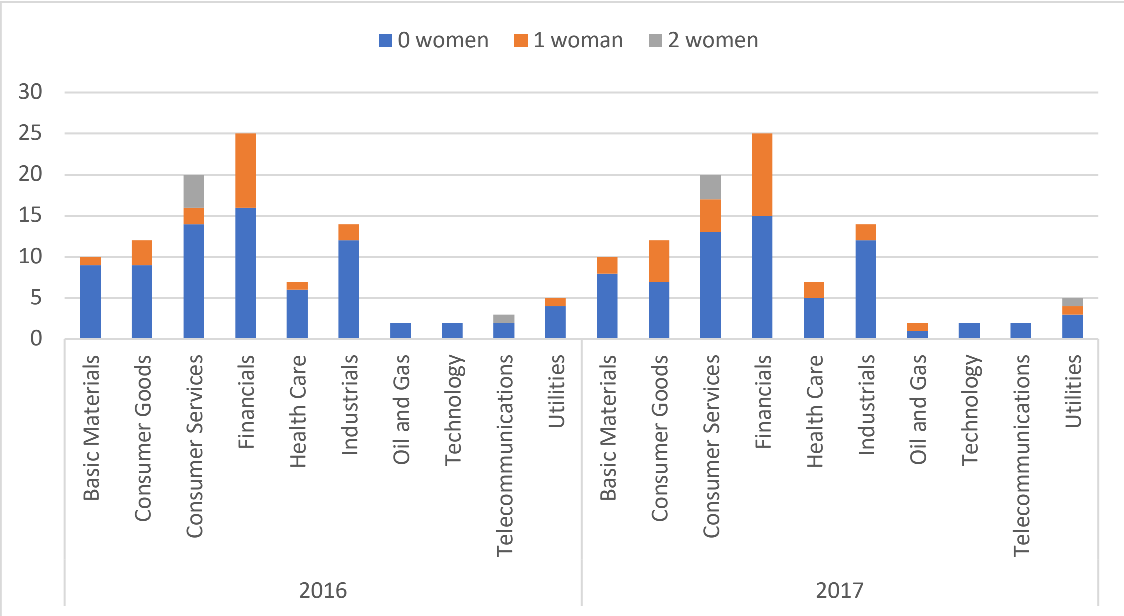
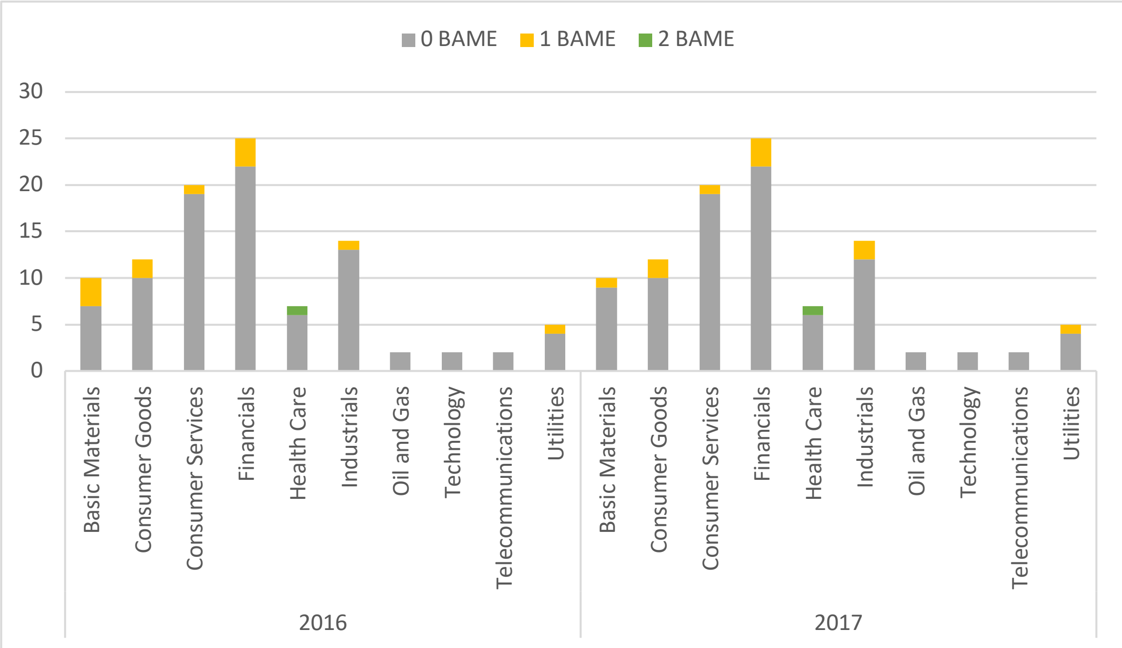


Figure 33 below provides an analysis of the ethnicity representation by industry sector and reveals a relatively even spread of BAME representation across industries. But, similar to the gender c-suite data (Figure 33), Oil and Gas, Technology and Telecommunications have the lowest ethnicity diversity.

Figure 33: Number of companies in each industry with 0 ,1 or 2 BAME c-suite members



1.2. Workforce, board and c-suite diversity

A look at the actual numbers of women in the c-suite reveals that they account for just 9% of the total of all c-suite executives in the FTSE100. This is broadly consistent with Cranfield Reports during this period (it is not exactly consistent because the Cranfield Reports focus on board executives as opposed to the c-suite, studied here, which includes Chairmen).[7] From an ethnicity perspective, BAME individuals account for just 4% of the total of c-suites executives in the FTSE100.

Looking beyond the c-suite at the company diversity statistics more generally, an average of workforce, senior management and board statistics can be seen in Table 13, together with an average of the percentage of women in the c-suite in

[7] *Female FTSE 2018: Busy Going Nowhere with the Female Executive Pipeline* (Cranfield University School of Management, 2018)

2016 and 2017. This shows increases in gender diversity at every level between 2016 and 2017. In relation to the board figure, this is consistent with the research, which has shown a steady increase in the number of women on boards since the Davies Report.[8] The increase at c-suite level, while noticeable, remains low.

Table 13: Female participation statistics in FTSE 100 by workforce element

	Average % women	
	2016	**2017**
C-suite	7.6%	9.4%
Board	26.5%	27.6%
Senior Management	23.4%	29.3%
Workforce	39.3%	40.1%

Between senior management and the board there is an increase which, at first glance, may appear to support the argument that there are insufficient women in the pipeline to the board. On reflection this is not the case for at least two reasons. Firstly, senior management roles are likely to be full-time and women holding those positions will hold only one at a time. In contrast, non-executive director ("NED") positions are part-time and multiple appointments can be held concurrently. Secondly, as mentioned above, there is little consistency in the way data provided by companies in relation to women in senior management positions is reported, therefore these statistics have limited reliability. This reliability will change following the implementation of the 2018 Code, after which

[8] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019)

companies will be required to define senior managers as the first level of management below the board, plus their direct reports.[9]

At present, workforce and senior management data does not exist in relation to BAME individuals. It was therefore not possible to provide the same type of analysis by ethnicity here. Although the 2018 Code does include reference to ethnicity, this does not extend to any requirement to provide ethnicity composition data, such requirements continue to refer to gender alone.[10] A small minority of companies voluntarily provide this information anyway.

1.3. Female executives

In addition to the data on the company board, companies often provide biographical information on the individuals who make up their executive team, i.e. the full-time managers who work with the c-suite but who come below the board in the corporate hierarchy. This is not a requirement of the Code, and 36% (2016) and 23% (2017) of the sample did not provide this information. This research gathered the available information on the roles assumed by women executives to see if there were any trends. This information was not gathered in relation to BAME individuals because typically there was insufficient information to reliably determine ethnicity.

Figure 34 below shows the types of roles women executives assume in the FTSE100. It indicates that women are most often found in human resource roles,

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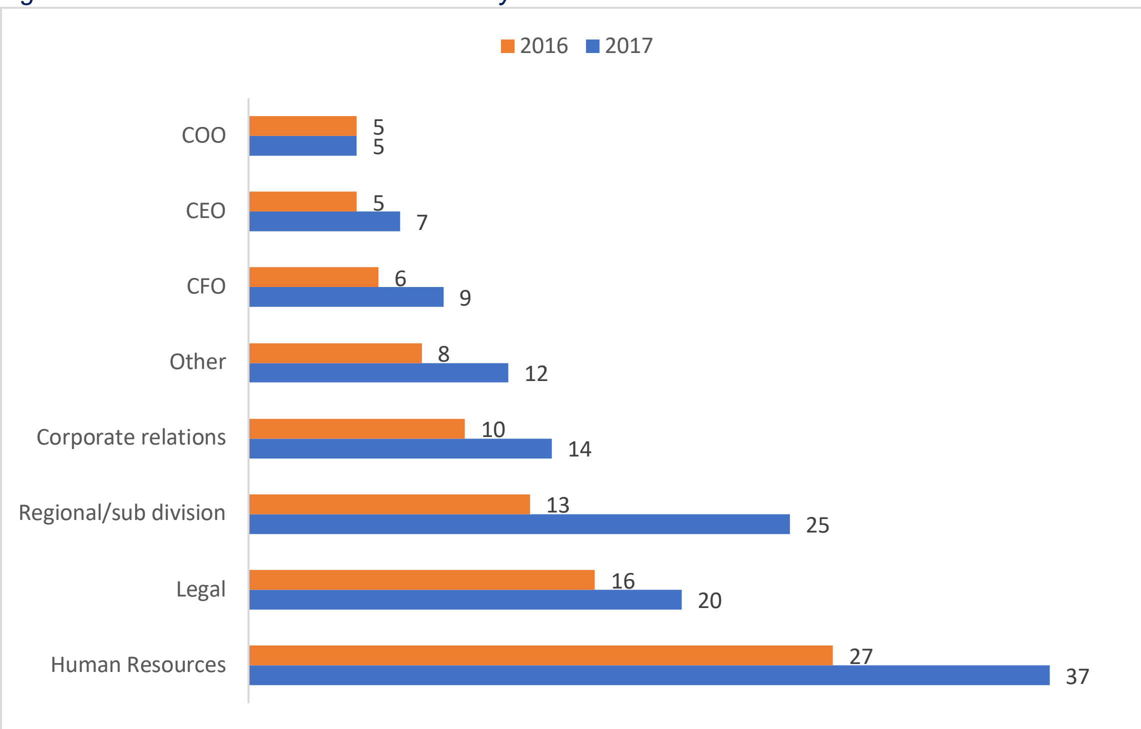
[9] UK Corporate Governance Code 2018

[10] Ibid Provision 23

followed by regional or sub-divisional roles (which are less well defined and can be quite diverse in scope). The third most common roles are legal. Year to year there has been a notable increase in the number of women executives, but these are primarily at non c-suite levels. The biggest increases correspond largely with the 2016 distribution, with a 75% (12) increase in regional/sub division roles, a 37% (10) increase in human resources roles and a 40% (4) increase in corporate relations.

Figure 34: Number of women executives by role in FTSE100



1.4. Gender pay gap

The legal obligation to report on the gender pay gap came into force with effect from 2017 and applies to all companies with over 250 employees.[11] Gender pay

[11] The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

gap statistics are intended to indicate "the difference between average pay between all men and women in a defined workforce at a point in time, regardless of the nature of the work."[12] As it was the first year of reporting these results, some significant reporting flaws were revealed. According to the House of Commons report:

> *"In this first year of reporting, it is clear that many organisations had difficulty in producing the figures required or, were reluctant to devote the resources to doing so. The resulting set of figures published initially was therefore inaccurate although to an unknown degree".*[13]

The flaws are many and various. The reports make no distinction for part-time and full-time work, they do not compare types of work like-for-like[14] and who should be included in the definition of workforce is unclear.[15] Most significantly, for the purposes of this research, large group companies can present their data by subsidiary company and only those subsidiaries based in the UK will be required to provide information. There is no overall parent company headcount. This means the gender pay gap data for some of the FTSE100 is likely to be incomplete, segmented and inaccurate. On this issue, Linklaters have reported that:

> *"at present, organisations are required to report on a single entity basis, rather than at a group level. This can lead to some inconsistencies as the gender pay gap of organisations with more complex group structures will be more difficult to ascertain".*[16]

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[12] *Gender Pay Gap Reporting* (House of Commons Business, Energy and Industrial Strategy Committee, 2018) 6

[13] Ibid 8

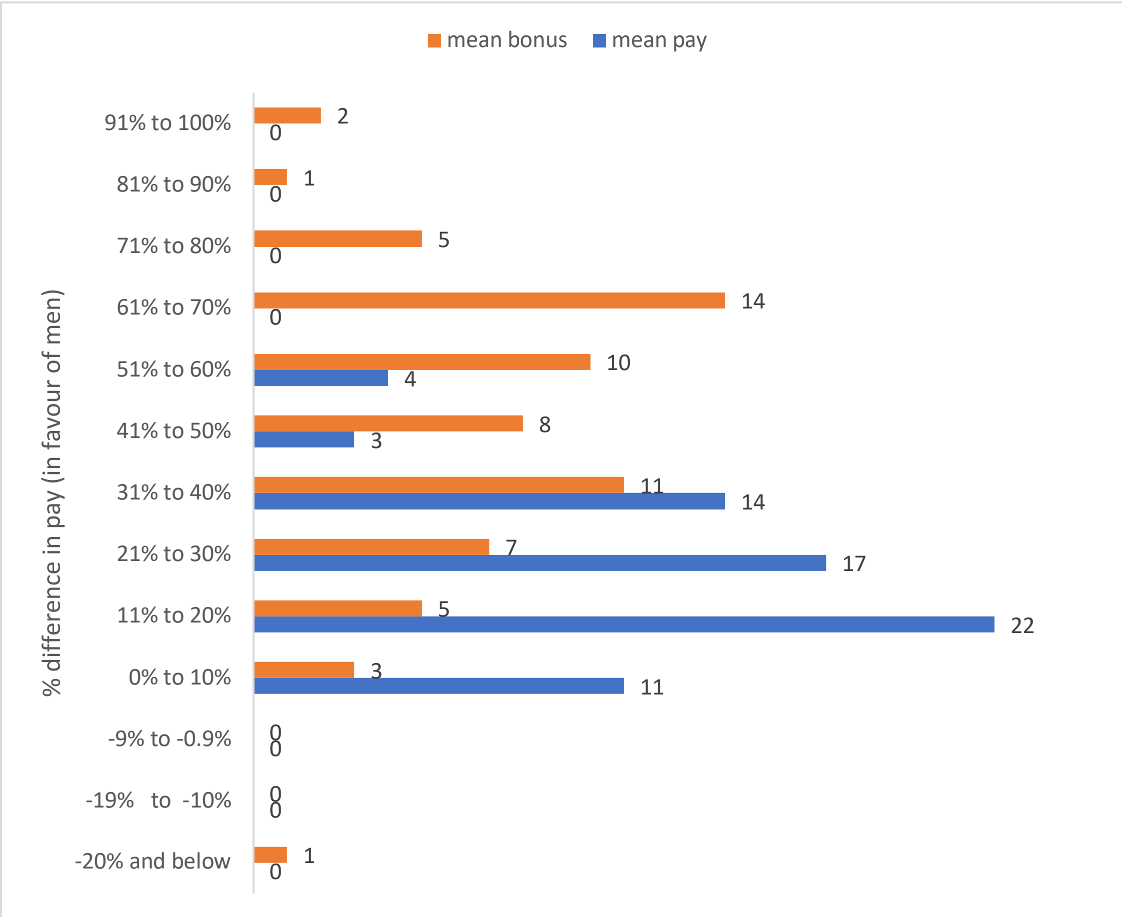
[14] Josie Cox, 'Gender Pay Gap Reporting: Government's new rules will not tackle financial inequality, critics warn' *The Independent* (5 April 2017) <https://www.independent.co.uk/news/business/news/gender-pay-gap-reporting-uk-government-rules-financial-inequality-critics-fawcett-society-womens-a7668581.html>

[15] *Gender Pay Gap Reporting (n 12) 8*

[16] *Written evidence from Linklaters relating to the House of Commons Committee review into gender pay gap reporting* (Linklaters, 2018)

Given these reporting difficulties, there are likely to be inaccuracies in the data. One consequence of this is that, as set out in Chapter 5, the data gathered here is only 77% complete due to the absence of clear group level statistics. In spite of these flaws the data still presents quite a clear picture as can be seen in Figure 35.

Figure 35: Mean gender pay and bonus gap distribution in the FTSE 100



The figure shows a substantial difference in pay between men and women in FTSE 100 companies, with more than 80% of companies paying men between 11% - 40% more than women. In terms of bonuses, the picture is even more extreme, with the most common band of bonus difference being 61%-70% more for men than women. It is arguable that, in the first year of reporting, where companies were unsure of the regulations, they would be more likely to err in favour of presenting a smaller gender pay gap and, as such, when the issues with the regulation were cleared up, this picture could become worse. This theory was supported by preliminary results from the 2018 reporting period which indicated the gender pay gap was getting worse.[17] In fact, when all the 2018 figures were released by the April 2019 deadline, it was revealed that there was very little change in the pay gap, despite the changes in the disclosure rules.[18]

It is also important to emphasise that these figures relate to the entire workforce and not just those in senior positions. A closer look at the c-suite remuneration data can be found in Chapter 6 but, looking at remuneration at a company level reveals that there are only 5 companies in the FTSE100 where the highest paid person is a woman. As there are 7 women CEOs in the sample this means that there are women CEOs who are paid less in total than males that are subordinate to them. The only company in the study in which the mean bonus gap favours women is Severn Trent, one of the four companies in 2017 who have more than one woman in the c-suite. There are no companies in which the mean difference in pay favours women.

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[17] Jamie Johnson, 'Gender pay gap is getting worse in nearly half of firms, analysis suggests, as critics say forcing firms to report is not enough' *The Telegraph* (<https://www.telegraph.co.uk/news/2019/02/20/gender-pay-gap-getting-worse-nearly-half-firms-analysis-suggests/>

[18] Aleksandra Wisniewska, Billy Ehrenberg-Shannon, Cale Tifford and Caroline Nevitt, 'Gender Pay Gap: women still short-changed in the UK' *Financial Times* 23 April 2019 https://ig.ft.com/gender-pay-gap-UK-2019/

2. Textual analysis of FTSE100 company annual reports and diversity

Also drawing on company annual reports, this part of the corporate diversity research sought to analyse the differing ways in which FTSE100 companies present their position on diversity to their stakeholders. This required a textual analysis of the diversity related content of the annual report of each of the FTSE100 companies. For each company the following factors were analysed: the definition of board diversity, the board appointment policy as required by the Code, any measurable objectives for the achievement of better diversity and indicators of commitment to diversity. This required a careful search of each annual report to identify text of relevance. Each nomination committee report and Chairman's statement was read in full and the rest of the report was searched for the words: diversity, diverse, gender, women, female, BAME, ethnic, minority, Hampton, Davies, Parker, compliance and UK Corporate Governance Code. Having collected the relevant text, it was then coded according to original codes devised as part of this research to enable comparison.

2.1. Company definition of diversity

Companies are free to choose how they define diversity in their annual reports. Exploring how a company defines diversity can therefore help create a more complete view of its diversity policy. Analysis of annual reports revealed a variety of diversity definitions. There was little consistency in what was or was not included. However, definitions were often distinguishable on the basis of whether or not they included non-protected characteristics as part of the definition. If diversity is defined to include only protected characteristics, such as gender and ethnicity, then a policy to consider diversity in all board appointments will have more meaning than if diversity is defined to include professional characteristics such as skill. Table 14 sets out the words used to define diversity in the annual reports studied and they are categorised according to whether they fall under the Equality Act 2010 definition of protected characteristic or relate to professional characteristics.

Table 14: Professional and protected characteristics

Protected characteristics[19]	Professional characteristics
Age Disability Gender reassignment Marriage and civil partnership Pregnancy and maternity Race Religion or belief Sex Sexual orientation	Skills Experience Geographic experience relevant to business Industry experience Educational background Professional background Knowledge

An example of a definition that includes both protected and professional characteristics is that of Mediclinic plc, whose annual report defined diversity as "various skills, regional and industry experience, background, race, gender and other distinction".[20] Where such definitions are combined with a policy to have due regard for the benefits of diversity, the consequential meaning places very little burden on nominating committees to genuinely consider protected characteristics, which arguably is the purpose of the provisions of the Code. This can be contrasted with the definition of diversity by the Imperial Brands Groups

[19] Characteristics are considered protected if they benefit from protection under s.4 Equality Act 2010

[20] *Annual Report* (Mediclinic plc, 2016)

as including “gender, race, religion, age or disability”.[21] This is an example of what has been described as a definitional approach to diversity.[22] Prima facie this has greater impact because it values protected characteristics independently of business values such as skills and experience. A third group of definitions were those which were non-specific, referring to diversity “in its broadest sense”[23] or a variation of this. This may or may not include professional characteristics depending on the lens through which diversity is viewed. A final category were those companies who failed to define diversity.

Based on the above, the following four categories of diversity definitions were assigned to all FTSE100 companies based on their annual reports:

1. Protected and professional characteristics;
2. Protected characteristics only;
3. Diversity in its widest/broadest sense;
4. Undefined.

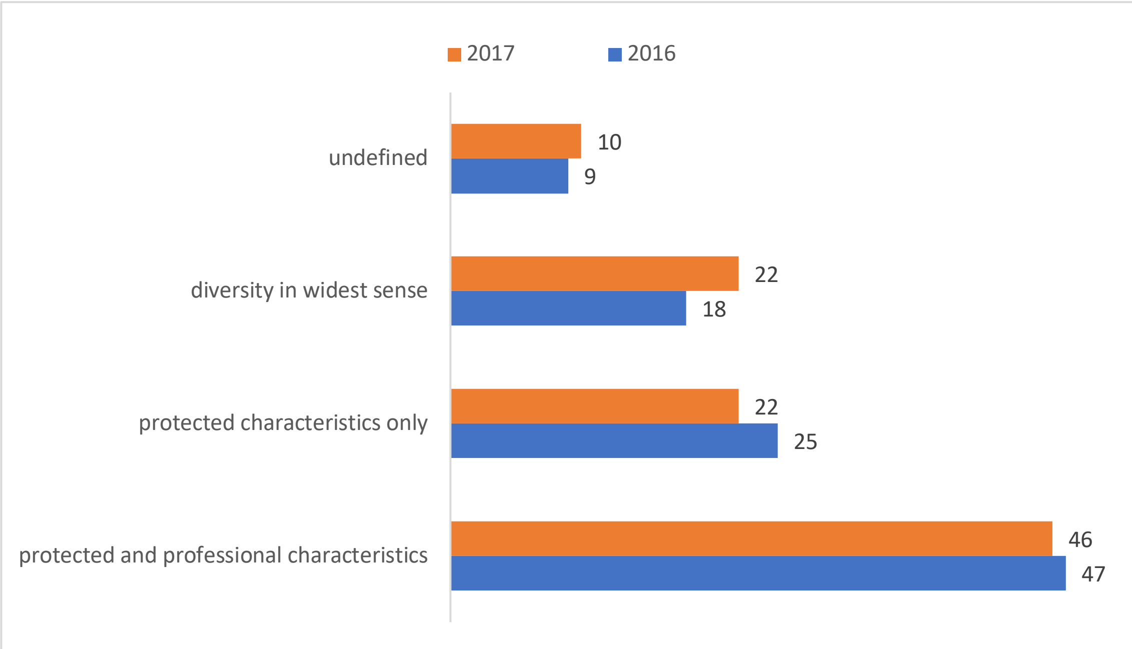
As can be seen from Figure 36 below, 47% of companies in 2016 defined diversity to explicitly include professional characteristics. There were a similar number of companies defining diversity in its broadest sense or by protected characteristics only.

