



Winckworth
Sherwood

Equality, Diversity and Inclusion

Latest Insights and Recommendations for Employers

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Foreword

A key priority for our clients is encouraging and promoting equality, diversity and inclusion (“EDI”) within their organisations. There are proven benefits of doing so: it can aid success; enable an organisation to be more innovative and serve its customers better; attract and retain key talent; and protect against legal claims deriving from bullying, harassment and discrimination.

EDI is also an important part of “ESG” (environmental, social and governance), a framework used by investors who take these factors into account alongside financial indicators when deciding on which companies to invest in.

With so much focus on the importance of EDI at present, we decided to carry out some research to find out how employers and employees felt their organisations are performing in relation to EDI, what challenges they are currently facing and what steps they are taking to overcome them. We surveyed over 1,000 employees and 600 HR decision makers in a YouGov survey from 31 March to 5 April 2022¹ and this report sets out the findings.

12 HR decision-makers and senior managers provided their recommendations in relation to building an EDI strategy and shared the steps they are taking in seeking to promote EDI in their organisation.

We are grateful to all of those who took part in our research and we hope that you find this report interesting and useful.

Best

Louise and Harriet

¹All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 614 senior HR decision makers (fieldwork was undertaken between 31 March to 5 April 2022) and 1,007 employees (fieldwork was also undertaken between 31 March to 5 April 2022). The survey was carried out online. The figures from the employee's survey have been weighted and are representative of British business size. Respondents work for organisations from a wide range of sectors that range in size (from 1 to over 250 employees). All are based in the UK. Of the employees surveyed 52% are male, 48% are female. 22% are under the age of 35, 21% are aged 35-44, 27% are aged 45-54 and 30% are aged over 55.

Executive summary

Our view (which is based on a number of studies undertaken in this area) is that EDI has a number of significant benefits for organisations. Therefore, we strongly believe that it is worth investing time and resources into EDI.

An obvious advantage of promoting EDI is in relation to recruitment, as it assists organisations to attract the best talent. Having any kind of bias (whether conscious or unconscious) within an organisation inevitably narrows the talent pool at the recruitment stage. On the other hand, recruiting from a wide talent pool enables an organisation to bring a much broader and more diverse range of ideas, skills and experience into the organisation from people with different cognitive diversity (education and personality), as well as demographic diversity, thus leading to greater innovation.

Research has also shown that individuals want to work for companies with a diverse workforce. According to a report from Glassdoor, "76% of job seekers consider workplace diversity an important factor when considering employment opportunities"². Further, a study by PWC UK³ found that 82% of

female millennials give importance to a company's policy on EDI when applying for a job.

In terms of retaining talent, where there is genuine equality and inclusion, employees feel able to voice their ideas and are more likely to reach their potential. Employees are also likely to remain more loyal to their employers if they feel they are valued and their voices heard.

There are also genuine financial advantages to promoting EDI within an organisation, for example, a study from McKinsey & Company⁴ found that organisations with gender-diverse executive teams were 25% more likely to outperform on profitability, while those with ethnically and culturally diverse executive teams were 36% more likely to achieve above-average profitability. These statistics alone present a clear business case for establishing a genuine EDI culture in the workplace.

In view of the significant benefits outlined above, we were therefore pleased that there was an overall positive response to our research from both employers and employees. They were closely aligned

in believing their organisations were faring well in relation to the diversity of their current workforce and their efforts to improve diversity and inclusion.

There is still, however, work to do in organisations' efforts to improve EDI: From an employee perspective, around half (47%) feel their organisation still needs to take steps to improve diversity and inclusion, and 1 in 4 employees believe their organisations are affected by some kind of bias. The top three improvements employees want employers to implement are: (1) flexible working; (2) training e.g. unconscious bias training for leaders; (=3) zero tolerance to discrimination; and (=3) paid leave above statutory levels.

When we asked employers about the steps they are taking, we were surprised that 1 in 5 employers surveyed are not taking any steps to improve EDI. 47% said they are offering flexible working; 44% have a zero-tolerance approach towards discrimination e.g. disciplining or dismissing managers that discriminate; 34% are providing EDI training and 25% are offering enhanced paid leave e.g. for carers or parents. These statistics seem low as these measures are all important in fostering an EDI culture. We have shared some of the steps which the organisations we interviewed are taking in relation to EDI, which we hope you find very interesting, and can help inform

your organisation regarding potential steps it could take.

We also address "positive action" measures, which can be taken under the Equality Act 2010 to increase levels of diversity within an organisation as the concept of "positive action" (as opposed to "positive discrimination") is often misunderstood.

39% of organisations surveyed still do not have an EDI strategy in place, with larger organisations more likely to have a strategy in place than smaller ones. In our report we cover the benefits of having an EDI strategy and our top tips for formulating an EDI strategy if your organisation is just starting off on its EDI journey. This includes tips from some of the in-depth interviews we held with some organisations as part of our research.

Lastly, we consider some particular EDI challenges that could be on the horizon for organisations as a result of the new world of work where "invisibility bias" can creep in to home-working and hybrid working arrangements; an ageing population means leaders now have to manage five generations within the workplace; and the 'great resignation' where in the scramble to recruit, diversity initiatives may fall by the wayside. We have set out our suggestions regarding how to address these particular challenges.

The three key terms, which are referred to throughout our report, are:

1 Equality which is about ensuring that every individual has an equal opportunity to make the most of their lives and talents. In the workplace, it means equal job opportunities and fairness for employees and job applicants.

The Equality Act 2010 prohibits all employers, service providers and education providers from discriminating against, harassing or victimising individuals with protected characteristics. It also

provides that reasonable adjustments can be made for disabled people.

The protected characteristics under the Equality Act are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which covers ethnic or national origin, colour and nationality), religion or belief, sex and sexual orientation.

2 Diversity which is about having a range of people in the workforce and respecting and valuing those differences. For example, this might mean people with different ages, religions, ethnicities; people with disabilities, and both men and women.

3 Inclusion which is about everyone feeling valued at work and included. It lets all employees feel safe to come up with different ideas; raise issues and suggestions with managers, knowing this is encouraged.

² <https://www.glassdoor.com/employers/blog/diversity/>

³ <https://www.pwc.com/gx/en/women-at-pwc/internationalwomensday/assets/next-generation-diversity-publication.pdf>

⁴ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

Key statistics and findings

12%

of organisations have no female Board/
Senior Manager Team (“SMT”) members⁵

1 in 4

employees think their
organisation is affected by
some kind of bias

38%

of HR professionals⁷ consider that those
working from home all or most of the
time are disadvantaged compared to
those working in the office all or most
of the time

47%

of employees consider
their employer can take
steps to improve diversity
and inclusion

20%

of employers are
not currently taking
any steps to improve
diversity and inclusion

44%

have no Black, Asian and
minority ethnic Board/
SMT members⁶,

44%

of employers have a zero-tolerance
approach to discrimination e.g.
disciplining or dismissing managers that
discriminate

39%

of organisations
currently do not have an
EDI strategy

22% & 47%

The top improvement employees are
looking for from their employers is to
allow flexible working (22%); only around
a half of organisations (47%) are offering
flexible working

22%

of employees consider
their leaders are not
equipped to lead a multi-
generational workforce

⁵ percentage taken from YouGov Plc survey to HR decision makers – 12% answered none, 85% provided a percentage of Board/SMT female representation above 0%, 2% didn't know, and 2% preferred not to answer.

⁶ percentage taken from YouGov Plc survey to HR decision makers – 44% answered none, 50% provided a percentage of Board/SMT BAME representation above 0%, 4% didn't know, and 2% preferred not to answer.

⁷ percentage taken from YouGov Plc survey to HR decision makers and filtered to those at organisations which are office based with some but not all employees working from home (452 respondents). Of these, 38% considered that those working from home all or most of the time were disadvantaged compared to those working in the office all or most of the time.

