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| 17th July 2014 | ITEM: |
| Thurrock Health and Wellbeing Board | |
| ENGAGING WITH USERS AND CARERS OF SERVICES AND THE PUBLIC THROUGHOUT THE COMMISSIONING PROCESS | |
| Report of: Len Green, Lay Member for Public and Patient Involvement, Thurrock CCG | |
| Accountable Director: Roger Harris, Director of Adults, Health and Commissioning | |
| This report is Public | |
| Purpose of Report: To set out the principles and approach for engaging with users of services and the public across health and (adult) social care throughout the commissioning process. | |

EXECUTIVE SUMMARY

It is an ambition of the Health and Social Care Transformation Programme to ensure that users and carers of services plus the wider public can co-produce with the Council and the CCG a plan for transforming health and social care in Thurrock. This means ensuring full involvement of users of services and the public throughout the commissioning cycle.

This report sets out the principles and process whereby this ambition will be achieved.

1. RECOMMENDATIONS:

- 1.1 To agree the principles and process for engaging with users of services and the public throughout the commissioning process as set out within the Health and Social Care Transformation Programme's Engagement Plan.**
- 1.2 To agree that the Board will require assurance from commissioners that the principles and process for engaging with users of services and the public throughout the commissioning process have been applied and that commissioning decisions will not be taken by the Board without the provision of this assurance.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 At a previous Health and Wellbeing Executive Committee meeting, Thurrock Clinical Commissioning Group's Lay Board Member for Patient and Public Involvement (Len Green) raised concerns about the extent which users of**

services and the public were sufficiently and consistently engaged in the commissioning process.

- 2.2 Whilst there had been good examples of public and service user/patient engagement, Len also cited examples where this had not been the case and stated that consistency was essential and that the public needed to be involved from the beginning.
- 2.3 As a result of the issues being raised and discussed at the Executive Committee, it was agreed that the Health and Wellbeing Board would be asked to agree to the principle of users of services and the public being involved throughout the commissioning cycle. The Health and Wellbeing Board would also be asked to receive assurance that this was happening – particularly as Board membership incorporates all commissioners spanning the local health and social care economy – Thurrock CCG, Thurrock Council, and NHS England.
- 2.4 Since the discussion at the Executive, Thurrock Clinical Commissioning Group and Thurrock Council have jointly established a Health and Social Care Transformation Programme. Programme arrangements have included responsibility for identifying how the health and social care ‘system’ will be transformed and redesigned – leading to the possible commissioning, re-commissioning and de-commissioning of services. The engagement of users of services and the public is central to this, and has been incorporated within the process that will be used to review and redesign the services that fall within the health and social care ‘pooled fund’. The process is jointly owned and recognises the Government’s ambition for health and social care services to be fully integrated by 2018 – which therefore encompasses the development of a fully integrated commissioning approach across health and social care too.
- 2.5 In November 2013, Adult Social Care took part in a regional Peer Challenge. The focus of the challenge was two-fold and included *‘examining the extent and effectiveness of the arrangements in place for co-production and engagement in enabling people to have a real say and involvement in shaping services, informing commissioning, and enabling the delivery of results and outcomes that achieve what people want’*. The Peer Challenge report recognised that ‘consultation and engagement with users and carers’ was ‘typically done well’, but that ‘consultation could be improved through involvement of the community in activities from the start’ and recommended the Council ‘widen and deepen the relationships with the third sector to further increase consultation and engagement and allow the Compact to become embedded’. The approach being developed by the Health and Social Care Transformation Programme’s Engagement Group, as contained within this paper and appended Engagement Plan, builds on the recommendations made by the Peer Review.
- 2.6 The Health and Wellbeing Board are asked to agree to the principles that will ensure users of services and the public are being engaged throughout the entirety of the commissioning cycle. Furthermore the Board are asked to

agree the process that will be used to engage with patients and the public throughout the commissioning process. Both the principles and process to be used are set out within the Health and Social Care Transformation Programme's Engagement Plan – as developed by the Programme's Engagement Group (appendix 1), and in the attached flowchart (appendix 2).

