The ethics of doing least harm:

managing health and care in an era of austerity

A personal reflection

Ethics and Practice of Disinvestment, May 2019

Jim McManus, Director of Public Health

Some Principles

- Develop clear and transparent criteria
- Publish them
- Use them explicitly
- Review your decisions
- Law meets Justice - Justiciability

Introduction

- These are a personal view
- Disinvestment is ethically special because of the potential to cause harm and the need to minimise this
- Disinvestment is also ethically special because of the nexus of legal and ethical issues it presents – it may be legal, but is it right?

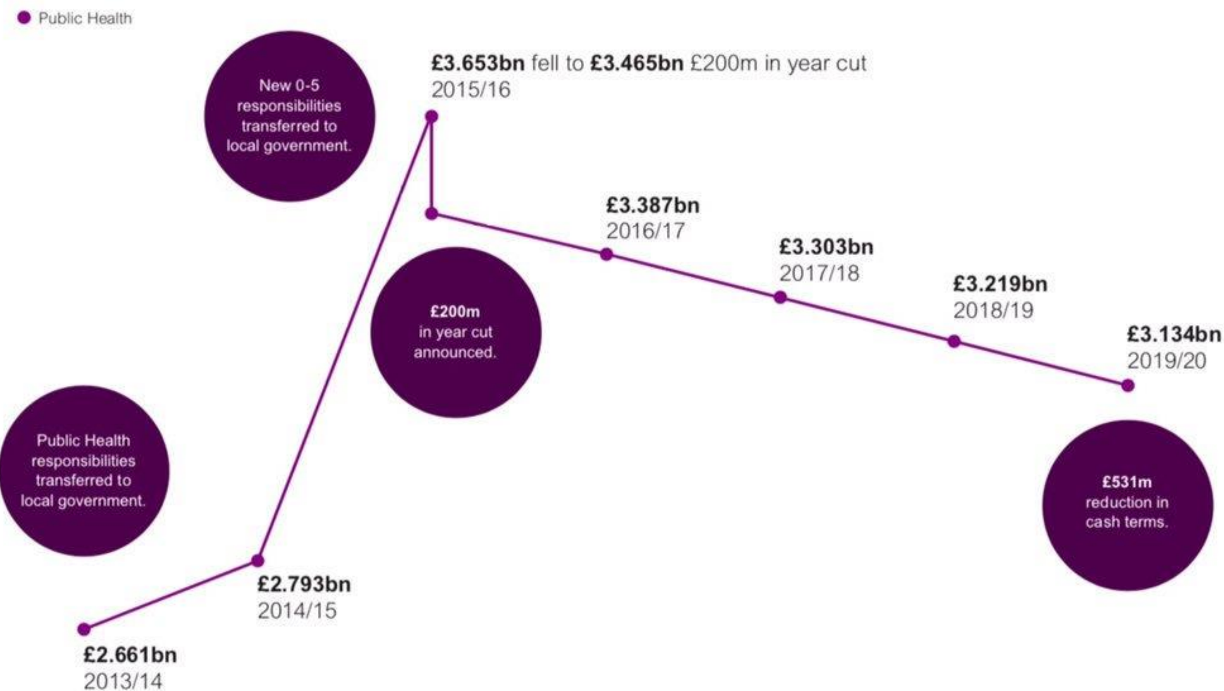
Public Health

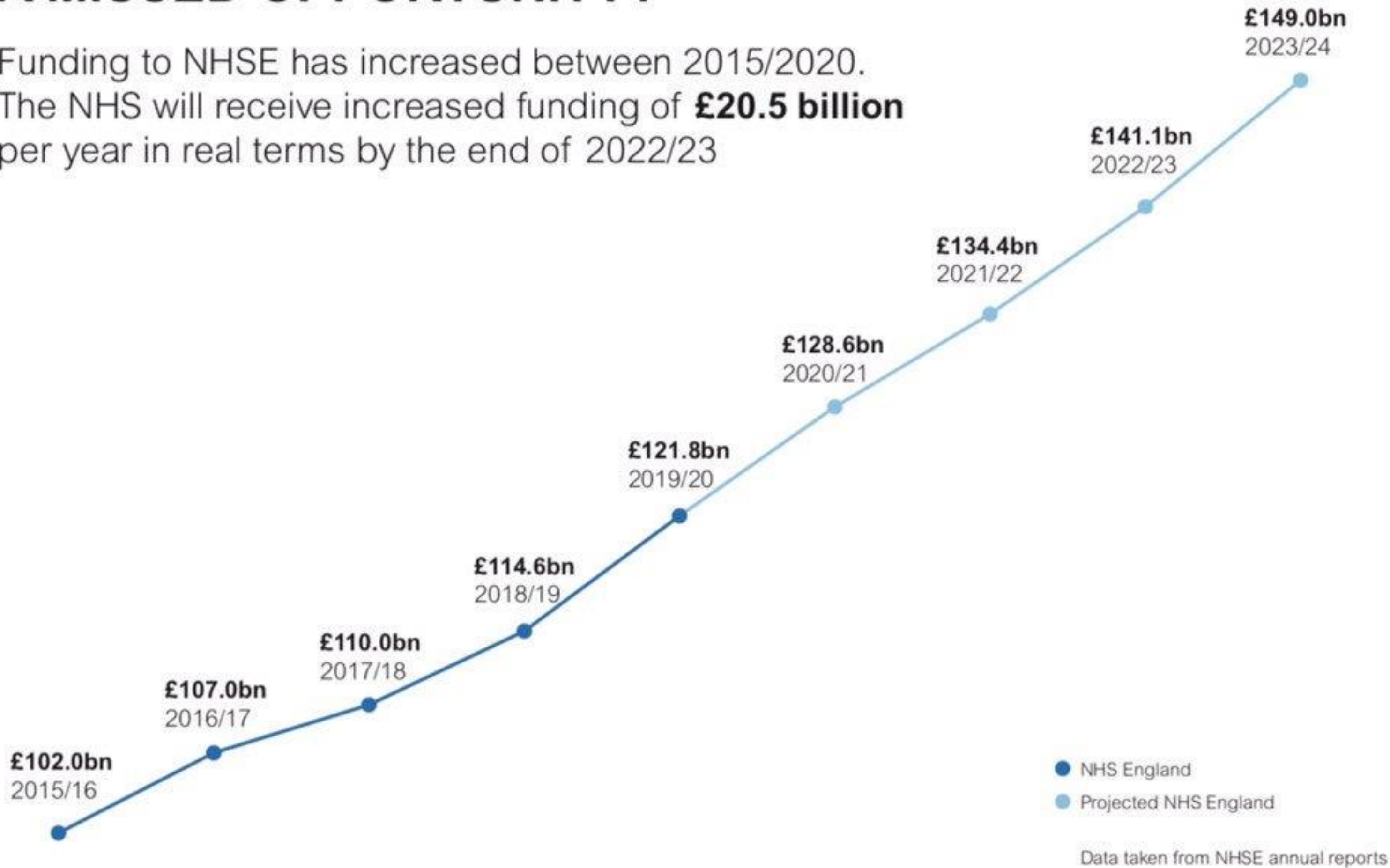
- Public Health services in England commissioned by LAs are part of the universal NHS
- But the authorities which commission them have a totally different financial regime to NHS

