



**Nottinghamshire Junior
Lawyers Division**



PRESIDENT'S CUP 2022

Negotiation is a consensual method of reaching agreement, including but not limited to resolving disputes. For a negotiation to produce a result, each side needs to be in a position to compromise. This means having clear instructions about what is critical to your client, and what can be “traded” in the interests of achieving other goals. Consequently, it is important not only to know what your own client’s goals are, but also to identify, as far as you can, what the goals of the other side are.

If there is nothing to be traded, then the negotiation is unlikely to achieve a result other than the parties walking away, unless one party is prepared to concede entirely to the other’s demands. Even when a negotiation breaks down, however, important information may have been shared.

Learning outcomes and competences

Negotiation is an important skill for both contentious and non-contentious lawyers. Trainee solicitors on a training contract,¹ equivalent means applicants² and pupil barristers³ are expected to have exposure to negotiation in practice. Trainee solicitors undertaking qualifying work experience may, but need not, have such experience (but negotiation, possibly in writing, is assessed in SQE 2).⁴

The BSB’s and SRA’s competence statements set out useful lists of the components of effective negotiation practice:

¹ Solicitors Regulation Authority, ‘Practice Skills Standards’ (*Solicitors Regulation Authority*, 18 May 2020) <<https://www.sra.org.uk/become-solicitor/legal-practice-course-route/period-recognised-training/managing-trainees/practice-skills-standards/>> accessed 12 September 2022.

² Solicitors Regulation Authority, ‘Applying for Period of Recognised Training Exemption’ (*Solicitors Regulation Authority*, 8 July 2020) <<https://www.sra.org.uk/become-solicitor/legal-practice-course-route/equivalent-means-information-pack/exemptions/period-recognised-training/>> accessed 12 September 2022.

³ BSB, ‘Pupillage / Work-Based Learning Component of Bar Training’ (*Bar Standards Board*, 2022) <<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/pupillage-component.html>> accessed 12 September 2022.

⁴ Solicitors Regulation Authority, ‘SQE2 Assessment Specification’ (*Solicitors Regulation Authority*, No date) <<https://sqa.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification>> accessed 12 September 2022.

Professional Statement for Barristers, 1.7 ⁵	Statement of Solicitor Competence, B.6 ⁶
<i>Negotiate effectively</i>	<i>Negotiate solutions to clients' issues, including</i>
They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client. Barristers should:	
a) Identify in so far as possible all parties' interests, objectives and limits.	a. Identifying all parties' interests, objectives and limits
b) Develop and formulate best options for meeting the client's objectives.	b. Developing and formulating best options for meeting parties' objectives
c) Present options for resolution cogently.	c. Presenting options for compromise persuasively
d) Recognise, evaluate and respond to options presented by the other side.	d. Responding to options presented by the other side
e) Develop appropriate compromises consistent with the client's instructions.	e. Developing compromises between options or parties
f) Bring the negotiation to an appropriate conclusion.	

Some suggested reading resources

Coburn C, 'Negotiation Styles.' (Harvard, No date)

<https://hms.harvard.edu/sites/default/files/Departments/Ombuds%20Office/files/NegotiationStyles.Understanding%20the%20Five%20Negotiation%20Styles.by%20Calum%20Coburn_0.pdf> accessed 12 September 2022

Fisher R and Ury W, *Getting Past No: Negotiating With Difficult People* (Random House Business 1992)

Fisher R, Ury WL and Patton B, *Getting to Yes: Negotiating Agreement Without Giving In* (3rd Revised ed, Penguin Books 2011)

Harvard Law School, 'Welcome to the Teaching Negotiation Resource Center' (*PON - Program on Negotiation at Harvard Law School*, 2022) <<https://www.pon.harvard.edu/store/>> accessed 12 September 2022

Shonk K, 'Principled Negotiation: Focus on Interests to Create Value' (*PON - Program on Negotiation at Harvard Law School*, 30 May 2022) <<https://www.pon.harvard.edu/daily/negotiation-skills-daily/principled-negotiation-focus-interests-create-value/>> accessed 12 September 2022

Simpson A, 'Junior Lawyer's Skillset: The Art of Good Negotiation' (*LexisNexis blogs*, 10 December 2019) <<https://www.lexisnexis.co.uk/blog/in-house/successful-lawyer-s-skillset-the-art-of-good-negotiation>> accessed 12 September 2022

⁵ Bar Standards Board, 'The Professional Statement for Barristers' (*Bar Standards Board*, September 2016) <https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf> accessed 12 September 2022.

⁶ Solicitors Regulation Authority, 'Statement of Solicitor Competence' (*Solicitors Regulation Authority*, 9 August 2022) <<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/>> accessed 12 September 2022.

The First Round

For this first round of the competition, you will need to prepare and submit a written negotiation plan. At this stage, you are **not** acting for one party or the other. You are considering the fact pattern and setting out in writing the issues you have identified as requiring negotiation and the structure and tactical approach to be taken to the negotiation meeting.

Your plan may be in any format you like, but you should consider the following points:

1. **Issues and information**

What do you think are the issues that will need to be negotiated? What further information will each party need from the other and what questions do you think need to be asked to draw that further information out of the other party?

2. **Objectives**

What do you think are the parties' objectives? What concerns do you think each party may have?

3. **Strengths and Weaknesses**

What are the likely bargaining strengths for each party and, conversely, what are the potential weaknesses.

4. **Negotiation Meeting**

How do you plan to conduct the negotiation meeting itself? What issues will you discuss and in what order of priority?

INFORMATION FOR BOTH PARTIES

Bookworld are a large publishing house who specialise in publishing historical novels. They have published a number of very successful historical romance novels and have built up a following of buyers who eagerly await the next Bookworld novel. They are always searching for new authors. If an author is successful, Bookworld are often keen to publish a series of books with the same characters. Bookworld have had success with licensing some of their books for television adaptation and often seek to capitalise on publicity from television adaptations to increase sales of their books.

Frederique Smith is a novelist. She has written a historical romance novel about a family called *Digerton*. This is not her first novel – she has previously self-published two novels to a small amount of acclaim. However, she has not previously published a book with a major press. She sees *Digerton* as the first of a series of novels about the family, but is keen not to only write such novels, and indeed has already started writing her next novel, a piece of science fiction about robotic cats stranded in space. Frederique is very attached to her characters and has particular views about how they should be portrayed.

Bookworld are very keen to acquire *Digerton* and have approached Ms Smith's agent.