[21] *Annual Report* (Imperial Brands Group 2016)

[22] Joyce M Bell and Douglas Hartmann, 'Diversity in Everyday Discourse: The cultural ambiguities and consequences of “happy talk”' (2007) 72 American Sociological Review 895 899

[23] *Annual Report* (Legal & General plc, 2017)

Figure 36: Range of FTSE100 diversity definitions in 2016 and 2017



2.2. Company diversity policy

The Code requires companies to include in their annual report a board diversity policy statement.[24] The level of detail provided by companies here varies widely, as does the level of support for gender and ethnic diversity objectives. At one extreme, companies choose to emphasise limited support for diversity policies and focus solely on merit. For example, the Imperial Brands Group report that "appointing the best people to our board is critical to the success of the company and any subsequent appointees are therefore made purely on merit regardless of gender, race, religion, age or disability".[25] This example implies that merit and diversity are not related. Arguably worse is its premise that appointments can be made regardless of gender and race. The possibility of having no regard for such

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[24] UK Corporate Governance Code, Provision B.2.4

[25] *Annual Report (Imperial Brands Group, 2016)*

characteristics is highly questionable given what is known about behavioural economics.[26]

A slightly more moderate view stipulates the consideration of diversity and merit as separate factors, merit being considered the most important. At the other end, there are companies who consider diversity alongside or within their understanding of merit. For example, in making appointments, the board at Direct Line says it "carefully considers the diversity of its members from various perspectives. It also seeks to ensure that directors have the relevant knowledge, skills and experience, and, where necessary independence".[27]

The diversity policies of the FTSE 100 in 2016 and 2017 were collected and categorised according to this grouping, which is set out in more detail in Table 15.

Table 15: Diversity policy categories

Category	Diversity policy	Example
Merit Only	Based solely on merit	"*the policy is to ensure we attract and retain the best possible people for any given role irrespective of their personal attributes. The policy is clear: all appointments must be based on ability, qualifications, merit and suitability for work irrespective of where the candidate is from, and his or her sexual orientation, gender, religion, age or nationality*"[28]
Merit Dominant	Merit based. Diversity is considered as a secondary issue.	"*the board needs and favours a diversity of knowledge, experience and gender. Subject to the overriding principle of merit and suitability*".[29]

[26] See Eleanore Hickman, 'Boardroom Gender Diversity: A behavioural economics analysis' (2014) 14 *Journal of Corporate Law Studies* 385

[27] Annual Report (Direct Line, 2017)

[28] *Annual Report* (GKN plc, 2017)

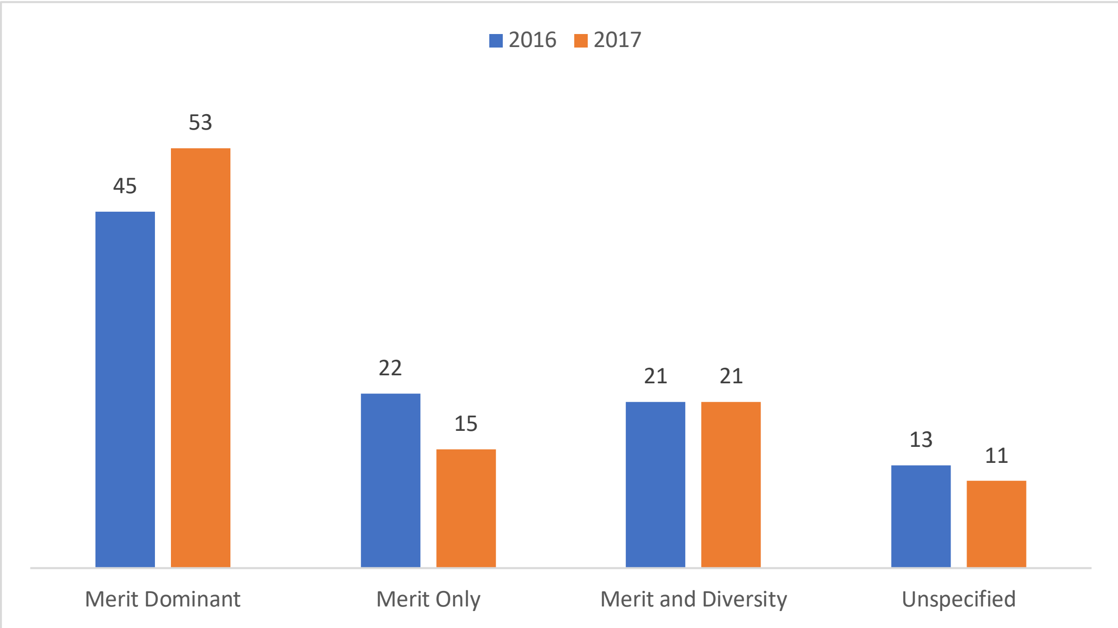
[29] *Annual Report (International Consolidated Airlines, 2016)*

Category	Diversity policy	Example
Merit and Diversity	Merit and diversity are considered and applied together	"*the board values diversity in all its broadest sense when considering appointments to the board. It seeks to identify and secure the best candidate available in the market against those criteria*"[30]
Unknown	Other/unspecific	"*robust selection process facilitated by independent search consultants*"[31]

The most common diversity policy by far is a Merit Dominant one. Such a policy accords with the Code, which suggests board diversity policies should be "made on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender."[32] Figure 37 shows that 53% of companies in 2017 adopted this type of policy. This is an increase of 8% on 2016. This increase corresponds with a 7% decrease in Merit Only definitions between 2016 and 2017 perhaps reflecting an increase in acceptance of the consideration of diversity as part of the appointment process. However, there remains a substantial number of Merit Only companies who do not adhere to the Codes recommendations and openly reject the suggestion that it is necessary to have "regard to the benefits of diversity".[33] In contrast, 21 companies in both 2016 and 2017 have Merit and Diversity policies, thereby going beyond what is expected of them in the Code.

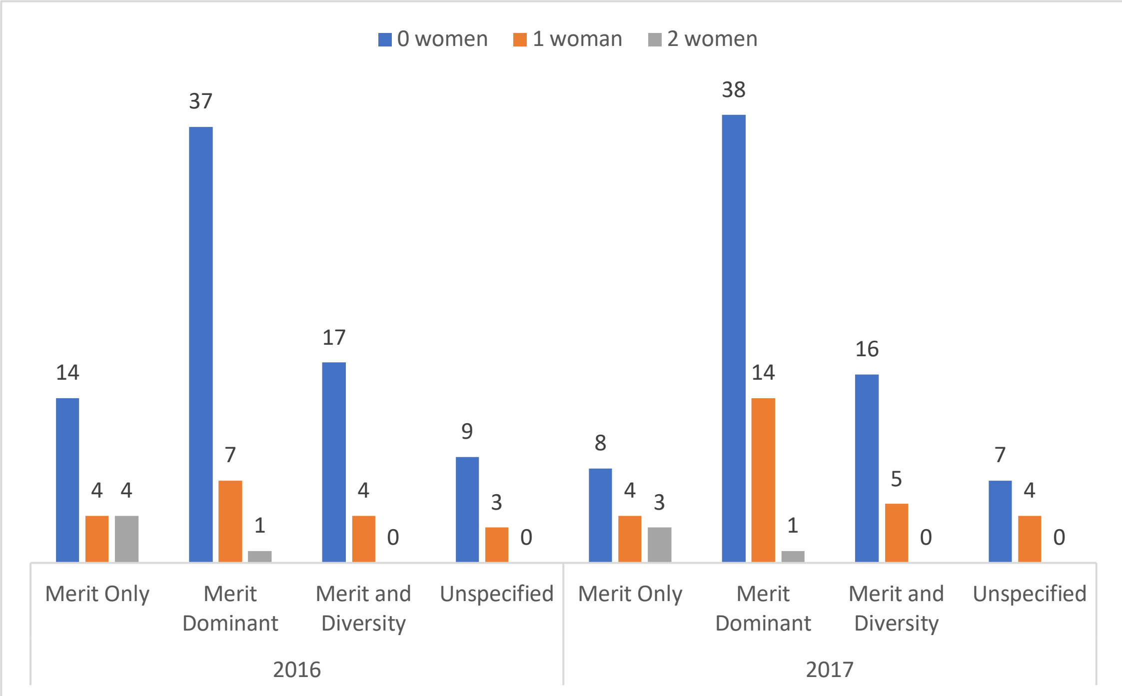
[30] *Annual Report* (Rio Tinto plc, 2017)
[31] *Annual Report* (J Sainsburys plc, 2017)
[32] Supporting principle to B.2 UK Corporate Governance Code 2016
[33] Ibid

Figure 37: Categorised diversity policies of FTSE 100 companies in 2016 and 2017



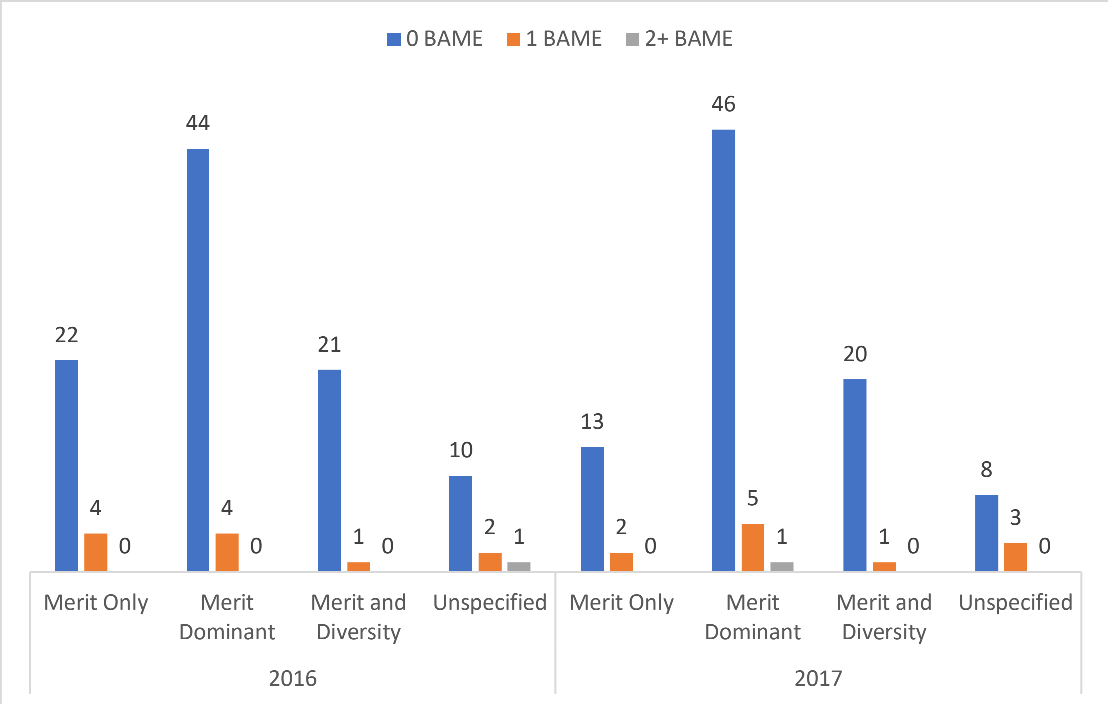
Looking at the data overlaid with the gender and ethnicity levels in the c-suite reveals more. As discussed above, having women in the c-suite is relatively rare, especially having more than one woman. Figure 36 sets out the diversity policy category according to how many women are in the c-suite. Of the 5% and 4% of companies in 2016 and 2017 respectively with 2 or more women in the c-suite, 80% (4) and 75% (3) have Merit Only policies (i.e. falling below the standard suggested by the Code). Of the 77% and 69% of companies with no women in their c-suite, in 2016 and 2017 respectively, 14% (14) and 8 % (8) companies have diversity policies which are Merit Only (and therefore not compliant with the Code).

Figure 38: Board diversity policies of FTSE 100 companies by number of women in the c-suite: 2016 and 2017



The picture is less clear on c-suite ethnicity and diversity policies. As can be seen in Figure 39 below, of the 11 companies with BAME representation in the c-suite, the split favours a diversity policy in line with the Code guidance. Very little can be drawn from the distribution of companies with other types of diversity policy as there is little difference between them. However, it is interesting to note that, of the companies that have 1 or more BAME individuals in the c-suite, the least common policy is that which favours diversity.

Figure 39: FTSE 100 diversity policy and BAME c-suite representation: 2016 and 2017



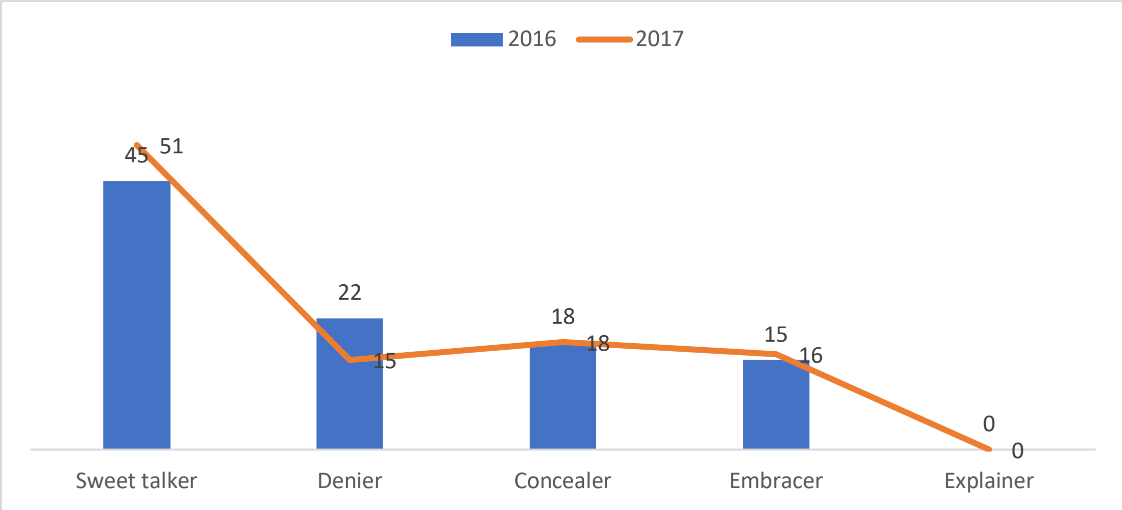
By combining the way companies formally define diversity in their annual reports with their appointment policy a picture is produced of the overall meaning of their diversity position, or, at least, the impression they are seeking to give by the wording of their annual reports. Table 16 categorises the companies into 5 groups according to a consideration of both the appointment policy and their diversity definition.

Table 16: Categorisation of companies according to appointment policy and diversity definition

Category name	Meaning	Diversity policy and diversity definition combinations included
Embracer	The annual report gives the impression that these companies follow the Code provisions on diversity in both letter and spirit	Merit Dominant OR Merit and Diversity Coequal policy PLUS protected characteristics-only definition of diversity
Sweet Talker	Apparent compliance with the Code but diversity definition renders the policy meaningless.	Merit Dominant OR Merit and Diversity Coequal policy PLUS professional characteristics or diversity in its widest sense definition of diversity.
Denier	Policy does not comply with the guidance of the Code	Merit Only diversity policy PLUS Any definition of diversity
Explainer	Policy does not comply with the guidance of the Code, but this is stated and explained elsewhere in the report.	As Denier category PLUS Statement explaining their non-compliance with the Code.
Concealer	Companies do not provide or, are opaque in the meaning of their diversity policies.	Companies diversity policy is absent or highly opaque PLUS Any definition of diversity

Figure 40 shows that the largest proportion of companies are categorised as Sweet Talker companies, having an appointment policy which gives consideration to diversity but defines diversity as inclusive of professional characteristics such as skills and experience. There are a similar amount of Embracer companies and Denier companies. The number of Denier companies has fallen between 2016 and 2017, with a corresponding increase in the Sweet Talker category for 2017. There are no Explainer companies in either year.

Figure 40: Board diversity policies of the FTSE100 categorised: 2016 and 2017



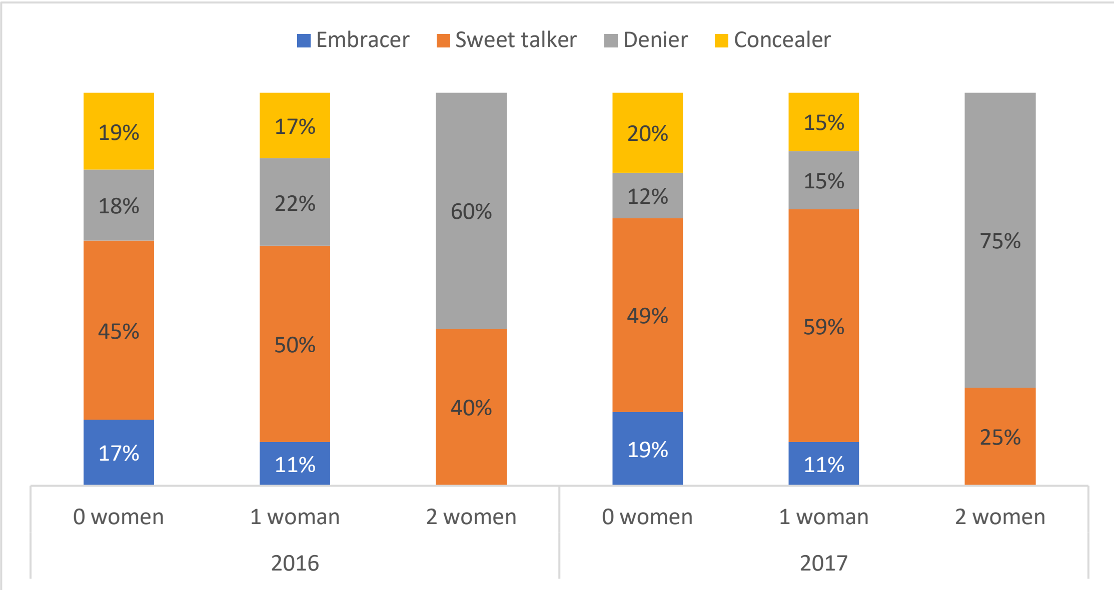
There were 3 companies whose appointment policy had changed substantially between 2016 and 2017. For example, in 2016 Sky plc's annual report stated “appointments are made on review of candidate’s individual merits regardless of gender, race, religion, age or disability”[34] (a Denier policy), but in 2017 this changed to “the company pursues a policy of diversity of skills, experience, nationality and gender in its approach to board appointments” (an Embracer policy).[35]

Looking at the categorised data by number of women in the c-suite reveals that the impression given by the wording of the policies does not correspond with the reality. Those companies with no women in the c-suite have proportionally the largest number of Embracers in both years. Contrastingly, companies with 2 women in the boardroom hold proportionally more Deniers than companies with fewer women in the c-suite. In both years, this group of companies are

[34] *Annual Report* (Sky plc, 2016)
[35] *Annual Report* (Sky plc, 2017)

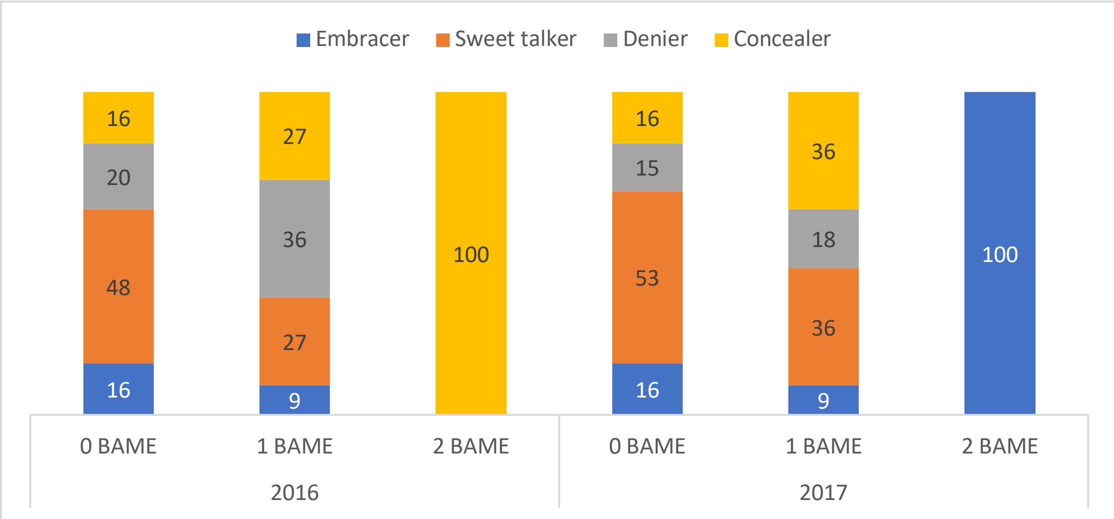
constituted by Denier companies by a large majority. There are no Embracers in either years amongst companies that have 2 women in their c-suite.

Figure 41: Percentage of diversity policy categories within companies by number of women in c-suite in 2016 and 2017



Looking at the categorised data from an ethnicity perspective shows a slightly different story as shown in Figure 42 below. As there is only one company with 2 BAME individuals on the c-suite in both years, little can be drawn from this aspect of the data. However, in respect of the boards with 0 and 1 BAME individuals, it is notable that the proportion of Deniers in companies with 1 BAME individual in the c-suite has fallen substantially since 2016. In a similar way to the gender analysis above, Embracers make up a larger proportion of companies with 0 BAME individuals on the c-suite than those that have 1 BAME individual. Again, consistent with the gender data, there is a larger proportion of Deniers in companies with 1 BAME individual than none.

