

BAR STANDARDS BOARD

REGULATING BARRISTERS

Determination by Consent ('DBC')

Explanatory note for barristers

What is DBC?

The DBC procedure is an alternative means of dealing with complaints which would otherwise be referred to a Disciplinary Tribunal. Involvement in the process is entirely voluntary and requires your express written consent at different points in the procedure to continue. Under DBC, if you agree, the complaint against you will be dealt with on the papers and the Complaints Committee ('the Committee') of the Bar Standards Board ('BSB') will decide whether you are in breach of the Code of Conduct and, if so, what sentence to impose. You will then be given the opportunity to accept or reject the Committee's finding and sentence.

The DBC procedure avoids the need for the complaint to be referred to a full Disciplinary Tribunal hearing and will hopefully, with your cooperation, conclude the complaint process more quickly. The maximum sentence the Committee can impose is a fine, whereas Disciplinary Tribunals have additional powers to suspend barristers from practice and disbar barristers. Further, Disciplinary Tribunals have the power to award costs against you whereas the Complaints Committee does not have this power.

What makes a case suitable for DBC?

There are three criteria that must be met for a complaint to be deemed suitable for DBC. These are:

- The complaint reveals a *prima facie* case of professional misconduct;
- There are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
- If admitted or found proved, the breach(es) of the Code do not warrant a period of suspension from practice or disbarment.

How is a case referred to DBC?

There are two ways that a complaint can be referred to the DBC procedure:

1. A member of staff (authorised by the Committee) can deem the case suitable for DBC; or

2. The full Committee can consider the complaint and decide that that it is suitable for DBC.

What are the stages of the DBC procedure?

A flow chart of the stages listed below can be found at the end of this explanatory note.

Stage 1 - If the complaint against you is deemed suitable for DBC, the first step is for the BSB to write to you to seek your confirmation as to whether you agree in principle to the DBC procedure. **In order for the DBC procedure to continue, you must respond in writing within 21 days to say whether you agree in principle to continuing with DBC.** If you do not agree, or do not respond within 21 days, the complaint will not be referred for DBC and will either be put before the Complaints Committee for a decision as to how to proceed or will automatically be referred to a three-person Disciplinary Tribunal. If you respond and agree to the procedure continuing, the complaint will move to stage 2 of the DBC procedure.

Stage 2 – By this stage the complaint against you will have been allocated to a Case Officer in the Hearings Team, who will prepare a draft DBC report on the complaint. The draft report will normally include the following sections:

- a. Background;
- b. Charge(s);
- c. Summary of Facts ('SoF'); and
- d. Previous disciplinary findings.

We will endeavour to serve the draft report on you within 28 days of the date that we receive your written agreement to the DBC procedure mentioned in Stage 1 or, if the complaint has been referred to DBC by a member of staff, within 28 days from the date of that referral. **After we have sent the draft report to you, we will ask you to respond within 21 days to say whether or not you admit the charge(s) and agree the SoF.** If you admit any of the charges, you will be invited to submit any mitigation (with relevant supporting documents). If you would like the Committee to take into account your financial circumstances as part of your mitigation or when considering what sentence to impose, you should provide supporting information at this stage. If you deny the charge(s), you will be asked to submit a written defence to the charges (with supporting documents). If you do not respond, or respond and indicate a significant dispute as to the facts, the complaint will either be put before the Complaints Committee, or will automatically proceed to a three-person Disciplinary Tribunal.

The SoF can be amended by agreement. If the SoF can be agreed, the complaint will move to stage 3 of the DBC procedure.

Stage 3 - After you have agreed the SoF and responded to the charge(s), we will add the following sections (where appropriate) to the draft report:

- e. Your plea to the charge(s);

- f. The committee's proposed decision on the charge(s) and reasons (if the charges are denied); and
- g. The committee's proposed sentence (if the charges are admitted).

The draft report will not be sent to you again at this stage but will be passed to a barrister member on the Complaints Committee to consider the draft report and present it to a meeting of the full Committee.

The Committee will consider the draft report and can decide to:

- Dismiss the entire complaint or individual charges;
- Take no further action on the complaint;
- Approve a final version of the DBC report and issue it to you; or
- Refer the complaint to a Disciplinary Tribunal if DBC is no longer considered appropriate.

If the Committee approves the report, we will serve the report on you and you will be asked to respond within 14 days to say whether you accept the findings and/or sanction recommended by the Committee. If you do not respond, or if you respond and reject the findings and sentence recommended by the Committee, the complaint will automatically proceed to a three-person Disciplinary Tribunal. If you respond and accept the finding and sentence recommended by the Committee, the complaint will move to stage 4.

Stage 4 - If you accept the Committee's finding and sentence, a disciplinary finding in accordance with the report will be formally recorded against you on the date your written acceptance is received by the BSB. Details of the charge(s) will be posted on the BSB's website and the full DBC report will be published in accordance with Schedule 1, paragraph 5 of the Complaints Rules 2009 (the Complaints Rules can be found on the BSB website: www.barstandardsboard.org.uk).

The complaint will then move into a compliance stage if the sentence includes the requirement that you take an action; i.e. to pay a fine or to complete CPD. You will be informed of what action you need to take in order to comply with the sentence. After you have complied with the sentence, we will close our file and mark the proceedings as complete.

What sanctions are the Committee able to impose?

Under DBC, the Committee is able to impose the following sanctions:

- Order you to pay a fine of up to £5,000 (for acts or omissions prior to 31 March 2009) or up to £15,000 (for acts or omissions that took place on or after 31 March 2009) to the Bar Standards Board;
- Order you to complete additional CPD requirements;
- Reprimand you;
- Order you to attend on a nominated person to be reprimanded; and/or

- Give you advice as to your future conduct.

The Committee is not able to impose a suspension from practice or disbarment, or make a costs order against you – these powers are reserved for Disciplinary Tribunals. When the Committee is considering what sentence to impose, it will take into account the Council of the Inns of Court's Sentencing Guidance. The Sentencing Guidance is published on the BSB's website and we encourage you to look at it.

Am I entitled to appeal the Committee decision made during DBC?

You are not entitled to appeal against a finding made by the DBC procedure because your express consent is required for a finding to be made and a sanction imposed. You are entitled to end the DBC procedure at any time up until your acceptance of the Committee finding and sentence, if you would prefer that the matter is dealt with by a Disciplinary Tribunal.

What if I wish to proceed with DBC but cannot respond during the required time?

Reasonable extensions to the time limits can be given if there is good reason to do so such as a holiday, a work or family commitment, or the need to seek advice. You should contact the Officer who has conduct of your case as soon as possible to discuss any extensions of time.

Who should I contact if I have any questions about the DBC procedure?

If you wish to discuss any aspect of the DBC procedure, please contact the Officer who has conduct of the complaint against you by telephoning the BSB's main switchboard on 020 7611 1444 and quoting the reference number for your case which is included at the top of the letters sent to you by the BSB.

**Bar Standards Board
August 2009**

DBC procedure flow-chart

