

# **HMRC Guidance for Local Authorities (LA) and Voluntary Aided (VA) Schools in England**

## **VAT Recovery on Expenditure**

### **Section 33 of the Value Added Tax Act 1994**

S33 is a special refund scheme allowing specified bodies, including LAs, to recover VAT incurred on their non-business activities. In order to be considered by HM Treasury for inclusion in s33, a body must:

- undertake a function ordinarily carried on by local government; and
- have the power to draw its funding directly from local taxation.

LAs have a statutory requirement relating to the provision of free education in their maintained schools, such that this is a non-business activity of the LA. This includes VA schools although their Governing Bodies are responsible for their premises.

### **Governing Bodies (GBs)**

Under section 36(1) of School Standards and Framework Act 1998 (SSFA), GBs of maintained schools are separate legal entities. They are not covered by s33 VAT Act 1994, and so VAT incurred by them in respect of their non-business activities may not be recovered under s33.

The GBs of VA schools have responsibilities in relation to capital works to premises.

The DfE in England may make grants to GBs of VA schools in order to help them meet their responsibilities, funding 90% of qualifying expenditure. VAT will not be recoverable by the GB in respect of this funded expenditure and the grant includes irrecoverable VAT costs.

VA school GBs are expected to meet the remaining 10% of costs from their own resources, although the SSFA allows LAs to contribute to the GB's 10% contribution, if they so wish.

### **Delegated budget**

All maintained schools, including VA schools, receive recurrent funding from their LA under arrangements set out in sections 45-53 of SSFA - which allows that every maintained school shall be financed by their LA by means of a "budget share" (the school's delegated budget).

S49(5) of SSFA allows that "any amount made available" by the LA to the GB of a maintained school shall remain the property of the LA until spent by the GB, and when spent by the GB shall be taken to be spent by them as the LA's agent. This generally allows the LA to recover VAT on expenditure made from the delegated budget.

However, in the case of VA schools, s49(6) of SSFA stipulates that the GB does not act as the LA's agent when spending amounts from the delegated budget to meet expenses payable by the GB in relation to the capital works for which the GB is responsible. Therefore, VAT may not be recovered on such expenditure.

## Factors Determining the Responsibility for Expenditure

The GB of a VA school are responsible for meeting all [capital expenditure](#) in relation to the [school premises](#) (with certain exclusions), except where it falls within a relevant [de-minimis limit](#).

These terms are explained in the following paragraphs.

### School premises

The GB's responsibility extends only to premises expenditure, specifically excluding playing fields, sports pitches, and buildings thereon (related to that use). The responsibility includes "fixed" furniture (e.g. laboratory table), fixtures, fittings that form part of the infrastructure. It does not include "loose" items, for example freestanding desks and freestanding educational equipment e.g. laptops, kindles, iPads etc.

The following table provides guidance on what ICT expenditure is regarded as premises related:

Premises (GB Responsibility)	Non-Premises (LA Responsibility)
<b>Note: VA Schools are allowed to use capital grant funding to pay for ICT equipment, but VAT will not then be recoverable</b>	
<b>ICT</b> <ul style="list-style-type: none"><li>• Building of ICT Suite - including construction works and all equipment, furniture &amp; fittings installed. <i>These become part of the premises.</i></li><li>• Installation of:<ul style="list-style-type: none"><li>○ ICT cabling;</li><li>○ WiFi systems, incl. ethernet &amp; routers;</li><li>○ Security systems, incl. proximity cards</li></ul><i>These are purpose built for premises, and not removable for use elsewhere.</i></li></ul>	<ul style="list-style-type: none"><li>• PCs, servers, interactive electronic whiteboards, projectors, printers and fax machines installed individually (not as part ICT suite)</li><li>• Laptops, kindles, iPads and other 'hand held' equipment used in the classroom *</li><li>• Laptop trolleys (storage / connection facilities)</li><li>• Electronic tills and biometric identification scanning devices</li></ul> <i>All of the above are not part of premises as removable and available for use elsewhere.</i> <i>* VAT recoverability on such items used by teachers is as non-VA schools.</i>

### Capital expenditure

It is necessary to determine whether expenditure is of a **capital nature in accordance with proper accounting practices**, as expenditure of a revenue nature will always be the LA's responsibility. [Appendix A](#) gives some examples of how commonly incurred premises expenditure is generally treated.

