Response of Liverpool Law Society to the Legal Services Board consultation on Enhancing consumer protection, reducing regulatory restrictions

1. This is the response of the Liverpool Law Society's Regulatory Sub-Committee to the LSB consultation paper on what types of legal services should or should not constitute reserved activities.
2. Liverpool Law Society was founded in 1827 and has some 2,100 members in practice in the Merseyside and surrounding areas, with a wide range of different expertises.
3. This response does not address each of the questions set out in the discussion document, but raises some general observations.
4. The question of what legal services should or should not be available only from qualified lawyers or certain categories of qualified lawyers is a question for Parliament rather than the legal profession. Parliament can also determine what protection should be provided where such restrictions are in place, including such measures as may be desirable to enable –
   (a) consumers and
   (b) other clients

   to know when they are, and when they are not, entitled to expect protection to be provided. Protection for these purposes may include information, insurance, other arrangements for compensation and redress, and complaints mechanisms.
5. However, while our position is broadly neutral, practising lawyers are in a position to identify situations from their experience where the restrictions on legal services provided at present may not be working well in practice.
6. Professor Stephen Mayson has identified the historical basis of the restrictions, many of which are illogical.
7. A further complication arises from the introduction of Alternative Business Structures, particularly Multi-Disciplinary Practices, where the redress mechanisms may vary with the qualification of the person in the firm providing the advice.
8. The area of most difficulty in our experience relates to the definition of 'reserved instrument activity'. It is often, wrongly, assumed to relate only to conveyancing. However, the definition in paragraph 5, Schedule 2 of the Legal Services Act 2007[1] goes far wider and introduces a host of anomalies, particularly paragraph 5 (1) (c) –

   > 'preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales'

   and the exceptions to that in paragraph 5 (1) (d).

[1] http://www.legislation.gov.uk/ukpga/2007/29/schedule/2

9. An example of the (presumably) unintended consequence of this which has nothing to do with the protection of consumers, in brief summary, is a US firm which has dual US-English qualified lawyers in the USA preparing deeds relating to the assignment of film rights. The US firm is about to open a London office, and must therefore seek SRA recognition of the London office purely because of work done by a dual qualified lawyer in the USA, and not because of the work proposed to be done in London which does not comprise reserved activities.
10. It is suggested therefore that –
    (a) Reserved instrument activities might be confined to conveyancing; and/or
    (b) Reserved activities generally might be confined to consumers, where the need for protection is at its highest, and which would be proportionate in the context of the legislation's aim to protect consumers.
11. Privilege, presently legal professional privilege, has been recognised by the courts as a fundamental human right. See for example **Bowman v Fels** [2005] EWCA Civ 226 in the context of money laundering compliance and **Quinn Direct v The Law Society** [2010] EWCA Civ 805 in the context of solicitors' obligations to their insurers. Subject to the decision of the Supreme Court in the **Prudential** case, this is generally confined to lawyers. The Court of Appeal identified the issue as one for consideration by Parliament if there were to be any change.
12. While it is not objectionable in principle that clients should enjoy the same privilege when seeking legal advice from accountants, for example on tax or even in connection with probate, it is clearly essential that this should be restricted to accountants who are properly regulated, e.g. by the ICAEW, and not extend to unqualified persons who claim the title 'accountant'. The challenges of regulating the extent of privilege laws in multi-disciplinary practices have yet to be considered sufficiently and will only properly be capable of review when such practices are in existence.

October 2011