

BAR STANDARDS BOARD

REGULATING BARRISTERS

Determination by Consent

Explanatory note for barristers and authorised bodies

What is Determination by Consent “DBC”?

1. The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal. Involvement in the process is entirely voluntary and requires your express written consent. Under DBC, if you agree, the case against you will be dealt with on the papers and an Independent Decision-Making Panel (‘an IDP’) will decide whether you are in breach of your professional obligations as set out in the Handbook and, if so, what sanction to impose. You will be given the opportunity to accept or reject an IDP’s finding(s) and sanction.
2. DBC avoids the case being referred to a full disciplinary tribunal hearing and will hopefully, with your co-operation, conclude the disciplinary process more quickly.

What rules govern DBC?

3. The rules that govern the DBC procedure can be found in the BSB Handbook, Part 5 (the Enforcement Regulations) section A4.

What makes a case suitable for DBC?

4. There are five criteria which must be met for an allegation or allegations to be suitable for DBC:
 - there is a realistic prospect of a finding of professional misconduct being made;
 - there are no substantial disputes of fact;
 - it is in the public interest to resolve the allegation(s) using DBC; and

- if the alleged professional misconduct is admitted or proved, it would not warrant a period of suspension, a disqualification order, or disbarment (bearing in mind your previous disciplinary history, if any).

How is a case referred to DBC?

5. There are two ways that a case can be referred to DBC:
 - a. a member of staff can deem the case suitable for DBC; or
 - b. an IDP can decide that the case is suitable for DBC.

What are the stages of the DBC procedure?

6. A flow chart of the stages listed below can be found at the end of this note. For the case to continue under DBC, you will either need to admit the charges in full, or you accept the summary of facts but deny that the facts amount to professional misconduct.

Stage 1 – Agreement in principle to DBC

7. If the allegation(s) against you is suitable for DBC, we will write to you and ask whether you agree in principle to the DBC procedure. **In order for DBC to continue, you must respond in writing within 14 days to say whether you agree in principle to DBC.** If you do not agree, or do not respond within 14 days, the case will automatically be referred to a three-person disciplinary tribunal unless issues are raised that require further consideration. If you respond and agree to DBC, the case will move to Stage 2.

Stage 2 – Charge(s) and Summary of Facts

8. A Case Officer in the Investigations and Enforcement Team will prepare a draft DBC report on the case. The draft report will include the following sections:
 - Background
 - Charge(s)
 - Summary of Facts ('SoF'); and
 - Previous disciplinary findings (if any).
9. We aim to serve the draft report, along with the bundle of evidence relating to it on you within 21 days of receiving your written agreement to DBC (see Stage 1). **You will be asked to respond within 21 days to say whether or not you agree the SoF and whether you admit the charge(s).**

10. You will be invited to provide any mitigation (with relevant supporting documents). If you would like an IDP to take into account your financial circumstances as part of your mitigation you should provide supporting information and documents. If you are not admitting the charges this will be collated in a separate bundle to be considered only if the charges are found proved.
11. If you accept the facts but deny that the facts amount to professional misconduct (and therefore deny the charge(s)), you will also be invited to provide a written explanation (with any supporting documents) as to why the facts do not amount to professional misconduct. If you are denying the charges then it will assist the BSB if you clearly identify which documents you wish to include to support this explanation and which are only for the purposes of mitigation, should this point in the process be reached.
12. The SoF can be amended by agreement – if you wish to request amendments to the SoF, you should contact the Officer responsible for your case. If the SoF is agreed, the case will move to Stage 3.
13. If you do not respond by the deadline, or respond and indicate a significant dispute as to the facts, the case will automatically proceed to a three-person disciplinary tribunal unless issues are raised that require further consideration. For DBC to proceed, you must continue to consent to the procedure, the SoF must be agreed, and an IDP or authorised member of staff must continue to consider that the procedure is suitable for the particular case.