Figure 42: Diversity policy categories by number of BAME in c-suite: 2016 and 2017



2.3. Measurable objectives

The 2016 Code required companies to report on whether they have any measurable objectives in place to support their diversity policy.[36] These are typically found in the form of a gender-based board targets, matching the 33% by 2020 as suggested by the Hampton-Alexander Review.[37] The 2018 Code has removed the measurable nature of this requirement, instead requiring companies to describe their "policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives".[38] It will be interesting to see what impact this has on the content of the diversity policies going forward but, for the sample under consideration, in both 2016 and 2017, 40 of the FTSE100 declared they had some form of

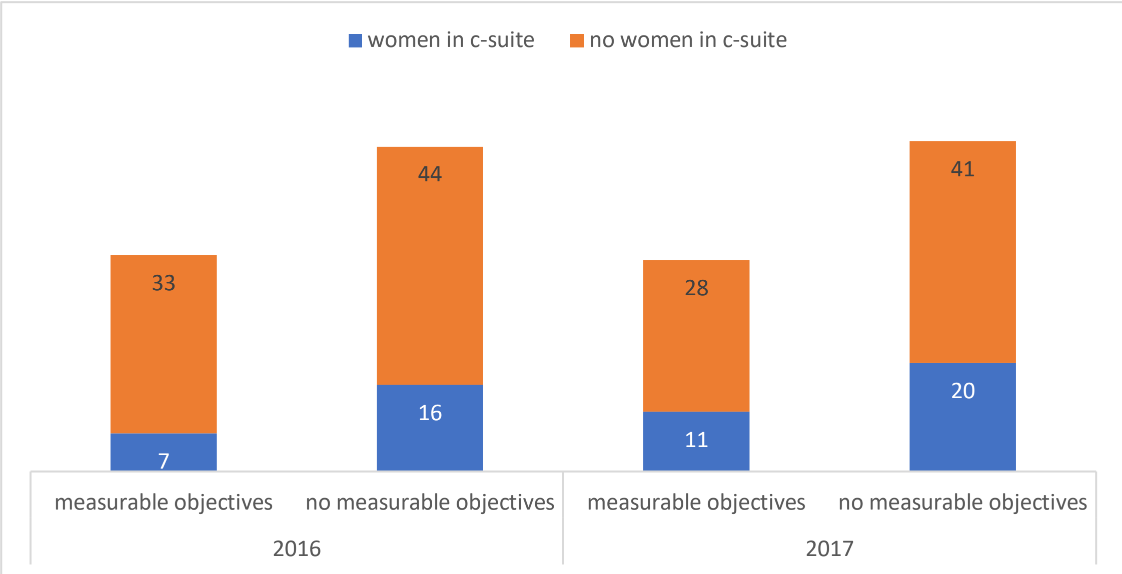
[36] UK Corporate Governance Code 2016 B.2.4

[37] Sir Philip Hampton and Dame Helen Alexander, *Hampton-Alexander Review. FTSE Women Leaders* (2016)

[38] UK Corporate Governance Code 2018, Provision 23

measurable objective in place.[39] When this is compared to the presence of women in the c-suite, as can be seen in Figure 43, it is clear that, consistent across both years, there are more women on the c-suite of companies with no measurable objectives in place to implement their diversity policy.

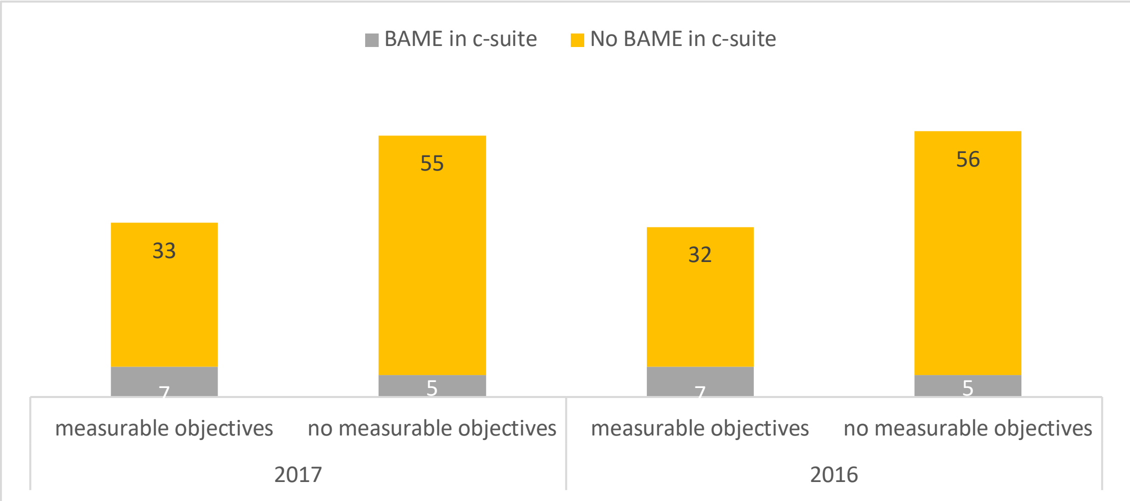
Figure 43: Measurable objectives and presence of women in c-suite



When considered from an ethnicity perspective (as in Figure 44) it is notable that the proportion of companies with BAME individuals in the c-suite is lower for companies with no measurable objectives. One might expect this to be the case, but it is the opposite to the finding in relation to gender.

[39] No further detail as to what those measurable objectives were collected in this study. However, more detail on this can be found in Sealy

Figure 44: Measurable objectives and presence of BAME in c-suite



2.4. Company engagement with diversity

This part of the study looks at indicators, provided in the annual report and beyond, that the company is engaging with diversity objectives. The following four indicators are discussed in turn below:

1) the perceived benefits of board diversity;

2) references to key diversity reports;

3) membership of the 30% club;[40] and

4) implementation of unconscious bias training.

These indicators were selected because they were considered the most relevant ways to assess corporate alignment with diversity objectives. Other indicators that were considered include workforce diversity policies, workforce diversity initiatives and external diversity awards. These indicators were rejected on the basis that they were too varied or broad, making them difficult to compare. Also,

[40] The 30% club is a collaboration of CEO and chairmen from leading UK businesses with the aim of improving boardroom diversity. It started as a UK campaign but has since developed 12 chapters worldwide. '30% Club' <https://30percentclub.org> accessed 21 October 2017

their more general relevance to the workforce runs counter to the importance this research places on positions of power.

Indicator 1: The stated benefits of diversity

The benefits of diversity, as assessed by academics and politicians, have been discussed in Chapter 2. The vast majority of the perceived benefits are related to business performance.[41] This research set out to compare the extent to which these externally stated reasons correspond to those stated by FTSE100 companies. It also provides insight to the proportion of companies that purport to perceive a benefit, of any kind, arising from diversity.

As Figure 45 shows, there is considerable variety in the perceived benefits of diversity across the FTSE 100. Many corporations did not refer to any perceived benefits of diversity (27% in 2016 and 21% in 2017). Almost as common was to recognise non-specific benefits of diversity. For example, Burberry "continues to believe in the importance of a diverse board".[42] Where specific benefits were provided, the most popular reason in both 2016 and 2017 was related to the variety of thoughts and perspectives brought by diversity. This reason pertains to the "outsider" perspective of women and BAME executive directors and accords with the business case for diversity.[43] The more stakeholder-oriented benefits, such as "good practice" or, to better address the "needs of the stakeholders", were the least common benefits cited. The phrases "diversity of

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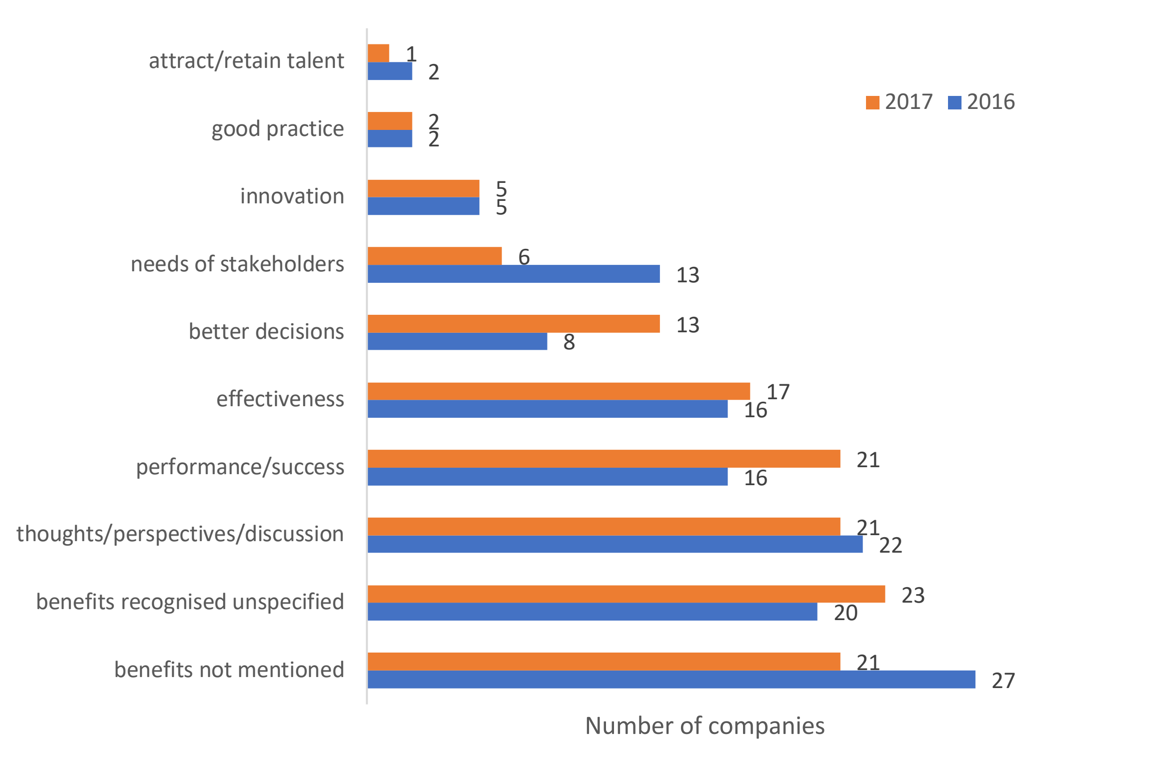
[41] See pages 71-80

[42] *Annual Report* (Burberry plc, 2016)

[43] See Chapter 2 pages 71 onwards

thought" and "diversity of perspective" were prevalent. The perceived benefits of corporations align with what many academics, politicians and businesses claim to be the benefits of diversity. The question is whether all parties are talking about the same or even similar definitions of diversity.

Figure 45: Stated benefits of board diversity as specified in FTSE 100 annual reports 2016 and 2017

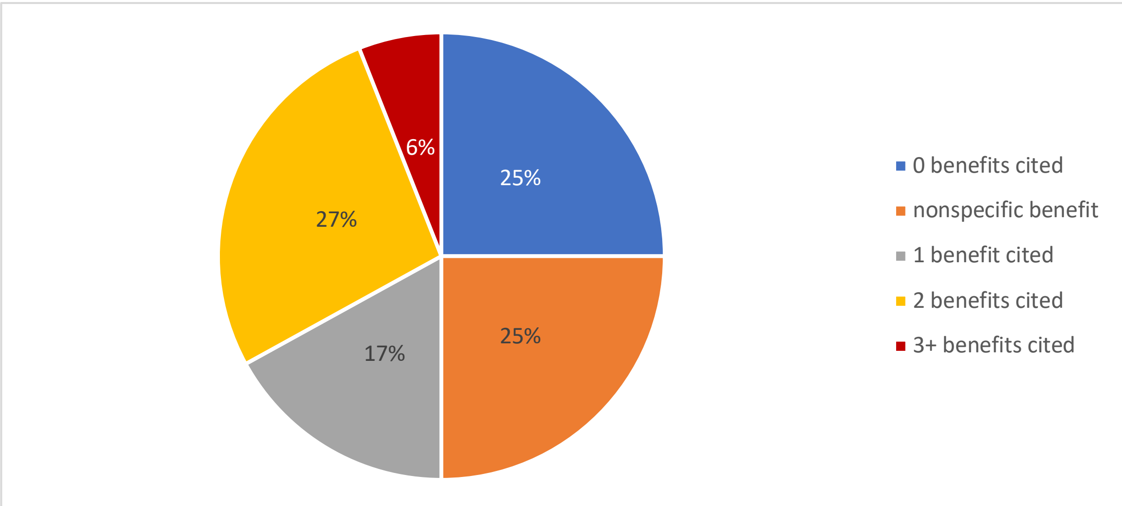


Companies who cited explicit benefits to diversity often cited more than one. For example, AstraZeneca stated that diversity would "foster innovation, harness different perspectives, talents and ideas and reflect the communities we live in".[44] As can be seen in Figure 46 below, where benefits were cited, it was most common to cite 2. This is relevant because when considered in conjunction with

[44] Office for National Statistics, '*Childbearing for women born in different years, England and Wales: 2016' (2016)*

Figure 45 above, it becomes clear that while there is a significant amount of variety in perceived benefit, there is also a significant level of overlap because many of the companies are saying similar things but in different combinations.

Figure 46: Number of benefits cited per company 2017



Indicator 2: Government commissioned diversity reports

As discussed in Chapter 1, there are four prominent reports providing advice to corporations on next steps and targets for diversity. In respect of gender there has been the Davies Report[45] and the Hampton-Alexander Review[46]. In respect of ethnicity there has been the Parker Report.[47] As a measure of support for the positions in those reports, the annual reports were searched for references to them. Figure 47 shows the companies that referred to 0, 1, 2 and all 3 of the reports. There were 3 companies who also referred to the McGregor Smith

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45 Lord Davies of Abersoch, *Women on Boards* (2011)
46 Hampton and Alexander (n 37)
47 Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016)

Review[48], however, this was not published in time for the 2016 reports and relates more generally to workplace ethnic diversity. As such the figures have not been included here. The results show that references to the reports increased between 2016 and 2017. In 2017 there were 17 more companies that made reference to 2 or more reports than in 2016. The number of companies referring to no reports at all, decreased by 7 in 2017.

Figure 47: Number of official diversity reports referred to in FTSE100 annual reports

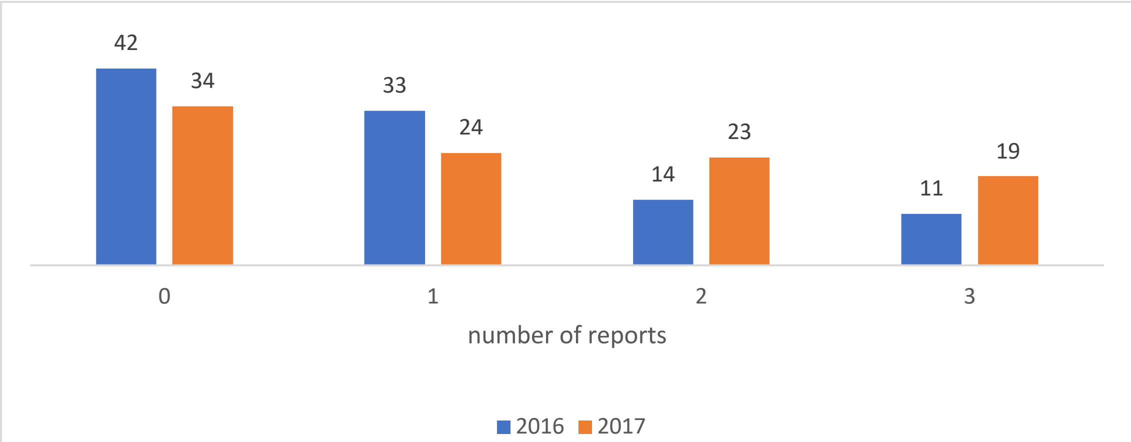
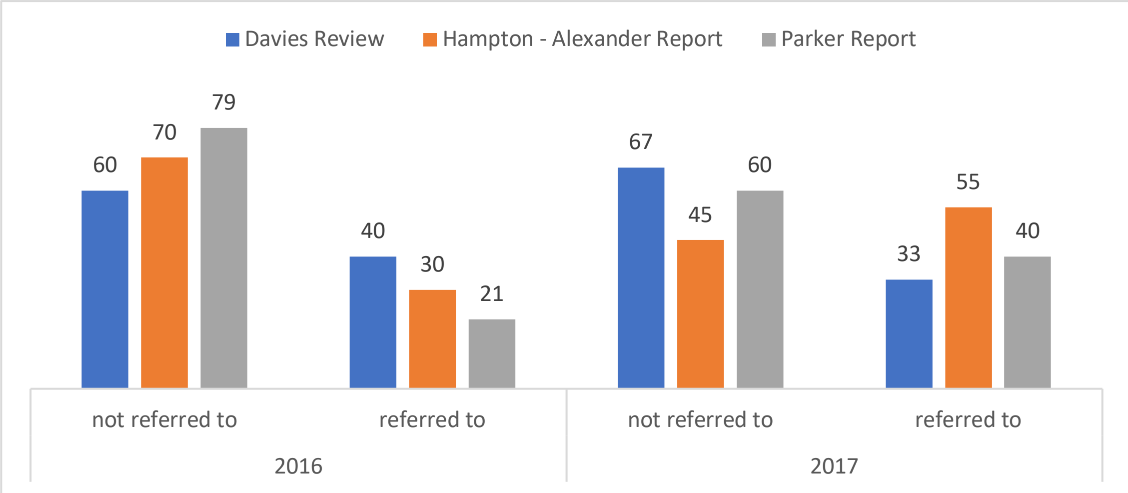


Figure 48 shows that the Davies Review is the report that is most commonly referred to in 2016, but in 2017 it becomes the report least referred to. Both the Parker report and the Hampton-Alexander Review see an increase in the amount they are referred to in 2017. This shows some effort on the part of corporations to update their diversity position to reflect changes in Government advice.

[48] McGregor-Smith (n 2)

Figure 48: References to Government diversity reports and reviews in 2016 and 2017



Indicator 3: 30% Club membership

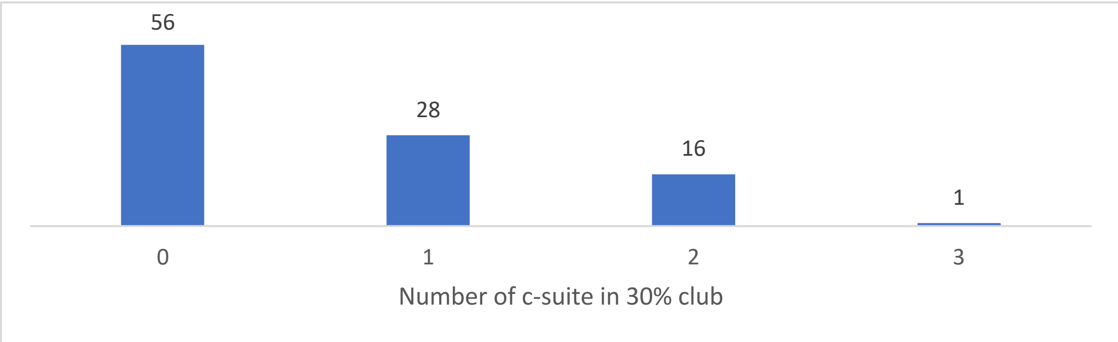
An external indicator of commitment to diversity is to become a member of the 30% Club. The 30% Club is a group of chairmen and other prominent individuals from business, policy and academia who are "committed to better gender balance at all levels of their organisation".[49] Data on the membership of the 30% Club by FTSE100 company data was gathered in relation to the 2017 annual reports. It is not possible to compare this to 2016 because this research only identified this as a potentially relevant factor in 2017, and in 2017 it was not possible to gather this data reliably for FTSE100 companies as of 2016 because the website did not provide this historic information

Figure 49 below shows that, as of 2017, 28 of the FTSE100 companies have a c-suite member who is in the 30% Club. In a further 16 companies, both the CEO and chairman are members of the Club.[50] One company, Standard Life

[49] www.30percentclub.org/about/who-we-are accessed 4 August 2019
[50] Annual Report (*Standard Life Aberdeen*, 2017)

Aberdeen Plc, has three members following a merger after which both CEOs remained in place as co-CEOs.

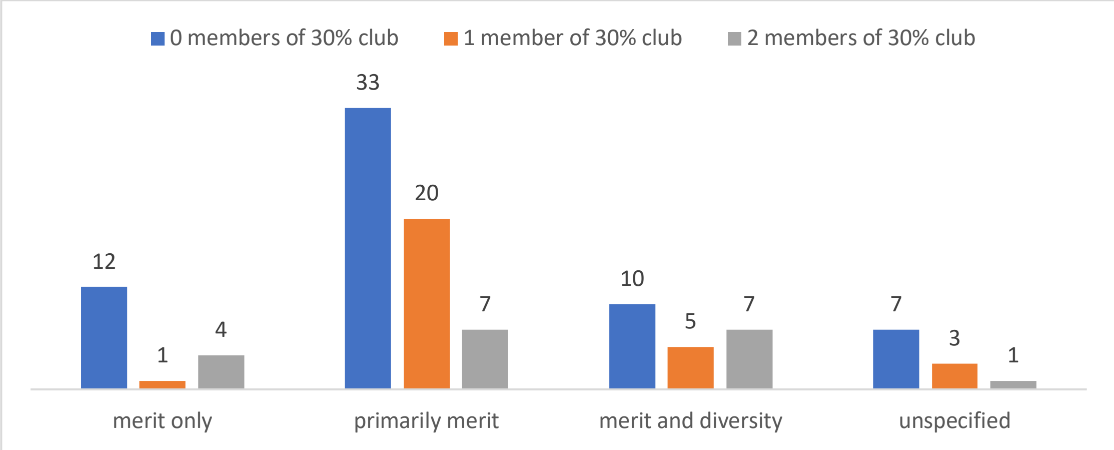
Figure 49: 30% Club membership in FTSE 100 companies 2017



50% (5) of the eligible women in the sample (Chairmen and CEOs) are members of the 30% Club. This compares to 30% (60) of the male CEOs and Chairmen. 16% (1/6) of BAME Chairmen and CEOs are members of the 30% Club. The correlation between the number of women in the c-suite and the number of members of the c-suite in the 30% Club is as might be expected, companies with 2 women in the c-suite have the highest proportion of members in the 30% Club. Similarly, FTSE100 companies with no women in the c-suite have the highest proportion of companies with no members in the 30% Club.

If 30% Club membership is considered from the point of view of how a company sets out its appointment policy, the results (as set out in Figure 50) show that companies who have Merit and Diversity policies are those companies most likely to have 2 c-suite members belonging to the 30% club. Correspondingly, companies with Merit Only policies are most likely to have no members belonging to the 30% Club.

Figure 50: Relationship between FTSE 100 diversity policies and c-suite membership of the 30% Club.

