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Achieving gender balance on British boards with the soft-law approach: Directors' perspective

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A soft-law approach is followed in the UK for improving gender diversity on boards. This paper explores the causes and solutions of gender homogeneity on British boards by interviewing thirty-three board members of FTSE 350 companies. Results suggest that British boards are homogeneous due to discrimination against women, a lack of confidence among women and a lack of objectivity in nomination processes. While current soft-law approach is the best-suited strategy due to established institutional processes, there is an increasing demand for more intrusive statutory action if the current approach fails to achieve gender parity, soon enough. The paper contributes to Institutional theory, public policy and corporate praxis.

INTRODUCTION

Diversity on corporate boards is recommended across the world by scholars of corporate governance (e.g. Cornforth, 2001; Hillman et al., 2002; Long, 2007; Kim et al., 2014). Gender diversity is advocated to improve board performance (e.g. Huse & Solberg, 2006; Nielsen & Huse, 2010) and corporate governance (Terjesen et al., 2009). In the UK, the Higgs Review (2003) and the Tyson Report (2003) recommend recruiting Non-Executive Directors from a diverse pool. The UK Corporate Governance Code (2014) (UK CG Code) also recommends diversity on the boards of public listed companies (PLCs) to encourage constructive debate and prevent 'groupthink'. The FRC's guidance (2011) recommends the nomination of board directors from a pool of different personal attributes.

Regulatory initiatives are deployed in a number of countries to increase gender diversity on boards (Adams & Kirchmaier, 2013). Regulatory authorities have adopted different diversity management approaches to improve gender diversity on corporate boards. While ten countries have implemented quotas through a legislative action for female representation on boards of directors, fifteen more countries have introduced non-binding gender quotas in their corporate governance codes (Terjesen et al, 2015). A number of other countries' scholars and regulators are contemplating actions to improve gender diversity on boards (Terjesen et al., 2015).

In the UK, the Davies Report recommended (Whitehead & Normand, 2011) that the FTSE 100 companies achieve voluntary targets by 2015. The corporate sector in the UK responded favourably, and the target was met amid the political volatility of parliamentary elections and Brexit (Department for Business, Innovation & Skills (BIS), 2015; Higginbottom, 2015). The Davies Review has now invoked FTSE 350 companies to voluntarily attain 33% gender diversity on their boards by 2020 (BIS, 2015). However, the pace of gender

diversity improvement is stagnating and in 2016, UK boards witnessed a particularly low intake of female board directors (Financial Times, 2016). The reasons and solutions for the lack of gender parity need to be investigated. Whether or not the soft-law approach (Terjesen et al., 2015) adopted in the UK is effective in achieving the objective is also worth exploring.

British boards are an interesting subject of research on board diversity as now the UK has the fifth highest gender diversity on its boards of PLCs. Hence a qualitative study is conducted to address the research gap by interviewing thirty-three board directors of FTSE 350 companies. The academic inquiry that this paper attempts to answer is how to make British boards more gender diverse. In order to answer the research question, the study first explores the reasons for gender homogeneity on British boards.

Participants in the study claim that discrimination against women, the resultant lack of confidence among women, and the lack of objectivity in the nomination process are the primary reasons for gender homogeneity on boards in the UK. A multipronged approach is required by the regulatory authorities to deal with this historical problem. Study participants suggest that the listed companies may be asked to submit non-financial disclosure describing their gender diversity policy and status of their boards. The respondents agree that the current soft-law approach of recommending voluntary targets is the most suited to the UK. However, many participants recommend statutory intervention for a limited period, if the current approach fails to bring gender balance soon enough.

The rest of the paper is structured as follows. The paper briefly discusses different governance regimes with a particular focus on the UK. The UK governance regime is explained with reference to Institutional theory (Meyer & Rowan, 1977), followed by the study approach and main findings. The findings are presented in two categories: causes and solutions of gender homogeneity on British boards. Finally, we present the conclusions as well as contribution and the limitations of the paper.

THE SOFT-LAW REGIME WITHIN THE UK AND ITS CHALLENGES

Under-utilization of women's talents at the top, decision-making levels, and the need for a change in the approach by the political class and the corporate world have been felt by the many regulatory regimes (Terjesen et al., 2015). The Women on boards report (Whitehead & Normand, 2011) describes three approaches that are adopted in different countries to improve gender diversity on corporate boards. First is legislative intervention or mandatory quotas, as exemplified by Norway, and followed by a few other countries globally, including Italy, Germany, Spain, France and India (Egon Zehnder, 2014; Sealy et al., 2016). Secondly, the USA and Canada adopt a liberal approach and expect voluntary commitments from private firms (Whitehead & Normand, 2011). The third is a collaborative, business-led approach of recommending targets to improve gender diversity on boards, as adopted in the UK (Sealy et al., 2016). Companies are expected to voluntarily take measures and comply, or explain the failure (UK CG Code, 2014).

