



# Action Sheet



## Employment Status of Sub-Contractors

### Introduction

There is an important distinction between Labour Only and Bona-Fide Sub-Contractors that has implications for both parties involved. Whilst this distinction raises questions around income tax, H&S and Corporate law, this fact sheet will only discuss the issues around liability insurance.

The crux of the matter is this: if a sub-contractor causes an incident, or is the victim in an incident, who is legally liable and who will foot the bill?

For insurance purposes, Labour Only Sub-Contractors (LOSC) are treated as employees and need to be considered (and paid for!) in the main contractors insurance. Bona-Fide Sub-Contractors (BFSC) are independent companies with their own insurance.

The distinction between LOSC and BFSC should be clear in the contract of engagement, but in reality, this is often not the case. We are then left with a number of questions to try and help define their status – but this is often inconclusive. You will tick some items that indicate LOSC and other items that indicate BFSC. The main factors are “who is in control” and “who carries the risk”. If in doubt, you should ask for further advice.

#### Typical features for Labour Only Sub-Contractors

	Yes	No
Do they have to do the work themselves?		
Can someone tell them at any time what to do, where to carry out the work or when and how to do it?		
Can they work a set amount of hours?		
Can someone move them from task to task?		
Do they work with direct employees as part of a squad?		

#### Typical features for Bona-Fide Sub-Contractors

	Yes	No
Are they in “control” of the work?		
Can they hire someone to do the work or engage helpers at their own expense?		
Do they risk their own money?		
Do they provide the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?		
Do they agree to do a job for a fixed price regardless of how long the job may take?		
Do they regularly work for a number of different people?		
Do they have to correct unsatisfactory work in their own time and at their own expense?		
Do they have their own “company” with bank accounts, and insurance?		

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## Examples

### Example 1:

If you ask Scottish Gas to fit central heating to a property, they will be **BFSC** if they:

- have a fixed price for the job
- supply the materials,
- decide who does the work
- pay for any mistakes they make.

If an employee of Scottish Gas burns down your property, you would raise a claim against their Public Liability Insurance.

### Example 2:

If you ask a local electrician, Jimmy, to help you with the first fix in your new property he is a **LOSC** if:

- you tell him what hours to work and pay him for the hours worked
- you tell him what to do and how to do it
- you supply materials and would pay if mistakes are made
- it is Jimmy, himself, that you are employing, and he can't send someone else in his place

If Jimmy falls off a ladder, he will be entitled to raise a claim against your Employers' Liability insurance.

Examples 3 and 4 are interesting since they demonstrate it is not the Company Status of the contractor that counts but the way in which they work for you.

### Example 3:

If you ask Jimmy, the owner of a local electricians, Three Phase Ltd, to install the electrics in your new property he is a **LOSC** if:

- you tell him what hours to work and pay him for the hours worked (*control*)
- you tell him what to do and how to do it (*control*)
- you supply materials and would pay if mistakes are made (*risk*)
- it is Jimmy, himself, that you are employing, and he can't send someone else in his place

If Jimmy falls off a ladder, he will be entitled to raise a claim against your Employers' Liability insurance.

### Example 4:

If you ask Jimmy, the owner of a local electricians, Three Phase Ltd, to install the electrics in your new property he is a **BFSC** if he

- has a fixed price for the job
- supplies the materials,
- decides who does the work (it may be one of Jimmy's employees)
- pays for any mistakes they make

If Jimmy or another employee of Three Phase Ltd falls off a ladder, they will be entitled to raise a claim against the Three Phase Ltd Employers' Liability insurance.

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