Reserved and Unreserved Lawyers' Activities

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Abstract

The current regulation of legal services has grown over hundreds of years as the profession itself has developed and expanded. The rules and regulations were produced both by the profession itself and by governments keen either to confirm existing practice though legislation or simply to respond to political pressure. The Legal Services Act 2007 (the Act) aimed to refocus regulation on consumer rather than professional interests, ensuring independent regulation and removing unnecessary barriers to competition. Despite this, centuries of legal regulation have left a patchwork of approved persons, reserved activities and authorised regulators criss-crossing across legal activities. The paper explores the regulation of legal services and considers how the Legal Services Board (LSB) will consider reforming and simplifying the regulation of legal services. The paper concludes that a reassessment of types of regulatory tools available and their deployment is necessary to ensure efficient and effective regulation of legal services.

Introduction

Regulation of legal services in England and Wales is predominantly provider based. It is also built around the list of reserved activities set out in the Act. Only persons that are authorised by an approved regulator that has been designated to regulate that activity under the provisions of the Legal Services Act may deliver a reserved activity. This brings the authorised person within the scope of legal services specific regulation for the reserved activities that they deliver, though certain professions e.g. solicitors have regulated all legal services that regulated individuals perform. The reserved activities are sometimes referred to as the "inner circle" of legal services – although, with the exception of rights of audience, they do not necessarily align with the parts of practice that carry the greatest remuneration or cultural kudos[1].

There are currently only six areas of legal activity that Parliament has determined must be reserved. These six reserved activities are listed at Section 12 and Schedule 2 of the Legal Services Act. The reserved activities are:

- the exercise of rights of audience (i.e. appearing as an advocate before a court);
- the conduct of litigation (i.e. managing a case through its court processes);
- reserved instrument activities (i.e. dealing with the transfer of land or property under specific legal provisions);

[1] Clementi, Chapter E – Regulatory Gaps, Final Report on the Review of the Regulatory Framework for Legal Services in England and Wales, December 2004.

- probate activities (i.e. handling probate matters for clients);
- notarial activities (i.e. work governed by the Public Notaries Act 1801); and
- the administration of oaths (i.e. taking oaths, swearing affidavits etc).

The LSB is a new organisation, created by the Legal Services Act 2007. The LSB came into being on 1 January 2009 and became fully operational on 1 January 2010. Its overriding mandate is to ensure that regulation in the legal services sector is carried out in the public interest; and that the interests of consumers are placed at the heart of the system. The Board itself is responsible for overseeing legal regulators in England and Wales. It is independent of Government and of the legal profession. It oversees ten separate bodies, the Approved Regulators, which themselves regulate the, more than, 120,000 lawyers practising throughout the jurisdiction. The LSB also oversees the Legal Ombudsman, administered by the Office for Legal Complaints, which was established to handle service complaints about lawyers. Our clear focus is to deliver the eight Regulatory Objectives, set out in the Act:

- protecting and promoting the public interest
- supporting the constitutional principle of the rule of law
- improving access to justice
- protecting and promoting the interests of consumers
- promoting competition in the provision of services
- encouraging an independent, strong, diverse and effective legal profession
- increasing public understanding of the citizen's legal rights and duties
- promoting and maintaining adherence to the professional principles.

Reservation and the consumer

There is evidence to suggest that the reserved activities remain remote to most providers of legal services, let alone consumers[2]. The majority of legal activities are not listed as "reserved activities" and are not explicitly required by statute to be brought within the scope of legal services specific regulation. This includes the services that most people use and understand to be legal services, and might instinctively expect to fall within the regulatory net – for example general legal advice, transactional corporate advice, will-writing and employment advice.

In practice, these activities can be provided by anybody who wishes to do so, irrespective of qualifications or expertise. In doing so the general competition and consumer protection framework applies but not the additional requirements, protections, constraints and costs of legal services

[2] See Mayson, Regulation of Legal Services, Moorhead, Time to Rethink Reserved activities, Rose – The Lawyer and the Plumber.

specific regulation. Research evidence published by the Legal Services Consumer Panel[3] revealed that the majority of consumers simply assume all legal activities are regulated and so at a high standard of quality.