The approach adopted in the UK for managing gender diversity on its PLC boards underpins Institutional theory (Meyer & Rowan, 1977). Institutional theory suggests that a set of processes becomes authoritative guidelines for social behaviour, and is adopted over time and space (Scott, 2004). These processes may have an impact on individuals and organizations without actually being incorporated into formal policies (Meyer, 2008). Such rules/institutions are made by state and professional bodies and can be coercive, normative or voluntary in nature (DiMaggio & Powell, 1983; Scott, 2004). Such practices evolve with other institutions and are adopted by organizations, thus becoming institutionalized (Terjesen, 2015).

Gender diversity management and the influence of institutional processes
The influence of institutional processes is exemplified in the emphasis on the rights of women, which has significantly influenced both policy and practice, globally (Bradley & Ramirez, 1996; Meyer, 2008). A country's institutional environment and corporate policies on diversity management are interlinked and are influenced by gender-sensitive welfare provisions, and path-dependent policy initiatives for gender equality (Terjesen et al., 2015: Goyal et al., 2018).

Existing research also suggests other institutional factors which influence gender diversity on boards, such as the gender diversity in executive positions, gender pay gap, history of female political representation (Terjesen et al., 2009), and the economic/cultural environment in countries (Grosvold & Brammer, 2011; Adams & Kirchmaier, 2013). As a result, the policy and the practice on the rights of women vary globally.

In both the Anglo-American system and Continental Europe, the law is an essential component of governance (Peters, 2011). In much of Continental Europe, society is significantly influenced by the state, but the Anglo-American political tradition assigns a less significant role to the state (Peters, 2011). In Common Law region, law is a more evolutionary and less deliberative a process (Peters, 2011). The UK follows the Common Law tradition, and the UK CG Code (2014) is based on the principle of 'comply or explain'. As a result, regulatory agencies in the UK recommend, without a coercive mandate, that FTSE 100/350 companies voluntarily enhance the gender diversity on their boards. The strategy has initially delivered favourable results, with the FTSE 100 boards attaining 26% gender diversity in 2015.

However, considering the lack of further progress and unimpressive fresh intake of female board members (Sealy et al., 2016) we attempt to investigate the causes and solutions for gender homogeneity on British boards. We also explore whether or not the current soft-law approach of diversity management on boards in the UK is effective enough in obtaining the objective.

METHODOLOGY OF DATA COLLECTION AND ANALYSIS

Methodologically the study is based on Sociological Institutional theory that often involves qualitative and highly interpretive approach (Meyer, 2008). Thus, we conduct a qualitative study based on one-to-one, face-to-face interviews with thirty-three board director – thirteen female and twenty male – from FTSE 350 companies. The data is collected through elite interviews (Dexter, 1970) to ensure that issues lying at the core of the interaction are elicited comprehensively (Culpepper & Gilbert, 1999). Interviews are the most widely used qualitative research methodology in research, investigating people's personal perspective and personal context in detail (Ritchie et al., 2003). Conducting board-related research through interviews has been a challenge due to difficulty in accessing the board members (Zahra & Pearce, 1989). Thus, interviewing board members is categorized as elite interviewing (Pettigrew, 1992).

In this study, the respondents are first approached from the database of the business school with which the authors are affiliated. The participants are first selected as per the criterion of their having experience as board directors in at least one FTSE 350 company. Subsequently, other participants are approached using the snowball methodology (Goodman, 1961) of data collection (i.e. through the first set of respondents in the study). However, the purposiveness of the sample set, as determined for the first set, was maintained. The snowballing technique for interviewing board members has been successfully adopted in previous research and is considered essential for studies of this nature due to the element of trust and the sensitivity of the topic involved (e.g. Kakabadse et al., 2015; Broome & Krawiec, 2008). Also, the method of snowballing was resorted to, as board directors are a relatively small population, consisting of busy individuals, who may not associate themselves with individuals or projects without the recommendation of someone they trust (Broome et al., 2011).

Qualitative research often involves interpretive and complex data analysis, where the categories and theories emerge from the data (Snape & Spencer, 2003). Interpretive data analysis is expected to provide a plausible insight into a phenomenon in order to enable a deeper understanding of it. Such understanding is possible only through the interpretations of that phenomenon by the people living and experiencing it (Shah and Corley, 2006). In this study, data has been analysed thematically (Braun & Clarke, 2006; Saunders et al., 2009; Baumgartner & Schneider, 2010). Thematic analysis involves content/context for identifying themes, and analysis is linked to the respondents or the contributors (Spencer et al., 2003).

