



**KENYA INSTITUTE OF SUPPLIES MANAGEMENT**

*"Promoting Professionalism in Supply Chain Management"*

**DRAFT DISCIPLINARY POLICY**

**SEPTEMBER 2020**

## FOREWORD

Kenya Institute of Supplies Management (KISM) is a national body for professionals in the practice of procurement and supplies management in Kenya. The Institute draws its mandate from the Supplies Practitioners Management Act No.17 (The Act) of 2007. The Disciplinary Committee (DC) is established under section 22 of this Act. The DC shall be guided by this disciplinary policy when carrying out its mandate as laid out in the Act with regard to cases related to misconduct or inappropriate behaviour during their professional undertakings.

The purpose of the Disciplinary Policy is to provide a framework of the disciplinary process that registered members will be subjected to as and when the need arises. As Procurement and Supply Chain Management professionals seek to meet their targets in the midst of dynamic economic conditions, global competition, risk and uncertainty their performance must be within satisfactory standards of conduct.

The Institute's Disciplinary Committee that is responsible for adjudicating this policy has the duty of promoting compliance with its directives through public awareness programmes, member sensitization activities and execution of disciplinary proceedings. The policy is the basis of the Institute's code of ethics, which is drawn from global best practices and research. It fosters a multi-step process that allows for early correction of unethical behaviour.

I take cognisance of the stewardship of the disciplinary committee in development of this policy document and the role played by the key stakeholders. During implementation of this policy, continuous engagement will be done with stakeholders as dynamics emerge. As a professional Institute we are committed to the full implementation of the policy.

**John Karani, MKISM, MCIPS**

**KISM CHAIRMAN**

## **PREFACE**

The Disciplinary Committee is responsible for administering the disciplinary procedures amongst persons registered under the Act and taking such disciplinary measures as may be necessary to maintain proper standards of conduct. This policy explains the basis, sequence and outcomes of disciplinary actions employed by the Disciplinary Committee in circumstances where a member's alleged misconduct warrants such action. The objective of disciplinary actions arising from this policy is to bring positive transformation in members' professional behavior.

It's worth noting that currently there are no clear disciplinary procedures, guidelines and published code of ethics and standards of supplies practitioners that professionals are expected to align themselves with. This has created a gap in management of cases of professional misconduct.

This led to the development of disciplinary policy document that provides a framework for the consistent application and management of disciplinary matters. It upholds the principles of rule of justice, equity and impartiality, rules of evidence, timely resolution of disciplinary matters, transparency and accountability, the rule of precedent and confidentiality. It establishes an equitable and consistent approach to addressing issues of professional misconduct by providing clear guidelines for disciplinary process and establishment of Code of Ethics and Standards of Professional Conduct. Adherence to these laws by the disciplinary committee is fundamental to building credibility in the disciplinary process.

Further, the policy aims at maintaining standards of behavior of procurement and supply chain professionals by providing an orderly means of correcting divergence from the standards of conduct. It provides a fair and consistent way of dealing with disciplinary issues and ensure that practitioners are aware of their rights, responsibilities and obligations within the disciplinary process. Overall, it's the objective of the policy to ensure all registered procurement and supply chain professionals adhere to expected standards of conduct or behavior.

The Institute and the disciplinary committee have a joint responsibility of ensuring that all aspects of this policy are clearly understood so that PSCM professionals adhere to best practice, prescribed rules and standards set for them in their areas of operation.

**Dr. Vincensia Apopa- MKISM, MCIPS**  
**CHAIRPERSON, DISCIPLINARY COMMITTEE**

## ACRONYMS

<b>DC</b>	<b>:</b>	<b>Disciplinary Committee</b>
<b>DP</b>	<b>:</b>	<b>Disciplinary Policy</b>
<b>KISM</b>	<b>:</b>	<b>Kenya Institute of Supplies Management</b>
<b>NT</b>	<b>:</b>	<b>National Treasury</b>
<b>PPRA</b>	<b>:</b>	<b>Public Procurement Regulatory Authority</b>
<b>PSCM</b>	<b>:</b>	<b>Procurement and Supply Chain management</b>
<b>SPMA 2007</b>	<b>:</b>	<b>Supplies Practitioners Management Act, 2007</b>

## DEFINITIONS

**“Appeal”** “an application to a high court for reexamination of a disciplinary decision

**“Code of Conduct”** “means principles, values, standards or rules of behaviors that guide the decisions, procedures and systems of the disciplinary process

**“Code of Ethics”** means a set of guidelines that members shall adhere to in upholding moral and ethical behavior while undertaking professional obligations.

