

Professional Liability Risks and Controls in Practice

- Are you Accepting Unsuitable Clients or Matters?

How will this presentation work?

1

RISK CONTEXT

Why prioritise this risk?
Who is exposed?

2

RISK FOCUS

What is an unsuitable client
or unsuitable matter?

3

CONTROL FOCUS

What can be done to
prevent the risk?

4

CONCLUSION

What will we do?
What should you do?

RISK CONTEXT

- Why prioritise this risk?
- What types of practices are most exposed?



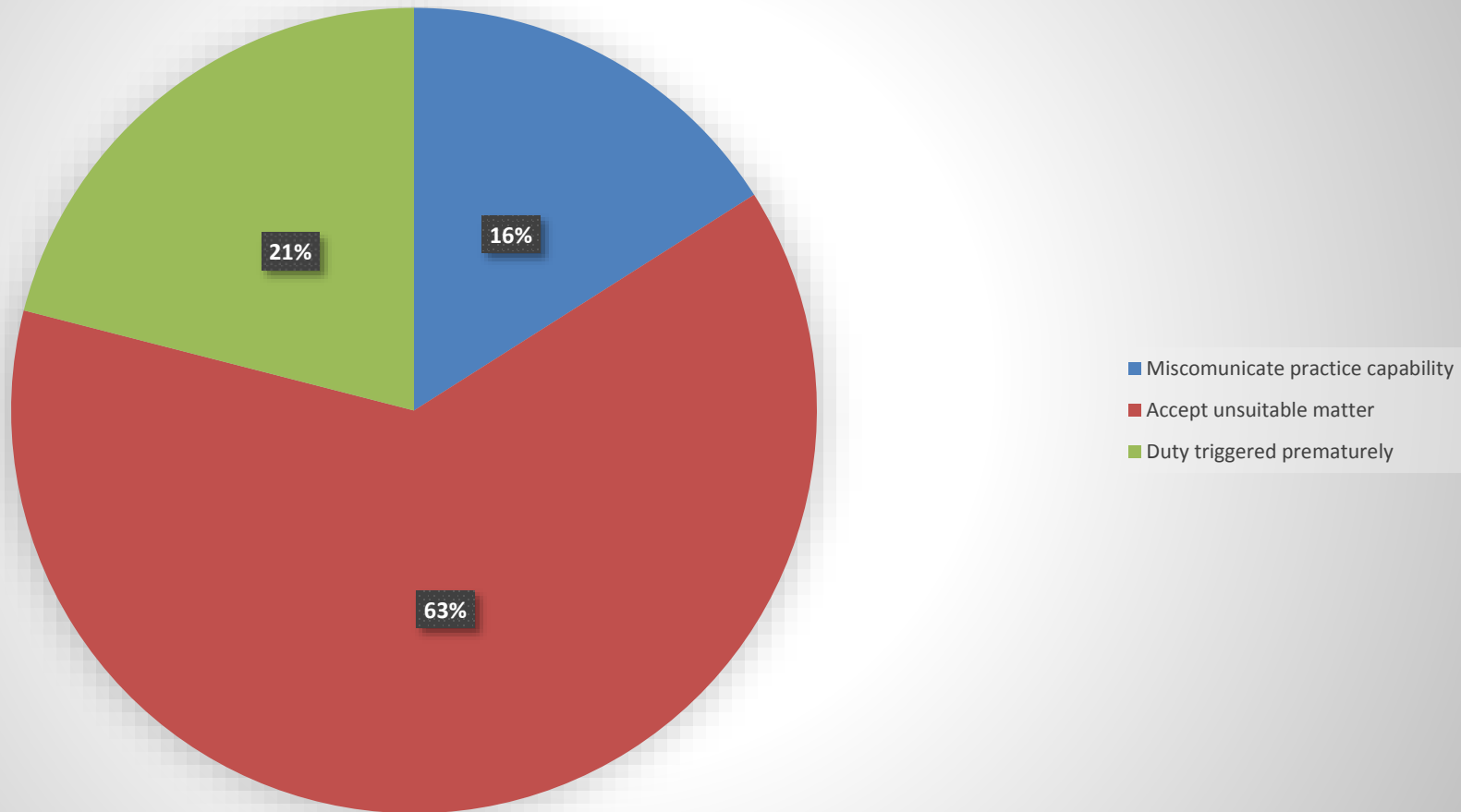
The Risk Management Process



2,200 insured practitioners polled on risk concerns...