### De minimis limit

S35 of the EIA amended Part II, schedule 3 of the SSFA. This limits "capital expenditure" to being "...expenditure .. which falls to be capitalised in accordance with proper accounting practices..." (paragraph 9A) with reference to "...any generally recognised published code..." applicable to either individual VA schools or the LA (paragraph 9B).

For materiality reasons, many LAs set de-minimis limits on capitalisation of their expenditure in accordance with the "CIPFA Code of Practice on Local Authority Accounting in the United

Kingdom". In the absence of a recognised individual VA school de minimis limit the LA de minimis limit set in accordance with this Code may be applied. Expenditure within these limits is not the responsibility of the GB.

At the time of publication of this guidance, no published code specifically applicable to individual VA schools has been identified. In any event, Regulation 2 of the CEVA sets out that any expenditure by a GB below £2,000 shall not be treated as capital expenditure. CEVA does not determine whether expenditure above £2,000 is capital. See Appendix A for further information.

**It is important to note that the de minimis limit should not be used to artificially disaggregate capital expenditure to recover VAT. For example, a single supply of ICT infrastructure should not be split into smaller contracts for individual ICT works. Similarly construction works should not be split so that if invoiced separately, this could be treated as revenue expenditure as individually below the de minimis limit.**

## Definition of the Responsibility for Expenditure

The current responsibility for expenditure within VA schools can therefore be defined as follows.

### GB Responsibility

Expenditure which is capital in nature, and relates to:

- The existing buildings (internal and external)
- Perimeter walls and fences, even if around the playing fields
- Playgrounds
- Fixed furniture, fixtures and fittings – including ICT infrastructure

**except** where it is excluded from the definition of capital expenditure due to it falling below the [de minimis limit](#) applicable, being the higher of:

- a de minimis limit set by the Governing Body of a VA school in accordance with a generally recognised published code
- (only in the absence of a de minimis limit set by the Governing Body) a de minimis limit set by the LA in accordance with the “CIPFA Code of Practice on Local Accounting in the United Kingdom”
- £2,000

### LA Responsibility

Expenditure which is capital in nature, and relates to:

- Expenditure excluded from GB responsibility (above) by virtue of it falling below the [de minimis limit](#) applicable
- Maintenance of playing fields (including sports pitches)
- Buildings on those fields related to their use
- Day to day running costs of the school e.g. costs of staff, training, consumables, teaching resources, utilities etc

## VAT Recovery on Expenditure

Generally the LA may recover VAT (under s33 of the VAT Act 1994) incurred by the LA in relation to expenditure for which it is responsible, i.e. where it receives the supply and uses its own funds (including donations as detailed below).

However, VAT incurred by a GB on expenditure for which the GB is responsible is not recoverable under s33, even when payment is made from the delegated budget. VAT is only ever recoverable on expenditure from the delegated budget to the extent that it relates to expenditure for which the LA is responsible.

Neither is VAT recoverable by the LA on any expenditure made from DfE grant funding awarded specifically to the GB. Again, this is designated for expenditure for which the GB, rather than the LA, is responsible.

Further, although LAs commonly contribute towards a GB's capital expenditure, for example, to assist GBs in meeting their own 10% contribution for capital works, or to subsidise certain projects, VAT is not recoverable by the LA on such contributions. HMRC recognise that there has been some confusion in the past regarding such recovery and until 2009 had accepted that LAs could recover the VAT incurred on expenditure which was the responsibility of the GB but which the LA funded. However, when this policy was reviewed it was realised that it went beyond what s33 actually permits. In these arrangements, the GB is responsible for the entire expenditure and receives the whole supply. Thus, any VAT incurred on the supply is incurred by the GB, not the LA. This revised guidance now seeks to bring such treatment within the normal rules for VAT recovery for LAs as set out in [Public Notice 749](#) "Local authorities and similar bodies." Therefore, with effect from 1 September 2009, for projects initiated after this date, VAT may no longer be recovered by LAs in these circumstances, as the supplies are not made to them (whether or not paid from the delegated budget). HMRC will consider, on their individual facts, cases where a project initiated after 1 September 2009 was funded on the basis of the previous policy.

