DIVERSITY & INCLUSION

MADE SIMPLE GUIDE

This guide is for information only.
It is not legal or investment advice.

FOREWORD

AT TRAVERS SMITH, WE VALUE THE FACT THAT EACH ONE OF US IS DIFFERENT.

Gender, ethnicity, disability, age, sexual orientation, gender identity and faith contribute to this diversity, as does background, education, working style and family or care responsibilities.

We're committed to leveraging these differences to achieve better results and so better serve our clients and communities. We're also convinced that creating an inclusive environment where all our people feel valued and able to bring their differences to work every day creates a more stimulating and rewarding environment in which to work. This is reflected in Travers Smith being ranked 12th in Stonewall's Top 100 Employers list in 2020, as well as being rated a Top Trans Employer.

The Travers Smith Pensions Sector Practice won the inaugural Diversity and Inclusion Excellence Award at the UK Pensions Awards 2018 and was highly commended in 2019. The team provides pro bono legal advice for a range of charities which champion work in the Diversity and Inclusion sector, including Stonewall, Series Q and Colours Cayman, and advised and co-launched a mentoring programme with Just Like Us, which provides LGBTQ+ students and graduates with skills and support as they transition into employment. The team also played a central role in the establishment of Refugees at Home, which has provided over 150,000 nights of free accommodation for refugees and asylum seekers since its establishment in 2015. We continue to provide extensive pro bono legal advice and serve on the board.

In addition, members of the Travers Smith Pensions Sector Practice include: a member of the PLSA's Diversity External Advisory Board; founding members of the newly-established pensions industry LGBTQ+ network group, O:pen; the highest-ranked lawyer in OUTstanding's 2019 worldwide 100 LGBT+ Executives list, having been featured in the list (then published in the Financial Times) for the three previous consecutive years; and a founding member of The Alliance, an LGBTQ+ executive network convened by McKinsey. Members of the team also have various trustee appointments and provide support to other not-for-profit community organisations including Re-Engage (previously Contact the Elderly).

WHAT YOU WILL FIND IN THIS GUIDE

THERE IS ROBUST AND EXTENSIVE EVIDENCE SHOWING THAT TEAMS WHICH ARE MORE DIVERSE AND INCLUSIVE MAKE BETTER DECISIONS AND ACHIEVE BETTER FINANCIAL OUTCOMES.

This guide introduces some of the concepts and good practice associated with diversity and inclusion (**D&I**), including:

1. What D&I means;

2. A summary of the benefits of D&I; and

3. Some practical steps for trustee boards to help promote greater inclusivity.

It is aimed primarily at trustees of occupational pension schemes, but many of the principles discussed will be of interest and use to a wider audience, in particular sponsoring employers, trustees of contract-based schemes, advisers and consultants.

There is no 'one-size-fits-all' solution to diversity issues, but this guide intends to prompt discussion about how best to achieve greater D&I and the advantages of doing so for all pension scheme stakeholders. The examples contained within the guide are for illustrative purposes only.

Armed with a greater understanding of these issues, pension schemes should be encouraged, and better equipped, to deliver D&I objectives. D&I issues are constantly evolving to reflect changes in our society and trustee boards are encouraged to regularly review and refresh their approach to D&I to ensure they remain up to speed with best practice.
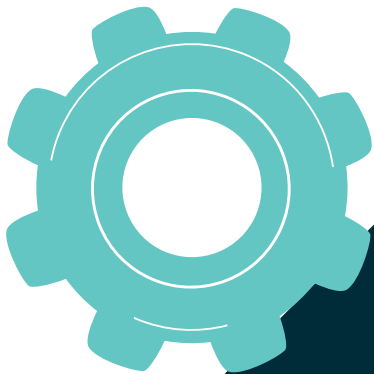
Although some pension scheme stakeholders have made great strides in recent years, diversity and inclusion are areas which may be relatively new and unfamiliar to readers. This guide considers many of the issues surrounding D&I, including the tendency for pension scheme trustee boards to struggle to achieve diversity of **gender** and age.[1]

THE JARGON BUSTER ON PAGE 22 EXPLORES THE TERMS IN BOLD USED IN THIS GUIDE IN GREATER DETAIL.

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1 Pension scheme trustees are overwhelmingly male and people in their 60s are disproportionately well-represented on trustee boards. See 'Where are trustees now?' section on page 13 for further details.

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1
WHAT IS DIVERSITY?

DIVERSITY MEANS VARIETY. A DIVERSE GROUP IS HETEROGENOUS, WHICH MEANS IT IS NOT THE SAME; ITS COMPONENT PARTS ARE ALL DIFFERENT. IT IS IMPORTANT TO NOTE THAT DIVERSITY IS DISTINCT FROM INCLUSION, WHICH IS DISCUSSED IN MORE DETAIL ON PAGE 7.

In the UK, it is illegal to discriminate against someone on the basis of certain 'diverse' characteristics. The Equality Act 2010 prohibits less favourable treatment on the basis of nine 'protected characteristics':

- *Age*
- *Disability*
- *Gender Reassignment*
- *Marriage and Civil Partnership*
- *Pregnancy and Maternity*
- *Race*
- *Religion or Belief*
- *Sex*
- *Sexual Orientation*

In this guide, we use the term 'diversity' to encompass a wider range of individual differences, irrespective of whether they are protected characteristics – for instance, socio-economic background. It is also worth noting that 'diversity' captures differences which may not be immediately apparent upon meeting someone, for instance, sexual orientation, religion or belief, **neurodiversity**, **socio-economic background** and many forms of disability, including mental health conditions.

2
WHAT IS INCLUSION?

INCLUSION MEANS EFFECTIVE INVOLVEMENT OF INDIVIDUALS OF ALL BACKGROUNDS, CREATING AN ENVIRONMENT IN WHICH THEY CAN PERFORM TO THEIR FULL POTENTIAL, AND HARNESSING DIVERSE CHARACTERISTICS IN A WAY WHICH IS MUTUALLY BENEFICIAL FOR INDIVIDUALS AND ORGANISATIONS.