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

Legal Context

- 3.1 There are many good reasons for engaging with users of services and the public throughout the commissioning process. This includes legal reasons for both the NHS and Local Authorities.
- 3.2 For example, Bevan Brittan state that 'many legal challenges arise because of a failure to get the consultation process right....', and that this must be 'when proposals are still at a formative stage'. This applies to both the commissioning and decommissioning of services.
- 3.3 The Health and Social Care Act 2012 states that 'CCGs must ensure users are involved in the planning of commissioning arrangements, the development and consideration of proposals for change affecting them, and in operational decisions affecting them'. CCGs have had to set out within their constitutions a description of the arrangements made to achieve this and a statement of the principles which it will follow in implementing those arrangements.
- 3.4 Local authorities have a long history of involving service users in the development of and commissioning of services. In Thurrock, adult social care has moved to co-production – ensuring that users are not only involved in the consideration of proposals. Co-production is a significant principle which underpins Local Area Coordination. Starting with a strength-based question about 'what a good life looks like', LACs help vulnerable people to find their own local solutions. The experience of asking this strength-based question at the beginning of the conversation has been profound – allowing the individual to articulate their own hopes, aspirations and needs. The solutions pursued usually do not lie with services. In exploring what the community solution might be, the LACs have made connections with a range of voluntary groups, some of whom have been re-invigorated by this connection. Co-production is also a key feature of Asset Based Community Development (ABCD) where using gifts, talents, energy and commitment of local people, communities can co-product health and wellbeing with statutory and voluntary partners.
- 3.5 In Local Authorities, consultation and engagement is key to meeting the Best Value Duty as set out within the Local Government Act 1999.

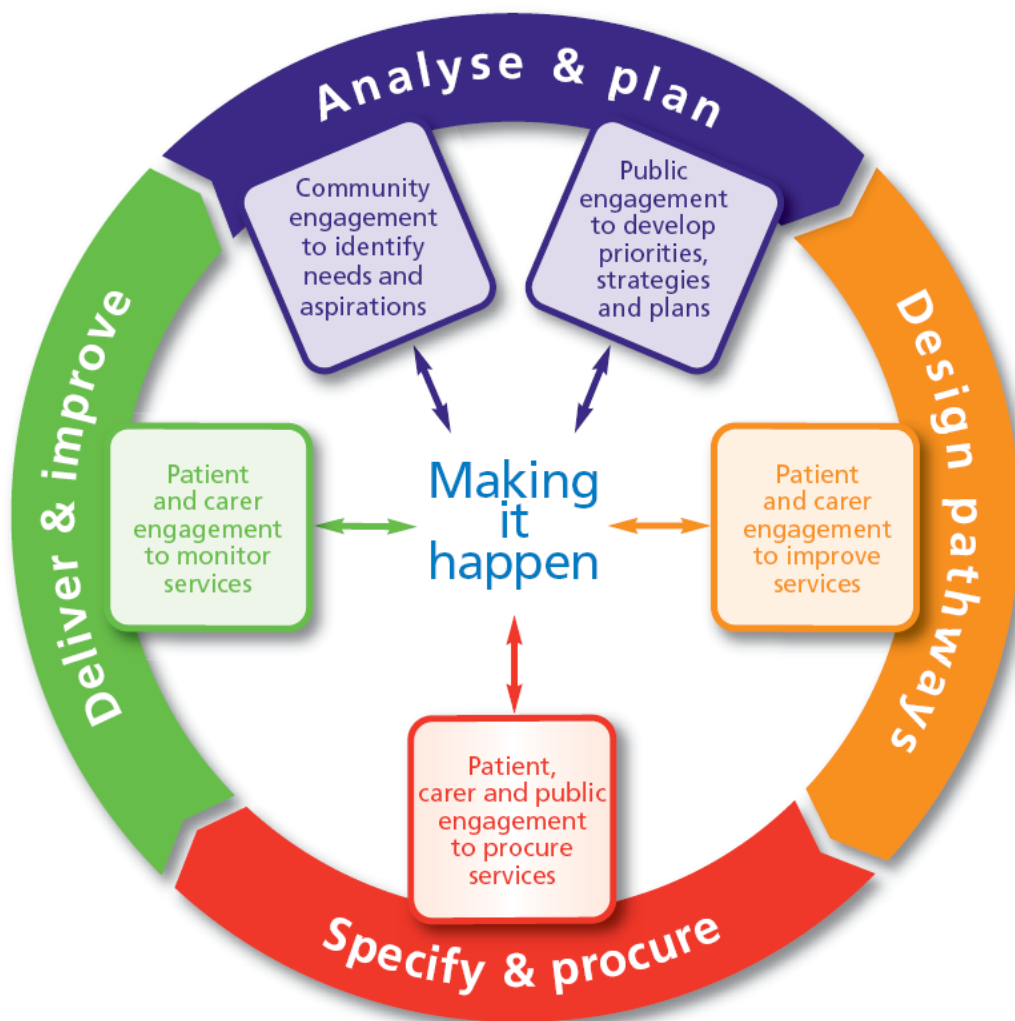
Engagement Cycle

- 3.6 The Engagement Group of the Health and Social Care Transformation Programme has developed an Engagement Plan. The Plan sets out how users of services and the public are to be involved in the development of the Programme – particularly in relation to the 'whole system redesign' element of the Programme.

