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The issue of diversity and inclusion has gained increasing prominence in the media over the course of the last year, spurred on by the outrage felt by many in response to the murders of George Floyd and Sarah Everard, and the myriad accounts of discrimination still experienced in many corners of society. When I explained to my wife that I had proposed to do some extracurricular writing on the subject of diversity she (imperceptibly to outsiders) raised an eyebrow.

The implicit question: What do you know about diversity?

It is true that I am male, pale, increasingly stale, and can barely speak for the cosmic silver-spoon wedged firmly in my chops. But, don't be deterred – I am not the best advert for a diverse and inclusive society, however, this article is not intended to virtue signal, rather to signpost the way toward (it is hoped) a greater future to which all FIRE thought leaders are headed.

Before I begin, the concept of organisational diversity can be summarised in this way: a diverse organisation is one that incorporates via its members a wide range of characteristics and perspectives across the matrices of age, sex, race, religion, gender identity, sexual orientation, disability, neurodiversity, educational attainment, and socio-economic background. A homogenous organisation is one whose members' characteristics and perspectives typically align in the same categories across these matrices.

Before considering the positives of diversity, take a moment to recognise the stark downsides of organisational homogeneity - Matthew Syed, a celebrant of diversity, has written about an example that sticks in the mind ¹: In the wake of 9/11, academics sought to figure out how such a catastrophe could happen under the watch of the most powerful intelligence service on the planet.

Two intelligence experts, Milo Jones and Phillipe Silberzahn, discovered an unwelcome answer: "The first consistent attribute of the CIA's identity and culture from 1947 to 2001 is homogeneity of its personnel in terms of race, sex, ethnicity, and class background (relative both to the rest of America and to the world as a whole)."

The CIA's entire recruitment process had been geared toward selecting a uniform 'elite' – the white, male, heterosexual, protestant, ivy-leaguer (sound familiar?). The upshot of this uniformity was that it was all too easy for a misguided consensus to take hold which dismissed the grave threat posed by Al-Qaeda. Simply put, Langley lacked the ethno-cultural scope to perceive the powerful symbolism of Bin Laden's call to arms, and wholly underestimated the capabilities of his acolytes. The rest, sadly, is history.

Conversely, the benefits conferred by diversity are well-documented and consistently corroborated by research.

A study by McKinsey found that of the 366 U.S. public companies surveyed, those in the top 25% for ethnic and racial diversity in management were 35% more likely to have financial returns above their industry mean, and those in the top 25% for gender diversity were 15% more likely to have returns above the industry mean ².

And it is not just financial performance that appears to improve with greater diversity. A group of researchers led by Barbara Casu of the City University Cass Business School reported in January 2020 that European banks with more female directors on their boards faced lower and less-frequent fines for misconduct, in particular misconduct linked to fraud. Even after adjusting for other variables, the conclusion of the research was clear: Banks with more women on their boards committed less fraud, and this in turn saved those institutions \$7.84 million per year on average ³.

So what is the causal link between organisational diversity and positive commercial outcomes? Evidence indicates that diverse groups maintain objectivity and factual focus in ways that homogenous groups do not ⁴. Similarly, diverse groups are inherently better at cancelling out conscious and unconscious biases by disrupting set thought-patterns, challenging orthodoxy, and re-examining facts from multiple perspectives ⁵. This aspect of diversity is perhaps the most obviously beneficial for FIRE practitioners- today's fraudsters are as diverse as their motives and modus operandi – consider some recent examples: The young, female, Eastern-European crypto-queen ⁶; A GP embezzling company funds to feed his gambling addiction ⁷; the elusive kleptocrat ⁸, and Winchester-based boiler-room scammers ⁹.

These are all very different frauds; very different perpetrators; very different challenges and obstacles. Approaching the complexities of fraud from a variety of angles and with the benefit of diverse experience can, as many of you will already know, provide a huge leap toward successfully recovering assets for clients.

However, diversity alone will not necessarily always lead to more dynamism within teams.