Traditionally most legal activities are regulated because those that undertake them also undertake a reserved activity or because they wish to maintain a protected title. For solicitors and barristers the conditions of professional membership extends the regulatory rule book to all of the work that they undertake, whether or not it has been determined an area in need of particular protections. In other words they still become subject to legal services specific regulation when undertaking legal activities that have not been reserved. There are ownership and management restrictions such as the Solicitors Regulation Authority's ("SRA") separate business rule that provide that firms are not able to conduct certain non-reserved legal activities through a separate unregulated business. This stops solicitors from taking advantage of the limitations of the business. Solicitors argue that this is unfair as other types of provider can take advantage of the narrow scope of reservation to deliver services outside of legal services specific regulation. This does not present a level playing field as different costs and barriers apply to different providers delivering the same service.

On the other hand some non-lawyer providers have argued that they should have the opportunity to access regulation of the same statutory standing as solicitors and other authorised persons when delivering what they consider to be professional legal services, in order to provide reassurance to potential consumers. However, this argument for equal treatment does not necessarily mean direct application of the status quo to new entrants.

Development and provisions of the Legal Services Act

Sir David Clementi, whose 2004 review of legal services specific regulation formed the bedrock of the Act, considered the issue of the scope of legal services specific regulation. He concluded that the landscape was "punctuated with gaps, overlaps and anomalies" [4]. He highlighted problems with the "asymmetry of regulation"[5], meaning that different consumer protections and regulatory burdens apply to different types of provider delivering the same service. Clementi said that the "Regulator will need to ensure that the regulatory framework provides the appropriate levels of consumer protection and avoid uncertainty of regulation" and "whereas there should not be a gap in regulation once it is determined that something should be within the regulatory net, there are asymmetries in the regulatory system of which the Regulator should take note" [6].

Despite identifying problems, Clementi explicitly proposed that neither his review nor the Act should change what is and is not regulated. This was for two main reasons: he felt that it would not be possible within the time frame of his review to examine the unregulated areas and he felt that in any event it would only amount to a partial review as new 'gaps' will emerge over time as the market and delivery methods change. Moreover, he took the view that it was for Government to decide which types of legal services should be regulated, as these are public policy decisions.

[3] "Quality in Legal Services", Vanilla Research, September 2010

[4]Clementi, Chapter E – Regulatory Gaps, Consultation Paper on the Review of the Regulatory Framework for Legal Services in England and Wales, March 2004.

[5] Clementi, Chapter E – Regulatory Gaps, Consultation Paper on the Review of the Regulatory Framework for Legal Services in England and Wales, March 2004.

[6] Clementi, Chapter E – Regulatory Gaps, Final Report on the Review of the Regulatory Framework for Legal Services in England and Wales, December 2004.

Therefore, the Act grandfathered in the existing landscape and the scope of legal services specific regulation: it took where the existing regulatory net fell as its starting point.

However, the Act did include flexibility to review the regulation of different services on an on-going basis and either bring new services into legal services specific regulation or deregulate existing reserved areas without the need for primary legislation. It is sections 24 and 26 of the Act that provide the mechanism for widening and narrowing the scope of what is subject to legal services specific regulation. Section 24 provides that the Lord Chancellor may, by order, amend Section 12 and Schedule 2 of the Act so as to add activities to the list of reserved legal activities[7]. It is only through this mechanism that an activity can be brought within the scope of legal services specific regulation irrespective of who delivers the service. Otherwise only the legal providers who are regulated in all that they do would be caught within the net when delivering that service. Section 26 of the Act allows for activities to be removed from the list of reserved activities in the same way.

In both instances the Lord Chancellor can act only on the recommendation of the LSB. The role of the LSB provides for oversight of problems and issues arising across the legal services sector including on the fringes and beyond the boundaries of existing regulation. It allows for "viewing the extent of activity within the whole field to assess how it is working" [8]. It is worth noting here that the regulatory objective of promoting competition explicitly refers to all legal services and not just currently reserved activities.

The LSB must follow a prescriptive process set out in Schedule 6 of the Act – the requirements of which may vary depending on the origins of the consideration. The process includes consultation with named bodies – the Office of Fair Trading, the Legal Services Consumer Panel and the Lord Chief Justice. The anticipated burden of proof for change is high, as it is with any statutory order. There is an expectation of clear rationale, robust impact analysis, detailed analysis of costs and benefits and consultation with the range of interested parties (as well as with the mandatory consultees).

