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# Welcome to negotiation skills for union reps

Welcome to Prospect’s negotiating skills course.

The aim of the course is to give you the skills and knowledge to represent your members, both as individuals and collectively, at meetings with your employers.

We will also look at how to build a relationship with your members and your employer and how to strengthen your workplace organisation so that Prospect is accountable to members and accurately represents their interests.

The training is very informal and there is no pressure on anyone to do anything they are not comfortable with. There is plenty of discussion and problem solving, as these are the most effective methods in adult learning

## Learning outcomes

* the theory and practice of negotiation
* proven negotiation techniques
* improve communication and interpersonal skills
* understand how pay claims are formulated
* understand psychological approaches to negotiation.

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## Course timetable

**Day 1**

Session 1: Introductions and objectives

Activity A: Getting to know you

Session 2: Negotiating basics

Session 3: Bargaining with employers

Activity B: Bargaining with employers

Session 4: Effective representation

Activity C: Working out your strengths

Activity D: Picking a team

Session 5: The negotiation process

Activity E: Tactics

Activity F: Perception

**Day 2**

Session 6: Negotiations in practice

Activity G: The X and Y game

Activity H: Negotiations at Stationery State

Session 7: Negotiations and your members

Activity I: Negotiations with members

Activity J: Getting your message across

## What happens on trade union courses?

For many trade union activists, Prospect courses mark a return to education, sometimes when previous experiences have been less than positive.

Trade union education places great value on the knowledge that union reps bring to the course and seeks to enhance this by working co-operatively to gain new knowledge.

We emphasise team working and involving everybody in the learning process. This not only makes learning interesting and challenging but is rooted in well-researched and tested educational methods.

As part of this approach, we will:

* encourage a cooperative approach to learning
* allow workplace experiences to be reflected and valued throughout the programme
* help you to build a useful resource pack to support your union activity
* encourage a collective approach to your role as a Prospect representative.

### The tutor’s role

Trade union tutors are qualified to teach in the ‘learning and skills sector’ (adult education outside of university) and will also have practical experience as trade unionists.

They should be inspiring, accessible and empowering – you should learn from them! Your tutor will:

* make sure that the expected learning outcomes are clear
* encourage and facilitate everyone’s participation
* introduce you to new ideas and concepts that will make sense of work and employment issues
* give guidance on how to become an accredited rep
* help you understand your own preferred learning styles.

### Your role

The focus of trade union education is 'learning' rather than 'teaching'. The focus is on you and your colleagues as learners rather than on the tutor (although their role is vital). We hope you will:

* feel confident to participate fully
* be able to support your colleagues
* enjoy the learning
* add to your existing knowledge and skills
* use your new knowledge and skills to support Prospect’s aims in your workplace.

We ask that you take an active part in the course, support your fellow reps and course members when you can and be respectful of other delegates during the course – this will help you promote collective and co-operative activity at your own workplace.

We respect whatever pronoun you wish to be referred to during the course – please write it on your name card.

### Using your knowledge and skills

Learning and knowledge are valuable in their own right – they need no justification but as practical people we want to encourage you to develop further.

We want your experience of learning with us to encourage you to engage in other forms of learning.

## Equality and diversity statement

Prospect provides training for all its representatives and activists that aspires to the highest standards of respect for difference and diversity.

This statement is inspired by our trade union values of justice, fairness, democracy, solidarity and equality. As a trade union, we oppose any view, action or organisation that undermines the ability of working people to act collectively to pursue their democratically determined policies and objectives.

We are opposed to discrimination against people based on their gender, nationality, ethnicity, religion, disability, sexual orientation, marital status, social class, age, politics or education.

We defend the right to freedom of expression and to political opinions and beliefs except where these conflict with, or tend to undermine, the freedom of other people from discrimination on the grounds listed above.

We are opposed to sexist, racist and fascist ideologies and will not permit such views to be promoted at Prospect education events.

We will seek to ensure that all Prospect training is accessible to all who wish to attend. Recruitment to courses will be open, fair and in line with our commitments above.

All courses will allow opinions to be put forward and defended (consistent with the statement above). All members who attend Prospect courses are entitled to respect.

Members who want to raise issues relating to our commitment to equality and diversity, or if they wish to lodge a complaint about any incident or failure concerning this policy, should use the following procedure:

* Any issue occurring during a course to be raised with the tutor
* If this is not practicable, or if the complaint is not dealt with to the satisfaction of the member, it should be raised with Prospect’s education officer or the education and skills manager
* If a member is not satisfied, the matter should be referred to the General Secretary.

## Trade union terminology

|  |  |  |
| --- | --- | --- |
| **ACAS** – The Advisory, Conciliation and Arbitration Service – a public body that provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. <https://www.acas.org.uk/>  **Bargaining unit** – The 'bargaining unit' is the group of employees that will be represented by the union. The employer and the union can agree who is in this unit as part of their negotiations. If the employer and the union don’t agree, the Central Arbitration Committee (CAC) will decide.  <https://www.gov.uk/government/organisations/central-arbitration-committee/about>  **Collective agreement** – Where collective bargaining has led to an agreement, for example pay increase, these agreements are called collective agreements. Collective agreements within the workplace can cover both union and non-union staff as trade unions often negotiate on behalf of the staff employed in a specific group. This group is known as the bargaining unit.  **Collective bargaining** – If a union is formally recognised by an employer, it can negotiate with the employer over terms and conditions. This is known as 'collective bargaining'.  **Consultation –** Consultations should be ‘meaningful’ and ensure that the employer listens to members concerns not just use as a ‘tick box’ exercise. Should always try to move to a position of agreement. There are some areas where employers have legal obligations to consult. [For more details](#_Information,_consultation,_negotiat)  **Facilities agreement** – An agreement between the employer and the union setting out the provision of facilities and facility time for trade union officials, representatives and members.  **Industrial action** - usually happens when a trade dispute in the workplace can’t be resolved through negotiation. There are three main forms of industrial action:   * strike – where workers refuse to work for the employer * action short of a strike – where workers take action such as working only to the terms of their contracts, overtime bans or callout bans (sometimes called work to rule). * lock-out – a work stoppage where the employer stops workers from working.     **Information** – like consultation there are areas where employers have a legal right to provide information. This should be requested I the first instance. [For more details](#_Information,_consultation,_negotiat)  **Informal meetings** – an opportunity to discuss informally to build a relationship with the Employer |  | **Memorandum of understanding –** Where a negotiation has many aspects covering a range of asks, a MOU can be used to commit to the negotiations once the main negotiation is complete.  **Negotiations Agenda** -This is where it has been agreed what topics are to be negotiated in a particular order. This could be from a decision made by the branch/committee to put to the employer or agreed with the employer.  **Negotiations Committee** - A negotiations committee wherever possible should be made up of reps and members who cover the interests of all the members affected by the planned negotiations. It could involve speciality reps such as equality or health & safety  **Policy & Procedure** –A workplace **policy** is a statement which outlines an organisation's practices and **procedures** concerning part of its business, which can cover everything from day-to-day operational matters to compliance with employment legislation.  **Prospect Data Protection Compliance Officer** – The person who handles data requests and data on behalf of Prospect [datacompliance@prospect.org.uk](mailto:datacompliance@prospect.org.uk)  **Prospect’s Member Contact Centre (MCC) –** a service for members to have their queries answered/triaged. Tel.0300 6001878 [info@prospect.org.uk](mailto:%20info@prospect.org.uk)  **Protected conversations/Settlement agreements** -A protected conversation or sometimes known as pre-termination negotiations are the negotiations to reach an agreed termination of contract between an employer and an employee, the outcome is known as a settlement agreement. If you sign a settlement agreement, you cannot make a constructive dismissal claim. The conversations in most cases cannot be used in an employment tribunal.  **Trade Union Congress (TUC)** – the umbrella body for most unions in England and Wales.It has 48 member unions representing around 5.5 million people. <https://www.tuc.org.uk/>  **Without prejudice** – Information exchanged under this heading are usually inadmissible as evidence in a tribunal for unfair dismissal cases unless there has been improper behaviour by the employer in the process. See the detailed [explanation](#_Without_prejudice_explanation)  **Working parties –** Where you may have a negotiating committee, you may find it beneficial and reach an agreement quicker to form breakout groups to focus on specific parts of large negotiations. |

## Session 1: Let’s get started

### Activity A: Introductions

The tutor will split you into pairs.

