

Social Communication and EHC Plans: understanding your rights



A guide to support parents in ensuring that social communication needs and interventions for children and young people with autism are appropriately provided for in Education, Health and Care Plans.

This guide has been developed by Friends of Bright Futures School, in consultation with specialist advisors from Irwin Mitchell Solicitors and Monckton Chambers.

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Introduction

This guide has been prepared by Friends of Bright Futures School to support parents in ensuring social communication needs and interventions for children and young people with autism are appropriately provided for in Education, Health and Care Plans.

The guide supports a series of training workshops and will look at:

- The use of one social communication intervention, Relationship Development Intervention (“RDI”) in improving outcomes for children and young people with autism
- Understanding the Legal Framework: Education, Health and Care Plans and the new assessment process
- How do parents ensure that provision to meet social communication needs is included in the EHC Plan?
- Making use of personal budgets and direct payments
- What to do if you need to challenge a decision

It is aimed at parents of children and young people with autism and professionals who work with them.

Key Points:

- *Relationship Development Intervention is a type of social communication intervention designed to meet the social communication needs of children and young people with autism*
- *Social communication needs are a special educational need and so should be assessed during an Education, Health and Care needs assessment and set out in section B of the Education, Health and Care Plan*
- *Some children may have needs which can only be met through a social communication intervention*
- *Social communication interventions educate or train a child or young person and so are special educational provision and should be set out in section F of the Education, Health and Care Plan*
- *Where local authorities and health partners do not have trained Relationship Development Intervention Consultants available to deliver provision, parents and young people may wish to request direct payments in order to fund this provision directly*
- *If a child or young person’s Education, Health and Care Plan does not properly describe their social communication needs or the social communication interventions required to meet those needs, there is a right of appeal to the First Tier Tribunal (Special Educational Needs Disability). Other remedies are also available*
- *In some circumstances, Legal Aid may be available to assist with challenging decisions*

Social Communication Interventions and Relationship Development Intervention (“RDI”)

Social communications interventions are a specific type of special educational provision which use a range of behavioural and developmental techniques designed to improve the social communication skills of children and young people diagnosed autism. Social communication interventions often involve the use of an adult guide who, under supervision from a trained and experienced professional, will work with the child or young person during sustained periods of joint engagement.

There are many different types of social communication interventions including the Child's Talk programme, the DIR Method, the Early Start Denver Model, the Hanen 'More than Words' programme, Pivotal Response Training, the Reciprocal Imitation Training programme, and the UCLA YAP model.

However, this guide will focus on one particular type of social communication intervention - Relationship Development Intervention ("RDI") which targets the core features of autism and has been developed to work with older children/young people and adults with autism, as well as with toddlers and young children.

Research shows that in autism, joint attention (and therefore joint engagement) can be delayed or disrupted and that this disruption has serious consequences for subsequent social and cognitive development. The consequences include: impairments in reciprocal social interaction and social communication, rigid thinking (which leads to inflexible behaviour); lack of perspective-taking and social reciprocity (leading to a focus on self and an inability to see the 'bigger picture'); difficulties with emotional regulation (leading to 'challenging' behaviours); impairments in episodic memory (leading to lack of resilience and low self-esteem).

NICE clinical guidelines issued in August 2013 on "the management and support of children and young people on autism spectrum"¹ recommend as a key priority for implementation that providers of services consider a specific social communication intervention for the core features of autism in children and young people that includes play based strategies with parents, carers and teachers to increase joint attention, engagement and reciprocal communication in the child or young person. NICE recommends that strategies should:

- Be adjusted to the child or young person's developmental level
- Aim to increase the parents', carers', teachers' or peers' understanding of, and sensitivity and responsiveness to, the child or young person's patterns of communication and interaction
- Include techniques of therapist modelling and video interaction feedback
- Include techniques to expand the child or young person's communication, interactive play and social routines

The guidelines state that the intervention should be delivered by a trained professional. This could be a registered Relationship Development Intervention ("RDI") Consultant who has expertise and qualifications in delivering interventions of this nature.

