

Keeping control of your customer dispute

You knew there was a problem. You did your best to sort it out but now your customer has sent that formal letter telling you they intend to sue. Maybe it even comes from their solicitor, setting out over three pages of lawyer-speak, just how your product or service failed to live up to its contractual standard and what that has cost his client.

What happens next?

Until this point, the discussion was about their needs and your inclination or ability to offer solutions. Now it has taken a turn for the worse and become about rights.

This change is significant. You could both get sucked into a war of litigation, building a case to impress a judge and becoming entrenched in your views about the strengths of your arguments. Your next step is a proper evaluation of your position should you end up in court, and for this you need some legal input. But remember your lawyers think in terms of ending in court but you just want out - as soon as possible, but not at any cost.

They will tell you that part of their role is negotiating a settlement. But rarely do lawyers go beyond stressing the strength of their client's case and trying to find some middle ground between zero and the amount claimed that both sides can agree on.

Mediation as a business tool

The alternative is mediation. While litigation is a process aimed at winning in court, mediation is aimed at finding a settlement. The mediator is an independent intermediary whose role is to help both parties find an acceptable solution.

Mediation is confidential. Both sides agree to say nothing in public about what happens. Each side can also have private conversations with the mediator and restrict what is reported to the other side. And nothing can become evidence in court just by being revealed during the mediation – so to some extent the discussions between the parties can be frank too.

Frequently litigation starts because the aggrieved side feels their interests are not being addressed. Paradoxically, what a court can order is sometimes hardly better. Yet litigation can become the end in itself. Mediation allows the talk about true interests to continue.

A mediator will challenge each party privately over the strength of its case and the costs of litigating. This is vital. It is easy to start believing your own publicity and it does you no good. What could be worse than ending up in court and finding that you had turned down a better offer than the court awards you. Yet a recent study in the US of several thousand trials where there had been settlement offers found that 60% of claimants had done just that.

Finally, the mediation meeting will be between the decision-makers. There will be no hiding behind “I will have to talk to Mr. Big.” Mr. Big, or at least someone with authority to settle, will be there.

Conclusion

Once the discussion about rights starts you need input from a litigation expert. But you can insist starting mediation early too. Do not be put off by ‘not yet ready’ or ‘suggesting mediation is a sign of weakness’. As soon as you have a reasonable idea of the likely outcome, you are ready. You make business decisions every day with the information that is then available. If you waited until you knew everything you would do nothing. And what is weak about grown-ups recognising they have a problem and looking for a way out? Settling a dispute is another business decision, and you have most to gain by doing it early.

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