

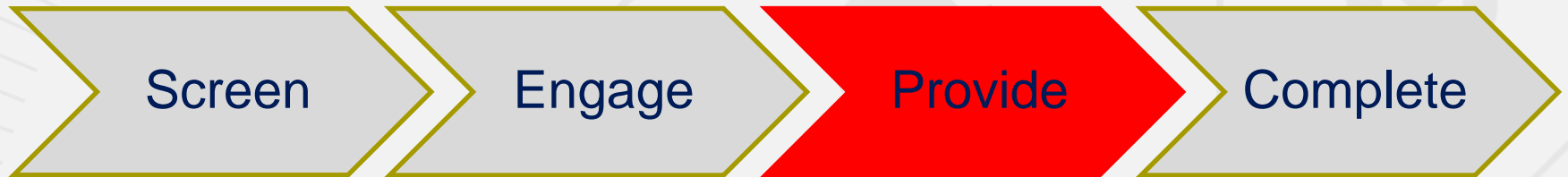


Risk management seminar - Providing legal services

2019

Presenters: Cameron Hay, MYR Consulting
Vicki Coles, Risk Manager, Law Mutual (WA)

Purpose



- Understand priority risks while providing legal services
- Discuss and poll good practice among WA law firms to manage these risks
- Consider level of control within our own firms

How will this workshop work?

1

INTRODUCTION

Resources + support
Seminar process

2

RISK + CONTROL – PROVIDING PHASE

What risks do we face while
providing legal services?
How should we control them?

3

CONCLUSION

What will we do?
What should you do?

INTRODUCTION

- Resources + support
- Seminar process

3 year training program

- Based on risk management priorities
- Structured towards tangible improvement in claims prevention among firms
- Linked to practical guidance and support

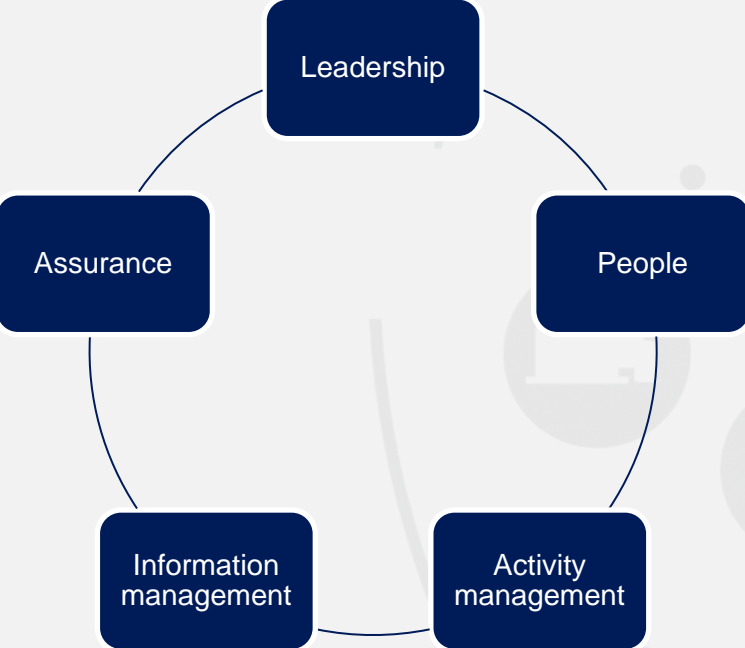
3 year training program

Training Area	2018/19	2019/20	2020/21
Risk management	<p>Introduction to risk management</p> <p>Screening</p>	Providing	Close out
Practice management		Supervision and delegation	Managing firm growth
Matter management	<p>Screening matters and clients</p> <p>Client identify and risk</p> <p>Client engagement agreements</p> <p>Screening for and managing conflicts</p>	Scoping work and accepting instructions outside expertise	<p>Deadlines + limitation periods</p> <p>Client management during delivery</p> <p>Closing out matters</p>

Other resources and risk management support

Practice management guidelines

60 high level requirements to manage a legal practice and prevent claims



Matter management guidelines

42 high level requirements to manage a legal matter and prevent claims

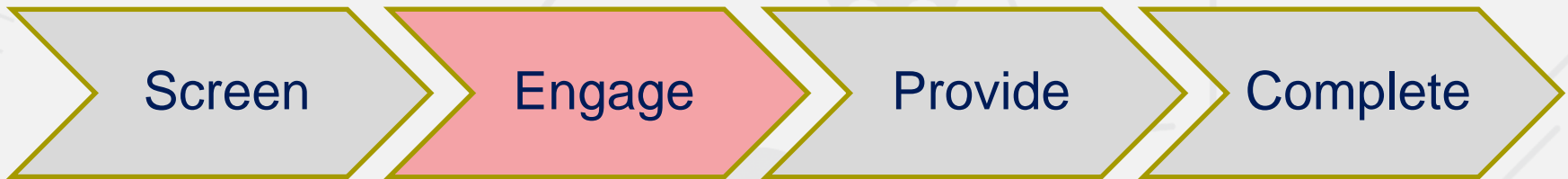


Other resources and risk management support



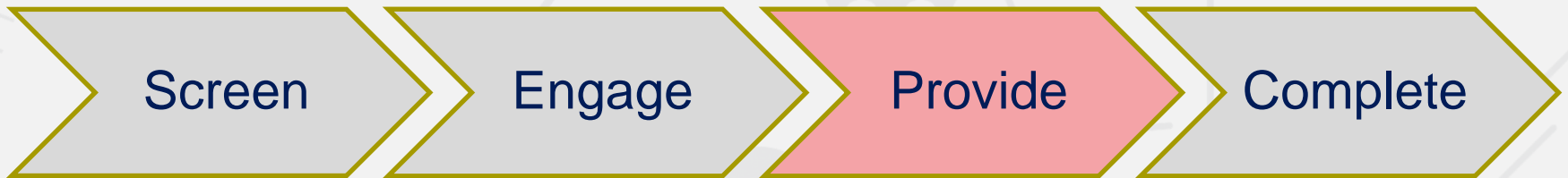
- Screening guidance
- Screening seminars
 - Conflicts
 - Client identification
- Screening controls
 - Client identity checklist
 - Conflicts management procedure
 - Checklist for declining and matter

Other resources and risk management support



- Engaging seminars
 - Engagement agreements
- Engaging controls
 - Engagement agreement template (incorporated into Law Society cost agreement)

Other resources and risk management support



- Providing guidance (in draft)
- Providing seminars
- Providing controls (TBC)

Other resources and risk management support

- **In house training**
 - Change and risk
 - Providing risks & controls
- **In house advisory**
 - Core process against matter management requirements
 - Lessons learned
 - Control gaps and improvements
- **Claims**
 - Capture root cause as missed requirements
 - Capture control gap using same logic as this seminar

How many practitioners are in your firm



- A. Sole Practitioner
- B. 2-5
- C. 6-9
- D. 10-15
- E. >15

How many years in practice



- A. 1 - 5
- B. 6 - 9
- C. 10 - 15
- D. >15

What is your firm's area of specialty

- A. Family
- B. Personal Injury
- C. Wills & Probate
- D. Commercial
- E. Criminal
- F. Property
- G. Employment
- H. Litigation & Disputes
- I. None

Process – Pre-seminar workshops

1. Thirty participants x 4 workshops
2. Polled on 7 risks, causes and controls

Process – Today

For each risk:

1. Understand risk and context

2. Discuss and poll

- Causes
- Best practice controls

Outcomes

- Practitioner-led guidance on best practice
- Tailored by firm size and area of specialty
- Used in Providing Guidance

Risk and control – providing phase



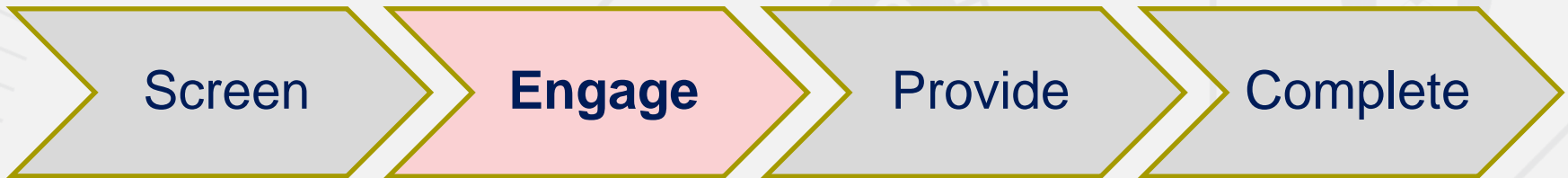
- What risks arise while providing legal services?
- What should we do to control these risks?

