

Our

10 Top Tips

when

Handling Business

Disputes

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Handling Business Disputes

Disputes are an unavoidable consequence of running a business. There are two main types: corporate disputes (internal disagreements about how the business should be managed) and commercial disputes (resulting from your relationship with another party - suppliers and customers, for example).

Every sort of dispute should be handled carefully. Here are our top ten tips for getting this right.



01

Is the dispute worth pursuing?

If the dispute is about money owed to you, it is important to find out why it hasn't been paid. Does the other party think you have overcharged or that your invoice isn't payable at all? Or do they simply not have the money? The answers to these questions will help you decide how best to tackle the dispute – if at all; there is little point in throwing good money after bad to try to force an insolvent debtor to pay up.

The flipside of this is where you are the debtor and on the receiving end of a demand for a disputed payment. Establish early on just how strong your case is and be clear about why you are refusing to pay. At the same time think about the other party's financial status; would they be able to pay your costs if you were to win your case in court? Is there scope for protecting your position by obtaining security for costs?

02

What evidence and documents will be relevant?

It sounds obvious. But when faced with a business dispute sometimes the last thing people turn to is the paperwork: contracts, terms and conditions, internal company documents. These might help provide an answer to any disputed issues.

Where those people managing the business disagree about how it should be run, check the articles of association and shareholders' agreement (companies) or partnership agreement (firm). Where the dispute involves your business and some other party, check the contract that governs your business dealings with them.



03

How much will the dispute cost to resolve?

Everyone knows that business disputes can get messy and expensive. This can be controlled through careful, strategic handling. But it is important to be realistic. Get advice on what the dispute is likely to cost you, and get this advice at the outset before committing to a course of action that will eat into your business finances.

Once you have issued court proceedings, it is very difficult to discontinue without having to pay the other side's costs.

You should factor into your litigation budget the risk of ending up having to pay the other side's costs; no business wants to be surprised by unexpected financial liabilities.



“Think about the consequential effects.”

04

What are the consequences of litigating?

Disputes have a tendency to hit businesses in more ways than one. Think about the consequential effects, such as damage to ongoing business relationships with the other party.

And then there is the external perception to think about; the negative publicity. How will a dispute with another business, or within your business, look to the outside world? You might need to brief your employees as to how they should respond if they are asked to comment on the dispute.

05

Are their alternatives to litigation?

It takes time and money to run a court case, and costs tend to increase pretty quickly as the litigation gathers pace. That is why pre-action protocols were introduced. They encourage parties to try to settle their dispute without involving the courts.

There are now various alternatives to litigation, like mediation and arbitration. Consider each very carefully; they could result in the dispute being resolved or determined sooner rather than later – and therefore - usually at less cost. Be wary of declining an offer to mediate just for the sake of having your “day in court”. This approach can backfire.



06

Which court will hear my case?

If you haven't been able to settle your case and need to issue proceedings, the first step is to prepare your case. You will need to consider which court should hear it. Certain County Court money claims must now be issued at a centralised Money Claims Centre. Higher value or more complex disputes get heard in the High Court, but you'll need to know which division of the High Court would be most appropriate. If the dispute has an international element, consider whether the courts of England and Wales will have jurisdiction, or if you will need to issue your claim in a different jurisdiction.

07

What documents and evidence will be required for my case?

Remember that you'll need to back up your claim (or your defence) with evidence. This could include email exchanges, invoices and

agreements. Make sure that you preserve this evidence. Work out who your witnesses will be and get them to write down all facts as they recall them. Don't delete or destroy any relevant documents or communications, and brief your employees along these lines; you will need to work together to make sure your case is as strong as it can be. As part of this, be careful about generating new documents that relate to the dispute; you could find yourself having to disclose these to the other party and to the court.

Finally, get the pleadings right. These explain the basis of your claim or defence and it is crucial to set out your case properly because it is always difficult to amend these documents later on. Cases are lost on poorly drafted pleadings, particularly where aspects of a claim or defence are left out. So, in all but the most straightforward of disputes, pleadings should be professionally drafted.

“Don't delete or destroy any relevant documents or communications.”



08

Are there any court rules or processes that I need to be aware of?

You will need to understand how the system works. There are strict rules about how cases should be brought, and when. And as your case progresses, there will be processes to follow and deadlines to meet.

Regardless of the strength of your position in any dispute, if you fall foul of procedure you are unlikely to end up with the outcome you set out to achieve.

09

Is it wise to consider settling my case?

If the dispute is about money owed to your business or financial loss your business has suffered, it can feel very personal. It is easy to become emotionally embroiled in what is happening and that can cloud judgement.

However strongly you feel about the dispute, holding out for what you regard as the ideal outcome isn't always the best strategy. Think about how much it will cost to take the case to trial, and weigh up the risks; litigation is inherently uncertain. Keeping a careful eye

on the commercial realities, and staying as objective as possible, will stand you in good stead.

Another important point to bear in mind is that rejecting an offer of settlement could place you at risk of having to pay the other party's costs (or more costs than you would otherwise be liable for) depending upon the outcome of the trial. It is why considerable thought goes into making offers as part of a tactical approach to dispute resolution. It's a strategy you'll be able to employ whether you are bringing or defending a claim.

10

What can I do to avoid other disputes?

When a dispute comes to an end, there's usually a sense of relief. You're unlikely to want to repeat the experience, so talk to us about ways of preventing disputes happening in the future. Perhaps there are shortcomings in your standard terms of business that could be addressed? Perhaps your partnership agreement needs to be amended to better record the distribution of partnership profits?

Whatever the circumstances, it pays to minimise the chance of another dispute rearing its head.



Talk to one of our advisors to find out more:

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