**“Consistency”**- means upholding the same standards when dealing with all cases

**“Collusive Practices”** means an arrangement between people or more parties designed to achieve an improper purpose including influencing negatively the actions of another party

**“Disciplinary committee”** means a committee as set out to handle disciplinary cases as provided for under section 22 of the SPMA 2007

**“Evidence”** means the rules and legal principles that govern the proof of facts in a legal proceeding

**“Fairness.”** means treating members justly

**“Misconduct”** means unacceptable or improper behavior contrary to the code of ethics and standards of professional conduct

**“Members”** has the meaning assigned to it under section 3(a) of SPMA 2007

**“Offence”** means an act that violates laid down rules, or laws.

**“Penalty”** means a punishment imposed for violation of law or rule

**“Precedent”** means a principle or rule established in a previous legal case that is either binding or persuasive in deciding subsequent cases with similar issues

**“Prudence”** means application of good judgement and wisdom

**“Removal from the register”** means revocation of membership and cancellation of practicing license of a registered practitioner

**“Risk”** means uncertainty about the effects or implications of PSCM decisions and their impact on Supply Chain activities

**“Stakeholders”** includes a party that has interest in KISM and Procurement and Supply Chain professionals and can either affect or be affected by their activities

**Supply Chain professional** means a person who has professional qualifications in PSCM from a recognized institution and is a member of KISM

**“The institute”** means Kenya Institute of Supplies Management.

**“Warning”** means a disciplinary action that comprises written communication to a member when he/she breaches the code of Ethics and standards of professional conduct.

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## **1.0 INTRODUCTION**

This policy seeks to inculcate desirable performance of those adjudicating, going through or acquiring knowledge on the disciplinary process.

### **1.1 Background**

Kenya Institute of Supplies Management (KISM) has advanced in diverse directions and gained reputation as a corporate body that promotes learning, best practices and application of the same to procurement and supply chain management functions. AS a professional body, KISM has a duty to provide guidance to its members on the standards of behavior and ethical conduct, hence the establishment of disciplinary committee under section 22 of SPMA 2007 and supplies Management Disciplinary Regulation 2015.

To reinforce core values of integrity, transparency and professionalism; protect public interest and strengthen the supply chain profession while ensuring that disciplinary issues relating to alleged misconduct are dealt with in a fair, equitable and consistent manner the disciplinary policy will take regard to the requirements of the constitution of Kenya 2010. It will further make reference to the existing relevant laws like; the Supplies Practitioners Management Act 2007 and its attendant Disciplinary Regulation 2015, the Public Procurement and Asset Disposal Act, 2015, the Public Officers Act 2003, The Public Service Commission Act 2017, The Public Officers Ethics Act 2003, Fair Administration Act 2015, International Best Practices and Law, Public Finance Management Act, Labour Laws and Leadership and Integrity Act.

Adherence to these laws by the disciplinary committee is fundamental to building credibility in the disciplinary process hence improving supply chain environment and contribute to economic development.

Information from this policy will continuously be disseminated through advocacy, newsletters, sensitization forums and training sessions. All KISM members, practicing locally and internationally are expected to maintain high standards of integrity and uphold the dignity of the positions they hold.



## **1.2 Situational Analysis**

The SPMA No. 17 of 2007 with its attendant disciplinary regulation 2015 was enacted in line with the Constitution of Kenya 2010 to make provision for the training, registration and licensing of supplies practitioners and to regulate the conduct of persons registered and licensed under the Act.

