

NEGOTIATION COMPETITIONS REVIEW 2017-18

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Each year the University of Plymouth Law Society (UPLS) runs a variety of competitions for students related to the study and practice of law, including mooting, debating and negotiating. This report will focus on the latter tracking my progression, along with my negotiation partner Sophi Carroll, from the 'internal' competition run by the UPLS, to our participation in 'external' competitions at a national and international level during the 2017-18 academic year. The views expressed are based on my own personal recollection and perception of each negotiation.

The Format

For those unfamiliar with a university negotiation competition, the format is broadly as follows. Students compete in pairs, with some participants signing up together, and others signing up individually and subsequently being assigned a partner by the UPLS Negotiations Officers who organise and run the internal competition. In our case, Sophi and I became a pair by chance; we signed up individually, but then happened to see each other at the sign-up event and agreed to be a pair.

A written scenario is provided by the Negotiation Officers for each round of the competition outlining a fictional situation in which some form of dispute has arisen between two parties. Each team takes on the role of solicitors representing one of these parties, and must prepare for and then undertake a time-limited negotiation with another student pair assigned as solicitors for the other side, with a view to reaching the best possible negotiated settlement for their client. Bilateral negotiations are therefore most common, however multilateral negotiations can feature in external competitions. For the internal competition, preparation of materials, such as an agenda and plan, is required. Plans set out a team's intended approach and strategy for the negotiation in light of the factual circumstances and any instructions given by the client. Following the negotiation, teams are required to reflect on their performance in writing or orally, explaining their actions and analysing whether anything ought to have been done differently.

The essence of the competition is to use the provided information to the best effect to reach the optimum outcome for your client, but is also about thinking creatively to reach a solution

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and gathering information from the other side that may assist your client going forward. The internal competitions are judged with reference to a ten-point scoresheet, which includes quality of preparatory documents, use of the given information, teamwork, outcome, ethics and self-analysis.

The Context

Negotiation and other forms of alternative dispute resolution (ADR) are now a key feature of legal practice. Pre-action protocols annexed to the Civil Procedure Rules and practice directions emphasise the importance of attempting to settle a matter without recourse to court action. If a party refuses ADR, they may be ordered by the court to shoulder a greater proportion of the cost of proceedings, or even the entire cost of proceedings. Rationales for this emphasis on ADR can be seen in the fact that settling a dispute is typically both cheaper and quicker for the parties if undertaken outside court, and that use of ADR reduces the court's workload meaning that cases having to go to court should be dealt with more efficiently.

The relevance of the skill of negotiation is not confined to domestic legal practice. Negotiation is employed between family and friends to make everyday decisions, whilst simultaneously being relied on at the international level such as during the World Trade Organisation's trade talks or the ongoing 'Brexit' negotiations.

The importance of negotiation skills is recognised at Plymouth not just by the UPLS competitions but also in the compulsory Dispute Resolution Skills module run by the Law School. This module sees students assume the role of lawyers and undertake a fictional case, steering it from its inception at the initial client meeting, through to a subsequent negotiation between lawyers, and finally to its conclusion in a mock court hearing. It was this module that inspired me to undertake the UPLS' negotiation competition during my final year, as it had made clear the relevance and benefit of good negotiation skills for any aspiring lawyer.

The Internal Competition

The internal competition consists of five rounds; teams progress on the basis of points, with a score out of five or ten being given for each element of the ten-point list. The UPLS Negotiation Officers for 2017-18, Julia Glukhikh and Lydia Foley, provided extremely detailed feedback on the performance of each team after every round of the competition, and this enabled Sophi and me to understand the (de)merits of our strategy and alter our approach for the next round. Suggestions were given on how best to organise our documents for ease of reference, and the importance of information gathering and using all the available facts for leverage in bargaining was underlined. The Officers also usefully commented on aspects of our approach

that were going well, such as providing reasons for our proposals and periodically summarising the agreements made to ensure both teams were on the same page.