Assumptions



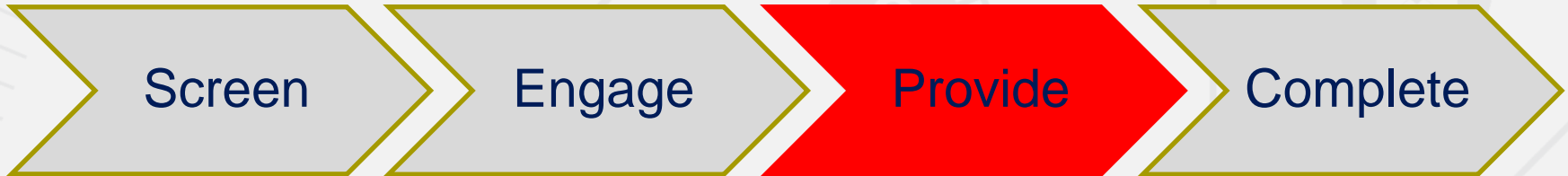
- Client and matter properly screened
 - no conflict
 - not a high risk or unsuitable client
 - matter within firm's overall capability

Assumptions



- Adequate engagement
 - Matter properly scoped
 - Matter properly allocated within firm
 - Adequate engagement agreement

And then...



- Something goes wrong while providing legal services
- Resulting in a claim or significant dispute with client

Matter management requirements

Manage file

Provide further advice on conduct and potential outcomes of matter

Undertake further investigation

Conduct legal research

Draft and lodge documents

Provide advice & representation

Engage experts

Render bills

Risks

Claim or dispute arises:

1. due to way **file** was opened, managed or closed i.e. documents or information not available when required
2. from firm's **error on facts** e.g. identity of defendant, date of event, ownership of property etc.
3. from error caused by inadequate **legal research**
4. due to firm producing inaccurate or non-compliant **documents**
5. due to firm providing incorrect or inadequate **advice or representation**
6. from non-reliance or over reliance on **3rd party experts** including barristers
7. from **billing** that was late or not in accordance with engagement agreement

What is the chance of a significant claim or dispute occurring over the next 5 years?

Very unlikely	Unlikely	Possible	Likely	Almost certain
<10% chance	10%-40% chance	40%-60% chance	60%-90% chance	>90% chance

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Pre-workshop survey results

Claim or significant dispute due to

Likelihood

Very unlikely	Unlikely	Possible	Likely	Almost certain
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44	46	5	5	
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38	51	8	3	
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35	43	19	3	
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firm producing inaccurate or non-compliant documents

error caused by inadequate legal research

firm providing incorrect or inadequate advice or representation

Pre-workshop survey results

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non-reliance or over reliance on 3rd party experts including barristers

billing that was late or not in accordance with engagement agreement

Pre-workshop survey results

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57	38	5		
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firm's error on facts

way file was opened, managed or closed

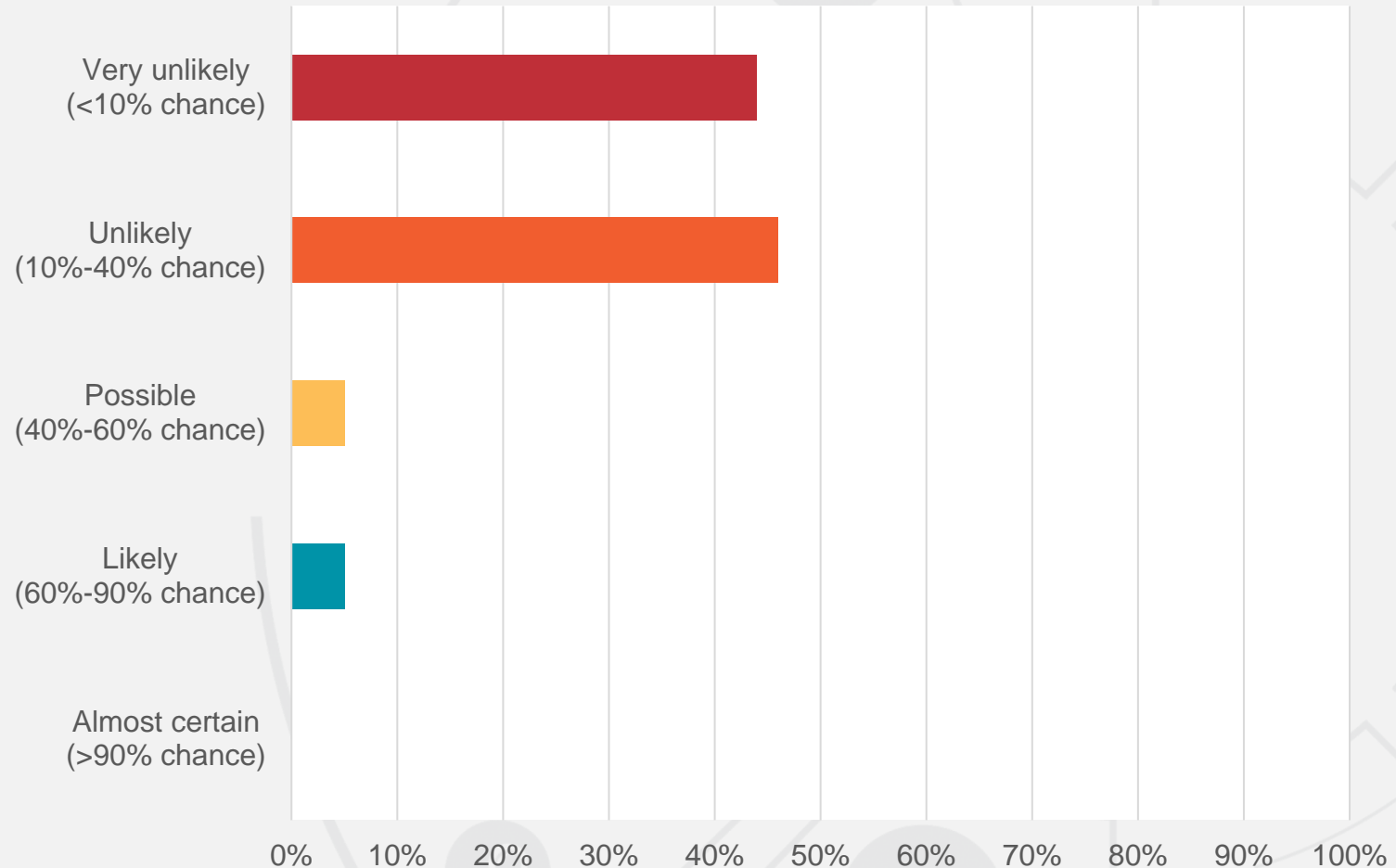
Pre-workshop survey results

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Claim or significant dispute with client arises due to firm producing inaccurate or non-compliant documents



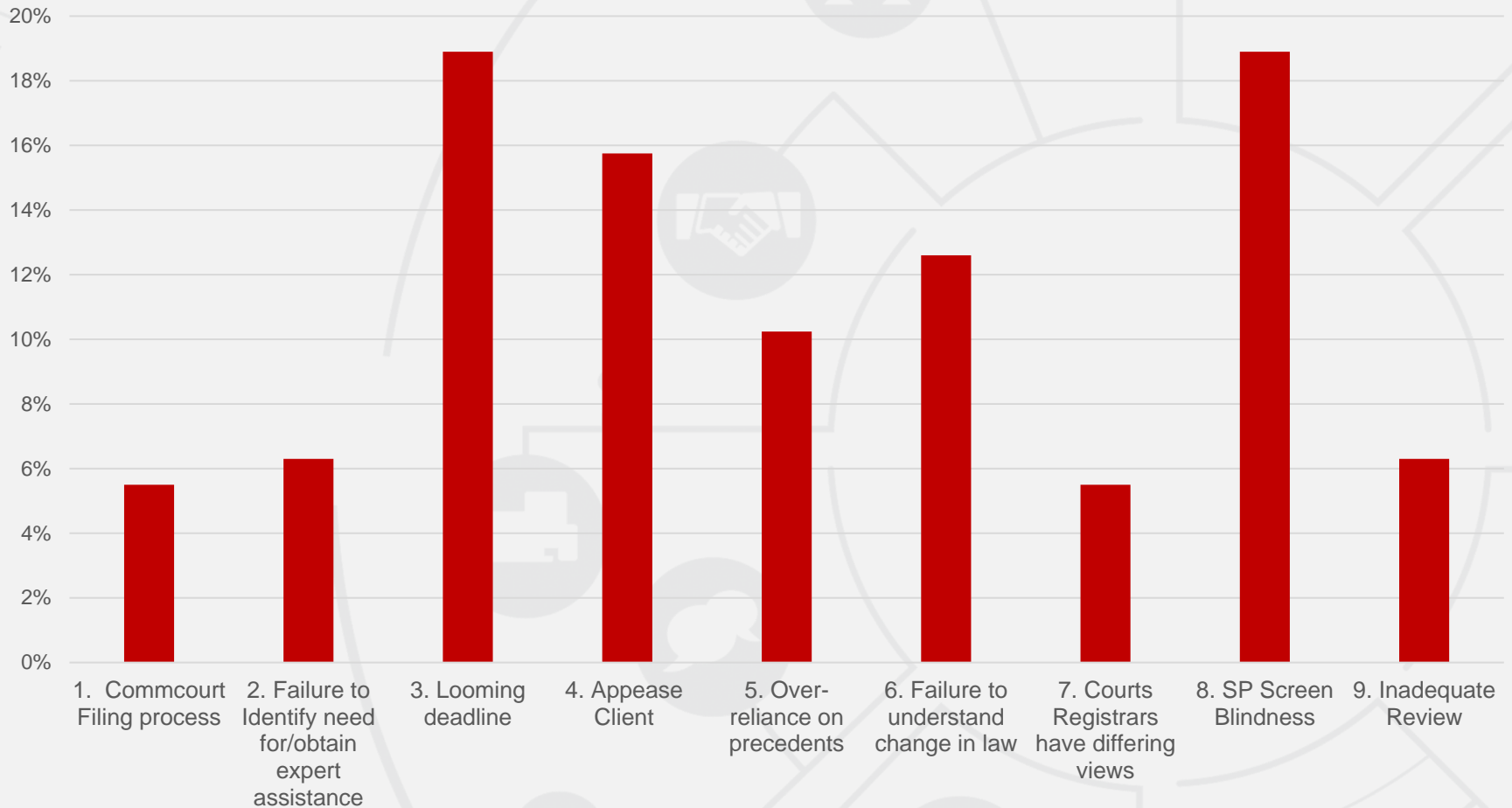
Claim or significant dispute with client arises due to firm producing inaccurate or non-compliant documents

How does this happen?

