

DISPUTE RESOLUTION

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What is dispute resolution?

All Businesses will from time to time face the daunting prospect of a dispute which has the potential to cost money and take time to resolve and may mean the loss of a sometimes very valued customer. All Businesses should look to resolve the dispute with the minimum expenditure in time, costs and effort. The earlier legal advice is obtained in a business or other commercial dispute the better. Below are some of the steps necessary to minimise the impact of a dispute and to ensure you have the greatest chances of success.

React. The sooner you reply to the other side the more confident your position appears. Delay can give the appearance of being elusive, even where you are genuinely investigating someone's concerns. An early solicitor's letter in reply to a serious complaint is an effective tool in letting your opponent know that you take the matter seriously and have belief in your position.

Early identification of issues. This sounds easy but is not always easy to do. Essentially, the question you need to ask yourself is "what is the person actually complaining about" and are there statutory provisions governing the business conduct of either party. You may find that the other party's business conduct falls far short of what the Law requires of them. Legal advice is almost always needed to identify the issues and Law, so that you have a comprehensive view as to the strength of your position.

Speak with the other side. If a dispute has arisen, the parties should continue to talk to each other. This may assist in resolving the dispute or help to identify the actual issues in dispute. In order to speak with authority on your position you need to have identified the issues and the Law.

Other alternatives. Some contracts provide that a dispute must be dealt with by Arbitration. Even if your contract does not provide for this method of dispute resolution, the parties can agree to resolve it by

Understanding. What is the other side actually looking for? Would they be satisfied with the goods being replaced, repaired or a different level of service being given? These are important questions. The answer

alternative means. Arbitration or Mediation can sometimes be quicker and cheaper than conventional Court procedures and can allow a business or commercial dispute to be resolved without publicity and preserving commercial relations between the parties. Advice is required before entering into any dispute resolution process to ensure that the procedure can provide the remedy required and that the other party will be bound by any decision reached.

Letters. Recording agreements with your customers and clients in writing can sometimes avoid a dispute arising and if it does, can help to resolve it. Memories fade and when a dispute arises, the terms you thought had been agreed with a client can suddenly be "forgotten". Do not leave yourself open to this possibility. Confirm important points in writing. It is not always apparent from the initial complaint.

Tactics. By understanding your objectives your lawyer can secure a favorable outcome by knowing when to offer settlement, when to probe the opponent's position by skillful questions and when to disclose the full strength of your case.

Issue proceedings. When the only alternative is to take the dispute to Court, it is essential that your case is presented with clarity and precision. If you are defending a claim, similarly, the facts and law applicable to the dispute must be carefully deployed.

Opportunity. Give your opposition a chance to settle the matter. Why? It can cost much less than taking the matter all the way. How? An offer made in the correct way during Court proceedings which is not accepted can lead to serious (and usually costly) consequences for your opponent.

Negotiate. It may seem strange to place this at the very end, but the lines of communication should never be cut. After all, a quick and acceptable resolution is the objective no matter what stage has been reached in the dispute.

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