The LSB can recommend that an activity be added to the list of reserved activities but does not automatically decide which approved regulator(s) will be authorised to designate the activity. It must consider applications from bodies wishing to be designated to regulate the new reserved area – again with a view to making a recommendation to the Lord Chancellor.

However, the Act introduces a potentially major innovation. Reservation may be to an individual *or an entity*[9]. Although the approved regulators currently take reservation of an authorised person to mean reservation to individual lawyers such as solicitors and barristers this is not a requirement of the Act. This means that there is considerable scope for applying regulatory arrangements in different ways and for amending existing requirements.

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[7] The LSB may only consider an activity that meets the Act's definition of a legal activity. Legal activity is defined as any activity which consists one or both of the following a) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; b) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes [s12(3)(b) LSA].

[8] Clementi, Chapter E – Regulatory Gaps, Final Report on the Review of the Regulatory Framework for Legal Services in England and Wales, December 2004.

[9] Section 18(1)(a) of the Act provides that an "authorised person" includes, inter alia, a person who is authorised to carry on the relevant activity by a relevant approved regulator. There is nothing in the Act to suggest that 'person' for this purpose does not have the wider meaning assigned to it by the Interpretation Act 1978 and thus include a body of persons corporate or unincorporated.

So, what was that regulation again?

Decker and Yarrow[10] in their publication draw a wide definition of regulation, incorporating everything from market norms from market opening hours, professional standards, legislation to statutory regulation. From a regulator's perspective understanding the roles of each of these will be important, particularly when considering their interaction with the rules of regulators, though actual control will be limited to their rules.

The approved regulators are responsible for setting appropriate regulatory arrangements. These arrangements provide the conditions on which a person is authorised and must abide by when carrying out the reserved activities. Through the regulatory arrangements, it is the approved regulators that determine the nature of regulation for activities carried out by individuals or entities they regulate. The arrangements include such provisions as: qualification and entry requirements, practice rules, conduct rules, disciplinary arrangements, indemnification arrangements and compensation arrangements. In some instances these are framed partly by statutory requirements of existing legislation that were maintained within the Act such as the Solicitors Act 1974, the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990.

Schedule 4 of the Act requires that the LSB must approve the regulatory arrangements of all approved regulators and all changes made to them. These provisions mean that the LSB already plays an important role in making decisions that directly affect the nature of legal services specific regulation and potentially (and proactively) the activities on which it applies. The challenge facing the LSB is inevitably one of how we approach making these decisions and the framework we use for our analysis. However, a prior question is what are we seeking to achieve from the regulation?

The LSB's agenda is driven by the Act itself and the Regulatory Objectives contained within the Act[11]. The Act itself, while sometimes characterised as a deregulatory agenda, is perhaps better described as a reregulatory agenda. Deciding to deregulate legal services would have produced a much shorter and simpler Legal Services Act than the one we have, though without the necessary regulatory protections put in place by the Act.

The approach of regulating legal services until the Act, as outlined by Mayson[12], has been one of deciding on an ad-hoc basis when and which activities should be reserved without a consistent framework for such decisions. The recent publication by Decker and Yarrow used an economic framework to attempt to explore how such a framework of analysis might be developed for legal services. Subsequent essays published alongside the report[13] provided an illustration of the variety of other disciplines and considerations that would need to be incorporated within any framework developed.

The regulation itself has been strongly influenced by the development of the reserved activities and the market for legal services – though these two are difficult to separate. Legal services have traditionally been offered solely by individuals following the traditional routes to qualification –

[10] Decker, C & Yarrow, G; "Understanding the economic rationale for legal services regulation", Regulatory Policy Institute, March 2011
[11] Which are?
[12] Mayson, S; "Reserved Legal Activities: History and Rationale", Legal Services Institute, August 2010
[13] "Understanding the economic rationale for legal services regulation – A collection of essays", Legal Services Board, March 2011

solicitors and barristers. The firms themselves retained rules that restricted ownership to those same qualified people in order to ensure that the ethics and professionalism of the firm retained the characteristics of those employed within the firm. Finally, the regulation and the rules governing the regulation were also governed by those same individuals who were the subject of the regulation a framework controlled by the profession.