Causes: inaccurate or non compliant documents

1. Commcourt filing process
2. Failure to identify need for/obtain expert assistance
3. Looming deadline
4. Appease client
5. Over-reliance on precedents.
6. Failure to understand change in law.
7. Courts registrars have differing views.
8. SP screen blindness
9. Inadequate review

Inaccurate or non compliant documents - causes



Claim or significant dispute with client arises due to firm producing inaccurate or non-compliant documents

How do we prevent these causes arising?

How do we prevent these causes arising?

The things we
do

VS

The ways we
ensure these
things are
always done

“How do *I*
produce accurate
and compliant
documents?”

Let me tell you!



“How do *I*
produce accurate
and compliant
documents?”

Let me tell you!

Good
practice



**“How do I know
everyone in the
firm does this
every time?”**



“How do I know
everyone in the
firm does this
every time?”

Management

To prevent risks...

Knowing good practice as an individual is only the first step

We also need to:

1. establish a firm-wide approach
2. ensure this approach is consistently applied across the firm

To prevent risks...

Good practice

Firm-wide approach

The partners have considered and agreed upon a firm-wide approach or process

The sole practitioner has considered his approach or process

To prevent risks...

Firm-wide approach

Controls ensure that the firm-wide approach is consistently applied across the firm

Consistently applied across the firm

To prevent risks...

Firm-wide approach

Knowledge

Accountability + authority

Leadership + culture

Assurance

Consistently applied across the firm

Controls ensure that the firm-wide approach is consistently applied across the firm

How do controls ensure that everyone applies the firm-wide approach or process?

Knowledge

training/mentoring plus tracking who has been trained in what, and whether they understand it

documentation e.g. policy or procedure

sole practitioner may rely on a **form, checklist or aide-memoire**

How do controls ensure that everyone applies the firm-wide approach or process?

Accountability + authority

Everyone knows who is **accountable** for each outcome and **responsible** for each task

Everyone knows who has **authority** to implement each part of the firm-wide approach, and who does not

How do controls ensure that everyone applies the firm-wide approach or process?

Leadership + culture

Everyone follows the firm-wide approach, because:

- **culture of compliance**; leaders walk the walk
- Compliance is recognised and rewarded, or at least not undermined, by **performance measures**
- **consequences** for non-compliance

How do controls ensure that everyone applies the firm-wide approach or process?

Assurance

There are mechanisms to **check** that the approach has actually been followed

Controls ensure that a firm-wide approach is consistently applied across the firm

