

# Equality, Diversity and Inclusion (EDI)

## STEPS FOR TRUSTEES AND EMPLOYERS

### Introduction

The Pensions Regulator issued [EDI guidance](#) on 28 March 2023. The guidance explains what trustees and employers can do to improve EDI in the trustee board. This note sets out:

- A series of trustee steps for the implementation of EDI in their scheme.
- A number of employer-specific considerations.

### Trustee steps for implementation of EDI

There are a number of steps which trustees should consider taking in relation to EDI. Depending on the circumstances of your scheme and your trustee board, in particular where you are in your EDI journey, some of the steps may be less relevant than others. In addition, these steps do not need to be carried out in the order below.

The Regulator's [guidance for trustees](#) provides further detail and examples on how trustees can improve EDI in the trustee board.

### STEP

#### 1

Consider the meaning of EDI and assess how EDI could be applied to your trustee board

- **Equality** is about ensuring that every individual has an equal opportunity to make the most of their lives and talents. It is also the belief that no-one should have poorer life chances because of the way they were born, where they come from, what they believe, or whether they have a disability. Equality recognises that historically certain groups of people with protected characteristics such as race, disability, sex and sexual orientation have experienced discrimination.<sup>1</sup>
- **Diversity** means variety. A diverse group is heterogeneous, which means it is not the same – its component parts are all different. While the Equality Act 2010 protects certain characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation), "diversity" encompasses a wider range of individual differences, including those which may not be immediately apparent e.g. socio-economic background, neurodiversity and many forms of disability, including mental health conditions.<sup>2</sup>
- **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.<sup>3</sup>

When viewing your trustee board, remember that equality, diversity and inclusion are interlinked – it is not sufficient to have a trustee board with diverse members unless those individuals feel respected (i.e. equal) and that they can participate fully in trustee business (i.e. included).

<sup>1</sup> Definition formulated by the Equality and Human Rights Commission.

<sup>2</sup> Based on a definition formulated by the Pensions and Lifetime Savings Association (PLSA).

<sup>3</sup> Definition formulated by the PLSA.

## STEP

### 2 Consider your level of EDI knowledge and undertake appropriate EDI training. Review your training needs periodically

The fact that the three elements of EDI are so interlinked makes it all the more important for all three elements to be taken into account. A good understanding of each element at the outset is essential before proceeding. Training is a key aspect and appropriate training should take into account the specific characteristics of your scheme and your trustee board.

## STEP

### 3 Recognise how EDI can improve your trustee board

The Regulator's guidance says that a diverse and inclusive trustee board made up of people with a broad range of characteristics, life experiences, expertise and skills will lead to a number of benefits for schemes and their members. Benefits may include:

- Wider discussion encouraging new thinking and approaches.
- A deeper understanding of issues that have a real-life influence on members' outcomes.
- More effective decision-making that reflects member needs and values.
- Improved communications with scheme members.

There are two key aspects to improving EDI in the trustee board. These are: (i) increasing diversity in the board's composition, and (ii) promoting a board culture of mutual respect and inclusiveness.

## STEP

### 4 Discuss the trustee chair's role in EDI and how they can promote EDI in the trustee board

As the person leading the trustee board on strategic priorities, the trustee chair has an important role in setting EDI priorities for the trustee board. Discussion as to how the trustee chair proposes to lead on EDI and how this fits with the scheme's overall EDI strategy is therefore key in ensuring a successful EDI implementation.

Typically, the trustee chair will support and help to embed a culture of respect and inclusivity. The trustee chair will also set the style and tone for trustee discussions generally. In addition, in most cases, the trustee chair will be the main line of contact between the trustee board and the employer and therefore has a key role in building a coordinated and collaborative trustee-employer approach to EDI.

The Regulator's [guidance for trustees](#) on EDI sets out a range of specific ways in which the trustee chair can drive improvements in EDI.

## 5 Discuss EDI with the employer and decide how you can co-ordinate your EDI strategies to make the best use of employer expertise in this area

The employer has an important role in supporting the trustee board to implement EDI. In the majority of schemes, the employer has the power to appoint a number (often the majority) of trustees (or directors of the corporate trustee). The employer's trustee appointment power frequently extends to appointment of the trustee chair. The employer's involvement is therefore essential to achieving your goals and objectives in relation to EDI and to supporting the trustee chair's role in promoting an inclusive board culture.

The employer is likely to have its own knowledge and expertise on EDI matters from which you can benefit. Some employers will already have experts focused on EDI who can provide input. The employer's own EDI policies may also be helpful when formulating your EDI strategy. You should look to leverage off the employer's expertise and knowledge as this can only be beneficial for the scheme.