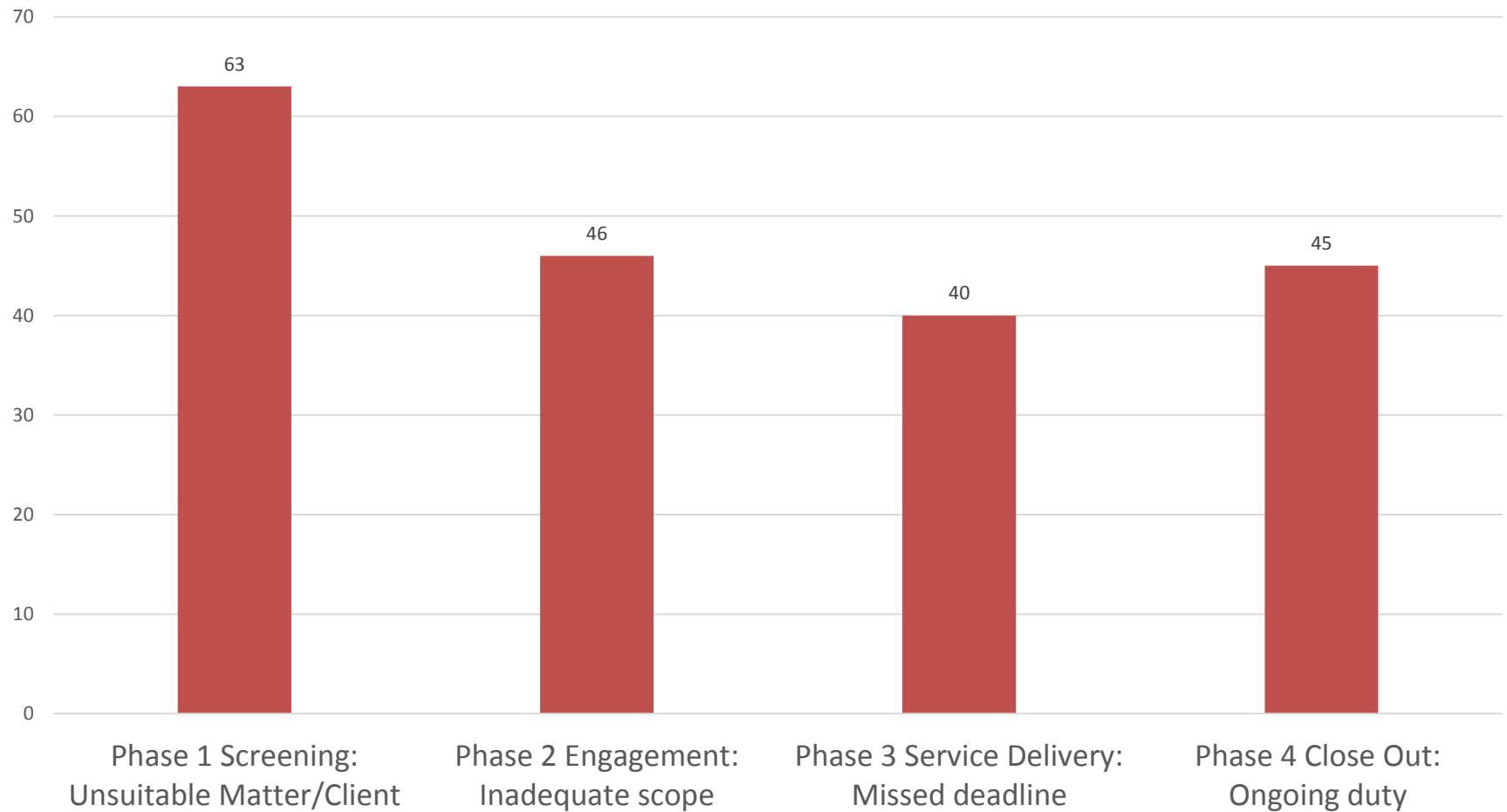


Screening Matter



Risk Analysis: Priority Risk Across All Phases

Top risk in each phase (%)



Key control for this risk...

Guidelines for screening prospects and matters

Claims Analysis: What firms have the highest proportion of claims?

Sole practitioner/Employment

Sole practitioner/Wills & Probate

Sole practitioner/Commercial

Firms of 6 - 9/Family

Firms of 2-5 & 6-9/Personal Injury

What firms have especially low implementation rates for “Guidelines for screening prospects and matters”?

Sole practitioner/Employment

Sole practitioner/Wills & Probate

Sole practitioner/Commercial

Firms of 6 - 9/Family

Firms of 2-5 & 6-9/Personal Injury

RISK FOCUS

- What is an unsuitable client or unsuitable matter?



An unsuitable client or matter...

“I knew this client was trouble, from the moment we took him on...”

“If he had not sued us for this, it would have been for something else...”

“Really, the best way to have avoided this claim would have been to not take on the matter in the first place...”

An unsuitable client...

Unrealistic and unmanageable expectations

- Service outcomes
- Scope of work
- Costs and fees
- Time to complete
- Service levels/availability
- Requirements on client

Unlawful or unethical objectives or intent

Inability to pay, communicate or manage their side of matter

Conflict

Anything else?

An unsuitable matter...

Outside your firm's ability to provide adequate legal services

- Lack of expertise
- Lack of time

CONTROL FOCUS

The background of the slide is a solid olive green color. Overlaid on this background are faint, semi-transparent white graphics. On the left side, there is a scale of justice, with a central fulcrum and two pans hanging from it. On the right side, there is a classical building facade with a triangular pediment supported by several columns. The overall aesthetic is professional and legal.