◆◆ **PEOPLE MUST FEEL VALIDATED AND TRUSTED IF THEY ARE FULLY TO CONTRIBUTE THE BENEFITS OF DIFFERENT WAYS OF THINKING**[2] ◆◆

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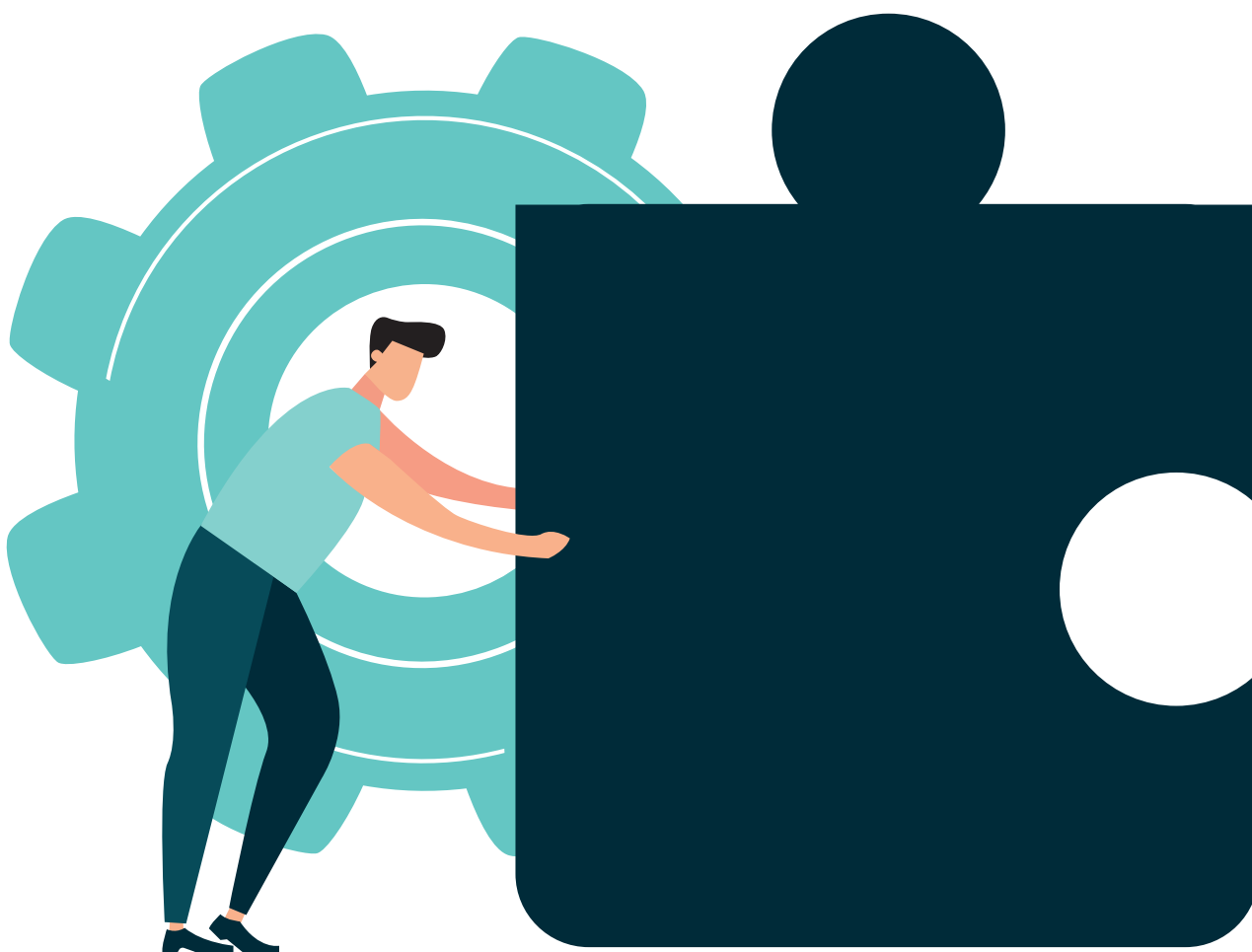
2   Scott E Page, quoted in Henry Farrell, Diversity Isn't Just About Justice. It's About Helping Us Make Better Collective Decisions, Washington Post, 28 September 2017.
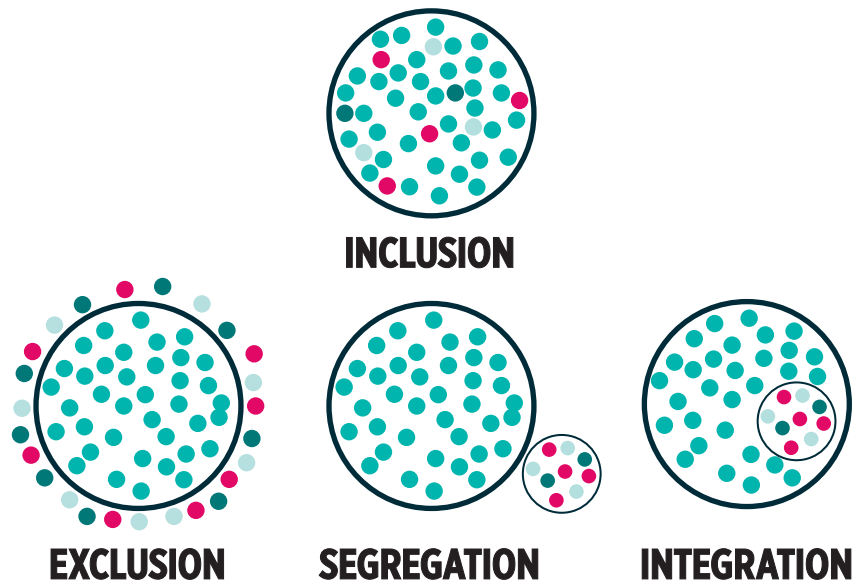
INCLUSION

EXCLUSION   **SEGREGATION**   **INTEGRATION**

Diversity without inclusion leads to exclusion, segregation, or integration. In order to fully see the benefits of diversity, people must feel validated, respected and included.

Exclusion: *although the group is, on the face of it, diverse, people with diverse characteristics are peripheral and find it difficult to fully utilise their skills and experiences to add value to the group, so the group is unlikely to see the benefits of D&I. In some cases, this outcome can even be used as a false justification for not engaging further with D&I because a group has 'tried it and it didn't work'.*

Segregation: *people with diverse characteristics gravitate towards other diverse people with whom they consider themselves to have more in common. This effectively forms a sub-group that operates on the periphery of the main group and faces many of the problems associated with exclusion.*

Integration: *the diverse sub-group is incorporated into the group slightly more, but it is treated as a group within a group and is not fully included or valued. Integration can be particularly damaging because the group appears to take D&I seriously, when in fact the sub-group is not given the same opportunity to perform. This can reinforce prejudices towards the marginalised group and its members.*

Inclusion *occurs when a group actively enables all of its members to fully participate, irrespective of their individual characteristics. Inclusion is positively embracing differences to create a group where different perspectives and opinions are valued and encouraged.*

While diversity statistics are an important and helpful barometer for measuring D&I progress, they can give the misleading impression that an organisation has completed its journey towards diversity. A diverse trustee board is unlikely to see the benefits of D&I unless all members are fully included and the board recognises that D&I is an ongoing process of good practice rather than a defined target or destination.

