Landmark Chambers

The initial stages of the process: checklist, multidisciplinary team and decision support tool

Galina Ward

Introduction to CHC

Landmark Chambers

- A **package of care** (health and social care services, and potentially accommodation) that is **arranged and funded solely by the NHS** for individuals who are (generally) not in hospital and who have complex ongoing healthcare needs to such an extent that the patient can be described as having a "**primary health need**".

- The governing legislation?
  - Section 3 of the NHS Act 2006
  - Part 6 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

- The key guidance?
  - National Framework for NHS Continuing Healthcare & NHS-funded Nursing Care (revised in October 2018)

What is a primary health need?

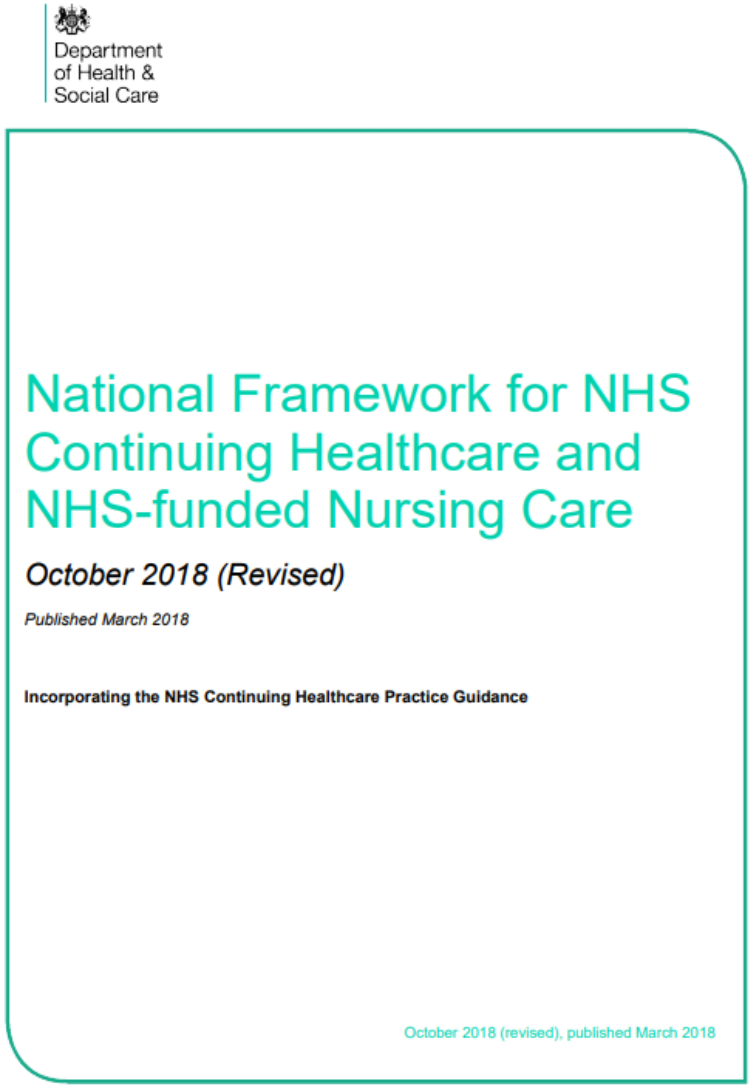
Landmark Chambers

- The Framework says:

- *55. An individual has a primary health need if, having taken account of all their needs (following completion of the Decision Support Tool), it can be said that the main aspects or majority part of the care they require is focused on addressing and/or preventing health needs. Having a primary health need is not about the reason why an individual requires care or support, nor is it based on their diagnosis; it is about the level and type of their overall actual day-to-day care needs taken in their totality.*

Status of the Framework

- The Framework is guidance published by DHCS. Sets out the principles and processes of NHS Continuing Healthcare.
- It includes Practice Guidance to support staff delivering NHS Continuing Healthcare.
- Sets out the process for determining whether an individual is eligible for NHS Continuing Healthcare or NHS-funded Nursing Care.



Status of the Framework

- What is the legal status of the Framework?

21 (12) In carrying out its duties under this regulation, a relevant body must have regard to the National Framework.

- What does ”have regard” mean?
  - requires that guidance to be taken into account
  - can be departed from but there must be “clear” reasons for any departure from
  - These should be **properly recorded**
  - **However,** to the extent that the Framework mirrors the 2012 Regulations, these must be complied with. **And indeed** also where the Framework contradicts the 2012 Regulations – these must take precedence.