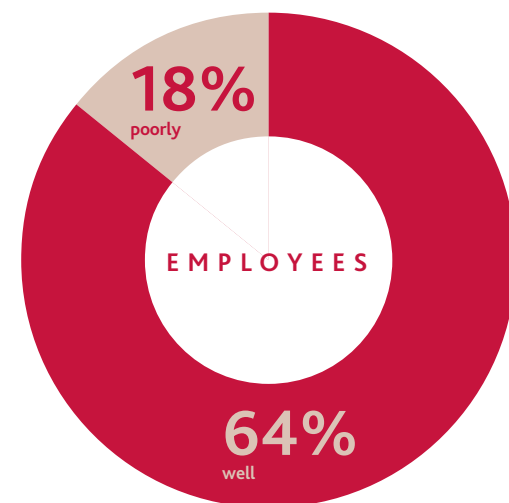
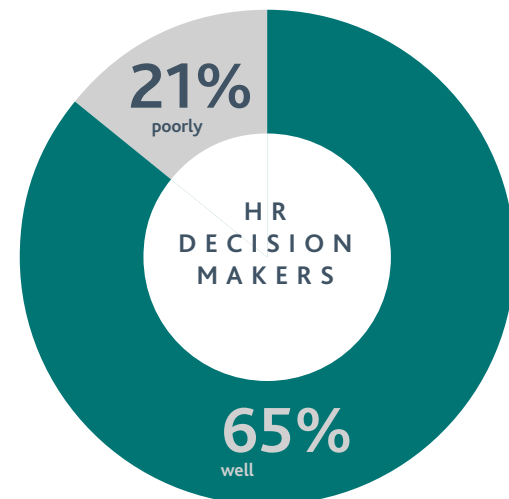
How well are organisations performing in relation to diversity?

Our YouGov survey asked both HR decision makers and employees how well they felt their organisations fared in terms of the “diversity” of the current workforce. Note that when using the term diversity, we were seeking to include a range of differences, including gender, ethnicity, age, religion, disability, sexual orientation, views and backgrounds. However, when asking employees and HR decision makers whether they considered their workforce to be diverse, we allowed each respondent to personally interpret the term “diversity”.

65% of HR decision makers said they felt that their organisations were doing well (18% said extremely well), compared with only 21% who said they were doing poorly. The results from the employees we surveyed presented a very similar picture with 64% of employees saying their organisations were doing well (18% said extremely well), compared to only 18% who said they were doing poorly.

Interestingly, although perhaps not surprisingly, when looking at the breakdown of the results, it was the smallest organisations, particularly those with less than 10 employees who were reported to be doing the least well and the large organisations the best. In addition, a higher proportion of younger employees reported their organisations were not doing well in terms of diversity compared to the older age groups. This supports research⁸ from studies elsewhere which has found that the younger generation are generally more alive to and concerned about EDI compared to previous generations, meaning they may have greater expectations of their organisations.

How would you rate your employer / you as an employer in terms of the diversity of the current workforce?



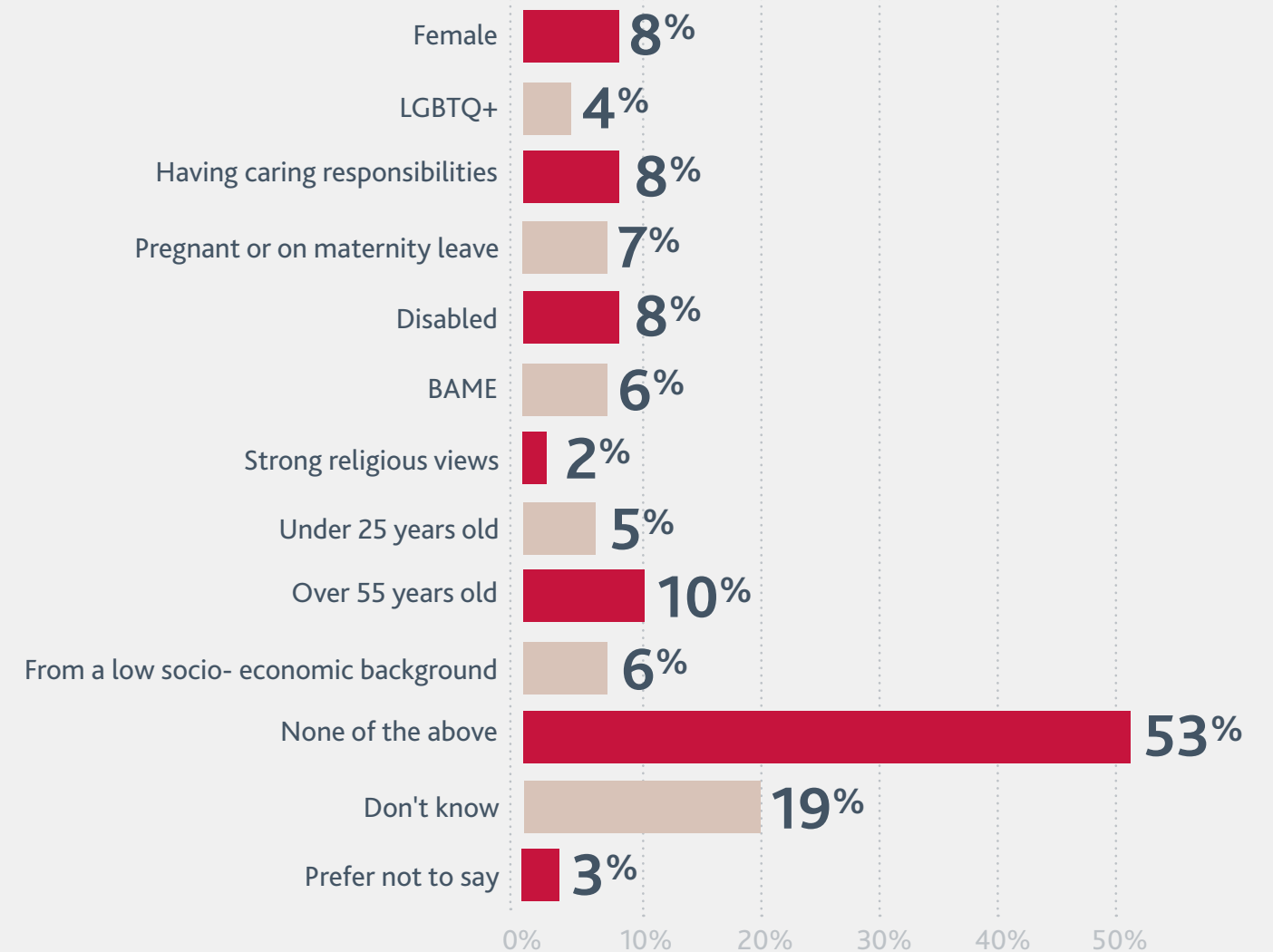
Bias

Despite the positive response from HR decision makers and employees in relation to their perceptions of the diversity of their organisations, as set out above, some of the other results from our survey present an alternative picture. 1 in 4 employees felt that the leaders of their organisation were either consciously or unconsciously bias against certain categories of people either at the recruitment stage or during employment and the

results also show a lack of diversity at Board and SMT level (which we explain further below).

When looking at the results in relation to bias, ageism came out as the highest result with 10% of employees saying they felt there was bias at their organisation against workers aged 55+ and we discuss ageism further below in the section ‘What particular EDI challenges are on the horizon’. This was closely followed by bias against female employees, those with caring responsibilities and those with a disability, which were each reported by 8% of employees.

Do you consider there is any bias (unconscious or conscious) by leaders of your organisation which negatively affects workers in one or more of the below categories during the recruitment stage or employment?