The institute is however yet to establish and operationalize a functioning disciplinary committee with clear procedures and guidelines and publish code of ethics and standards of supplies practitioners that professionals are expected to align themselves in accordance with the SPMA 2007 and attendant disciplinary regulations. The professional register is also not yet published for public knowledge.

The forgoing circumstances have resulted in confusion within the supply chain environment as employers and the general public is not aware of where to report errant members in cases of professional misconduct. There is also a blanket condemnation and unfair blame on supply chain practitioners without clarity as to whether their actions constitute actionable misconducts. This has created a gap in the operating environment which has led to loss of public confidence in procurement supply chain profession.

The creation of this policy will ensure publication of code of ethics and standards of professional conduct that registered and licensed practitioners shall uphold. Additionally, it will provide for clear disciplinary procedures, ensure proper management of records pertaining to each disciplinary case and support engagement of key stakeholders to upscale disciplinary procedures and address emerging risks, trends and challenges.

## **1.3 Scope of Application**

This policy applies to persons registered and/or licensed under SPMA 2007 and its attendant regulations in reference to adherence to the code of ethics and standards of professional conduct, the disciplinary process covering; registration of complaints, investigations, hearing, appeal, sanction , gazetment, record management, stakeholder management, policy administration, monitoring, evaluation and review.

Disciplinary complaints handled by the Institute shall include information received from members or any source relating to a member's misconduct, an investigation, a disciplinary process, an audit, a judgment from a national court or information from another organization.

Key procurement and supply chain phases governed by this policy relate to design, planning, execution, monitoring and control. During disciplinary hearings, the Disciplinary Committee will allow members to make representations on their actions covering procurement, logistics, transportation, warehousing, storage, stock control, contract management, distribution and/or disposal.

This policy highlights the alternative decisions to the Disciplinary committee ranging from acquittal from accusations raised, written caution, written reprimand, payment for losses incurred, suspension and dismissal from KISM.

#### **1.4 Policy Goal and Objectives**

This Policy complements the Institute's commitment to enforcing and improving ethical practices in procurement and supply chain management.

The policy objectives are:

- To continuously improve the efficiency of the disciplinary committee
- To improve and maintain standards of behavior of PSCM professionals by providing an orderly means of correcting divergence from the standards of conduct
- Provide a mechanism for dealing with any disciplinary issue that arise in a way that is fair, consistent without discrimination and as quick as possible
- To ensure that practitioners are aware of their rights, responsibilities and obligations within the disciplinary process
- To ensure that no disciplinary action against a practitioner is taken until the complaint and case have been appropriately investigated and concluded
- To ensure that all registered PSCM professionals adhere to expected standards of conduct or behavior

#### **2.0. GUIDING PRINCIPLES**

This policy outlines the disciplinary procedure for investigating issues of misconduct by members to emphasize with consequences of their failure to meet their professional obligations. A disciplinary procedure may be commenced at any stage if the member's alleged misconduct warrants such action.

Members conduct will be assessed against the Institute's code of ethics and applicable laws and regulations under following principles:

- 1) Rule of natural justice
- 2) Equity and Impartiality

- 3) Rules of Evidence
- 4) Timely resolution of matters
- 5) The rule of precedent
- 6) Transparency and Accountability
- 7) Confidentiality

## **2.1 Rule of natural justice**

The rules of natural justice are what people believe to be right and fair. The disciplinary committee shall apply the principle of natural justice when making a decision taking cognisance of procedural fairness rules on notice, disclosure, opportunity to respond, opportunity to present ones case, right to counsel, right to interpreter, legitimate expectation, right to impartial decision maker and freedom from bias, delay and right to reason

## **2.2 Equity and Impartiality.**

All disciplinary hearings will be founded on objective criteria as laid out in the disciplinary procedures and executed in a fair manner. DC decisions shall be based on objectivity rather than on the basis of bias and prejudice

## **2.3 Rules of Evidence**

The DC shall uphold the rule of evidence covering the burden of proof, admissibility relevance, weight and sufficiency (quantum, amount, quality, and type) of what should be admitted into record of a disciplinary proceeding.