We can already see changes in the legal services market that undermine this model and have led, among other things, to the Act itself. The services demanded by individual and business clients of legal services and by the government – a major purchaser of legal services – have changed. Firms themselves have reacted to changing economic pressures by increasing their use of employees who are not solicitors and barristers , whether paralegals or legal executives; changing charging structures or changing ways of delivering services. Legislation over time has attempted to keep up by changing regulation to respond to the changes in the market e.g. allowing Licensed Conveyancers. In the second half of 2011 the move to allow non-lawyer ownership of legal firms through Alternative Business Structures will present a further significant break from the traditional . But, until now there remained a general acceptance that the current mix of reserved and unreserved activities were the cornerstone of legal services regulation.

As the market changes, even within the existing structure of reservation, the risks that are presented change. Regulation, as illustrated by the Regulatory Objectives in the Act, attempts to balance risks and opportunities across many factors, in some circumstances these may be in conflict e.g. consumer access versus consumer protection, in other circumstances distinctions may be more difficult e.g. consumer interest versus public interest.

In the past, regulation has used rules to define how lawyers should behave in order that they deliver high quality legal advice. We have argued that regulation would be better targeting outcomes rather than using rules targeting inputs. An obvious example of the problems an excessive focus of rules might cause is when regulation defines the way in which law is practised in order to maintain quality, when what really matters to the client is the quality of the outcome. As technology and practice change it is possible that defining standards of practice rather than outcomes could actually restrict the ability of legal firms to offer new ways of delivering services to customers in ways that maintain quality but at a lower cost. The SRA has accepted the need to change its regulation and is planning to introduce new outcomes focused regulation in the second half of 2011.

But, we believe that regulation will have to go further. Regulation that tries to deal with problems after they have occurred will continue to disappoint consumers who are more concerned with having their problems solved than knowing someone will take action if anything goes wrong. While a retrospective safety net is essential to a functioning market that maintains consumer confidence, effective, proactive risk based regulation can deliver better outcomes for all clients. When this is backed, as it is now by an independent ombudsman scheme, it can allow regulators to target their resources proportionately according to the particular level of risk.

In financial services the regulated community have become used to the separation between economic, conduct of business (COBs) and prudential regulation. As regulators of legal services change it is easy to wonder whether such terms will become familiar here too? The FSA has long maintained that they are not an economic regulator, though this relies on a strict and very narrow definition that looks increasingly doubtful in application. The legal services regulators have a much

clearer economic remit under the Regulatory Objectives. While the COBs Handbook in financial services has resulted in a rulebook running to thousands of pages, we do not believe that this is an inevitable consequence of this type of regulation. COBs rules pre-date the move to outcomes focused regulation in financial services and we would imagine such an approach, if applied to the COB Handbook, could drastically reduce the quantity of written rules.

In financial services prudential regulation refers to capital adequacy rules designed to protect firms against failure and consumers (and the wider economy) against the financial impact of such failure. These concerns simply do not apply in the same way in legal services, the LSB has been clear that it has no wish to define the shape or form of capital adequacy rules for Alternative Business Structures (ABS). Key will be the protections offered in respect of client money through indemnification and compensation arrangements, regulation does not need to look at the structure of the firm with an eye on ensuring long-term survival.

But would the equivalent of prudential regulation in financial services be the protection of ethics and professionalism in legal services? Should we be more concerned that changes in the legal services market undermine the effective individual self-regulation that occurs through common standards of ethics and behaviour, beyond those that regulation can enforce? Beyond the world of the ABS firms, should the equivalent of prudential regulation in legal services be considering 'fitness to own' tests for all legal services businesses?

We suspect that greater supervision of the conduct of the regulated legal community, both at entity and individual level is both necessary and inevitable as part of the move to risk based regulation. This must be accompanied by effective compliance and credible punishment that actively deters those seeking to avoid their regulatory obligations.

Reserved or unreserved?

As noted earlier, relatively few of the large variety of legal activities are reserved to authorised individuals. For those activities that are reserved the full weight of the regulatory arrangements of the approved regulators applies. Outside of the reserved activities there is no reason why the activities couldn't be undertaken by those with no formal legal qualification, no reserved title and none of the regulatory protections that Authorised Regulators provide for consumers.