⁸ <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclus-millennial-influence-120215.pdf>; <https://www.kudos.com/blog/heres-why-millennials-want-more-diverse-workplaces>

Board/SMT representation

As part of the survey, we asked HR decision makers about the diversity at Board/SMT level at their organisations, focussing on female representation and ethnicity. The results evidence a lack of diversity in the top tiers of organisations. Of those who responded to the question, 12% of HR decision makers stated there was no women at Board/SMT level and 44% stated there was no Black, Asian and minority ethnic representation at this level. Where HR decision makers did report representation of female or Black, Asian and minority ethnic employees at the senior management level, the proportion still remained low in most organisations (see chart). Unsurprisingly, the largest representation of female or Black, Asian and minority ethnic employees at the top level was at larger organisations. There was also a variation across the regions, which is not surprising in view of the diversity of ethnic groups varying within

regions in the UK. There was also a variation across sectors and size of organisation.

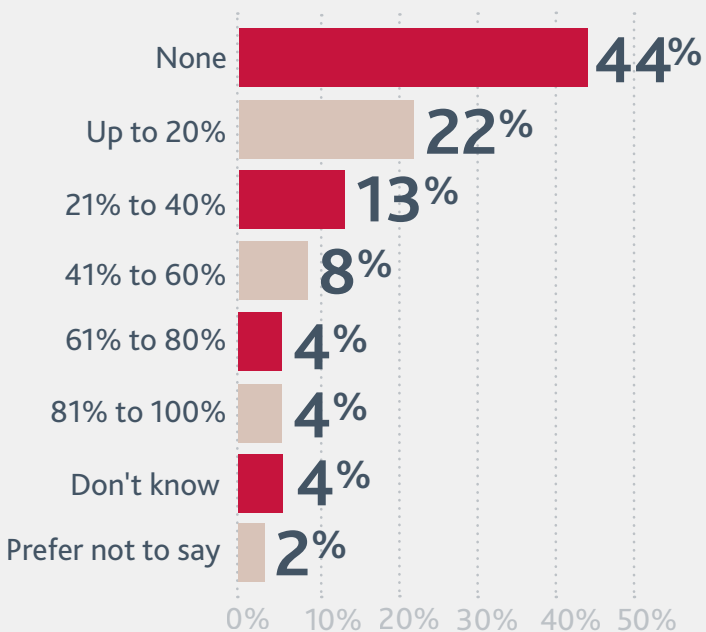
If we compare the results of our survey in relation to female and BAME employees at Board/SMT level against the representation of these categories of people in the UK population as a whole, the low representation of female and BAME employees at the senior levels is particularly evident, for example:

- Only 39% of organisations reported they had 41% or higher female representation at Board/SMT level, whereas the current female population of the UK is 51%⁹.
- 43%¹⁰ of organisations in England and Wales reported no Black, Asian and minority ethnic representation at Board/SMT level, which does not reflect the diversity of the population in England and Wales. Taking London as a particular example, which is the most ethnically

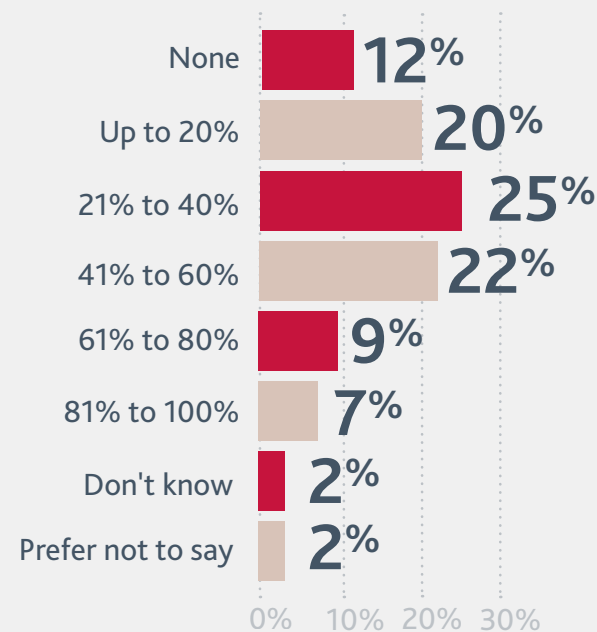


Approximately what percentage of your Board/ Senior Management Team is female, and what percentage is BAME?

BAME



WOMEN



diverse region in England and Wales: 20%¹¹ of organisations based in London had no Black, Asian and minority ethnic representation at Board/SMT level when 58% of the London population identified their ethnicity as white in the Office for National Statistics data for 2019.

answer as they are likely to be based on a number of factors and subjective to the particular employee and HR decision maker, but it is an interesting point to consider as we look further into the results of our research and the expectations of employees and HR decision makers in relation to diversity.

From the results of our survey in respect of the two areas of diversity at a Board/SMT level, there appears to potentially be a mismatch between the high proportion of employees and HR decision-makers who perceive their organisation to be diverse, compared to the reality in the senior ranks of most organisations that we surveyed.

This begs the question as to the expectation of employees and HR decision makers in relation to diversity. Do they consider some representation of certain groups, even if a token amount, sufficient to count as "diversity" or that organisations could be diverse even if this is not reflected at SMT/Board level? And what is the tipping point between an employee's perception that an organisation is doing well vs doing badly? These are questions that we cannot easily

TERMINOLOGY

'BAME' (Black, Asian and minority ethnic).

We recognise that the use of the term "BAME" is contested and it would have been preferable to have a breakdown of statistics of ethnic minorities rather than having to rely on the collective term 'BAME' as this does not individually recognise ethnic minority groups. However, it is a common way of gathering statistics and we wanted to be able to make a comparison with the white population in the UK as this information is gathered by the Office for National statistics.

⁹ percentage taken from Office of National Statistics population estimates 2019

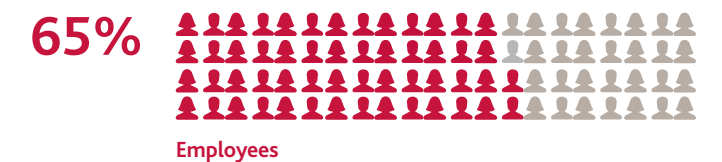
¹⁰percentage taken from YouGov Plc survey to HR decision makers – 43% answered none, 51% provided a percentage of Board/SMT BAME representation above 0%, 4% didn't know, and 2% preferred not to answer.

¹¹ percentage taken from YouGov Plc survey to HR decision makers – 20% answered none, 73% provided a percentage of Board/SMT BAME representation above 0%, 4% didn't know, and 3% preferred not to answer.



What could organisations do better?

How would you rate your employer / you as an employer in terms of the efforts being made to improve diversity and inclusion within the workforce?



The results of our survey show that a significant proportion of both HR decision makers (69%) and employees (65%) consider that their organisations are making a positive effort to improve diversity and inclusion.

When we asked employees what improvements they would like to see made to tackle diversity and inclusion, over a third of the employees surveyed (35%) said that their organisation had already taken appropriate steps to improve diversity and inclusion. This compared to 47% who said that improvements needed to be made (and the remainder saying they did not know).



TOP 3

Improvements cited by the employees were:

(1) flexible working; (2) training; (=3) zero tolerance to discrimination; and (=3) paid leave above statutory levels

1

Flexible working

The highest proportion of employees surveyed (22%) cited flexible working, indicating that flexible working is the highest priority for employees at the present time and something they perceive as key to improving diversity and inclusion. In light of the increased flexibility, which we have seen offered by organisations across the board since the COVID-19 pandemic, we were initially surprised by this result as we had anticipated that this was a step which the majority of organisations were already taking and therefore other improvements may be deemed more necessary at this stage. However, when we asked HR decision makers what efforts they were currently implementing to tackle/improve diversity and inclusion, only 47% responded saying they in fact offered flexible working (contrary to our perception of the position), which helps explain why so many employees are likely to have cited flexible working as a desired improvement.

2

Training

17% of employees said that training on EDI e.g. unconscious bias training for leaders was something they felt should be implemented in order to improve EDI within their organisation. This corresponds with our employee results in relation to bias (in which 1/4 of employees said they felt that the leaders of their organisation were either consciously or unconsciously bias against certain categories of people) and we would expect to find a similar proportion of employees saying that they would like to see training being provided to overcome such bias. Only 34% of HR decision makers said they currently provide EDI training, which seemed low. EDI training is key in raising awareness of EDI and creating a more inclusive environment. It is also a relatively easy measure to implement, yet our results show that this measure is still not being routinely implemented.