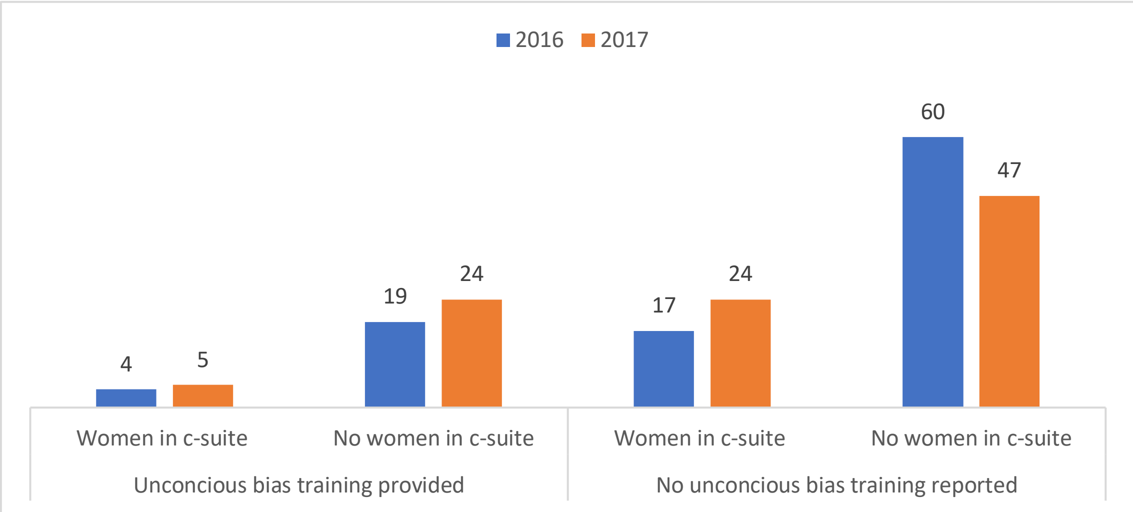


Indicator 4: Unconscious bias training

An increasingly well-known and commonly discussed response to diversity issues is for companies to provide staff training in unconscious bias. The training itself is not specifically focused on the c-suite or board. However, it provides an indication of awareness of the issues surrounding unconscious bias in the making of appointments that could impact the gender and ethnic balance throughout an organisation. As discussed in Chapter 4, unconscious biases are founded on the stereotypes people hold about other groups of individuals. In 2017, 29 of the FTSE100 companies reported providing unconscious bias training at some level in the organisation. This was an increase from the 22 that in 2016, amounting to a 32% increase. However, it must be noted that not reporting unconscious bias training does not preclude its provision, as there is no obligation to report it. It also does not speak to the quality or effectiveness of the training provided.[51] However, it does give some indication of the rise in prominence of the issue.

Although unconscious bias training may be increasing, Figure 51 shows that it is considerably more common for there to be women in the c-suite where no unconscious bias training is reported than when there is.

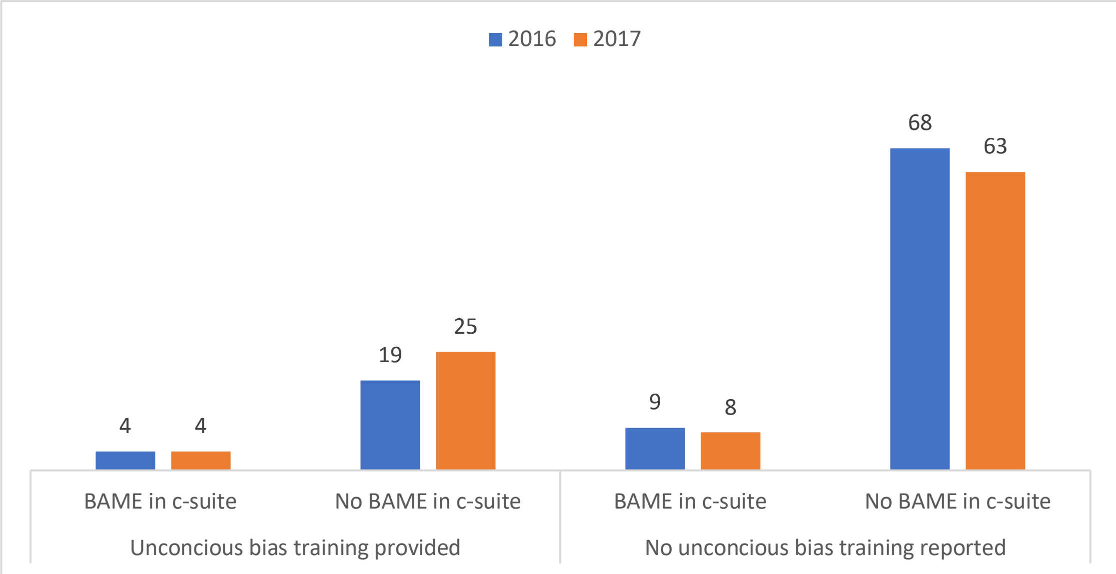
Figure 51: Women in the c-suite and the provision of unconscious bias training



The same pattern is shown, albeit with less prominence, when considered from an ethnicity perspective as set out in Figure 52 below.

[51] Mike Noon "Pointless diversity training: unconscious bias, new racism and agency." (2018): *Work, employment and society* 32.1 198

Figure 52: BAME in the c-suite and the provision of unconscious bias training



3. Summary

This chapter has reviewed data gather about each company in the FTSE100 in 2016 and 2017. The findings revealed some variety in the levels of compliance with the diversity provisions of the Code. It also revealed some counter-intuitive results regarding the relationship between the number of women in the c-suite and the respective companies position on board diversity. A number of indicators of corporate engagement with the need for diversity have also been considered. The results of all these findings are considered in detail in the following chapter.

Chapter 8

A discussion of the key findings

Using the empirical research results set out in the previous two chapters, this chapter will address each of the research questions set out in Chapter 5.[1] In doing so, the theories of appointment processes and human capital (discussed in Chapters 3) and the concepts of merit and power (discussed in Chapter 4) will be considered in order to determine the extent to which they are supported by the empirical findings. It also provides a basis for further critical examination of the theories of boardroom diversity discussed in Chapter 2. In addition, it develops a theory of One Deviation, which suggests that where an individual differs from the norm in either gender or ethnicity, they are less likely to stray from the norm in other respects. This supports research by Zhu et al, claiming that women and ethnic minorities have to display more similarities than White men, in order that they might be recategorized from the out-group to the in-group.[2] It also supports research suggesting that nomination committees are exposed to pressure to counter balance diversity of one type on the board with lack of diversity of another type.[3] The One Deviation theory can be differentiated because it is focused at the individual and not the board level.

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[1] See page 166

[2] David H Zhu, Wei Shen and Amy J Hillman, 'Recategorization into the In-group The Appointment of Demographically Different New Directors and Their Subsequent Positions on Corporate Boards' (2014); *Administrative Science Quarterly 264*

[3] Winfried Ruigrok and others, 'The Determinants and Effects of Board Nomination Committees' (2006) 10 *Journal of Management and Governance* 119 121142

1. C-suite research questions

1.1. Gender and ethnic representation

Research Question 1*: What are the differences in representation of gender and ethnicity in the FTSE100 c-suite in terms of numbers, roles and representation?*

During the sample period, women constituted 9% and BAME individuals constituted 4% of the c-suite. When compared with population data, both categories are significantly underrepresented. Proportionally, women remain more underrepresented than BAME individuals and BAME women are the most underrepresented. The absence of BAME women in the study (with the exception of Manjit Wolstenholme, Chair of Provident in 2016), suggests that minority women are at the greatest disadvantage in accessing appointments.[4] This corroborates the findings of research into the compounded disadvantages faced by minority women.[5]

Roles

When found in the c-suite, women are most commonly in Chief Financial Officer ("CFO") roles and BAME individuals in other board executive ("CXO") roles. Empirical research in the US has shown that investors react positively to the appointment of a woman CFO for firms in low growth industries, and it is claimed that the cause of this is a perception that women are less

[4] Margaret Yap and Alison M Konrad, 'Gender and Racial Differentials in Promotions: Is there a sticky floor, a mid-level bottleneck, or a glass ceiling?' (2009) *Journal of Industrial Relations* 593 609

[5] See page 33

overconfident than men.[6] In contrast, White men are relatively evenly distributed between Chief Executive Officer ("CEO"), CFO and Chairman roles. This indicates that there is a tendency to confine women and BAME individuals to the least powerful roles. This mirrors the "prestige effect" seen in the judiciary, where women and minorities are mostly found in the lower levels of the judiciary.[7]

Remuneration

Once women attain board seats their mean remuneration, across all roles, is substantially lower than it is for men. In market terms, the clear indication is that men are perceived to be more valuable than women when in the c-suite. There are three potential explanations for this: (1) there is an actual competence difference between genders; (2) there is a perceived competence difference between genders; or (3) regardless of actual or perceived competence, women do not wield as much bargaining power as men do in similar situations.

Regarding actual competence, an analysis of the share price for the 5 companies in this study that have a women CEO in both 2016 and 2017, shows a slight decline in performance for 3 companies, an increase for one and a stable result for another. These findings arguably point to a possible competence difference but this is refuted on the basis that such a conclusion

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[6] Trang Doan and Mai Iskandar-Datta, 'Does Gender in the C-Suite Really Matter?' (2018) *Journal of Accounting, Auditing & Finance* 24

[7] Cheryl Thomas, 'Understanding Judicial Diversity. A Research Report for the Advisory Panel on Judicial Diversity' (2009)

would require a more detailed analysis of the share performance of all companies in the FTSE100 during the period.[8] Furthermore, for a sufficient degree of reliability, it would need a much larger sample. Research in this area has had mixed findings as to the relationship between gender and CEO performance.[9] This is perhaps because the wrong question is being asked. In contrast, research by Dwivedi et al asked "what are the factors that determine success for women CEOs" and they found that "the long tenure of the male predecessor and the insider origin of the female successor are both enablers of female success."[10] The majority of the women CEOs in this research sample were external appointees. If the "glass cliff" theory (whereby women are appointed to precarious positions) is true, any results of a share price to gender analysis would be skewed.[11] More research is needed here.

Regarding perception of competence, women are at a disadvantage when assessed on a typical understanding of merit because it is based on a concept of human capital that favours men and because its inherent flexibility allows human biases, which again favour men, to enter into the decision making

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[8] Share performance is a crude indicator of CEO performance given the number of external factors that can influence it.

[9] Seung-Hwan Jeong and David A. Harrison, 'Glass Breaking, Strategy Making, and Value Creating: Meta-Analytic Outcomes of Women as CEOs and TMT members' (2017) 60 *Academy of Management Journal* 1219, Jason Q Zhang, Hong Zhu and Hung-bin Ding, 'Board composition and corporate social responsibility: An empirical investigation in the post Sarbanes-Oxley era' (2013) 114 *Journal of Business Ethics* 381, Walayet A. Khan and Joao Paulo Vieito, 'CEO Gender and Firm Performance' (2013) 67 *Journal of Economics and Business* 55,

[10] Priyanka Dwivedi, Aparna Joshi and Vilmos F Misangyi, 'Gender-inclusive Gatekeeping: How (mostly male) predecessors influence the success of female CEOs' (2018) 61 *Academy of Management Journal* 379

[11] Michelle K Ryan and S Alexander Haslam, 'The Glass Cliff: Evidence that women are over-represented in precarious leadership positions' (2005) 16 *British Journal of Management* 81

process.[12] This may explain the data showing men being paid more than women in all roles. If remuneration is linked to merit, it suggests that men are considered to have more merit than women in all roles. As there is no evidence of a difference in levels of merit the suggestion must be one or a combination of the following reasons: (1) remuneration is not linked to merit; (2) merit is not a sufficiently definitive concept; or (3) women are paid less than men for the same work. Regarding (1), research suggests that the link between merit and remuneration is questionable and that cronyism plays an important role in determining levels of remuneration.[13] In relation to (2), Malleson argues that merit cannot be legitimately or fairly constructed without reference to the potential candidate pool.[14] This means that the definition of merit against which each gender and ethnicity is measured should be one that accounts for the skills of all of the entire pool, and merit based remuneration should reflect this.

If it is a question of bargaining power, as in (3), this runs counter to a typical supply and demand situation whereby the holder of that which is in demand has a good bargaining position. In a functioning market, where women are desired by companies but there are fewer of them, their remuneration ought to at least match men's remuneration on the basis of their rarity combined with a purported desire for companies to diversify management. This is unless,

[12] Human capital and its flaws are discussed in detail in Chapter 3 page 115 onwards and the flexibility of merit is discussed in Chapter 4 133 onwards
[13] Lars Oxelheim and Kevin Clarkson, 'Cronyism and the determinants of chairman compensation' (2015) 131 *Journal of Business Ethics* 69 86
[14] Kate Malleson, 'Rethinking the Merit Principle in Judicial Selection' (2006) 33 *Journal of Law and Society* 126

contrary to common argument, the pipeline is inundated with capable and available women.[15] Consequently, either the pipeline argument is inaccurate (in which case the question returns to why are there not more women in the c-suite) or women should have better bargaining power than they do. Either way, women are evidently disadvantaged on the basis of an assessment of merit or the reality of their power.

If remuneration is considered from an ethnicity perspective, the picture is not clear. The data suggest that BAME individuals are paid more, on average, than White individuals. This could be a consequence of a combination of exceptional merit and power (a significant proportion of them are founder members) within this small sample, bringing up the group average. Due to sample size, no reliable conclusions can be drawn from this data.

Who's who

Both women and BAME individuals appear to be less visible in their prominent roles based on their proportional representation in Who's Who. Who's Who is a database of influential people in the UK selected by a secret panel in order to present a picture of "the people of influence, or distinction and interest in contemporary British Society".[16] Given the uniqueness of their position, the lack of BAME membership in Who's Who is surprising. It is also surprising

[15] Nancy M Carter and Christine Silva, *Pipeline's Broken Promise* (Catalyst New York 2010),

[16] Neil Tweedie, 'Who's Who and Why oh Why?' *The Telegraph* (1 December 2008) accessed 26 October 2018ort

that so few women are featured. What we do not know from this statistic is whether any of this sample were invited but declined to be included.

1.2. Commonalities and differences in personal characteristics

Research question 2: *What are the similarities and differences in the personal characteristics of the individuals who make up the c-suite of the FTSE100 in 2016 and 2017?*

Age

The data revealed few characteristics with high levels of diversity in them. However, one such characteristic was age. The age range for men was from 40 to 86 and for women, from 42 to 70. The most common age bracket for both genders was between 50 and 60. While diversity of age is positive and should add a range of boardroom perspectives, it is disheartening to see that the age range for women is 18 years smaller than it is for men, indicating a smaller pool from which women are considered. It is also surprising that the average age for women c-suite directors is 52, whereas for men it is 58. This is counter-intuitive because women are more likely than men to take career breaks for family reasons.[17] This may be a consequence of the paucity of women Chairs (there are only 5). The nature of the chairmanship, as it is currently constructed, means the role is typically filled by the most experienced individuals in the team. The majority of them are aged 65 and above, and 95% are male. This has the effect of lifting the average age of c-suite men up considerably. This is not true of the BAME men, as there are just 2 BAME Chairmen. As such the results suggest that BAME men are appointed to the

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[17] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019) 7

c-suite later in their career, on average, than women or White men. A closer look at age by gender can be seen in Figure 6 in Chapter 6.

Nationality

There were many characteristics displaying high levels of similarity. In Kanter's 1977 empirical research, one of her participants asked "do all companies have an ethnic flavour? Our top men all seem to be Scotch-Irish".[18] Kanter attributed having an "ethnic flavour" to the process of homosocial reproduction i.e. the appointment of others in the image of the appointees.[19] The results of the present study show that there is still some truth in this as the nationality of the c-suite showed interesting patterns of similarity. Non-British nationals constituted 35% of the sample. This supports research in 2016 which found 60% of FTSE100 CEOs were British.[20] This may be decreasing as 2019 research shows 55% of women directors were British; there were no equivalent statistics provided for men.[21] At first glance this may appear to be a reasonable level of diversity given the listing location, but these are primarily global companies with only 10% obtaining all their revenue from the UK and 21% being headquartered overseas.[22] Given the knowledge gap UK nationals are likely to have about other jurisdictions it is arguably necessary for other jurisdictions to be represented. However, other European indexes display even less diversity of nationality. For example, in the German

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[18] Rosabeth Moss Kanter, *Men and Women of the Corporation*, vol 5049 (Basic books 1977), *54*

[19] Ibid

[20] *The Odgers Berndtson Global Corporate Leadership Barometer* (2017)

[21] *The Female FTSE Board Report 2019* (n 17)

[22] *FTSE100 Stocks listed in London*

DAX 75% of the CEOs are German, and in the French CAC40 86.5% of the CEOs are French.[23]

The findings also show that nationalities often group together. Only 17% of companies have 3 or more nationalities represented on the board, and the largest proportion (46%) have just one nationality. When considering that the average number of people in a FTSE100 c-suite over the two-year period of the study was 4.02, it is surprising that nearly half of the sample companies have just one nationality. This supports the theory of homosocial reproduction, and that the heuristic of representation interferes with the appointment decision.[24] It also corresponds with research that finds firms with foreign board members are more likely to make foreign appointments.[25] This resemblance magnet effect is problematic because "the values that business executives bring to their tasks are largely influenced by a national system of beliefs".[26] A lack of diversity in terms of nationality will very likely impact upon the many value-based choices made by the c-suite.

Universities

A consideration of which universities c-suite members attended was used as an indicator of background and privilege. Attendance at elite institutions is

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[23] Ibid

[24] Kanter (n 18)

[25] Sabina Nielsen and Bo Bernhard Nielsen, 'Why Do Firms Employ Foreigners on their Top Management Team? An exploration of strategic fit, human capital and attraction-selection-attrition perspectives' (2010) 10 *International Journal of Cross Cultural Management* 195 204

[26] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116, *53*

thought to be beneficial for making networks that will help retain privilege but also a likely symbol of the historic privilege of an advantageous upbringing. Research shows that just 8 schools in the UK have as many students going to Oxbridge as three-quarters of the rest of UK schools .[27]

Certain elite institutions were highly represented in the research sample, such as the universities of Oxford, Cambridge and Harvard. This supports the theory of social capital, discussed in Chapter 3.[28] This dominance may relate to the "continuing significance for corporate firms and their clients of the class cachet conferred by Oxbridge and elite public schools".[29] The dominance of Oxbridge appears to be more significant for women, as the findings show that 30% of the total women in the sample attended Oxbridge, compared to 15% of the men. On the wider board, the proportion of women with an Oxbridge background is 11%.[30] From an ethnicity perspective, 9% (1) of the BAME sample attended Oxbridge, compared to 17% (65) of White individuals. Considering the disadvantage faced by BAME individuals in gaining places at these universities, this is perhaps unsurprising.[31] Attendance at such institutions may facilitate the development of both the right connections and the right cultural markers, thereby increasing a person's social and cultural capital respectively. The suggestion is that this is not only important from the

[27] The Sutton Trust, '*Access To Advantage'* (2018)

[28] See page 118 onwards

[29] Hilary Sommerland, 'The Social Magic of Merit: Diversity, equity, and inclusion in the English and Welsh legal profession' (2014) 83 *Fordham Law Review* 2325 referring to Galanter and Roberts

[30] *The Female FTSE Board Report 2019* (n 17) 25

[31] In 2017 a White applicant to Oxford University was at least twice as likely to gain entry than a Black applicant *University of Oxford, Annual Admissions Report* (May 2018). Historically this disadvantage would have been considerably greater.

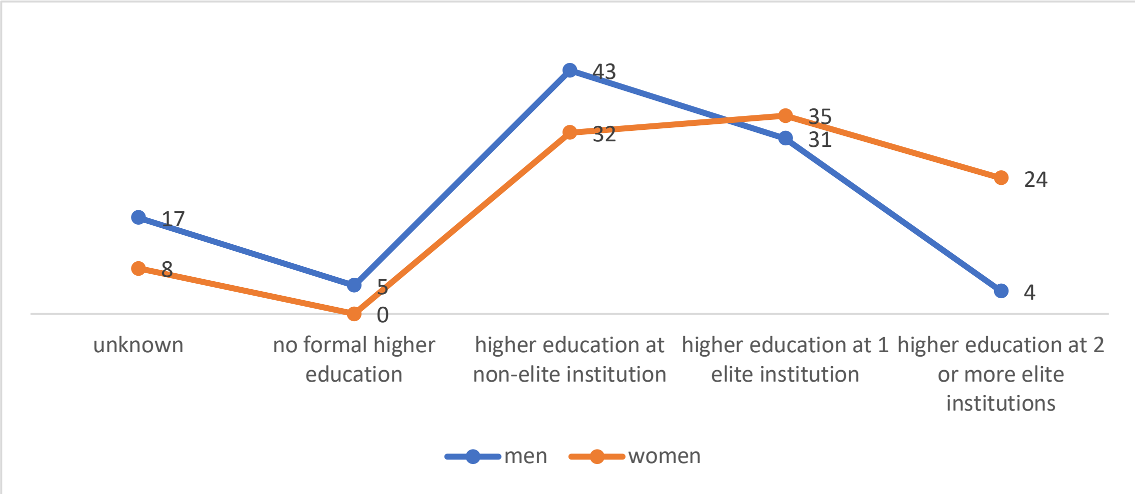
perspective of boardroom elitism and the limitation of diversity of perspectives, but that this is more important for women than it is for men.

In addition to the high proportion of elite institutions, it was interesting to note the number of c-suites in which two or more individuals shared an alma mater, again supporting the theory of homosocial reproduction. It suggests that a combination of prestige associated with elite institutions and the benefits of having a network of connections is involved in the determination of merit and appointment.

Looking at the data at a higher level revealed that, when universities are classified as elite or non-elite and when a c-suite member's education is scored according to attendance at such institutions, 24% of women have attended 2 or more elite institutions but only 4% of men have. This can be seen in Figure 53. It is also the case that proportionally more women than men have attended 1 elite institution. The situations reverse when considering non-elite institutions.[32] This suggests that women must demonstrate a higher level of social and cultural capital in order to be accepted onto the board. This supports the One Deviation theory, i.e. where an individual differs from the norm in respect of gender or ethnicity the individual needs to either be the same in other characteristics or better.

[32] This finding is presented in Figure 10 on page 209

Figure 53: Gender and attendance at university according to elite/non-elite status



Family

The marital status data suggest that men and women are similar in terms of the proportion who are married or unmarried. Looking at the number of children per individual reveals that c-suite women tend to have fewer children than men. Potential causes may include the difficulty of combining motherhood and high-profile careers and the enduring idea that women should take on the bulk of the parenting duties.[33] Data on children were collected via media reports and was much more available for women than for men. This supports research findings that the media have a tendency to prime gender roles through their greater likelihood of referring to the children and marital status of women executives.[34] However, the data were not available on this issue for all c-suite members, so it is not possible to draw a definitive

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[33] Michela Iannotta, Mauro Gatti and Morten Huse, 'Institutional Complementarities and Gender Diversity on Boards: A configurational approach' (2016) *24 Corporate Governance: An International Review* 406 6, Nina Smith, Valdemar Smith and Mette Verner, 'Why Are So Few Females Promoted into CEO and Vice President Positions? Danish empirical evidence, 1997–2007' (2013) 66 *Industrial & Labor Relations Review* 380,

[34] Peggy M Lee and Erika Hayes James, 'She'-e-os: gender effects and investor reactions to the announcements of top executive appointments' (2007) 28 *Strategic Management Journal* 227

conclusion on this. In particular, there was insufficient family data available for the BAME individuals and therefore no analysis could be conducted along ethnicity lines.