Where however, an LA decides to spend its own funds (excluding the delegated budget), on work to a VA school for which the GB is statutorily responsible by placing an order directly with a supplier then, under certain circumstances, it may recover VAT under s33. This is described in para 7.1 of Public Notice 749 i.e. the LA must procure the goods or services, receive the supply and pay from its own funds. However, the LA must treat any contribution towards its costs from the GB as consideration in accordance with the normal VAT rules and declare VAT on that contribution where appropriate.

The tables of examples and [flowchart](#) are intended to give further guidance on circumstances when the [LA may recover VAT](#) and [LA may not recover VAT](#). These examples are not intended to be exhaustive. In cases of doubt, GBs or LAs are advised to discuss the matter with HMRC.

### Insurance arrangements for VA schools

Annex B of the DfE's [Blue Book](#) details these such that this section only considers the VAT recovery consequences under the above VA school VAT rules.

Where VAT is recoverable, insurance claim settlements exclude VAT on the cost of works. However, if remedial works are GB responsibility, VAT will not be recoverable by the LA. Therefore, when establishing the insurance policy and its value, the insurer should be made aware that any VAT incurred in respect of such works at VA schools is irrecoverable and the premium should therefore reflect that. (DfE confirm this view and that this results in increased premises insurance premiums for VA schools, for which LAs are responsible).

Any DfE grant aid, available as 90% of replacement costs via capital grant where resources permit, towards this is awarded to the GB. The GB must fund the remaining 10% of costs to be met from its own resources.

VA schools should be treated in the same way as other maintained schools in relation to providing for any revenue premises losses including all losses below the de minimis level applicable to the LA for which the LA is responsible. The LA can reclaim VAT on these works.

### Examples when VAT is recoverable by LA under s33

	Example	Comments
1	Where GBs undertake revenue (LA responsibility) works and pay for them through the delegated budget	GB acts as LA's agent (S49(5) SSFA)
2	Where donations are received from: <ul style="list-style-type: none"> <li>• GBs</li> <li>• private school funds (e.g. operated by the GB or PTA)</li> <li>• charities</li> <li>• commercial organisations</li> </ul> and used to meet expenditure for which LA is responsible.	<p>Provided the conditions in:</p> <ul style="list-style-type: none"> <li>• para 10.4 of <a href="#">Public Notice 701/30</a> and/or</li> <li>• para 7.3 <a href="#">Public Notice 749</a> (LA contracts for, pays for, retains ownership etc)</li> </ul> <p>(HMRC Internal Guidance <a href="#">VATGPB7550</a> and <a href="#">VATEDU65750</a>) are met, LA may recover VAT under s33.</p> <p>This will not be possible where the donated funds are used by LA to pay for works that are the GB's responsibility.*</p> <p>Donations must be paid into the delegated budget, and the goods / services bought must be for the benefit of the school rather than the donor.</p>
3	Where the LA decides to spend its own funds (excluding the delegated budget), by means of an order placed directly by the LA (i.e. not by the GB) with a supplier. This is so even if the expenditure is in respect of GB responsibility works.	<p>When LA uses its own funds, VAT may be recovered under s33 as described in <a href="#">Public Notice 749</a> para 7.1 - i.e. LA must procure the goods or services and receive the supply.</p> <p>However, the LA must treat any contribution towards the costs from the GB as consideration in accordance with the normal VAT rules.</p>
4	Ongoing maintenance/lifecycle costs resulting from building works funded by PFI	Any unitary charge from the PFI provider is regarded as revenue expenditure and as such is the LA's responsibility

\* this is because:-

- it will be difficult in most cases for the LA/GBs to argue that the LA can retain ownership of capital works in VA schools. (Dioceses, or trustees, will usually own school buildings and LA is responsible for ongoing costs of upkeep)
- where funding originates from DfE direct grant to GBs to fund 90% of capital projects, any such funding paid by GBs to LAs to fund capital works should be treated as consideration for a supply to GB. In other words, the money is not donated because it obtains benefits for the GB.

