

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 the Professional Conduct Committee (‘the Committee’) of the Bar Standards Board (‘BSB’) will decide whether you are in breach of your professional obligations as set out in the Handbook (or for conduct that happened before 6 January 2014, the Code of Conduct 8th edition) and, if so, what sentence to impose. You will be given the opportunity to accept or reject the Committee’s finding(s) and sentence.
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 A5.

What makes a case suitable for DBC?

4. There are five criteria which must be met for a complaint 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;
 - the circumstances do not warrant the complaint being dismissed or no further action being taken;

- it is in the public interest to resolve the complaint 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 (authorised by the Committee) can deem the case suitable for DBC; or
 - b. the full Committee 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 complaint 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 Investigation and Hearings Team will prepare a draft DBC report on the case. The draft report will include the following sections:
 - A. Background
 - B. Charge(s)
 - C. Summary of Facts ('SoF'); and
 - D. Previous disciplinary findings.
9. We aim to serve the draft report 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 admit the charge(s).**

10. If you admit the charge(s), you will be invited to provide any mitigation (with relevant supporting documents). If you would like the Committee to take into account your financial circumstances as part of your mitigation you should provide supporting information and documents.
11. If you accept the facts but deny that the facts amount to professional misconduct (and therefore deny the charge(s)), you will be invited to provide a written explanation (with any supporting documents) as to why the facts do not amount to professional misconduct.
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, the barrister must continue to consent to the procedure, the SoF must be agreed, and the Committee must continue to consider that the procedure is suitable for the particular case.

Stage 3 – Presentation of report to the Committee

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:
 - E.** Your plea in respect of the charge(s);
 - F.** If the charge(s) are denied, a summary of your reasons as to why the facts do not amount to professional misconduct and a recommendation to the Committee as to whether or not the charge(s) should be found proved, along with draft reasons; and/or
 - G.** If the charges are admitted, a summary of your mitigation and a recommended sentence based on the circumstances of the case and the Sentencing Guidance.
15. The draft report will not be sent to you at this stage but it will be presented to the Committee, 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 sentence for each charge; or
 - refer the complaint 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 the Committee.
 17. **Charge(s) admitted:** if you have admitted the charges, the Committee will approve the contents of the report and decide the sentence for each charge.
 18. **Charge(s) denied:** If you deny the charge(s), the case will be considered by the Committee twice. On the first occasion, the Committee decides whether or not the charge(s) of professional misconduct against you are proved. If the Committee finds the charges proved, we will send you the DBC report, which will explain the Committee's findings and reasons and we will ask you whether you accept the Committee's findings. If you accept the findings, you will be invited to provide any mitigation (including supporting documents) that you wish the Committee to take into account when making the decision on sentence.
 19. The report will be updated to include a summary of your mitigation (if any) and a recommended sentence. It will be presented to the Committee for a second time to decide the sentence in respect of the charge(s).
 20. When the Committee has decided on sentence we will send you the final DBC report, which will explain the sentence the Committee imposed and we will ask you whether you accept the sentence. If you respond and accept the sentence, the case will move to Stage 4.
 21. If you do not confirm in writing within 14 days that you accept the Committee's findings and/or sentence, or you reject the Committee's decision, the case will automatically be referred to a three-person disciplinary tribunal unless issues are raised which require further consideration by the Committee.

What sanctions can the Committee impose?

22. The Committee will consider our enforcement strategy and take into account the Bar Tribunals and Adjudication Services' ('BTAS') Sentencing Guidance. The sentencing guidance is published on the BTAS website (<http://www.tbta.org.uk>) and we

encourage you to look at it. Under DBC, the Committee is able to impose the following sanctions:

- order you to pay a fine;
- reprimand you (or order you to attend on a nominated person to be reprimanded);
- give you advice (or an order to attend on a nominated person to be given advice); and/or
- order you to complete CPD of such nature and duration as the PCC directs and provide satisfactory proof of compliance.

23. The Committee 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 Committee's finding and sentence, a disciplinary finding will be formally recorded against you as of the date when we receive your written acceptance. In accordance with rE73 of the BSB Handbook, details of the charge(s), the finding and sentence will be posted on the BSB's website and publication will be to the same extent as a finding and sentence by a disciplinary tribunal.

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 rE198 of the BSB Handbook, the publication of a disciplinary finding is mandatory and there is no right of review.

Can a Committee 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 sentence if you would prefer that the case is dealt with by a disciplinary tribunal. The Committee 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 sentence 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 sentence and the deadline for doing so. After you have complied with the sentence, we will close our file and mark the case as complete. Failure to comply with the sentence by the deadline is likely to be treated as professional misconduct and the Committee 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 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 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

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DBC procedure flow-chart

