Checklist

Making a sanction decision

**Initial considerations**

* Do you have the power to make the sanction decision?
  + Have you been delegated the role of sanction decision-maker and relevant powers by the head of the agency consistent with the agency’s policies and s.78 of the PS Act?
  + Have you been delegated powers to impose the sanction—e.g. transfer at level, reduction in classification or termination of employment?
  + If you are outside the APS, has the Commissioner’s consent been given to the delegation?
* Have you declared any potential conflicts of interest that might arise from or in making a sanction decision?
* Are you satisfied that you will be able to bring an independent and unbiased mind to this inquiry and that a reasonable bystander would agree?
  + If in doubt, you may wish to discuss with your manager, HR area, or the Ethics Advisory Service.
* Have you read your agency’s s.15(3) procedures and other guidance material?
* Are you aware of the sanctions available under s.15(1) of the PS Act?
* If you have any concerns that the determination of breach of the Code was not made in accordance with legal requirements, such as your agency’s s.15(3) procedures, have you raised this with the relevant person within your agency?

**Advice to the employee who has breached the Code before making a decision**

* Have reasonable steps been taken to inform the employee who has been found to have breached the Code:
  + that a determination has been made that they have breached the Code?
  + of the proposed sanction(s) under consideration?
  + of the factors that are under consideration in determining any sanction(s)?
* Has the employee who has breached the Code been provided with a reasonable opportunity to make a statement in relation to the proposed sanction(s) under consideration and the factors relating to it?

**Considerations in deciding a sanction**

Sanctions are intended to correct behaviour and maintain public confidence in the APS. Sanctions should therefore be proportionate to the misconduct. Before deciding what sanction, if any, to impose, have you considered:

* the nature and seriousness of the breach?
* the degree of relevance of the misconduct to the employee’s duties?
* the likely impact on the reputation of the agency and the APS if the misconduct were a matter of public knowledge?
* whether the misconduct was uncharacteristic of the employee or whether there is evidence of past behaviour of a similar nature, including past findings of a breach of the Code for similar matters?
* any remorse or willingness to take responsibility for the breach, or understanding of the seriousness of the breach, by the employee?
* any mitigating factors, including any such factors raised by the employee?
* any previous sanctions imposed on the employee for a similar breaches of the Code, if the employee has previously breached the Code?
* what sanction, if any, is necessary for the employee to understand the gravity of the situation and for you to be confident that they are unlikely to breach the Code again?
* any information or guidance from your agency on sanction decisions to ensure consistency where circumstances are essentially similar?

**Preparing a decision record**

* If you have decided to impose a sanction(s), have you made a written record of your decision?
* Does the sanction record comply with agency s.15(3) procedures?

Does the record include:

* a description of the relevant actions and behaviours, and the elements of the Code that were breached?
* your assessment of the seriousness of the breach?
* your assessment of aggravating and mitigating factors, if any?
* the decision on whether or not a sanction needs to be imposed, and, if not, the factors you consider relevant to taking other management action as an alternative?
* the sanction to be imposed?

**Advising the employee who has breached the Code of your decision**

* Have you taken reasonable steps to inform the employee
  + of your decision on the sanction(s) to be imposed, if any, consistent with relevant requirements in your agency’s s.15(3) procedures, and
  + when the sanction or sanctions will take effect?
* Have you ensured that the employee has been advised of any right to seek review of your decision under s.33 of the PS Act (or other review rights), noting that seeking a review will not operate to stay the imposition of the sanctions?