Preparing for damage limitation

Customer service is key to success, yet law firms often lack strategies to deal with complaints. In the first of a two-part article, Michael Herlihy explains what can happen when lawyers are caught unprepared

Many years ago, I became an early adopter of Virgin Atlantic. Undeterred by my colleagues' jibes of 'but they've only got a few planes', I eagerly embraced the new airline as an alternative to the starched service at BA and enthusiastically sang its praises to anyone who would listen.

Then one day the inevitable happened: I had a bad flight. Clearly not so bad that the plane fell out of the sky, but Murphy's Law bad in that most other things which could go wrong did go wrong, all compounded by a cabin crew more interested in reliving the dubious highlights of their last stopover than serving their customers. The colleague I had persuaded onto the flight sat alongside me in silent recrimination.

With all the righteous indignation of a disappointed fan, I scribbled an ill-tempered note and thrust it into the hands of one of the crew.

Five days later, I received a phone call from Richard Branson (well, OK, not Branson himself – though I know people who have – but from his office).

Without going into the details of that conversation, suffice to say that, 15 years later, I still choose Virgin over BA, and am still telling people the story as an illustration of the importance of handling unhappy customers correctly.

Not that people need telling, of course. Everyone agrees that if you deal really well with customers' complaints, you can not only avoid losing them, but can actually cement your relationship and enlist them as spokesmen for you as they tell their friends about the amazing service they received.

Indeed, more than once when discussing this phenomenon, people have responded with tales (urban myths, perhaps?) of how some businesses with 'six sigma' levels of customer service deliberately engineer a certain number of service failures just to give themselves the chance to show customers how brilliantly they handle them. Without being unkind, I suspect that few of these are law firms.

So if occasional service difficulties are to be expected, and a firm's effectiveness in handling them is potentially key to its reputation with customers, what steps do people take to prepare for these eventualities?

Fairly or otherwise, my experience suggests it is not many. Inevitably, in 25 years of instructing firms around the world, you get your share of 'bad flights'.

Very rarely, if ever, though, did we part company with a firm simply because of a bad outcome. Even the best firms can lose a case or misjudge a negotiating position. Mature clients know that these things happen.

Bad behaviour, however, including inappropriate responses to bad outcomes, is a different matter. On that basis, several distinguished firms managed to put themselves in a position where they found their services were no longer required.

Of course, no one intends to behave badly to a customer, so what goes wrong? How could Virgin as an upstart airline get it right, and major professional service firms with decades more experience come so unstuck?

Consider a hypothetical example. You have just received the decision in a long-running arbitration case and it is not good news. Not only have you lost, but damages are well in excess of what you had told your client to expect. The ruling describes your legal arguments as 'ingenious but ultimately without merit' and makes it clear that the panel placed little weight on the evidence given by the client's chief executive.

You could be forgiven for feeling relieved that you have another meeting this morning and you are not scheduled to see the client about the arbitration matter until this afternoon.

Unfortunately, though, events move ahead of you. By the time you get back to the office, your able but clearly shaken assistant has already had a fuming general counsel on the phone. The assistant reports that he had said he tried to call you, but your phone was off, which was no surprise, as 'having just lost him a small fortune and all credibility with his board of directors, he assumed that you'd be hiding somewhere'.

If you deal really well with customers' complaints, you can actually cement your relationship

'Did you explain where I was?' you ask.

'Well, I tried to, but he didn't seem interested. He just ranted on about how was he supposed to tell his CEO the arbitrators thought he was lying, never mind the fact that they said the company was represented by a bunch of charlatans.

'Of course, I tried to remind him that we never said there were any guarantees of success and that they hadn't called us charlatans, just ingenious, and the chairman of the panel had given slightly eccentric rulings before, but all that just seemed to make him more mad.

'He was swearing by now – demanding to know that we would not be billing for the work (which obviously I said I couldn't comment on, except to say we had done an awful lot of work) and demanding to know when we'd be filing an appeal.'

'And what did you say to that?' you press.

'Well, I tried saying we'd have to look at it, but he kept on and on, so eventually I felt I had to agree and say we'd appeal.'

'But you know we almost certainly won't be able to.'

'I know, but he was just so angry that I felt I had to agree with him on something. I mean, what else could I have said?'

Oh dear. Clearly it could not have gone much worse, so as you prepare to pick up the pieces, how will you approach the client and what advice will you give your assistant for the future?

In part two of this article next week, we will take a look at some of the techniques for putting things right.

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