



Releasing the potential of people in business

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## NEGOTIATING SUCCESSFULLY

By Tom Bird, Director, RTPLegal

Negotiating is a key part of the role of a lawyer. Lawyers need to be effective at negotiating both on behalf of their clients (to win the right kind of deal for them) and in negotiating the right fee for the work. Often, however, lawyers have had little, if any, formal training in the core concepts and techniques of effective negotiation.

But it's not just an important skill for lawyers. We all have to negotiate as an integral part of our role. Think about your role as an HR or L&D specialist. You may need to negotiate your departmental business plan with the partnership, your budgets, your rates with suppliers as well as lots of less 'formal' negotiations with work colleagues around work allocations and deadlines.

So what are the key concepts to consider in your negotiations and what are some of the main concepts that lawyers need to understand and apply to be excellent negotiators?

Perhaps some of the most powerful concepts are also the simplest. The challenge is to help people apply them in their work. Lawyers often need to see the academic or theoretical basis for a technique and then be given the opportunity to apply the technique in their context preferably backed up with relevant examples and cases. Here are three of the main concepts that we find lawyers (and hopefully you as an L&D or HR professional) find most useful in their work – both negotiating fees and acting in negotiations on behalf of their clients. We use some of these in our 'Negotiation Skills' and 'Fee Negotiation' workshops.

1. **Think of negotiation as packing and unpacking a box:** A key concept in negotiation is the need to trade rather than give away concessions. The analogy of a box is a useful way of thinking about how you approach the negotiation. The box is the total package that you are negotiating. If this was for a fee for a piece of work then the box might contain a number of 'items': the timescales, the payment terms, the fee itself, the partner involvement and any work done by the client to assist. Clients will typically want to negotiate the price in isolation but, if you do this, it means that when the box is 're-packed', all of the different items will not fit in the same way. The key point is that if you negotiate one item and change it (reduce the fee, for example) then you need to change the other items in the box so that the overall package fits.

When applied in the context of a fee negotiation this might mean that you have conversations such as:

"I can do something on the price if we can agree revised payment terms of 14 days instead of 30 days"



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“If you are prepared to collate all of the documentation for us by the end of this month we can reduce the amount of time required to complete the deal” (this does not reduce your margin on the deal)

“We have some flexibility on the fee if you can be flexible on the timescales for completion”

Note that in each case, we are taking an exchanging approach to concessions rather than simply saying “yes” to a request for a discount.

- 2. Understand the cost and value equation:** Linked to the concept of exchanging concessions is the need to understand the difference (for you and the client) of the cost and value of what is being exchanged during a negotiation. Whatever you are trading in a negotiation will have a cost to you and a value to the client. This will rarely be a simply monetary value. Equally, anything that you want in return from the client will also have a cost to them and a value to you. If you take the time to understand the difference between cost and value to both sides of what you might be asked to give and what you might request you will be well prepared for the negotiation conversation.

For example, one lawyer that we worked with offered to provide a free seminar on a particular legal topic of relevance to his client as long as the fee he requested was paid without any discount. The cost to him for giving this seminar was 2 hours of his time but the value to the client was much higher because it equipped their senior people with valuable knowledge that would help their business moving forward. If you understand the value to the client you are in a strong negotiation position.

- 3. The difference between ‘positions’ and ‘interests’:** Time and time again we here stories of lawyers getting entrenched in a negotiation which seems to be going nowhere. They are negotiating on behalf of a client and the other side have dug themselves in and seem unwilling to move. What do you do to move the negotiation forward, to get ‘unstuck’? One technique that often helps is seeking to understand the interests that lie behind the other side’s position.

A position is defined by the nature of the agreement that you want to reach – the specific terms and conditions. Often, our client and the other side will state specific terms that they want to have. This is their position. The problem with negotiating on a position is that it is very black and white. Often, we end up making small movements to try and achieve a compromise. The problem with achieving a compromise is that both parties may not be happy with the final outcome. The more we negotiate around our positions, the more we can get entrenched. It can be a no-win negotiation!



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Behind each position (ours and the other side's) there will be an interest. The interest is what is important but, often, the other side will simply focus on their position and we won't know what the interest is that is behind it.

By asking the question "Why?" we can often get behind a position to understand the interest that is driving it. If we can really understand the interests we are much more likely to be able to find alternative 'positions' to satisfy it. For example, someone selling a business might state a position of needing a minimum shareholding and this might be a sticking point for our client who wants a higher percentage shareholding. By asking "Why?" we might find that the person selling the business wants to maintain some involvement and control. If his business is doing well we might be able to satisfy this underlying interest without having to change the shareholding that we are requesting.

If you think now about your own negotiations you might be able to find opportunities to apply some of these concepts yourself. For example, understanding the value to your lawyers of being trained in fee negotiation might help you sell the idea of some courses! Asking "What would a 5% improvement on fee income mean to the business?" and "How would it impact the margin?" might give you some great leverage using the 'cost' vs. 'value' concept!

In our experience, perhaps the biggest thing that impacts on negotiations of all types is the need to spend time on preparing for it. Preparation is one of those 'important but not urgent' tasks that seems to be sacrificed in favour of the 'urgent'. In your role you will have no shortage of calls on your time and so you may enter into a negotiation less than well prepared for it.

The US entrepreneur and businessman Donald Trump says this of negotiating: "When I started out in business, I spent a great deal of time researching every detail that might be pertinent to the deal I was interested in making. I still do the same today. People often comment on how quickly I operate, but the reason I can move quickly is that I've done the background work first, which no one usually sees. I prepare myself thoroughly, and then when it is time to move ahead, I am ready to sprint."

Spending time on preparation is absolutely critical if you want an outcome in your favour. Making the time for it is about self-management – and that's another course!

For more details about our range of tailored negotiation and fee negotiation courses please email [info@rtplegal](mailto:info@rtplegal), or call us on 01903 813897.