

Meeting: Cabinet **Date:** 17 December 2024

Wards affected: All

Report Title: Procurement of Education other than at School (EOTAS) Programme

When does the decision need to be implemented? Procurement activity is planned to take place from Spring 2025, which the new contracts commencing from 1 September 2025.

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1. Purpose of Report

- 1.1 To seek approval for the procurement and subsequent award of contracts to provide a set EOTAS education programme for children and young people (CYP), who have an Education, Health and Care Plan (EHCP) and are unable to attend school.
- 1.2 The proposal is for the following:
 - Lot 1- Block Contract with one provider for core curriculum education
 - Lot 2 – Block Contract with one provider for community inclusion and preparing for adulthood
 - Lot 3 – Framework for vocational and interest-based curriculum to enhance the educational offer to meet CYP aspirations
- 1.3 It is requested that once the procurement process is concluded, delegated authority is given to the Director of Children's Services to award the contracts upon the completion of a satisfactory procurement exercise.

2. Reason for the Contract and its benefits

- 2.1 Torbay Children's Services currently commissions EOTAS packages with alternative providers to meet the needs of CYP who are unable to attend school and who have an EHCP. This is currently done on a spot purchased basis.
- 2.2 The EOTAS packages that CYP currently receive are often dependent on the availability of provision and the hours and offer being accessed can vary hugely.
- 2.3 There are a high number of alternative providers which are commissioned by Torbay Children's Services with varying impact and outcomes for the CYP who access them. By having set providers to work with who have been contracted for specific outcomes will increase the monitoring abilities of Torbay Council.
- 2.4 Torbay Council want to ensure that all CYP who are unable to access education within a registered school can continue to access an impactful and high-quality provision to ensure that they can continue to get their best out of their education journey.
- 2.5 Torbay Council want to ensure that CYP who are unable to access school, can be supported successfully into adulthood, by having a robust educational offer despite not attending school.
- 2.6 Torbay Council want to ensure that when families and their children are offered an EOTAS education programme, that this is a streamlined process which clear provision in place and available for a smooth and successful transition into this provision.
- 2.7 By implementing these contracts, it meets legislative requirements which stipulate that the local authority undertakes a relevant procurement process to award contracts.

3. Recommendation(s) / Proposed Decision

1. That authority be delegated to the Director of Children's Services, in consultation with the Cabinet Member for Children's Services, to award the contracts following the subsequent successful completion of the procurement process.

Appendices

Appendix 1: Provisional Procurement Timeline

Background Documents

EOTAS Data Analysis

Supporting Information

1. Introduction.

- 1.1 Torbay Children's Services commissions EOTAS packages for CYP with an EHCP where it has been agreed by the LA that they are unable to successfully receive their education within a registered school.
- 1.2 For the academic year 2023/24, Torbay Council funded a total of 97 CYP who accessed EOTAS packages at some point over that year at a total cost for the year of £1,168,844.70.
- 1.3 For this academic year, 2024/25 there have been 59 CYP accessing their education via an EOTAS package as of end of October 2024, at a current projected cost so far of £1,029,498.90.
- 1.4 Placement costs at each provider vary hugely, which is down to the flexibility in offer and the variation in hourly costs requested by each provider. The hourly cost, although often standardised, may vary depending on the needs of the CYP accessing. This creates challenging in financial forecasting whilst also creating additional resource in approving the individually priced packages.
- 1.5 The packages for each of the CYP vary hugely with the highest cost for one this year being £58,171.25 per annum and accessing three different providers and the lowest cost for one CYP at a cost of £6,780.00 and only accessing one provider.
- 1.6 For this academic year, 18 providers in total have been commissioned, out of 30 providers which have been Quality Assured and individually contracted to enable spot purchasing to occur. 1 provider has 31 CYP placed for part of their EOTAS package, and there are 10 providers who are supporting 5 CYP or less.
- 1.7 The price of one provision varies hugely also, with the cost per place ranging from £3,304 per annum to £27,930 per annum.
- 1.8 There is a need for Torbay Council to have more control over the provision that is on offer for CYP, and to be able to implement an equitable offer for the vulnerable CYP who require their education via an EOTAS package. The contracts being proposed will enable these huge variations to be reduced and for CYP to access what they are entitled to.
- 1.9 It is a statutory duty of LAs to ensure that CYP can access suitable education, and for those who have an EHCP, the LA has a duty to ensure that the provision listed within the EHCP is in place. To ensure that Torbay Council can swiftly and successfully meet this duty, it is felt that having this provision allocated with contracted providers would support this legal duty.

