

Disruption: the real cost of conflict

Mediation is a realistic answer to minimising the potential damage to a business caused by a dispute. Andrew Knight, commercial litigation partner, explains.

Our recent articles have focused on the rise and importance of mediation and, indeed, the way in which the courts (and, in particular, with the recent decision of *Darren Egan v Motor Sales (Bath) Ltd* implore litigants and their professional advisors to consider mediation.

One of the often quoted reasons for considering mediation to resolve a dispute is to reduce the cost and disruption to your business. This article focuses on the need to manage conflict effectively and to recognise the cost of conflict to a business.

Any organisation of any significant size ought to have an individual at managerial level whose responsibility it is for managing any disputes in which the business finds itself. This does not necessarily have to be a director but someone at senior or line manager level ought to be tasked with this unenviable role.

When a business finds itself in a dispute, it is often the case that a number of individuals in that business can be involved to assist with the resolution of it. For example, if it is a contractual dispute with a customer, there might be sections or departments of the business who need to be involved. There might be a file in the sales department that dealt with the acquisition and completion of the contract, there then might be a file in the manufacturing department which actually dealt with the performance of the contract and there might be a file in the accounts department dealing with the payment.

If the contracts have gone wrong or there are issues over performance, there might even be a separate line of correspondence with senior management even at director level.

Potentially, therefore, three or four people or sections of a business can be involved and a considerable amount of paper. It is important to have one person capable of managing or coordinating these individuals and their respective paper trails.

Reputation

The cost of conflict should also be considered. This is not just 'costs' in the sense of the business wins or loses its claim and has to pay damages, its legal costs or, indeed, the costs of its opponent if unsuccessful. The real cost of conflict lies in the disruption to the business and the loss of management/ executive time.

In the same way that a well run and successful business has competent management and has a reputation for quality product, procedures, personnel, and so on, the management of a dispute equally falls into that category. The company's reputation can be damaged because it gets into disputes but, more importantly, its reputation can be damaged because disputes are handled poorly from an internal management point of view.

Staff can become demotivated and disaffected if they are involved in an exercise of poor management. Other aspects of the business also will perceive the business to be 'weak' or poorly managed if the dispute is not conducted effectively.

As a result, it is advisable for businesses to have people specifically charged with the responsibility of managing a dispute, being a single point of contact with external professional advisors, collating documents internally and ensuring that an effective line of communication is kept open with the professional advisors.

Just as importantly, it is advisable that those within the business (whether or not the dispute is their fault) are kept fully appraised and updated as to the progress with the dispute.

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