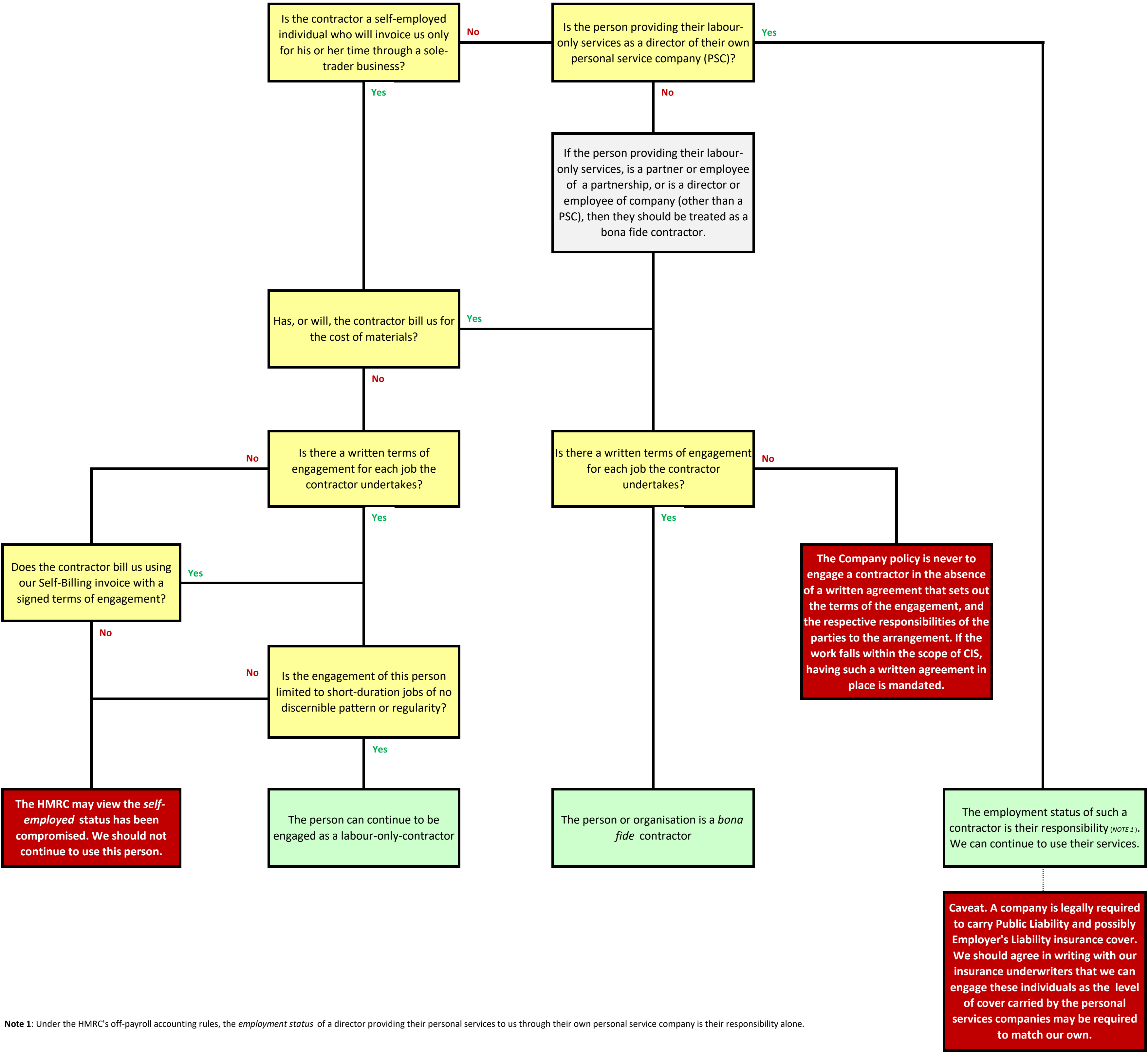


Deciding if a contractor is a labour-only, or a bona fide contractor.

For the purposes of this document the terms 'subcontractor' and 'contractor' refer to any trading entity we wish to subcontract work on site to.



