

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Richard Scully
Heard on:	Tuesday, 15 October 2019
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mr Maurice Cohen (Chairman) Mr Trevor Faulkner (Accountant) Mr Barry Picken (Lay)
Legal Adviser:	Mr Richard Ferry-Swainson (Legal Adviser)
Persons present and capacity:	Mr Mohammed Ismail (ACCA Case Presenter) Miss Rachael Davies (Hearings Officer) Ms Geraldine Murray (Hearings Officer)
Observers:	Mr James Walker (Appointments Board) Mr Ryan Moore (New Panellist)
Summary:	Facts and misconduct found proved. Student removed from the register. Costs to ACCA of £6,855.50.

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Mr Scully, who was not present or represented.
2. The papers before the Committee were in a bundle, numbered 1 to 150, and a costs schedule, numbered 1 to 3. The Committee was also provided with a Service Bundle, numbered 1 to 17.
3. Mr Ismail made an application to proceed in the absence of Mr Scully.

PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Ismail, on behalf of ACCA, and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing, dated 6 September 2019, thereby satisfying the 28 day notice requirement, which had been sent to Mr Scully’s address as it appears in the ACCA register, by International Tracked and Signed for post. The Notice included details about the time, date and venue for the hearing and also Mr Scully’s right to attend the hearing, in person or by telephone, and to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment, and the Committee’s power to proceed in Mr Scully’s absence, if considered appropriate. Proof of postage was provided, and the Royal Mail Track and Trace which indicated that, by 18 September 2019, the Notice had reached the Overseas International Logistics Centre in South Africa. The Notice was also sent to Mr Scully by email.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received. Having so determined, the Committee then considered whether to proceed in Mr Scully’s absence. The Committee

bore in mind that although it had a discretion to proceed in the absence of Mr Scully, it should exercise that discretion with the utmost care and caution, particularly as Mr Scully was unrepresented.

7. The Committee noted that Mr Scully faced serious allegations, and that there was a clear public interest in the matter being dealt with expeditiously. He had been properly notified of the hearing, and the Committee was satisfied that he should be aware that it was due to go ahead today. He had been given the option of attending by telephone or live televisual link if he was unable to attend in person, but had chosen not to do so. Although at an earlier stage in the process Mr Scully had been engaging with ACCA, he had not responded to the Notice of hearing, or indeed any other correspondence sent to him about this hearing. In addition, the Hearings Officer had tried to telephone him on 11 and 14 October 2019, but on both occasions the telephone went to the engaged tone and no one answered. It was clear to the Committee that Mr Scully had decided not to engage any further with ACCA, and it thus concluded that he had voluntarily absented himself from the hearing and thereby waived his right to be present and to be represented at this hearing. The Committee considered an adjournment would serve no useful purpose. Mr Scully had not requested an adjournment, and it seemed unlikely that Mr Scully would attend on any other occasion.

8. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Mr Scully.

ALLEGATION/BRIEF BACKGROUND

9. Mr Scully faced the following Allegation:

Allegation

Allegation 1

(a) On any date between 8 January 2019 and 6 February 2019, Mr Richard

Scully, an ACCA student, made a series of postings on his public Twitter page including but not limited to those set out in Schedule A.

(b) Mr Richard Scully's conduct in respect of 1(a) breached:

- (i) Section 115.1 of the ACCA Code of Ethics and Conduct ("The Fundamental Principle of Professional Behaviour") (as applicable in 2019)
- (ii) Section 115.3 of the ACCA Code of Ethics and Conduct ("The Fundamental Principle of Professional Behaviour.") (as applicable in 2019)

(c) By reason of his conduct in respect of any or all of the matters set out at 1(a) and 1(b) above, Mr Richard Scully is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i); and/or
- (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

10. Mr Scully registered as a student on 2 December 2016.

11. In 2019, it came to ACCA's attention that Mr Scully was using his public Twitter page to post offensive, racist and sexist remarks, as detailed in Schedule A. On his Twitter page, Mr Scully described himself as the following: "*Hard Brexiteer, Democratic Alliance ACCA Accounting and Business.*"

12. Once ACCA became aware of the nature of the postings made by Mr Scully on his public Twitter page, it raised a complaint against him pursuant to Rule 4(1)(a) of The Complaints and Disciplinary Regulations 2014.