After each round, Sophi and I reviewed our feedback and adjusted our approach accordingly, attempting to improve our performance wherever possible. This system yielded results; we reached the final of the internal competition held at the Plymouth offices of Womble Bond Dickinson (WBD) and kindly judged by two of its lawyers, alongside the Negotiation Officers. The negotiation was watched by an audience of law students and was scheduled to last for 60 minutes. The scenario concerned alleged breaches of a business-to-business sale contract for the supply of chocolate from a producer to a chocolatier. Despite the alleged breaches, it was clear that the preferred solution for our client (the chocolatier) was to maintain an amicable relationship with the supplier, with court action being undesirable due to the financial implications. Consequently, we adopted a collaborative approach during the negotiation and built a good rapport with the other team – law students Priscilla Agyenim and Teekor Tejan – who also employed a collaborative approach. Our detailed plan and agenda allowed us to cover all relevant issues and reach an agreement that preserved the working relationship between the two parties, and that we believed was in the best interests of our client. After their deliberations, the judging panel stressed the difficulty they encountered in reaching a decision as both teams had performed well and were evenly matched. Ultimately, Sophi and I very marginally pipped Priscilla and Teekor to the post, and became the winners of the UPLS negotiation competition for 2017-18. As a prize, we were generously awarded a period of work experience with WBD, which we found to be very interesting and insightful, and would like to thank the lawyers at WBD for sparing their time to talk to us and provide guidance during our internship.



Left: Sophi and Oliver after the final of the internal competition at WBD's Plymouth offices.

The Regional Competition

Part way through the internal competition in December 2017, Sophi and I were contacted by the Negotiation Officers and offered the opportunity to represent the University at the regional heat of the National Student Negotiation Competition as we were one of the highest scoring pairs in the internal competition at that point. We were thrilled to be offered the opportunity and gladly accepted. We travelled to Bristol on 24 February 2018 along with the Negotiation Officers and another pair of high-scoring students in the internal competition (Patrick Prestidge and Rebecca Green), one day after I had competed in the semi-finals of the UKELA moot competition in London. The National Student Negotiation Competition is run by the Centre for Effective Dispute Resolution (CEDR), with the Bristol regional heat hosted by the University of Law. Each team was scheduled to undertake two negotiations.

Our first negotiation was with a team from Cardiff University concerning a franchise agreement for a coffee shop chain. Our client (the franchisee) had made some changes to the aesthetic of the shop premises and products sold to better suit the local demographic, however the franchisor was concerned about these changes. Overall, the scenario ran to 8 pages and included excerpts from the fictional franchise agreement and tables of financial data. In common with many of our other negotiations, we employed a collaborative approach to try and find a middle ground where our client could continue to run the franchise with her own twist, whilst also addressing the franchisor's concerns. This approach was reciprocated by the Cardiff team, and the meeting felt productive. We made some creative suggestions regarding shop layout and social media, and used a whiteboard as a visual aid for our ideas. We came to an agreement subject to client approval and considered that the negotiation had gone well.

Our second negotiation was with a team from the University of Exeter and concerned the redevelopment of a dilapidated council-owned dockside area by a commercial firm, where we were acting for the local authority. Whilst the negotiation was similarly amicable and professional, it differed from the first in that the other side's position in terms of development priorities and cost varied significantly from our client's objectives. Nevertheless, we built a rapport with the other team and managed to secure many of our client's priorities at least in principle. However, managing to gain concessions in this way led to a financial offer from our counterparts that was far below our client's expectations. This result caused us to question our performance and whether we had employed the correct approach. In this case, the oral self-reflection was key in justifying our approach to the judges. Crucially, we considered the extent to which our client would have valued the outcome. Whilst the meeting did not yield the desired result for our client, we noted that the information regarding the amount the developer was willing to pay would be beneficial. In light of this information, we suggested our client

might be advised to accept an offer for the land that they had confidentially already received as this was far in excess of the offer made in the negotiation. The council could then directly pay for some of its priorities such as a community gym or children's playground, whilst maintaining a greater profit margin than if it accepted the developer's offer with those elements included. At the end of the day, Cardiff were announced as second place, and, somewhat to our surprise, we were announced as having won the Bristol regional heat. Therefore, both Plymouth and Cardiff would now progress onto the national final.