2. Options under consideration

- 2.1 Other options for delivery have been considered.
- 2.2 Do nothing: This will result in a continued inequitable offer and high-cost spot purchased placements. This presents challenges with financial forecasting along with not having the provision available to meet the needs of the CYP due to relying on a spot purchasing process.
- 2.3 Framework only: This will enable Torbay Council to have more control over the provision that is being used for CYP who require a package for EOTAS however will not resolve the sufficiency issue in having placements readily available in high quality provision.
- 2.4 Block contracts only: This will result in increased control over the provision used however restricts the flexibility of the EOTAS programme by limiting the number of providers which are available and therefore removing aspirational factors from the CYPs education.

3. Contract term and budget

- 3.1 It is proposed that all contracts will be awarded for 5 years, starting from September 2025, to ensure that the consistency of offer can be in place for the CYP accessing EOTAS and working through their educational journey until they reach post 16 education.
- 3.2 A budget envelope for the commissioning of these services is being developed, taking into consideration opportunities to reduce spot-purchase costs where possible and increase value for money.
- 3.3 As part of the procurement market engagement, interested parties will be requested to submit their indicative proposed costings for the contracts which will be up for tender, to enable Torbay Council to identify each contract worth.
- 3.4 The contracts will outline the maximum which each contract could be worth, based on the costing analysis which is underway, however the providers awarded the contracts would only be funded for the service and the hours that Torbay CYP access.
- 3.5 It is possible that, in ensuring that the education package for the CYP is enhanced and made more robust, that this may result in additional costs from the High Needs Budget. This is because some CYP are currently receiving an inadequate package of education at present and is not offering them the breadth of provision that is now being sought under these contracts. By increasing the availability and quality of provision that is used, CYP may be able to increase their access to this provision over time, potentially resulting in higher costs.
- 3.6 There is the potential for making costs savings by the implementation of group options within the EOTAS package. At present, the offers in place are 1:1 and rarely include the

opportunity for peer contact. By enhancing the offer to include group work, this will reduce the 1:1 cost currently being experienced.

4. Procurement routes to market

- 4.1 Consideration was made to wait until the Procurement Act 2023 comes into force on 28 February 2025, however as the majority of suppliers that will be bidding for this opportunity are local suppliers who may not have previously engaged with a procurement process, it may be overwhelming for them to understand their duties and navigate PA23 whilst participating in a new process.
- 4.2 The route to market will be an Open Above Threshold Tender, utilising the Light Touch Regime under the Public Contract Regulations 2015.
- 4.3 This is the preferred route as it complies with the Public Contract Regulations and will enable more suppliers to access the opportunity.
- 4.4 The contract will be lotted, both to encourage SMEs and structure the contract in a way that has specific focus on each element.

5. Best value duty

- 5.1 Consideration will be made into the split between cost, quality and social value as part of this procurement. Due to educational and often social vulnerabilities of the CYP accessing EOTAS packages, there is a need to ensure that the providers have the right impact and can keep the CYP safe.
- 5.2 Social Value will be considered in the contract through the Council's standard Social Value process, i.e., requesting suppliers to identify which social value indicators they are capable of delivering and how they will deliver against them.
- 5.3 As part of this work, the transport used for CYP to access their EOTAS programme is being considered to ensure that we include a system that enables CYP to successfully access the offer available, whilst also considering ways in which to support the climate challenges.

6. Engagement and consultation

- 6.1 Hybrid event carried out with parents and carers of CYP who are currently in receipt of an EOTAS package. This was to offer an overview of Torbay's proposed plans to enhance the EOTAS offer and to gain families lived experiences and their views on the proposal.
- 6.2 Analysis on the needs and provision in place for those currently accessing EOTAS to understand the programme that is needed.

- 6.3 The voice of the CYP has been gained as part of their annual reviews to assist in understanding what they would be benefit from and how we need to further develop and enhance their education offer.
- 6.4 Development work has been underway with the providers, prior to this procurement proposal, which Torbay Council currently work with, to understand their experiences and improvements that can be made across the sector to ensure that there is an impactful provision in place.
- 6.5 Market engagement with the current and wider market is planned for the end of the Autumn term to ensure that awareness is raised on the procurement proposal and to take away any further learning from their feedback to support the development of the contract requirements.

7. Equality Impact Assessment

The Council has a Public Sector Duty under the Equality Act 2010 to have 'due regard' to equality and to ensure that it considers equality when taking decisions and throughout its business activities.