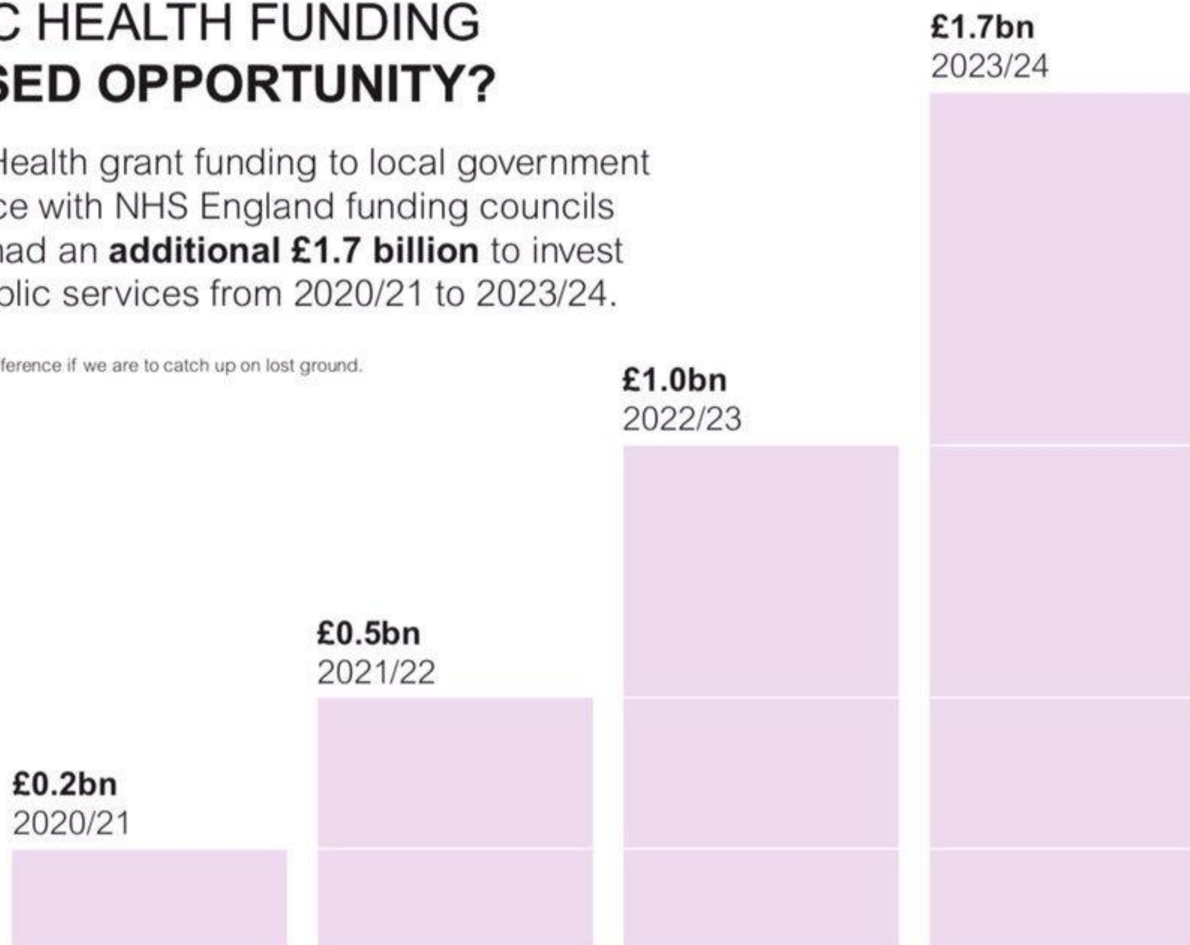
Local government context

- NHS and local govt finances differ
- Social care can and sometimes must charge
- Local Govt Act 2000 – a Council must set a legal budget
  - It must balance income and expenditure
- Annual Timetable (11 Mar [billing authorities] or 1 April [precepting authorities])
- Section 151 Officer role to constrain spend
- Secretary of State's Powers
- No NHS style "cost pressures" or bail outs (£600m this year on top of announced resource)

