

Negotiating in the midst of uncertainty

In times of downturn and uncertainty, you need to do more than minimize threats to come out of the crisis in a reasonable shape. In the early days of the COVID-19 pandemic, 80% of the posts I saw fell into three categories:

1. Stay safe and obey the rules
2. Stay motivated.....
3. Get legal advice and document delays and damages.

While many of these posts contain good advice, to my mind they are all focused on threat mitigation and while minimizing threats is important these approaches miss the opportunities inherent in unstable times.



The two factors that will help you come through a crisis in the best shape possible are your innovative skills and your negotiation skills. Innovation is the focus of *Innovation and Design Thinking*¹. In this article I want to focus on negotiation in a time of uncertainty.

To be able to negotiate you do need to stay safe (point 1 above) and also understanding the current situation (point 3 above²), but then if you want some control over your future, you also need to be willing to get into serious negotiations with the people who matter.

This is a very different situation to normal negotiations with employers, clients, subcontractors and suppliers, the traditional negotiating frame involves having defined outcomes in mind, deciding on your 'walk away' point (BATNA), and using a range of negotiating stances and tactics to achieve your desired outcome³. In a time of crisis, no one knows what the future holds and everyone is suffering inconvenience and damage to different degrees. Consequently, your mindset needs to be inclined towards '*we are all in this together*' rather than playing '*hard-ball*' for short term illusory benefits.

For example, the world over landlords have traditionally tended to play '*hard ball*' with tenants; you pay your rent or you are evicted. However, in Australia as part of its COVID-19 response the government made it illegal for landlords to evict business tenants who can't pay their rent for a 6-month period (with the possibility of an extension). The objective of this measure was to ensure the tenant still has a business when the current 'lock-downs' were over and the landlord still had a tenant capable of paying rent in the future. Government incentives and guidelines were offered to encourage both parties to negotiate a

¹ See, *Innovation and Design Thinking*: https://mosaicprojects.com.au/Mag_Articles/AA002_Innovation+Design-Thinking.pdf

² For some thoughts on the risks associated with *contract termination* https://mosaicprojects.com.au/WhitePapers/WP1100_Contract_Termination.pdf

³ For more on *negotiating* see: <https://mosaicprojects.com.au/PMKI-TPI-010.php#Negotiating>

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workable agreement. Compare this to the normal 'business-as-usual' alternative which would have been for the landlord to evict the tenant, the tenant to go bankrupt, and the landlord to miss out on 100% of rental income for 2 or 3 years until the market recovers.

The imposed solution has everyone sharing the pain. The tenant still has to pay some rent if possible, the landlord will get less income, the banks are supporting the landlords (after being lent on by government), and the government is paying some of the overall costs if there is an agreement. This won't save every business or every commercial landlord but it will significantly reduce the damage to most businesses and the overall economy, or at least the government hopes this will be the outcome – no one really knows given the unique situation we are all in⁴.

So how does this concept translate to your personal situation? Obviously, everyone, and every business is in a uniquely different situation but there are some useful ideas you can apply at both the business and the personal level.

1. **Start talking.** You will not be able to influence your situation by passively accepting everything that gets done to you. And importantly, the only effective way to negotiate in the current situation is based on achieving a win-win outcome (recognizing that in the current circumstances, a 'win' may be a reduced loss). The ability of good negotiators to influence outcomes is not limited by contract terms or organizational position⁵.
2. **Be realistic and adaptable.** For some projects the negotiation will be around shutting everything down with minimum costs all round – I seriously doubt anyone will be interested in a new cruise liner terminal for a few years..... This can be done cooperatively with costs minimized for everyone or arbitrarily with the likelihood of massive legal costs as the solution is fought through the courts. For other projects the question may be how to mothball the project for a period, and for others how to accelerate or adapt the project to the 'new-normal'. In any of these situations, proactive 'win-win' negotiations are likely to deliver better outcomes all-round the combative win-lose approaches.
3. **Accept change is inevitable,** even after the negotiations! Every negotiated agreement needs to be part of an adaptive and evolving approach that recognizes circumstances will change unpredictably. The only thing taking a hard 'win-lose' approach to a negotiated outcome is likely to achieve, is cutting off possibilities for a better outcome as the situation changes. Collaboration is likely to deliver far better results than confrontation.
4. **Be innovative.** The smart rental agents and facilities managers in Australia are dealing with their massive loss of income caused by the downturn in rent receipts by innovating processes to help landlords and tenants reach agreements and maximize government receipts. What's in it for them, partly a new stream of fees for services rendered and second, being in the box seat to carry on managing the facility once the lock-downs are over. Win-win-win.
5. **Be agile and adaptive.** Vast areas of business will never return to 'normal' and many jobs will be permanently lost. But there will be a 'new-normal' and there will be new jobs. It does not matter if

⁴ Similar measures were also introduced for private tenants.

⁵ For more on *communicating to influence* see:
https://mosaicprojects.com.au/Mag_Articles/SA1025_Influence_without_authority.pdf



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you are a person looking for work or a business looking for clients, the ones that succeed will be those that adapt fastest to whatever the new normal looks like. But agility is not anarchy! Useful agility is based on research and assessment of what the future may hold. The problem is no-one knows for certain what this will look like, so being a pragmatic risk taker is essential.

People and organizations that come through a crisis in the best shape to succeed are resilient, adaptive and collaborative. Great negotiating skills and innovative thinking are essential and then hope you get lucky. As discussed in ***Probability -v- luck. Should we give up our day-job?***⁶ luck will play a major part in deciding who comes out of a crisis the best shape. But, to quote Coleman Cox⁷: *I am a great believer in Luck. The harder I work, the more of it I seem to have.*

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⁶ See, ***Probability -v- luck. Should we give up our day-job?***:
https://mosaicprojects.com.au/Mag_Articles/AA003_Luck-v-Probability.pdf

⁷ Cox C. (1922) *Listen to This*. San Francisco: Coleman Cox Publishing Co.