- How can we ensure we do not accept unsuitable matters or clients?

The Risk Management Process



Key Control: Suitable Guidelines for Screening Prospect and Matter

How do you identify an unsuitable prospect or matter?

- How do you find? (Processes, questions etc.)
- What do you look for? (Identifiers or clues)

Key Control: Suitable Guidelines for Screening Client and Matter

Processes

Interview and conversation

Identity check

Solvency check

Identifiers & Clues

Unrealistic/unmanageable expectations

Actual client not who they say they are

Brought actions against other law firms

Questions

Do you understand the likely cost of this matter?

What are you hoping to achieve through this matter?

FORMAL

Documents & Templates
Procedures & Guidelines
Automated Processes

CULTURE

Do our values
and
expectations
support
control of this
risk?

CAPABILITY

Personnel
Training
Supervision
Responsibilities & Authorities
Resources

FIT FOR PURPOSE

Are these
controls
appropriate
based on our
assessment
of the risk?

ASSURANCE

Monitoring
Reviewing
Independent audit

Control: Suitable Guidelines for Screening Prospect and Matter

Let us say that your firm has a document called “Guidelines for Screening Prospect and Matter” ...

Despite this, how might your firm still end up taking on an unsuitable prospect or matter?

Control: Suitable Guidelines for Screening Prospect and Matter

Formal:

- Use of guidelines before acceptance of matter is compulsory

Capability:

- Only a senior lawyer has authority to accept a client and matter
- All involved in receiving, screening and accepting clients and matters are trained in use of guidelines (inc. during absences)
- Processes allow time to follow guidelines, and client expectations are managed accordingly

Assurance:

- Record that guidelines were followed

Culture:

- Communicate expectations around “lost fees versus unacceptable risk”