Please gather the following information about your partner and fill in the form overleaf:

* Their name
* The company/organisation they work for
* Current union role/s
* An example of a negotiating experience they have had
* What they would they like to know before returning to their workplace.

The tutor will then ask you to introduce your 'partner' to the rest of the course participants.

**PLEASE NOTE:** Complete this form for the person you interview, not yourself.

|  |
| --- |
| Name |
|  |
| **Company and job role** |
|  |
| **Union role** |
|  |
| **A negotiating experience** |
|  |
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|  |
| **What does the person you are interviewing want from the course?** |
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## Session 2: Negotiation basics

This session clarifies the negotiating role and aims to bring out any areas of confusion or concern among participants.

Often employers just don’t know what to expect from the Union, building relationships helps this and is done over the long term. Some employers are good at consultation, some are very poor. It helps that a rep can build a good relationship to smooth the negotiation process.

Through this session participants will:

* understand the legal and cultural context for collective bargaining in the UK
* know UK law as it applies to collective bargaining
* understand basic conventions/techniques in negotiating with employers.

### The ‘voluntarist’ tradition

UK industrial relations have evolved into ‘voluntary’ arrangements between employers and unions – which isn’t to say these were established easily or peacefully.

In the 1970s, the government encouraged good industrial relations and most Prospect bargaining relationships (including the energy and telecoms sectors) are a legacy of this. However, remember that:

* employers are not obliged to bargain with unions
* union recognition is on a voluntary basis
* a statutory recognition provision was introduced in 1999. Even if an employer resists, a union can achieve recognition if it has

a) over 50% membership; or

b) over 10% membership and gets a majority in a ballot of all employees.

### Negotiations and the law

Although negotiations are not regulated or mandated by legislation in the UK, there are some legal (and para-legal) provisions that are relevant to negotiations.

### Union recognition

Statutory recognition is restrictive, is limited to pay, hours and holidays and is not an improvement on voluntary recognition. (link to C.A.C on terminology page)

As representatives of a recognised union, you have legitimate expectations of your employer that **don’t** rely on the law or legal enforcement. The employer shouldn’t act unilaterally.

Recognition covers everything you actually bargain about – regardless of whether it is specifically mentioned in a written agreement. A recognition agreement would set out:

* that the employer recognises the union for collective bargaining purposes
* the scope of collective bargaining
* who is covered by collective agreements?
* what issues are for negotiation and/or consultation; bear in mind that custom and practice may extend the scope of union recognition over time.

### Collective agreements

A collective agreement is property of both parties – employer and union – and cannot be changed unilaterally.

A union is less likely than an employer to serve notice to end an agreement. But it could do so if, for instance, there was an opportunity to reach a more advantageous agreement.

Collective agreements set the terms of how can negotiate with the employer and how we can communicate with our members within that. There is the need to review collective agreements periodically especially in the digital/homeworking age.

Collective agreements:

* are not a legal contract
* can have contractual effect
* Negotiated changes to terms and conditions are ‘implied terms’, altering employees’ contracts
* Variation of collective agreement
* By negotiation initiated by employer or union
* By employer serving notice to terminate agreement

### Information, consultation, negotiation

The purpose of information, consultation and negotiation is to take employees’ views and interests into account.

A recognition agreement may cover all of these:

* Providing information
* Consultation
* Negotiation
* Aims to reach agreement on changes at work
* No commitment to discuss information provided.

The union will always seek to make sure that any consultation is ‘meaningful’ and not just a tick box exercise by the employer. This can be defined as willing to listen to members concerns and move position because of that to reach an agreed position.

### Legal duties to consult

Employers have legal obligations to consult on:

* **Redundancy**

Trade Union and Labour Relations (Consolidation) Act 1992 s188 & ff

There’s no time limit for how long the period of consultation should be, but the minimum is:

20 to 99 redundancies - the consultation must start at least 30 days before any dismissals take effect

100 or more redundancies - the consultation must start at least 45 days before any dismissals take effect

* **Business transfers/outsourcing**

Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as TUPE)

[Public sector branches should also consult Cabinet Office Statement of Practice *Staff transfers in the public sector* (application of TUPE principles to public service transfers) **No defined consultation period.**

* **Health and safety at work**

Safety Representatives and Safety Committees Regulations 1977

Health and Safety (Consultation with Employees) Regulations 1996

* **Pensions (60 days)**

Social Security Pensions Act 1975

Occupational and Personal Pension Schemes Regulations 2006

* **Information and consultation**

EU Directive 2002/14/EC, European Union Directive for informing and consulting employees –applies to organisations of more than 50 employees (post-Brexit, this is included in the Information and Consultation of Employees Regulations 2004)

EU Directive 94/45/EC European Works Council Directive – applies to organisations of more than 1,000 employees across more than one European country (post-Brexit, this is included in the Transnational Information and Consultation of Employees Regulations 1999 [relevant part repealed on 1 January 2021] right to complain to the Central Arbitration Committee, if the council set up process was started before 2021 but not completed)

* **Statutory union recognition** (for where employers will not agree voluntarily)

Trade Union and Labour Relations (Consolidation) Act 1992 Schedule A1

**Note: In Northern Ireland,** the provisions contained in TULR(C)A 1992 are in the Trade Union and Labour Relations (Northern Ireland) Order 1995

### Rights to information from employer

The legal right to information gives a strong basis for requesting info – it **doesn’t** mean reps should seek legal enforcement in first instance!

Release of information can be refused on grounds of national security; that it was obtained in confidence; personal details; ‘substantial injury’ to business.

If considering seeking legal enforcement, you should think about whether the advantage of having the information will outweigh the potential impact on current and future relationships with your employer.

**For the purpose of collective bargaining**

* Information without which the union would not be able to negotiate effectively
* Information that should be disclosed in accordance with good industrial relations practice

The ACAS Code of Practice gives specific examples:

* Pay and benefits
* Employee numbers
* Business performance
* Financial information

The Freedom of Information Act applies if the employer is a public or wholly-publicly-owned body.

### Negotiating conventions

* Confidentiality
* Until agreement reached or unless agree to release information as part of negotiations
* Chatham House Rule: When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.
* ‘Without prejudice’ offers (see [explanation](#_Without_prejudice_explanation))
* An offer made during negotiations by either side that is not a definite commitment
* ‘Corridor conversations’/‘behind the chair talks’
* A way of opening up dialogue to move negotiations forward
* Minutes and reports – or lack of them
* ‘Negotiating in a goldfish bowl’

### What about the members?

* Voluntarism
* What is achievable in negotiations depends on membership strength and support
* Need to keep members engaged
* Communication about key issues; but
* respect confidentiality of negotiations
* Too early, too little?
* Insisting on being able to disclose content to members may mean you can get less for them!

### Rights to information – a checklist

Section 181 of the Trade Union and Labour relations (Consolidation) Act 1992 requires employers to provide certain information to a recognised trade union upon request.