3
WHAT ARE THE ADVANTAGES OF DIVERSITY & INCLUSION?

THERE IS AN ARGUMENT THAT D&I IS SIMPLY 'THE RIGHT THING TO DO' FROM AN ETHICAL PERSPECTIVE. THERE ARE ALSO COMPELLING COMMERCIAL REASONS FOR DEVELOPING MORE DIVERSE AND INCLUSIVE WORKPLACES.

◆◆ TRUSTEE BOARDS WITH A GREATER THAN AVERAGE GENDER BALANCE OR WITH HIGHER MNT REPRESENTATION, WHICH IS MORE LIKELY TO BE AN INDICATION OF GREATER SOCIO-ECONOMIC DIVERSITY, ARE GOVERNED BETTER[3] ◆◆

Artificial intelligence-based research into the performance of **heterogenous** versus **homogenous** groups has shown that diverse groups are better at:

▶ paying attention to the key facts and assessing relevant evidence

▶ reasoning

▶ reaching the 'best conclusion'

▶ explaining their decisions[4]

These skills are highly desirable for a trustee board when seeking to discharge its legal duties and provide the best outcome for members.

Research into the advantages of D&I in business has found compelling evidence that:

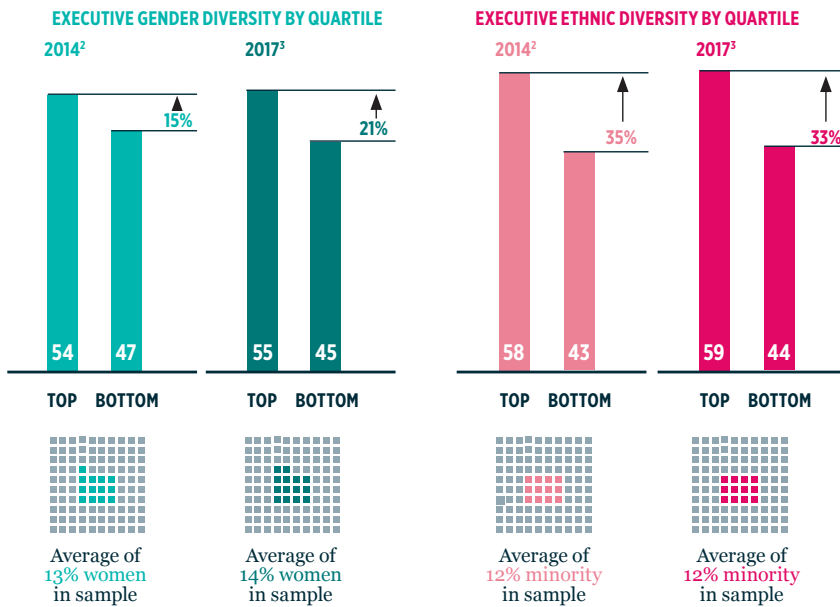▶ There is a strong correlation between **gender** and racial diversity and profitability

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3   Gary Millar, Occupational Pensions in a Financialised World, 2019.
4   Scott E Page, The Diversity Bonus, 2017.

GENDER AND ETHNIC DIVERSITY ARE CLEARLY CORRELATED WITH PROFITABILITY, BUT WOMEN AND MINORITIES REMAIN UNDER-REPRESENTED[5]

LIKELIHOOD OF FINANCIAL PERFORMANCE[1] ABOVE NATIONAL INDUSTRY MEDIAN, %

EXECUTIVE GENDER DIVERSITY BY QUARTILE

2014[2]   2017[3]

15%   21%

| 54 | 47 | | 55 | 45 |

TOP BOTTOM   TOP BOTTOM

Average of   Average of
13% women   14% women
in sample   in sample

EXECUTIVE ETHNIC DIVERSITY BY QUARTILE

2014[2]   2017[3]

35%   33%

| 58 | 43 | | 59 | 44 |

TOP BOTTOM   TOP BOTTOM

Average of   Average of
12% minority   12% minority
in sample   in sample

When companies have implemented neurodiversity programmes, some have reported that neurodiverse teams can be up to **30%** more productive[11]

In an experiment involving financially literate people on simulated financial markets, individuals in ethnically diverse teams were **58%** more likely to price stocks correctly than those in homogenous teams[12]

1 Average earnings-before-interest-and-taxes (EBIT) margin, 2010-13 in Diversity Matters I and 2011-15 in Diversity Matters II.
2 Results are statistically significant at p-value <0.10.
3 Results are statistically significant at p-value <0.05.

McKinsey
& Company

▶ The ability of **LGBTQ+** inclusive companies to innovate, attract and retain talent leads to stronger financial [5]performance[6]

▶ Companies that embrace best practices for employing and supporting people with **disabilities** outperform their peers[7]

▶ When deliberating complex issues, diverse teams raise more relevant facts and are better at self-correcting any errors than **homogenous** teams[8]

▶ Increasing diversity on trustee boards can help offset the impact of behavioural biases, which can have a significant effect on investment outcomes[9]

▶ Inclusive teams achieve better results in less time[10].

5 Exhibit from "Delivering Through Diversity", January 2018, McKinsey & Company, www.mckinsey.com. Copyright (c) 2020 McKinsey & Company. All rights reserved. Reprinted by permission. https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity
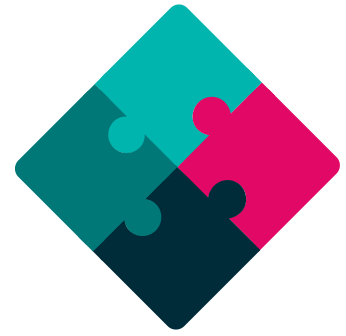6 Jon Miller & Lucy Parker, *Open For Business: Strengthening The Economic Case*, 24 January 2018.
7 Accenture, *Getting to Equal: The Disability Inclusion Advantage*, 2018.
8 David Rock & Heidi Grant, *Why Diverse Teams Are Smarter*, Harvard Business Review, 4 November 2016. This experiment assigned participants to mock juries and showed them a trial of a case involving a black defendant and white victims. The juries consisted of either six all-white members, or four white and two black members. The mixed juries raised more facts which were relevant to the case and made fewer factual errors. Although this conclusion was reached in the context of a mock jury experiment, the research has clear parallels with a trustee's duties.
9 Anna Tilba, Michelle Baddeley and Yixi Liao, *Research Report on the Effectiveness of Oversight Committees: Decision-Making, Governance, Costs and Charges*, 2016. This research, commissioned by the FCA, analysed behavioural biases which are prevalent in the context of investment decisions and concluded that increasing diversity on boards is an effective way of mitigating biases. The research considered multiple behavioural biases but the bias most applicable to trustee boards is overconfidence. Overconfident board members can ignore relevant information and discount evidence which does not support their pre-conceptions, which can mean the full implications and risks of investment decisions are not properly considered. Tilba et al cites complementary research indicating that males are more likely to be overconfident than females, and concluded that male-dominated pension scheme boards are more prone to overconfidence than boards with greater diversity.
10 Erik Larson, New Research: Diversity + Inclusion = Better Decision Making At Work, Forbes, 21 September 2017.