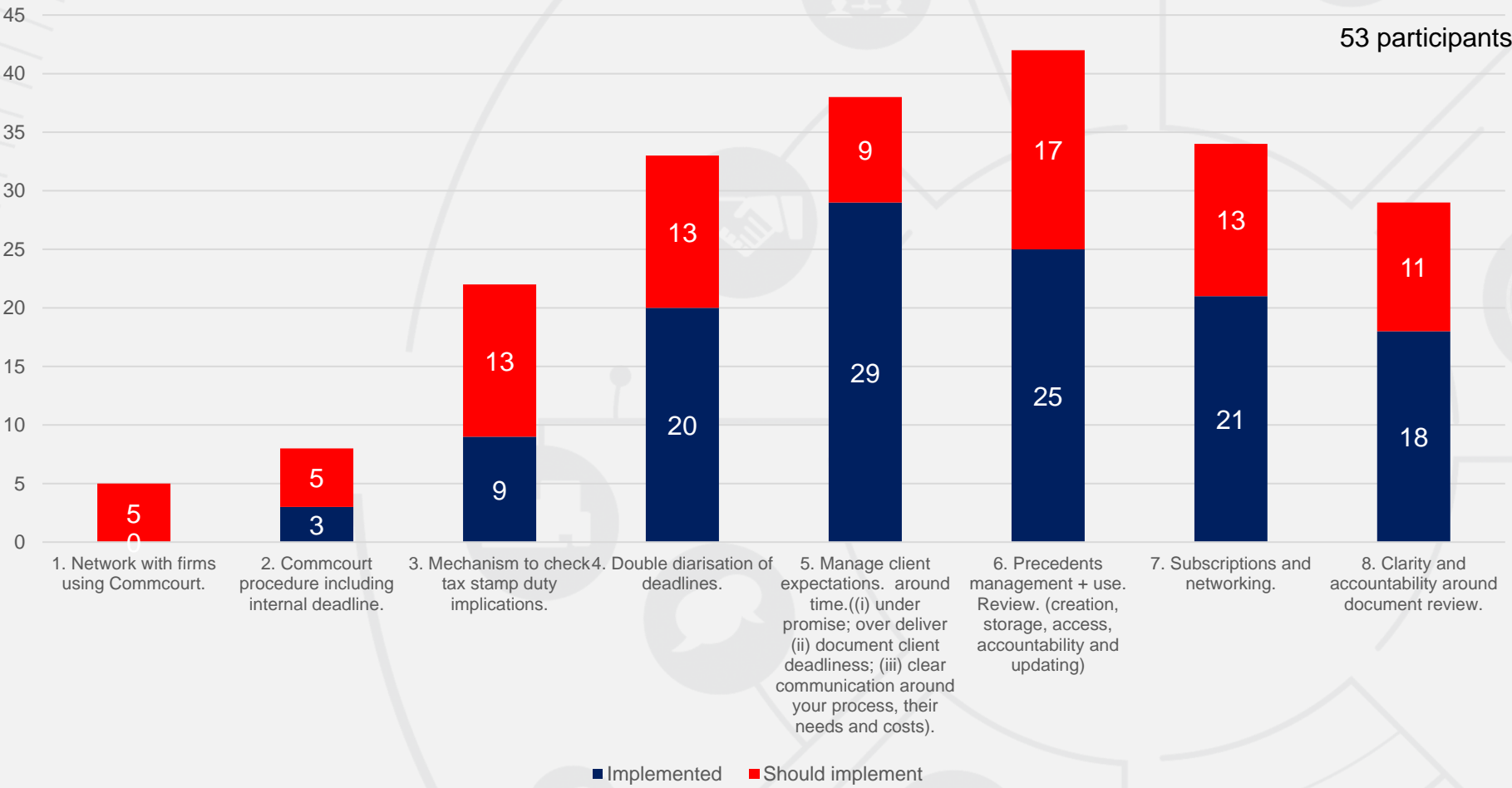


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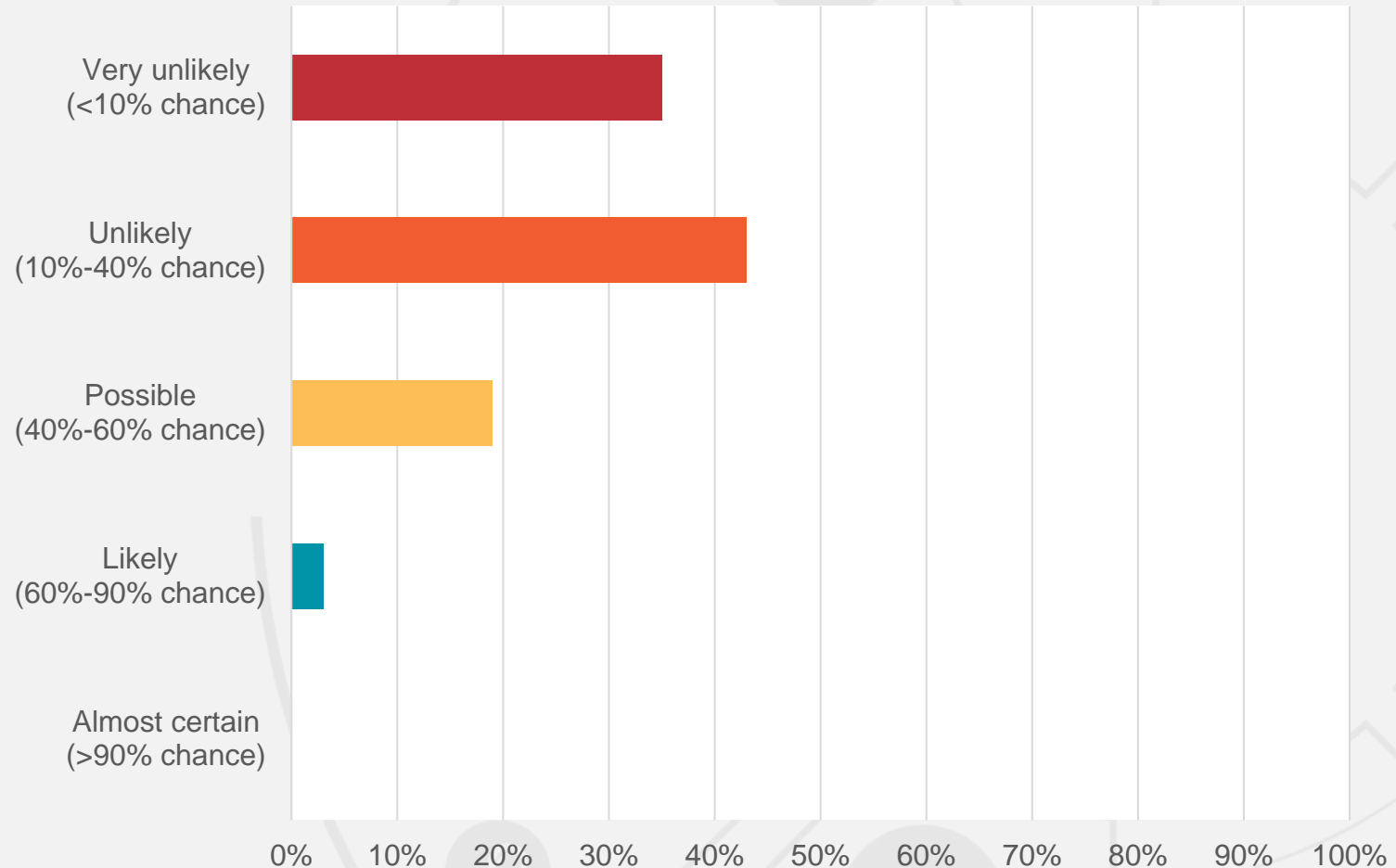
Controls: inaccurate or non compliant documents

1. Network with firms using Commcourt
2. Commcourt **procedure** including internal deadline
3. **Mechanism** to check tax stamp duty implications
4. Double diarisation of deadlines
5. Manage client expectations around time:
 1. under promise, over deliver
 2. document client deadlines
 3. clear communication around your process, their needs and costs
6. **Procedure** for precedents management + use (creation, storage, access and updating, inc. accountabilities)
7. Subscriptions and networking

Inaccurate or non compliant documents - controls



Claim or significant dispute with client arises due to firm providing incorrect or inadequate advice or representation



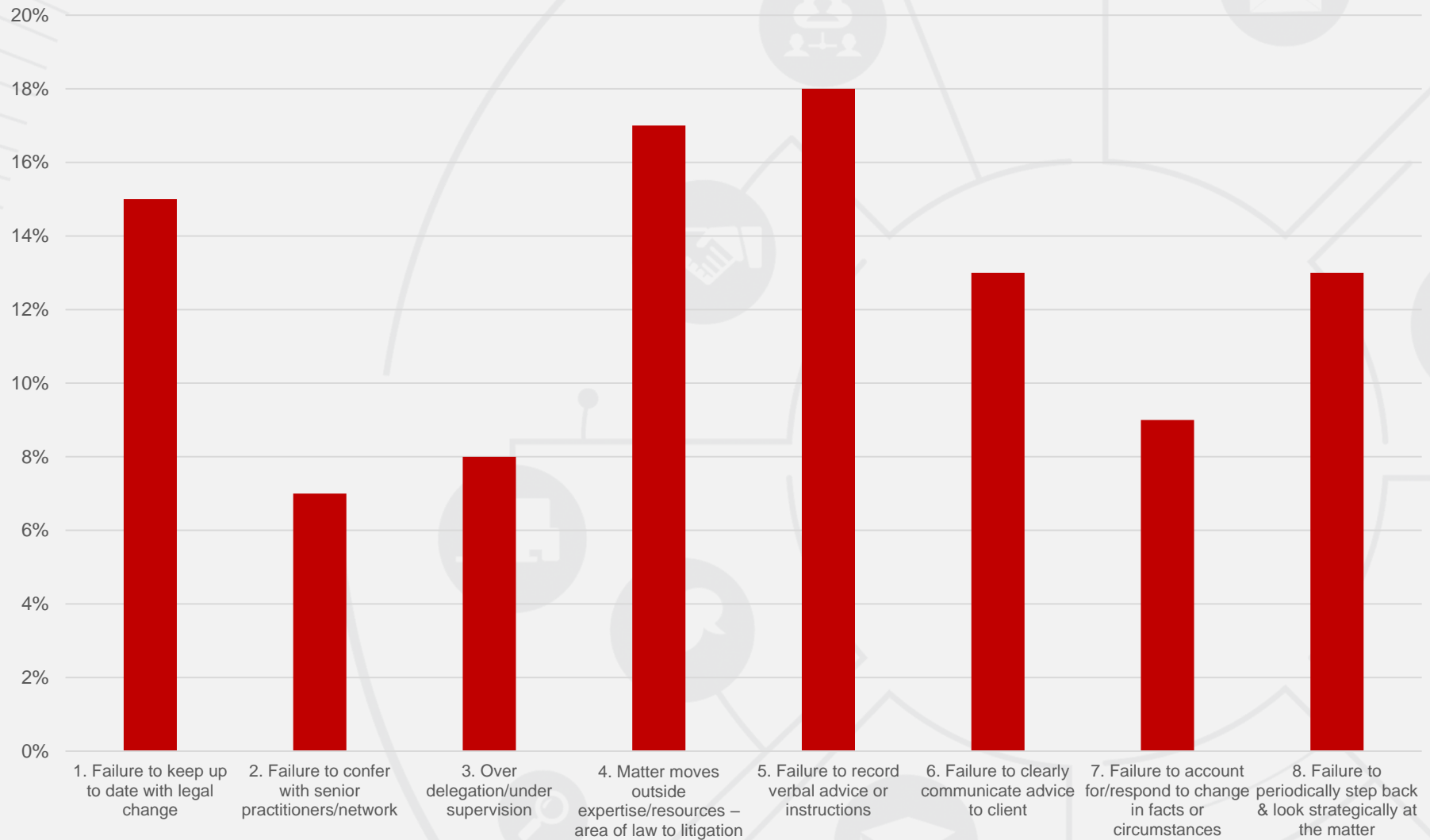
Claim or significant dispute with client arises due to firm providing incorrect or inadequate advice or representation

How does this happen?

Causes: incorrect or inadequate advice or representation

1. Failure to keep up to date with legal change
2. Failure to confer with senior practitioners/network
3. Over delegation/under supervision
4. Matter moves outside expertise/resources – area of law to litigation
5. Failure to record verbal advice or instructions
6. Failure to clearly communicate advice to client
7. Failure to account for/respond to change in facts or circumstances
8. Failure to periodically step back & look strategically at the matter

Incorrect or inadequate advice or representation - causes



How do we prevent these causes arising?