What is Relationship Development Intervention ("RDI")?

i) Overview

The main goal of RDI is to remediate the core difficulties of autism. Remediation is defined as addressing these difficulties until they are no longer obstacles in an individual's life. Autism is commonly considered an information processing disorder making it challenging for these individuals to think flexibly, relatively, and problem solve unexpected situations. Often, novel information is processed and stored in a static and concrete manner leading to confusion and preference for sameness. RDI affords young people (working with adult guides) the opportunities to experience competence in a range of different situations where *they* are the ones making discoveries without direct prompting. As a result, they become increasingly curious and intrinsically motivated to expand these discoveries. They become more flexible in their thinking and adaptive in their behaviour.

All targeted concepts follow typical development systematically and gaps in the mastery of key developmental milestones are identified and addressed. While many individuals have some higher level skills, most have developmental gaps that typically appear within the first year of life. Parents and those working with children and young people also focus on specific concepts aimed at helping them be a more effective guide to their child. To better gauge their progress the guide will video tape interactions and analyse themselves and the young person according to their assignments relating to the developmental objective they are currently working on.

¹ <https://www.nice.org.uk/guidance/cg170> - pages 9 and 10

In RDI, the guide modifies their own actions to increase the child's level of understanding. Some examples include: slowing down, clarifying their role, simplifying the activity, and decreasing language, using invitational language and removing demands. This process is individualised based on the situation, the child and their response. In RDI, the over-arching goals are:

1. To support families / carers and school staff in their roles as participant guides, creating daily opportunities for adaptive and thoughtful responding in the face of novel and increasingly unpredictable settings and unexpected change.

Through participation in guided and continually more complex cycles of regulation, challenge and new regulation, the aim is for individuals on the autism spectrum to learn not only to tolerate, but also to enjoy changes and transitions.

2. To facilitate experiences of competence that can lay down special 'episodic memories' of success. These memories are then used to inform decision-making in future similar situations.

These are key factors in the young person developing intrinsic motivation to take part in social engagement.

The most recent emerging research into the developmental trajectory of autism is showing that altering the communication style of the parent/caregiver can alter the trajectory of autism².

ii) RDI in practice

RDI involves the use of an adult guide who, under supervision from a trained and experienced RDI Consultant, will work with the child or young person during sustained periods of joint engagement.

The adult guide could be a teacher or learning assistant within the school or college who has received specific training, or could be someone specifically employed as a guide.

The guide undertakes regular (preferably daily) guiding engagements with the child or young person. A guiding engagement can take many forms e.g. art and craft, board and other games, a building and making project, cleaning, cooking.

The guided work needs to take place in a distraction free / low stimulus environment, away from the main classroom. Sometimes it may also be necessary for guiding work to also take place outside of school. The RDI consultant will be able to provide specific advice on this.

The guide will be focusing on a specific student objective and will have planned and framed the activity in order to maximise opportunities for the young person to work on that objective. The guide will give the student opportunities to be competent so that these positive experiences can be subtly spotlighted in order for the student to encode positive episodic memories of being competent and resolving challenges in a joint activity where the guide is used as a reference point.

The guide has to adapt 'in the moment' to the feedback s/he is getting or not getting from the young person in order to make sure that the joint engagement is sustained. The guide also has to spot and exploit spontaneous opportunities to enable the young person to be a competent, reciprocal partner in the interaction. The guide has to develop a state of 'mindful guiding' so that they can carry out co-regulatory actions whilst anticipating what might happen next, analyse what has just happened and think about what they need to do in order to facilitate the student to be competent in the interaction.

The guide films a sample of guiding engagements with the young person and then critically analyses the footage against the objective they were working on. The video footage and notes are shared with the supervising RDI Consultant who analyses the footage and gives feedback on how the guide can improve and/or

² Green J. et al. Parent-mediated intervention versus no intervention for infants at high risk of autism: a parallel, single-blind, randomised trial. *Lancet*. 2015; 2: 133-140

better enable the student to master the guiding objective. The guide uses this feedback to inform their planning and execution of the next guiding engagement.

The RDI Consultant will then undertake bi-annual or annual assessments of progress of both young person and adult guide. This is done in person by means of a clinical assessment using a peer-reviewed research tool (the Relationship Development Assessment – Research version) and enables the trained professional to refine the guiding programme in relation to the results of the assessment.

iii) Outcomes

Long term outcomes of RDI include:

- Improved mental flexibility
- Adaptive planning
- Improved self-directed learning and emotional growth
- Improved internal motivation
- Improved ability to learn from mistakes
- Improved episodic memory
- Improved emotional regulation

If these outcomes are achieved, then it is anticipated that the child or young person will be significantly more able to make and maintain meaningful reciprocal friendships and relationships with peers, secure and maintain meaningful employment and live independently.