The type of information is defined in detail in the ACAS Code of Practice (see [www.acas.org.uk/codes-of-practice)](http://www.acas.org.uk/codes-of-practice)), but in summary it is as follows:

* Number of employees (broken down by grade, location, race, disability, occupation, sex and employment status (full-time, part-time etc)
* Distribution of employees through the pay scales
* Employee turnover in the previous year, including leavers and joiners
* Number of posts vacant
* Cost of the pay bill in the previous year
* Cost of overtime in the previous year
* Cost of allowances in the previous year
* Cost of performance-related pay in the previous year
* Distribution of performance-related pay broken down by the criteria outlined in (1) above
* A summary of the financial performance of the organisation and its future plans.

Employers sometimes try to block the release of information. The following reasons are specified in Section 182 of the Trade Union and Labour relations (Consolidation) Act 1992 as allowable restrictions on employers’ general duty to disclose information:

* where to provide it would be a breach of national security or of a statutory prohibition
* where the information is property of a third party and is held in confidence
* where disclosure would be injurious to the employer (NB this does not mean injurious to the employer’s bargaining position relative to the union!)
* where compiling the information would involve a disproportionate amount of work.

If the disclosure of information is withheld for these or any other reasons, seek immediate advice from your branch colleagues and/or your Prospect full-time officer in case it is necessary to take action to enforce the union’s statutory right to information.

## Session 3: Bargaining with employers

### Activity B: Bargaining with employers exercise

You are the branch committee of ExertCo.

ExertCo is a provider of customer service systems to major companies, including BigCo.

BigCo has its own employees who deal with their customer interfaces, which include both business and personal customers.

It uses ExertCo for design, supply, installation and periodic upgrading of customer service software.

ExertCo’s employee relations manager has written to the branch on a ‘without prejudice’ basis.

ExertCo has a technical helpdesk for BigCo users of a personal customer service software application. The helpdesk is staffed by 25 ExertCo employees, many of whom are women and most of whom are in their thirties.

ExertCo wants to increase the hours covered by the helpdesk. You have agreed to meet the employee relations manager in a few days’ time.

At the moment, the helpdesk is staffed from Monday to Friday on a 9am to 5pm basis, with on-call cover for evenings up to 10pm and weekend daytimes only.

Cover over lunchtimes is arranged informally within the helpdesk team.

ExertCo wants to extend this so that the hours for full service will be 7am to 7pm, covered by two shifts of 7am to 3pm and 11am to 7pm respectively.

The out-of-hours and weekend cover arrangements will not be changed, except that obviously out-of-hours working will now start at 7pm rather than 5pm.

Attached are copies of:

* ExertCo’s working hours policy
* ExertCo’s on-call agreement

Both of these are collective agreements with Prospect.

As yet, you do not have formal proposals from ExertCo about how the proposed changes would be implemented, except that the company has stated that they do not intend to increase headcount on the helpdesk.

They are taking the view that there will still be a full complement of staff between the hours of 11am and 3pm and that demand is lower outside those hours.

You have checked the membership records and found that you have 10 members among the helpdesk staff.

As the branch committee, you need to consider how you will approach the meeting. Consider:

* What issues are raised for members and for Prospect by the information you already have?
* What information should you ask ExertCo to provide?
* What is your initial position on the proposals?
* What are you going to do next?

**ExertCo working hours policy**

ExertCo is conscious of its obligations to employees under UK and European law. It is agreed between ExertCo and Prospect that working hours within the company will be managed as follows:

**Hours of work**

1. The standard working week for ExertCo employees is 35 hours.
2. Every employee is entitled to a break of one hour each day.
3. Within their total working hours, employees will be flexible to meet the needs of the business.

**Additional hours and time off in lieu**

When an employee is required to work longer than their normal hours s/he will be entitled to compensatory time off on an hour-for-hour basis. The time off should be taken within the same week where possible and in the following week otherwise, at a time agreed with her/his manager.

In the event that operational requirements lead to an employee working more than seven additional hours in one week, s/he may choose to take one day’s pay rather than the equivalent time off.

Weekend attendances are exceptional, will be subject to at least two days’ advance notice by the company and will be compensated with pay at time-and-a-half.

**Family-friendly working hours**

If an employee requires time off for a medical appointment, or for a medical appointment of a child or relative or other dependant, this will be granted, and her/his line manager will specify how this time can be made up.

If an employee requires time off to care for a child or sick relative or other dependant, s/he must notify her/his manager as soon as possible, stating the expected duration of such time off. Paid time off will be available for five days each year under this arrangement, and unpaid time off thereafter.

Employees may request flexible working hours under the statutory arrangements, and ExertCo will make every effort to meet such requests, subject to operational requirements.

*Last updated 1 November 2003***ExertCo standby policy**

It is in the nature of ExertCo’s business that in some functions, flexible out-of-hours support to customers will be required. It is agreed between Prospect and ExertCo that:

1. The company will seek to provide such out-of-hours cover on a voluntary basis.
2. Employees who agree to provide out-of-hours cover will be provided with appropriate equipment to enable them to meet the operational need for such cover, ie a mobile phone and a laptop with access to ExertCo systems.
3. An employee who agrees to provide out-of-hours cover will be required to cover no more than one evening per week plus half a day at weekends, on a roster to be determined by the manager of the relevant department.
4. When on standby, calls should be answered as soon as possible, with due regard for safety (eg if driving) and in any case within 15 minutes. Work on the problem should begin as soon as is practicable and the customer should be advised of when this will be.
5. Employees who provide outside cover will be compensated on the following basis:

* One-quarter of their normal hourly rate for each hour spent on rostered standby; plus
* payments for responding to calls as follows:

|  |  |  |
| --- | --- | --- |
| **Duration** | **Weekday evenings** | **Weekends and public holidays** |
| Up to 60 minutes | £15 | £30 |
| 60 minutes – 120 minutes | £35 | £70 |
| More than 120 minutes | £50 | £100 |

1. A complex problem requiring, or projected to require, more than 120 minutes to resolve should be logged as a priority job for the next working day. ExertCo will not pay more than the maximum allowance if an employee on standby works on a problem for more than two hours.
2. An employee wishing to cease providing out-of-hours cover must give one month’s notice of her/his intention.

*Last updated September 2006*

## Session 4: Effective representation

### Activity C: Working out your strengths

This activity gives you an idea of which roles should play to your strengths. Consider the statements for each category, pick the one that best sums you up and circle the letter response.

Then score yourself:

* for each A, give yourself three points
* for each B, give yourself two points
* for each C, give yourself one point.

**Planning**

**A)** I feel that I am a very disciplined planner. I think through almost everything I do. I make detailed lists and always follow them through. I set concrete goals for myself every day.

**B)** I make lists for myself, but not in every instance. I possess a general vision for what I want to accomplish, but sometimes I get bogged down in the detail. When things get hectic, I plunge ahead on intuition.

**C)** I rarely, if ever, make lists. I believe over-planning gets in the way of spontaneity and real creativity. I take things the way they come.

**Direct requests**

**A)** I almost always know what I want and am not shy about asking for it. I don't worry that I may hurt the feelings of others. A request is simply business.

**B)** I know what I want when it's important to me. Sometimes I don't know what I want (or particularly care) because it isn't important. I expect others to be sensitive to my needs the same way as I am to theirs and I get frustrated if they don't.

**C)** I think in most cases, every problem has many solutions and that one is as good as another. I don't want to impose my requests on anyone. I don't like people to say no to me.

**Patience**

**A)** I never get upset with people I do business with. It takes me a while to get involved in a project or committee, but once I do, I stay with it until the end.

**B)** I can stick to a goal as long as it is realistic to me. But when the odds are bad or nil, my enthusiasm wanes. I only finish the important things I start.

**C)** I tend to get discouraged when things don't happen my way. I don't like the tension of uncertainty. I need gratification quickly or I move on to something else.

**Listening skills**

**A)** People seek me out when they have problems they need to discuss. When I am in conversation, I listen ‘behind’ the words in order to understand what the other person really means. I do not feel as if I must always be talking in a conversation. I often remember little facts about people.