All of this means that trustee boards which are more diverse and inclusive are more likely to:

▸ Make better decisions and find more innovative solutions to problems, resulting in better outcomes for members

▸ Fulfil their legal obligations more effectively

▸ Achieve better investment returns

▸ Work more efficiently

▸ Better reflect the scheme membership profile; more effectively representing members' interests.

HOW THIS RELATES TO OCCUPATIONAL PENSION SCHEMES

What makes a good trustee of a pension scheme?

You might think of characteristics such as fairness, independence, integrity, familiarity with the trust documentation and relevant law, investment expertise and the ability to solve problems, work towards goals, communicate and work with others.

A good trustee will likely possess some or all of these characteristics, but one of the key legal duties in trustee decision-making is the ability to take account of relevant factors and disregard irrelevant factors so as not to reach a perverse or irrational conclusion.[15] In 2019, the Pensions Regulator commented for the first time on the correlation between D&I, good governance and the proper performance of a trustee board's legal duties.

Companies with the most ethnically/ culturally diverse executive teams are **33%** more likely to outperform their peers on profitability[13]

A study conducted in Spain found that companies with [more women] were more likely to introduce new innovations into the market[14]

"Our view is that pension boards benefit from having access to a range of diverse skills, points of view and expertise as it helps to mitigate against the risks of significant knowledge gaps or the board becoming over-reliant on a particular trustee or adviser. It also supports robust discussion and effective decision-making.

*"Limited participation on trustee boards in relation to protected characteristics, for example age, **race**, **gender**, sexual orientation, religion or belief or disability, can act as a barrier to success. **Unconscious bias** can also lead to an environment which stifles fresh thinking or approaches and a failure to properly recognise issues that have a real-life impact on savers' outcomes.*

"We would also like to explore ways in which the industry can build on the work and initiatives that already exist to encourage a greater diversity of strong applicants for trustee roles." [16]

11   Robert D. Austin & Gary P. Pisano, Neurodiversity As A Competitive Advantage, Harvard Business Review, May-June 2017 issue. Note that this figure is based on a single organisation's neurodiversity programme and may not be reflected across sectors or geographical regions.

12   David Rock & Heidi Grant, Why Diverse Teams Are Smarter, Harvard Business Review, 4 November 2016.

13   McKinsey & Company, Delivering Through Diversity, January 2018.

14   David Rock & Heidi Grant, Why Diverse Teams Are Smarter, Harvard Business Review, 4 November 2016.

15   See Edge v Pensions Ombudsman [2000] Ch. 602 for a more detailed account of the considerations trustees should make when making decisions.

16   The Pensions Regulator, Industry Consultation: Future of Trusteeship and Governance, July 2019.

While this is not to say that **homogeneous** boards *cannot* fulfil their legal duties, it suggests an acknowledgement from the Regulator that trustee boards lacking diversity are less likely to possess the requisite skills and experience to perform their legal duties to a high standard. At a time when investments are more sophisticated and trustee decisions are more complicated than ever before, D&I can help trustee boards stand up to ever-increasing scrutiny and reduce the risk of their decisions being challenged.

Having reviewed the responses to its consultation, the Regulator stated its intention to establish a working group aimed at improving D&I on trustee boards and added that there is *"also scope for us to look at the steps trustees are taking to improve diversity through our supervision and enforcement activity"*.[17]

EMBRACING D&I IS NOT: TOKENISM; COMPROMISING ON PERFORMANCE; POSITIVE DISCRIMINATION; CHARITY; OR 'BOX TICKING'.

17 The Pensions Regulator, Consultation response: Future of Trusteeship and Governance, February 2020.

4
WHERE ARE TRUSTEES NOW?

SINCE THE PENSIONS ACT 1995 INTRODUCED THE REQUIREMENT FOR AT LEAST ONE-THIRD OF OCCUPATIONAL PENSION SCHEME TRUSTEES TO BE MEMBER-NOMINATED ("MNT REQUIREMENTS"), TRUSTEE BOARDS HAVE BECOME MORE DIVERSE, PARTICULARLY IN DIVERSITY OF SOCIO-ECONOMIC BACKGROUND, EXPERIENCE, REMUNERATION AND DAY-TO-DAY EMPLOYMENT ROLE. THESE REQUIREMENTS WERE MODIFIED BY THE PENSIONS ACT 2004, BUT CONTINUE TO COMPEL EMPLOYERS AND TRUSTEES TO CONSIDER A WIDER POOL OF POTENTIAL TRUSTEES.

However, research indicates that:

▸ 83% of scheme trustees are male[18]

▸ 2.5% of scheme trustees are under 30 and 7% are over 70[19]

▸ 5% of trustee boards have more than 50% female trustees[20]

▸ 25% of schemes have all-male trustee boards

▸ 50% of chairs of trustee boards are over 60 years old

▸ One-third of scheme trustees are over 60.[21]

By comparison, on FTSE 100 company boards:

▸ 32.1% of board members are female[22]

▸ 19% of chief executives are over 60[23]

▸ 7.4% of board members are BAME, including 3.3% in the most senior positions of chair, chief executive or finance director

▸ 53% have at least one BAME board member.[24]

It seems clear that occupational pension scheme trustee boards have generally not implemented robust diversity policies as effectively as FTSE 100 boards, many of which are sponsoring employers of large occupational pension schemes.

Employers and trustees should consider if compliance with the MNT Requirements alone is sufficient to create diversity on a trustee board. The statistics above indicate that diversity of **gender** and age are particular problems across the pensions industry, but consideration should of course be given to the other characteristics discussed throughout this guide.