Are social communication needs a special educational need?

Social communication needs are expressly identified in the Special educational needs and disability code of practice: 0 to 25 years (“the Code of Practice”) as a type of special educational need which should be assessed and planned for through effective provision. The Code of Practice states at paragraph 6.28 and 6.29 that:

Communication and interaction

6.28 Children and young people with speech, language and communication needs (SLCN) have difficulty in communicating with others. This may be because they have difficulty saying what they want to, understanding what is being said to them or they do not understand or use social rules of communication. The profile for every child with SLCN is different and their needs may change over time. They may have difficulty with one, some or all of the different aspects of speech, language or social communication at different times of their lives.

6.29 Children and young people with ASD, including Asperger’s Syndrome and Autism, are likely to have particular difficulties with social interaction. They may also experience difficulties with language, communication and imagination, which can impact on how they relate to others.

This means that where social communication needs are identified during a child or young person’s Education, Health and Care needs assessment, they must be clearly described in the Education, Health and Care Plan and the special educational provision contained in the Plan must then set out how those needs will be met.

Further information about how to ensure that these needs are properly described in EHC plans is set out below.

Are social communication interventions a type of special educational provision?

Section 21 of the Children and Families Act 2014 defines special educational provision, for a child aged two or more or a young person as “*educational or training provision that is additional to, or different from, that made generally for others of the same age in...*” mainstream educational placements.

Accordingly, as social communication interventions would not generally be provided for children and young people within mainstream schools / colleges, they are a special educational provision.

Some local authorities may try to argue that social communication interventions are a social care or healthcare provision rather than an educational provision.

However, section 21(5) makes clear that healthcare provision or social care provision which “*educates or trains*” a child or young person is to be treated as special educational provision (instead of health care provision or social care provision). As can be seen from the description of social communication interventions above, they are clearly designed to “*educate or train*” a child or young person and are therefore they are a type of special educational provision which can be included in the EHC plan as explained in more detail below.

In addition, the Code of Practice at paragraph 9.74 states that “*since communication is so fundamental in education, addressing speech and language impairment should normally be recorded as special educational provision unless there are exceptional reasons for not doing so*”.

In cases where health care provision or social care provision is to be treated as special educational provision, responsibility for ensuring that the provision is made rests with the local authority (unless the child’s parent has made suitable arrangements) and the child’s parent or the young person will have the right to appeal to the First-tier Tribunal (SEN and Disability) where they disagree with the provision specified.

Legal Framework for Education, Health and Care Plans

On 1 September 2014, the government introduced significant changes to the way in which children and young people with special educational needs and disability are supported. These changes are set out in Part 3 of the Children and Families Act 2014 (“the Act”), the Special Educational Needs and Disability Regulations 2014 and the new Special educational needs and disability Code of practice: 0 to 25 years.

One of the key changes under the Act is that statements of special educational needs for children in schools and learning difficulty assessments for young people in further education and training are being replaced with a combined Education, Health and Care Plan (EHC plan). The EHC plan will cover children and young people from birth to the age of 25, and will include information about health and social care needs as well as special educational needs in one single document.

The Act puts emphasis on³:

- wishes, feelings and participation in decision-making
- aspirations, goals and improving outcomes for children and young people in the transition through to adulthood
- achieving the best possible educational and other outcomes

These principles will now have to underpin all decisions made by local authorities. Effective social communication interventions will be an essential provision for many young people with autism if they are to achieve the best possible outcomes as they move through to adulthood.

Some of the other changes include:

- The First Tier (Special Educational Needs and Disability) Tribunal can consider appeals regarding the education parts of the EHC plan up to the age of 25.
- There are now requirements to consider mediation before making most types of appeal.
- Personal budgets must be made available for SEN provision along with a right to request direct payments.
- School Action and School Action Plus have been replaced with SEN support, which has been extended to colleges and sixth forms.

³ See section 19

In addition, each local authority must publish a Local Offer which sets out in one place information about the provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled⁴.

Information in relation to social communication interventions and approaches to meet the needs of children and young people with autism and how these can be accessed in your local area should be available on the Local Offer website for your local authority. If the local authority uses any eligibility criteria for access to these services that information should also be published⁵.