**B)** I enjoy conversations and often have long talks with people. When I am with somebody interesting, I listen. I normally dominate the conversation. I can often predict what somebody will say before they say it.

**C)** I feel that conversations exist to accomplish a goal. If you keep to the point, people say what they want. I take people at face value most of the time. I don't try to figure out where people are coming from in a conversation.

**Rating yourself**

**A score of 10-12** – you possess the basic personal skills to be an astute negotiator. You plan, are patient, listen well and make direct requests.

**A score of 6-9** – you are strong in some areas, but you need to be stronger in others (where you scored 1 or 2) pay special attention to them.

**A score of less than 6** – you need to exercise firm discipline throughout the whole negotiation process. You are not a natural, but if you concentrate you can still get a good outcome.

### Roles in team negotiations

When a negotiation starts, it is important that your side is prepared – this includes the roles within the negotiating team. It is always better to stick to people’s strengths when they take on a role.

Here are three examples of the roles within a team:

* The Leader, who sets out the arguments
* The Task Manager, who makes sure the negotiations stay on track
* The Observer, who keeps notes and evaluates any changes in position.

### Activity D: Picking a team

In your groups and from your scores, pick the roles that best suit you. Those who have higher scores in listening should take the part of the observer; those higher in planning should be the task manager and those with the overall high scores should be leaders.

### Roles within a negotiating team

Deciding and defining roles in advance helps to make your negotiations more systematic and maintains unity within the team during the negotiating process.

Depending on the size of your team, here are some roles your lead negotiator might decide to give people:

* People watcher – looking out for reactions
* Information analyst/Number cruncher
* Specialist input (eg from a particular interested department or group)
* Note taker
* Mr/Ms Angry!

It is vital that people who take on a role in the team understand what is expected of them and commit to carrying out their role during the process.

## Session 5: The negotiation process

### Starting points­­­

Union claim Employer offer

, .­­­

Union claim No employer offer

Employer proposal for change Union resistance

Employer proposal for change Union neutrality

Each party has limited knowledge of the other’s position and it may not be enough just to put in a claim; it might need informal exploratory chats to dig down to discover the other side’s real intentions. You will need to know this about your own side too.

­­­­Diagram, bubble chart

Description automatically generated

**What is your position?**

To negotiate successfully, your side needs to know what they want.

**Decide which fight to fight**

Is this the right issue to negotiate on? Is it worth the time and effort? Do the stakes stack up?

Is the gain higher than the risk of loss?

How flexible do you think the other side will be? One of the big things that unions try to do is preserve the status quo, when it might be better to negotiate better terms for change.

How much power does the other side have? Do they have the power to negotiate an agreement or are they simply carrying out orders eg lower management in a bigger organisation.

**Checklist of questions to ask**

* Is it a member issue or needs input from members?
* Have you identified the key information that needs to be obtained from the employer?
* Have you discussed this issue with the branch committee (other reps, elected body) to decide if or what wider member engagement is needed?
* Have you clearly identified the times and mechanisms to be used in the process and where members engagement is needed?
* Are there several areas that can be broken down into negotiation points?

**Plan, plan, plan**

Ask yourself these questions:

* What do you want from the negotiation?
* What does the other side want?
* When do you want it?
* How much will you give up for it?
* How much will the other side give up for it?
* Once you have a plan write it down and share it with your team.

**Be SMART**

S... Specific

M... Measurable

A... Achievable/Agreed

R... Realistic

T... Time-bound

**Stop, look and listen**

Remember: you have two ears and one mouth, and that is so you can listen twice as much as you speak.

You need to get every scrap of information you can from the other side, and you won't get any if you do all the talking!

**Define your position**

Do this clearly while leaving the door open to negotiation. The more hesitant language you use, such as “isn't it”, “you know”, “um mm” and “I mean”, the less people are likely to believe your argument.

**Who do you need to convince to say yes?**

Sometimes both sides have to convince their members/board members that this is the best deal on the table.

What is the timetable? Does the other side need a quick resolution, or can they walk away without any damage?

Persuasion involves creating a storyline to support a position eg if the workers do not have a minimum call-out rate, they could actually lose money because the cost of travelling to work is more than they earn on that shift.

This can be tackled by challenging the facts. Ask how these facts were arrived at, any assumptions break the story.

Use positive rather than negative language: instead of saying “You're wrong about this”, say “That's true, however...”, “That's an excellent idea, but if we look more deeply...” or “I agree with what you say but have you considered...”

### Informal meetings

Informal contact:

* helps you to get to know the person you need to deal with and build up a good relationship
* helps you understand what makes them tick and how will they respond to different approaches
* gives you the opportunity to break down negative expectations or perceptions of trade union stereotypes and the fear they are going to be outsmarted if they are new to working with a union.

### Activity E: Perception

Spend five minutes going through the statements and then as a group, suggest building bridges between the two

|  |  |
| --- | --- |
| **Member’s perceptions** | **Employer’s perceptions** |
| The pay has not been increased for a long time. | The wage bill is already too high. |
| With other costs going up, I need some more income. | With other costs going up, I can’t afford to pay more for staff. |
| The workplace looks tired and depressing. | They have given that workplace heavy wear and tear. |
| These targets are not achievable. | The staff can easily hit the targets if they knuckled down. |
| The dress code is so restrictive. | The staff constantly need reminding of the dress code. |
| Other employers care about their staff. | Staff should be proud to be working here. |
| There should be no dogs in the workplace. | We let staff bring their dogs in to work to help with their mental health. |
| I always do tasks whenever managers asked  me to. | The staff never use their own initiative to pick up tasks needed to be done. |
| The management is cold and distant; never asks me how things are. | The managers are considerate and are encouraged to have a hands-off approach. |
| Why is the manager phoning me when I am  off sick? | We have a caring approach to staff off sick and check up on their wellbeing. |

### Things to consider when in a negotiation meeting

**Be professional**

You are representing members, and this should be done professionally and with discretion. Decide on your team roles and stick to them.

**Challenge the other side’s behaviour**

They are there to get a deal, not to ‘have their say’. Constant interruptions should be challenged, such as receiving phone calls in the meeting or not letting you get through your claim without interruption.

**Refuse to be intimidated!**

Even when the odds are most unlikely, few situations are rigidly fixed. If you don't ask, you won't get!

Never assume you know how events are going to play out, what the other side wants, or how they will react. Always expect the unexpected.

**Never be afraid to ask**

Let the other side say “no” for themselves. But when you ask for something, be prepared that you may have to give up something in return.

**Don't get personal**

Steer clear of personal antagonism in your negotiations. Be alert to personal agendas, both yours and the other side’s. Resist the temptation to bring up the past as you deal with the present. Even if someone on the other side is rubbing you up the wrong way, stick to tackling the problem. We know that this is sometimes easier said than done!

Think about your language, don’t use ‘you’ try using the ‘members’ and the ‘company’

**Build up trust**

Good faith breaks down for several reasons:

* innocent misunderstandings
* perceived dishonesty
* negligence and irresponsibility
* fear.

Always clarify the reasons for your actions and position, don't assume the other side knows. Mean what you say and say what you mean.

If you make a mistake, admit it. If you say you will do something, do it in the time you say you will. Respect confidences and the other side.

Ease any fears that can be identified.

**The different type of conflicts**

* **One-sided –** only one side has a request eg asking for flexible working.
* **Two-sided –** each side has an objective, and no agreement can be reached until both are satisfied.
* **Personal grievance –** conflict arises from acts of individual volition.
* **Systemic –** disagreements are the result of the different organisational agendas eg management wants to increase profit and the union wants to safeguard workers’ terms and conditions.

**Stating your case**

Is it going to be a business case, one of fairness, a moral one or a bit of each?