It should be noted that by definition a labour-only-contractor that meets the criteria for insurance purposes, is likely to be viewed by the HMRC as not being 'self employed' for tax purposes. A person who has all of the HMRC hallmarks of being 'self-employed' for tax purposes, is unlikely to meet the labour-only-contractor qualifying criteria for working under the umbrella of the engager's insurance cover. The risk here is that the engager could end up in the worst of both worlds. That is, the engager's insurance underwriters refusing to accept the contractor as being covered in the event of a claim, and the HMRC ruling the same contractor is not self employed and raising a significant back-duty tax penalty to be paid.

There are no black and white answers to this particular thorny and contentious issue. The truth is that the mutually exclusive factors that differentiate between labour-only and bona fide contractors is an impossible theoretical construct that makes relying upon it for determining both employment status and insurance purposes as absurd. The law does not reflect the construction sector's need for a mobile, semi-skilled work force. So engagers are left in the unsatisfactory position of favouring engaging contractors under terms that secure essential insurance cover, and running the risk the HMRC will challenge the tax treatment of such workers with the real risk of suffering significant tax charges.

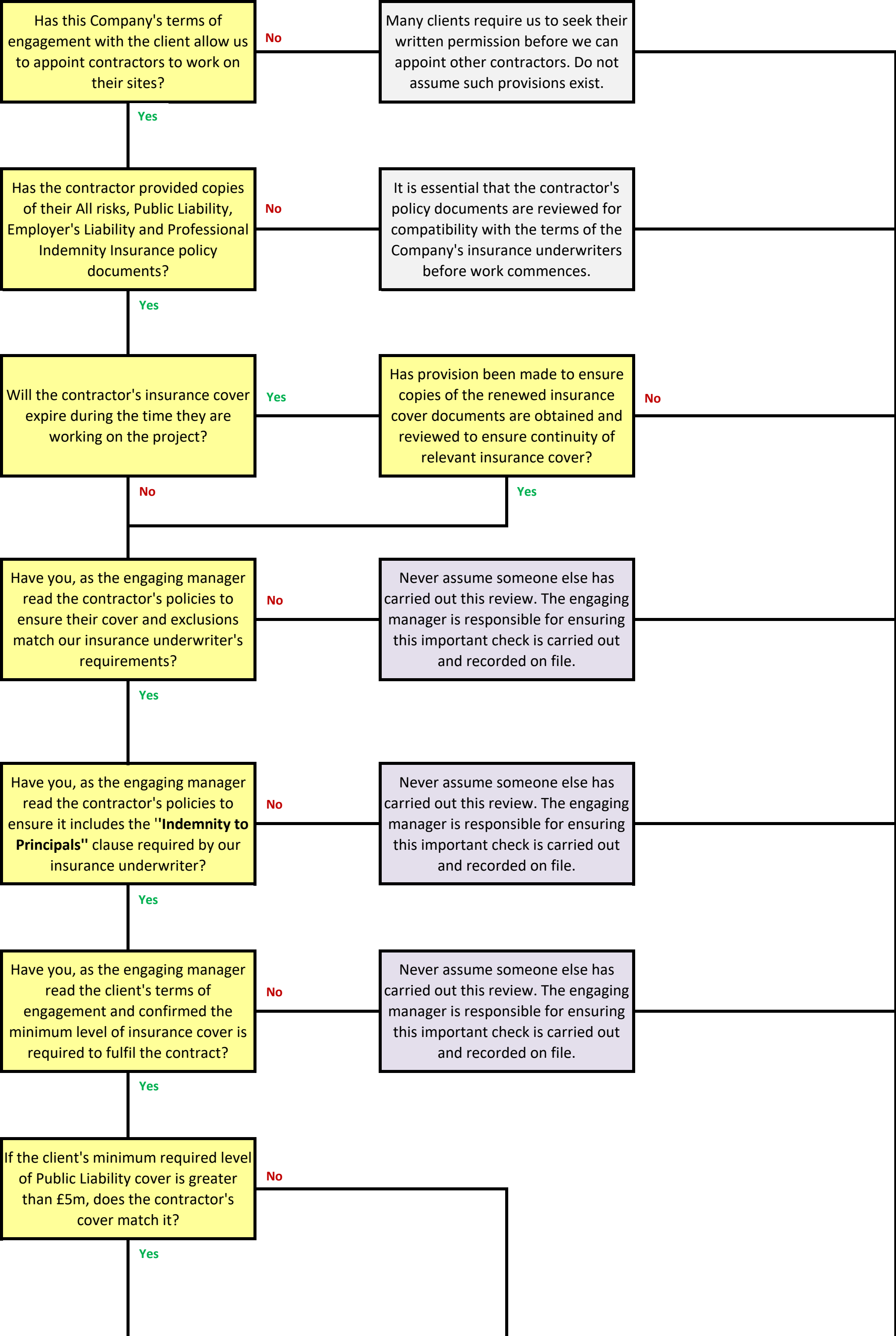
There is a solution. The engager can always make a formal application to the HMRC to determine the employment of a specific worker on a case by case basis. The problem with that approach is engagers are always worried the HMRC will come back with the answer they do not want to read.