Hobbies

The most popular hobby for men in the c-suite is golf. None of the women c-suite members cited golf as a hobby. Golf is commonly associated with business, so much so that it is reportedly now common for business schools to offer golf lessons.[35] The stereotypical image of business men on the golf course is a familiar one, and research has shown a well-established link between business and golf since the early 20th century.[36] In contrast, the most popular hobbies for women were arts (including theatre, opera and art), music and reading. Arts and music were in the top five most popular hobbies for men also. Unlike golf, these are much wider categories, encompassing a wide array of leisure opportunities, most of which are accessible to all. These findings are interesting in that they support the business and golf association and highlights a potential disadvantage to non-golfers if appointments are considered from the perspective of homosocial reproduction.

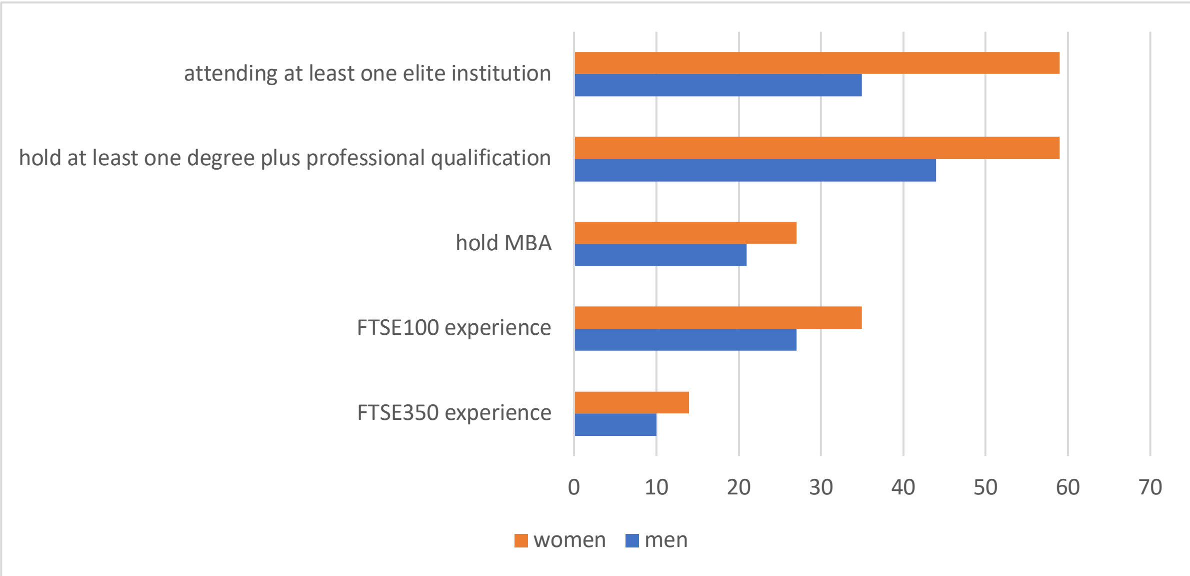
1.3. Differences in the professional backgrounds of the c-suite

***Research Question 3**: Are there any identifiable differences between genders and ethnicities in the sample in relation to professional characteristics?*

[35] Hugo Ceron-Anaya, 'An Approach to the History of Golf: Business, symbolic capital, and technologies of the self' (2010) 34 *Journal of Sport & Social Issues* 339 340
[36] Ibid

The findings revealed an interesting gender story in relation to key professional background factors. Figure 54 summarises the main findings and shows that, consistently, there is a higher proportion of women at the upper end of the spectrum in terms of achievements. The suggestion is that barriers to entry into the c-suite may be higher for women than for men.

Figure 54: Graphical summary of proportions of key professional background factors by gender



Education

Taking a closer look into the professional background of each c-suite member reveals considerable similarity in terms of education. There is a slightly higher proportion of women with high education scores (i.e. 3 and above, corresponding to at least a Bachelors degree plus an MBA or an equivalent variation thereof). This suggests that on average women are just as qualified, if not more so, than their male counterparts. This reflects US research examining Fortune 500 which companies and concluded that an "examination of the director's professional backgrounds shows that these females are as highly qualified as their male counterparts".[37] It runs counter to any tokenism arguments that have been used to justify lack of diversity. Correspondingly, a slightly larger proportion of women than men have professional qualifications. Noticeably, however, women and BAME individuals almost always hold accounting qualifications (if they hold any professional qualifications). This suggests a reluctance to deviate from the norm and further supports the One Deviation theory. However, for women this prominence of accounting qualifications is likely to be related to the proportion of women CFO's, even though it is not an official requirement of the role.[38] Research shows that there has been an 11% increase in the proportion of directors with finance backgrounds since 1996, and this is thought to represent an unwelcome step backwards in diversity of background.[39] According to an Ernst & Young survey conducted across Europe, the Middle East, India and Africa, 29% of CFOs highest qualification was a finance degree, 27% an MBA and 27% a chartered accounting qualification.[40]

Prior board experience

When the c-suites are analysed according to their prior board experience, it is notable that a substantially higher proportion of women than men have prior FTSE100 experience. The same is true of FTSE350 experience, although to a lesser degree. This runs counter to the argument, frequently used to defend

[37] Craig A Peterson and James Philpot, 'Women's roles on US Fortune 500 boards: Director expertise and committee memberships' (2007) 72 *Journal of Business Ethics* 177 193
[38] Peter Williams, 'The Business Man' *Accounting and Business* (June 2015)
[39] *A View at the Top: Boardroom trends in Britain's Top 100 Companies 19*
[40] Ernst & Young, '*The DNA of the CFO'* (2010) 26

the lack of women on boards, that women have less experience than men.[41] It implies that women are more likely than men to need to demonstrate prior high-level experience in the most relevant markets. They are less likely to have prior experience in board positions in other stock markets. Again, this supports the One Deviation theory.[42] It also runs counter to research suggesting women hold more appointments than men because it is harder to find women perceived to be suitable.[43] Often board experience is obtained at Non-Executive Director (NED) level, where the representation of women is substantially higher.

For ethnic minorities, 70% have no prior board experience. This suggests some truth in the argument that there are fewer ethnic minorities with the relevant board experience.[44] However, it is also a natural consequence of being excluded from high level board appointments. It is relevant to consider here that BAME individuals have not yet benefited from the same push as given to women from the Davies Review.[45]

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[41] Siri Terjesen, Val Singh and Susan Vinnicombe, 'Do women still lack the ''right'' kind of human capital for directorships on the FTSE 100 corporate boards' (2008) *Women on Corporate Boards of Directors: International Research and Practice* 152 157, Economic and Social Research Council, *Opening the Black Box of Board Appointments: women's and men's routes to the boardroom* (2015) 14

[42] Alice Hendrickson Eagly and others, *Through the Labyrinth: The truth about how women become leaders* (Harvard Business Press 2007) 102, *112*

[43] Cathrine Seierstad and Tore Opsahl, 'For the Few Not the Many? The effects of affirmative action on presence, prominence, and social capital of women directors in Norway' (2011) 27 *Scandinavian Journal of Management* 44

[44] Sir John Parker and The Parker Review Committee, *A Report into the Ethnic Diversity of UK Boards* (2016)

[45] The Parker Review was published in 2016 and the Davies Review initial target was set in 2011.

External appointments

The guidelines of the Code state full time executives should have no more than one NED or other significant role.[46] Excluding CFOs, women have a greater number of external appointments than men in all roles but almost always remain within the guidelines of the Code about having no more than one NED or other significant role. In contrast, men tend to have slightly fewer roles, except when it comes to the role of CFO, where men have proportionally more. Nearly 10% of male CFOs exceed the Code's external appointments guidelines. Again, deviating from the Code appears more acceptable, whereas women work within the boundaries of what is deemed acceptable, with a tendency towards as many appointments as possible. This again accords with the One Deviation theory in that men are more likely to deviate from what is deemed acceptable.

There are no restrictions in the Code on the number of external appointments a Chairmen may hold. Women Chairmen have substantially more external appointments than male Chairmen. This could be a consequence of women needing to demonstrate a higher level of social capital in order to obtain appointments. An alternative theory is that these women are the "golden skirts"[47] of the FTSE100 and are given more appointments because of the dearth of talented women in the pipeline. The former argument is more

[46] UK Corporate Governance Code B.3.3

[47] Morten Huse, *The Golden Skirts: Changes in board composition following gender quotas on corporate boards* (2011)

persuasive, given the evidence and support for the view that there are no issues with the pipeline of talented women.[48]

Apart from CXOs, the proportion of external appointments held by BAME individuals is substantially lower than for White individuals across all roles. This correlates with the idea (discussed under Entry Route below) that BAME individuals are more likely to gain their appointments through internal promotion, thus not needing to demonstrate high levels of external board membership.

Non-profit appointments

The analysis of non-profit appointments suggests that women tend to have fewer of these appointments than men and that BAME individuals tend to have more than White individuals. These results may be a consequence of the availability of for-profit roles and the amount of time able to dedicate to non-profit roles given other external commitments. It is possible that the career benefits of not-for-profit appointments mean women opt for for-profit appointments. For BAME individuals, the external for-profit appointments may not be quite as available given their lower levels of representation.

Entry Route

In contrast to research by Doldor et al,[49] the findings on entry route into the c-suite show a relatively even split between the proportion of c-suite members

[48] For a discussion of this please see page 62 onwards

[49] Elena Doldor, Ruth Sealy and Susan Vinnicombe, 'Accidental Activists: Headhunters as marginal diversity actors in institutional change towards more women on boards' (2016) 26 *Human Resource Management Journal* 285.

gaining their position through the internal and external routes. This is consistent across genders and corresponds to the claim that there has been a shift in recent years towards more external hiring.[50] When considered as a whole (See Figure 14) Fitzsimmons et al's theory that women were more likely than men to gain entry via the external route is not supported here.[51] Neither is the theory that internal pathways are more common for women because they allow the individual to become known and evaluated on their own merits instead of on stereotypes.[52] However, the data suggest that this may be true for BAME individuals although it is not conclusive due to the sample size. This apparent prominence of internal routes for BAME individuals presents a possible opportunity to research the effectiveness of the executive search firms' voluntary code to promote diversity in external appointments for ethnicity.[53]

When the entry route is broken down by role, differences begin to emerge. While the vast majority of male Chairmen are brought in externally, the opposite is true for women. One of the roles of the Chairman is to reassure stakeholders about the state of the company, and this may be related to why the proportion of externally appointed male Chairman is higher than for women. Where a company is wishing to comfort its stakeholders, the

[50] Discussion between author and FTSE executive recruitment consultants Susanne Thorning-Lund at Odgers Berntsen on 20 August 2018 and Sarah Galloway at Russell Reynolds on 13 August 2018

[51] Terrance W Fitzsimmons, Victor J Callan and Neil Paulsen, 'Gender Disparity in the C-suite: Do male and female CEOs differ in how they reached the top?' (2014) 25 *The Leadership Quarterly* 245

[52] Andrea C Vial, Jaime L Napier and Victoria L Brescoll, 'A Bed of Thorns: Female leaders and the self-reinforcing cycle of illegitimacy' (2016) 27 The Leadership Quarterly 400

[53] The Voluntary Code of Conduct for Executive Search Firms

perception may be that it is easier to do this with a high-profile, highly experienced individual with considerable social capital. It is suspected that men are perceived to fit this profile more frequently than women. In contrast, for the CEO role, women are more likely to obtain these roles via the external route and the opposite is true for men. To the extent it is true that women are appointed to precarious "glass cliff" positions, it is arguably more likely they would be external hires, thereby knowing less about the precariousness of the position.[54] This may explain the increased likelihood of women CEOs being externally hired.

1.4. Distribution of power in the c-suite

Research Question 4*: Are there any differences in the power of the c-suite directors by gender or ethnicity?*

Using a variation of Finkelstein's econometric measures for management power, this study sought to analyse the respective levels of power in the c-suite. Structural, ownership and prestige power were examined. On average women demonstrated substantially lower structural and ownership power than men, but more prestige power. In contrast, BAME individuals had higher average power scores than White individuals across all power measures.

Structural power is a combination of the power a person wields by virtue of their position in the corporate hierarchy, their tenure and their remuneration. Women are often confined to the lowest power roles in the c-suite and, even when in comparable roles, are paid considerably less than men. This research

[54] Michelle K Ryan and S Alexander Haslam, 'The Glass Cliff: Evidence that women are over-represented in precarious leadership positions' (2005) 16 *British Journal of Management* 81

supports growing evidence that "once women are appointed to boards they have significantly shorter tenures and are less likely to be promoted into senior roles".[55] The combination of the gender pay gap, shorter tenures and lower status position makes it unsurprising that women's structural power scores are substantially lower than for men. This could mean that women are less likely than men to be able to use structural power to retain their board position.

The data suggest that when BAME individuals attain c-suite positions, they are just as powerful as White individuals. This is echoed in an analysis of **ownership power**. However, given the high proportion of BAME founders in the sample, this is not unexpected. Women's ownership power is low because they are neither founders nor substantial shareholders. Again, it is suggested that lower levels of ownership power could mean a lower likelihood of ability to use such power to retain board positions.

Prestige power, though arguably less significant than structural and ownership power, recognises the relevance of individuals' backgrounds, connections and status. Women in the c-suite demonstrated higher levels of prestige power than men, and BAME individuals demonstrate higher levels of prestige than White individuals in the c-suite. As prestige is an "entirely cultural and symbolic construct"[56], a genuine meritocracy would not afford it much weight in determining merit. If it did not impact upon appointments, there should be very little variation in the levels of prestige power between

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[55] *The Female FTSE Board Report 2019* (n 17) 7
[56] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 2011) 202 *222*

men and women or White and BAME individuals. However, women and BAME individuals tend to have higher levels of prestige power, perhaps because it is less important for men and White individuals to demonstrate this to obtain their position. It may also be because women have higher barriers to entry into the c-suite, thus having to establish their levels of prestige prior to appointment more strongly than men by showing more prestigious experience, education and potential networks. Either way, it is thought that prestige power is of primary relevance at the appointment stage. After appointment, the importance of matters such as educational institution should begin to diminish as individuals develop relationships and their background becomes less significant.

2. Company diversity questions

2.1. A comparison of FTSE 100 diversity statistics

Research Question 5: *What do the figures presented by each company say about the reality of diversity within that company and, when considered collectively, within the FTSE100?*

In general, c-suite diversity is a poor reflection of workforce diversity and even board diversity. Companies appear willing to diversify their NEDs but much less willing to diversify the c-suite.[57] By increasing the number of women on the wider board, companies appear to believe they can satisfy diversity critics, while not really changing anything substantive in the company's leadership.

[57] *The Female FTSE Board Report 2019* (n 17)

The analysis of diversity statistics presented in the FTSE 100 companies annual reports reveals that men outnumber women and White individuals outnumber BAME individuals in the corporate c-suite in all industries. In the Technology industry, there were no women or BAME individuals in the c-suite in both years of the study (2016 and 2017). The industries with greatest c-suite diversity in both years are Consumer Goods and Consumer Services. This supports research suggesting that reputational benefits resulting from having women on boards are most evident in these industries.[58]

Almost every **executive management** role has seen an increase in the number of women from 2016 to 2017. The increase may bode well for future appointments of women in the c-suite, as the executive management team is often considered to be the pool from which internal c-suite candidates are chosen. However, the roles women executives occupy tend to follow stereotypical paths, with the majority finding roles in human resources, legal or corporate relations. There is a distinct lack of women in the more strategic roles such as Chief Operating Officer. These results suggest women may be being stereotyped into roles which have a human element. There is similarity here with the "caring role effect" found in the legal profession and the judiciary, in which women are most commonly found in family law-related posts.[59] It is not uncommon for women to be grouped this way. Research has found that women are more likely than men to be on public affairs committees and less

[58] Stephen Brammer, Andrew Millington and Stephen Pavelin, 'Corporate Reputation and Women on the Board' (2009) 20 *British Journal of Management* 17 18

[59] Cheryl Thomas, 'Understanding Judicial Diversity. A Research Report for the Advisory Panel on Judicial Diversity' (2009) 3

likely than men to be on executive committees.[60] Discussing occupations more generally, Padavic and Reskin have found that women are limited to fewer occupations than men, and those occupations conform to stereotypes of women as “caring, patient, nimble-fingered, skilled at household tasks and docile”.[61] While none of the executive roles fit that description, there does appear to be a pattern in the employment of women at executive level that reflects the caring role effect.

The analysis of the **gender pay gap** statistics was also revealing.[62] Despite flaws in the first year of reporting[63] (arguably putting companies in their most favourable light), there are extensive differences in the amounts women and men are paid, particularly when it comes to bonuses. The most common argument for the pay differential is that there are more men in senior positions.[64] This may be one of the key reasons, but it does not amount to a justification. It is not even consistently true. There are a small number of companies in which women outnumber men in the c-suite, and yet only one of those companies (Severn Trent plc) has a bonus gap which is (marginally) in favour of women[65], and even then the pay gap continues to favour men.[66] Despite the evident issues with accuracy of the data, it is clear that there are

[60] Peterson and Philpot (n 37) 177
[61] Irene Padavic and Barbara F Reskin, *Women and Men at Work* (Pine Forge Press 2002) 73 *71*
[62] Pay gap data are currently unavailable in respect of ethnicity.
[63] Discussed in Chapter 7 page 240-242
[64] Feargal McGuinness and Doug Piper, 'The Gender Pay Gap Briefing Paper' (2018) 4
[65] 'Gender Pay Gap Service' <https://gender-pay-gap.service.gov.uk> accessed 2 August 2019
[66] Ibid

major disparities in pay across the workforce of the FTSE100. If women are paid unequally to men, their incentives and ability to climb the ladder will also be unequal.

2.2. A comparison of FTSE100 diversity policies

Research question 6*: how do the companies present their position on diversity, how does they compare with each other and how does this correspond with their statistics?*

The analysis of diversity text in FTSE100 annual reports revealed a number of trends and inconsistencies. First, in relation to how diversity is defined, the vast majority of companies include professional characteristics such as skills and experience in their definition of diversity. The Cambridge Business English Dictionary defines diversity as "the fact of there being people of many different groups in a society, within an organization".[67] It is doubtful that many would agree that "FTSE350 industry experience" forms a "group in society" for diversity purposes.

The consequence of including professional characteristics in a definition of diversity is that, when companies claim to make appointments with regard to the benefits of diversity, they are saying very little, if anything. This supports the view that "diversity has become a smorgasbord from which companies are taking what they desire and leaving the rest".[68] While most people would

[67] *Cambridge Business English Dictionary* (Cambridge University Press)
[68] Susan E Reed, *The diversity index: The alarming truth about diversity in corporate America and what can be done about it* (Amacom Books 2011)

define diversity in terms of legally protected characteristics (such as gender and ethnicity), FTSE100 companies appear free to define it as they like, more often than not choosing to include non-protected characteristics (such as skills and industry experience). According to Edelman et al, this move to broaden the definition of diversity is a double-edged sword in that it "is less threatening to managerial interests in competitiveness but it tends to divest law of its moral component".[69] In other words, it is easier for management to commit to such a definition but it does little to forward the objective or spirit of the Code in respect of diversity.

None of the diversity definitions are without issue because even when they only list protected characteristics it can be considered to undervalue individuals. Diversity as a list of factors suggests everyone can be categorised, and this approach is difficult to reconcile with a genuine belief in the value of individual uniqueness.[70] It "simultaneously acknowledges racial and other differences while down-playing and disavowing related social problems".[71]

The analysis of each company's **board appointment policy** is set out in Table 17 below. This revealed that there are five potential paths a company may take, only some of which are compliant with the Code. The numbers in brackets within each category represent the total number of companies

[69] Lauren B Edelman, Sally Riggs Fuller and Iona Mara-Drita, 'Diversity Rhetoric and the Managerialization of Law' (2001) 106 *American Journal of Sociology* 1589 1632
[70] Joyce M Bell and Douglas Hartmann, 'Diversity in Everyday Discourse: The cultural ambiguities and consequences of "happy talk"' (2007) 72 American Sociological Review 895
[71] Ibid 905

within that category in 2017.

Table 17: Company diversity policy categorisation

		Does policy accord with Code guidance?	
		Yes	**No**
Is company Code compliant?	**Yes**	**Embracer companies (16)** Policy accords with Code and there is a meaningful definition of diversity	**Explainer companies (0)** Policy does not accord with the Code, but this is stated and explained in the report.
	No	**Sweet talker companies (51)** Policy prima facie accords with the Code, but definition of diversity is such that the policy places no burden on the company. [72]	**Denier companies (15)** Policy does not accord with the Code. No statement or explanation is made anywhere in the annual report. **Concealer companies (18)** Appointment policy is unclear. No statement or explanation is made anywhere in the annual report.

The largest proportion of companies fall within the category of **Sweet talkers.** These companies claim to make board appointments according to the guidance of the Code but, given their definition of diversity, they are not obligating themselves to do so in any meaningful way. This implies that they seek the benefits of appearing to support diversity without any of the concomitant responsibilities. An alternative interpretation is that they are unaware of the effect of their wording.

[72] This group of companies appear to comply with the Code, but it is argued that they do not because their definition of diversity renders their policy virtually meaningless.

The second largest group of companies are classified **Concealers**. With these companies the wording of their policy is unclear or absent, and therefore no determination of their position on board diversity can be made. The absence of policy description is not compliant with the Code and these companies make no attempt to appear compliant.

Perhaps the most pertinent example of the failure of the Code to engender compliance amongst the FTSE100 can be seen in **Deniers,** of which there are a similar number to the number of Embracer companies. Denier companies openly reject the guidance of the Code in relation to the basis upon which companies should appoint their board members. The indication from this is that those companies openly do not value diversity in leadership positions, claiming that appointments are made “regardless of gender and ethnicity”. This language is in direct contradiction to the language of the Code. As none of these companies report any diversity related deviations from the Code they are, prima facie, in contravention of the Listing Rules which require them to disclose non-compliance with Code provisions.[73]

Embracers companies adopt a policy that accords with the Code as well as a definition of diversity that relates only to protected characteristics. They have seen an increase in their number between 2016 and 2017 which may be due to an increasing pressure or awareness of the diversity issue.

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[73] Listing Rules 9.8.6. (5), (6)

The final group of companies are the **Explainers**. These are companies who reject the Code's diversity appointment policy but explain why they do so in their report. To do so would be in accordance with the Listing Rules and companies who do this would remain Code compliant, despite their lack of compliance with Code principles. No companies chose to do this.