- If any disputes arise in relation to the interpretation of the Framework?
  - The proper interpretation of guidance is for the courts, not the CCG or NHS England

The duty to assess

Landmark Chambers

Reg 21(2): A relevant body **must take reasonable steps** to ensure that an assessment of eligibility for NHS Continuing Healthcare is carried out in respect of a person for which that body has responsibility in all cases where it appears to that body that—

(a) there **may** be a need for such care; or

(b) an individual who is receiving NHS Continuing Healthcare may no longer be eligible for such care.

- = statutory duty on a CCG to take reasonable steps to carry out a CHC assessment.

The duty to assess

- Is this an absolute duty?
- No – only to take reasonable steps.
- For example, if a patient with capacity refuses to give consent to an assessment, it will in practice be impossible for a CCG to carry out an assessment.
- See pages 24-25 of the Framework, which gives greater guidance on the need for informed consent by a patient to assessment

Step 1: CHC checklist as an initial screening tool

Landmark Chambers

- If the CCG has a legal duty to conduct a CHC assessment, the first step is to decide whether to use the CHC checklist as an initial screening tool to screen out patients who are clearly not eligible for CHC.

- NB, there is no absolute duty to have a screening process, although. The Framework suggests that the Checklist should normally be completed (para 88)

- However, if the CCG does, it **must** complete and use the NHS Continuing Healthcare Checklist (issued by the Secretary of State – latest version is 1 March 2018) to **inform that decision.**
- **So cannot use an alternative checklist or screening tool**

Step 1: CHC checklist as an initial screening tool

Landmark Chambers

- The Framework says:
- 83 "*The purpose of the Checklist is to encourage proportionate assessments of eligibility so that resources are directed towards those people who are most likely to be eligible for NHS Continuing Healthcare, and to ensure that a rationale is provided for all decisions regarding eligibility*."

- 84 "*The Checklist has 11 care domains broken down into three levels: A, B or C (where A represents a high level of care need, and C is a low level of care need). The outcome of the Checklist depends on the number of As, Bs, and Cs identified*."

Step 1: CHC checklist as an initial screening tool

Landmark Chambers

- *85 The Checklist threshold at this stage of the process has **intentionally been set low**, in order to ensure that all those who require a full assessment of eligibility have this opportunity. There may, **very occasionally, be exceptional circumstances** where a full assessment of eligibility for NHS Continuing Healthcare is appropriate even though the individual **does not apparently meet the indicated threshold**.*

- *86 Completion of the Checklist is intended to be relatively quick and straightforward. It is not necessary to provide detailed evidence along with the completed Checklist (refer to paragraphs 97-99).*

Who can complete the Checklist?

Landmark Chambers

- *92. The Checklist can be completed by a variety of health and social care practitioners, who have been trained in its use. This could include, for example:* ***registered nurses employed by the NHS, GPs, other clinicians or local authority staff such as social workers, care managers or social care assistants*** *(refer to Practice Guidance note 13).*

- *93. It is for each CCG and local authority to identify and agree who can complete the tool but it is expected that it should, as far as possible, include staff involved in assessing or reviewing individuals' needs as part of their* ***day-to-day work****.*

Step 1: outcome of the checklist

Landmark Chambers

- 87. There are two potential outcomes following completion of the Checklist:

- a **negative** Checklist, meaning the individual does not require a full assessment of eligibility, and they are not eligible for NHS Continuing Healthcare; or
- a **positive** Checklist meaning an individual now requires a full assessment of eligibility for NHS Continuing Healthcare. It does not necessarily mean the individual is eligible for NHS Continuing Healthcare.

- Filling out the Checklist and filling out reasons for or against a full assessment, and providing a copy of the Checklist to the patient or their representative, will satisfy the legal requirements under the 2012 Regulations to record the decision and provide reasons

Step 2: the full assessment process

Landmark Chambers

- As the Framework makes clear:

- "*Once an individual has been referred for a full assessment of eligibility for NHS Continuing Healthcare (following use of the Checklist or, if a Checklist is not used in an individual case, following direct referral for full consideration), then, a multidisciplinary team must assess whether the individual has a primary health need using the Decision Support Tool*.

Step 2: the full assessment process

Landmark Chambers

- The duty under the 2012 Regulations is as follows:
- (5) When carrying out an assessment of eligibility for NHS Continuing Healthcare, a relevant body must ensure that—
- (a) a **multi-disciplinary team**—
  (i) undertakes an assessment of needs, or has undertaken an assessment of needs, that is an accurate reflection of that person's needs **at the date of the assessment** of eligibility for NHS Continuing Healthcare, and
  (ii) uses that assessment of needs to complete the **Decision Support Tool** for NHS Continuing Healthcare issued by the Secretary of State and dated 1st March 2018; and
- (b) the relevant body makes a decision as to whether that person has a primary health need in accordance with paragraph (7), **using the completed Decision Support Tool** to **inform that decision**.