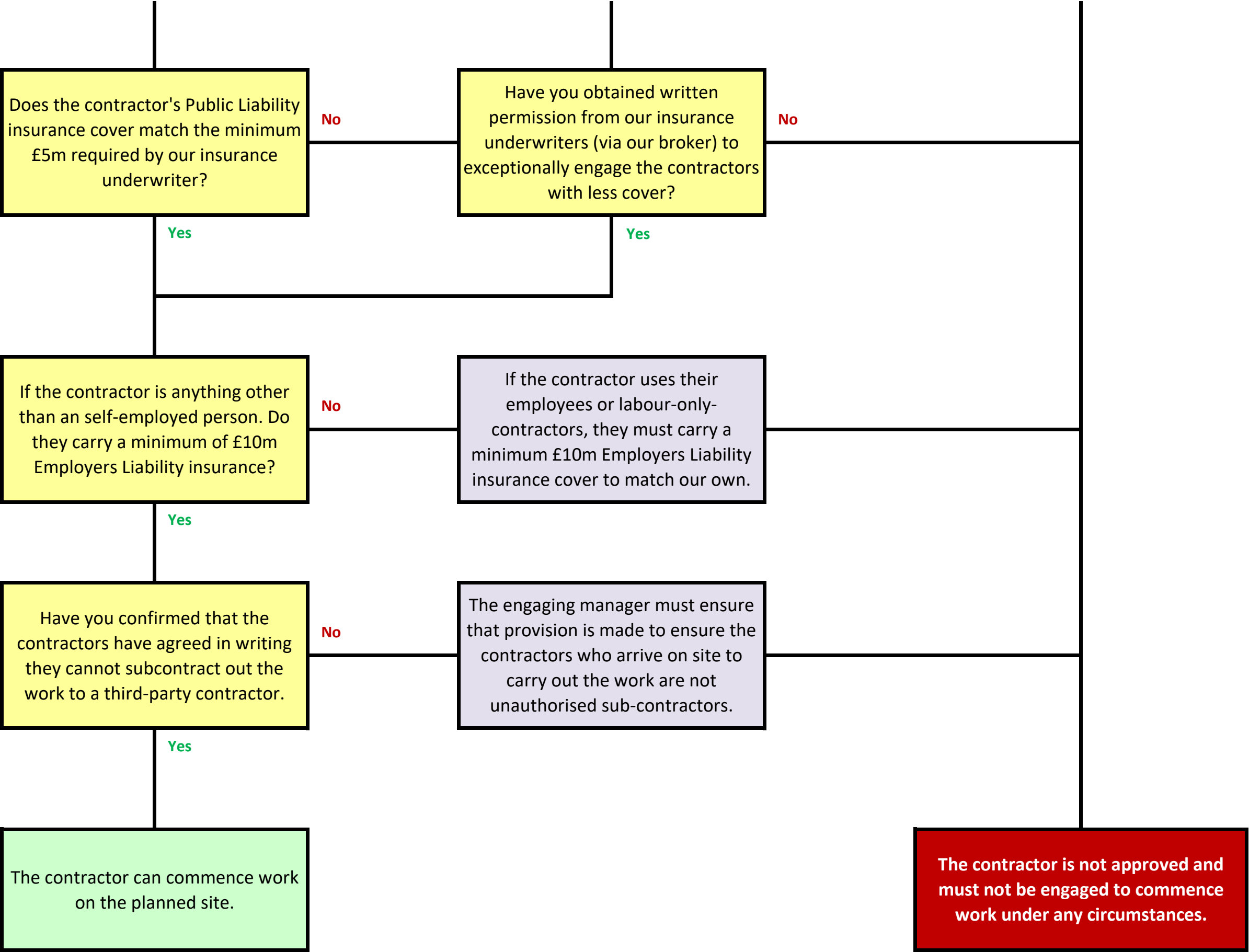
Copyright 2023. All rights reserved MAAP Consultants Ltd