In order to harness the full potential of diversity, FIRE teams should also strive to create a culture that promotes “psychological safety” – i.e. the belief that one will not be punished or humiliated for speaking up with ideas, questions, concerns, or mistakes.

Without psychological safety, people do not fully contribute, and the potential of diversity may remain untapped. Furthermore, the absence of psychological safety gives rise to defensive behaviours that militate against creative thought ¹⁰. In order to promote psychological safety, team members, in particular team leaders, need to be more curious, inquiring, experimental, and nurturing. Hierarchical structures need to be flattened, and directive, controlling, and conforming behaviours curtailed.

While there is still plenty more to do, the legal sector visibly embraces the value and importance of diversity, as do many other professional services sectors. However, the greater challenge is likely to be fostering a culture that promotes psychological safety. Professional services firms are, in large part, hierarchical, rigidly structured, and while many accept that ‘to err is human and to forgive divine’ – neither are company policy. Add to that the extremely high expectations of the Court, clients, and opponents, the conditions needed for psychological safety may be in short supply for FIRE practitioners.

So, how can FIRE practitioners make the most of diversity? In the first instance, organisations should ensure that their own recruitment practices are up to scratch in this regard ¹¹. Furthermore, clients increasingly expect their advisors to have taken meaningful action to promote diversity, with some moving to withhold fees unless diversity and inclusion are given due prominence¹².

Ensuring diversity within is therefore becoming a no-brainer.

However, FIRE practitioners in particular can benefit from careful selection of their case partners – insolvency practitioners, investigators, forensic analysts, counsel teams, and experts all have roles to play in contributing to the problem solving effort. By ensuring your case partners embrace diversity, your collective output is very likely to benefit from greater objectivity and reduced risk of conscious or unconscious bias, which may be the difference between winning and losing the case in hand.

The greater challenge will likely be creating the conditions which allow you and your case partners to operate in psychological safety – it is unlikely that there are any easy short-cuts here, as these conditions must exist at the intra and inter-organisational level to truly be felt. And this is where The Avengers come in – as we all know, they are an ostensibly diverse bunch; they tend to operate in high-pressure environments (just like FIRE practitioners); some come from rigidly hierarchical backgrounds; and yet they are psychologically safe and sound (except for the Hulk, of course) – one attribute stands out – they don't fight, they don't blame, they work through conflicts before it turns ugly: Iron Man and Captain America – different worldviews, forceful communicators, but when it comes to the crunch they see the value each brings to the table, they set ego aside, perform their roles, and save the world ¹³. Bare this in mind when assembling your Avengers.



2 <https://www.mckinsey.com/~media/mckinsey/business%20functions/people%20and%20organizational%20performance/our%20insights/why%20diversity%20matters/why%20diversity%20matters.pdf>

3 https://www.bayes.city.ac.uk/_data/assets/pdf_file/0009/510975/Arnaboldi_et_al_2020.pdf

4 See for example: <https://www.apa.org/pubs/journals/releases/psp-904597.pdf>

5 Mishcon de Reya have produced an insightful and brief webinar on this topic <https://www.mishcon.com/news/events/current/dishonesty-uncovered-thinking-about-thinking>

6 <https://www.bbc.co.uk/news/stories-50435014>

7 <https://www.bbc.co.uk/news/uk-england-hampshire-59179195>

8 <https://www.bbc.co.uk/news/uk-england-hampshire-59179195>

9 <https://www.cps.gov.uk/cps/news/two-fraudsters-jailed-defrauding-ps36-million-vulnerable-victims>

10 <https://hbr.org/2018/04/the-two-traits-of-the-best-problem-solving-teams>

11 See for example the best practice guidance promoted by Legal CORE <https://www.legalcore.co.uk/>.

12 <https://www.lawgazette.co.uk/practice/we-demand-results-coca-cola-threatens-to-deduct-30-from-fees-over-diversity/5107250.article>

13 <https://www.orangescrum.com/blog/5-team-work-lessons-from-team-avengers.html>