Step 2: the full assessment process" the MDT

Landmark Chambers

- What is the MDT's role?
- *123. The MDT works together to collate and review the relevant information on the individual's health and social care needs. The MDT uses this information to help clarify individual needs through the completion of the DST, and then works collectively to make a professional judgement about eligibility for NHS Continuing Healthcare, which will be reflected in its recommendation. This process is known as a multidisciplinary assessment of eligibility for NHS Continuing Healthcare.*

- NB, however, that the MDT is not the final decision-making body as to whether a patient qualifies for CHC. Their role is to complete the assessment process and to provide information to the CCG, and thus support the CCG decision-maker to decide whether the patient is eligible for CHC.

Step 2: the full assessment process" the MDT

- Who makes up the Multidisciplinary Team ("MDT")?
- Regulation 21(13):

"multi-disciplinary team" means a team consisting of at least—

(a) two professionals who are from different healthcare professions, or

(b) (b) one professional who is from a healthcare profession and one person who is responsible for assessing an adult's needs for care and support under section 9 of the Care Act 2014 (assessment of an adult's needs for care and support)

Step 2: the full assessment process" the MDT

Landmark Chambers

- While it is lawful to have two healthcare professionals, the Framework makes clear that:*"…the MDT should usually include both health and social care professionals, who are knowledgeable about the individual's health and social care needs and, where possible, have recently been involved in the assessment, treatment or care of the individual."* (para 121)

- Under Reg 22(1)(b) (Joint working duty), the CCG must, as far as is reasonably practicable, "*co-operate with the relevant social services authority in arranging for persons to* ***participate in a multi-disciplinary team*** *for the purpose of fulfilling its duty under regulation 21(5).*"

- Framework: *126. It is important that those contributing to this process have the* ***relevant skills and knowledge.*** *It is best practice that where the individual concerned has, for example a learning disability, or a brain injury, someone with specialist knowledge of this client group is involved in the assessment process.*

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- *124. Establishing whether an individual has a primary health need requires a **clear, reasoned decision**, based on **evidence** of needs from a **comprehensive range of assessments** relating to the individual. A good-quality multidisciplinary assessment of needs that looks at all of the individual's needs '**in the round'** – **including the ways in which they interact with one another** – is crucial both to addressing these needs and to determining eligibility for NHS Continuing Healthcare. The individual and (where appropriate) their representative should be enabled to **play a central role** in the assessment process.*

- *125. It is important that the **individual's own view of their needs, including any supporting evidence, is given appropriate weight** alongside professional views. Many people will find it easier to explain their view of their needs and preferred outcomes if the assessment is carried out as a conversation, dealing with key issues as the discussion naturally progresses, rather than working through an assessment document in a linear fashion.*

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- *131. The Decision Support Tool (DST) has been developed to **aid consistent decision making**. The DST supports practitioners in identifying the individual's needs. This, combined with the practitioners' skills, knowledge and professional judgement, should enable them to apply the primary health need test in practice.*

- *132. The DST is **not an assessment of needs in itself**. Rather, it is a **way of bringing together and applying evidence in a single practical format**, to facilitate consistent, evidence-based assessment regarding recommendations for NHS Continuing Healthcare eligibility. The **evidence and rationale for the recommendation should be accurately and fully recorded**.*

- *133. The DST should not be completed without a multidisciplinary assessment of needs (meaning a comprehensive collection and evaluation of an individual's needs, refer to paragraphs 124-130). If any assessments relating to the individual's health and wellbeing (such as a needs assessment under the Care Act 2014) have recently been completed by practitioners, they may be used to complete the DST. However, care should be taken to ensure that such assessments provide an accurate reflection of current need.*

Potential sources of information for DST

Landmark Chambers

- **Framework PG 22 (NB: this is not an exhaustive list)**
- Health needs assessment
- Needs assessment (under the Care Act 2014)
- Nursing assessment
- Individual's own views of their needs and desired outcomes
- Person-centred plan
- Carer's views
- Physiotherapy assessment
- Behavioural assessment
- Speech and Language Therapy (SALT) assessment
- Occupational Therapy assessment
- Care home/home support records
- Current care plan
- 24-hour/48-hour diary indicating needs and interventions (may need to be 'good day' and 'bad day' if fluctuating needs)
- GP information
- Specialist medical/nursing assessments (e.g. tissue viability nurse, respiratory
- nurse, dementia nurse, etc.)
- Falls risk assessment
- Standard scales (such as the Waterlow score)
- Psychiatric/community psychiatric nurse assessments