## Examples when VAT would not be recoverable by LA under s33

	Example	Comments
1	Where expenditure is met from 90% DfE funding (e.g. Devolved Formula Capital).	This grant is <a href="#">awarded and belongs to the Governing Body</a> for spending on GB responsibility works. It is calculated to include irrecoverable VAT costs.
2	Where remaining 10% is met directly from GBs' fund raising or delegated budget funding.	S49(6)(b) SSFA specifically excludes GBs from acting as LA's agent when they use delegated budget to pay for works that are their responsibility
3	Where GB spends own funds on revenue expenditure, procuring goods/services itself.	i.e. not paid for from delegated budget or funds donated to the LA
4	Where LA donates funds to GB for capital works for which GB is responsible	Unless LA procures, receives and pays (para 7.1 of <a href="#">Public Notice 749</a> ), then supply is not to LA. <i>(HMRC historically allowed recovery by LA, this was corrected from September 2009).</i>
5	Where expenditure is paid for from funding obtained by the GB from sources such as: <ul style="list-style-type: none"> <li>• charges for community services (adult education, sporting facilities etc.)</li> <li>• Lottery, Sport England etc.</li> <li>• Government <a href="#">grant awarded to the GB rather than the LA</a>.</li> </ul>	Funding does not belong to LA. The GB owns the funds and is the body responsible for carrying out the works. If funds are passed by the GB to the LA, this may allow VAT recovery by the LA, but will also require output tax declaration on the funds passed.
6	Although paid via the LA, Building Schools for the Future (BSF) funding for Design & Build (D&B) or redevelopment of VA schools is awarded and belongs to the GB for these capital works for which the GB is responsible. (Exceptionally BSF grant is paid to meet 100% of GB's liability).	For D&B or redevelopment works procured under BSF, the LA and GB will enter into a Development Agreement for the BSF works. Acting as principal, the LA will procure/project manage BSF work for all schools in its area. When complete, the LA will make a supply of the works to the GB, which will be subject to VAT unless the work can be zero rated. The LA will retain the school's BSF funding as consideration for the supply of the works to the GB.