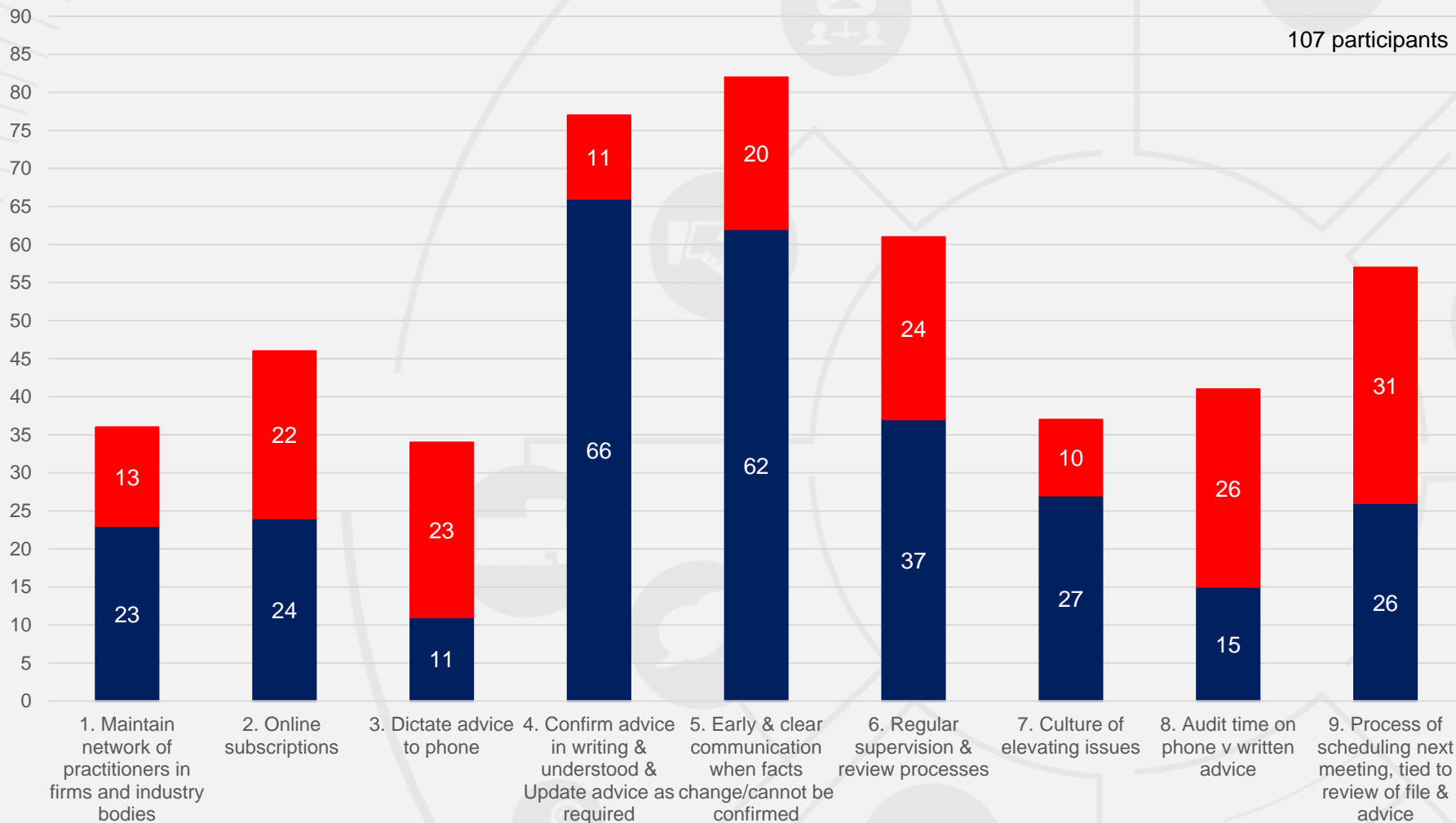


Controls: incorrect or inadequate advice or representation

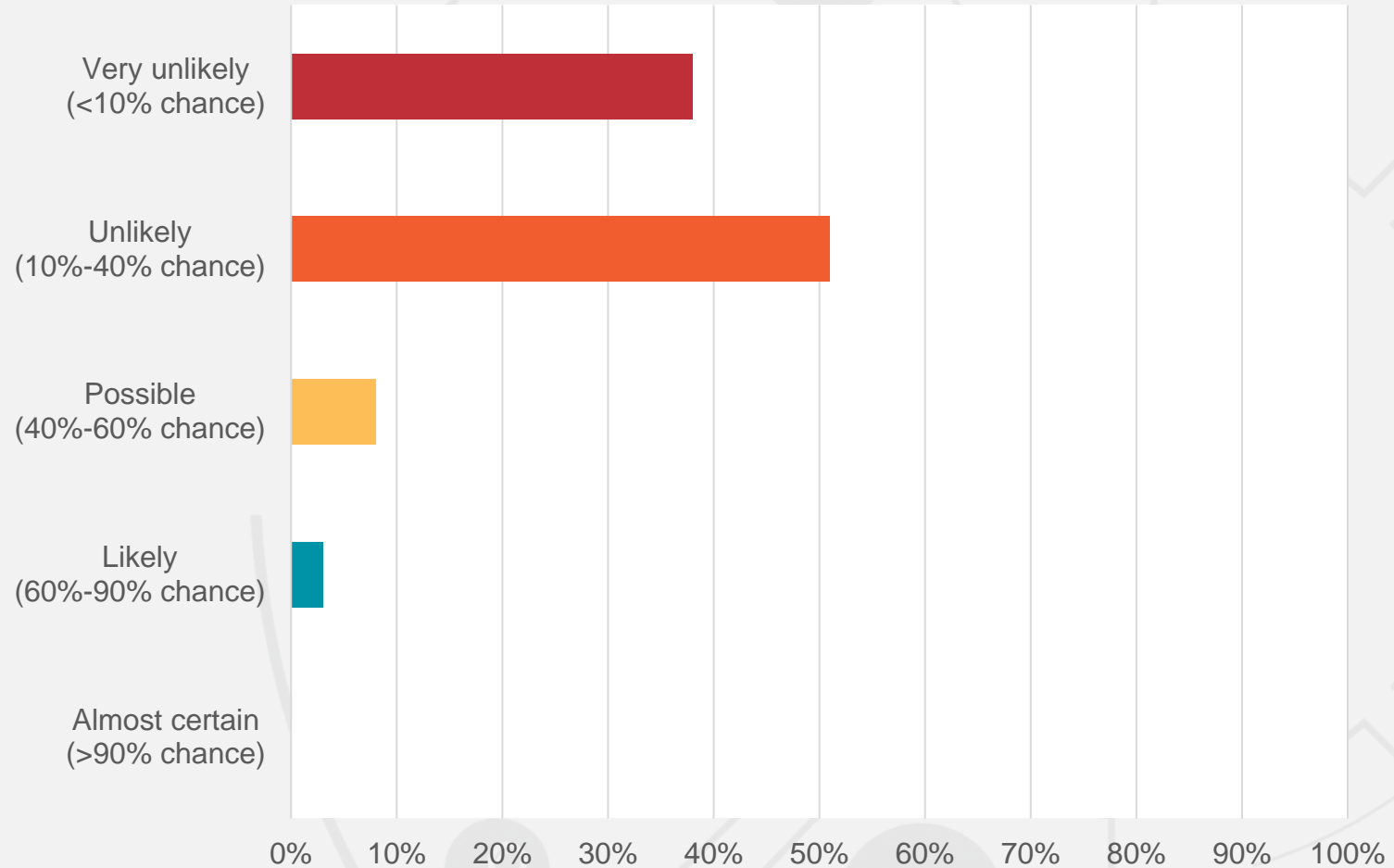
1. Maintain network of practitioners in firms and industry bodies
2. Online subscriptions
3. Dictate advice to phone
4. Confirm advice in writing, and understood and update advice as required
5. Early & clear communication when facts change/cannot be confirmed
6. Regular supervision & review **processes**
7. **Culture** of elevating issues
8. **Audit** time on phone v written advice
9. **Process** of scheduling next meeting, tied to review of file & advice

Incorrect or inadequate advice or representation - controls

107 participants



Claim or significant dispute with client arises due to error caused by inadequate legal research



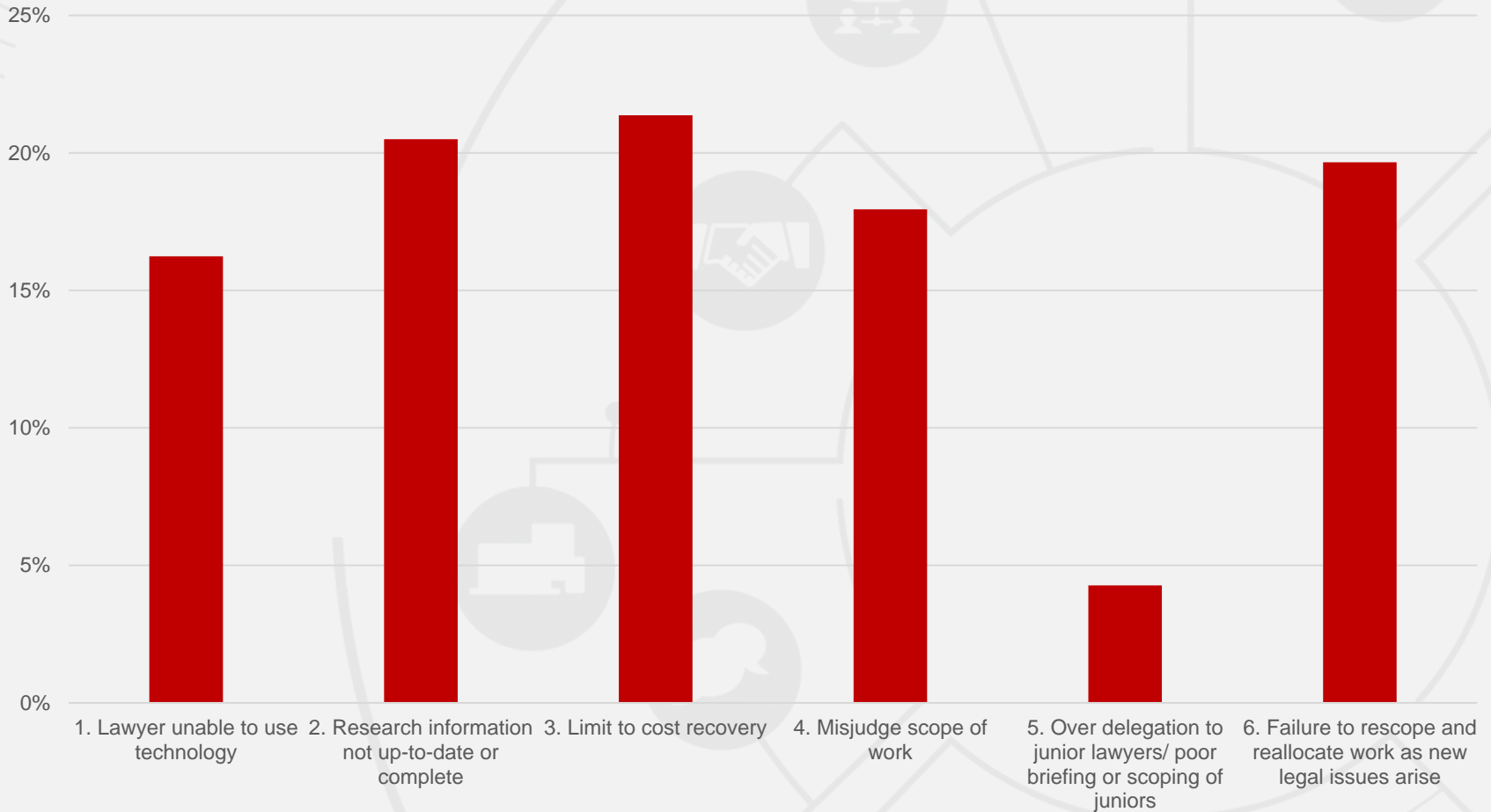
Claim or significant dispute with client arises due to error caused by inadequate legal research

How does this happen?