## **2.4 Timely resolution of disciplinary matters**

The Disciplinary process will be managed within reasonable time to prevent delays that cause unnecessary and excruciating burden to members. The process will be conducted within prescribed timeliness. As provided in article 159(2) of the Constitution of Kenya 2010, justice will not be delayed and will be administered without un-due regard to procedural technicalities which do not affect the merits or demerits of the issue at hand.

However, in particularly complex situations or where circumstances determine an investigation or finalizing a case will take longer, then the respective member shall be informed.

## **2.5 The rule of precedent**

A principle or rule established in a previous disciplinary hearing that was binding or persuasive will apply for subsequent cases with similar issues or facts.

It is worthy to note that albeit the fact that the same approach will be applied in addressing similar occurrences of the same act of misconduct, the resulting sanctions may be different. Sanctions will depend on the conditions of the matter; and position and powers of the member.

## **2.6 Transparency and Accountability**

The DC shall handle all disciplinary matters in a fair, open, consistent, transparent and accountable manner.

**2.6.1 Responsibilities of the DC to the parties:** The Committee will ensure that procedure for reporting, replying to and hearing complaints are adhered to as per the disciplinary procedures. All parties to a disciplinary hearing will receive information on the matter that requires their involvement within reasonable time to enable them undertake their responsibilities effectively.

**2.6.2 Responsibility to KISM members:** Publicity of the disciplinary policy, code of ethics and standards of professional conduct will be done to ensure that members acquire knowledge on their responsibilities in making sure that they adhere to professionalism.

To boost openness, accountability and public awareness on the disciplinary process, information on matters that attract disciplinary action will be continuously communicated to members. This will be done through the Institute's sensitization and training forums.

## **2.7 Confidentiality**

Throughout the disciplinary proceedings the DC shall maintain strict confidentiality as members maintain innocence until a final verdict proves otherwise.

All information obtained during the phases of receiving complaints, assessment of complaints and adjudicating disciplinary proceedings shall be considered confidential, except for exchange of information as allowed in the disciplinary procedures.

### **3. KEY FACETS OF THE DISCIPLINARY POLICY**

This policy is anchored on the following thematic areas; Code of Ethics and standards of professional conduct, disciplinary process, records management, stakeholder engagement, Policy administration, monitoring, evaluation and review, and emerging issues.

#### **3.1 CODE OF ETHICS AND STANDARDS OF PROFESSIONAL CONDUCT**

This constitutes the set of rules and formal procedures guiding the proceedings, action and sanctioning of unacceptable, improper, unethical and unlawful conduct by PSCM practitioners. In adherence to these codes and standards, professionals will embrace values that uphold integrity (fairness, transparency, accountability) while simultaneously rebuilding and instilling public confidence in PSCM functions.

##### **Policy Statement**

Persons registered and licensed under SPMA, 2007 shall uphold the principle of the PSCM practice as defined in the code of Ethics and Standards of Professional Conduct and comply with all provisions set out therein.

##### **Objectives**

- To standardize the professional conduct and principles to be employed by KISM members in the course of their duties.
- To ensure that PSCM professionals sustain reputations and expertise that will place them in positions of influencing economic activities.
- To codify ethical conduct and establish a formal process and procedure for a fair and consistent disciplinary action of members
- To maintain proper standards of conduct that will protect public interest and integrity of supply chain management profession

##### **Strategies**

KISM shall:

- Sensitize and regularly update, through capacity building programmes, members' knowledge and understanding of ethical principles that govern sound PSCM decisions.
- Publish Code of Ethics and Standards of Professional Conduct.
- Maintain and update register of supply chain professionals in line with SPMA 2007, and its attendant regulations.

- Provide procedure for removal from the register, suspension of registration or revocation of the practicing license of PSCM practitioners.
- Correct irregularities by ensuring compliance with provisions of the laid down rules, ethical requirements and professional conduct.