Inclusive teams make better business decisions 87% of the time, and teams that follow an inclusive process make decisions 2x faster with half the meetings[25]

Companies in the top quartile for racial and ethnic diversity are 33% more likely to perform above the national industry average[26]

Companies in the top quartile for gender diversity are 15% more likely to perform above the national industry average[27]

"Gender diversity is correlated with both profitability and value creation"[28]

18 PLSA Annual Survey, 2016.
19 Aon: Mapping the Trustee Landscape, 2016.
20 PLSA Annual Survey, 2016.
21 PLSA Annual Survey, 2016.
22 Ben Chapman, UK Firms Set To Fall Short Of Government Targets For Women On Boards, The Independent, 1 July 2019.
23 Kenny Kemp, Number of FTSE 100 CEOs In Their 60s 'Has Doubled In 20 Years', Insider, 12 December 2018.
24 Philip Inman, Top UK Firms Failing To Increase Boardroom Diversity, Study Shows, The Guardian, 4 December 2019.
25 Erik Larson, New Research: Diversity + Inclusion = Better Decision Making At Work, Forbes, 21 September 2017.
26 McKinsey & Company, Delivering Through Diversity, January 2018.
27 McKinsey & Company, Delivering Through Diversity, January 2018.
28 McKinsey & Company, Delivering Through Diversity, January 2018.

Female and **BAME** candidates have traditionally been less likely to apply where MNTs are elected. If a trustee board considers a particular group of people to be underrepresented, they may consider trialling a selection process for MNTs instead. Where there is a compelling reason to continue to elect rather than select, trustee boards should be satisfied that the communications regarding the election process are drafted so as to explicitly encourage a diverse range of candidates to apply.

The sponsoring employer of a scheme that has implemented effective diversity policies can provide guidance and examples of good practice. An employer is likely to be keen to embrace D&I on the trustee board of its pension scheme where it has experienced the benefits of D&I, so it is anticipated that employers and trustee boards can work collaboratively towards a shared objective.

WHY DIVERSITY CAN BE DIFFICULT: BIASES AND PREJUDICES

Although most people would not consider themselves to be prejudiced, we are conditioned to categorise information and make instinctive judgements, often based on physical characteristics, when determining who is in our 'in-group' or 'out-group'.

These arise from prevailing societal beliefs and circumstances together with evolutionary suspicion of the unfamiliar. Cultural stereotypes can register on the brain in one-fifth of a second, but can take a lot of time to overcome. Someone who we initially consider to be in our 'out-group' will have to do a lot more to overcome our initial judgements, unless we consciously try to create a more egalitarian environment.[29] This is relevant in the context of recruitment of trustees and also with regards to how certain sub-groups on boards can dominate decision-making.

UNCONSCIOUS BIAS

*The concept of **unconscious bias** relates to beliefs and intentions which are shaped by society, upbringing and environments. They are often deeply engrained, automatic and can create 'blind spots' which affect behaviour. We all have **unconscious biases**, and while in most cases they will fall short of overt discrimination, they may nonetheless result in unconsciously favouring a person of a particular demographic.*

***Unconscious bias** interacts with trusteeship and governance because of what we are conditioned to believe is normal about trustee boards. For example, as most trustee boards are mainly made up of white males, there is a **confirmation bias** towards recruiting other white males (the demographic we associate with trustees). Similarly, potential candidates who are not white males may feel discouraged from applying because of their own **unconscious bias** telling them that they are unsuitable. Those who do apply may subconsciously try to imitate and agree with the existing board members in an attempt to fit in, which can lead to a lack of proper scrutiny and innovation.*

It is clear how a vicious cycle can easily be created in this context.

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29 Susan T. Fiske, Look Twice, Greater Good Magazine, 1 June 2008. Fiske also cites the research of Joshua Correll into how police deal with criminal suspects.

Diversity & Inclusion

MITIGATING BIASES

The ultimate aim when seeking to minimise the impact of a person's biases is to assess another person based entirely on their skills and abilities, ignoring any assumptions about the demographic to which they belong.[30] This cycle can be very difficult to break, but the first step in reducing the impact of unconscious biases is to recognise them and spend time developing a greater awareness of them. Some ways to help this include:

▶ *Being conscious of implicit biases when evaluating performance, making a hire, or nominating a team member for promotion. An awareness of the potential biases involved in decision making means people are less likely to lean on mental shortcuts*

▶ *Engaging with diverse groups of people. Working with individuals of different groups is one of the most effective ways of breaking down reliance on assumptions, biases and stereotypes*

▶ *Reflecting on personal values, cultural norms and behaviours. The more we learn about ourselves, the more we are aware of how the lens we see through affects our behaviour towards other people.*

MANY LEADERS STILL HAVE BLIND SPOTS REGARDING DIVERSITY. THEY UNDERESTIMATE THE OBSTACLES CONFRONTING AN EMPLOYEE OF A DIVERSE GROUP, PERCEIVING A WORKPLACE WITH FAR LESS BIAS THAN ACTUALLY EXISTS[31]

MULTIPLE IDENTITIES

Creating a truly inclusive and diverse culture requires an acknowledgement and greater understanding of the multiple identities, which shape our perspectives and experiences.

Multiple identities, or **intersectionality**[32], can be a complicated concept, but this example (diagram below) is a useful illustration of the point that diverse characteristics can combine to create unique forms of less (or more) favourable treatment even where certain characteristics appear to be, in isolation, treated equally. It recognises that our experiences are multi-dimensional, and that focusing on a specific diverse characteristic can be of limited use if the broader context is not also taken into consideration.

RACE EDUCATION SEXUALITY ABILITY AGE GENDER ETHNICITY CULTURE LANGUAGE CLASS
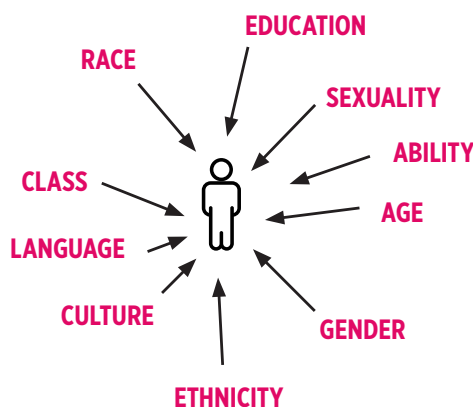
30 Dr. Pragya Agarwal, Unconscious Bias: How It Affects Us More Than We Know, Forbes, 3 December 2018.
31 Boston Consultancy Group, Fixing the Flawed Approach to Diversity, 2019.
32 Kimberlé Crenshaw, Mapping the Margins, 1991.