The transcript data is disaggregated into conceptual units of a similar nature which are given labels (Saunders et al., 2009). Thus data is coded and analysed to identify themes, and reveal patterns and relationships. Such categorization is saturated by continuing to collect more data on the category, until the researchers are convinced that further collection will not improve the results (Blaikie, 2009).

STUDY FINDINGS

We now present the findings of the study in themes and sub-themes below, with illustrative quotes showing multiple nuances of respondents' perceptions. Data analysis reveals two themes: the causes of gender homogeneity on British boards and the solutions to make boards gender diverse.

Why are Boards Not Gender Diverse?
The participants point out three primary and interlinked causes of lack of gender diversity on British boards. The respondents claim homogeneous boards consisting of men may discriminate against female executives and directors. Such practices render the board nomination process lacking in objectivity and also result in a lack of confidence among women executives and directors.

Discrimination
Discrimination against women is acknowledged both by male and female respondents. Study participants posit that discrimination in board nominations is conventional and is perpetrated due to board leaders' desire to have the comfort of familiarity around them.
"Oh by definition there is [discrimination]! If they will consider only the people who went to certain schools or the people who were like them, that is discrimination." (Resp. 23 – Male)
Respondents acknowledge that such discrimination against women perpetuates as it is tough to document. As a result, scholars also assess discrimination against women through a proxy of poor gender diversity on boards (e.g. Dalton & Dalton, 2010; Hillman et al., 2002; Matsa & Miller, 2013; Singh et al., 2008).
"Yes, I am sure there was [discrimination]. I felt it, and I am sure there was. [But] it is very hard to document that." (Resp. 22 – Female)
Female participants narrate accounts of discrimination they suffered. They also argue that discrimination perpetrated against them was demoralizing for other female executives as well.
"I was offered a promotion with no pay increase and no grade change. Having a whole bunch of men reporting to me, some of whom earned more than me. And they said 'oh we can't afford you a pay rise'." (Resp. 20 - Female)
"When my boss left the company, I was one of three directors, and I wasn't even asked if I wanted to replace him. The person who was asked was very much part of the old boys' club. When he was appointed, all these women managers came to me said 'Oh, why didn't you get that?' Yeah." (Resp. 15 Female)
However, the respondents in the study acknowledge that bias against women is often unconscious. The male members are often ignorant of the potential contribution that women directors can make in boards as they have traditionally been gender homogeneous.
"It has always been men up there. It has been a boys' club. It has become a norm. But I am not sure how conscious that was." (Resp. 21 – Female)
Also, discrimination against women appears to be on the ebb due to increased awareness and regulatory intervention.
"I am sure there has been some degree of discrimination in the past. But as the time goes on, that is less and less likely." (Resp. 33 – Male)
The finding supports the existing academic research on the subject as many companies are appointing diverse directors to signal their policy of non-discrimination (Bartlett, 2010).

Nomination process – Still not objective
Discrimination against women in the nomination process also results in the process lacking objectivity. Many participants acknowledge that functioning nomination committees are still not a norm in FTSE companies.

"I don't think it is objective. It is still someone who has worked with the Chief Executive before." (Resp. 29 – Female).

Integrity and objectivity of the nomination process is critical for promoting gender diversity. The lack of objectivity in the process is the result of discrimination against women which has kept boards homogeneous.

"I think the integrity of the nomination process is absolutely the key, in order to have people who are prepared to say what they think. And to challenge and test the Chief Executive." (Resp. 22 – Female)

The UK CG Code (2014) also upholds the integrity of nomination process. It recommends that only independent directors are appointed as the members/Chair of the nomination committee and only members are present in committee meetings. It also asks for the nomination committee to lead the process of nominating board directors and taking its decisions only after evaluating the balance of skills, experiences, knowledge and independence on boards (p.11).

Discrimination against women also results in a lack of confidence among female executives and directors, which is the third sub-theme of the causes of poor gender diversity on British boards. This is discussed below. Lack of confidence among female executives and directors Both male and female participants identify that discrimination against women leads to a lack of confidence among them about their ability to contribute on boards.

"I think many women lack confidence. I found myself lack confidence while speaking up at the board meetings or whatever it was." (Resp. 10 – Female)

"Most of the guys I approach, who tick 2 or 3 boxes in eligibility conditions say 'Yep, I am in'. If the woman ticks 9 of 10 boxes and can't tick the tenth one, she will say 'Sorry I am not qualified.' And that's not uncommon." (Resp. 17 – Male)

Lack of confidence among women aspiring to the top jobs has earlier been reported in academic studies (e.g. Burke & Richardsen, 2016; Foster, 2016). Such low confidence among women often leads to them not being appointed to board positions despite their being eligible.

