Briefing: Securing the investigative powers needed for the effective regulation of the legal profession

The Solicitors Regulation Authority (SRA) has long assumed – and the profession has broadly accepted – that it is empowered under section 44B of the Solicitors Act 1974 to compel solicitors to produce documents protected by legal professional privilege during misconduct investigations. Following a challenge by law firm Carter-Ruck, however, the High Court recently ruled that the SRA does not have power to access privileged material – exposing a major gap in the regulatory framework.

This ruling has already caused significant disruption to the SRA's ongoing investigations and has huge ramifications for its future ability to supervise lawyers effectively. These powers are particularly important for investigating potential breaches of anti-money laundering (AML) rules, as well as abusive lawsuits known as 'SLAPPs'.

The Financial Services and Markets Bill (FSMB) offers a window of opportunity to address this gap as part of the government's proposed reforms to make the Financial Conduct Authority (FCA) the AML supervisor for the legal sector. The FSMB should:

- Expressly empower the SRA to compel the production of privileged material from solicitors and law firms for purposes of investigating professional misconduct.
- Empower the SRA to share relevant privileged material with the FCA where it considers this necessary for purposes of investigating AML breaches by a solicitor or law firm.

1. The problem: a critical legislative gap exposed

1.1 Under section 44B of the Solicitors Act 1974, the SRA is empowered to require a law firm or solicitor to provide information or produce documents where this is necessary for purposes of investigating professional misconduct. For years, the SRA has routinely exercised this power on the assumption that it extends to legally privileged material.

1.2 Earlier this year, however, the law firm Carter-Ruck and their former client Mohamed Amersi challenged the SRA's powers to request privileged material. This dispute arose in the context of the SRA's investigation into the law firm's conduct in pursuing libel proceedings against the former Conservative Party MP Charlotte Leslie alleging she had defamed Amersi in due diligence memos she prepared on the political donor.

1.3 Despite the SRA's longstanding practice of issuing section 44B notices to access documents that may be subject to legal privilege, the High Court ruled in September 2026 that the legislation does not in fact give the SRA this power. The High Court emphasised, however, that the question of whether the legal regulator *should* have power to access privileged material is ultimately a question for Parliament to decide.

2. Why does a legal regulator need this power?

2.1 As a fundamental right, legal professional privilege plays a vital role in helping secure access to justice. But the sound administration of justice also depends on effective regulation to uphold public confidence in the legal profession.

2.2 Privileged material is not just relevant to regulatory investigations – it can be decisive in determining professional misconduct. As the regulator itself has argued, "*if the SRA cannot consider … [privileged] material, there is a risk that serious wrongdoing on the part of solicitors may be occluded from regulatory oversight*". It is equally important to recognise that privileged material may also help a solicitor defend their conduct in some circumstances.

2.3 Privileged material is especially important where the regulator is investigating potential AML breaches, because it sheds light on what a solicitor or firm knew about the client and the transaction. In high-profile cases, privileged material has been central to assessing whether due diligence was adequate in the circumstances.

2.4 In other sectors, the firm under investigation is usually the client (such as a bank) that holds legal privilege and can therefore waive it to engage constructively with their regulator. By contrast, a lawyer cannot waive their client's privilege which is why the SRA's power to *compel* disclosure is so important for accessing this material.

2.5 Without this power, the SRA will be reduced to investigating client complaints against a solicitor – with the result that serious professional misconduct, including AML breaches and SLAPPs, will go uninvestigated because it is not in the client's interest to waive privilege.

3. How can the FSMB address this gap?

3.1 While the SRA is seeking permission to appeal the Carter-Ruck judgment in the Supreme Court, the immediate disruption and longer-term uncertainty about the extent of these investigative powers require urgent attention from Parliament.

3.2 The government's proposed reforms through the FSMB to make the FCA the statutory AML supervisor for the legal sector opens up a narrow window of opportunity to put these crucial powers on a clear statutory footing. The SRA should be given express powers to request privileged material when conducting its own investigations into professional misconduct, while the FCA should be empowered to access privileged material where this is necessary for investigating alleged AML breaches by solicitors.

Recommendation: Amend the FSMB to:

- Expressly empower the SRA to request the production of privileged material where it considers this necessary for investigating professional misconduct by a solicitor or law firm.
- Empower the SRA to share privileged material with the FCA where it considers this necessary for purposes of investigating AML breaches by a solicitor.