### **3.2 DISCIPLINARY PROCESS**

A disciplinary process is a standardized step by step comprehensive procedure that KISM commits to in situations where a PSCM professional has to be warned, reprimanded or dismissed. The process is not intended to be punitive in nature but rather to ensure that issues of misconduct are managed and dealt with in a fair and consistent manner.

The process includes handling complaints, investigations, hearings and disciplinary rulings. It may result in dismissal of a complaint, removal from register, suspension of registration, revocation of the practicing license or the imposition of fine on a member.

A sound and efficient disciplinary system presupposes acquaintances/knowledge of rules, timely action, fair and just action and positive approach.

#### **Policy Statement**

The Disciplinary Committee is responsible for ensuring that an efficient and effective disciplinary procedure is in place in line with the legal framework of the SPMA 2007, 2007 and best practice.

The DC shall ensure the disciplinary process is immediate, consistent and impersonal with prior warning and notice.

#### **Objectives**

- To maintain compliant membership that upholds the rules of conduct and work ethics for optimal service delivery
- To ensure that disciplinary issues relating to alleged misconduct are dealt with in a fair, equitable and consistent manner.
- To deal speedily with actions relating to professional misconduct
- to standardize the disciplinary process

#### **Strategies**

KISM shall:

- Prepare disciplinary procedure guidelines.

- Investigate the circumstances speedily with a full consideration of all relevant facts and take appropriate action.
- Ensure that the process is adjudicated in compliance with the established laws
- The DC shall establish a formal efficient system and process for the just, fair, expedient, equitable, consistent, standardised and balance disciplinary control and action. DC actions will include but not limited to designing of standard forms for instituting complaints, obtaining response, issuing notice of hearing, witness summons and lodging an application for review of dismissed a complaint.
- Conduct proceedings and give the respondent an opportunity to state their case before a final verdict can be arrived at.
- Institute clear levels of sanctions in case of breach of code of conduct

### **3.3 INDEPENDENCE OF THE COMMITTEE**

As a quasi-judicial entity, the Disciplinary Committee shall be guaranteed structural and operational autonomy to shield it against influence or interference from external forces in the course of undertaking its strategic functions. In this case, such forces could be the Government, political interests, and commercial interests. The Committee must be seen and should at all times, carry out its functions free of orders, instructions, or any other intrusions from those forces. However, it will not disengage from other players in public governance.

#### **Policy Statement**

- The Disciplinary Committee has operational and decisional independence in the exercise of its mandate under the law.
- The Disciplinary Committee shall while exercising its mandate ensure a clear commitment to inter-agency harmony and co-operation.

#### **Objectives**

- To promote functional, operational and financial independence of the Disciplinary committee
- To facilitate the powers of the Committee including order production of documents, inspections, investigations, conduct of hearing and delivery or rulings in a more efficient, expeditious and accountable manner.
- To promote collaboration, consultation and harmony with the key stakeholders including the Council, the practitioners, the Judiciary and other relevant government agencies.

## **Strategies**

KISM shall:

1. Cause an amendment to the Supplies Practitioners Management Act, 2007 to provide for tenure of Committee members, the power to order equitable reliefs, and decisional immunity among others.
2. Ensure sufficient budgetary allocation at the commencement of each financial year, to help fund the activities of the committee for:
  - i. Payment of allowances and other charges in respect of the members of the Committee and staff of the secretariat of the Committee; and
  - ii. Funding of training, research and development of activities that relate to the organization and functioning of the Committee.
  - iii. Facilitating investigations, invite expert witnesses and conduct hearings
3. Ensure that members of the Committee shall on appointment, subscribe to the oath of office.
4. Facilitate the Committee's development and operationalization of a system for reporting its decisions for purposes of jurisprudential development.

### **3.4 RECORDS MANAGEMENT**

Records management involves identifying, classifying, storing, securing retrieving, tracking and disposing or permanently preserving the records. It includes the process of capturing and maintaining evidence documents of a disciplinary process, for a period as may be prescribed in the legal instruments.