All activities remain subject to consumer and competition law and the regulatory protections this presents. Indeed, such protections have expanded to an extent that would be unimaginable to a consumer 25 or 50 years ago. Despite this, the boundary of reserved activities can act as a regulatory cliff edge. The fact that this regulatory cliff edge has emerged from hundreds of years of progressive changes in legislation, rather than a grand plan for the protection of the public or consumer interest, poses a significant concern to our regulatory objectives.

Until now, consumer protection (beyond consumer and competition law) existed in unreserved activities through rules in authorised regulators (whose role is primarily for reserved activities) and professional bodies maintaining high ethical standards of practitioners holding reserved titles. Other rules prevent the construction of connected businesses providing unreserved activities outside of regulation. The power of the main brand of legal suppliers i.e. 'solicitor' ensured that most consumers approached regulated individuals when seeking any legal advice and so benefited from

the protections regulation provided. The fact that reserved titles acted as more powerful brands for most consumers than individual firms has prevented the development of competitive pressures from the consumers of the service. Even as the numbers of individuals practicing has increased (for example solicitors with practicing certificates has increased from 46,000 in 1985 to 118,000 in 2010) firms have remained relatively undifferentiated. Only recently have models emerged suggesting greater competition between firms e.g. emergence of Quality Solicitors.

As the legal profession has found itself under increased commercial pressure – most clearly seen in the increased use of paralegals and the off shoring of aspects of legal services; inevitably, this has created pressures for firms to remove legal activities wholly outside of regulation in ways that until now would have been unimaginable.

New firms are emerging to supply legal services outside of the existing regulatory environment whether they are will-writing firms, paralegal firms or technology firms. This trend is likely to continue as individuals looking for legal services become more active consumers, driven by experiences in other markets where changes in technology have encouraged shopping around for the best deal.

As a regulator we must ask ourselves, what is regulation seeking to achieve? And what can be best left to the market and competition? In practice, the choice is not binary as Decker and Yarrow summarised, regulation will occur in many forms that are not statutory regulation and so outside of the direct control of the regulator. Many of these softer regulations are simply common practice or historical precedent, such regulation can be in place whether the service is reserved or not. Our tools are limited to the application of regulatory rules that have effect on reserved activities. But, as commercial pressures change this leads to the question of what should minimum standards of consumer protection be for individuals purchasing currently unreserved legal services? Can statutory regulation or intense competition driven by 'outsiders' undermine existing cultural parameters that act to protect consumers? Are the protections offered by consumer law in the absence of specific regulatory rules sufficient? Should consumers be offered the same protection currently offered by regulation of reserved activities? Alternatively, does the solution lie somewhere in-between? Given the complexity of a market with huge variation of consumer experience and complexity of legal offering, the answer of the appropriate level of regulation is not likely to be simple.

A reassessment of regulatory tools?

In looking at the future mix of reserved activities and the regulations that apply to these reserved activities we will seek to achieve a balance between our competing regulatory objectives. Publications including those of Mayson; Decker and Yarrow; and Opinion Leader[14] who looked at the outcomes that consumers want when using legal services, help us to frame our approach to analysing the required regulatory decisions. The literature makes a clear distinction between the need for regulation, depending on the type of client affected; the type of legal service; the client's experience etc. While a tailored approach is certainly desirable, when considering statutory

[14] "Legal Services Board: Developing measures of consumer outcomes for Legal Services" Opinion Leader, March 2011

regulation we must balance the desire to tailor our response through specific regulation, against the principles of better regulation[15] and desire for simple transparent regulation.

When we analyse the market we will start by identifying the actual problem causing concern e.g. concerns over will-writing. Then identify how the problems impact on concerns for regulation e.g. concerns that consumers of unregulated will providers receive wills that fail to deliver their stated objectives, i.e. poor quality of wills; what types of individual or business or consumer are affected and what evidence exists to support the problems occurring in practice.

Inevitably, where we identify problems that could require regulatory intervention, option appraisal tools will be used to determine which tools are most appropriate. Here it is worth emphasising that any regulatory tool used must be demonstrably better than the impact of making no intervention at all. In many cases the impact of regulation could be negative, any benefits from a targeted intervention outweighed by unwanted side effects. The standard of proof required to introduce new regulation is high. Where activities are currently unreserved, the option of reservation does not imply that the activity will be reserved to those currently regulated to undertake reserved activities, nor does it presume that reservation would entail the same underlying regulations as imposed on currently reserved activities.