13. ACCA wrote to Mr Scully on 5 February 2019, in order to ask for his response to the allegation that he had been making racist, sexist and offensive remarks on his Twitter page. On the same date, ACCA received numerous emails from Mr Scully. In his first email, he said:

"I received your letter and ask you to take note of the term ACCA Accounting and Business. If you notice on LinkedIn you can place your "college" as such and the diploma or degree which is accompanied by ACCA Advanced diploma in accounting and business... unless the diploma I have is not from ACCA.....?????"

In fact I take pains on linkedin to specify bachelor's level so as not to confuse that with Chartered Accountant. It appears a remain member of our society has chosen to take issue with my personal views to try and attack me personally which is truly in keeping with the way things have gone since we voted to leave the European Union."

14. In Mr Scully's second email to ACCA, he said:

"Just look on that twitter feed and you will see the ACCA Accounting and Business is split by a line..... sorry, I don't design the page."

15. In a third email to ACCA, Mr Scully said:

"Another thing I noticed... The ACCA does not come after my name unless "Hard Brexiteer" and "Democratic Alliance" are new degrees."

16. In a fourth email to ACCA, on the same date, Mr Scully said:

"It seems you have a problem with my political views and will be approaching the ERG on this matter."

17. In a fifth email to ACCA, on the same date, Mr Scully said:

"So are you suggesting now I should not write my exams in march???"

18. In a sixth email to ACCA, on the same date, Mr Scully said:

"My messages to Sadie (sic) Khan remain. ACCA or not. I will have to see you in court. Can you organise my legal representation. Thank you. I

will assume we will be hearing this in London. I will need transport and accommodation as well.”

19. In his seventh email to ACCA, on the same date, Mr Scully said:

“I think this is disgusting that a professional organisation goes on a witch hunt over political views and statements. I guess we are going to court. A battle I never asked for. This is absolutely shocking. I am absolutely shocked and will take this further. I can’t believe this that an organisation such as ACCA decided how it’s students and members must think and believe politics. If I disagree with the way Sadie Khan is running London and his lack of control of knife crime, the organisation that provides my qualifications decided I cannot think this way. Who the HELL do you think you are?? Who the HELL do you think you are to decide what I post on my twitter account? This is absolutely shocking. I am taking this to the police.”

20. In his eighth email to ACCA, still on the same date, Mr Scully said:

*“To avoid any confusion I have adjusted my twitter bio to read as follows
WTO Brexit, Association Chartered Certified Accountants (ACCA)
Advanced Diploma Accounting and Business.
You are welcome to follow me on twitter if you wish to read my tweets.
Further than that they are of no business whatsoever to the ACCA
I am laying charges of intimidation against yourselves with at this stage
the Metropolitan Police, however will take further advice if that is the
correct location(s).”*

21. In his ninth, and final, email to ACCA, on 5 February 2019, Mr Scully said:

*“Hi [NAME REDACTED] or whoever you are
I just am so shocked that you should become the “Twitter moderator”. If
people have a problem with tweets they go to twitter, or in extreme case
the police. But I see this must have failed for whoever complained here,
whoever happened to disagree with me. The the (sic) hell do you think*

you are. For Gods sake. I have written to my MP in the UK, not bothering with South Africa as I am sure nothing will happen.

I wonder how many ACCA students and members and qualified people will be interested to know that ACCA is now moderating our tweets and that people who disagree with our political views can contact the ACCA to try and shut us up. Where are we living??? Communist China??? The ACCA thought police??? This is shocking.”

22. In an email to ACCA on 6 February 2019, Mr Scully said:

“Why don’t you start going after the CA’s that are crooking the books in the South African SOEs, yes, the big international firms like KPMG and the rest, all I am sure are full of ACCA accountants just waiting to be investigated by you?? Or would that jeopardise your job?? But instead you go after my knife crime tweet against sadiq khan... Really... you need more to do... I am really shocked at this... If I was part of some accounting or business irregularity fine, but this really falls outside your remit and is really intimidation... I can’t get over this. Every time I think about it I get angrier... This must go to the police.”

23. On 5 February 2019, the same date as the above emails had been sent, Mr Scully set up a Twitter poll on his Twitter public page which stated:

“Do you believe professional organisations like the ACCA (Association of Chartered Certified Accountants) should be moderating their Members and student’s Tweets (that are not in violation of Twitter’s policy?”

24. ACCA wrote to Mr Scully on 19 February 2019, advising Mr Scully to observe proper standards of conduct, in accordance with ACCA’s Rulebook, and that, if Mr Scully had any further comments which he wished ACCA to take into account, then to provide them by 26 February 2019.