Causes: error caused by inadequate legal research

1. Lawyer unable to use technology.
2. Research information not up-to-date or complete.
3. Limit to cost recovery
4. Misjudge scope of work.
5. Over delegation to junior lawyers/ poor briefing or scoping of juniors
6. Failure to re-scope and reallocate work as new legal issues arise.

Error caused by inadequate legal research - causes



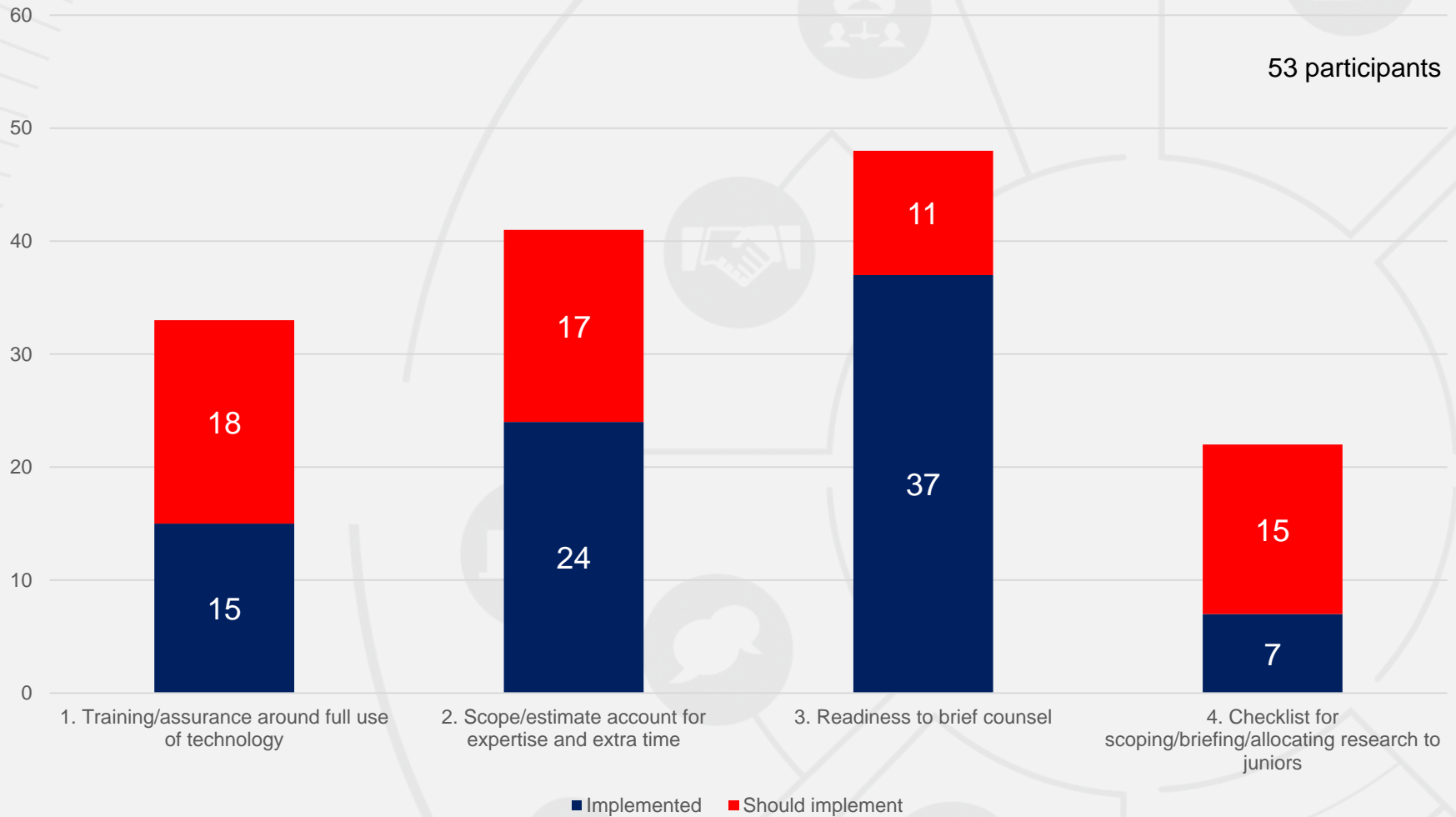
How do we prevent these causes arising?



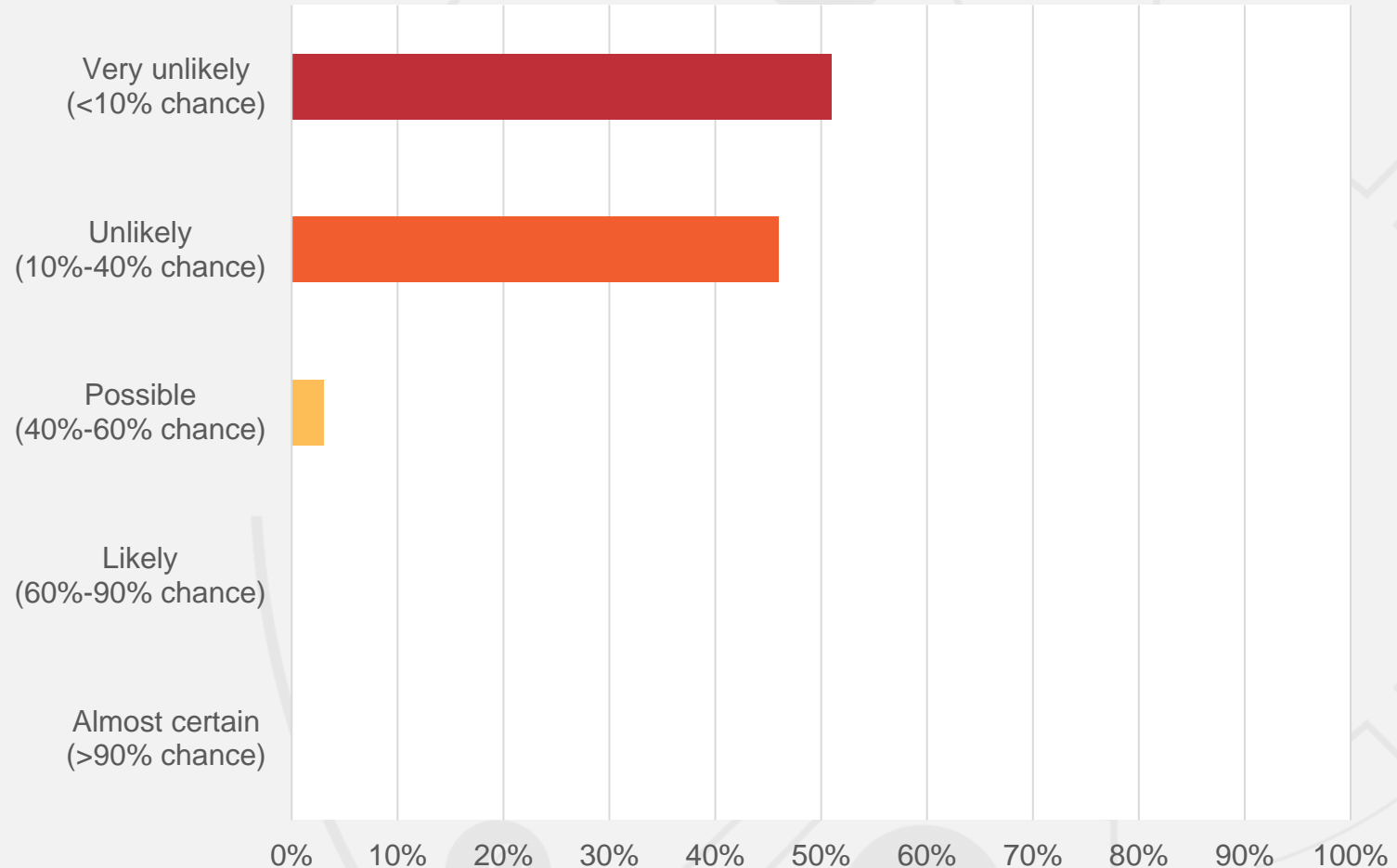
Controls: error caused by inadequate legal research