Reservation in this analysis simply becomes an, albeit important, tag on which some form of regulation is applied. Where activities are brought into reservation it is likely that minimum standards of what regulations should accompany reservation will need to be defined. These can, and inevitably will, be different to the mix of regulations that apply to individuals practicing the currently reserved activities. Equally, analysis may reveal the need to remove certain activities from reservation, in effect setting minimum regulatory standards at nothing above that offered to all consumers in any transaction.

A variety of preventative or remedial regulatory tools could be attached to reservation as minimum standards. Deciding between preventative and remedial will be a matter for the particular circumstances - types of clients, risks of the activities and costs and impacts of any intervention. For example, circumstances where clients are vulnerable and the impact of a poor outcome irreversible (e.g. a prison sentence) then regulation would seek to favour preventative action. Equally, in circumstances where clients are well informed and impacts of poor outcomes reversible though, say financial compensation, regulation may favour remedial measures.

The underlying regulatory measures which lie behind reservation of an activity could target all or any of:

- market access and market structure – rules here could target either individual (e.g. qualification requirements) or entity (e.g. requirement to have certain individuals in set positions)

[15] The principles state that any regulation should be:

- transparent
- accountable
- proportionate
- consistent
- targeted – only at cases where action is needed

- pricing – commonly in the past this involved minimum or maximum prices, but equally rules could provide guidelines on pricing structures e.g. ensuring pricing structures were designed to meet the needs of specific client groups

- services – rules could specify minimum standards or standard exclusions for specific services e.g. standard contract terms for conveyancing

- information - outcomes focused regulation commonly focuses on the provision of information as a key means of facilitating a competitive market e.g. signposting complaints procedures

- systems and processes – the presence and use of specific systems and processes can be demonstrated to support risk management e.g. computer systems highlighting particularly complex conveyancing work to the senior partner

- behaviour – codes of behaviour are commonly central to outcomes focused behaviour e.g. solicitors code of conduct

- compensation systems – presence of a compensation scheme is often central to a regulatory system e.g. Legal Ombudsman

Cost benefit analysis will, in practice, compare the option of doing nothing (leaving other legislative/professional rules to address the problem) against alternative packages of regulation under a reserved area e.g. code of conduct plus access to Legal Ombudsman. Inevitably, the cost benefit analysis will have to consider specific groups or legal areas, thus tailoring the analysis on specific risks. But this desire will have to be balanced against the need to aggregate to some degree to maintain a proportionate cost of undertaking the cost benefit analysis. Regulators will therefore need to use broad categories and sensible grouping, the LSB hopes to help with this debate with the work we have commissioned from OXERA considering appropriate market segmentation. Of course in a world of outcomes focused regulation, the firms themselves will have to use sensible risk groupings for their clients, as they see fit, to deliver the regulatory outcomes set by their regulator.

It is fairly simple to imagine how such alternative packages of regulatory tools might work when bringing an activity into regulation for the first time e.g. will-writers. But, the application of these ideas to areas that, while not reserved, are effectively regulated by Approved Regulators at present e.g. will writing undertaken by solicitors, is more complex. Regulation would need to account for the risks inherent in all of the activities undertaken by the regulated individual in determining a regulatory approach for the individual or firm. In effect, risk based regulation. While minimum standards such as a compensation fund, common standards of ethics may be appropriate for all practising an activity, some professions within the overall population offering a service may have more stringent regulations due to differences in the mix of services offered or clients served.

Conclusion

Inevitably, as the world changes regulation must change too. Changing commercial pressures are leading to changes in the way in which legal services are provided, this comes at a time when regulation itself is also changing. Moves to an outcomes focused regulatory structure where regulation is tailored to risk will allow existing regulators to apply a wider mix of regulatory tools where appropriate. The LSB will be reviewing the current reserved and unreserved legal activities and assessing these against our Regulatory Objectives and recent studies to determine where we believe the mix of activities which are currently regulated should change. The resulting activities may change, as may the regulatory tools that sit behind the reserved activity. The market for legal services is changing rapidly and regulation will change to respond to the changing risks. What counts is simple, accessible regulation that helps providers deliver imaginative and consumer focused services while giving consumers' confidence that regulation helps them without burdening them with costs.