The variety of approaches to the Code is concerning because it suggests inconsistency in agreement and cooperation with the guidelines. Overlaying the categories with statistics about the gender and ethnic make-up of the c-suite reveals counter-intuitive results. The majority of the Embracers (those who appear to embrace diversity openly and in accordance with the Code) are companies with no women in the c-suite. This is suggestive of a desire to promote an image that may not be adhered to, and it inspires little faith in the authenticity of their commitment to diversity. For example, at Rio Tinto plc there are no women in the c-suite, but their appointment policy is categorised as a Diversity and Merit one.[74]

A generous explanation for this inconsistency is provided by the "paradox of meritocracy" discussed in Chapter 4, whereby those who feel they have established themselves as unbiased have a tendency to then behave in more biased ways.[75] This echoes research showing that "88% of FTSE500 bosses say they are committed to championing diversity in their workforce [….], this

[74] The different categories of appointment policy can be found in Table 15 page 249
[75] Emilio J Castilla and Stephen Benard, 'The Paradox of Meritocracy in Organizations' (2010) 55 *Administrative Science Quarterly* 543 543

number includes 89% of the large group of companies that have no women at all on their executive board".[76]

A less generous explanation for this inconsistency may be that this is a form of "organised hypocrisy", whereby procedures are manipulated to prevent any impact on corporate culture[77] or negative associations that may result from a more honest report. It is certainly clear that companies are facing investor pressure to be more diverse and more proactive in seeking diversity.[78] The findings of this research suggest that companies want to appease investors without making significant changes.

In contrast, the vast majority of companies with 2 or more women in the c-suite fall into the category of Deniers (those who claim not to consider the diversity of their candidates when making appointments). This implies that companies with women dominating the c-suite find it necessary to openly reject the benefits of diversity and defend their appointments by pointing to merit. This accords with the comment of Alison Cooper, CEO of Imperial Brands (a FTSE 100 company) that "boards should make selections on the basis of merit […]. I'm appalled by the idea of forced distribution on boards, I

[76] Albone Juliette, *Two thirds of Ipsos Mori captains not confident in Governments ability to negotiate with the EU* (2018)
[77] Iris HY Chiu, 'An Institutional Theory of Corporate Regulation' (2018) 71 *Current Legal Problems* 279 309
[78] Kayleena Makortoff, 'Investor group warns almost 100 firms over lack of gender diversity' *The Guardian* (<https://www.theguardian.com/business/2019/may/13/investor-group-warns-almost-100-firms-over-lack-of-gender-diversity> accessed 3 August 2019

find that rude to women".[79] It indicates a perception that diversity is not a genuine merit factor and that people still feel it is necessary to compensate for diverging from the White male norm. It is also more evidence that the information that can be obtained from the diversity-related additions to the annual report is inconsistent and of questionable value.

2.3. Engagement with the diversity issue

There is a suggestion that diversity, at least in the US, is "yesterday's topic" and no longer of critical interest to corporations, who now favour "sustainability" as the corporate social responsibility topic of choice.[80] A review of the reports of the FTSE100 does not support this argument, all of which discuss diversity in varying degrees. In order to better understand the FTSE100 commitment to diversity, this research sought to gather indications of corporate engagement with diversity using four separate indicators considered in turn below. These indicators were: (1) citing of specific perceived diversity benefits; (2) reference to key diversity reports; (3) membership of the 30% Club[81]; and (4) the provision of unconscious bias training.

[79] Jonathan Sibun, 'Alison Cooper: Lighting up Imperial Tobacco' *The Telegraph* (<https://www.telegraph.co.uk/finance/financetopics/profiles/7494521/Alison-Cooper-lighting-up-Imperial-Tobacco.html> accessed 19 February 2019

[80] Reed (n 68) *17*

[81] The 30% Club is a group of CEOs and Chairman from business, policy and academia who are "committed to better gender balance at all levels of their organisations" '30% Club'

Perceived benefits

Looking at the statement of perceived benefits, it was clear that, to the extent companies perceive benefits to diversity, those benefits align strongly with the business case for diversity. Such perceived benefits focus on performance, effectiveness and decision-making improvements. There is limited recourse to benefits associated with the stakeholder basis for improving diversity (e.g. needs of stakeholders or to attract and retain talent) and no engagement with the societal basis. Although identifying the benefits of diversity may suggest that companies are committed to having a diverse board, the benefits given need to be read in conjunction with the company's definition of diversity. If a company claims that diversity improves board effectiveness but defines diversity to include skills and experience, then this perceived benefit adds little information of value. Of the 12 companies who claim diversity improves board effectiveness, 8 are Sweet Talker companies, 3 are Denier companies and 1 is a Concealer. For such companies, particularly Denier companies, these claims may relate more to the board's public relations desires than to an authentic representation of their views. There are no Embracers in this group. This is counter-intuitive and inconsistent. A genuine belief that diversity can improve board effectiveness arguably *requires* companies to embrace diversity.

Key diversity reports

Looking at the second indicator, it is clear that companies are taking note of the relevant reviews and associated targets because the majority of companies referred to at least one of the three key diversity reports (i.e. the

Davies Review, the Hampton-Alexander Review and the Parker Report).[82] This suggests that more companies are engaging with the diversity issue. Another interpretation could be that this simply reflects an increased awareness of the need to declare a commitment to diversity.

30% Club

The majority of companies still do not have either their Chairman or CEO as a member of the **30% Club**. This is despite their eligibility to join as a consequence of their position. The data indicate that proportionally more women join the club than men, and that eligible BAME individuals are less likely to do so than eligible White individuals. However, given the small size of the BAME sample, this is far from conclusive.

When the 30% club membership data are considered in light of the number of women in the c-suite, the picture is unsurprising: those companies with more women in the c-suite have more members of the 30% Club and those with no women have the highest proportion of companies without any members of the 30% Club. Similarly, when the data are analysed in light of the appointment policies, those companies that have Merit Only appointment policies have proportionally the largest number of companies with no members in the 30% Club.

[82] Lord Davies of Abersoch, *Women on Boards* (2011), Sir Philip Hampton and Dame Helen Alexander, *Hampton-Alexander Review. FTSE Women Leaders* (2016), Parker and Committee (n 44),

Unconscious bias training

The final indicator of engagement considered was that of unconscious bias training. There was a 32% increase in the number of companies reporting the provision of this training between 2016 and 2017. This suggest that unconscious bias training is gaining in prominence. However, the benefits of such training remain questionable, particularly when considered in light of the finding that women were more likely to be in the c-suite in companies that did not report having any unconscious bias training. There is support here for the "paradox of meritocracy"[83] in that, those companies who have provided the training feel comfortable that they have done enough to prevent them from making unconsciously biased decisions. Leaving them free to go ahead and make them with abandon.

3. Conclusion

An analysis of the **director data** reveal that there are a number of similarities amongst the c-suite that continue to support Kanter's theory of homosocial reproduction.[84] There are substantial similarities in gender, ethnicity, nationality, education institution, family and hobbies. Where an individual differs in either gender or ethnicity, they are less likely to stray far from the norm along the other characteristics, giving rise to a theory of One Deviation. The effect is that, where exceptions to the unofficial requirements of a role may be made for White men, they are less likely to be made for women or BAME individuals. This effectively increases women's barriers to entry.

[83] Castilla and Barnard (n 75)
[84] Kanter (n 18)

Notable differences between genders do arise in relation to a couple of factors. First is remuneration, with women being paid, on average, substantially less than men across all c-suite roles. Also, women c-suite members' education and achievements match or exceed those of men, suggesting a higher hurdle is in place for women than for men to attain c-suite positions. The same is not true in relation to the ethnicity of c-suite members, but the small numbers of BAME c-suite members make similar analysis problematic.

When the data are considered econometrically and a **power analysis** is produced, it is revealed than men have higher levels of structural and ownership power than women, while women tend to have higher levels of prestige power. As only structural and ownership power are likely to affect the retention of appointments (prestige power is only likely to have a significant impact upon appointment), it is argued that men are more likely to be able to exert sufficient power to retain their appointments than women.

There are little substantial differences in levels of structural power between White and BAME individuals, but BAME individuals have proportionally higher levels of ownership and prestige power than White individuals. Due to the size of the BAME sample little can be drawn from this, but there is the suggestion that BAME individuals are more likely to obtain and retain their appointments if they have ownership power (i.e. are founders) or, in the case of appointments, prestige power.

One of the most striking revelations from the **company data** is the inconsistency between actual diversity and stated commitment to diversity. The analysis reveals that annual reports are not a reliable indicator of a company's diversity position. The wording of the policies is often specious and oblique; 57% of companies in 2016 and 53% in 2017 adopt a board diversity policy in which diversity is defined to preclude any discernible impact from its reference. The suggestion is that there is a great deal of talk, perhaps for the benefit of investors and public reputation, but little action corresponding to change within the c-suite.

This finding leads to concerns about whether companies genuinely do believe in the benefits of diversity, whether the diversity-based values commonly espoused by many companies are authentic and what, in reality, is the point of the Code's diversity provisions as they stand. One could argue that the current effect of the Code is to facilitate companies generating diversity "spin" in order to appease investors and stakeholders. This would be counterproductive because as long as parties do not take diversity requirements seriously, the position of women and BAME individuals remains undermined. This is evidenced by their lack of representation in the positions of real power in the c-suite and their significantly lower pay once they get there.

When these three streams of analysis are considered together the picture it paints is one of layered inequality. In the first instance, women and BAME individuals are subject to higher hurdles to obtain c-suite positions than men and White individuals. Once they reach the c-suite, women are substantially underpaid relative to men and less likely to be able to retain their position through the exertion of power. This does not correspond with the picture painted in corporate reporting, and it could be argued that the Code has created a system which permits the continuation of homosocial reproduction under a façade of “happy talk”.[85]

[85] Bell and Hartmann (n 70)

Chapter 9

The possible paths towards achieving c-suite diversity

> *"Only those programmes which do not impact on the core of the merit-based system – the construction of what is meant by merit - can claim to have legitimacy, yet only those which fully engage with the construction of merit have any hope of being effective"*[1]

The first of two key findings from the empirical research is that appointments in the c-suite continue to be made in the image of the incumbents. There is little diversity along the many potential axes of difference, and minorities show less divergence (aside from their gender or ethnicity) from the traditional image than do White males. There is much research that confirms that people are confined by their knowledge, beliefs and experiences, no matter the effort to be open-minded and objective.[2] If the c-suite continues to remain homogenous, the decisions made therein will reflect this. It has been argued here that this is problematic for society, particularly when considering such prominent institutions as the FTSE100.[3]

The second key finding is that the image that companies portray of their diversity position is often misleading. Diversity policies often have little to no discernible impact and this was surely not the intention of the UK Corporate Governance Code ("Code") when drafting its diversity related provisions. In

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[1] Kate Malleson, 'Rethinking the Merit Principle in Judicial Selection' (2006) 33 *Journal of Law and Society* 126 140

[2] Sydney Finkelstein, Donald C Hambrick and Albert A Cannella, *Strategic Leadership: Theory and research on executives, top management teams, and boards* (Strategic Management (Oxford U 2009) 116, *83*

[3] See Chapter 2 page 20 onwards

this way, the two key findings are related; the c-suite is not diverse in part because the Code is not effective in engaging the FTSE100 with its guidance.

This chapter considers these key findings in relation to the Code's method of seeking diverse appointments premised on merit. As discussed in Chapter 4, merit is a problematic concept in part because of its reliance upon the flawed concepts of human capital, but mainly because of its inherent plasticity[4] and consequent use as a tool for maintaining the status quo. It is argued here that so long as merit remains the route we take towards diversity, without further measures being taken change will not occur at an acceptable rate. The problem, as identified by Malleson in relation to the judiciary in the above quote, is that impacting upon the merit principle impacts upon perceived legitimacy and yet not impacting on the merit principle will have little effect on diversity. In light of this analysis, the chapter considers methods of improving c-suite diversity. These include soft law changes to the Code, the implementation of regulatory quotas and non-regulatory measures. The conclusion summarises the findings of this research and assesses what is likely to be the best course of action for improving c-suite diversity.

[4] Hilary Sommerland, 'The Social Magic of Merit: Diversity, equity, and inclusion in the English and Welsh legal profession' (2014) 83 *Fordham Law Review* 2325

1. Regulating by mandatory disclosure

1.1. Is disclosure an effective tool?

It is commonly said that “sunlight is the best disinfectant”.[5] Whether or not this is the case, it is embraced as a key policy tool for regulating companies in the UK and globally. Mandatory disclosure is thought to be a way to “empower stakeholders and civil society to engage with companies at an input level, influencing companies to adopt more socially infused frameworks”.[6] Requiring companies to disclose their board appointment policies is a key part of the boardroom diversity approach. Disclosure is critical to the operation of the Code. However, doubts have been raised as to the efficacy of disclosure in creating accountability,[7] particularly in relation to corporate social responsibility matters.[8] For disclosure to be an effective method of regulating behaviour this thesis argues that it should not be susceptible to manipulation. It must be transparent and enforced.[9]

Writing about **transparency,** Etzioni states that “disclosure cannot fulfil its communicative purpose if investors find it impenetrable and therefore ignore

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[5] Justice Louis D. Brandeis, 'Justice Louis D. Brandeis' <https://www.brandeis.edu/legacyfund/bio.html> accessed 16 April 2019

[6] Iris H-Y Chiu, 'Unpacking the Reforms in Europe and UK Relating to Mandatory Disclosure in Corporate Social Responsibility: Instituting a Hybrid Governance Model to Change Corporate Behaviour?' (2017) 14 *European Company Law* 193

[7] Jonathan Fox, 'The Uncertain Relationship Between Transparency and Accountability' (2007) 17 *Development in Practice* 663

[8] Iris HY Chiu, 'An Institutional Theory of Corporate Regulation' (2018) 71 *Current Legal Problems* 279 325

[9] Amitai Etzioni, 'Is Transparency the Best Disinfectant?' (2010) 18 Journal of Political Philosophy 389

it."[10] The concept of merit is a good example of this as it is impossible to know what it means from the perspectives of the decision makers.

In order to react to disclosure, the information disclosed must be able to be processed by relevant individuals in a way that allows them to draw accurate conclusions and take **enforcement** action if necessary. Even to the extent the information is accurate and easily understood, its impact on behaviour will be limited to how much the company cares about what can be done with that information, and how much the relevant individuals care to pursue enforcement. Research by Fox suggests that "if the power of transparency is based on the power of shame, then its influence over the really shameless could be quite limited".[11] Shame alone may not be enough to get companies to do the right thing.

Considering whether or not disclosures are **manipulated**, Danish research suggests that investors are more positive about the contents of corporate communication than management.[12] If the well-known practice of "window dressing" can be used on financial and operating information[13], it would be fairly easy to apply the same approach to reports on corporate appointment policies.

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[10] Ibid 11

[11] Fox (n 7) 665

[12] Eva Parum, 'Does disclosure on corporate governance lead to openness and transparency in how companies are managed?' (2005) 13 Corporate Governance: An International Review 702

[13] Etzioni (n 9) 9

Applying this framework to the Code's diversity provisions it is arguable that they do not promote transparency, are largely unenforced and are easily manipulated.

1.2. The failure of the Code's diversity objective

The Code has two main diversity requirements. Firstly, companies must appoint directors on merit, against objective criteria with due regard for the benefits of diversity.[14] Secondly, companies must set out their board diversity policy in their annual report.[15] The Code's objective in this regard is claimed to be the improvement of diversity in the boardroom.[16] But while there has been an increase in numbers of women NEDs, any substantive changes to the c-suite have been "glacial".[17]

As discussed in Chapter 6 and 7, members of the FTSE100 c-suite show remarkable profile similarities. The data support the One Deviation theory (set out in Chapter 7), in which individuals who differ from the c-suite norm in one way, such as gender, often do not deviate in a significant way from the other expected characteristics such as ethnicity, qualifications and external appointments. Women and ethnic minorities are also more restricted in the range of roles they occupy. On this account then, it can be argued that the objective of the Code has failed in relation to the c-suite. Furthermore, as

[14] UK Corporate Governance Code 2018
[15] Ibid
[16] Ibid
[17] *The Female FTSE Board Report 2017: Women on boards, back on track?* (Cranfield University School of Management, 2017) 15

shown in Chapter 7, what the FTSE100 annual reports say about corporate board diversity often lacks both meaning (when considered literally) and truth (when considered in light of their diversity statistics).

It is a discouraging position, particularly as most companies *prima facie* fall within the remit of the requirements of the Code on diversity. If genuine change is sought in the demography of those who wield significant power over the general population, by virtue of the power they wield in the largest of companies, the flaws in the Code need to be addressed. But addressing diversity *ex post facto* is challenging because, in many ways, boards are constrained by the people, decisions and characteristics that have made them what they are today.[18] Whether this can be done within the confines of the Code or whether more concrete Government intervention is needed is considered below.

1.3. Improving the Code

There are at least two sources of uncertainty within the Code: (1) the concept of merit; and (2) the meaning of diversity. As has been discussed, the meaning and application of the concept of merit is flawed because of its flexibility and lack of definition, allowing it to be used as a tool to justify bias, unconscious or otherwise. Combining the use of merit with a requirement for diversity might place constraints on this flexibility, but only if diversity is taken

[18] Scott G Johnson, Karen Schnatterly and Aaron D Hill, 'Board Composition Beyond Independence: Social capital, human capital, and demographics' (2013) 39 *Journal of Management* 232 250

seriously. As revealed in Chapter 7, many companies define diversity to incorporate any personal or professional characteristic, and they are therefore not applying diversity seriously. Unless this is clarified, merit will remain problematic with respect to diversity, and the impact of the Code will be minimal. The following section considers a number of options for improving the Code's diversity related provisions, but ultimately suggests three key changes. Firstly, to abandon the requirement to report on appointment policy; secondly, to require more detailed disclosure as to the diversity of the board and c-suite; and finally, to charge the Chairman with the responsibility for overseeing the progress of board diversity.

Addressing transparency

In a practical sense, ensuring that diversity is central to c-suite appointments is challenging. Greater transparency in the FSTE 100 c-suite appointment system is necessary, but this is difficult because of the sensitive nature of those appointments. A number of potential ways to increase transparency are considered below

An extreme option is to create specific context driven criteria to determine merit (e.g. qualifications and experience applicable to circumstances, gender and ethnicity according to what a board might be lacking). The criteria could be democratically agreed upon by stakeholders, as being the most important factors.[19] This would not prevent the possibility of partiality, but it may put the criteria for diversity on a fairer footing, albeit a highly administratively

[19] Ibid

burdensome one. There has been a similar suggestion in the judicial context where, to make merit more transparent, it was suggested that objective measures such as productivity, opinion quality and judicial independence should be put in place.[20] Importantly, the criteria would need to be unambiguous and decided before those making the appointments know the gender and ethnicity of the applicants.[21] Research suggests that using predetermined questions, asked in a fixed order, can decrease discrimination.[22] But despite indications of potential for diversity progress, this option must be ruled out. Not only would such a proposal make the appointment process more administratively burdensome, it is arguable that being more prescriptive about criteria in advance would not improve matters. If the criteria were too prescriptive, companies run the risk of bureaucratically ruling out candidates who might be good at the job. If the criteria were too broad, they would not significantly improve the problematic plasticity of merit. Furthermore, there is a danger that, instead of relying on merit terminology to justify appointments along typical lines, another form of rhetoric will develop. One would hope that, at some point, it will become easier to genuinely see the benefits and importance of diversity, instead of circumventing it. But relying on such a hope is not a feasible choice if change is desired soon.

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[20] Cheryl Thomas, 'Understanding Judicial Diversity. A Research Report for the Advisory Panel on Judicial Diversity' (2009) 68 citing Stephen J Choi and G Mitu Gulati, 'Choosing the Next Supreme Court Justice: An Empirical Ranking of Judge Performance' (2004) 78 S Cal L Rev 23

[21] Eric Luis Uhlmann and Geoffrey L Cohen, 'Constructed Criteria: Redefining merit to justify discrimination' (2005) 16 *Psychological Science* 474 478

[22] Ibid 479

In a different attempt at clarifying the relationship between merit and diversity, the UK judiciary recently introduced the use of diversity as a “tie-breaker” when 2 or more candidates have equal merit.[23] Such a system has little more to recommend it than the Code’s current system because it assumes that merit is a science and can be calculated without bias. Furthermore, it is nonsensical to imagine two potential CEO’s, for example, with exactly the same amount of merit. Individuals with over 40 years of experience behind them cannot be found indistinguishable from each other. They will differ in their skills, backgrounds or experience and determining merit involves subjective judgements on these. In addition, this method continues to place diversity outside of the definition of merit when what is needed is an understanding of diversity that is inclusive of merit. Including diversity within the meaning of merit would prohibit the use of merit-based appointment systems as justification for lack of diversity, as is so often the case in annual reports and beyond.[24]

Research into disclosure as a regulatory method suggests that diversity may be better served by removing the obligation to report on board appointment policies and instead focus efforts on requiring companies to report more on the consequences of the appointment policies.[25] As set out in Chapter 4, merit

[23] 'Equal merit provision' <https://www.judicialappointments.gov.uk/equal-merit-provision> accessed 16 April 2019

[24] 'Merit vs Equality? The argument that gender quotas violate meritocracy is based on fallacies' 2015) <https://blogs.lse.ac.uk/politicsandpolicy/merit-vs-equality-argument/> accessed 29 July 2019

[25] Prat (n 11) 862

cannot be defined, and it cannot be impartially applied.[26] Yet there is no viable alternative. For all of its flaws, the concept of merit does provide some incentive to work hard because the ideology suggests that hard work is rewarded. It is also an attempt to make appointments appear justifiable. If merit can't be defined and there is no viable alternative, perhaps the best course of action is to stop referring to it, trust that it will form part of the appointment decision and that there is little that can be done to define the shape it takes in each individual appointment. Instead the focus should be shifted from the action, and attention should be diverted to the outcome.

There is a difference between transparency of consequence and transparency of action.[27] Prat found that when an agent had to disclose their action to their principal this often had a detrimental effect on performance, because their actions were inhibited by a desire to conform.[28] In contrast, transparency of consequences had a positive effect[29], perhaps because actions are taken with a view to performance. The requirement to disclose a company's board appointment policy can be considered a disclosure of action, whereas the requirement to disclose gender statistics of the board and workforce is a disclosure of consequence. The results of the data collected in this thesis on the diversity policies and diversity statistics support the idea that disclosure of action is ineffective, if not detrimental.