**Persuading** involves being able to convince others to take appropriate action.

**Negotiating** involves being able to discuss and reach a mutually satisfactory agreement.

**Influencing** encompasses both of these.

**Mirroring the other person's mannerisms** (eg hand and body movements).

A study at INSEAD Business School found that 67% of sellers who used mirroring achieved a sale compared to 12% who did not.

People you mirror subconsciously feel more empathy with you. However, it can be very embarrassing if the other person detects conscious mirroring so it must be very subtle.

You need to leave a delay of between two and four seconds before the mirroring action.

***“It is very easy to defeat someone,   
but it is very hard to win someone”***

*–* A.P.J. Abdul Kalam (former President of India)

**Finding common ground**

How do you get beyond talking at each other?

Try such phrases as:

* “If you could…, we could…”
* “How would you respond if we move on…?”
* “If we did… then presumably you could…”
* “Perhaps we could look at this in a new way…”
* “You have made some very valid points, let me just go through with you the effects that would have…”

**Practical tips**

* Keep it clear and simple
* Avoid confrontation as a starting point
* Think through their likely position/responses in advance
* Don’t waste time on less important issues
* Use side-talks/adjournments to try out alternative approaches
* Be straightforward – remember to build trust
* Don’t try and force a public climb-down
* Don’t spoil a win by rubbing their noses in it
* Make an agreement, not your last agreement; even if you get a win you need to look to the longer-term impact and future relationship.

**Creating a win-win scenario**

In most negotiations, it is important that both sides feel they won something for the effort of negotiating. Here are some things to look out for:

* Understand their world
* Sound consensual and reasonable
* Talk different viewpoints (not ‘interests’)
* Identify advantages of your alternatives
* Focus on the outcomes, not the problem
* Find reasons for them (and you) to move eg changed circumstances (internal/external)
* If you get concessions, let them take credit
* Don’t try to force a climb-down.

### WIFTA and BATNA

**WIFTA = What If you Fail to Agree?**

Emphasise that there are consequences to not being able to agree.

Alternatives all have their drawbacks eg escalation or arbitration can compromise relationships for the future, also a third party may take a harder line.

Industrial action – may be falling into a trap!

**BATNA = Best Alternative to Negotiated Agreement**

eg securing a broader review of issues, agreeing to return to some questions next year, obtaining a commitment to a fact-finding exercise etc.

Negotiators who think ahead and define (realistic!) BATNAs avoid falling into traps or getting painted into a corner.

### Activity F: Tactics

Look at the following tactics and in your groups, decide if you would use that tactic or challenge it if it was done to you.

**Opening gambits**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Tactic** | **Use?**  **Yes / Maybe / No** | | | **Challenge?**  **Yes / Maybe / No** | | |
| **Tactic 1: Always appear reluctant** I do not have to take this deal. I am interested in acting in good faith, but I may or may not accept the conditions of this deal. |  |  |  |  |  |  |
| **Tactic 2: Never, never, accept the first offer** A good negotiator always starts you at one extreme of the bargaining range. Counter with “that's an attractive offer but I still have real concerns”. |  |  |  |  |  |  |
| **Tactic 3: That's not good enough** This is the single most effective way to begin the negotiation on your terms. The other side may turn the tables on this and counter with “What will be good enough?” Avoid a direct answer to this. |  |  |  |  |  |  |
| **Tactic 4: Cringe and make a face** A little bit of theatrics goes a long way in negotiations. Shake your head or make a small sound of horror, then stay silent and let the other side maybe alter their offer. |  |  |  |  |  |  |
| **Tactic 5: Ask for the kitchen sink** Don't be shy in your first offer. Be bold, the more you ask for in the beginning, the better. If you ask for A, B & C and you'll settle for C, you can always trade A & B. |  |  |  |  |  |  |
| **Tactic 6: Neutralise the other side's perceived power** Don't let the other side make you feel slight or inferior; focus on your strategy. |  |  |  |  |  |  |
| **Tactic 7: Schedule sessions on your own turf** Like a football team, the home side has an advantage. |  |  |  |  |  |  |
| **Tactic 8: Use confusion to your advantage** When people are unsettled, they are easily influenced. At critical moments, it will be to your advantage to suggest a variety of complicated options. The option you favour is the easiest to understand. |  |  |  |  |  |  |

**Winning the middle of a negotiation**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Tactic** | **Use?**  **Yes / Maybe / No** | | | **Challenge?**  **Yes / Maybe / No** | | |
| **Tactic 1: Resolve the small issues first** It is important to establish good faith at this stage; you are laying the foundation for the end of the negotiation. If you are getting bogged down, is there a smaller issue that can be resolved to start the process? |  |  |  |  |  |  |
| **Tactic 2: Always keep an impasse alive with set asides** This is an issue you agree to disagree on until a later date. Setting aside emotional issues gives both sides time to cool down. |  |  |  |  |  |  |
| **Tactic 3: Avoid the emotional land mines** Don't antagonise the other side over emotional topics. |  |  |  |  |  |  |
| **Tactic 4:** **Don't over-react when the other side says no** No does not necessarily mean never, it could be subject to change. |  |  |  |  |  |  |
| **Tactic 5: Be careful of the telephone and online** The telephone can be a double-edged sword. It can speed up the process, but it can also stop real movement on an issue. Like email, the words can be misinterpreted, and you can miss subtle visual clues to what the other side may move on.  Online negotiations can reduce the ability to see someone’s body language. One side can use a poor connection to their advantage. You could WhatsApp between your team while the meeting is taking place. |  |  |  |  |  |  |
| **Tactic 6: Get it in writing** It is good to consolidate what has been agreed and what is still to be agreed. It is much harder to retract a position once it is written down. |  |  |  |  |  |  |

**Closing the deal**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Tactic** | **Use?**  **Yes / Maybe / No** | | | **Challenge?**  **Yes / Maybe / No** | | |
| **Tactic 1: Set a deadline** Letting things drag on can work against you. |  |  |  |  |  |  |
| **Tactic 2: Allow the other side to make the first move** Even if you set the deadline, you want the other side to come back with an offer. |  |  |  |  |  |  |
| **Tactic 3: Why not split the difference?** As soon as this is said, it changes the deal. We are down to finding where that split should go. 75/25 could be gained. |  |  |  |  |  |  |
| **Tactic 4: Lay planks through the quicksand** When the deal is stuck, is there some element that gets one side to move over that sticking point? For example: spreading the deal over a longer time; raises in instalments; back pay rounded-up; moving someone to another department. |  |  |  |  |  |  |
| **Tactic 5: The last-minute surprise** This is where one side throws in an unexpected demand, usually not so huge as to break the deal, but big enough to get that bit extra. |  |  |  |  |  |  |
| **Tactic 6: Know when to hold onto something and when to give up on that issue** Sometimes holding out on a condition at all costs can mean you lose the chance for a better deal. |  |  |  |  |  |  |
| **Tactic 7: You draft the document** If you supply the words, you can ensure they cannot be misinterpreted. |  |  |  |  |  |  |
| **Tactic 8: Making sure the agreement is  stuck to** Always agree when the changes happen and that the terms are carried out. |  |  |  |  |  |  |

## Session 6: Negotiations in practice

This session is designed to put what you have learnt into practice.

### Activity G: The X & Y game

**Win as much as you can!**

For six successive rounds, you and your team will choose either an X or a Y. Each round’s profit or loss depends on the pattern of choices made by your team and the other teams.

|  |
| --- |
| **3 teams** |
| 3 Xs: each team loses £1 |
| 2 Xs: win £1 each, 1 Y: lose £2 |
| 1 X: win £2, 2 Ys: lose £1 each |
| 3 Ys: each team wins £1 |
| **4 teams** |
| 4 Xs: each team loses £1 |
| 3 Xs: win £1 each, 1 Y: lose £3 |
| 2 Xs: win £2 each, 2 Ys: lose £2 each |
| 1 X: win £3, 3 Ys: lose £1 each |
| 4 Ys: each team wins £1 |

In each round, you should confer within your team and make a joint decision whether to play an X or a Y. Do not play your card until the facilitator tells you to.