OTHER ISSUES WITH CATEGORISATION

It can seem counter-intuitive to encourage employers and trustees to take steps to recognise and embrace diverse appointments to trustee boards while continuing to group people together by reference to certain shared characteristics. This guide, by necessity, categorises people in this way for illustrative purposes only and with the intention of facilitating discussion of the key issues.

As the concept of **intersectionality** recognises, our lives are multi-faceted and so it can be unhelpful to consider only a single characteristic. It is unlikely that a British Asian person's experiences are identical to a Black person born in West Africa, just as a gay cis-gendered person and a transgender person are likely to have had only limited shared experiences. Each person may experience some forms of discrimination in similar ways to people with the same characteristics, but their experiences based on other identities will vary greatly and their experience will be unique.

There can also be inherent assumptions in categorising people into groups which can be unhelpful. For example, women can hold **unconscious biases** or explicit prejudices which are less favourable towards other women; it should not therefore be assumed that a trustee board comprised of 50% men and 50% women cannot be sexist.

Similarly, the term **neurodiversity** can be used in a number of different ways, ranging from diagnosed conditions such as autism, to people who simply 'think differently'. Generally, neurodiversity is used to refer to medically-recognised differences and trustee boards are therefore encouraged to exercise caution if seeking to consider themselves diverse on the basis of the broader definition of **neurodiversity** where the group is otherwise largely **homogeneous**.

These nuances can further complicate already difficult issues and discourage people from positive action. However, the solution is quite simple: taking all reasonable steps to treat people not as proxies for particular characteristics, but as rounded individuals.

5
HOW TO CREATE MORE DIVERSE AND INCLUSIVE TRUSTEE BOARDS

THERE IS NO PERFECT SOLUTION TO ACHIEVE GREATER D&I; THE KEY IS TO MAKE SMALL BUT SIGNIFICANT STEPS ON A REGULAR BASIS. IT IS ALSO A CONTINUOUS PROCESS AND THE BEST EXAMPLES OF GOOD PRACTICE ARE BOARDS THAT SEE D&I AS SOMETHING THAT REQUIRES CONSTANT MONITORING.

Measures aimed at improving D&I on trustee boards can be broken down into those which are aimed at <u>recruiting</u> diverse people, and those aimed at the <u>retention</u> and continuous development of existing trustee board members.

Trustee boards should consider the following check-lists for examples of good practice. While it may not be appropriate to implement all of these measures, trustee boards should be prepared to provide a compelling justification where they do not substantially comply.

Recruitment

▸ *Have a formal D&I policy*

▸ *Ensure communications relating to vacancy use inclusive language, encourage diverse applicants and clearly set out expectations for the role*

▸ *Blind CVs/ application forms*

▸ *Objective selection criteria. Consider if skills-based assessments are appropriate*

▸ *Ensure the interview panel is diverse, using sponsoring employer support where appropriate*

▸ *Consider timing of interviews/ meetings*

▸ *Invite requests for reasonable adjustments to premises, equipment, working practices and role descriptions*

▸ *Retain links with strong but unsuccessful candidates for future vacancies*

▸ *Monitor progress by capturing D&I related data throughout the recruitment process*

▸ *Showcase allies and role models from diverse backgrounds*

Retention

Many of the principles for recruitment apply equally to appraising existing trustees and retention more generally, but some other suggestions include:

▸ *Promote a culture of active bystanders*

▸ *Clear policy of support for D&I, including importance of trustee chair setting agenda for D&I*

▸ *Diversity of trustee board advisers*

▸ *Foster a culture of mentoring and mutual support*

▸ *Regular training on D&I issues*

▸ *Strive to create a culture of open dialogue about D&I issues*

D&I POLICIES

▶ All but two of the FTSE 100 companies now have a formal board diversity policy, many of which refer to both **gender** and **ethnicity**.[33]

▶ Trustee boards should formalise a policy on recruitment, integration and retention of diverse candidates to the board. Sponsoring employers' D&I policies can provide a starting point.

▶ The policy may simply contain some high-level principles, but all practices relating to selection and retention of diverse trustees should be consistent with it.

▶ The role of the chair of trustees is essential in setting the tone for board discussions surrounding D&I, embedding D&I as a fundamental aspect of a board's culture and ensuring that the board acts in accordance with any diversity policies.

▶ Given the performance benefits of diversity, trustees should also consider whether their advisors and investee companies have good D&I policies and practices when tendering for advice or reviewing investment decisions.

▶ It may also be wise for trustees to note the sponsoring employer's D&I policies and practices as these may correlate with improved decision-making and, ultimately, business performance and profitability. Sponsoring employers with robust D&I policies and practices may therefore benefit from an improved employer covenant.

SELECTION AND APPRAISAL CRITERIA

▶ It is important that vacancies are communicated in a way which is likely to attract a diverse range of applicants. It should be clear on the face of any advertisement that candidates throughout the workforce are encouraged to apply, and not just those in senior positions.

▶ The language used should be gender-neutral and inclusive, and it should be stated that the successful candidate will receive comprehensive training to enable them to fulfil their duties; they are not expected to be up-to-speed from day one.

INCLUSIVE LANGUAGE

Inclusive Language treats everyone with respect, dignity and impartiality, and is aimed at bringing everyone into a group, excluding no one. It requires people to consider the potential wider implications of words or phrases that may otherwise go unchallenged.

▶ The use of blind CVs is considered good practice as there is reduced scope for assumptions that can come from knowing a person's name, **gender** and **ethnicity** in advance.

▶ Consistent and objective selection and appraisal criteria can overcome **unconscious biases** and make it easier to assess people objectively and fairly. For example, trustees could agree criteria against which all candidates will be assessed in advance and score each candidate out of 10 for each. The interview and any other assessments can then be designed to give each candidate a fair chance to demonstrate their competence in each of these areas. Trustees should also consider whether reasonable adjustments should be made to these criteria for disabled candidates.

▶ Trustee boards' interview or review panels should be as diverse and inclusive as possible, to ensure that different perspectives are heard about a person. Trustee boards should consider supplementing the panel with representatives from a sponsoring employer or advisers to achieve this. Focusing entirely on a candidate's experiences is likely to favour particular characteristics, such as age. Trustee boards should consider making some of their criteria skills-based, for example by using psychometric testing to see if a candidate's skillset would complement the existing trustees', or staging mock board meetings to assess a candidate's ability to communicate with others and understand legal, actuarial, covenant or investment advice.

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33 Financial Reporting Council, Board Diversity Reporting, September 2018.