"Now, what happens, because of that either lack of confidence or honesty from a female point of view, is that the male often will succeed." (Resp. 15 – Female)

Moreover, lack of confidence also makes women not actively network with decision makers to claim board positions. In the prevailing corporate culture, dominated by men, where aspirants actively promote themselves, this reticence on the part of female executives compromises their opportunities of board nominations (Burke & Richardsen, 2016).

"I think women are not that ready to promote themselves. They would very often think that they can't do it." (Resp. 16 – Female)

A respondent shared a story of one female executive who almost did not get a coveted position just because she initially chose to wait to be asked instead of staking her claim for it.

"This lady now is one of the top general counsels of a FTSE top 10, all because she asked. And that's the issue that we all have as women who don't think that we are good enough, and we don't think to ask." (Resp. 20 – Female)

The paper now discusses the solutions for gender homogeneity on British boards.

How to make boards gender diverse

The study participants believe that in a governance regime such as the one applied in the UK, regulatory intervention is required for promoting gender diversity on corporate boards. However, the soft-law approach of recommendatory targets appears to be the best-suited strategy for British boards. In order to remedy the situation, the respondents support continued regulatory intervention in British corporate governance. However, the level of intervention as recommended by the participants in the study varies. Three sub-themes under the theme of solutions to gender homogeneity on boards are identified as non-financial disclosures, quotas, and the existing soft-law approach.

Regulatory Intervention – Non-financial Disclosures

Participants claim that considering the slow progress in improving gender diversity on British boards, regulatory intervention is essential to change the culture. The respondents suggest that the companies may be asked to submit a non-financial disclosure about their gender diversity status on their boards.

"It will only happen when the company starts thinking about non-financial reporting at the corporate level. People see that as 'the boss wants'." (Resp. 18 – Male)

Respondents support such a move, as it leads to more awareness on the issue of gender diversity on boards and transparency in the nomination process.

"I am a great believer in openness. Transparency is good. I think that encouraging a change in behaviour is great." (Resp. 33 – Male)

Disclosure on gender diversity on boards will ensure that any progress or the lack of it will be easily accessible by the investor, regulatory bodies and other stakeholders.

"Transparency, disclosures and all that brings awareness. Having to disclose is very efficient because you have to look at the numbers. And you also have to show the numbers to the world, including potential investors, shareholders, and clients." (Resp. 21 – Female)

Thus non-financial disclosure norms are likely to encourage companies to be more committed to the cause.

Regulatory Intervention – Quotas

In the UK, support for statutory intervention for promoting gender diversity on boards has been reported in the recent past. Terjesen et al. (2015) quote Virgin founder and CEO Richard Branson who claimed that male corporate leaders need to be forced to bring gender parity on boards. Many respondents in the study also suggest that a timeline may be set for improving gender diversity on boards through voluntary targets.

"My view is how long do we wait. I don't believe in quotas just at the very beginning of the process. But I also think that the process runs out of speed and time at some point." (Resp. 22 – Female)

Support for quotas is more common among the female directors on British boards than male directors, though not all female respondents support and/or call for quotas.

"A lot of top women are coming to the conclusion that unless you have quotas, you are not going to make a big change. Because as per the present forecast it would take 80 years before you get to gender parity." (Resp. 29 – Female)

Many countries have implemented gender quotas on the boards of public companies in Continental Europe, and the same has been examined in academic research (e.g. Matsa & Miller, 2013; Ahern & Dittmar, 2012). Scholars agree that despite natural vested interest to keep a status quo, regulatory authorities are obliged to intervene if gender diversity on boards does not improve (Adams & Borsellino, 2015). Legislative intervention mandating gender diversity on boards is the most substantial measure to improve the representation of women on boards as compared to any action taken by any individual, firm or industry (Adams & Kirchmaier 2013; Terjesen et al., 2015).

Soft-law Approach: Best Suited for the UK

Presently, the soft-law approach of recommending a framework by the regulatory agencies is widely supported by the respondents. The respondents in the study explain that the UK is a different regime to the USA, where statutory regulatory intervention is not appreciated by companies, and to the Nordic countries, where statutory intervention is the norm.

"In the US you can do what you want to do as long as you don't break the law. In Nordic companies, the societies are much directed and much stricter. Britain, for better or for worse, always held up law as a society. But a lot of it we do is principle based, which means guidance rather than heavy-handed regulation. In the UK I would veer on the side of keeping it (soft-law approach). (Resp. 27 – Male)

The participants suggest that the continued regulatory encouragement may improve gender diversity on British boards.