In rounds three and six, bonuses apply:

* in round three, the payout is multiplied by a factor of three;
* in round six, the payout is multiplied by a factor of six.

In these rounds only, a representative from your team may confer with representatives from the other teams.

### Activity H: Negotiations at Stationery State

This role play exercise, and the planning process that you will undertake to carry it out, will help you to:

* produce an effective negotiating plan
* demonstrate key negotiating skills
* evaluate negotiating positions.

You will be divided into management and union teams.

In your pre-meeting, you should read through the information on Stationery State on pages 33 and 34, plus the additional briefing material for your team, to:

* identify the key issues and facts relevant to your negotiations
* agree some negotiating objectives for the meeting
* decide on your opening position and how you are going to back it up
* consider the other side’s likely position and your responses
* decide what you could concede, and your fall-back position
* agree roles for everyone on the negotiating team. (If your team is large, you will be asked to nominate an observer for the meeting too.)

When you come to the negotiating meeting, make sure that you maximise what you are able to achieve in the limited time available.

You can find dos and don’ts for negotiating meetings on page 40.

**Opening scenario – negotiations at Stationery State**

Stationery State is a private company formed in 1988 following the privatisation of the Government Supplies Agency (GSA).

It publishes and sells specialist and technical government publications to industry and the general public in the UK and around the world.

It has a 10-year renewable contract with the Department of Innovation, Trade and Specialist Affairs. Though it is largely self-sustaining, a fall in demand for its products and cuts in government funding have necessitated a recent corporate belt-tightening exercise.

The company was established as a not-for-profit entity but is under increasing pressure to operate along more commercial lines.

When the company was initially formed, most of the staff were transferred to it from the GSA. They retained their civil service status and, although some reorganisation and harmonisation has been carried out, the rather hierarchical grading structure inherited from the GSA remains pretty much intact for the staff who were transferred in under the Transfer of Undertakings (Protection of Employment) Regulations – TUPE.

The company’s headquarters are just outside Preston where it employs 650 staff. 50 of these, all of whom are multi-lingual, work in the call centre which is a 24/7 operation.

Nearly all of these staff are highly skilled migrants from the new EU states in eastern and central Europe. With one exception, this team is not on civil service terms and were employed after privatisation. They receive a foreign language skills allowance won as part of an earlier pay agreement.

Stationery State considers itself to be an *employer of choice* in the local area due to its favourable terms and conditions. The company also has a network of retail shops around the UK which in employ a further 70 people.

The company retains the civil service love for process and procedure and most aspects of the employment contract are covered by some sort of process or other. Many, including the equal opportunities policy, have not been revised in any meaningful way since the company was formed.

The company is quite top-heavy with about 60% of staff concentrated in the higher grades. The remainder are administrative and production workers. Prospect membership is quite high.

Prospect concluded a single union agreement with Stationery State when the company was formed and is recognised for collective bargaining on all terms and conditions and for all employees.

The current chief executive is Jaspal Singh. Jaspal was a senior civil servant in the GSA before privatisation; he has no private sector experience other than at Stationery State. He is due to retire next year. He is a member of the First Division Association.

Clarice Clocktower, the recently appointed director of people resources, has embarked on a programme of refreshing Stationery State’s image as an employer.

In particular, she has ensured that the company displays the *Investors in People* and *Positive about Disabled People* kite marks in all its premises and on its stationery.

Clarice came to Stationery State from the telecoms industry in the USA where she specialised in change management. She has not previously worked with trade unions.

**Stationery State equal opportunities policy**

Stationery State aims to be an equal opportunities employer and all employees will be treated on the basis of their own individual merits and abilities. We recognise that it makes good business sense to ensure that we recruit the best candidates and that all our employees are treated with dignity and respect.

We are committed to diversity and equality and oppose all forms of direct or indirect discrimination.

In accordance with requirements under the legislation, this policy covers all employees irrespective of sex, race or disability.

This policy covers all aspects of employment and we will monitor the composition of our workforce in order to ensure compliance with the policy.

Stationery State will communicate this policy to all employees and job applicants.

All staff are required to demonstrate compliance with this policy and where required training will be provided. Breaches of the policy will be treated as serious misconduct and will be dealt with under the disciplinary procedure.

Any complaints of unfair discrimination should be raised through the grievance procedure.

Advice on any areas of equality at work should be sought from the HR manager.

This policy has been agreed with Prospect. It will be reviewed on a regular basis, and at least every three years.

**Equality and diversity survey results**

1. There are a greater number of women, members of ethnic minorities, older and disabled workers in the lower grades than in higher grades.
2. People in those grades can only access training related to their job – so although they apply for promotion, they are never eligible.
3. There are numerous examples of workers across a number of grades who have been told informally that they are too old to apply for certain types of training or promotion.
4. There were numerous experiences of unwelcome workplace ‘banter’, especially about people with disabilities and notably in the customer call centre.
5. There is widespread ignorance of equality issues generally and most people surveyed had not received any employer-led equalities awareness training during their time with the company.

**Negotiations at Stationery State: Management brief**

You are the HR manager and other senior managers at Stationery State. You have regular quarterly meetings with the Prospect Stationery State branch. In the upcoming meeting, a number of items need to be addressed, some of which are contentious.

You need to decide on your objectives for the meeting and how to address the various issues to achieve those desired outcomes.

Prospect has asked for equality and diversity to be on the agenda. When asked to give some further details, the Prospect rep concerned said that the organisation’s policy was out of date, and that there were other concerns arising from a union survey that they would like to discuss.

You are aware that your policies do not fully reflect the current state of the equalities law and the potential problems of non-compliance.

You are aware that one member of the trade union negotiations team has just completed a CIPD diploma which involved them drafting an equal opportunities policy for an organisation.

You would like to use this meeting as an opportunity to offer the updating work to that person as a development opportunity. It would save you the time and bother of doing it yourself and avoid the expense of putting it out to an external consultant.

However, the union’s survey is a problem in itself. The director of people resources, Clarice Clocktower, has instructed you to treat the survey as a breach of the facilities agreement, as it was conducted without permission from Stationery State.

She believes that the union has overstepped its role and that this is an opportunity to put Prospect in its place and clarify its role. Although Stationery State has always had a good relationship with Prospect, you know that Clarice believes that trade unions are a barrier to change and modernisation.

You suspect Clarice thinks that lots of the people in Stationery State are also barriers to change and modernisation!

She believes people should work the hours required to get the job done and she is impatient with what she calls Stationery State’s ‘internally-focused culture’. She is very ambitious and clearly thinks that Stationery State needs a shake-up, although she hasn’t yet been explicit about what needs to change.

One thing that Clarice has changed is that the training budget has been halved. You know that the union has been supportive of Stationery State’s approach to training and has used it as a case study of good practice in the union’s journal, so you are concerned about how they will receive this news.

Despite Prospect’s support, your training records indicate weak involvement by certain categories of worker. These are mostly low-grade workers who don’t need much training to do their job and where staff turnover is high.

You feel that there is not much you can do about that. You are more worried by the fact that more than half of your line managers appear not to have received any training for their managerial aspects of their roles. Although some of them are pretty experienced, you doubt they are all up to date with current legislation and policies.

Clarice has written to Prospect giving notice that Stationery State intends to cease the foreign language allowance from the call centre staff. The union has not yet responded to this letter.

In her letter, Clarice said that she was informing the union as a gesture of goodwill. The call handlers have been advised in team meetings that there will be a change to their terms and conditions and that further information will be provided following the next meeting with Prospect.

You have had quite a lot of questions, ranging from anxious to furious, from the call handlers themselves.