1. Training/assurance around full use of technology
2. Scope/estimate account for expertise and extra time
3. Readiness to brief counsel
4. Checklist for scoping/briefing/allocating research to juniors

Error caused by inadequate legal research - controls



Claim or significant dispute with client arises from a firm's error on facts



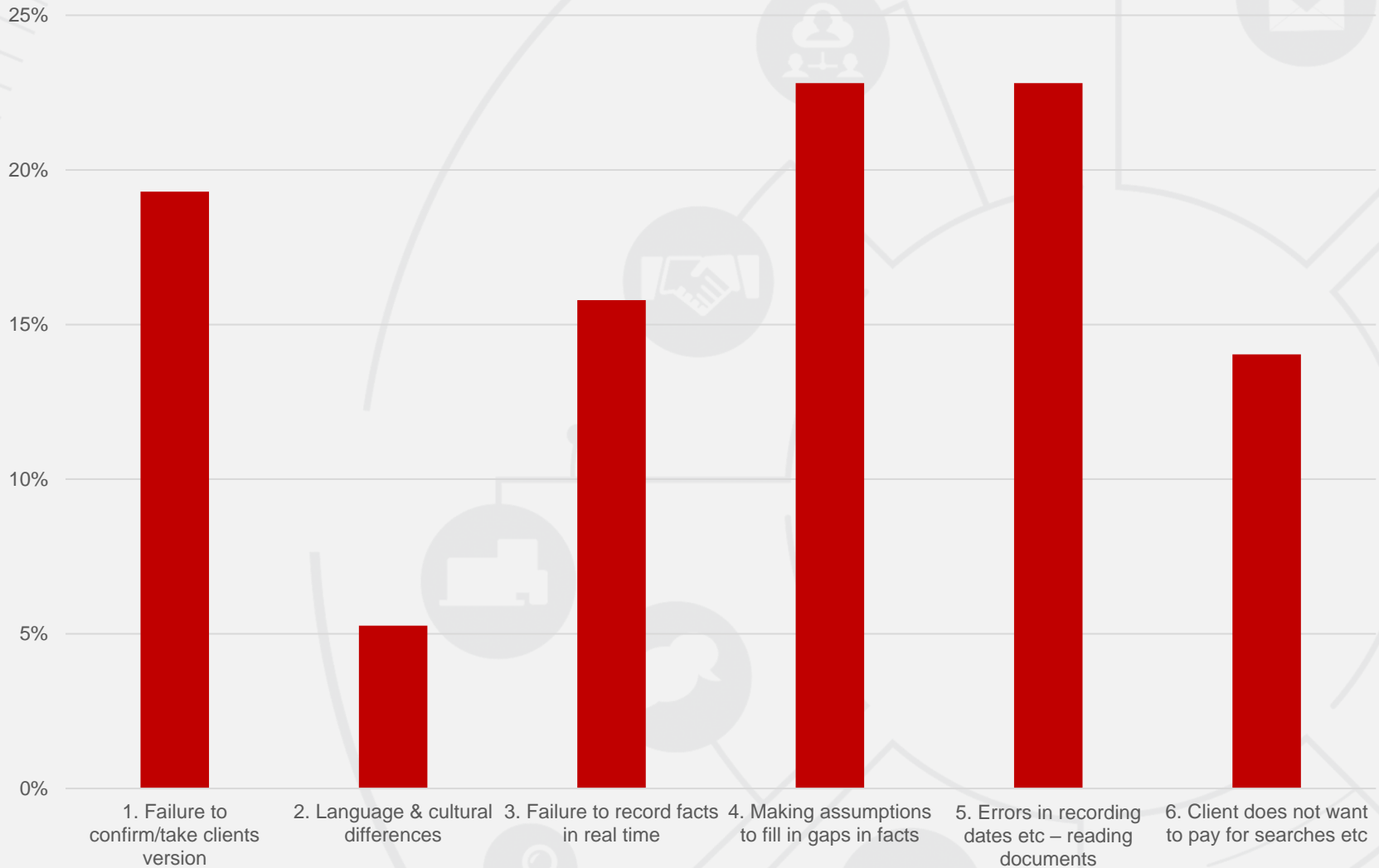
Claim or significant dispute with client arises from a firm's error on facts

How does this happen?

Causes: a firm's error on facts

1. Failure to confirm/take client's version
2. Language & cultural differences
3. Failure to record facts in real time
4. Making assumptions to fill in gaps in facts
5. Errors in recording dates etc. and reading documents
6. Client does not want to pay for searches etc.

A firm's error on facts - causes



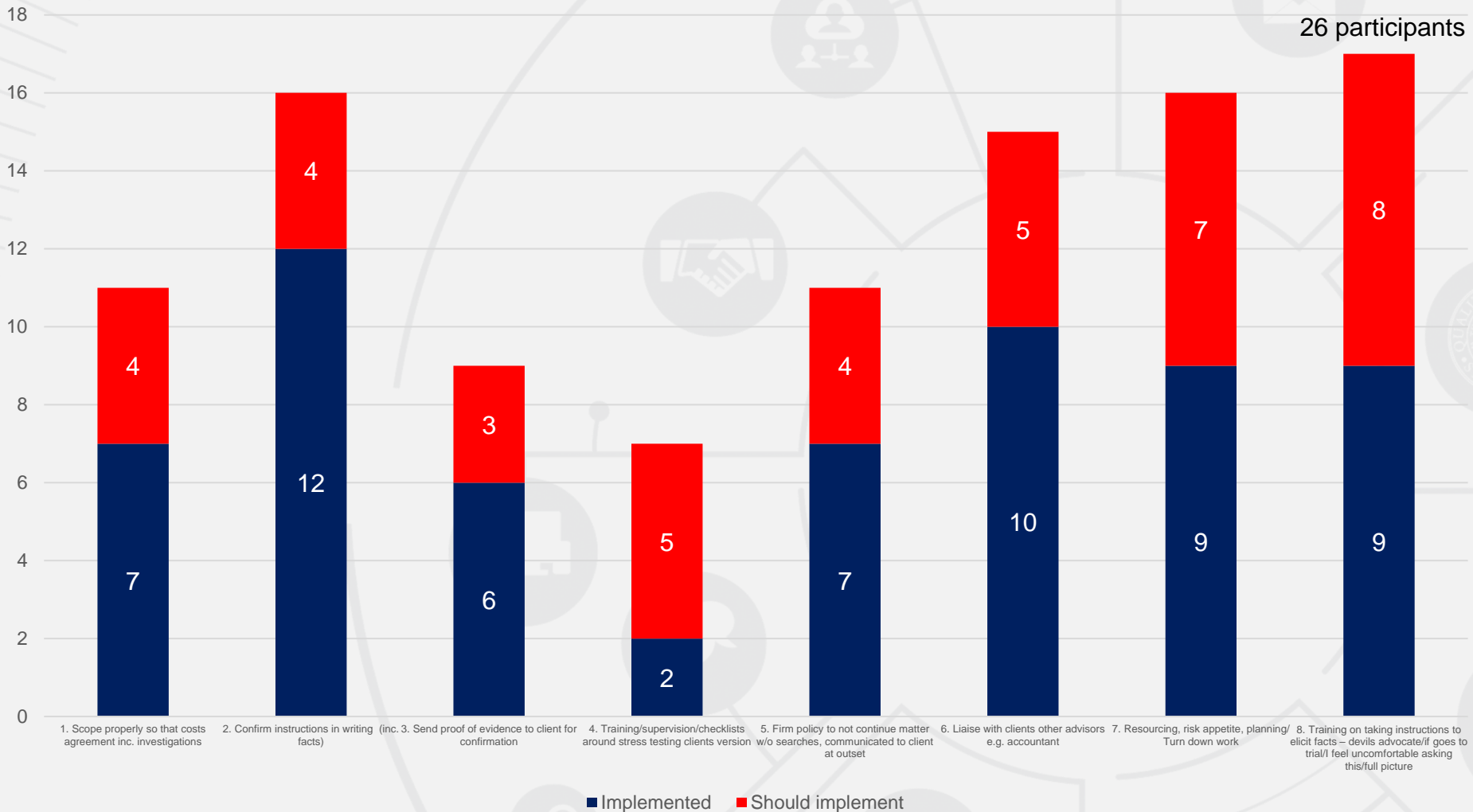
How do we prevent these causes arising?