=3

Zero tolerance to discrimination

The third improvement that employees said they wanted was for their organisation to have a zero-tolerance policy towards discrimination e.g. dismissing or disciplining managers that discriminate. Only 44% of HR decision makers said they adopted such a policy i.e. less than half and only 1 in 5 organisations reported leaders were role modelling inclusive behaviour. From our experience in advising on EDI, we consider these measures are critical to erasing discrimination and bias in the workplace and ensuring there is an environment where all employees feel that they are included and belong.

=3

Paid leave above statutory level

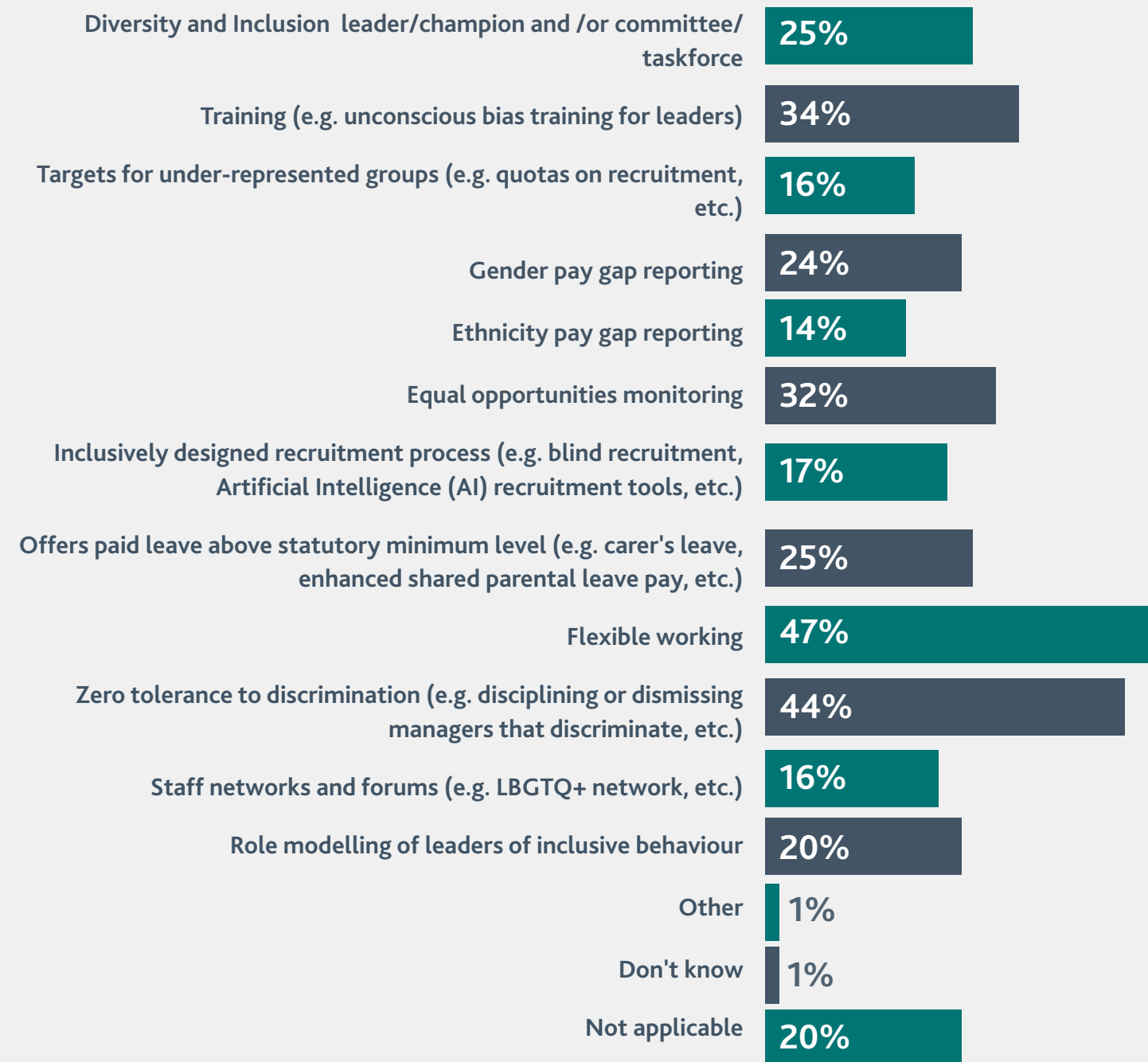
Only 25% of HR decision makers said their organisations offer enhanced paid leave above a statutory minimum level e.g. for maternity leave, shared parental leave or carer's leave. It is therefore perhaps not surprising that one of other top improvements that employees wanted their organisation to implement is enhanced paid leave. There are certainly benefits in organisations offering enhanced pay as it enables their workplace to be more attractive to new talent, fosters loyalty and helps retain employees.

Addressing negative perceptions

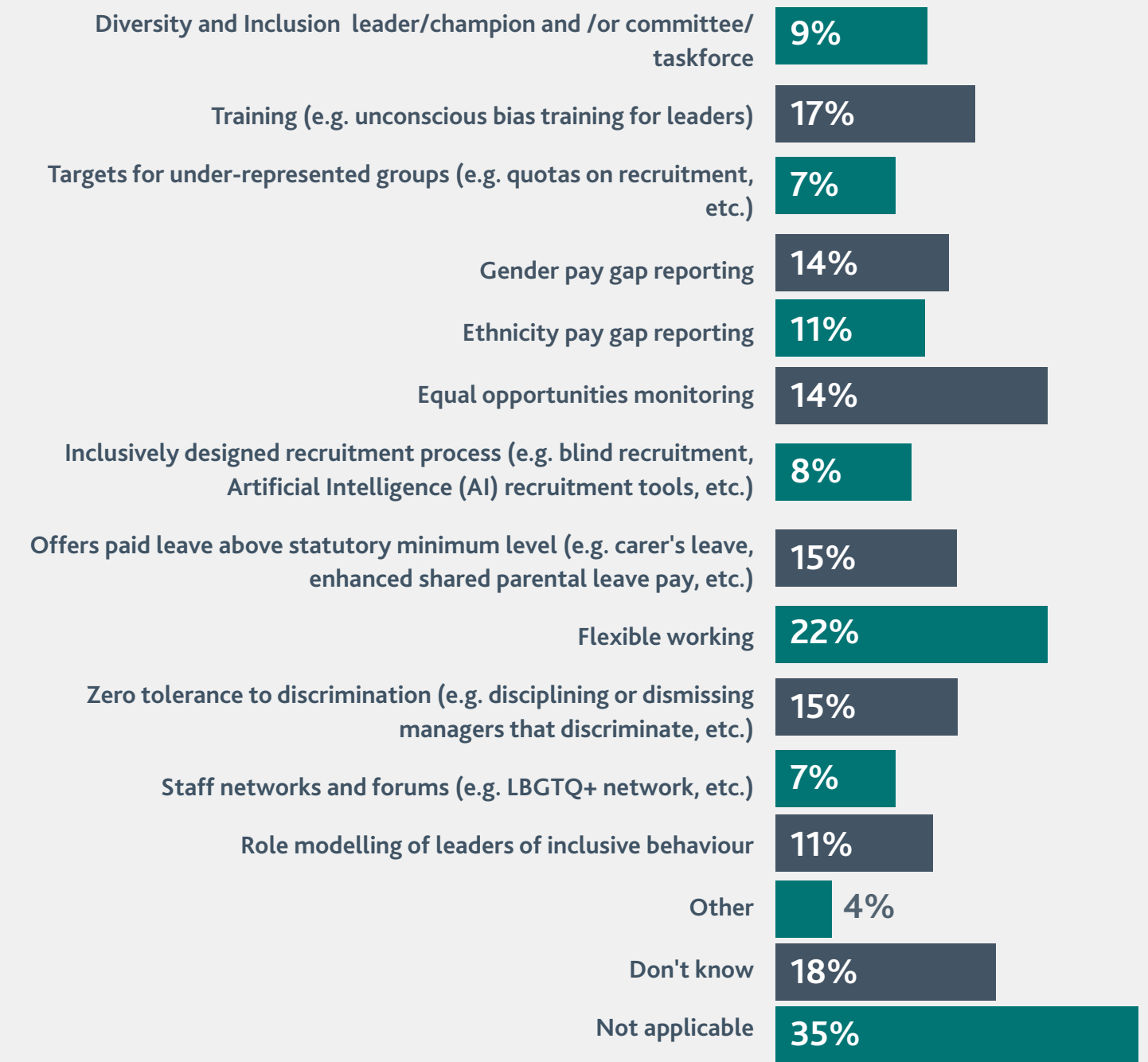
On the employee side, we received some negative feedback in relation to EDI in our YouGov survey, including comments that it was *"a bad thing"*, *"not relevant"*, *"not required – all these measures make the problem worse"*, *that "job opportunities should be down to who is the best person for that job"*, and *"employ people on merit and not because they fit into one type of group"* (these were just some of the comments we felt able to print). Whilst these negative comments were made by only a small proportion of employees, it is clear that there is still a body of people who do not see EDI as positive. In our view, these strongly held views against EDI are concerning and demonstrate how important it is for organisations to focus on 'inclusion', not just diversity. Whilst there will always be outliers, we believe that an authentic EDI programme which is aimed at including and enhancing the position of all employees and the organisation as a whole, presented to employees in the correct way, should help address and overcome these negative perceptions and create a workforce where employees understand the value of EDI.