## STEP

## 6 Assess the EDI characteristics of your trustee board and the composition of your scheme membership with EDI in mind

The EDI strategy that you adopt will depend in part on where your trustee board is in its EDI journey, the structure of your trustee board and the characteristics of your scheme. It will therefore be necessary to examine your current trustee board's diversity of characteristics, life experience and skills to identify any gaps. It will also be necessary to review the composition of the scheme membership and how this can be reflected in your chosen EDI strategy.

## STEP

## 7 Determine your EDI strategy and put an EDI policy in place

Bringing steps 1-6 together, consider what your EDI strategy (including your EDI goals and objectives) should be and put in place a written EDI policy. The following matters (which are not exhaustive) will be relevant in the formulation of and implementation of your EDI strategy and policy:

- Identifying the trustee board's current and ongoing EDI training needs.
- Reviewing your trustee appointment arrangements and considering what changes, if any, are required. Changes could relate to any of the following:
  - » Member-nominated trustee/member-nominated director nomination and selection arrangements, including communications.
  - » The provisions of the trust deed and rules (and, where applicable, the trustee company's articles of association) on the appointment of trustees/directors.

- » Trustee/director terms of appointment.
- » Trustee handover/induction processes.
- » Trustee/director succession planning arrangements.
- » Professional trustee appointments.
- » Trustee remuneration arrangements.
- Reviewing the appointment and succession planning arrangements for the trustee chair.
- Engaging with the employer on the changes which could be made to:
  - » Its trustee appointment processes (including in relation to appointment of the trustee chair where relevant) and any of the aspects outlined above that are within the employer's control.
  - » Support employees who are appointed as trustees/directors in their role.
- Reviewing your trustee board meeting arrangements. Changes could relate to:
  - » How meetings are held.
  - » How meeting agendas are put together.
  - » How trustees/directors prepare for meetings.
  - » The involvement of advisers and service providers in meetings.
  - » The use of sub-committees.
  - » How trustees/directors participate in meetings.
  - » Trustee training.
- Reviewing your member communications and member communication processes and considering what changes should be made.
- Finding out about how your advisers and service providers implement EDI within their own organisations and discussing this with them.

## STEP

### 8

#### Regularly review your EDI strategy

Both your EDI strategy and your EDI policy will evolve over time, for example as you achieve specific EDI goals and objectives and as industry practice develops. You should review your EDI strategy and progress on your EDI goals and objectives regularly and update the strategy, those goals and objectives and your EDI policy as necessary.

## Employer-specific considerations

As discussed above, employers have a key role in EDI. In the same way as for trustees, the steps which you should consider taking will depend on the circumstances of your scheme and its trustee board. However, the areas for employers to consider include:

- The trustee board's diversity of characteristics, life experiences, expertise and skills and how any gaps could be filled when selecting employer-nominated trustees/directors. This includes considering whether there are individuals outside of senior management who could be selected.
- Whether there are changes that could or should be made to the scheme rules and/or the trustee company's articles of association to encourage greater diversity in the trustee board e.g.:
  - » Removing any requirements which restrict who you can appoint as a trustee/director.
  - » Imposing a fixed term of office for employer-nominated trustees/directors.
- Your legal obligations towards employees who are trustees/directors and how you can support such employees, such as ensuring they are able to commit sufficient time to the role and providing access to relevant training and other appropriate resources.
- Where you are responsible for appointing the trustee chair, whether the potential candidates for appointment demonstrate qualities that will promote EDI in the trustee board.
- Whether appointment of a professional trustee (whether as trustee chair or otherwise) could help to enhance EDI on the trustee board.
- How improving EDI in the trustee board may align with other employer EDI initiatives.

The Regulator's [guidance for employers](#) provides further detail and examples on how employers can improve EDI in the trustee board.

## How can we help?

Mayer Brown can support trustees and employers in improving EDI in the trustee board by:

- Providing you with EDI training specific to your scheme characteristics and trustee board structure.
- Advising on trustee and employer legal obligations in relation to:
  - » EDI, including obligations under the Equality Act 2010.
  - » Trustee appointment processes.
- Advising on setting and/or reviewing an EDI strategy and EDI goals and objectives.
- Reviewing and/or drafting EDI policies.
- Reviewing and/or draft amendments to your member-nominated trustee/member-nominated director arrangements.
- Reviewing and/or drafting amendments to other relevant policies and processes including those relating to trustee chair appointment and succession planning, trustee meetings, and appointment and review of advisers and service providers.
- Drafting amendments to scheme rules and/or trustee company articles of association.
- Reviewing and/or drafting amendments to member communications.

For more information, please speak to your usual Mayer Brown contact.

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