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[26] Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 2011) 202

[27] Prat (n 34) 862

[28] Ibid 863

[29] Ibid

One way to move towards transparency of outcome is by adapting a version of the Supreme Court judicial selection criteria in Canada. Canadian Supreme Court Judges are chosen on the basis of a variety of specific professional and personal characteristics and their appointment should "address the extent to which the composition of the Court appropriately reflects the diversity of Canadian society".[30] The Ontario Judicial Appointments Advisory Commission includes demographics as one of 4 main criteria for making judicial appointments.[31] The consequence of this is that "the appointment body must see the appointment process at both the individual judge level and the institutional level of the judiciary".[32] This is arguably more effective than "having due regard to the benefits of diversity" as required by the Code because it applies diversity as part of merit, whereas the Code implies merit and diversity are distinct. Although this judicial selection criteria is focused on the action of appointments, the same question can be asked in the context of consequences. Asking how the board reflects the wider company and society, alongside other specific merit-based questions, has the benefit of focusing on outcome whilst including diversity within the understanding of merit.

[30] Hon. Irwin Cotler, 'An Unknown But Not A Secrety Process: Appointment of Supreme Court Justices' (2004) 27 *Canadian Parliamentary Review*
[31] Thomas (n 25) 15
[32] Ibid 16

Addressing manipulation

The addition of professional characteristics to the standard understanding of diversity, as made by much of the FTSE100, seems to be a clear manipulation. It constitutes an attempt to mislead the reader who would expect a definition to include only protected characteristics. This research suggests that the consequence of these adaptations to the meaning of diversity results in the majority of appointment policies in the FTSE100 annual reports amounting to little more than lip service or “happy talk”.[33] A seemingly simple solution would be to clarify the definition of diversity within the Code. The Code could adopt a universal meaning of the term to promote consistency in approach. This would help close the loophole in which companies value laden their diversity definition with professional characteristics.

Unfortunately, defining diversity is far from simple. If the meaning of diversity is disaggregated in order to bring focus back to protected characteristics, diversity of professional characteristics is seemingly removed from appointment policies. ‘Cognitive diversity’, i.e. diversity of professional characteristics, is clearly of importance to company boards and will, inevitably and rightfully, form part of their definition of merit. One potential solution is to differentiate between diversity and cognitive diversity in order to prevent companies from claiming they consider diversity when they only consider cognitive diversity. This leads to a secondary problem of becoming too

[33] Joyce M Bell and Douglas Hartmann, 'Diversity in Everyday Discourse: The cultural ambiguities and consequences of “happy talk”' (2007) 72 *American Sociological Review* 895 911

prescriptive about what constitutes diversity and cognitive diversity. The more prescriptive the definition, the more care needs to be taken to account for all types of diversity. For example, if protected characteristics were defined according to the Equality Act 2010, socio-economic diversity, for example, would not be accounted for. This could result in boards which are gender and ethnically diverse, but on which all the board members were privately educated. This would not be much of an improvement.

There are other concerns. To the extent that the corporate definitions of diversity studied here had any meaning, they often appeared as categories of difference. This can be considered at odds with an understanding of diversity which appreciates uniqueness and individualism. A list of factors suggests everyone can be categorised. It "simultaneously acknowledges racial and other differences while down-playing and disavowing related social problems".[34] The challenge is defining diversity to appreciate uniqueness while maintaining sufficient specificity to avoid exploitation of the term.

If, as discussed above, focus moved away from action and onto consequence, many of these issues disappear. Instead of requiring companies to disclose the actions they are taking in the interests of diversity, companies would be required to disclose how their board and c-suite fulfil specific categories of diversity. This combines the approach of the Ontario judicial selection process with the principle that transparency of outcome is more effective. The specific diversity disclosure requirements would be a matter for debate but should, as

[34] Ibid 905

a minimum, include gender, ethnicity, socio economic background alongside cognitive diversity.

Addressing enforceability

One of the key responsibilities of the Chairman is to chair the nomination committee. This puts the Chairman in the best position to bring the board's focus onto diversity. It is also the Chairman who is responsible for a harmonious board, ensuring all voices are heard. Research by Kanadli et al found "a negative association between chairperson tenure and women directors' influence on board decisions".[35] Consequently, women and BAME individuals depend upon the Chairman to attain their board positions and, once in place, to give them the chance to be heard. This latter point is not as relevant for the CEO, who should be in a position to make themselves heard, but it is relevant for all other roles, including CFO and CXO. If the Chairman were held to account for the progress of diversity, they may place greater weight on seeking and maintaining change. One method for holding the Chairman to account for diversity was suggested in Cranfields 2019 report, under which "Chairmen with less than 20% women on their boards and executive committees need to explain why this is the case".[36]

[35] Sadi Boĝaç Kanadlı, Mariateresa Torchia and Patricia Gabaldon, 'Increasing Women's Contribution on Board Decision Making: The importance of chairperson leadership efficacy and board openness' (2018) 36 *European Management Journal* 91 92102

[36] *The Female FTSE Board Report 2019: Moving beyond the numbers* (Cranfield University, 2019) 9

In order to take on such an important role, it is highly arguable that Chairmen should be more diverse. Given their prominent and important role in diversity, it is surprising that there are still so few Chairmen who are women or ethnic minorities. As has been demonstrated in Chapter 6, the position of the Chairman is the least diverse of all the c-suite roles. During the two-year sample period there were only 6 women and 3 BAME chairs (2 of the BAME chairs were no longer in position in 2017 and the third acts as a co-chair with a white male). A potentially effective way to achieve meaningful diversity in the c-suite and wider board is for the Code to be more prescriptive about the appointment of chairs. The new 2018 Code requirement that Chairmen do not serve more than 9 years may help with this.[37] At present the Code says little about Chairman appointment, arguably leaving potential for additional guidance aimed at encouraging more diverse appointments - whether that be younger, BAME, female or all three and more.

On a broader level, the enforceability of the Code itself presents an obstacle for improving c-suite diversity. Critical to the success of a comply-or-explain system of regulation, such as the Code, is the level of non-compliance. If many companies do not comply with its provisions, pressure to comply is limited.[38] If investors do not appear to react negatively to non-compliance, pressure to comply is further reduced.[39] Overt non-compliance does not

[37] UK Corporate Governance Code 2018
[38] David Seidl, 'Standard Setting and Following in Corporate Governance: An observation-theoretical study of the effectiveness of governance codes' (2007) 14 *Organization* 705 714
[39] Ibid 712

necessarily cause a reaction, unless there is a triggering event.[40] But if investors do pick up on non-compliance, the consequence for the company can be damaging.[41]

Where companies choose not to comply, there is a tendency for companies to opt for deficient explanations.[42] Empirical research has shown that where companies deviate from the Code provisions only 39% of the explanations were informative.[43] All other explanations were either invalid, general or limited.[44] This may be because the principle of comply-or-explain is predicated on shareholder involvement and oversight. And although this appears to be increasing, it seems that shareholders are still not engaged enough to be effective monitors.[45] Returning to the categorisations of companies from Chapter 7, Code non-compliance but with an explanation corresponds with the Explainer category of company. As there are no Explainer companies this

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[40] Paul Sanderson, David Seidl and John Roberts, *The Limits of Flexible Regulation: Managers' Perceptions of Corporate Governance Codes and 'Comply-or-Explain'* (Center for Business Research, University of Cambridge 2013) 812; Sridhar Arcot, Valentina Bruno and Antoine Faure-Grimaud, 'Corporate Governance in the UK: Is the Comply-or-Explain Approach Working?' (2007) *Corporate Governance at LSE Discussion Paper Series* No 001, November 2005 Tosi, HL, Gomez-Mejia, LR, Loughry, ML, Werner, S, Banning, K, Katz, J, Harris, R, Silva 1999. This paper sets out a good example of this in its discussion of Morrisons plc. Historically, the supermarket chain had been bad at compliance with the Code but had suffered no ill effects in share price. This changed when they made a poor purchase decision and the share price fell, after which, shareholders began to pressurise the board into better compliance with the Code.

[41] Marc T Moore, 'The End of Comply or Explain in UK Corporate Governance' (2009) 60 Northern Ireland Legal Quarterly 85 95

[42] Sanderson P, Seidl D and Roberts J, 'The Limits of Flexible Regulation: Managers' perceptions of corporate governance codes and comply-or-explain'' (2013)

[43] *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States 14*

[44] Sanderson and others (n 49)

[45] Andrew Keay, 'Comply or explain in corporate governance codes: in need of greater regulatory oversight?' (2014) 34 *Legal Studies* 279 303

suggests that companies do not feel investor pressure to explain their lack of compliance or they do not feel it will be picked up on.

In contrast, Sweet Talker companies exhibit false compliance, and this research shows that such "full compliance" with the Code is common. This may be because apparent compliance is very important to investors.[46] The problem is the authenticity of those compliance claims. As Seidl says "there is no schema for assessing whether stated compliance tally up with the truth".[47] Keay has suggested that a potential solution to this problem is to set up a regulator to oversee compliance with the Code.[48] This is worth considering if persistent non-compliance with the spirit of the Code remains. It seems that for some Sweet Talker companies, complying with the Code provisions may be little more than window dressing; while for others, they may believe they are in compliance when in reality they are not. Either way if what is being sought is compliance with the objective of the Code, more needs to be done. According to Hooghiemstra et al, "regulators need to be restrictive if they want companies to comply not only with the letter but also with the spirit of the Code*".*[49] Importantly, false compliance should no longer be an issue if disclosure was based on outcome as opposed to disclosure of appointment process.

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[46] Marc T Moore, '" Whispering Sweet Nothings": The Limitations of Informal Conformance in UK Corporate Governance' (2009) 9 Journal of Corporate Law Studies 95 138

[47] David Seidl, 'Standard Setting and Following in Corporate Governance: An observation-theoretical study of the effectiveness of governance codes' (2007) 14 *Organization* 705 716

[48] Keay (n 54)

[49] Reggy Hooghiemstra and Hans van Ees, 'Uniformity as Response to Soft Law: Evidence from compliance and non-compliance with the Dutch corporate governance code' (2011) 5 *Regulation & Governance* 480 494

Going beyond a lack of compliance with the spirit of the Code are those companies categorised as Deniers and Concealers. These companies are either overtly at odds with the provisions of the Code or do not disclose what they are required to. In both cases there is a breach of the Listing Rules disclosure requirements because they do not explain their lack of compliance.[50] This appears to be widely overlooked. This could be because the lack of compliance is obfuscated by the terminology, or perhaps because boards have seen increasing diversity at the NED level, giving the impression that the situation is improving. Again, a move to abandon reporting on the appointment policy would remove this issue and a focus on outcome would be easier to hold companies accountable to.

Some external monitoring and/or some incentive to comply may be necessary to improve the levels of actual and authentic compliance with the Code's diversity provisions. At present, incentives to comply come in the form of encouragement on the basis that it makes business sense to do so. Given the low levels of genuine compliance, this does not appear to be sufficient. As argued in Chapter 2, the business case is an unreliable and ultimately unhelpful incentive. One alternative is to disincentivise non-compliance. Some argue that credible sanctions for non-compliance are critical if a comply-or-explain system is to work.[51] In contrast, others claim that threatening to punish non-compliance is demotivating because it undermines cooperation

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[50] Listing Rules 9.8.6 (6)

[51] Iain MacNeil and Xiao Li, '"Comply or Explain": market discipline and non-compliance with the Combined Code' (2006) 14 *Corporate Governance: An International Review* 486 487

and implies a want of ethics on the part of the non-complier.[52] It is difficult to see what form of non-regulatory punishment could be effectively used. If the goal is for companies to make authentic diversity changes at the top and throughout, it is doubtful whether threats will engender such a commitment to change. Even without punishment, boards respond negatively to rules they do not see the sense in.[53] Adding punishment into the mix may breed resentment and may damage any authentic progress towards a more diverse c-suite.

One action-based alternative is to make "compliance with the Code a default rule which can be opted out of on the basis of shareholder resolution".[54] This would not have to apply to all of the provisions of the Code, but it would have the benefit, in relation to diversity provisions, of ensuring the company gives some *ex ante* thought to board diversity. This would allow shareholders to consider non-compliance before it is implemented in policy. However, such a change would again introduce more administrative burden and, in order to have any effect, would need to be made in conjunction with the changes to the Code diversity provisions in relation to merit and the meaning of diversity.

Enacting a Rooney Rule is another action-based alternative.[55] This could be in the form of a requirement for executive search firms to notify the authorities

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[52] Jodi L. Short and Michael W. Toffel, 'Making Self-regulation More than Merely Symbolic: The critical role of the legal environment' (2010) 55 Administrative Science Quarterly 361

[53] Sanderson and others (n 49) *17*

[54] MacNeil and Li (n 60) 487

[55] The term Rooney Rule is derived from a National Football League policy requiring teams to interview minority candidates for head coach positions (Fanning Madden, Janice, and

where they see firms failing to interview sufficiently diverse candidates. Or, as suggested by Choudhury, firms with low levels of board diversity could be required to have their appointment practices audited.[56] Again, this would need to be in conjunction with a change in the terminology of the appointment provisions of the Code because, at present, proving lack of compliance is all but impossible.

The major downside to all of these action-based options is that they increase the bureaucratic nature of the Code, so they are unlikely to create the right attitudes to compliance or foster the Code's long-term effectiveness.[57] It is claimed here that a shift in focus from action to outcomes reduces bureaucracy and would foster a genuine change in approach.

2. Regulatory remedies

2.1. The market failure argument

Tackling diversity in the c-suite by introducing regulation is controversial. Some reject the idea of legislative intervention in the private world of business.[58] Many more are sceptical.[59] According to Malleson, "the development and application of effective affirmative action programmes in

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Matthew Ruther. "Has the NFL's Rooney Rule Efforts ''Levelled the Field ''for African American Head Coach Candidates?." *Journal of Sports Economics* 12.2 (2011): 127

[56] Barnali Choudhury, 'Gender Diversity on Boards: Beyond quotas' (2015) 26 *European Business Law Review* 229 241

[57] Moore (n 55) 103

[58] Richard A Posner, *Economic Analysis of Law*, vol 5 (Aspen Law & Business New York 1998), David Singh Grewal and Jedediah Purdy, 'Introduction: Law and neoliberalism' (2014) 77 Law & Contemporary Problems 1

[59] Ian Ayres and John Braithwaite, *Responsive regulation: Transcending the deregulation debate* (Oxford University Press 1992)

public and professional selection processes has been paralysed by the fear that such action will corrupt the merit principle".[60] Yet the argument suggesting regulation is necessary is strong where the market is failing.

Considering the c-suite diversity issue using economic terminology, if the appointment market was operating as it should, the best candidate would go to the party offering the best reward. The suggestion that there are not enough women and BAME individuals capable of these roles has been shown to be false.[61] Unless none of these women or BAME individuals are better than any of the 361 white males in the c-suite sample, it follows that the market is failing. Further, unless some directors are staggeringly better at their jobs than others, warranting pay packages several times those of most other c-suite directors, the market is again demonstrably failing.[62]

Government intervention into a market scenario is arguably justifiable when it is evident that there are insurmountable hurdles to overcome in order to get the market running as it should. According to Elster, "in the absence of externalities, the market system is collectively rational in the economic sense. Since, however, externalities are in fact all pervasive, the state appears as a collectively rational political solution".[63] The externalities in the market

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[60] Malleson (n 1) 139

[61] Please see the discussion on this in Chapter 2

[62] A failure of the market was the conclusion of the Department for Business Innovation and Skills when they considered excessive executive remuneration in 2012. Although this impact assessment did not specifically consider the gender pay gap issues of excessive remuneration, differences in pay levels by gender appear to be two sides of the same coin.

[63] Jon Elster, *Sour Grapes. Studies in the Subversion of Rationality* (Cambridge University Press 1984) 30

scenario described here include all conscious and unconscious biases and the institutional structures that benefit men over women and whites over ethnic minorities preventing the identification of the best person for the job, as discussed in Chapters 3 and 4. While perpetuated by business, these externalities are not entirely of their making. Consequently, the responsibility for changing the status quo cannot be solely the responsibility of business. But there is a big part for them to play.[64]

The historical lack of relevant experience levelled against board-capable women and BAME individuals as a reason for their low boardroom representation when compared to white males is an externality that should be addressed. If women and BAME individuals are not getting appointments because they do not have as much board experience as their male counterparts, how are they to get that experience? It seems clear that the market cannot address this because it does not take account of historical inequality. In contrast, the political process could do this by, for example, introducing quotas. A democratic government may be able to judge the legitimacy of preferences in a way that the market cannot. For example, it may be economically most sensible for a company to employ only White men because of the tastes of its current employees or customers. The market will react to these tastes by appointing White men, whereas the political process could overrule them.[65] When inertia or self-interest prevents managers from implementing effective diversity changes, even where there is no desire to

[64] Choudhury (n 65) 242

[65] Arthur M Okun, *Equality and efficiency: The big tradeoff* (Brookings Institution Press 2015) 78

discriminate, government can apply pressure for the pursuance of inclusionary practices.[66] The question is, should they? Social enterprise theory states that, since public interest is the foundation of the legitimacy of companies, society should be entitled to government intervention to ensure companies operate consistently with the public interest.[67] Certainly, it would be possible to make real and tangible changes to the diversity of the c-suite in a relatively short space of time if such a method was adopted. But there remains a lack of clarity as to the normative basis for such intervention.

Normative concerns with regulating market failure

Some fear that if the domain of the market is continually eroded by government intervention, more and more such erosion may follow. According to Hayek, this erosion has been the cause of the UK's "rapid growth of very imperfectly checked powers of administrative agencies over the private life and property of citizens".[68] Many feel that government intervention into who is appointed to the most influential positions in the UK's largest companies is unacceptably coercive, on the basis that businesses, not governments, know best what to do to remain competitive.[69] This is especially convincing for the c-suite where roles are individualized, context dependent and highly scrutinized. The roles have an impact on employment, the stock market and

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[66] Irene Padavic and Barbara F Reskin, *Women and Men at Work* (Pine Forge Press 2002) 73 *85*

[67] John E Parkinson, 'Corporate Power and Responsibility: Issues in the theory of company law' (1995) OUP Catalogue

[68] Friedrich A Hayek, *The Road to Serfdom.* (Routledge Classics 1944) 357

[69] For a consideration of those arguments see Siri Terjesen and Ruth Sealy, 'Board Gender Quotas: Exploring Ethical Tensions From A Multi-Theoretical Perspective' (2016) 26 *Business Ethics Quarterly* 23 9

the economy to name a few. Government involvement at this level is undesirable for reasons of efficiency, the potential for scapegoating and, ultimately, national economic success. Faith in the government's ability to make the right decisions for society is unstable. Some argue that CEOs are held to a higher level of accountability than politicians.[70]

The boardroom diversity rhetoric focuses on the business performance impact of diversity, but it has been argued here that social reasons are a more sustainable basis on which to make a change.[71] Both justifications are contentious. Any regulatory intervention would need to be clear where it stands in relation to them. This goes to the heart of the most debated question in corporate governance: i.e. whose interests should corporate governance favour? Any assessment of proposed regulation seeking to take account of the costs and benefits of such an intervention would be fraught with uncertainty of impact and contentiousness of basis.[72]

It is arguable that, even if the definition of merit is unclear, a mandated requirement for diversity would act as a control mechanism for the flexibility issues arising from the use of merit as a basis for appointment. For diversity purposes this seems intuitive. Women and BAME individuals may not be disadvantaged by the use of merit if there is a regulated obligation to properly consider all genders and ethnicities. The question then becomes whether or

[70] Audience discussion with Rupert Younger at IAS Lies: The Business of Lies and the Lies of Business (27 February 2019)
[71] See Chapter 2 pages 83-88
[72] Martin Petrin, 'Regulatory analysis in corporate law' (2016) 79 *The Modern Law Review* 537

not the outcome justifies and requires regulatory intervention. It is argued here that, on balance, it does not. The next section will consider specific concerns with regulating diversity.

2.2. Quotas

The most widely known regulatory tool for improving diversity is the quota. This would be a drastic course of action, and there are those who are strongly opposed.[73] For the c-suite, quotas are impractical. Looking at gender, it is very hard to be prescriptive about the gender balance of such a small group of distinct and highly specialised positions. If ethnicity is considered, this becomes all but impossible. However, if quotas are put in place for the whole board, it is arguable that diversity may trickle up.

As set out in Chapter 1, a number of jurisdictions have implemented quotas. Norway was the first to introduce a board quota, which was set at 40% with a 2007 deadline. When the deadline passed, 77 companies were not in compliance but, against the threat of dissolution, all relevant companies were in compliance by 2008.[74] Most recently, in 2018 a gender quota was introduced in California for all companies headquartered in that state.[75]

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[73] Renee B Adams and Daniel Ferreira, 'Women in the Boardroom and their Impact on Governance and Performance' (2009) 94 *Journal of Financial Economics* 291, Kenneth R. Ahern and Amy K. Dittmar, 'The Changing of the Boards: The impact on firm valuation of mandated female board representation' (2012) 127 *The Quarterly Journal of Economics* 137, Drude Dahlerup and Lenita Freidenvall, 'Quotas as a 'Fast Track' to Equal Representation for Women: Why Scandinavia is no longer the model' (2005) 7 *International Feminist Journal of Politics* 26, Michela Iannotta, Mauro Gatti and Morten Huse, 'Institutional Complementarities and Gender Diversity on Boards: A configurational approach' (2016) *24 Corporate Governance: An International Review* 406

[74] Rohini Pande and Deanna Ford, 'Gender Quotas and Female Leadership' (2012) 15

[75] Senate Bill 826, Jackson. Corporations: Boards of Directors

The effect of the quotas on how boards function is little understood, but there are some deeply held concerns.[76] Conceptually, the arguments against are usually based on the notion that quotas are non-meritocratic. As has been discussed, merit is a problematic concept. The advantages attributed to a merit-based system stem from market theories and ideas of economic individualism. But, given the flaws identified with the concept of merit, any arguments against the use of quotas based on merit are weak unless the understanding of merit in this context is clarified considerably.