What actions have organisations taken to improve diversity and inclusion and what could they do better?

HR decision makers: Which, if any, of the following does your organisation currently implement to help tackle/improve diversity and inclusion?

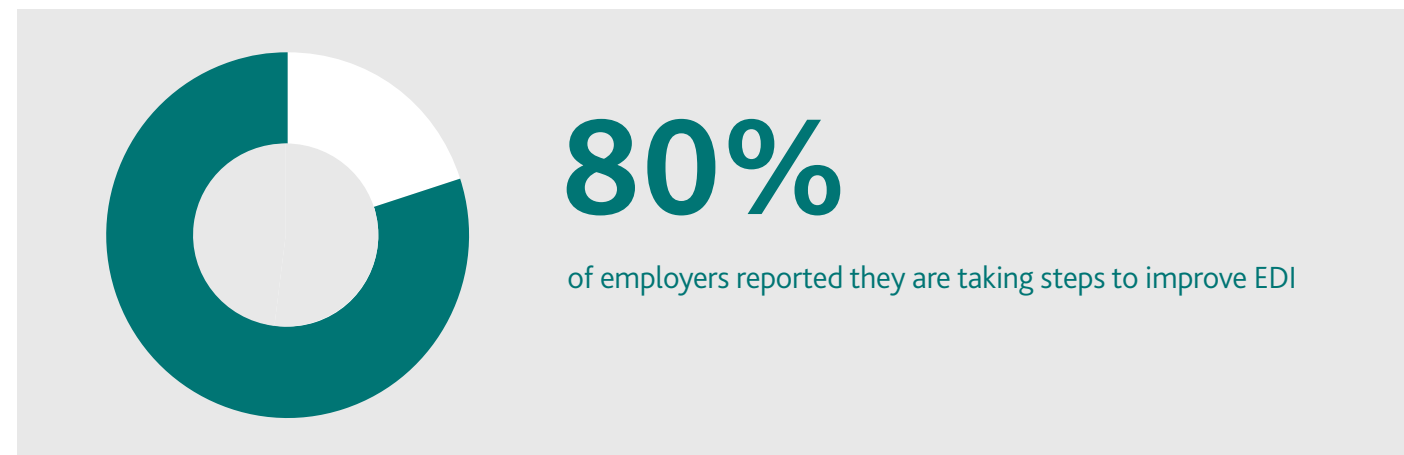


Employees: Which, if any, of the following do you think your employer could implement to help improve diversity and inclusion in your organisation?



What steps are employers putting in place to improve EDI?

The overall response from our YouGov research was very positive with an overwhelming majority of organisations reporting they are taking steps to improve EDI (80%). We did however assume that more organisations would be taking steps to improve EDI because of the clear benefits of doing so yet 20% are still not taking any steps to improve diversity and inclusion.



We have set out below some of the initiatives that the organisations we interviewed are currently implementing in relation to EDI, which we hope you find useful in considering what steps your own organisation could take:

HR Business Partner, mid-sized health care company

"In regard to recruitment, we anonymise all CVs so we only see qualifications and work experience. Our industry is small so the hiring manager could know the candidate and we do not want a preconceived opinion; we therefore make sure we forward

the candidate's application to someone who does not know them to remove bias. We hold assessment days rather than interviews with multiple assessors, again to remove bias. We have frank conversations if we think bias is coming into play".



Tracey George, Chief Operating Officer at TPP Recruitment:

"In terms of our recruitment, we are open to transferable skills and strip out unintended barriers in job specs; we provide interviewees with set questions for all internal roles to support any who are anxious or the neuro diverse population; we offer interviews to any disabled candidates who meet the minimum criteria for the role; we overtly offer support in providing flexible dates & times for interviews; and our inclusion statement states that we are looking to get better representation from ethnic minority backgrounds as well as the disabled community".



Sarah Cogswell, HR Manager, Leybold

"One of our core pillars is ensuring a culture of inclusion that celebrates inclusion and wellbeing, without biases of any kind, where difference is valued, creating an engaged and innovative workforce. We have taken a number of steps

in relation to this goal including implementing a number of wellbeing initiatives; promoting teamwork; continuing to raise awareness and understanding of being inclusive as a team; and encouraging people to speak up should they witness or feel our culture of inclusion is not being followed".



Deputy Director of HR, Large non-profit institution

"We have a focus on generous behaviours. Our agreed charter of behaviours is based on our values and how we treat each other, which is measured in our annual employee survey on diversity and belonging, and our performance reviews. As part of this, we train our senior managers to treat people as individuals and take account of what is going on with them in their lives at different stages".

HR Director, mid-sized law firm

"We have implemented unconscious bias training at

all levels; put in place resource groups/networks as well as a speaker series and book clubs. We are reviewing our policies and undertaking university outreach for recruiting in select markets. We also have a greater focus on DE&I data so we fully understand our footing. Locally, offices are engaging in various CSR/pro bono initiatives and developing partnerships with local organisations to assist with hiring".

Karan Yearwood, Practice Manager, Saunders Law

"We have a hybrid working policy with individuals only being asked to attend the office for one day a week. This has been helpful in attracting staff. We require our staff to undertake mandatory training on equal opportunities. We offer enhanced maternity and paternity pay. For the size of our business we have a huge amount of diversity with people from all walks of life and culture, which I believe is partly down to the type of work that we do but also our culture".



Positive action

Can an organisation positively discriminate during the recruitment process to address a lack of diversity amongst its workforce?

If an organisation recruits a person because of a protected characteristic (e.g. race or sex) rather than because they are the best candidate for the job, this would be unlawful positive discrimination and could leave the organisation open to claims from those candidates who do not share the protected characteristic.

Positive discrimination on the basis of a protected characteristic is generally unlawful under the Equality Act 2010 ("EqA") unless a statutory exception applies or the protected characteristic is disability.

The statutory exceptions which allow for positive discrimination are rare e.g. it is an occupational requirement for an applicant to have a certain protected characteristic. An example of this might be where the need for authenticity or realism requires someone of a particular race, sex or age for an acting role.

What steps can an organisation legitimately take to address a lack of diversity amongst its workforce?