The National Final

Prior to the final, all participants were kindly offered advanced negotiation skills training by CEDR at their Fleet Street offices. This provided a great opportunity to meet the teams hailing from universities across England and Wales, all of whom were friendly and enthusiastic about the competition. The training itself was very useful, including group workshops and outlining concepts such as 'anchoring' and the 'zone of potential agreement'. The final of the CEDR National Student Negotiation Competition took place on the 24 March 2018 at the Bloomsbury campus of the University of Law, London and featured the 12 best teams from the 72 that competed in the regional heats. There were three scenarios and corresponding negotiations; two bilateral and one trilateral.

The trilateral negotiation concerned personal injury sustained by our client whilst watching a drag race, with the other student teams representing the drag racing venue and the driver of the crashed vehicle. Expectedly, both of the other parties were keen to distance themselves from liability for the incident, however, we tried to convey the impact on our client's quality of life as a result of the injuries sustained, and we managed to come to an agreement in principle that some level of compensation should be paid to our client. During the negotiation, we tried to move the discussion away from a premature consideration of quantum of damages and towards an exploration of share of liability, as suggested in our training session. We also tried to move away from a detailed analysis of how the tort of negligence might apply to the case, as a negotiation should generally be more akin to a conversation, rather than a mini-trial. It was difficult to know how the negotiation had gone, and progress did not seem as decisive as in previous negotiations.

Our second negotiation concerned the recent purchase of a zoo by a firm, where we acted for the existing employees of the zoo, and the other team represented the new owners. By happenstance, a team had dropped out and the team representing the zoo owners was in fact the team from Exeter with whom we had negotiated in the regional heat, having graciously stepped in at very short notice as one of the next highest scoring pairs. We put forward some

creative ideas to address the employees' concerns, and these were well received by the other side, who employed an accommodating and collaborative style, making the negotiation a very pleasant experience. The final bilateral negotiation concerned the separation of two individuals from a business enterprise that they had previously jointly started. There was some confusion regarding numbers during the negotiation, with the other side quoting the overall value of the relevant assets, whilst we were quoting the profit to be made from commission if said assets were sold. This disparity was noted in the negotiation, but the time pressure meant that we were actually unable to resolve the confusion fully. Despite this, we managed to explore several possible options in reasonable depth. However, the time pressure also meant that, for the first time, the allotted time ran out as we were just bringing things to a close. These aspects caused us to doubt how well the negotiation had gone.

After the day of negotiating, the results were revealed at a meal for the competitors and judges. To our delight, we were placed second, and only one 'ranking point' behind the winners, who in a reversal of the regional heat were the team from Cardiff University, Sophie Rudd and Charles Wilson. As winners, Sophie and Charles would now represent England and Wales at the International Negotiation Competition for Law Students (INC) (fittingly to be held in Cardiff for 2018), and Sophi and I were very happy for them indeed. At this point we assumed we were at the end of our negotiation journey, and were pleased with our achievements.



Left: After the national final at the Bloomsbury campus of the University of Law, London.

Left to right: Lydia Foley, Sophi Carroll, Oliver Tuck, Julia Glukhikh.

An Unexpected Development

Some time after the national final, we were unexpectedly contacted by CEDR, informing us that there was space for an additional team at the INC, and therefore offering us the chance

to represent England and Wales alongside Sophie and Charles. Sophie and I were thrilled to be offered this opportunity, and eagerly accepted. The competition was held at Cardiff University between 25 and 30 June 2018. There were talks on the first day from distinguished speakers relating to negotiations within South Africa, hostage negotiation, and Brexit. Activities were also organised throughout the week to complement the negotiations, including a boat trip, meals, and visits to a former mine and sports stadium. There were three negotiating rounds in which teams had to participate, each relating to a different aspect of the organisation of a fictional festival to be held in Wales; two bilateral and one multilateral. Including both common and confidential information, the scenario ran to 36 pages, and part of the challenge in preparing was to identify the most pertinent facts.