The Financial Context



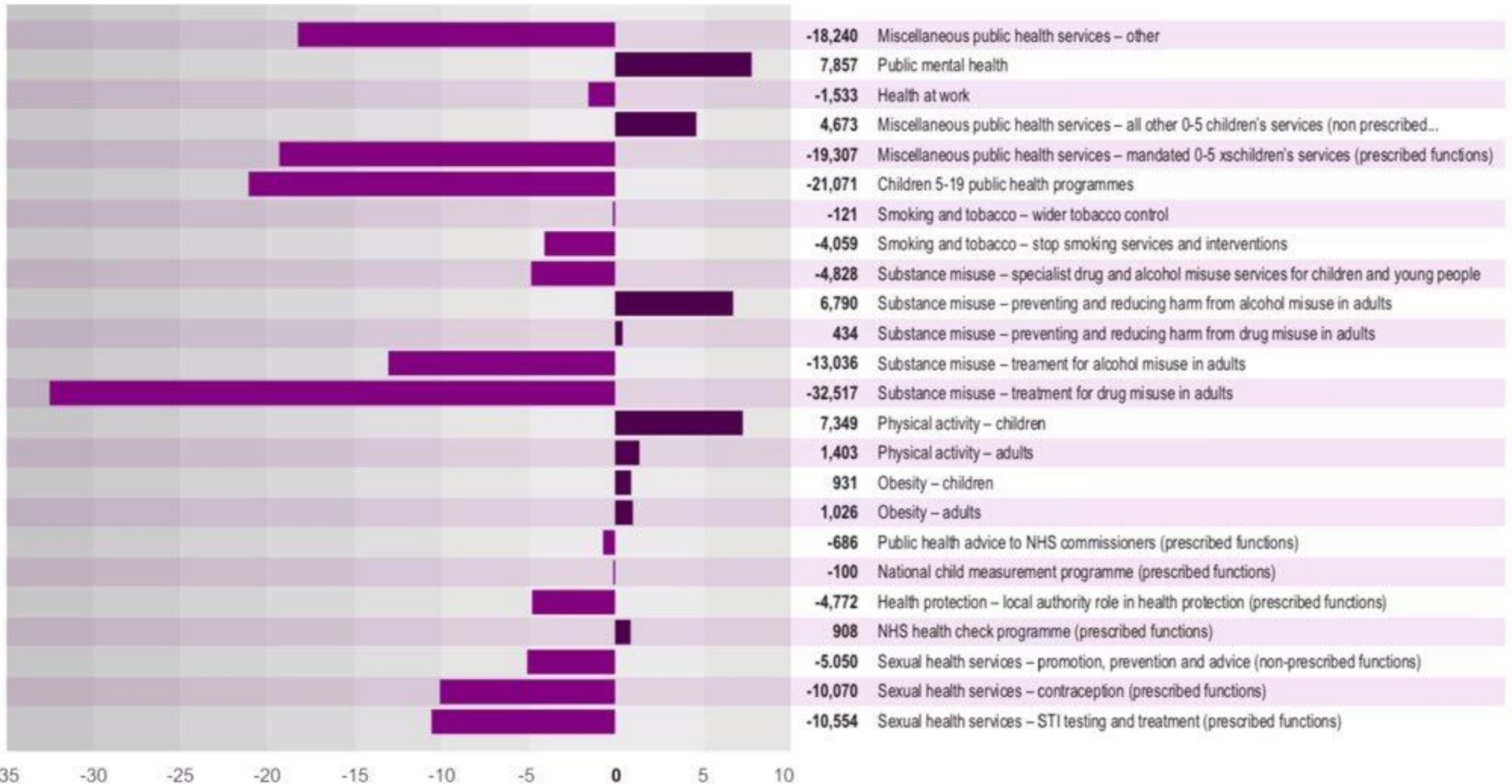

PUBLIC HEALTH FUNDING
A MISSED OPPORTUNITY?
Funding to NHSE has increased between 2015/2020.
The NHS will receive increased funding of £20.5 billion per year in real terms by the end of 2022/23
£102.0bn
2015/16
£107.0bn
2016/17
£110.0bn
2017/18
£114.6bn
2018/19
£121.8bn
2019/20
£128.6bn
2020/21
£134.4bn
2021/22
£141.1bn
2022/23
£149.0bn
2023/24
NHS England
Projected NHS England
Data taken from NHSE annual reports


PUBLIC HEALTH FUNDING
A MISSED OPPORTUNITY?
If Public Health grant funding to local government keeps pace with NHS England funding councils will have had an additional £1.7 billion to invest in vital public services from 2020/21 to 2023/24.
Cummulative difference if we are to catch up on lost ground.
£0.2bn
2020/21
£0.5bn
2021/22
£1.0bn
2022/23
£1.7bn
2023/24

PUBLIC HEALTH FUNDING
A MISSED OPPORTUNITY?