Under the EqA, organisations can take "positive action" provided they meet certain conditions.

The positive action provisions allow organisations to take action without opening themselves up to discrimination claims brought by people who do not hold the relevant protected characteristic.

Positive action is generally optional; organisations are not obliged to take positive action save that all employers have a duty to make reasonable adjustments for disabled people and public sector employers may have a duty to consider positive action under the public sector equality duty.

There can be benefits in organisations taking positive action e.g. to ensure a wider pool of talented, skilled and experienced people from whom to recruit. This will also lead to a better understanding of the needs of a more diverse range of customers and can improve the service provided to customers.

There are two positive action provisions in the EqA:

1

General Positive Action

An organisation can take steps to enable people who share a particular protected characteristic to either overcome a disadvantage which they suffer or meet their needs if they have different needs to those without the characteristic. An organisation can also take steps to enable people who share a protected characteristic to participate in an activity if they reasonably consider that group's participation in the activity is disproportionately low.

The organisation would have to ensure that the steps it takes are a "proportionate means of achieving a legitimate aim" in accordance with the EqA.

So, what does this actually mean?

TAKING AN EXAMPLE:

An organisation is concerned that it has disproportionately low female representation amongst its senior management team so it takes the following steps:

- 1 Compiles evidence which can be used to show that there is low female representation compared to what could reasonably be expected. *Note that sophisticated statistical data or research is not necessarily needed but there does need to be some information or evidence to show the existence of disproportionately low involvement.*
- 2 Considers why there is disproportionately low representation of women in the senior management team to inform it in deciding what action would be appropriate e.g. are women being put off from applying to become promoted in the first place or are they being disadvantaged in the application process itself.
- 3 Considers taking steps to enable or encourage women to become senior managers. *Note that the EqA does not specify what action should be taken – it will be for each organisation to decide depending on its circumstances. Examples of action which could be taken are:*
 - a. *Providing bespoke training for women within the organisation which would enable them to have the skills needed for the promotion application; and*
 - b. *Putting in place a mentoring scheme for women.*
- 4 Considers whether the action it is proposing to take is proportionate. *Note that whether the action is proportionate will depend on the seriousness of the relevant disadvantage suffered by the protected group, the extremity of need of under-representation and the availability of other means of countering them. Essentially the question the organisation has to ask itself is whether the proposed action is reasonably necessary to achieve the aim or whether it is possible to achieve the aim as effectively by other means that are less likely to result in less favourable treatment of others.*

TOP TIP

The Equality and Human Rights Commission's statutory code of practice for employment (<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>) is a comprehensive and useful guide to the detail of the EqA and explains how to apply the law in practice using examples.

2

Positive Action in Recruitment and Promotion

The EqA allows an organisation to treat someone with a protected characteristic (for instance race or sex) because it believes they are disadvantaged or disproportionately under-represented more favourably in connection with recruitment or promotion than someone without that characteristic who is as qualified for the role, i.e. it allows positive action in a tie-breaker situation.

An organisation can only rely on this provision if:

1. It has evidence that a particular group is disadvantaged or is disproportionately under-represented.
2. A tie-breaker situation exists - In determining whether candidates are of "equal merit", the organisation has to establish a set of criteria against which candidates are assessed, for example, their skills, experience, qualifications and qualities. It is not lawful to adopt artificially low thresholds to allow more candidates into a tie-breaker situation.
3. It does not have a blanket policy of treating people who share the protected characteristic more favourably in connection with recruitment or promotion than people who do not share it.
4. The action is proportionate - it has considered whether taking other appropriate steps would be enough to improve representation and it keeps matters under regular review as indefinite positive action would not be proportionate.

In the Employment Tribunal case of *Furlong v Chief Constable of Cheshire Police (2018)*, Mr Furlong, a heterosexual white man, applied for the position of police constable and despite successfully completing the assessment centre and interview stages of the recruitment process, was unsuccessful. Mr Furlong brought direct discrimination claims on the grounds of sex, race and sexual orientation on the basis that he had been treated less favourably because he was a man and/or heterosexual and/or white. The Tribunal found that the Cheshire Police's decision to give favourable treatment to candidates of underrepresented groups (LGBT, BAME and female) during the selection process was potentially acceptable but it acted unlawfully because it had given preference to candidates who were not as qualified as Mr Furlong. The Force had applied the positive action law incorrectly by treating all of the 127 candidates who achieved a pass mark following the interview stage as of equal merit and then giving preference to those who were female, BAME and/of LGBT. The Tribunal found that if candidates had been recruited solely on scores given to them in the recruitment process, Mr Furlong would have been selected for the role because he had received a higher score. Mr Furlong was therefore successful in his direct discrimination claim

TOP TIP

When organisations are considering positive action measures, we recommend drawing up an action plan

*This guide concerns English employment law. Please note this guide is not a comprehensive summary of all legal requirements and guidance. The content should not be taken as legal advice. This information is correct as of May 2022".

The importance of an EDI strategy

Whilst many organisations may promote EDI within their organisation, it is clear from our research that a large proportion (39%) still do not have an EDI "strategy" in place. When we looked at the breakdown of the results, these showed that larger organisations are more likely to have an EDI strategy in place than smaller ones, which is as we would expect given that large and established organisations are likely to have much more resource to dedicate to EDI, compared to smaller organisations.

In our view, to properly harness the benefits of EDI, we would recommend organisations put in place a clear and effective EDI strategy. This will help ensure that each area of EDI is in focus, understood

and fostered within the organisation, particularly as many organisations fall into the trap of succeeding in relation to one element of EDI and overlook the importance of the other two. For example, some organisations succeed in improving the diversity of the organisation, but then fail at the inclusion and/or equality stage, meaning that although they have managed to recruit a diverse workforce, the employees from the minority groups feel they do not belong, or perhaps cannot reach their potential and so leave, taking with them their wealth of skills and ideas.

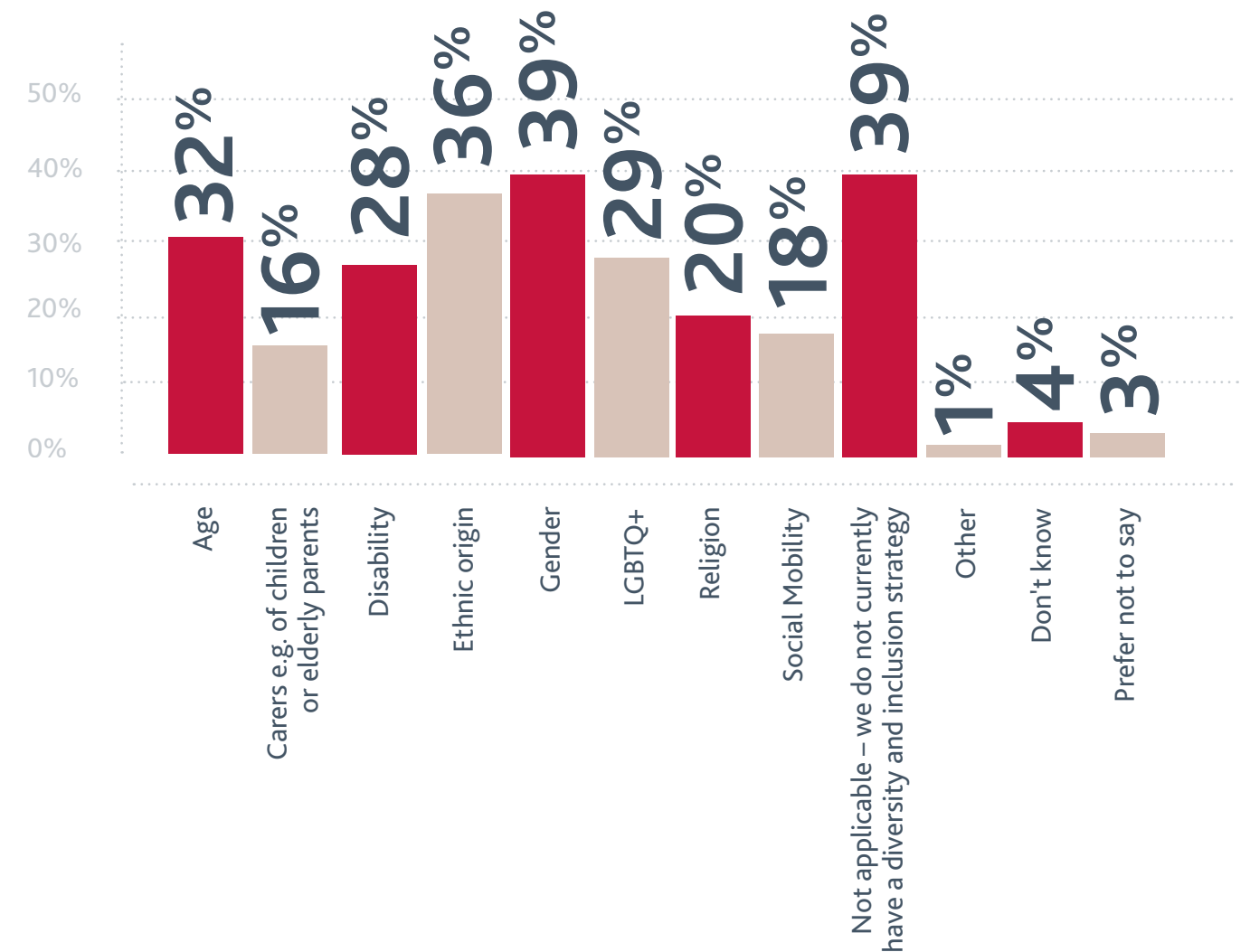
Putting in place an EDI strategy will also assist the organisation to measure progress in this area and