The Prospect branch secretary asked if Clarice could attend this meeting as she has not yet met the union, but she has declined, citing an important meeting with a local politician.

You have heard anecdotally that there is a problem in the Preston office with some staff circulating ‘jokes’ about disabled people. However, you personally have not seen or heard evidence of this, and no complaints have been raised.

|  |
| --- |
| **Notes** |

**Negotiations at Stationery State: Union brief**

You are the Prospect Stationery State branch committee. You have regular, quarterly meetings with the Stationery State HR manager, who also brings other relevant senior managers to the meeting.

In the upcoming meeting, a number of items need to be addressed, some of which are contentious. You need to decide on your objectives for the meeting and how to address the various issues to achieve those desired outcomes.

You have asked for equality and diversity to be on the agenda. One of the committee members recently did some work for a course they are on (funded by Stationery State), which involved carrying out a survey on equality issues.

The survey covered current job status, promotion, training, pay, and asked people to identify their most significant issue or concern at work. The most recurrent theme arising from their results are attached on page 32.

One of your members, a disabled Asian woman from the call centre, has just told you that she has submitted a formal grievance on grounds of discrimination.

She has a hearing date and wants someone to represent her. You are concerned that the HR manager has not contacted the branch to informally to make you aware of this, in line with custom and practice.

Although only three grievances have been taken out on equality issues over the past two years, the survey findings threw up more widespread dissatisfaction.

As a committee, you have discussed this and decided that the organisation’s equal opportunities policy is not fit for purpose.

The branch committee has agreed that one of its priorities must be to seek a negotiated policy that reflects current standards and concepts of equality. You are happy to play an active role in the policy’s implementation as well.

Clarice Clocktower, the new director of people resources, has written to the branch giving notice that Stationery State intends to discontinue the payment of the foreign language allowance to staff in the call centre.

In the letter, Clarice said that she was informing the union as a gesture of goodwill. You have heard from members in the call centre that they have been advised in team meetings that there will be a change to their terms and conditions and that further information will be provided following the next meeting with Prospect. They are extremely concerned.

The committee is not impressed with this example of Clarice’s style, but does not want to make a conflict out of what may simply be a misunderstanding.

You have therefore asked HR if Clarice can be at the regular meeting. As yet, you have not received an answer.

### Negotiation planning sheet

|  |  |
| --- | --- |
| **Summary of key issues and facts** | |
| **What you aim to achieve** | |
| **Your opening position** | **Arguments and evidence** |
| **The other side’s likely position** | **Your counter-arguments** |
| **Your fall-back position** | **What you could concede, and under what circumstances** |

### Negotiation planning and observation sheet

This is to help you give relevant feedback after the meeting. Make your notes under the relevant headings.

|  |
| --- |
| **Was the opening position clear?** |
| What worked well and not so well setting this out? |
| **Did the team understand the other side’s position?** |
| How well did they:  1) Show that they understood the position and the reason for it?  2) Put forward counter arguments? |
| **Did the team make concessions?** |
| If so:  1) Were these necessary, or did they go too far?  2) What did they get in return? |
| **Was there a clear outcome to the negotiating meeting?** |
| If so:  1) How did it compare with the team’s fall-back position?  2) Did the team summarise it accurately? |

### Dos and don’ts for negotiating meetings

**Before the meeting**

**Do** prepare thoroughly – know your stuff.

**Do** prioritise and identify your key objectives and issues.

**Do** plan your approach and agree team roles.

**Do** establish your showstoppers and potential concessions.

**Don’t** neglect issues that are significant, even if they only affect a minority of people.

**Don’t** get so bogged down in information that you forget what you want to achieve.

**Don’t** try to anticipate everything in advance – you will lose flexibility and responsiveness.

**Don’t** over-estimate the strength of your bargaining position – or the employer’s!

**In the meeting**

**Do** listen to the employer and ask questions if you need to seek clarification.

**Do** use positive statements to put forward and support your arguments.

**Do** be clear about what you want to achieve for members.

**Do** explore ‘What if…’ scenarios and use a problem-solving approach.

**Do** use adjournments if you are uncertain about where you’ve got to or how to proceed.

**Do** keep your own side together.

**Do** stay calm, professional and assertive.

**Do** summarise at the close of the meeting.

**Don’t** make assumptions or try to second-guess the employer’s motivation.

**Don’t** talk too much.

**Don’t** sound dogmatic or inflexible about how to meet your objectives.

**Don’t** make concessions without getting something in return.

**Don’t** walk out.

**Don’t** talk among yourselves in the meeting.

**Don’t** get personal, lose your temper or be sarcastic.

**Don’t** be intimidated – you have a right to be there!

## Session 7: Negotiations and your members

### Making the most of recognition – relationship management

Recognition for the purposes of collective bargaining is a precious asset for you as a trade union negotiator. Managing relationships with your employer smartly and effectively helps you make the most of recognition, maximising your influence with your employer by:

1. improving the negotiated outcomes you are able to achieve; and
2. convincing the employer that good relations with Prospect are an essential part of managing the organisation well.

Volumes have been written on the complexities of relationship management, but here are some straightforward principles and tools to help you:

**‘Experience good’**

Negotiating with trade unions is what economists call an **‘experience good’** – an employer will be more receptive to what you have to say if they have had positive experiences of working with you, or of working with other union/reps.

Conversely, negative experiences will affect an employer’s attitude to negotiations with you, even if you and/or Prospect were not involved. And employers who have no experience of negotiating with unions may simply have prejudices or fears about dealing with you.

Part of being a good negotiator is being able to show the value to the employer of having a positive relationship with you and with Prospect.

**Do your homework and gather intelligence**

Make sure you **do your homework and gather intelligence**. What are your members’ attitudes to their employer and to any current issues? What is their level of confidence? What is your track record in negotiations, and what were the reasons for any successes/failures? Do you have access to key decision-makers? Can you show that not dealing with Prospect could give rise to problems for the employer?

**Foghorn message**

Decide on your **‘foghorn message’** – the most important thing you want to get across to the employer.

A foghorn message can be context-specific – eg “compulsory redundancy is out of the question”.

Alternatively, it can be a more general attitude or standpoint – eg “We’re all working to make sure this business is going places”, or “We all want is a good place to work”.

Your foghorn message should be repeated at every opportunity – the aim is for it to shape the employer’s expectation of negotiations and their attitude to the union more generally.

**Needs identification** and **needs creation**

Develop your skills in **needs identification** and **needs creation**. To demonstrate value, you have to understand the employer’s position, needs and concerns, and persuade them that both they and the organisation will benefit from good relations with Prospect, including arriving at negotiated solutions to issues and problems.

**Needs identification**: ask open questions about the business situation that the employer is facing – eg ask what aspects of a consultant’s report surprised them most and why, or where they see the business going in the future given the issues raised in the report.

**Needs creation**: shows that the employer needs Prospect. In other words, whatever the employer wants to do, it will be most effective to do it by negotiating an agreed approach with Prospect.

You don’t need an army of members ready to go to the barricades to achieve this – tough situations impose constraints on the employer as well as the union. Be forward-looking in your own thinking and clear about your goals.

**Organisational and personal needs**

Take account of **organisational needs and personal needs**. Organisational needs are objective factors related to economy, efficiency, reliability, risk management etc.

Personal needs are more emotional – the need for the esteem of one’s peers or superiors in an organisation, the need to avoid criticism etc.

Emotional needs are often more powerful influences on behaviour – the fact that the evidence is on your side may not be enough for you to win the day.

**Feature, advantage, benefit**

Use a **‘Feature, Advantage, Benefit’** model to structure your approach – this enables you to position what you as a negotiator have to offer, the potential advantage to the employer of dealing with you and – critically – how dealing with you will meet their needs, eg in our case study:

**Feature** – your position as a trusted and professional representative of your members.

**Advantage** – an agreed way forward will enable you to help manage this difficult change.

**Benefit** – managing change sensitively and agreeing positive changes as part of restructuring will mean a stronger, more successful organisation.