Mediocrity concerns

One of the fears commonly cited about quotas is that, if women or BAME individuals are promised positions, there will be a consequential loss of high performing men.[77] It is claimed this will create a significant cost to organisations.[78] The concern is that gender quotas serve only to replace competent men with mediocre women. Attempts to introduce gender quotas in politics in India, Pakistan and Bangladesh failed due to the inequality in education between men and women.[79] Education inequality is not a factor in the UK. One could argue that high performing women will replace mediocre

[76] Terjesen and Sealy (n 81) 38

[77] Heather Long, '80 Nations Set Quotas for Female Leaders. Should the U.S. be next?' *The Washington Post* (<https://www.washingtonpost.com/business/economy/80-nations-set-quotas-for-female-leaders-should-the-us-be-next/2019/03/29/a27434ba-45c4-11e9-aaf8-4512a6fe3439_story.html?utm_term=.edb29ac9c905> accessed 4 May 2019

[78] Ibid

[79] Dahlerup and Freidenvall (n 85) 32

men.[80] From the perspective of the company, the impact of affirmative action on obtaining high performing individuals is questionable. Experimental research by Nierderle et al, found that: “While some high performing men drop out of the competition, many women come in, and the overall number of high performing participants in the entry pool is barely affected”.[81]

Looking at the impact of the Norwegian quota on firm performance, Ahern and Ditmar found the quota had a large negative impact on firm value.[82] This conclusion is supported by research indicating that the quota introduced in California produced “a robust and significant negative valuation effect on stock returns”.[83] One of the reasons suggested for this effect in Norway is that, following the quota, the men who remained were the older ones with more experience and this meant that age and experience were what companies really wanted but what women lack.[84] Such a view neglects to consider that age and experience may not be as relevant as the power wielded by the remaining males relative to other board members. Power does not necessarily correspond to organisational need, particularly when a job is at stake. This issue was not present to the same extent in California, as there was no requirement to remove male directors, only to add women.[85] Despite

[80] IFN Working Paper, *Gender Quotas and the Crisis of the Mediocre Man: Theory and evidence from Sweden* (No 985, 2013) *33*
[81] Muriel Niederle, Carmit Segal and Lise Vesterlund, 'How Costly is Diversity? Affirmative action in light of gender differences in competitiveness' (2013) 59 Management Science 1 40
[82] Ahern and Dittmar (n 85)139
[83] Felix von Meyerinck and others, 'As California Goes, So Goes the Nation? The impact of board gender quotas on firm performance and the director labor market (December 19, 2018)
[84] Ahern and Dittmar (n 85) 173
[85] von Meyerinck and others (n 95) 5

this, the negative effect was present, arguably because investors react negatively to states willing "to impose non-economic legislation".[86]

Other research claims that quotas have a negative impact on company performance.[87] One reason claimed is that quota firms do not make as many people redundant as non-quota firms.[88] The suggestion is that women are more benevolent than men.[89] This analysis is problematic because it relies on stereotypes and generalisations. However, while the reasons may be disputed, there is evidently some empirical support to the idea that quotas are not good for business.

Discrimination

If more women and BAME individuals are appointed to the c-suite either the c-suite will increase in size (thus only changing and not solving the diversity problem), or fewer men will be appointed based on decisions relating to their gender. This leads to the objection that solving discrimination with discrimination is morally wrong and, some would argue, illegal. In California, 30 business groups have indicated their willingness to challenge the recently introduced quota on the grounds of non-compliance with corporate doctrines and federal civil laws.[90] In the political arena, a similar method was attempted

86 Ibid

87 David A Matsa and Amalia R Miller, 'A female style in corporate leadership? Evidence from quotas' (2013) 5 *American Economic Journal: Applied Economics* 136 12

88 Ibid 28

89 Ibid

90 von Meyerinck and others (n 95) 31. The corporate internal affairs doctrine states that corporations are bound by the laws of their state of incorporation. One legal challenge to the

by the Labour party in 1993 when they implemented all-women shortlists. These were successfully challenged on the grounds of sex discrimination.[91] But they had already reduced the proportion of male Labour seats in the House of Commons from 90% to 82%.[92] In consequence of the evident success of the shortlists the Sex Discrimination (Election Candidates) Act 2002 was introduced, allowing political parties to use them for the purposes of addressing underrepresentation for a period that has been extended until 2030.[93] This made legal what had previously been judged by the courts to be discrimination, at least for a period of time under previous law.

Some argue that to frame affirmative action as discrimination against men is to imply that the current and preceding social roles are fair.[94] No matter how one frames it and whether or not what precedes discrimination is fair, actions which advantage one group over another group for reasons related to characteristics they have no control over constitutes discrimination. The question is whether that discrimination is acceptable in the context.[95] Noon has highlighted the hypocrisy of White men claiming that, instead of quotas, appointment practices should be blind to gender, race and other difference,

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quota could be based on the way the quota applies to all firms headquartered in California, even though many of those companies will be incorporated in different States such as Delaware. In addition, by favouring one gender, the quota is arguably discriminatory and therefore in violation of civil rights laws. Ibid 2

91 *Jepson and Dyas-Elliot v the Labour Party and others* [1996] IRLR 166

92 Helen Lewis, 'The success of all-women shortlists risks masking the issues they were meant to solve' *New Statesman* (<https://www.newstatesman.com/politics/uk/2018/03/success-all-women-shortlists-risks-masking-issues-they-were-meant-solve> accessed 1 March 2019

93 Richard Kelly and Isobel White, 'All-women Shortlists' (2016) Number 5057 House of Commons Library

94 Dahlerup and Freidenvall (n 85) 31

95 Young, (n 35) 202

thus appealing to the social justice discourse.[96] He highlights that there was no objection on the grounds of fairness when "accepting the privileges of their dominance".[97] Nevertheless, a male backlash might be expected and can already be seen in some form. For example, J Walter Thompson (part of WPP, a FTSE 100 advertising company) is facing legal action after a number of men lost their jobs following a diversity drive.[98] Given that it is difficult to discern whether "affirmative action is aimed at preventing unfairness or at compensating for previous injustices", it seems the normative argument for allowing discrimination is unclear.[99]

Negative reactions

One consequence of the Norwegian quota was that many companies went out of their way to avoid being subject to the legislation, and it was found that there were 30% fewer Plcs there in 2009 than there were before the policy was announced.[100] If UK companies reacted in a similar fashion, this could potentially have severe consequences for the economy and may be counterproductive to achieving diversity objectives.

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[96] Mike Noon, 'The shackled runner: time to rethink positive discrimination?' (2010) 24 *Work, Employment & Society* 728 736

[97] Ibid

[98] Matthew Moore, 'Pale, stale Mad Men at JWT claim discrimination' *The Times* (13 November 2018) <https://www.thetimes.co.uk/article/pale-stale-mad-men-at-jwt-claim-discrimination-tpf507thh> accessed 23 November 2018

[99] Terjesen and Sealy (n 81) 16

[100] Ahern and Dittmar (n 85)141

From an individual perspective, reactions to the quota may be unfavourable, both from those who may benefit from the quota and from those who may be disadvantaged. Beneficiaries may object on the basis that the very idea of needing help to get a position implies a deficiency of some kind. These objections "stem from feelings of being stigmatised, undervalued, under rated and not promotable".[101] From a male perspective, those who perceive themselves to have lost out to women as a result of the quota are likely to feel some resentment. This is important because, to the generation of men who see women being favoured in order to rebalance the scale of diversity, it appears they are paying for the injustices from which their predecessors have benefited. The resulting tension between beneficiaries and non-beneficiaries, and between the old and the young, may be counter-productive. While there may be a change in the numbers of women and BAME individuals in the c-suite as a result of a quota, a quota on its own is unlikely to impact upon the attitudes derived from a corporate lifetime of non-diverse c-suites. It is arguable that this is evidenced in Norway where, following the quota, the number of women with influential positions did not increase.[102]

A necessary evil?

Some argue that affirmative action is a necessary precondition to change, and it is the only way that new working patterns, processes and values can

[101] Noon (n 108) 735

[102] Cathrine Seierstad and Tore Opsahl, 'For the Few Not the Many? The effects of affirmative action on presence, prominence, and social capital of women directors in Norway' (2011) 27 *Scandinavian Journal of Management* 4450

emerge.[103] It is certainly arguable that forcing a change in diversity, even if purely representational, needs to happen in order to break down the norms upon which the lack of diversity is built. Moss argues that "women rationally use level of diversity as a proxy for discrimination, since the latter is harder to observe".[104] If the level of diversity is changed, this apparent discrimination will diminish. Forcing change may, in time, change cultural assumptions of what women and BAME individuals are good at. Managing diversity through regulation instead of soft law is a clear expression of the importance to society of diversity and could, in itself, help re-set norms.[105] However, there is no convincing evidence that quotas will do this or achieve any of the diversity goals sought, apart from in relation to the numbers. If companies seek only to comply with the letter of the law and not the spirit of diversity regulations, quotas may be counter-productive in the long term.[106] Quotas do not even reliably improve the numbers, as evidenced by Belgium, Spain and Italy.[107] This supports research suggesting "outcomes based" regulation (as a quota would be so categorised) may not be adequate at controlling corporate behaviour in circumstances of uncertainty surrounding the basis of the legal duty.[108]

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[103] Noon (n 108) 737

[104] Scott A Moss, 'Women choosing diverse workplaces: A rational preference with disturbing implications for both occupational segregation and economic analysis of law' (2004) 27 *Harvard Womens Law Journal* 1 1

[105] Etzioni (n 9) 15

[106] Terjesen and Sealy (n 81) 12

[107] Iannotta and others (n 85) 12

[108] Iris HY Chiu and Anna Donovan, 'A New Milestone in Corporate Regulation: procedural legalisation, standards of transnational corporate behaviour and lessons from financial regulation and anti-bribery regulation' (2017) 17 *Journal of Corporate Law Studies* 427 431

It is argued here that while affirmative action may affect change, it may not ultimately be the change desired and it is unlikely to impact the c-suite. This is because on top of the highly context dependent nature of these high-profile roles, it is difficult to envisage what government intervention could look like. Because of the size and specialisation of the c-suite, quotas would need to be directed at the wider board. The likelihood is that it would only impact the number of NEDs. A more subtle and nuanced approach could yield more stable and ultimately beneficial results for the long term.

3. Non-regulatory changes

Tackling diversity in the c-suite is arguably tackling diversity too late. Other more holistic or bottom-up methods may be more sustainable. It is a persuasive argument that

> *"the best place to solve inequality isn't at the end. It's at the beginning. Don't just ask for 50/50 casting; ask for a creche. Don't hand-wring vaguely about the lack of working-class voices in the arts. Start an outreach programme. Introduce training schemes, paid at a level that allows those whose parents can't subsidise their early careers to participate".*[109]

In Slovenia, Denmark and Sweden, affirmative action to improve the number of women on boards is unnecessary.[110] This leads one to query what it is about those national institutions that foster diversity, and whether this can be replicated in the UK. The following section will consider examples from other jurisdictions, as well as novel non-regulatory suggestions, and apply them to

[109] Lewis (n 104)
[110] Iannotta and others (n 85) 12

the UK. The particular examples and ideas have been divided into the following categories: job segregation, specific skills training, adapting board processes and the attenuation of power.

3.1. Tackling job segregation

Whether it is a consequence or a cause of lack of c-suite diversity, research suggests that women and BAME individuals suffer from their over-representation in low status jobs.[111] According to Pager et al: “individuals from an early age can identify male and female associated jobs. This has implications both for the shaping of occupational aspirations and the mapping of occupational barriers”.[112]

Job segregation serves both to perpetuate negative stereotypes regarding competence and aspirations, and it also prevents access to necessary networks.[113] As discussed in Chapters 2 and 3, networks are critical to career success. The findings in Chapter 6 support the notion that networks are part of the story leading to the lack of diversity. Negative stereotypes and affected aspiration lead to self-selection into lower status jobs. Research indicates that such self-selection issues affect women more than BAME individuals.[114]

[111] Alexandra Kalev, Frank Dobbin and Erin Kelly, 'Best Practices or Best Guesses? Assessing the efficacy of corporate affirmative action and diversity policies' (2006) 71 *American Sociological Review* 589 592
[112] Devah Pager and David S Pedulla, 'Race, Self-Selection, and the Job Search Process' (2015) 120 *American Journal of Sociology* 1005 1038
[113] Kalev (n 123)
[114] Pager and Pedulla (n 124) 1030

The problem can be described as one of path dependency, i.e. the market for c-suite roles has a history which impedes change.[115] One method of seeking to overcome this path dependency is through setting better examples. In New Zealand the government has committed to the idea that diverse representation in higher status jobs increases corporate board diversity, and they have targeted 45% women on public sector boards.[116] The UK could replicate this as there is room for improved diversity in many public areas, such as politics, the judiciary and the public sector.

A further method of tackling diversity through job segregation is to try to break down the internal barriers between jobs. Naming it the "relational approach to stratification", Kalev shows that companies that adopt training programs seeking to reduce segregation between jobs and cross-train people has a positive effect on the number of women and BAME in management positions.[117] In contrast companies who adopt more standard on-the-job training programs may reinforce the boundaries between jobs. [118]

3.2. Specific skills training

The concept of human capital (discussed in Chapter 3) forms part of an assessment of merit. It is a useful tool to measure the suitability of c-suite candidates. But this thesis argues that the concept is problematic and forms

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[115] Moss (n 116) 84
[116] Deloitte, '*Women in the Boardroom. A Global Perspective' 2016*
[117] Kalev (n 123) 1627
[118] Ibid 1593

one of the fundamental causes of the lack of c-suite diversity. However, there may be ways to address the distribution of human capital at a corporate level.

Research suggests that the cause of occupational gender segregation is the limitation of women to general skills-based jobs.[119] Skills training is an investment in human capital and is often expensive. For general skills, the investor tends to be the individual in question. In contrast, for specific skills, companies will often make that investment. Businesses fear spending money on women who may not return after having children. Specific skills are more commonly found in men because companies are more willing to make this investment for men who are less likely to take career breaks.[120] Estevez-Abe describes this as the reason why Scandinavian countries, widely considered to be the most progressive countries for social policies promoting women's work, display high levels of occupational gender segregation.[121] The provision for long periods of paid leave is thought "likely to depress demand for female labour in the private sector in coordinated market economies that rely on specific skills".[122] This is in contrast to the public sector, where policy objectives may surpass the additional costs incurred to ensure that women have the specific skills needed. In other words, public sector employers may decide that, despite the additional training costs, the appointment of women is important. Such a perspective is less likely to be replicated in the profit

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[119] Margarita Estévez-Abe, 'Gender Bias in Skills and Social Policies: The varieties of capitalism perspective on sex segregation' (2005) *12 Social Politics: International Studies in Gender, State & Society* 180

[120] Whether specific skills training affects ethnic minorities other than across the gender divide is not clear.

[121] Estévez-Abe (n 131) 190

[122] Ibid 193

driven world of the private sector. It is therefore important to either impress upon the private sector the will to train women in firm specific skills or to promote policies that mean men are just as likely as women to take family leave or provide more extensive childcare. A combination of these methods could possibly be most effective.

3.3. Adapting board practices

According to theories of heuristics, discussed in Chapter 4, women and BAME individuals are disadvantaged in the appointment process because the assessment of their merit is negatively impacted by their lack of resemblance to the typical c-suite director. There are methods which may help mitigate these heuristics. One method is to evaluate appointments jointly, enabling reason to displace heuristics and make protected characteristics less significant.[123] In symphony orchestras, concealing a candidate's identity in the audition led to an increased likelihood that women would be appointed.[124] Adopting this blind audition method into boardroom appointment practices is not practicable as the identity of the candidate is key to the role. What the research highlights is the importance of reducing the potential impact of a candidate's gender and ethnicity on decision makers.

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[123] Iris Bohnet, Alexandra Van Geen and Max Bazerman, 'When Performance Trumps Gender Bias: Joint vs. separate evaluation' (2015) 62 *Management Science* 1225 1234
[124] Claudia Goldin and Cecilia Rouse, 'Orchestrating Impartiality: The impact of" blind" auditions on female musicians' (2000) 90 *American Economic Review* 715

Research indicates that groups are not good at information sharing because of the tendency to focus on commonly held information.[125] If this is true, a board constituted of a variety of different backgrounds, ethnicities and genders may fare worse because their variety of perspectives and expertise may mean they share less common knowledge than a homogenous group, and will therefore be less likely to utilise their individual expertise.[126] Training and research into how non-homogenous groups share information may help improve the effectiveness of diverse boards and fully reap the benefits that may arise from diversity of perspective.

At a more practical level, it has been shown that mentoring is critical to career success, but that women are less likely to be mentored.[127] Encouraging senior management to mentor women may have a positive impact on their careers and see an increase in diversity in the c-suite. Roth had a number of ideas of how this could be done based around the development of incentives for senior individuals to choose to mentor more junior staff of a different gender and/or ethnicity.[128] More generally, ensuring that the learning environment on the board and across the company is viewed as supportive by all ethnicities and genders is thought to increase firm performance.[129] This supportive

[125] Elizabeth Mannix and Margaret A Neale, 'What Differences Make a Difference? The promise and reality of diverse teams in organizations' (2005) *6 Psychological Science in the Public Interest* 31 46
[126] Ibid
[127] See discussion page 67
[128] Louise Marie Roth, *Selling women short: Gender and money on Wall Street* (Princeton University Press 2006) 178
[129] Robin J Ely and David A Thomas, 'Cultural Diversity at Work: The effects of diversity perspectives on work group processes and outcomes' (2001) 46 *Administrative Science Quarterly* 229 355

environment is more likely to promote ethnic and gender diversity by virtue of its inclusiveness, making it attractive to employees of all backgrounds.

3.4. Attenuating power

As has been set out in Chapters 4 and 6, the power of members of the c-suite can affect their ability to retain their position. The findings of this research suggest that men have the highest levels of power at present. This not only keeps them in their roles but prevents another opportunity becoming available to women or BAME individuals. Research has divided boards into 4 categories according to their power balance: (1) **caretaker** boards, where neither the CEO nor the board are powerful and the company is dominated by its executives; (2) **statutory** boards, in which the CEO is powerful and the board acts as "rubber stamps"; (3) **proactive** boards in which the board is more powerful than the CEO; and (4) **participative** boards in which CEOs and boards have equal power.[130] One of the conclusions made by Pearce was that participative boards were most likely to perform well financially. This was on the basis that an equal power footing led to better decisions because more discussion and negotiations were needed to reach consensus.[131] If this is true, it follows that boards are likely to be unbalanced having just one or two powerful individuals. An increase in the power of the board may help to attenuate the power of dominant executives. A reduction in the power of the c-suite members is also possible and could be achieved by introducing a

[130] John A Pearce and Shaker A Zahra, 'The Relative Power of CEOs and Boards of Directors: Associations with corporate performance' (1991) 12 *Strategic Management Journal* 135 136
[131] Ibid 138

maximum tenure.[132] This may be particularly helpful to diversity objectives in light of research suggesting that long serving board leaders "limit positive effects of diversity on strategic change".[133] Further research is required to determine other methods of addressing the power imbalance.

4. Conclusion

There is a problem in the diversity of the FTSE100 c-suite. At present this problem is largely overlooked under the glow of the apparent progress made in gender diversity on the wider board. The Code is proving to be ineffective in addressing the issue, and this inadequacy stems from the Code's reliance on the concept of merit. The problem is perpetuated by an uneven distribution of power among the members of the c-suite. It is important to address these issues for reasons of social justice. The c-suite represent corporations most powerful voices, reverberating throughout many aspects of society. The people occupying these roles are selected from a pool of privileged individuals to the exclusion of other possible candidates. This is unfair to the disadvantaged individuals and to the society the companies operate in. Furthermore, as long as mainly White men are seen to dominate leadership roles, the aspirations and actions of the generations that follow will be impacted.

[132] A nine-year maximum tenure has been implemented for Chairs in the 2018 Code, the effects of which remain to be seen.
[133] Kanadlı and others (n 44) 102

It is understood and acknowledged that, in terms of the empirical part of this study, the size of the sample, the small proportions of which being women and ethnic minorities, raises questions as to the reliability of the conclusions. Without a doubt it will be important to continue this research over the coming years in order to test the theories suggested here, as well as investigate the impact of ongoing change to the regulatory environment. Extending the research into the FTSE350 would be desirable. In relation to the theoretical aspects of the research, a qualitative study into what merit means to board members and beyond, would be of significant interest.

The path to greater diversity depends upon what is considered the priority in light of all the information. If speed is prioritised, quotas would be the answer.[134] If what is sought is progress that is enduring and authentic, quotas must be discounted as they are too blunt an instrument to affect a change that will be embraced, particularly at c-suite level. Quotas risk creating more problems than they solve, such as resentments, board tension and an undermining of belief in the abilities of women and BAME individuals. Practically, it is extremely complex to use quotas in the c-suite, given the roles are so few and so context driven. The corporate pushback would be immense.

Having ruled out quotas, the focus can return to soft law and the use of merit as the key appointment determinant. As this research has sought to establish, merit is a flawed and problematic concept, often working against

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[134] Hans de Wulf, 'Do Gender Quotas Contribute to Better Corporate Governance?' in Marc De Vos and Philippe Culliford (eds), *Gender Quotas for Company Boards* (Intersentia 2014) 31

diversity objectives. But despite its flaws, merit does have advantages, not least of which being the lack of feasible alternatives. Merit cannot be abandoned as an appointment basis, but there needs to be an understanding of its inherent plasticity. The Code needs to accept its limitations regarding its ability to define how companies determine merit and move away from requiring disclosure of appointment policies towards enhanced disclosure of consequence. In a broad sense, it is important that diversity is considered a core component of merit, not an add-on. In this way, it should not be possible to use merit as a justification for lack of diversity.

A new understanding of merit should also develop awareness that the application of human capital theory disadvantages women and BAME individuals. When combined with decision-making biases, women and ethnic minorities are in an unacceptably disadvantaged position. The continued development of training and awareness on the impact of these factors could help to mitigate this effect. Other ways to help improve diversity would be for the Code to encourage companies to more carefully reflect on their Chairman appointments. Chairmen are the door to more diverse boards, and they should be held to account to this. To the extent that any of the abovementioned changes are sought through the Code, their effect will be nullified unless the lack of meaningful Code compliance is addressed.

Some consideration has also been given to other, more holistic, ways that companies could change their c-suite diversity, perhaps in conjunction with Code amendments, but without the use of quotas. Tackling job segregation from the beginning of careers and ensuring specific skills training is provided to women as frequently as men could see the pool of potential women and BAME candidates swell considerably in the long term. This does not contradict what has been claimed in this thesis about the falsity of the argument that the pipeline is the reason why more women are not appointed to the board. It is still the case that there are plenty of suitable women and BAME in the pipeline to considerably improve c-suite diversity. Yet more could be done. Changes to job segregation and specific skills training may increase the pipeline so that it matches the male pipeline. Many of these changes would be of minimal cost. If companies really do believe in the business case for diversity, it is perhaps strange these actions are not more commonly seen.

What has not been considered in any detail are the societal changes relating to family life. These include childcare support, changes to education, parental leave and many more. Changes in these areas could have a substantial impact on aspirations, incentives and abilities for the under-represented. There is much that can be done by businesses to change the way home and family norms fall disproportionaly on women. This remains an important avenue for future research.

Although the diversity problem is one that endures, the situation is not so desperate as to require the implementation of potentially damaging quotas. There are several far less drastic measures which, it is argued, will be more effective in the long run if implemented in conjunction with a redrafting of the Code. So long as the Code remains as drafted, there is little real pressure on companies to change their c-suites. In contrast, if these holistic measures are combined with changes to the Code, there is the possibility of a shift in acceptance of the benefits of a more diverse pool of candidates. Critical to this change is acknowledgement that merit is an ideology and not a science. According to this research, it is the reliance on merit rhetoric that stops women and ethnic minorities entering the c-suite, and it is the use of power that prevents White men from leaving.

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