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- *The tool provides practitioners with a method of bringing together and recording the various needs in **12 'care domains**', or generic areas of need.*

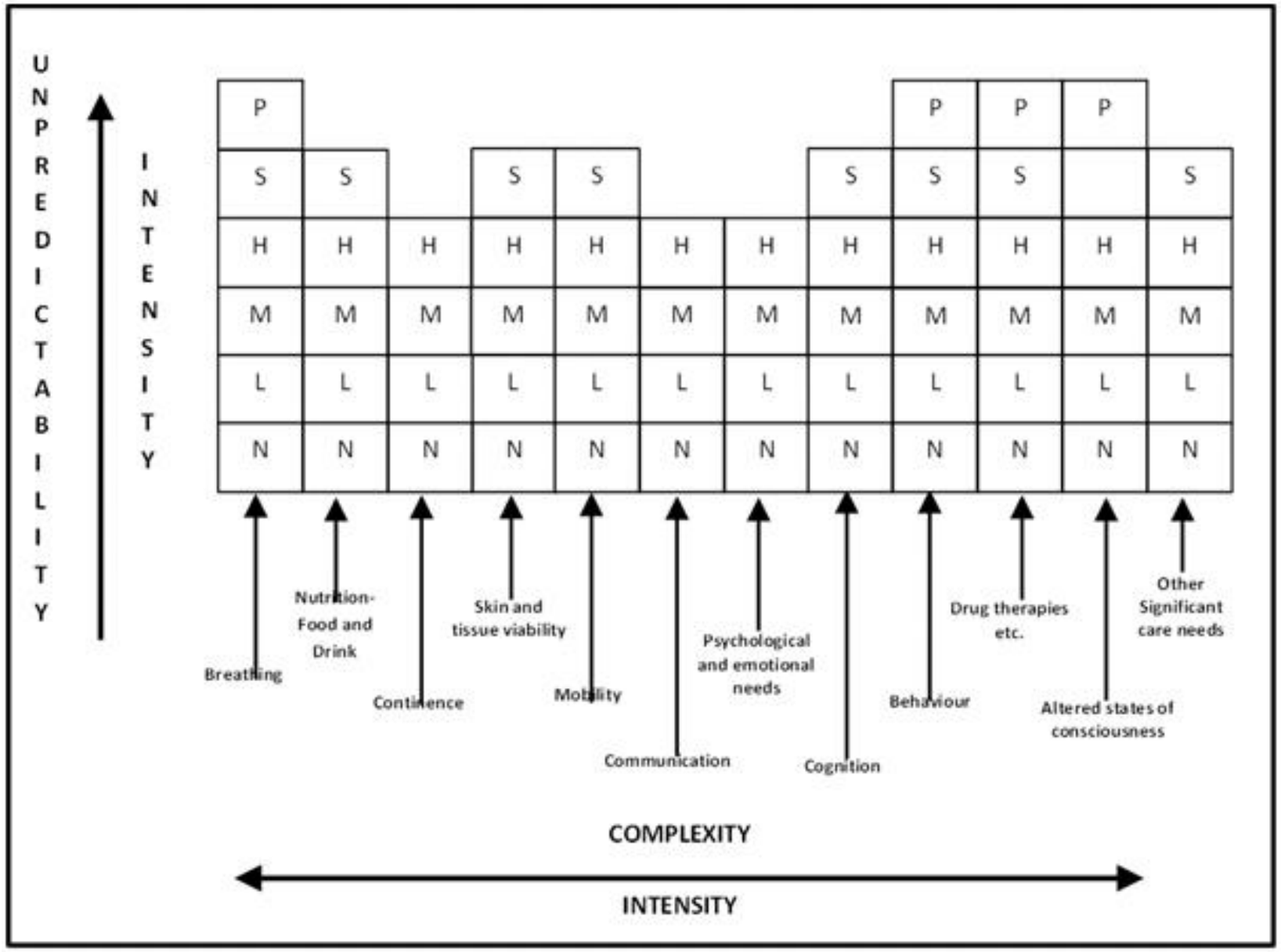
- *Each domain is broken down into a number of levels. The levels represent a hierarchy from the lowest to the highest possible level of need (and support required) such that, whatever the extent of the need within a given domain, it should be possible to locate this within the descriptors provided.*

- The level of need for any care domain can be assessed at:
- Low, moderate, high, severe or priority (the latter for only for four of the domains)

Step 2: the full assessment process: Decision Support Tool (“DST”)

Landmark Chambers

- 136. The care domains are:
- 1. Breathing
- 2. Nutrition
  3. Continence
  4. Skin Integrity
  5. Mobility
  6. Communication
  7. Psychological & Emotional needs
- 8. Cognition
  9. Behaviour
- 10. Drug therapies and medication
- 11. Altered states of consciousness
- 12. Other significant care needs.