**Check your power base regularly**

It’s not enough to have a good relationship, you need a good relationship with the people who matter. Do you have access to key decision-makers? Is there anyone important who is biased against Prospect? Is there anyone you can use to counterbalance that prejudice?

**Don’t talk ‘relationship’**

Without context, the notion of a ‘good relationship’ doesn’t have any content. Merely appealing to the relationship suggests the union isn’t really bringing much to the party. Use specific examples of where you have worked together successfully or resolved differences to beneficial effect (for your members and for the organisation).

### Engaging members with negotiations – dos and don’ts

**Do** consult members early in the process – before making a claim, if the union is raising an issue with the employer; or soon after receiving formal proposals, if the employer is opening negotiations.

**Don’t** make promises before or during the consultation that create unrealistic expectations or could tie your hands in negotiations – you’re going to need some scope for manoeuvre if things get tough.

**Do** take ownership of the issue and be prepared to show leadership to members – consultation isn’t a plebiscite; your members chose you as their representatives and that means you are responsible for being clear with them about what is and is not possible or realistic.

**Don’t** fall into the trap of not listening to your members – their feedback will help you judge what concessions are appropriate and how far they are prepared to back you if negotiations stall.

**Do** communicate with members regularly during the negotiations – even if the update is just to remind them of what the issue is or what are the most important aspects of a complex set of negotiations.

**Don’t** enter into specific correspondence on the negotiations with individual members – you are engaged in collective bargaining, not a personal case. If there are one or two particularly vocal people, give someone from the branch committee responsibility for talking to them and explaining that all members will receive updates when appropriate.

**Do** tell members how they can show active support for the union’s position on important issues – a visible campaign can strengthen your hand in negotiations.

**Don’t** try and rally member support for any old issue – you’ll waste the members’ energy and dilute the impact of campaigning. And some issues just aren’t suitable for campaigning. If in doubt, think: is the issue **widely felt? deeply felt? visible?** and **winnable?** If not, a campaign runs the risk of raising false expectations and demoralising members.

**Do** communicate clearly what the negotiated outcome is and why you have made/are recommending an agreement. Have face-to-face meetings or teleconferences to report back on important issues, if you can.

**Don’t** back away from the agreement you have made. All negotiation is to some extent a compromise, and some of your members won’t like compromise (that’s why you are the representative and not them!)

### Activity I: Negotiations and your members

In small groups, discuss the following questions:

* How can you keep members engaged with the union’s negotiating agenda?
* What are the advantages and disadvantages of communications and campaigns during the negotiations?
* What constraints or problems might you face in your efforts to keep members engaged with your negotiating agenda?
* What could you do to get around these?

Summarise your answers on a flip chart and nominate one of your group to report back to the plenary session.

You have 25 minutes for this exercise.

### Activity J: Getting your message across

Read the scenario below and in groups come up with a strategy to take to management.

* What do you need to know from members?
* How can you get this information?
* What will be your ‘foghorn message’ to management?
* How can members contribute to these negotiations?

**Use the outline negotiating plan to formulate the upcoming meeting:**

A company department that produces published data to regular deadlines has good union membership among its 30 employees.

Most of the existing staff have been with the company a long time and have a lot of experience of doing this type of job.

The company has been forced to make cuts. Over the last couple of years, the company has offered voluntary redundancy to staff and did not replace any staff that took the redundancy or left for other reasons.

This led to a drop in staff in the department by a third. Any positions that were replaced were on short-term contracts.

Morale is low. Management uses penalties when staff do not meet their performance targets.

They have moved to smaller offices where rest rooms were reduced and did not always have windows. Members have been staying on past their paid work hours to meet deadlines.

Members reported to their reps they feel pressurised and tired. They feel that they cannot go off ill as fellow workers resent them when they return.

There has been a rise in grievances being taken up between members.

|  |
| --- |
| **Main facts:** |
| **Cause of the problem:** |
| **Underlying problem:** |
| **Aims:**  **Timescale: Maximum Minimum** |
| **Your main arguments:** |
| **Management’s likely response:** |
| **Management’s likely arguments:** |
| **Your planned response:** |

## Putting what you’ve learnt into practice

Spend a few minutes thinking about what you would like to do when you get back to your workplace and what you need to achieve this.

|  |
| --- |
| **Task** |
| When might you or expect to negotiate, be informed and be consulted? How do they differ? |
| Do you have a negotiations committee? |
| Do you have regular negotiations? |
| Do you have a negotiations agenda? |
| How might you look to influence policy change? |
| After attending this course, what will you stop doing? |
| After attending this course, what will you continue to do? |
| Based on your new knowledge, what three points will you take to your next negotiations? |

## Without prejudice explanation

Without prejudice phrases are more typically used during negotiations for a settlement agreement to conclude the mutual ending of an employment relationship where a dispute exists. This is known as pre-termination negotiation.

Written communications which are used as part of this process should be headed as “Without prejudice”.  This allows for free and open discussion to take place to try and resolve the dispute through financial agreement.

Information exchanged under this heading are usually inadmissible as evidence in a tribunal for unfair dismissal cases unless there has been improper behaviour by the employer in the process.

The protection of ‘without prejudice’ does not extend to cases which involve discrimination, automatic unfair dismissal, whistleblowing, maternity or trade union activities.

Protected conversations are similar to ‘without prejudice’ with the main difference being that ‘protected conversations’ can be used where one of the parties isn’t aware that there is an issue.  i.e. there isn’t a dispute at the time between the parties.  It is likely in most situations that a protected conversation will move to a without prejudice negotiation, but it isn’t compulsory.

Protected conversations can provide less protection to the employer especially where improper behaviour is identified.

Whether oral or in writing the same process should be applied at the beginning of the conversation as to what protection is being applied.

The terms apply to both individual and group negotiations, but where collective bargaining is in play, this would normally fall under Chatham House rules.

## Useful contacts

Your first and best point of contact outside your branch is your Prospect negotiator or national secretary – they will know your employer and are the union’s primary channel for expert advice and support to branches.

The following organisations may also be useful sources of information and advice:

**Prospect Member Contact Centre**

Telephone: 0300 600 1878

Email: [info@prospect.org.uk](mailto:email%20info@prospect.org.uk)

**ACAS – Advisory Conciliation and Arbitration Service**

ACAS aims to improve organisations and working life through better employment relations. It provides up-to-date information, independent advice, high quality training and works with employers and employees to solve problems and improve performance. ACAS works with employers and employees in England, Scotland and Wales.

[www.acas.org.uk](http://www.acas.org.uk/)

<https://www.acas.org.uk/codes-of-practice> - specifically code of practice 2 (disclosure of information to trade unions for collective bargaining purposes.)

Telephone: 08457 474747

BEIS – government department is changing.

<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>

For latest updates;

<https://www.gov.uk/government/publications/making-government-deliver-for-the-british-people/making-government-deliver-for-the-british-people-html>

**Employment Tribunals Service**

The Employment Tribunals Service resolve disputes between employers and employees over employment rights issues.

[www.gov.uk/courts-tribunals/employment-tribunal](http://www.gov.uk/courts-tribunals/employment-tribunal)

Telephone: 0845 795 9775

**Labour Research Department**

LRD is an independent research organisation publishing news and information for trade unionists. Prospect is affiliated to LRD.

[www.lrd.org.uk](http://www.lrd.org.uk/)

Telephone: 020 7928 3649

**Guidance on The Information and Consultation of Employees Regulations 2004**

Guidance from GOV.UK on the information and consultation regulations

<https://www.gov.uk/guidance/the-information-and-consultation-regulations>

ACAS guidance on informing and consulting

<https://www.acas.org.uk/informing-and-consulting-employees>