Stage 3 – Presentation of report to an IDP

14. After you have agreed the SoF and responded to the charge(s), we will add the following sections (where appropriate) to the draft report:
 - Your plea in respect of the charge(s);
 - If the charge(s) are denied, a summary of your reasons as to why the facts do not amount to professional misconduct ; and/or
 - If the charges are admitted, a summary of your mitigation..
15. The draft report will not be sent to you at this stage but it will be presented to an IDP, which can decide to:
 - dismiss some or all of the charges of professional misconduct;
 - find some or all of the charges of professional misconduct proved;

- if you have admitted the charge(s) of professional misconduct, impose a sanction for each charge; or
 - refer the allegations to a disciplinary tribunal if DBC is no longer appropriate.
16. The final DBC report will only be sent to you after it has been approved by an IDP.
 17. **Charge(s) admitted:** if you have admitted the charges, an IDP will approve the contents of the report and decide the sanction for each charge.
 18. **Charge(s) denied:** If you deny the charge(s), the case will be considered by an IDP in two stages at the meeting. Firstly, an IDP decides whether or not the charge(s) of professional misconduct against you are proved. If the IDP finds the charges proved, we will then provide the IDP with the documents and information you have provided for the purposes of mitigation. In some cases the BSB may have other information or documents which it considers relevant that will also be provided to the panel at this stage (for example previous disciplinary findings). Where this is the case, they would have been sent to you in advance and any comments you have in relation to the material will also be provided to the panel.
 19. Once the panel has considered the additional material, it will then decide the sanction in respect of the charge(s).
 20. When the IDP made its decision, we will send you the final DBC report, which will explain the reason for finding the charges proved and the sanction the IDP imposed. We will ask you whether you accept the decision. If you respond and accept the sanction, the case will move to Stage 4.
 21. If you do not confirm in writing within 14 days that you accept the IDP's findings and/or sanction, or you reject the IDP's decision, the case will automatically be referred to a three-person disciplinary tribunal unless issues are raised which require further consideration by an IDP.

What sanctions can an IDP impose?

22. The IDP will consider our enforcement strategy and take into account the Bar Tribunals and Adjudication Services' ('BTAS') Sanctions Guidance. The sanctions guidance is published on the BTAS website (<http://www.tbta.org.uk>) and we encourage you to look at it. Under DBC, an IDP is able to impose the following sanctions:

- order you to pay a fine;
 - reprimand you;
 - give you advice about future conduct; and/or
 - order you to complete CPD of such nature and duration as the IDP directs and provide satisfactory proof of compliance.
23. The IDP cannot suspend or disbar you or make a costs order against you – these powers are reserved for disciplinary tribunals.

Stage 4 - Decision made, compliance and publication

24. If you accept the IDP's finding and sanction, a disciplinary finding will be formally recorded against you as of the date when we receive your written acceptance. In accordance with rE44 of the BSB Handbook, details of the charge(s), the finding and sanction will be posted on the BSB's website and publication will be to the same extent as a finding and sanction by a disciplinary tribunal. This means that the full report will be published on the BSB's website (with necessary redactions).
25. As stipulated in the BSB's policy on the ['Publication of disciplinary findings'](#), DBC findings will remain on the website for two years from the date of your written acceptance.
26. Under rE44 and rE243 of the BSB Handbook, the publication of a disciplinary finding is mandatory and there is no right of review.

Can an IDP decision be appealed against?

27. You cannot 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 can end the DBC procedure at any time up until your acceptance of the finding and sanction if you would prefer that the case is dealt with by a disciplinary tribunal. An IDP may also terminate the DBC procedure at any time if it no longer considers the criteria are satisfied or for any other good reason.

Compliance

28. If the sanction includes a requirement for you to take action, for example to pay a fine or complete CPD, the case will move into the compliance stage. We will tell you what you need to do to comply with the sanction and the deadline for doing so. After you have complied with the sanction, we will close our file and mark the case as complete. Failure to comply with the sanction by the deadline is likely to be treated as professional misconduct and an IDP may refer the matter to a disciplinary tribunal.

Further questions

What if a barrister/authorised body wishes to proceed with DBC but cannot respond during the required time?

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

Who should a barrister/authorised body contact with any questions about DBC?

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

Bar Standards Board

October 2019

DBC procedure flow-chart