Impact of reductions to public health funding on services

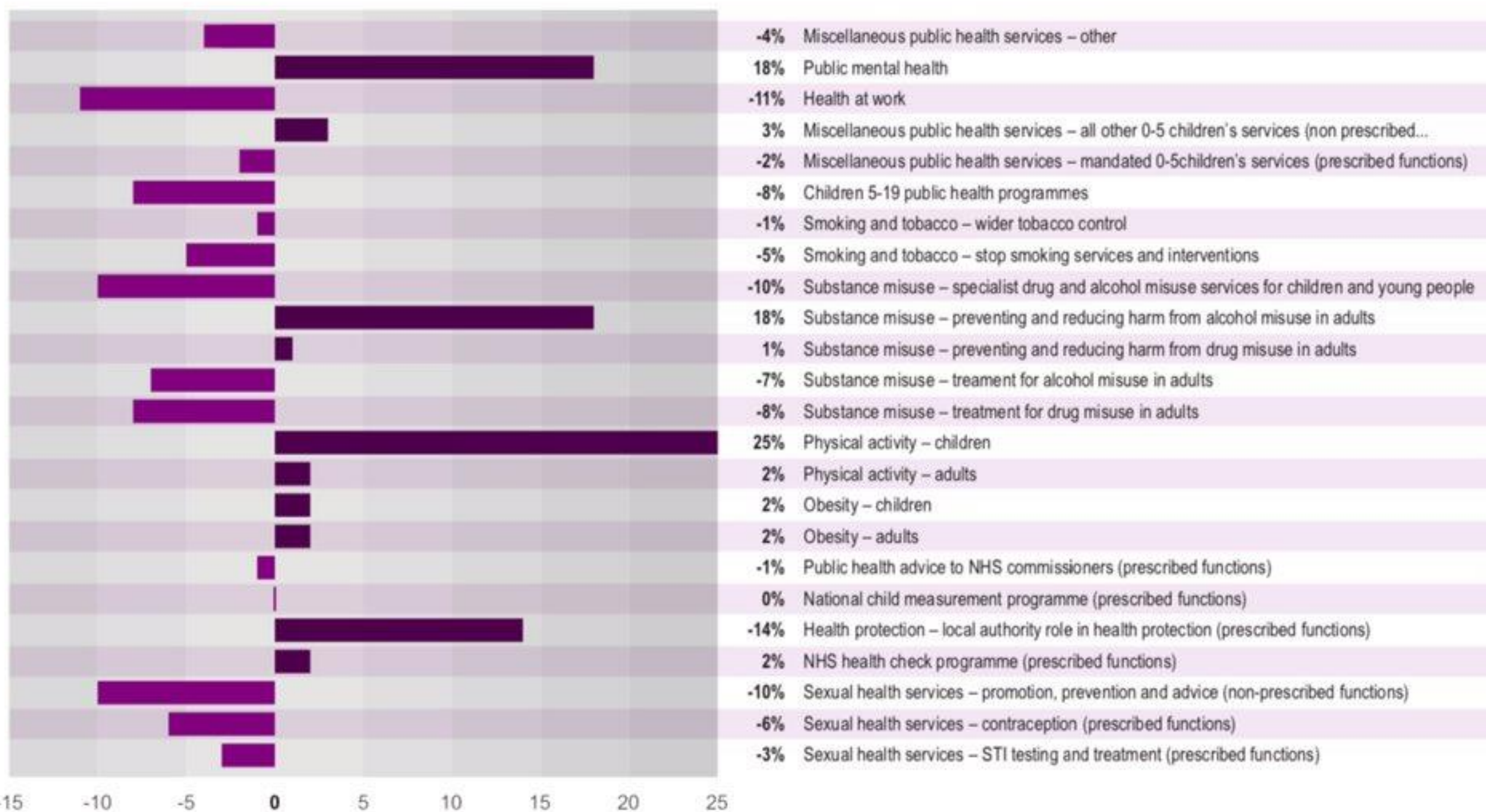
Actual change from RO 2016/17 to RO 2017/18 (£ thousand)



PUBLIC HEALTH FUNDING
A MISSED OPPORTUNITY?

Impact of reductions to public health funding on services

Percentage change from RO2016/17 to 2017/18 (%)



Result…

- Disinvestment has been forced by government policy
- Decisions are being made about doing least harm by disinvestment by Directors of Public Health and Local Authorities
- This seems, on the basis of quantum of funding, different from what is happening in NHS
- It therefore raises ethical issues

Ethical Frameworks

- Utilitarianism
- Biomedical ethical paradigms derived from individualist philosophies
- Analytical philosophies
- Ethics of activism – whatever that actually is "Feel good for shouting rather than doing what good you can"

These all feel problematic

Some key fundamentals

- A natural right to healthcare
- The legal and jurisprudential role of government and its right to act
- When these two seemingly come into conflict
- So what's the answer?
  - Advocate for a better position while doing the best you can practically in the situation you're in

Law, Ethics and Methods meet

- There are multiple sources which must be taken into account when disinvesting
  - Public law principles of reasonableness
  - Discrimination
  - Effective and fair consultation
  - Justiciability
- Is a legally problematic decision automatically unethical or vice versa?