Our Public Sector Equality Duty requires us to:

- Eliminate unlawful discrimination, harassment, victimisation, and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- Foster good relations between people who share a protected characteristic and people who do not.

The Equality Act says that we must consider equality and understand the possible impacts that our decision may have on different groups of people (the protected characteristics)

It is important that you carefully and thoroughly consider the different potential impacts that the decision being taken may have on people who share protected characteristics.

It is not enough to state that a proposal will affect everyone equally. There should be thorough consideration as to whether particular groups or individuals are more likely to be affected than others by the proposals and decision. Please complete the table below. If you consider there to be no positive or negative impacts state 'there is no differential impact anticipated'. Where there are adverse impacts being identified this should be raised with your director and the Partnerships and Inclusion Manager for further discussion.

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	18 per cent of Torbay residents are under 18 years old.	This decision is anticipated to positively impact children and young people. The decision will	Not applicable	Not applicable

	55 per cent of Torbay residents are aged between 18 to 64 years old. 27 per cent of Torbay residents are aged 65 and older.	support young people to access education and learning.		
Carers	At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these provided 50 hours or more of care.	No adverse impacts are anticipated. It is anticipated that there will be a positive impact on those who have caring responsibilities for children and young people accessing this provision due to having a more consistent education offer.	Not applicable	Not applicable
Disability	In the 2021 Census, 23.8% of Torbay residents answered that their day-to-day activities were limited a little or a lot by a physical or mental health condition or illness.	No adverse impacts are anticipated. It is expected that there will be a positive impact for those accessing EOTAS who have a disability. Services will continue to be delivered in a child centred way so children with an ECHP continue to get their individual needs met.	Not applicable	Not applicable
Gender reassignment	In the 2021 Census, 0.4% of Torbay's community answered that their gender identity was not the same as their sex registered at birth. This proportion is similar	No adverse impacts are anticipated.	Not applicable	Not applicable

	to the Southwest and is lower than England.			
Marriage and civil partnership	Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership.	No adverse impacts are anticipated.	Not applicable	Not applicable
Pregnancy and maternity	Over the period 2010 to 2021, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 63.7 per 1,000) than England (60.2) and the South West (58.4). There has been a notable fall in the numbers of live births since the middle of the last decade across all geographical areas.	No adverse impacts are anticipated.	Not applicable	Not applicable
Race	In the 2021 Census, 96.1% of Torbay residents described their ethnicity as white. This is a higher	No adverse impacts are anticipated.	Not applicable	Not applicable

	<p>proportion than the South West and England. Black, Asian and minority ethnic individuals are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England.</p>			
Religion and belief	<p>64.8% of Torbay residents who stated that they have a religion in the 2021 census.</p>	<p>No adverse impacts are anticipated.</p>	<p>Not applicable</p>	<p>Not applicable</p>
Sex	<p>51.3% of Torbay's population are female and 48.7% are male</p>	<p>No adverse impacts are anticipated.</p>	<p>Not applicable</p>	<p>Not applicable</p>
Sexual orientation	<p>In the 2021 Census, 3.4% of those in Torbay aged over 16 identified their sexuality as either Lesbian, Gay, Bisexual or, used another term to describe their sexual orientation.</p>	<p>No adverse impacts are anticipated.</p>	<p>Not applicable</p>	<p>Not applicable</p>
Armed Forces Community	<p>In 2021, 3.8% of residents in England reported that they had previously served in the UK armed</p>	<p>No adverse impacts are anticipated.</p>	<p>Not applicable</p>	<p>Not applicable</p>

	forces. In Torbay, 5.9 per cent of the population have previously served in the UK armed forces.			
Additional considerations				
Socio-economic impacts (Including impacts on child poverty and deprivation)		No adverse impacts are anticipated.	Not applicable	Not applicable
Public Health impacts (Including impacts on the general health of the population of Torbay)		No adverse impacts are anticipated.	Not applicable	Not applicable
Human Rights impacts		The Council is committed to Human Rights and to ensuring the Right to Education for children and young people in Torbay. No adverse impacts on human rights are anticipated from this decision.		
Child Friendly	Torbay Council is a Child Friendly Council and all staff and Councillors are	No adverse impacts are anticipated.	Not applicable	Not applicable

	Corporate Parents and have a responsibility towards cared for and care experienced children and young people.			
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8. Impact and risks

- 8.1 The risk of not putting these contracts in place is that CYP in Torbay will continue to receive an inequitable education offer.