

Resolution 4: ABS

This is the resolution which is requisitioned by Michael Sheridan and supported by, Andrew Duthie, David John Oliver Dickson, Bridget McLaren, Claire Helen Crawford, John McGeechan, Robert Campbell, Julie Millen, Sally Lewis Davidson McKenzie, Paul K Donnachie, Grant Peter McLennan for adoption by the AGM of the Society on 27th June 2024 all by virtue of the attached member requisition form signed in counterpart by said proposer and supporters

Introduction; ABS

1. Whereas sections 47, 48 and 49 of the Legal Services (Scotland) Act 2010 (the 2010 Act) which are not yet in practical effect and section 80 of the Regulation of Solicitors (Scotland) Bill 2023 (the 2023 Bill) provide for the authorisation of the acquisition, ownership, significant control and operation of solicitors businesses in Scotland by non-solicitors including investment companies under shareholder control the effect of which sections taken together provide a regime identified as Alternative Business Structures or ABS and

Solicitors' rights are held in public trust and cannot legitimately be sold privately.

2. Whereas the solicitors' profession enjoys the privilege of monopoly rights to deliver to and charge the public for certain legal services these rights were created by public general statute and are provided to solicitors who have undertaken an average of about ten years of relevant education, training and practice. The rights are held by solicitors as trustees for the public and is contrary to the principles of trustee ownership that these rights be sold by said trustees to non trustees for the private profit of the selling trustees and of the purchasing companies and their shareholders who are likely to be very interested in the acquisition of the solicitors' monopoly and the dividends which might thereby be derived from a public which needs legal services but already often has difficulty in affording legal fees without the additional expense of shareholders' dividends

Only solicitors can own solicitors' practices

3. Whereas the Solicitors (Scotland) Act 1981 (the 1981 Act) provides that only solicitors who are fully qualified with requisite qualified experience are authorised to own and control businesses as solicitors in the provision of services in the reserved areas so that the profession of solicitors and the public served by that profession are protected against the potentially damaging provision of these services by persons who are not sufficiently educated, trained and experienced as to be able to properly deliver said services in such a way as to properly protect the interests of the solicitors' profession, the clients of that profession and the public interest in access to justice, the proper function of the court system and in the accuracy of the official registers, and



Professional Indemnity and Guarantee Fund cannot properly be shared with non solicitors

4. Whereas the profession of solicitors, the clients of that profession and the public interest in an independent and functional legal profession are protected against loss by dishonesty or negligence arising from the operation of solicitors' practices by virtue of the professional indemnity fund and the clients guarantee fund which are constituted by premiums and contributions paid in by qualified solicitors on the basis that these funds will provide compensation only in cases where loss has been suffered in connection with the operation of businesses owned and controlled by fully qualified solicitors and whereas the said premiums and contributions are calculated in relation to the potential amounts of said losses and whereas, if that protection were extended to losses arising in the operation of businesses owned and controlled by persons such as investment companies who do not have the education, training or experience of qualified solicitors then the said losses are likely to be much greater and the said premiums and contributions likely to be correspondingly greater and would, in any case, be outwith the control of the solicitors' profession and are likely to threaten the successful function of the said funds, and

Solicitors' profession has not consented to ABS

5. Whereas the Scottish government has undertaken not to seek the promotion of ABS without the support of the solicitors' profession and no formal enquiry has been made of that profession as to whether or not it is so supportive and whereas the Scottish Law agents Society carried out an informal survey of the profession and said survey indicated a rejection of ABS in a proportion of 4:1 against ABS and whereas Scottish solicitors properly convened an extraordinary general meeting of the Law Society of Scotland in 2010 on a motion to reject ABS and whereas approximately 3000 solicitors attended said meeting in person or by proxy and whereas the President of the Law Society of Scotland as chair of said meeting declined to take a vote and thus obstructed the right of the said solicitors who had called and attended the meeting to demonstrate the substantial rejection of ABS by said profession and whereas the only available evidence demonstrates that the solicitors' profession has rejected the introduction of ABS, and

State Control of solicitors' regulation cannot legitimately be purchased by private bargain

6. Whereas the 2010 Act authorised ABS on the basis of majority ownership thereof by registered professional human beings but the 2023 Bill proposes instead to authorise 90% corporate ownership and whereas the 2010 Act authorised minimal regulatory control by Scottish ministers of the solicitors' profession but the 2023 Bill proposes a greatly increased degree of such regulatory control by Scottish ministers and whereas by virtue of the said extension of the market the potential sale value of solicitors' practices stand to be greatly increased at the same time as the regulatory control by Scottish ministers in the solicitors' profession is increased so that those persons who stand to make private financial gains from said increased values are given a financial inducement to promote the said increase in the regulatory powers of Scottish ministers and whereas it is in the public interest in an independent solicitors' profession that investment companies should not have control over solicitors' practices and the state in the form of Scottish ministers should not have control over the regulation of solicitors' practices, and



ABS has failed to benefit England and Wales

7. Whereas the operation of ABS was established English and Welsh jurisdiction from about 2012 and has not brought any known benefit to the solicitors' profession or to the public in that jurisdiction and whereas the said profession in that jurisdiction is reported to have amassed total indebtedness of £4.5 billion (New Law Journal 17th April 2024) and whereas the said profession holds huge sums of money in trust for clients and whereas it is contrary to public policy that persons who are subject to extreme indebtedness should be permitted to hold funds in trust for other persons and whereas the conveyancing system provided by one investment company owner of of solicitors' practices (Inflexion Partners – O,Neill Partners – Times 25th November 2023) in the English and Welsh jurisdiction broke down around causing at least hundreds and possibly thousands of conveyancing transactions in that jurisdiction to be delayed or aborted to the financial detriment of many clients of those firm, all indicating that the operation of ABS has been seriously disadvantageous to that jurisdiction and should not be introduced in the Scottish jurisdiction, and

Conflict of interest between clients and shareholders of corporate providers of legal services

8. it is inevitable that a solicitor acting within a shareholder company shall face an irreconcilable conflict of interests between those of clients of that company as a legal services provider and those of the shareholders of the company. Under company law, directors are bound to operate companies for the benefit of the company members (Companies Act 2006 section 172), while, under solicitors' regulation, solicitors must act in the best interests of their clients (Law Society of Scotland Practice Rules etc). While it is in the interests of the client that expenditure through the company be minimised, it is in the interests of the shareholder that the company maximise the legally available "take" from any particular customer. These two objectives cannot be reconciled; the solicitor's client is the company's customer and these two separate identities cannot be reconciled within the one person..

Conclusion

9. Therefore, this meeting resolves that the Law Society of Scotland calls upon the Scottish Parliament and the Government of Scotland to exclude said section 80 from the 2023 Bill and to repeal said sections 47, 48 and 49 from the 2010 Act and to make such other statutory amendments as may be required to exclude the operation of ABS in the Scottish jurisdiction.