25. ACCA wrote a reminder letter to Mr Scully on 27 February 2019, as no further response had been received by then. The same day Mr Scully responded in an email, stating:

“When you sent me that first email, in my disgust and anger at being stalked by you I was able to look at the first tweet page without my glasses, all I saw was my twitter page where you circled the ACCA. As you are aware from my letters I naturally assumed that you were calling me on some sort of misrepresentation issue which I responded to.”

26. Mr Scully went on to say:

“On receiving your letter I see that was not the issue but a series of not very nice tweets.

I do not know how they arrived on my page, however let me fill you in as to steps taken so far to investigate.

I opened that account a number of years ago but never used it and all sorts of things might have occurred with a dormant account in that period as regards hacking.

After seeing this apparent evidence of yours, naturally I was as shocked as I imagine you were and I took steps are closed all my social media accounts to prevent my accounts being hacked again.

After deactivating the accounts on Twitter THREE TIMES, changing the password, the accounts have been reactivated every time and are still active under a different name but the same access. I have tried to notify twitter, however they will not allow the complaint to go through without showing some URL they ask for. Perhaps you can assist me here considering your agility with Twitter.”

27. On 28 February 2019, Mr Scully sent the Senior Investigations Officer an email together with a picture, saying: *“I found an interesting picture on the web while looking up some accounting standards”*. The picture depicts a scene from the Nazi era, and shows books being burned in front of a crowd. ACCA deemed this picture to be wholly inappropriate and offensive and in a further email to Mr Scully on 1 March 2019, advised him to once again think carefully about his conduct towards ACCA members of staff and to adhere to answering the questions asked of him. ACCA set out some further

questions for him in relation to his previous response, asking him to confirm whether all the Twitter screenshots, referred to in Schedule A, were posted by him on his twitter page, and any steps he had taken to report the 'hacking' of his social media account as he had alleged in his previous response.

28. In an email to ACCA dated 5 March 2019, Mr Scully said:

"I would appreciate if you could point out and explain which ones are racist and which ones you think are sexist and please stout [sic] your reasons therefore."

29. In a second email to ACCA on 5 March 2019, Mr Scully said:

"So therefore by ACCA decree I am guilty?"

30. ACCA wrote a further email to Mr Scully on 6 March 2019, setting out the position in relation to the current investigation and reminding him to answer the questions previously asked of him.

31. On 14 March 2019, Mr Scully provided a further email response to ACCA in which he stated:

"I believe I stated that I believed my account could have been hacked or cloned.

I am not sure of the name Twitter Account A, I seem to remember Twitter Account B.

I closed the account on Twitter, facebook and LinkedIn after this episode and have no intention of pursuing them again. In fact I have a business associate in the United States who spends money every year "cleaning the internet" of his name to prevent incidents of cloning or hacking. I may follow suit."

32. Mr Scully then went on to say:

“I attempted to close my social media accounts as stated in the last letter and noticed that the Twitter account refused to close. Further attempts recently to call up the account have been unsuccessful. I am not sure about Twitter Account A. I am sure I had a hyphen or underscore somewhere.”

33. He added:

“As with all the social media accounts we unfortunately run the risk of accounts being hacked and cloned, hence the reason I usually keep my conversations harmless. Unfortunately by placing my qualification, which I am extremely proud of, on one place I realised that there are unscrupulous people in the world who will do anything to further their criminal acts by identity theft....

The action taken is to block that person and delete the friend request. It is pointless contacting the social media companies as they do not respond nor stop any of the attempted identity thefts. This I know as others have attempted to report these matters, which was in the press, and to no avail. I have realised from this incident that there should be nowhere that is safe to disclose my education achievements on the public internet.”

34. And:

“...the family have a book of passwords which we keep in the United Kingdom... The whole family has a number of devices which I am sure you can appreciate are both very expensive and carry a lot of personal information.... Whenever anything happens, such as this incident we change our passwords for safety sake. I use the same password and where I can allow the devices to remember.... So we send, or did send emails to my mother with updates for her to enter into the password book. The hack on my mothers computer was over a long period of time and the suspicion is that before deleting everything and destroying the computer that they went through absolutely everything. In fact when trying to shut down one of my social media accounts I could not get the password correct, however the email address was correct so I was able

to put in new passwords to delete the accounts. I can say that I have not as yet received any notice of ransom at this stage over cloning of a twitter account, however after this experience I am wondering when that letter will arrive.”