evolve depending on what is working and what is not.

As well as considering the well-known and recognised protected characteristics under the EqA, organisations should consider other disadvantages that individuals may suffer in the workplace e.g.

because they are carers of children or elderly parents or because of their socio-economic background, when putting in place their EDI strategy (only 30% and 33%¹² of organisations who had an EDI strategy in place considered these points as part of their strategy).

Which, if any, of the following currently form part of your diversity and inclusion strategy?



¹² percentage taken from YouGov Plc survey to HR decision makers – calculated on the basis that as 238 HR decision makers did not have an EDI strategy in place, 20 preferred not to say and 19 did not know, 337 had a strategy in place. Of those, 100 covered carers (30%) and 112 covered social mobility (33%)



Top tips for building an EDI strategy

1

Be informed

If you are starting from scratch, start off by understanding the basics – know the difference between equality, diversity and inclusion, what the law is and gain knowledge in this area.

Dr Toby Simpson
Director, The Wiener Holocaust Library:

“We had external training which covered unconscious bias; the advantages of a diverse workforce; how some professions like academia and heritage (which is relevant to us) are not very diverse; and the lived experience of minority ethnic employees in the workplace. This raised awareness amongst our workforce and led to discussion points”.

2

Consider where you already are in your EDI journey

Check what policies and procedures you already have in place; what relevant data you are currently collecting and where there are gaps compared to local demographic/industry averages, and what data is missing; what initiatives are already in place; and what awareness of EDI issues there are.

Tracey George
Chief Operating Officer at TPP Recruitment:

“We temperature checked our own internal knowledge to see where we were starting from. As a starting point, we looked at our data and what resources we needed to access to get a strategy in place. There is so much information out there and it feels as though there is a real information over-load at times, so we have worked with 'Inclusive Employers' to provide support and tool kits to guide us”.

3

Ensure there is buy-in to EDI at the top-level and decide who will be accountable at the top

HR Director,
mid-sized law firm:

“We have been successful in securing global buy in for the DE&I strategies at all levels of the firm. We have implemented a committee network locally that is integrated regionally and ultimately globally, so there is accountability and consistency up and down and across the organization”.

Tracey George
Chief Operating Officer at TPP Recruitment:

“I ensured there was buy in at the top and I was committed to making sure that the business knew we were committed to taking action. My mantra has very much been 'practice what we preach”.

4 Ask your workforce how they feel about EDI

Undertake employee surveys to gather feedback about how your employees think, feel and behave, which will help inform you about which areas to focus on. Also engage with staff groups in setting your EDI goals and objectives as early as possible so they become key stakeholders and advocates for the strategy at the implementation stage.

Gemma Shambler Head of People at The Happiness Index:

"At The Happiness Index, employee feedback is at the heart of everything we do. We use the data and feedback we collect on a regular basis not only to inform our People strategy, but to ensure that we remain true to our vision of "Freedom to be human". Fundamentally, this means we want people to feel comfortable in bringing their whole self to work which underpins our inclusive culture. Gathering responses through our surveys allows us to continually monitor the cultural health of THI, build on the things we're doing well and tackle any areas head on where we may be falling behind. This builds trust with our people and gives everyone a voice on the journey to creating a thriving culture for all."

Fiona Biddle Interim Head of HR at BNP Paribas Real Estate:

"You need to ensure that you have a D&I committee that represents the diversity of the organisation. Whilst you need people on the committee who are business leaders and can drive forward improvement, you also need representation from people in the minority groups. You should also have representation from the younger generation as often this is missing."

5 Make sure the D&I proposition is relevant and appropriate throughout the regions that your organisation operates

HR Director, mid-sized law firm:

"This is a complex issue as DE&I issues and priorities vary country to country. For example, not all countries are tolerant of LGBTQ+ people, and have laws relating to this demographic. While we want to be sensitive to that, we strive to create a workplace that serves as a community for our employees where they feel supported, welcome, included, and where they can thrive professionally. In looking at traditional DE&I initiatives, we have selected recruiting, retention (i.e., ensuring we are a place people really want to work and have long careers), pro bono and education/information sharing as our priorities globally".

6 Consider what challenges you face and what steps could be taken to overcome these

Fiona Biddle Interim Head of HR at BNP Paribas Real Estate:

"One of the challenges we face is that people from low socio-economic backgrounds don't tend to think of real estate as a career. We are therefore working with the National Sponsors for Educational Opportunity and other industry partners to help us change this and reach more people".

HR Director, financial services firm:

"Our biggest struggle (which is typical of banking in both large and small firms) but also an opportunity, is attracting women. Unfortunately, there are not enough women in the pool applying for jobs in the first place so female representation is limited as a consequence which escalates throughout the various levels. We have tried to increase female representation at intern level as the aim of this scheme is that interns become full-time analysts at the end of it; we attend university fairs to address what it is really like to work at an investment bank; are active in women in banking networks and we offer an enhanced maternity pay policy. We are also taking positive action measures in our application process".

7 Set EDI objectives or goals

Put in place initiatives which can help address the challenges you face as an organisation. Set objectives which are measurable, aligned to key business priorities and talent progression and have clear lines of accountability. Get feedback on the strategy from across the business before you implement it.

Fiona Biddle Interim Head of HR at BNP Paribas Real Estate:

"We are authentic in the promises we make...We have been careful not to commit to things which we cannot meet and acknowledge where we are not there yet. You need to put in place a clear structure and measure your progress. Clients demand this nowadays and will audit us against our commitment.

Sarah Cogswell HR Manager, Leybold:

"Our D&I strategy is aligned with the wider Group targets and our Leybold Customer Centre targets as well as driven by business and people needs. It focuses on 3 core pillars and we have set internal targets to help challenge ourselves".

What particular EDI challenges are on the horizon?

Each organisation will have its own challenges but we have decided to focus on three particular challenges that we believe organisations are likely to face (or are currently facing) as a result of the new world of work; an ageing population; and the 'great resignation'.

Invisibility Bias

38%

Over a third (38%) of HR professionals (working at organisations which were office based with some employees working from home), admitted that they believed those working from home all or most of the time are disadvantaged compared to those working in the office all or most of the time.