## Ownership of grant funding

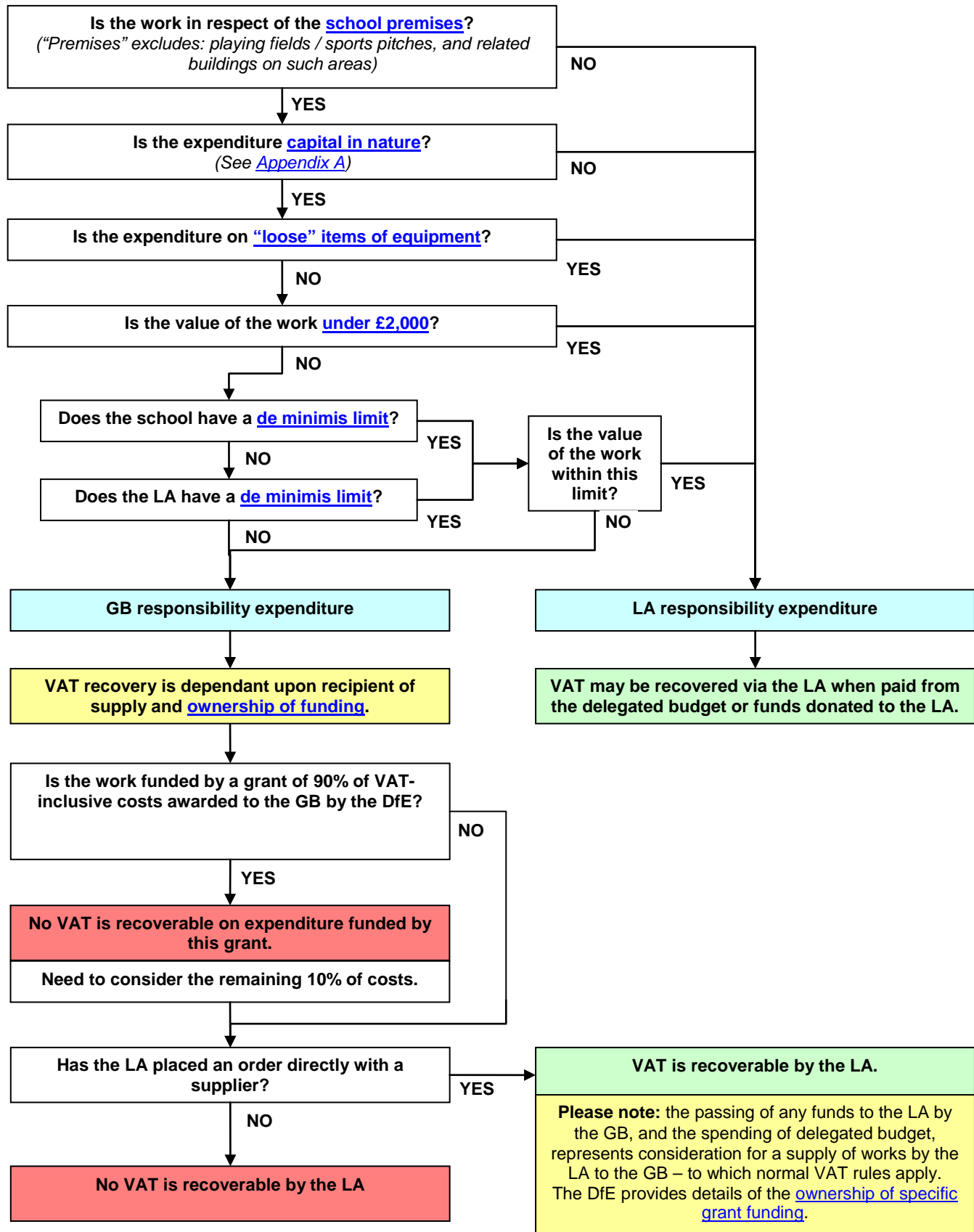
The ability of an LA to recover VAT when spending grant funding on GB responsibility works generally depends upon whether the ownership of the grant lies with the LA or the GB, and who procures the work. Some grants administered by LAs may still belong to GBs. The DfE has provided guidance on the ownership of grants currently available:

GRANT NAME	OWNERSHIP i.e. LA or GB	PURPOSE / DESCRIPTION
Locally Coordinated Voluntary Aided Programme (LCVAP)	GB	Pupil-weighted share of capital maintenance funding. Funding is awarded to the GB for those capital works for which the GB is responsible.
Basic Need	LA	LAs have a duty to provide sufficient schools for their areas. Basic Need Funding for all taxpayer-funded schools has been allocated to LAs to support them in that duty.
Devolved Formula Capital (DFC)	GB	To provide each school with some capital funding to address its own priorities. Funding is awarded to the GB for those capital works for which the GB is responsible.
Modernisation	LA	To upgrade and build new buildings and facilities in line with priorities in the local asset management plan.
School Access Initiative	LA	To improve the accessibility of mainstream schools to disabled pupils and those with special educational needs.
Extended Schools	LA	To provide pump priming capital funding to develop extended schools across an area, delivering the core offer of extended services. It was expected that funding would be joined up with other devolved LA level funding, including in particular, the resources being made available through the Primary Capital Programme.
Targeted Capital - Standards and Diversity	GB	To raise standards by supporting choice and diversity of provision. Funding was awarded to the GB for those capital works for which the GB is responsible.
Targeted Capital - 14-19 and Special Educational Needs	LA	To provide those LA areas not currently in the BSF programme with additional funding to support the provision of facilities for the delivery of 14-19 diplomas and/or to improve facilities for pupils with special educational needs and disabilities.