35. In conclusion, Mr Scully said:

“...I am disappointed that this has occurred, especially considering I hold the ACCA in the highest order and have worked very far to get this far with the qualification... At no point have I meant any disrespect to the ACCA or its members and hope this matter can be put to bed.”

36. ACCA received a further email from Mr Scully on 17 March 2019, in which he forwarded an email from his “Evernote account”, in which he said: *“I just received this tonight and thought I would forward it to you to show the challenges I am having with cyber security.”*

37. ACCA sent a further email to Mr Scully on 18 March 2019, asking for more evidence in relation to his previous response, and reminding him to refrain from sending emails to ACCA which are not relevant to the issues of this particular case.

38. Mr Scully then provided a further email response to ACCA on 18 March 2019, in which he said:

“I have stated that I believe my account is being messed with, hacked, violated in some manner. The email you received on the 17th March 2019 backs this up in that it is an email sent by the developers of another program that I have and indicates that there is suspicious activity referring to my password on this account...

I looked at those pages and cannot spread any further light on them other than to say whoever wrote them must have had some pretty stiff provocation from another party to say such things.

I cannot provide evidence as to my closing of my Twitter account as I told you every time I tried to close the account it would not accept my

password. Eventually I think I managed to change the password and it closed. (I believe). As I told you I am not in control of these accounts and furthermore I don't even know if it is my account."

39. In all his correspondence with ACCA, Mr Scully used the same email address.

DECISION ON FACTS/ALLEGATION AND REASONS

40. The Committee considered, with care, all the evidence presented and the submissions made by Mr Ismail. The Committee accepted the advice of the Legal Adviser, and bore in mind that it was for ACCA to prove its case, and to do so on the balance of probabilities.

41. The Committee considered that, by the tone, nature and content of his responses in all of the emails he sent on 5 February 2019, Mr Scully clearly gave the impression that he was the owner of the Twitter page in question and that he had made the postings which were of concern. In those emails, he did not deny making the Tweets, but rather took ownership of them, stating, *"It seems you have a problem with my political views and will be approaching the ERG on this matter."* He went on to say, *"I think this is disgusting that a professional organisation goes on a witch hunt over political views and statements. I guess we are going to court. A battle I never asked for. This is absolutely shocking. I am absolutely shocked and will take this further. I can't believe this that an organisation such as ACCA decided how it's students and members must think and believe politics. If I disagree with the way Sadie Khan is running London and his lack of control of knife crime, the organisation that provides my qualifications decided I cannot think this way. Who the HELL do you think you are?? Who the HELL do you think you are to decide what I post on my twitter account? This is absolutely shocking. I am taking this to the police."* [sic]

42. In a further reference to his Tweet about Sadiq Khan he said, *"My messages to Sadie Khan remain. ACCA or not. I will have to see you in court."* [sic]

43. Further evidence of Mr Scully's ownership of the Tweets can be found by a poll Mr Scully set up on his Twitter page on 5 February 2019, where he asked his followers to indicate 'yes' or 'no' to the following question:

"Do you believe professional organisations like ACCA (Association of Chartered Certified Accountants) should be moderating their Members and student's tweets (that are not in violation of Twitter's policy)?"

44. It was only later, no doubt on reflection, that Mr Scully, somewhat disingenuously, tried to distance himself from the comments made, and claimed his account had been hacked. The Committee was not remotely persuaded by this assertion, and was satisfied that it was, indeed, Mr Scully who was responsible for the racist, sexist and offensive postings detailed in Schedule A. After claiming, on 27 February 2019, that his account had been hacked, Mr Scully showed his true colours the very next day, on 28 February 2019, when he sent the deeply offensive picture to ACCA staff members, using the same email address that he had used throughout. The Committee noted that, whilst Mr Scully attempted to claim that his Twitter account had been hacked, at no stage did he claim that his email had been hacked and offensive comments and attitudes were also demonstrated therein. At a later stage, on 15 May 2019, Mr Scully appeared to be claiming that his behaviour was the result of a medical condition. However, when he was asked to provide evidence of his claimed medical condition, Mr Scully did not respond and, indeed, that was the last time that Mr Scully engaged with ACCA. Accordingly, the Committee discounted any possible medical reason for Mr Scully's behaviour.

45. In all the circumstances, the Committee therefore found 1(a) proved.

46. The Committee then considered whether such behaviour breached sections 115.1 and 115.3 of the ACCA Code of Ethics and Conduct ("The Fundamental Principle of Professional Behaviour), as applicable in 2019.