"I think as a framework, as a long as it is not legislation, it is something that raises it as an agenda for boards to do, regarding their responsibility, (it should continue)." (Resp. 15 – Female)

Respondents thus support the current practice of recommendatory voluntary targets to improve board diversity in the UK.

DISCUSSION

Academic studies often define board diversity from regulators' or scholars' perspectives (e.g. Singh et al., 2008; Grosvold et al., 2007). The study presents the perspective of board directors on the causes of gender homogeneity and the solutions to making boards gender balanced in the UK. The participants point out that discrimination experienced by women, as perpetrated by employers and by society, leads to their loss of confidence. In this paper, only discrimination experienced in the workplace, particularly in leadership positions, is discussed.

While the respondents' most favoured diversity management approach for boards is the present soft-law approach in the UK, a surprising finding for the authors is the obvious support for gender quotas among male and female board directors in UK companies. Earlier academic research has found that female directors disapprove of gender quotas as they consider it discriminatory, and also as belittling their efforts to reach leadership positions on their merit (e.g. Kakabadse et al., 2015). The same sentiment is echoed in this study by a few male and female participants as well. However, the response appears to be generational where older board members oppose quotas, and younger ones seem more accepting or even demanding of it.

The study participants also extol the contribution of the Davies Report (Whitehead & Normand, 2011) in making companies and Chairpersons take note of the need to make boards more gender diverse.

"I am sure the Davies report was certainly a wake-up call, a kick in the butt for many boards, many chairmen, many companies, to see what they could do about this." (Resp. 17 –Male)

Thus the respondents believe that the present regulatory regime in the UK is delivering results in improving gender diversity in boards, with the Davies Report (Whitehead & Normand, 2011) providing the necessary impetus.

CONCLUSION

The soft-law approach adopted in the UK continues to be the most favoured approach for improving gender diversity on boards of PLCs. Support for the approach is due to two reasons: historical and the recent progress in gender diversity in FTSE boardrooms. The result is also underpinned by Institutional theory (Meyer & Rowan, 1977). The Anglo-Saxon system of governance does not favour the intervention of the state, as is the case in Continental Europe (Peters, 2011).

The study also finds that there is substantial support – particularly among the female directors of FTSE boards – for a more interventionist approach from regulators, should the present approach fail to deliver.

CONTRIBUTION

The paper is based on a study which is guided by Institutional theory, which supports the findings of the study. The paper explores the subject of gender diversity on boards from a theoretical perspective which is not explored extensively. Thus the study makes a theoretical contribution towards the application of Institutional theory (Meyer & Rowan, 1977).

Institutional theory suggests that the role of the state in the governance of companies varies in different regulatory regimes. Thus the soft-law approach is the best strategy for improving gender diversity on British boards. The approach suits British companies because it is in accordance with the Anglo-Saxon governance system where companies expect minimum statutory regulation in its affairs.

The paper explores the measures to improve gender diversity on boards of UK companies. The study is conducted in a country under the Common Law regime which has wide reach globally. The study offers potential processes (namely addressing discrimination against women and different regulatory

interventions) to improve boards' gender diversity, which may be applicable in other countries with similar path-dependency (Terjesen et al., 2015).

Discrimination and lack of confidence among women are seldom investigated extensively as the causes of homogeneity on boards. The paper has explored the subject elaborately. Moreover, non-financial disclosure, as suggested by the respondents, is a unique contribution of the study. Another contribution of the study is the support for the quotas among FTSE 350 board directors if the voluntary approach fails to deliver soon enough. The study also contributes to corporate praxis by indicating potential causes of gender homogeneity on boards. Companies may endeavour to address these causes to make boards more gender diverse. The study may also guide policy formulation on adoption of the best approach for improving gender diversity.

LIMITATION

The study is conducted with a sample consisting of a ratio of 60:40 male to female respondents. While the gender balance (i.e. 50:50) is desired in the dataset, this could not be achieved due to a significantly lower proportion of female director on FTSE boards. The respondents often attributed the lack of gender diversity on British boards to discrimination against women in society and flawed perceptions about gender. However, the paper only presents the responses on discrimination in the workplace, to explore that aspect elaborately.

Also, the study is conducted with a limited sample set of thirty-three board directors of FTSE 350 companies. These findings may be further tested with a larger sample in order to understand the views of a wider set of corporate leaders. Further studies may attempt to capture the view of regulators, which could not be done in this study, to maintain the persuasiveness of the sample.

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