> ▶ In some cases, it may be possible to retain links with a strong but unsuccessful candidate in anticipation of a vacancy arising. Where a candidate has demonstrated many of the skills required, it may be appropriate to enable them to attend some training sessions with the other trustees, or to provide support and guidance about the Pensions Regulator's trustee toolkit and encourage the candidate to familiarise themselves with it. Although the unsuccessful candidate would not be able to attend board meetings, the trustee board should consider ways in which it can help to up-skill the candidate and encourage them to reapply in the future.[34]

MEETINGS AND INTERVIEWS

Some measures which appear neutral, such as the timing of meetings, can disproportionately affect certain groups.

Meetings or interviews at 8am or 6pm might affect those with childcare or other caring responsibilities (disproportionately affecting women). People from particular faith groups may also be unable to attend meetings held at particular times of the day or year.

Trustee boards should think carefully about whether their scheduling of board meetings and interviews is appropriate, and consider steps to mitigate any impact on disadvantaged groups. The timing of events which are likely to affect a significant proportion of people, such as religious festivals and school holidays, should be considered before scheduling meetings, and steps should be taken to ensure any candidates or trustees with non-standard working hours (including part-time workers – again, more likely to be women) are not prevented or discouraged from attending.

In some cases, this could be as simple as moving meetings to a more mutually convenient time to reflect the circumstances of each trustee board member or candidate. Where that is not possible, steps such as encouraging flexible working/ use of video link for meetings or covering the cost of childcare may be appropriate. It is considered good practice for meetings which are held during the working day to be held between 10am and 3pm where possible.

Flexible working policies should specifically consider people with disabilities, and how technology can support facilitative working arrangements, when drafting such policies.[35]

Any measures put in place should be specific to the needs of board members or applicants and reviewed regularly to ensure they remain suitable.

Applicants should be invited to make requests for any adjustments, such as braille, mobility access requirements or large-print documents in advance, or changes to role descriptions and working practices, and all reasonable requests should be accommodated. Many are inexpensive or cost free. This will enable the candidate to focus on the assessment rather than any accessibility issues they may have. It also demonstrates that the organisation is engaging effectively with the principles of D&I.

The impact of engaging in dialogue about adjustments with existing and prospective employees (or trustees) will generally reduce the stigma associated with requesting adjustments.[36]

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34 Some of the practical suggestions are adapted from Winmark research commissioned by PLSA, 2018.

35 Foster and Hirst, *Legally Disabled? The career experiences of disabled people working in the legal profession*, 24 January 2020. Although this report focusses on disabled people in the legal profession, the recommendations made are generally applicable to many sectors.

36 Foster and Hirst, *Legally Disabled? The career experiences of disabled people working in the legal profession*, 24 January 2020.

TRAINING

▶ Trustees should be provided with regular internal or external D&I training covering key diversity issues to ensure they remain aware of good practice. A trustee's induction training should include details of the trustee board's D&I policy.

▶ Many trustee chairs have recognised that trustee boards spending time together in an informal setting, such as a lunch, can facilitate integration and give members an opportunity to connect outside the boardroom environment.[37]

▶ By adopting some or all of the above measures trustee boards are likely to find the changes will not only benefit members of a specific demographic that directly benefits from a given measure, but that it has a positive effect on other demographics through improving inclusivity and the culture of D&I.

ALLIES, ROLE MODELS AND ACTIVE BYSTANDERS

Trustee board members do not need to be 'diverse' themselves in order to advance D&I in their organisation. **Allies, Role Models** *and* **Active Bystanders** *are all examples of how people who do not identify as being diverse can drive change by supporting and advocating for those who do.*[38]

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37 Some of the practical suggestions are adapted from Winmark research commissioned by PLSA, 2018.
38 See Jargon Buster on page 22 for further discussion about Allies, Role Models and Active Bystanders.

6
EXAMPLES OF GOOD PRACTICE

APPROPRIATE MEASURES OR INITIATIVES FOR A PARTICULAR ORGANISATION WILL LIKELY DIFFER DEPENDING ON FACTORS SUCH AS THE SIZE OF AN AND HOW ADVANCED IT IS ON ITS D&I JOURNEY.

While the following examples of good practice may not be suitable for all organisations, similar initiatives could be implemented by large in-house pension support teams, third party administration service providers, and possibly even some of the larger independent trustee houses, for example. Some of these measures could be implemented alongside, and with the support of, the sponsoring employer.

▶ Contextualised recruitment looks at the context in which a candidate for a role has achieved their qualifications and experiences. Tools exist, such as the Rare contextual recruitment system, which compares data from all UK schools to identify which students overachieved, or those whose achievements have been despite significant hardship. While the significance of school exam grades and their knock-on effect on higher education arguably become less significant as a person advances in their career, the principles of contextualised recruitment could equally be applied to applicants for trustee roles.

▶ Many larger organisations have created their own D&I networks, such as gender balance, **LGBTQ+** and **BAME** groups. These networks provide a safe space to discuss, support and advance underrepresented groups, as well as fulfilling an educational function for the wider workforce. The existence of these network groups demonstrates a wider commitment to D&I and helps set the tone for how diversity issues are treated within the organisation.

▶ Smaller organisations which require support may find it helpful to enter into partnerships with external organisations aimed at promoting D&I. These organisations, such as the 30% Club (which has a target of 30% of board seats being held by women), can provide support and guidance on best practice.

▶ Many organisations adopt initiatives that demonstrate an inclusive culture, such as Stonewall's Rainbow Laces campaign for promoting **LGBTQ+** inclusion in sport. If an organisation has sports teams, they may consider wearing rainbow laces to show support for the campaign and **LGBTQ+** equality more generally.

For more information about D&I initiatives in the pensions, savings and investment sector, the following groups are a good place to start:

▶ **NextGen** is a network for young professionals aimed at promoting the next generation within the pensions industry.
Website: **https://www.nextgennow.co.uk/**

▶ **The Diversity Project** is a cross-company initiative championing a more inclusive culture within the savings and investment profession.
Website: **https://diversityproject.com/**

▶ **Young Pension Trustee Network** is a network which provides resources, support and connections to help young professionals take on trustee roles at pension boards.
Website: **https://www.youngpensiontrustee.com/**

▶ **Women in Pensions** is a network for women in the pensions industry whose membership includes trustees, asset management employees, consultants, journalists, lawyers and non-profit organisations.
Website: **https://www.womeninpensions.org/**

▶ **O:pen** – is a new initiative open to LGBTQ+ pensions professionals, their allies and anyone with an interest in diversity and inclusion in the pensions space industry.

7
JARGON BUSTER

Active bystanders are people who intervene to challenge inappropriate language or behaviour towards another person when they witness it. The intervention does not need to be dramatic, or even immediate, but rather the aim is to ensure that certain behaviours do not go unchallenged and that the person in question is encouraged to consider the potential implications of their actions.