Disclaimer. The information published here is for general application and for this reason any person or organisation that relies upon it does so at their own risk. MAAP Consultants Ltd will not accept any liability for any loss or claim for damages caused by relying on the information provided here. Every situation where this information might be applied has specific circumstances that may alter the outcome of the decision pathway published here. For that reason, advice should be sought from a professional adviser who is in possession of all the relevant facts, and who can provide more appropriate advice based on the specific circumstances of each situation.

# BONA FIDE CONTRACTOR INSURANCE COMPLIANCE CHECK

We must always comply with the terms of our insurance cover policies imposed upon us by our insurance underwriters. We are audited each year to ensure all of the conditions set out below are complied with on every occasions a contractor is engaged by us to carry out any work on our sites. An inability on our part to demonstrate we complied with all the check below in the event of a claim, may result in the underwriters refusing to meet the claim. In the event the insurance annual audit identifies we are not carrying out the correct level of due diligence checks on engaging contractors may result in higher premiums, or a refusal to continue providing cover.





We cannot understate the importance of not allowing subcontractors to commence work on any of our sites unless they have signed a contract of engagement, completed the contractor's questionnaire, and supplied copies of the required Public Liability, Employer's Liability, All Risks insurance cover. If the contractor is carrying out 'design work' for us they should also match our £1m Professional Indemnity Cover as follows:

	Councils Local Authorities	Private Work
Level Public Liability with 'Indemnity to Principals' clause;	£10m	£5m
Employers liability cover if they employ or use labour-only operatives	£10m	£10m
professional Indemnity Insurance	£1m	£1m

Remember permission can always be sought from the client or insurance underwriters to step outside the normal parameters. Such permission should always be obtained from a person of recognised authority and seniority, in writing, and retained on file.

Copyright 2023. All rights reserved MAAP Consultants Ltd

Disclaimer. The information published here is for general application and for this reason any person or organisation that relies upon it does so at their own risk. MAAP Consultants Ltd will not accept any liability for any loss or claim for damages caused by relying on the information provided here. Every situation where this information might be applied has specific circumstances that may alter the outcome of the decision pathway published here. For that reason, advice should be sought from a professional adviser who is in possession of all the relevant facts, and who can provide more appropriate advice based on the specific circumstances of each situation.

# Construction Contractors: Choosing the correct VAT charging system

As the engaging contractor we have a legal obligation to inform in writing what VAT system a CIS contractor should use to bill us for the services rendered. This exercise should be carried out as part of the engagement due diligence process that must be carried out before work commences on EACH project commissioned. It should be noted the correct VAT charging system for the same contractor can change according to the nature of the work, and whether we have a vested interest in the property concerned.

The **VAT domestic reverse charge** must be used for most supplies of building and construction services.

The charge applies to **standard** and **reduced rate** VAT services:

- for businesses who are registered for VAT in the UK
- reported within the Construction Industry Scheme (CIS)

Although not mentioned explicitly, by elimination **Zero rated** supplies of building and construction services fall outside the scope of the VAT domestic reverse charges regulations.

[Source:](#) HMRC Guidance: "Check when you must use the VAT domestic reverse charge for building and construction services".

A critical part of determining the correct VAT charge to apply rests with determining if the supply of services falls with the scope of CIS. We recommend using the following HMRC guide to help users of this decision tree decide if the nature of the work to be undertaken falls with the scope of CIS. It is worth noting that invoices containing mixed supplies automatically require all of the invoice to be charged under the VAT reverse charge rules.

[HMRC Guidance:](#) You may find the following link useful in deciding whether the intended work fall within the scope of CIS.