The COVID-19 pandemic has resulted in many organisations becoming more flexible in terms of homeworking. A potential disadvantage to hybrid or home working arrangements, however, is a risk of an "Invisibility Bias" which threatens to disproportionately impact women and those with disabilities.

"Invisibility Bias" in the context of working arrangements is an unconscious bias which can affect employees who do not physically attend the office. This is because there is a natural instinct to look more favourably on those whom we see more often – the perception can be that they are harder working and more trustworthy. Managers are more likely to hand an employee a task or ask for their input if they can see them, rather than jumping on Zoom to do the same with someone working remotely. This "invisibility" has the potential to lead to an employer underweighting a home-worker's contribution and the employee being passed over for new work

opportunities, with a knock-on effect when it comes to promotion, salary increases and bonus awards. In simple terms, these employees can suffer from being "out of sight and out of mind".

In our YouGov survey, over a third of HR professionals (working at organisations which were office based with some employees working from home), admitted that they believed those working from home all or most of the time are disadvantaged compared to those working in the office all or most of the time.

Unfortunately, such bias will likely affect women and those with disabilities most acutely. We cannot ignore the fact that those who choose to work from home on a more permanent basis is not random; it tends to be those who have childcare or caring responsibilities (which is judicially accepted to be predominately women). In addition, vulnerable or clinically vulnerable employees may remain concerned about the transmission of COVID-19 by attending and/or travelling to the workplace and therefore also choose to work from home.

If invisibility bias is allowed to permutate an organisation, female and disabled employees could be left behind due to a lack of visibility, resulting in a lack of diversity in the senior ranks and employers exposing themselves to the risk of discrimination claims. In such a competitive marketplace, it could also lead to women and disabled employees leaving their employer to go to a competitor, which has a much more inclusive culture.

Addressing the potential imbalance is not easy, but one that employers should take seriously. Our tips for addressing this are:

- Be alert to this potential issue.
- Take pro-active steps to help overcome the "visibility" issue through speaking with managers

so they become aware of the issue and ensure effective engagement with home-working employees e.g. regular one to one catch ups online and ensuring there is technology in place which allows for home-workers and those working in the office to equally participate in the workplace.

- Engender a culture where employees feel comfortable to share their feelings and concerns so that if employees are concerned about how they are being treated e.g. they feel they are being overlooked for work, this can be raised as early as possible and dealt with appropriately.
- Monitor engagement with home-workers and their career progression, awards and benefits to continuously check if there are any risks of invisibility bias in the opportunities given to them.

with the tools to lead these five different generations in the workforce and facilitate collaborative working between employees of different ages and backgrounds in order to maintain productivity and innovation. 2 in 9 employees in our YouGov survey considered that their leaders were not equipped to lead a multi-generational workforce.

Many generational conversations rely on false stereotypes e.g. that older workers are less productive and resistant to change and younger workers have short attention spans, are "snowflakes" or are non-committal. One particular (misguided) perception is that older workers are technically illiterate compared to younger workers, when in fact, recent research has shown that there were no differences between employees of different age groups adapting to unfamiliar technology tools¹³.

These stereotypes are damaging in circumstances where new ways of working have resulted in an increased requirement for technology in the workplace e.g. meetings and presentations being held remotely, online collaboration hubs for communicating with clients, and online tools for measuring productivity and performance. Negative stereotypes can lead to ageism, disparate treatment and a toxic company culture. From our experience, ageist stereotypes still continue to be an issue within the workplace and our YouGov survey found that the top bias that employees considered organisations to

have was against those workers aged over 55 (10%). This is concerning as the UK's workforce demographic aged 55-plus is increasing exponentially. The wisdom, skills and experience of this group, which have taken time to develop, are a crucial asset to any business and not one that should be overlooked or de-valued. Age should be covered in any EDI strategy to find out how best to attract, engage, retain and develop employees from various life stages and what steps can be taken to ensure harmonious working between employees of different generations.

Training which confronts age-based stereotypes could be useful in dispelling bias across all generations, and an understanding and respect for people from different generations.

Organisations need to promote an environment where there is cross-collaboration with employees with different perspectives learning from each other. This could be by having peer mentoring and learning or assembling teams which allow for knowledge sharing between generations. If employees from different generations are able to share experiences and knowledge, this should support innovation and success.

The 'Great Resignation'

A theme which came through from the comments we received from employees in the YouGov survey was that in a competitive workplace, where organisations are already facing difficulties recruiting, organisations cannot afford to factor in diversity. This raises the question - is prioritising EDI a luxury which some businesses cannot afford during the current situation of the 'great resignation'? Is there a danger in the scramble to recruit employees, that organisations will hire the first qualified person they can find, without any consideration of diversity?



We believe that it is still important to not lose sight of the importance of EDI and organisations should consider:

- whether you can up-skill your current workforce to transfer into difficult to fill vacancies;
- whether your roles are reaching a diverse group of candidates and whether the requirements for the role are absolutely necessary as this will enable you to have a larger pool of candidates including those with different backgrounds;
- how your organisation is viewed by prospective employees and whether it appears a welcoming place to join;
- whether your organisation can offer flexible working – not just in relation to place of work but also hours as again this will ensure the role is open to a more diverse pool of people such as those with childcaring responsibilities and disabilities.

Tracey George, Chief Operating Officer at TPP Recruitment, which works in the not-for-profit sector explained: "we work with organisations in a way that challenges their thinking and approach to things like job descriptions and whether the role criteria noted is in fact essential; hold role design workshops; train clients on 'inclusive recruitment' and have a grant initiative called 'Altogether Better' where we offer recruitment grants to organisations to support them in their inclusive recruitment journey".

Multi-generational workforce



2 in 9 employees considered that their leaders were not equipped to lead a multi-generational workforce

For the first-time, five generations are working alongside each other. Leaders need to be equipped



¹³<https://www2.deloitte.com/us/en/insights/focus/technology-and-the-future-of-work/post-pandemic-talent-strategy-generations-in-the-workplace.html>

Our team



JO KEDDIE
Partner, Head of
Employment
jkeddie@wslaw.co.uk
+44 (0)20 7593 5157



BETTINA BENDER
Partner
bbender@wslaw.co.uk
+44 (0)20 7593 5045



LOUISE LAWRENCE
Partner
llawrence@wslaw.co.uk
+44 (0)20 7593 5082



ANDREA LONDON
Partner
alondon@wslaw.co.uk
+44 (0)20 7593 0287



DANIELLE CRAWFORD
Senior Associate,
dcrawford@wslaw.co.uk
+44 (0)20 7593 0398



HARRIET CALVER
Senior Associate
hcalver@wslaw.co.uk
+44 (0)20 3735 1897



WILL CLIFT
Associate,
wclift@wslaw.co.uk
+44 (0)20 7593 5117



ALEKSANDRA TRACZYK
Solicitor
atraczyk@wslaw.co.uk
+44 (0)20 7593 5130



BLAIR ADAMS
Partner
badams@wslaw.co.uk
+44 (0)20 7593 5018



SUE KELLY
Partner
skelly@wslaw.co.uk
+44 (0)20 7593 5080



ANDREW YULE
Partner
ayule@wslaw.co.uk
+44 (0)20 7593 5089



CHRIS GARRETT
Partner
cgarrett@wslaw.co.uk
+44 (0)20 7593 5020



YOUNES ECH-CHADLI
Senior Associate
yech-chadli@wslaw.co.uk
+44 (0)20 3735 1970



JAMES LYNAS
Consultant
jlynas@wslaw.co.uk
+44 (0)20 7593 5175



DANIEL PARKER
Associate
dparker@wslaw.co.uk
+44 (0)20 3735 1938



FLORENCE SMART
Solicitor
fsmart@wslaw.co.uk
+44 (0)20 7593 0390



"A very strong team – they are aligned, knowledgeable and able to pick up work quickly and seamlessly. I think their collaboration is second to none – whoever you speak to they understand our business and can advise accordingly."

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