Although it is not necessary to be 'diverse' to have a positive impact as active bystander, ally or role model, any trustees who do not fit the profile of a 'traditional trustee' can have a particularly powerful impact.

An **ally** is a person who actively promotes and advances the culture of inclusion, for example by openly demonstrating support for D&I issues, building relationships based on trust and accountability with people from underrepresented groups, or sharing opportunities for growth and advancement.[39]

Being an ally is an ongoing process of empowering and supporting diverse people in a way which encourages their advancement and inclusion, but in a way which allows that person to retain responsibility for themselves and learn and grow from their own experiences. It is about recognising where inherent inequalities exist and taking steps to help a person overcome them in a way which seeks to create fair and equal opportunities; it is not 'positive discrimination' or 'affirmative action'.

BAME is an acronym for Black, Asian and Minority Ethnic. As with most categorisations, there are limitations with the use of BAME (BAME is not always associated with white minority ethnic groups such as Roma, for example), and as such some people prefer the term 'minority ethnic' or 'ethnic minority'. Any category relating to race and/ or ethnicity should be treated as shorthand only and it should not be assumed that BAME is a homogenous group; there is a lot of diversity within that group. You may also see the term BME used as an acronym for Black and Minority Ethnic.

Confirmation bias is the tendency to favour information and evidence that confirm a person's pre-existing biases, ideas and assumptions about people. Although evidence to the contrary is not always disregarded, greater or disproportionate weight will often to attached to evidence which supports existing views when interpreting information.

Disability is a broad term which covers any condition, impairment, limitation or restriction which affects a person's ability to perform certain activities. Although most commonly used in the context of physical impairments, the term also relates to cognitive, psychiatric, intellectual, neurological and sensory conditions (or any combination of these). Although disability is generally accepted as a respectful term, it should be noted that some critics believe it places too much emphasis on what people cannot do. Instead, some people prefer the term differently abled.

Ethnicity is a social construct which is used to describe a person's cultural identity. These are characteristics, such as language and religion, which are often based on learned behaviours rather than any biological or physiological factors. An ethnic group will have a shared history and geographical origin, cultural traditions and language. It is important to note that everyone has an ethnicity; the term ethnicity can be used to describe white British people in the same way as it can be used to describe a minority ethnic group. It is also possible for a person to identify with more than one ethnicity, for example a person born to Japanese parents in the US may identify with aspects of Japanese culture and as well as aspects of American culture.

Gender refers to socially and culturally constructed roles and behaviours which a society associates with men and women. A person is assigned a sex at birth based on their biological and physiological characteristics, but as gender pertains to a person's identity it can be more fluid than this. A person born a man (sex) may identify with roles and behaviours which society associates with females (gender). A person can be non-binary, which is where their gender identity is not exclusively associated with masculine or feminine roles and behaviours. Some people have a fluctuating gender identity (gender fluid) and others reject the concept of gender altogether.

Heterogenous means diverse, or different. In the context of this guide, it is used to refer to groups which consist of members who are different to each other.

Homogenous means the same. In the context of this guide, it is used to refer to groups which consist of members who share characteristics. For example, a trustee board which is comprised entirely of white men in the 50s would be a homogenous group.

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39 See Sheree Atcheson, Allyship – The Key To Unlocking The Power Of Diversity, Forbes, 30 November 2018 and Sheree Atcheson, Embracing Diversity and Fostering Inclusion Is Good For Your Business, Forbes, 25 September 2018.

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Intersectionality is a term which was coined by Kimberlé Crenshaw in her 1991 paper, *Mapping the Margins*. Crenshaw's theory is that multiple social identities, such as race, gender, socio-economic characteristics, etc. overlap to create unique experiences. Crenshaw argued that *"discourses... are shaped to respond to one [identity] or the other"*, but not both. Crenshaw considered this reductive because it did not reflect the reality we live in, where many people possess more than one diverse characteristic.[40]

LGBTQ+ is an acronym for lesbian, gay, bisexual, transgender, queer (or questioning) and other identities that do not identify with any of these terms but who otherwise associate with the LGBTQ community. Queer has previously been used as a derogatory term but in recent years the LGBTQ+ community has increasingly used the word as an umbrella term for sexual identities other than straight. The + relates to sexual identities such as pansexual (attraction to a person regardless of their sex or gender identity) and asexual (a lack of, or very low, sexual attraction to others). LGBT and LGBTQ are also commonly used acronyms.

Neurodiversity relates to neurological (or brain-related) differences. There is no universally accepted definition, but in this guide it is used to refer to medically-recognised differences, such as ADHD, dyslexia or autism. In other contexts, it is sometimes used to mean diversity of thought, or people who think differently (sometimes also referred to as 'cognitive diversity').

Race has historically been used to refer to the biological features of a person such as skin colour, with races being grouped together as distinct groups within the wider human race. However, research indicates that the genetic differences between people within the same ethnic group can be greater than the differences between people from different ethnic groups, thus casting doubt on the biological justification for defining people by race. Although race and ethnicity have different definitions, they are sometimes used interchangeably.

Role Models provide a visible example of certain characteristics or behaviours which others can identify with, demonstrating that being different and being successful are not mutually exclusive and helping challenge stereotypes and promote change.

They not need to share the same characteristics as the person who sees them as such; they simply need to set an example that a person wishes to follow. While a BAME person may find having another BAME person as a role model to be more beneficial, a white person with a different characteristic, such as disability, can be an effective role model to a non-white person. Characteristics such as authenticity, integrity, self-awareness, fairness and a willingness to learn are characteristics that transcend boundaries and make a person relatable.

Role models do not have to be senior members of an organisation, but it is clear that a member of senior management (or the chair of trustees) being a vocal and active supporter of D&I can have a profound impact in promoting cultural change. The most effective examples of role modelling are where a person has several role models, and is inspired by different characteristics from each role model, while remaining authentic themselves.

Socio-economic is an umbrella term used to describe a person's perceived social status on the basis of factors such as personal or family wealth, level of education and occupation. There is often a correlation between these three factors. For example, a wealthy family might be more likely to spend money on a child's education, which might in turn result in better exam results, attending a more prestigious university and then ultimately obtaining a more prestigious job. A person's socio-economic status can change throughout their life but their socio-economic background is often seen as a key determinative factor in their future life. Although not strictly the same, social-economic status and social class are often used interchangeably.

Unconscious bias is defined on page 14.

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40 ttps://www.racialequitytools.org/resourcefiles/mapping-margins.pdf