- 3.7 Embedded within the Plan are the principles and process to be used for engaging users of services and the public throughout the commissioning process – which in the Programme’s case will include consideration of service redesign, commissioning, re-commissioning and de-commissioning. The process as contained within the Engagement Plan is shown below:

The Engagement Cycle

Engaging with patients and the public throughout the commissioning process



- 3.8 The Principles set out within the Engagement Plan and that are expected guide engagement throughout the commissioning cycle are as follows:

To enable citizens and community groups to participate fully in the co-production process, we recognise that clear and accessible information about the challenges and choices facing them must be made available in a timely manner.

From the outset we pledge to ensure our engagement is:

- *Honest and transparent about the scope of change, and the enablers and constraints in the change process*
- *On terms, in places and at times which suit citizens and communities*
- *Two way, with information being imparted and received, and delivered in a manner which encourages questions and constructive criticism*
- *Responsive to what we hear, where ever possible giving an account of what will be done with what we learn and the likely outcomes*

Our communication will

- *demonstrate integrity and public accountability*
- *be clear and easy to understand*
- *be appropriately targeted to the communication needs of our various audiences*

3.9 Whilst the Health and Social Care Transformation Programme does not cover the complete Health and Adult Social Care budget, it is a future ambition of the Programme that it will do so. There is an expectation therefore that the principles and process set out within the appended Engagement Plan should apply to all commissioning decisions across health (CCG) and (adult) social care.

3.10 In addition to this work the Council is also developing its approach to the Social Values Act. In response to this legislation and following concerns raised about recent procurement exercises by the CVS a joint Council and 3rd sector working party was established under the Joint Strategic Forum (the JSF is a joint body between the Council and the CVS overseeing the voluntary sector compact and wider 3rd sector / Council joint issues).

3.11 This working party has produced a Draft Commissioning and Procurement Strategy which tries to map out what is good practice in the way the Council commissions and crucially **procures** services. The strategy states clearly that specifications must be co-produced before the tendering starts, makes recommendations over the make-up of the procurement panel and the criteria that will be used for the assessment process. Following consultation this strategy will be going to the October Cabinet.

4. REASONS FOR RECOMMENDATION:

4.1 To embed the engagement of users of services and the public throughout the commissioning process.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

5.1 The principles and process as set out within the Health and Social Care Transformation Programme's Engagement Plan have been developed by the Programme's Engagement Group. The Group includes representatives of Thurrock Healthwatch, Thurrock Coalition, Thurrock CVS, and Thurrock Commissioning Reference Group. A draft Engagement Plan was submitted

alongside Thurrock's Better Care Fund Plan in April 2014. A flowchart also setting out the process of engagement is attached at appendix 2.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

6.1 Ensuring that users of services and the public are at the centre of decision-making ensures that resource is used to best effect.

7. IMPLICATIONS

7.1 Financial

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No financial implications identified.

7.2 Legal

Implications verified by: **Dawn Pelle**
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The CCG have to consult pursuant to statute – Health and Social Care Act 2012. The duty to consult for local authorities is a common law concept laid down in case law. These are called the Sedley Guidelines as follows:
'a) consultation must be at a time when proposals are still at a formative stage; b) sufficient reasons must be given for such consideration and response; c) adequate time must be given for such consideration and response; and d) the product of consultation must be conscientiously taken into account in finalising any proposals.

These were referred to in the proceedings as the 'Sedley requirements' because they were originally formulated in 1985 by Stephen Sedley QC, as he then was, in submissions in Ex parte Gunning [1985] 84 LGR 168. They were notably referred to by Lord Woolf in the leading case of Coughlan (R v North East Devon Health Authority, ex parte Coughlan [2001] QB 213.

7.3 Diversity and Equality

Implications verified by: **Rebecca Price**
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Engagement with the public and users of services throughout the commissioning cycle helps to ensure that the needs of different users will be met and helps to ensure that different equality outcomes can be incorporated.

Bevan Brittan point out that engagement 'can assist with understanding whether there are alternative ways of services provision that could advance equality'.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None identified.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

APPENDICES TO THIS REPORT:

Appendix 1 – Health and Social Care Transformation Programme Engagement Plan

Appendix 2 – Engagement Flowchart

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