#### **Policy Statement**

The DC shall maintain complete, accurate, authentic, and accessible records pertaining to each disciplinary case for a period as may be specified in the disciplinary procedure

#### **Objectives**

- To maintain accurate written accounts of disciplinary proceedings and decisions for reference, to support future decisions through precedent.
- To keep records that will support statistical compilations of disciplinary information and trends to support research and development, education to members and communication to stakeholders.



- To develop a system for efficient and effective creation, use, storage, maintenance of and access to all proceedings of the Committee

### **Strategies**

KISM shall:

- Design systems for controlling, receiving, maintaining, safety, securing and tracking movements of disciplinary records and documents including but not limited to leveraging on technology.
- Utilise the decisions and experiences to support capacity building for a better supply chain environment.

## **3.5 STAKEHOLDERS ENGAGEMENT**

Stakeholders are persons, groups or organizations that have interest or concern in the disciplinary procedure/process. They can affect or be affected by the disciplinary actions, objectives and policies.

The stakeholders include; registered members, other professional bodies, the Government of Kenya, individuals, groups and firms, among others who have interests or interact with KISM and PSCM professionals.

### **Policy Statement**

KISM shall collaborate with key stakeholders to upscale disciplinary procedure and address emerging risks, trends and challenges; and generate solutions that will solve ethical dilemmas in dynamic business environments.

### **Objectives**

- To instill confidence and create positive relationships with stakeholders through appropriate management of their expectations.
- To encourage collaborations and partnerships amongst stakeholders who may have a positive contribution to the functions of the DC.
- To achieve a transparent decision making process with greater input from relevant stakeholders and their support of the decisions that are taken.

### **Strategies**

KISM shall:

- Develop a framework for stakeholder engagement to effectively promote stakeholders interlinkages and relationships for the proper functioning of the disciplinary process

- Benchmark from time to time with other professional bodies, government entities and commercial organizations to identify gaps for improvement and sustain a culture of continuous improvement.
- Provide clear communication channels with the public for suggestions, feedback, whistleblowing and knowledge transfer.
- Create awareness amongst stakeholders of the existence of the disciplinary policy in the profession
- Embrace consultative approach when developing disciplinary guidelines

### **3.6 POLICY ADMINISTRATION, MONITORING, EVALUATION AND REVIEW**

Policy monitoring allows for systematic examination of the process of creating a policy, implementing it, and evaluating its effect.

The policy will be administered and continuously monitored to provide clarity on what is acceptable and unacceptable professional behaviour. Whenever there is change in the environment including new trends, the policy will be reviewed to accommodate the changes.

This policy shall periodically be evaluated to check its effects in terms of necessity, efficiency and validity in addressing disciplinary cases. In case gaps, challenges or negative impacts are found in its directives, proposals on changes will be presented to the KISM Council.

This policy document shall be reviewed after three years or when regulations or environmental shifts necessitate a substantial change.

#### **Policy Statement**

The DC shall ensure that the policy is relevant to the prevailing circumstances and practice environment at any given time

#### **Objectives**

- To periodically provide monitoring and evaluation reports that probe the strengths and weaknesses of this policy's operational model, and provide detailed information about its effectiveness.
- To enhance policy efficiency and effectiveness.

### **Strategies**

KISM shall:

- Continuously monitor, evaluate, improve and review the policy document
- develop a monitoring tool for the policy document

### **3.7 EMERGING ISSUES**

Emerging Issues are new trends that have not been influential, experienced or important in the past that might be significant in the future.

#### **Policy Statement**

KISM shall continuously identify and address any emerging issues that may have an impact on Procurement and Supply Chain Management profession.

#### **Objectives**

To ensure the Disciplinary Policy copes with changes in economic conditions, global competition, innovation, risk and uncertainty both locally and internationally.

### **Strategies**

KISM shall:

- Encourage continuous research and innovation on emerging issues in PSCM to improve it solutions to stakeholders.
- Ensure continuous capacity building on emerging issues in procurement and supply chain management