<b>GRANT NAME</b>	<b>OWNERSHIP i.e. LA or GB</b>	<b>PURPOSE / DESCRIPTION</b>
Targeted Capital - Basic Need Safety Valve	LA	To enable LAs to provide additional school places to cope with exceptional growth in pupil numbers, where these cannot be met from other programmes.
16-19 Capital Fund	GB	To provide capital funding for significant numbers of new 16-19 places in schools and colleges. Funding was awarded to the GB for those capital works for which the GB is responsible.
Primary Capital Programme	LA	Funding to support rebuilding or redevelopment of primary schools, was subject to agreement of an LA's Primary Strategy for Change.
Building Schools for the Future (BSF)	GB	Funding to support rebuilding or redevelopment of secondary schools. Although paid via the LA, BSF funding was awarded to the GB for those capital works for which the GB is responsible.

## Flowchart for determining VAT recovery



## Appendix A - Examples of Capital / Revenue Expenditure

The following indicative table is provided to assist in determining how some examples of commonly incurred premises expenditure might be treated. Where expenditure is shown as capital, the remainder of the guidance will still need to be considered in order to determine the responsibility.

Capital	Revenue
<b>Roofs</b>	
Structure. New (not replacement) structure.	Repair/replacement of small parts of an existing structure
Structure. Replacement of all or substantial part of an existing structure to prevent imminent or correct actual major failure of the structure.	Replace small areas of rotten or defective timber, make good minor areas of spalling concrete where reinforcing bars are exposed. Replace/repair small areas of rotten/defective joists, rafters, purlins, etc. Not complete trusses.
Screed/insulation in a new building/extension	Repair/replacement of screed/insulation where defective.
Screed/insulation. Replacement/repair of substantially all. Improve effectiveness of insulation.	Work to improve insulation standards, during work to repair/replace small areas of roof. Repair/replacement/increasing thickness of insulation in an existing roof.
Finish on new build. Replacement of all/substantially all on existing roof.	Replacement of roof finish on existing building. Re-coating chippings to improve life expectancy. Replace missing/damaged small parts.
Bargeboard/edge trim/fascia on new build	Repairs/replacement/repainting.
Bargeboard/edge trim/fascia, replacement of all/substantially all on existing roof.	Repairs/replacement/repainting.
Drainage on new build/extension. Replacement of all/substantially all on existing roof.	Clearing out gutters and downpipes. Replacement/repair of individual gutters/pipes. Repainting gutters/pipes.
Other items e.g. flashings, rooflights/windows on new build/extension. Replacement of all/substantially all items on existing roof.	Repair/replacement/cleaning of individual items
Provide new covered link etc. between existing buildings	Minor repairs, maintenance to existing covered link.
Rebuild or substantially repair structure of existing covered link. Add porch etc to existing building	Minor repairs, maintenance to existing structure.
Rebuild or substantially repair structure of existing porch.	

Capital	Revenue
<b>Floors</b>	
Structure and damp proof course (dpc) in new building	Repair/replacement of small parts of an existing structure
Structure and dpc – replacement of all or substantial part of an existing structure to prevent imminent or correct actual major failure of the structure	
Screed and finish in new build, replacement of all/substantially all on existing floor – e.g. replacement of most carpet/tiles in a room.	Replacement and repair of screed and finishes/replacement of mats/matwells. Maintenance e.g. revarnishing wooden floors.
<b>Ceilings</b>	
Suspension	Repair/replacement inc from water damage & necessary decoration
Membrane	
Fixed	Repair/replacement inc from water damage.
Access panels	Repair replacement
Specialist removal/replacement of damaged/disturbed Asbestos based materials, planned or emergency	Inspection/air testing. Applying sealant coats to asbestos surfaces for protection
<b>External Walls – masonry/cladding</b>	
Structure. Underpinning/propping for new build. External finish on new build	Repairs/preventative measures e.g. tree removal. Repairs/replacement of small parts of an existing structure e.g. repointing/recladding a proportion of a wall where failure has occurred.
External finish on existing build where needed to prevent imminent (or correct actual) major failure of the structure e.g. repointing/recladding work affecting most of a building/replacement build.	
<b>Windows and Doors</b>	
Framing – new build	Repair/replacement of individual frames. Repainting frames.
Framing – structural replacement programme	Repair/replacement of individual windows. Repainting frames.
Glazing – new build	Replacing broken glass
Glazing – upgrading existing glazing	
Ironmongery	Repair/replacement
Improved security	Upgrading locks etc.
Jointing including mastic joints	
Internal and external decorations to new build	Internal and external decoration to include cleaning down and preparation.

