



## Recent high-profile challenges to ED&I progress in the US and UK.

### What effect could this have on your business' approach to ED&I?

#### Executive Summary

Business leaders have long prioritised and invested in developing their workforce culture to ensure they can attract, retain and develop people from the widest talent pool available. They recognise the benefits ED&I has on increasing productivity, business performance and the need to meet the expectations of their key stakeholders including staff, customers and investors.

Today, ED&I is coming under closer scrutiny than ever before.

The challenges facing organisations have been exacerbated by recent legal rulings, such as the US Supreme Court's decision on college admissions. The RAF Positive Discrimination Inquiry into recruitment practices and the findings from the UK Government's Inclusive Britain report, make for an increasingly complex landscape to navigate. Keeping a firm grip on knowledge of the legal and demographic contexts to emerging ED&I issues wherever they may spring up can keep you one step ahead. For instance, while these rulings haven't changed the law in the UK they do perhaps reflect an emerging sentiment that warrants serious attention, as workforces and nations become ever more diverse .

Change the Race Ratio want businesses to continue taking action, to keep doing what many of you are already doing; the business and moral case for increasing workforce participation for under-represented groups is sound. Like any operational strategy, your approach should be considered, measurable and support the overall business strategy. It must also be flexible and willing to adapt in its understanding and practices, just as the evolution of ED&I should never stand still.

Businesses should prepare and be ready to justify their action on ED&I - to their staff, customers, shareholders and a host of wider stakeholders. You should be able to set out the evidence base and analysis of the problem your business is trying to solve, how you are measuring the impact of interventions and how your actions conform with UK equality laws.

#### Recent external challenges

The US Supreme Court's (SCOTUS) decision last year has made it unlawful for US colleges to take race into consideration as a specific factor in admissions.

The Chief Justice said that the Harvard and University of North Carolina admissions programmes violated the Equal Protection clause, because they failed to offer 'measurable' objectives to justify the use of race.

The RAF held an internal Positive Discrimination Inquiry which found that recruitment policies to increase the numbers of women and people from ethnic minorities in the airforce had led to unlawful positive discrimination.

The Inclusive Britain report - released just a few weeks ago - challenged the effectiveness of ED&I training, warned against focusing purely on visible diversity (gender and race) and suggested that some organisations actions aren't effectively including, nor benefiting everyone. Encouragingly, the report did find that the majority of firms were rightly using data to inform decision-making and measuring the effectiveness of their actions.

It also highlighted that businesses would benefit from some support to understand which policies work better than others to achieve greater diversity. Learning from others and sharing best practice is where Change the Race Ratio can support you on your organisation's journey.

### **How could this impact your business?**

In the US, the SCOTUS ruling won't impact the vast majority of ED&I efforts, as it primarily addresses initiatives focused solely on specific characteristics, particularly in college admissions.

Businesses in the US who do operate scholarship programmes targeted at under-represented groups have started to widen their admission criteria, running open programmes and encouraging applications from specific groups.

We are also seeing firms in the US reframe their broader approaches; not necessarily changing their course of action, but rather adjusting how they articulate them to better explain and justify the business rationale.

Driving ED&I efforts forward means continuous, open and two-way communication with your workforce and key stakeholders. You should consider conducting a review of your ED&I strategy to objectively assess any potential risks. Mitigating risks involves ensuring appropriate training is provided and decisions are made based on data to substantiate the rationale for action.

### **Looking to the future**

ED&I is undoubtedly an issue for every business. It's one that we must work on and learn together, because no single company is going to solve the problems of under-representation alone. Taking action remains of the utmost urgency, because many colleagues still face additional barriers in the workplace, both day-to-day and in career progression.

Remember that the law hasn't changed here in the UK. Continue to focus on the work that is evidence-based and where impact can be measured.

That's because despite the challenging headwinds, significant progress is still being made. FTSE Women Leaders have achieved a nearly 50/50 boardroom split on gender in the FTSE100, as reported in their 2023 Report. Meanwhile, the Parker Review Report also evidences increased representation of board members and leaders from ethnic minority backgrounds in the FTSE350.

Change the Race Ratio also has a positive story to tell, with now more than 115 FTSE signatories committed to working together to drive more diverse, equitable, and inclusive boards and leadership teams.

Contrary to what may be grabbing the headlines, there's a notable increase in regulatory measures aimed at tackling the barriers faced by under-represented groups. And many of these measures have a focus on expanding efforts on ED&I, rather than reducing them. Further regulation is likely to help underscore the importance of diversity on boards and in the workforce more widely.

For instance, the Financial Conduct Authority - responsible for regulating the financial services sector and markets - announced a consultation on rules aimed at enhancing diversity within the sector.

### **Recommendation – tell your business story**

It's important to recognise the existence of anti-ED&I sentiment, alongside the influence of political pressures on corporate decision-making. Companies will need to remain vigilant and be prepared to address these challenges as they arise.

ED&I should be positioned not just as a response to such challenges, but as a fundamental solution to continued business success in a more diverse nation and to help address long-standing societal inequalities.

Crafting a compelling narrative supported by robust data and evidence is key to making the case for your ED&I strategy. This narrative should be developed in partnership with relevant employee resource groups, alongside your legal and communications teams. Learn with and from others in your business, a top-down approach is unlikely to make the long-lasting change you may hope for.

Despite potential disruptions in the ED&I landscape, it's imperative for businesses to continue in their efforts to cultivate a strong and equitable leadership team and workforce. These actions are crucial not only for today, but also for your business' success in the future.