Our first bilateral negotiation was with the team from France, and largely concerned general planning for the festival, including its scope, the construction of staging, and disruption to local residents. We represented the organisers, whilst the French team acted for the fictional local authority. The negotiation was collaborative in nature, with both sides firmly raising their client's concerns, but attempting to find mutually beneficial solutions. Both sides had a good grasp of the facts, and we were able to build a good rapport quickly and reach an agreement within the time limit. The feedback from judges afterwards seemed very positive. Our second bilateral negotiation was with the team from Japan, and concerned arrangements for an internationally acclaimed singer and performer to appear at the festival, with us again acting for the organisers. There were slight differences in our approaches, with the other side wishing to discuss the issues concurrently, whereas we wanted to tackle the issues one by one, and moreover the negotiation was slightly more positional at the outset than that to which we were accustomed. The Japanese team also made effective use of the fact that each team could call short breaks during the negotiation, strategically taking these to refine their approach. Overall, the negotiation was productive and enjoyable, and we reached an agreement. In our self-reflection we noted that we had given good reasons for our proposals, however the judges pointed out that our reasoning had not actually effected a change in our counterparts' position, and that perhaps we ought to have changed tack in light of this.

The final negotiation was a four-party negotiation with teams from Australia, Poland and South Korea concerning the distribution of intellectual property rights to the broadcast of the festival, distribution of DVDs and performance adaptation rights. This negotiation featured figures and valuations which the teams together tabulated on the room's whiteboard, but this became somewhat confusing towards the end of the negotiation, and subsequent feedback suggested that it might have been beneficial to abandon use of the whiteboard at that point. Certainly, this negotiation was the most challenging, owing in large part to the number of parties involved

with competing interests, making it harder to reach agreement and demonstrate competence to the judges. Whilst Sophi and I had prepared and made notes on the different combinations of shares that the parties could have in these IP rights, on reflection I believe we may have benefitted from forming a clearer idea of the exact outcome that would be most beneficial to our client prior to the negotiation. Again, breaks were taken mid-negotiation in which teams keenly bargained and formed alliances, which made matters more complex, and was later noted by the judges as being essentially in conflict with each parties' stated aim of being collaborative. It was difficult to tell exactly how well the negotiation had gone, but I felt it was likely that it was the one we had performed least well in, due largely to its intrinsically more challenging nature. At a dinner on the final day, certificates were presented to each team for participating and final rankings were announced. Sophi and I placed 11th out of the 28 teams competing from across the world. It was a privilege to represent England and Wales and the University of Plymouth at international level, and it was a pleasure to meet dedicated and enthusiastic law students from a wide range of jurisdictions. Furthermore, we were delighted that our friends from Cardiff University, Sophie Rudd and Charles Wilson, who were also representing England and Wales, were awarded 8th place, signifying a strong performance for the host nation in the INC 2018.

What Did We Learn?

This whole experience has been invaluable in bolstering our dispute resolution skills, and it seems clear that there are several key things that underpin an effective negotiation. Firstly, negotiators must have an excellent grasp of the facts, know their position, and be clear in their mind about for what they are aiming. Secondly, asking questions and listening carefully to what the representative for the other party is actually saying is beneficial both in tailoring your responses and gleaning valuable information for your client. Thirdly, remember that a negotiation is a discussion; its objective is to avoid litigation, not to act as a trial run for it. Finally, negotiators should always be asking themselves what their client would think if presented with the deal that has been reached.

Concluding Remarks

Competing has been immensely rewarding and enjoyable, and I would certainly recommend that current students grasp opportunities such as these wherever possible. There are many people who have greatly assisted and supported us during our journey and we particularly wish to thank: Julia Glukhikh and Lydia Foley for their exceptional support and feedback as UPLS Negotiation Officers for 2017-18; the University of Plymouth Law Society in general; the Plymouth Law School; all of the competitors in both the internal and external competitions for

making the experience so enjoyable; CEDR and particularly Frederick Way; the INC Committee; Cardiff University and in particular Matthew Parry for his kind assistance, as well as Sophie Rudd and Charles Wilson for sharing our journey through the external competitions with us. I would of course especially like to thank Sophi Carroll for her commitment and enthusiasm throughout, and wish her success as President of the UPLS for 2018-19 and in her future career.

We also both wish the best of luck to the current UPLS Negotiation Officers, Patrick Prestidge and Teekor Tejan, and hope future Plymouth competitors can improve on our results.