Capital	Revenue
<b>Masonry Chimneys</b>	
Structure	
Jointing including expansion and mortar joints/pointing/dpc	Repair/repointing
<b>Internal Walls</b>	
Solid walls - complete including various internal finishes, linings and decorations	Repairs and redecoration to internal plaster/linings, pin boards, etc.
Partitions - complete structure including linings, framing, glazing, decoration, etc.	Repairs and redecoration
Refurbishment and alterations	Minor alterations
Glazing to meet statutory Health and Safety requirements	Replacement of broken glass
<b>Sanitary Services</b>	
In new buildings provision of all toilet fittings, waste plumbing and internal drainage.	Repair/replacement of damaged sanitary ware, fittings, waste plumbing, etc.
Large scale toilet refurbishment	Small areas of refurbishment
Provision of disabled facilities and facilities related to pupils with statements	Repair/replacement of damaged fittings, waste plumbing etc.
Kitchens in new buildings, complete with fittings, waste plumbing and internal drainage. Internal finishes and decorations. General refurbishment. Large and costly items of equipment.	Maintenance of kitchen to requirements of local authority. Cleaning out drainage systems Redecoration Repairs/replacement parts.
<b>Mechanical Services</b>	
Complete heating and hot water systems to new projects, including fuel, storage, controls, distribution, flues, etc.	General maintenance of all boiler house plant including replacement of defective parts. Regular cleaning. Energy saving projects.
Safe removal of old/damaged asbestos boiler and pipework insulation, where risk to Health and Safety.	Monitoring systems Health and safety issues
Planned replacement of old boiler/controls systems past the end of their useful life.	Replacement of defective parts
Emergency replacement of boiler plant/systems	
Provision of cold water services, storage tanks, distribution, boosters, hose reels etc. in major projects.	Maintenance and repair/replacement of defective parts such as servicing pipes. Annual servicing of cold water tanks.
Gas distribution on new and major refurbishments, terminal units	Repairs, maintenance and gas safety All servicing
Mechanical ventilation/air conditioning to major projects.	Provision of local ventilation. Repair / replacement of defective systems / units.
Swimming pool plant and its complete installation, including heat recovery systems	Repair/replacement of parts to plant, pumps and controls. Water treatment equipment and all distribution pipework. Simple heat recovery systems.

Capital	Revenue
<b>Electrical Services</b>	
Main switchgear and distribution in major projects	Testing/replacement of distribution boards. The repair and maintenance of all switchgear and interconnecting cables including that in temporary buildings.
Control gear, distribution, fixed equipment, protection, etc.	All testing, repair and replacement of small items of equipment
Provision of luminaries and emergency lighting	Replacement of luminaries, all testing, adjustments and improvements to emergency lighting.
Lightning protection in new build.	Repair/replacement
Alarm systems, CCTV, lifts/hoists, etc	Repair and maintenance
New installation of communication systems, radio/TV, call, telephone, data transmission, IT etc. and provision in new build	Repair/replacement/maintenance, including all door access systems
<b>External Works</b>	
Provision of new roads, car parks, paths, courts, terraces, play pitches, steps and handrails, as part of major project, including disabled access	Maintenance and repair Car park and playground markings
Provision of walls, fencing, gates and ancillary buildings as part of major project	Maintenance and repair of all perimeter/boundary/retaining walls, fencing and gates.
Drains, soakaways, inspection chambers and sewage plant as part of new projects	Maintenance and repair of drains, gullies, grease traps and manholes between buildings and main sewers. Cleaning of the above and unblocking as necessary.
Open air pools - structure, hygiene/safety in new build	Hygiene, cleaning, maintenance and repairs, including replacement parts. Simple energy saving systems
Services distribution - heating mains, gas mains, water mains, electricity mains, renewal of any of the above	Annual servicing.