Principles of Catholic Social Teaching

Often applied in a US context by healthcare institutions

Life and dignity of the human person	Everyone is of value and importance
The common good	What is good for us all in common
Solidarity	We must care about each other's good and wellbeing
Subsidiarity	People should have a say and the structures of government should serve
Family, Community and Participation	We have a duty to participate and social organisation must allow us to do that
Stewardship	We must care for our environment and resources
Preferential option for the poor	Some people need extra

Some ethical principles

1. The need for disinvestment must be demonstrable
2. It should remain oriented to the Common Good
3. A common basic level should remain accessible to all
4. It should result from a reasonable, open, justiciable process with fair consultation
5. It should not undermine Solidarity

Some ethical principles

6. The care of disadvantaged people must be ethically prior

7. The decision and process must be free of wrongful discrimination (and I would argue social value judgements)

8. The Social and other impacts must be monitored

9. We must advocate for the needed resourcing and system change, and participation

What can we do before disinvesting?

9 checks before we deprioritise

1. Seeking reductions in management costs from contracts
2. Opportunities for shared, co-commissioned or externally funded provision
3. Looking to where services can share premises or move to peripatetic premises.
4. Moving Capital works to the Capital budget and the provider repaying the cost of works over the cost of the contract to the Capital budget.
5. Skill mix and workforce mix of staff at services
6. Redesigning services to reduce costs while maintaining outcomes
7. focusing outcomes on the most vulnerable e.g. restricting interventions to areas of poorest health
8. Potential disinvestment to prioritise by burden of ill health or big causes of preventable morbidity
9. Identifying whether medicines management initiatives can make any savings in the prescribing budgets.

Criteria

	Prioritisation Criterion	Prioritisation Points
1.	We will appraise every workstream in relation to its contribution to	0-5
	a) improving and protecting the health of the population of Hertfordshire,	0-5
	a) best outcomes and population impact	0-5
	a) best evidence or best business case of likelihood to achieve a. or b. above	0-5
1.	We will be informed by evidence of population need in the Joint Strategic Needs Assessment prioritising services for continuation, redesign or restriction	0-5
3.	We will consider evidence of effectiveness, impact and outcomes in prioritising spend and intervention	0-10
4.	We will be informed by the principles, values and approach in key policy frameworks	
	the County Council Corporate Plan	0-5
	the Integrated Plan	0-5
	the Health and Wellbeing Strategy	0-5
	The Public Health Strategy	5-10
5.	We will seek to maintain the statutory and mandated services but will ensure that despite being prioritised all other criteria here are applied to them to ensure we achieve best value for money	0-10
6.	We will seek to maintain equity across the population	0-5
7.	We will because of the statutory and mandated roles continue to keep a portfolio of programmes and work across all three domains of Health Improvement, Health Protection and Service Quality	0-5

Continued

8.	We will seek to deliver a strategic shift to primary, secondary and tertiary prevention across services to help minimise cost to other county council services (e.g. so early intervention for children to avoid later need.)	**0-5**
9.	We will redesign services wherever possible to reduce cost while maintaining outcomes for people	0-5
10.	Where we cannot redesign, we will make restrictions and other savings in areas starting with areas where least harm is caused to people affected	0-5
11.	Those services where there is highest spend will be redesigned as a priority	0-5
12.	Those services where there is greatest inequity or inequality within delivery will be redesigned as a priority	0-5
13.	Those savings which are most achievable may be prioritised early if needed to achieve the reductions when other savings prove more difficult	0-5
14.	We will seek to design new services with partners to achieve best outcome where this is possible	0-5
15.	We will meet our Public Sector Equality duty by taking those measures above and while we are undertaking this process considering the impact of proposed measures on those with protected characteristics.	0-5
16.	We will benchmark spend and outcomes against our neighbours and nationally where possible and consider where we sit in relation to spend per outcome	0-5

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thank you