UNPREDICTABILITY
INTENSITY
P
S
H
M
L
N
Breathing
Nutrition- Food and Drink
Continence
Skin and tissue viability
Mobility
Communication
Psychological and emotional needs
Cognition
Behaviour
Drug therapies etc.
Altered states of consciousness
Other Significant care needs
COMPLEXITY
INTENSITY

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- The DST suggests that a patient is likely to be eligible for CHC if he or she has:

- A level of **priority** needs in any one of the four domains that carry this level;

- A total of two or more incidences of identified severe needs across all care domains

- However, this is not to be applied mechanistically and the MDT is entitled to recommend that the patient has a primary health need even I they score lower. A question of **professional judgment**.

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- **<u>"Well-managed needs"</u>**

- One of the key challenges for MDTs is assessing the level of a "need" if medical and social care interventions mean that the need is being effectively managed.

- The Framework says clearly at para 142: "*The decision-making rationale should not marginalise a need just because it is successfully managed: well-managed needs are still needs. Only where the successful management of a healthcare need has permanently reduced or removed an ongoing need, such that the active management of this need is reduced or no longer required, will this have a bearing on NHS Continuing Healthcare eligibility*."

Step 2: the full assessment process: Decision Support Tool ("DST")

Landmark Chambers

- What happens if the MDT cannot agree on scoring the domains for an individual?
- NB NOT A MAJORITY SCORING PROCESS

- The Framework, PG 32: ***The DST (paragraph 21 of the user notes) advises practitioners to move to the higher level of a domain where agreement cannot be reached but there should be clear reasoned evidence to support this***. *If practitioners find themselves in this situation they should review the evidence provided around that specific area of need and carefully examine the wording of the relevant DST levels to cross-match the information and see if this provides further clarity. Additional evidence may be sought, although this should not prolong the process unduly. If this does not resolve the situation, the disagreement about the level should be recorded on the DST along with the reasons for choosing each level and by which practitioner. This information should also be summarised within the recommendation so that the CCG can note this when verifying recommendations.*

Step 2: the full assessment process: the recommendation as to eligibility

Landmark Chambers

- Written recommendation, to accompany the DST
- *149. The recommendation regarding eligibility for NHS Continuing Healthcare should:*
  - *provide a summary of the individual's needs in the light of the identified domain levels and the information underlying these. This should include the individual's own view of their needs.*
  - *provide statements about the nature, intensity, complexity and unpredictability of the individual's needs, bearing in mind the explanation of these characteristics provided in paragraphs 54-66 of the National Framework.*
  - *give an explanation of how the needs in any one domain may interrelate with another to create additional complexity, intensity or unpredictability.*
  - *in the light of the above, give a recommendation as to whether or not the individual has a primary health need (with reference to paragraphs 54-66 of this National Framework). It should be remembered that, whilst the recommendation should make reference to all four characteristics of nature, intensity, complexity and unpredictability, any one of these could on their own or in combination with others be sufficient to indicate a primary health need.*

Timescale required by the Framework

Landmark Chambers

- Expectation that decisions should usually be made within 28 calendar days of the CCG being notified of the need for a full assessment of eligibility for NHS Continuing Healthcare

- PG 28.2

- This timescale is measured from the date the CCG receives the completed Checklist indicating the need for full consideration of eligibility (or receives a referral for full consideration in some other acceptable format) to the date that the eligibility decision is made. However, wherever practicable, the process should be completed in a shorter time than this.

Urgent cases: Fast Track Pathway

- Regulation 21(8) of the 2012 Regulations:

The usual process – checklist, MDT, DST etc - does not apply where an appropriate clinician (i.e. patient's responsible clinician – either a registered nurse or medical practitioner) decides that—

(a) an individual has a **primary health need** arising from a **rapidly deteriorating condition**; and
(b) the condition **may** be entering **a terminal phase**,

and that clinician has completed the **Fast Track Pathway Tool** stating reasons for the decision.