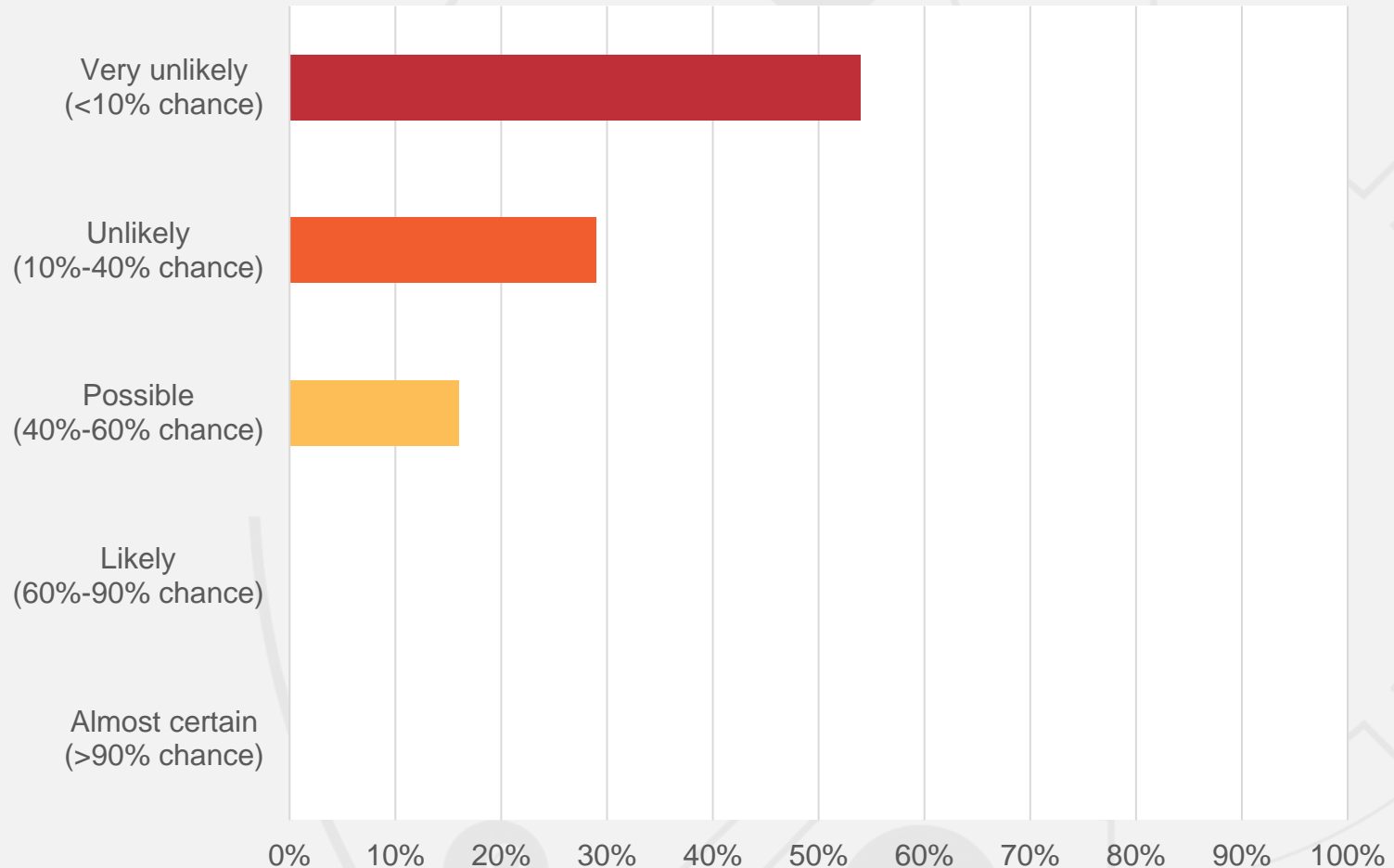
Controls: a firm's error on facts

1. Scope properly so that costs agreement includes investigations
2. Confirm instructions in writing including facts
3. Send proof of evidence to client for confirmation
4. **Training/supervision/checklists** around stress testing client's version
5. **Firm policy**, communicated to client at outset, to not continue matter w/o searches
6. Liaise with client's other advisors e.g. accountant
7. Resourcing, risk appetite, planning - turn down work
8. **Training** on taking instructions to elicit facts
 1. "I'm going to play the devil's advocate here but..."
 2. "If this goes to trial the other side is likely to..."

A firms error on facts - controls



Claim or significant dispute with client arises from non reliance or over reliance on 3rd party experts including barristers



Claim or significant dispute with client arises from non reliance or over reliance on 3rd party experts including barristers

How does this happen?

Causes: non reliance or over reliance on 3rd party experts including barristers

1. Over-reach/arrogance
2. Time constraints/cost constraints
3. Use of wrong expert
4. Unaware of need to brief
5. Expert does not care

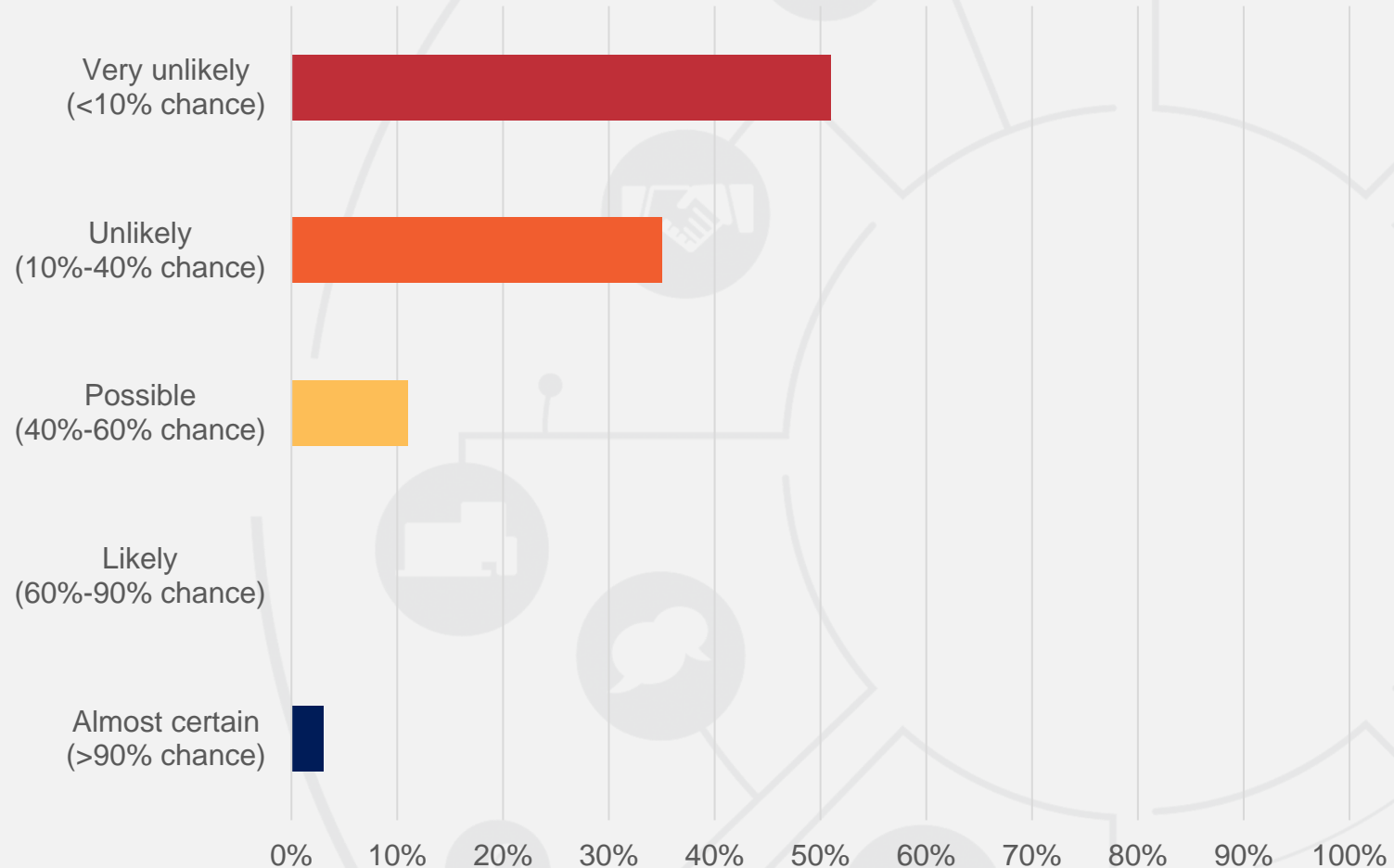
How do we prevent these causes arising?



Controls: non reliance or over reliance on 3rd party experts including barristers

1. Find & raise with mentor/network
2. Consider need for expertise when scoping/managing
3. Register of experts
4. Educate client on use of experts
5. Supervision requirements inc. review of need for experts.
6. Exercise own legal knowledge

Claim or significant dispute with client arises from billing that was late or not in accordance with engagement agreement



Claim or significant dispute with client arises from billing that was late or not in accordance with engagement agreement

How does this happen?

Causes: **billing that was late or not in accordance with engagement agreement**

1. Letting WIP accrue
2. Legal deadlines/priorities
3. Scope expands beyond initial agreement
4. Failure to set client expectations around costs – reset for change in customer representative

How do we prevent these causes arising?



Controls: billing that was late or not in accordance with engagement agreement

1. Monthly review of WIP by partner
2. Software alarms/trigger when reach e.g. 80% WIP
3. Send 'Draft Bill' for review/discussion with client
4. Process around checking WIP, billing and scope creep

The background features a large, faint circular graphic composed of several concentric circles and radial lines. Scattered throughout this graphic are various icons: a classical building with columns, an envelope with a document, a group of three people, a handshake, a factory, a speech bubble, a magnifying glass, and a graduation cap. The overall aesthetic is clean and professional.

Thank you!