47. Section 115.1 states:

“A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.

Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.”

48. Section 115.3 states:

“A professional accountant shall behave with courtesy and consideration towards all with whom the professional accountant comes into contact in a professional capacity.”

49. Section 115 applies to students in the same way as it applies to members. His behaviour in posting such offensive remarks on his Twitter page, a page which also associated him with ACCA, clearly brought discredit to the profession and ACCA as its regulator. Whilst fully accepting the principle of free speech, the Committee found the particular comments, as referred to in Schedule A, to be despicable and not to represent the behaviour expected of a student member of ACCA. The Committee did, therefore, find that Mr Scully had breached section 115.1, and that 1(b)(i) was proved.

50. The Committee also found Mr Scully had breached section 115.3. By describing himself on his Twitter page as *“ACCA Accounting and Business”* there was the possibility that his Twitter feeds would bring him into contact with people in a professional capacity. He clearly had not behaved with courtesy and consideration to all with whom he came into contact in a professional capacity and, therefore, the Committee found 1(b)(ii) proved.

51. Having found the facts proved in Allegations 1(a) and 1(b), the Committee then considered whether they amounted to misconduct. The Committee was in no doubt that making such offensive remarks in a public forum, which directly linked him to his membership of ACCA, would clearly be considered deplorable by fellow members of the profession and the public. It was behaviour which brought discredit upon Mr Scully, the profession and ACCA. Indeed, it had been noticed by a member of the public, who then contacted ACCA to complain about it. The Committee therefore decided that Mr Scully's behaviour in making the offensive Tweets amounted to misconduct, and that Allegation 1(c) was proved in respect of 1(a) and 1(b).
52. Having found Allegation 1(c)(i) proved it was not necessary for the Committee to consider Allegation 1(c)(ii), which was in the alternative.

SANCTION AND REASONS

53. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Ismail. Mr Scully had not attended, nor had he provided any personal mitigation for the Committee to take into account. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Mr Scully, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
54. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
55. The Committee considered the following aggravating features: the extensive and repeated nature of the deeply offensive posts; aggressive, hostile behaviour towards ACCA members of staff; the attempt to mislead the Committee by claiming he was not responsible for them; the complete lack of insight and remorse.

56. The Committee considered there to be one mitigating factor, namely a previous lack of disciplinary matters.
57. The Committee considered all the options available from the least serious upwards, and concluded that the only appropriate and proportionate sanction was removal from the student register. Repeatedly using such reprehensible, derogatory and downright racist language in a public forum, whilst displaying links to his membership of ACCA was, in the Committee's view, fundamentally incompatible with being a student of ACCA. This behaviour was compounded by his appalling behaviour towards ACCA staff, as demonstrated by the deeply offensive photograph sent to them. In addition, he attempted to deceive ACCA, and this Committee, into believing his account had been hacked and that he was not responsible for the Tweets. Mr Scully had shown no insight into his behaviour and, indeed, at various stages had sought to defend it, disputing that it was not for ACCA to, in any way, censor his views.
58. Being a member of ACCA, whether as a student or as a full member, brings with it responsibility, professionalism, and the duty to abide by a code of conduct and ethical behaviour. Mr Scully's blatant and deplorable conduct was such a serious breach of bye-law 8 that the Committee considered no other sanction but removal from the student register would adequately reflect the gravity of his offending behaviour.
59. The Committee also considered that a failure to remove a student from the register who behaved in this disgraceful way would seriously undermine public confidence in the profession and in ACCA as its regulator. The public need to know it can rely on the integrity and professionalism of those who are members of ACCA. In order to maintain public confidence and uphold proper standards in the profession, it was necessary to send out a clear message that this sort of behaviour would not be tolerated.
60. The Committee, therefore, ordered that Mr Scully be removed from the student register.

COSTS AND REASONS

61. ACCA applied for costs in the sum of £7,135.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable, except for the estimates for the Case Presenter and Hearings Officer for today's hearing which, in the event, took less than a full day. Mr Scully did not provide any details of his means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.
62. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £6,855.50.

EFFECTIVE DATE OF ORDER

63. In light of Mr Scully's heinous behaviour, and the Committee's decision that it was necessary to remove him from the student register, the Committee decided it was in the public interest to state that this Order will have immediate effect.

Mr Maurice Cohen
Chairman
15 October 2019