You have a right to make comments on the Local Offer which the local authority must publish and respond to when reviewing the sufficiency of provision in your area⁶. This is particularly helpful where a particular type of provision is not included within the Local Offer.

Implementation of the new SEND system

Since 1 September 2014 no assessments for statements of SEN (for children and young people in school) or learning difficulty assessments (for young people in college) have been offered by local authorities. All new requests for an assessment have been considered under the new legislation and those who meet the legal criteria will receive it through an EHC plan.

Children and young people with existing statements and learning difficulty assessments will begin to transfer to Education, Health and Care Plans in accordance with the transitional arrangements put in place by each local authority. This will be set out in their Local Transition Plan⁷.

In order for a Statement of SEN to be transferred to an EHC Plan, the local authority must first carry out an EHC needs assessment in accordance with the procedure set out below⁸.

The legal force of statements and learning difficulty assessments will not be withdrawn until all children and young people have completed the transition to EHC plans. This will be September 2016 for learning difficulty assessments and September 2018 for statements⁹.

The Assessment Process

The process by which the local authority decides whether a child or young person needs an EHC Plan, and if so, what provision it should contain, is called an "Education, Health and Care Needs Assessment".

The following people have a specific right under the Act to ask a local authority to conduct an EHC assessment for a child or young person aged between 0 and 25¹⁰:

- the child's parent
- a young person over the age of 16 but under the age of 25, and
- a person acting on behalf of a school or post-16 institution

In addition, anyone else can bring a child or young person who has (or may have) SEN to the attention of the local authority, particularly where they think an EHC needs assessment may be necessary¹¹.

The local authority must carry out an EHC needs assessment following a request where:

- a) the child or young person has or may have special educational needs, and

⁴ Section 30, Children and Families Act 2014

⁵ Special Educational Needs and Disability Regulations 2014, schedule 2, para 18

⁶ Special Educational Needs and Disability Regulations 2014, reg 56

⁷ Para 5.5 to 5.8 "Transition to the new 0 to 25 special educational needs and disability system", departmental advice for local authorities and their partners, March 2015

⁸ Local authority newsletter to local authorities – October 2014 – can be accessed via <https://www.ipsea.org.uk/file-manager/resources/dfe-newsletter-to-local-authorities.pdf>

⁹ Para 19 – 25 DfE advice "Implementing a new 0 to 25 special needs system: LAs and partners: Duties and timescales - what you must do and when", March 2015

¹⁰ Section 36(1)

¹¹ Section 36(2)

- b) it may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan¹².

The local authority must consult the child's parent or the young person when reaching this decision and consider any evidence provided¹³. When making requests for assessments, you should try to include as much information as possible regarding the child or young person's special educational needs.

Social communication difficulties are a special educational need and social communication interventions are a type of special educational provision as they train or educate a child. Accordingly, it is important that at this stage of the process, you ensure that you provide as much information as possible to the local authority about the child or young person's social communication needs to ensure that they are properly considered as when the local authority decided whether to carry out an assessment.

Paragraph 9.14 of the Code of Practice sets out factors which local authorities must pay particular attention to when determining whether an EHC needs assessment is required. These include:

- Academic attainment and rates of progress
- Nature, extent and context of CYP's special educational needs **(which will include social communication needs)**
- Evidence of action already being taken by placement
- Evidence that where progress has been made, only as a result of additional intervention and support above usually provided
- Evidence of physical, emotional and social development and health needs

You will need to demonstrate why the child or young person's social communication needs are not currently being met by the placement and why they are not able to deliver social communication interventions from within the placement's own resources.

In relation to a young person over the age of 18, the local authority must consider whether he or she requires additional time, in comparison to the majority of others of the same age who do not have special educational needs, to complete his or her education or training¹⁴.

Paragraph 9.16 of the Code of Practice makes clear that although local authorities may develop criteria or guidelines to help them decide whether to carry out an assessment but they **must not** apply a blanket policy to particular groups / types of needs and must consider the child or young persons needs individually and on their merits.

The local authority must make its decision on whether to assess within 6 weeks of the original request¹⁵.

Once the local authority has decided that it will carry out an EHC needs assessment, it must then seek advice from¹⁶:

- the child's parent or the young person
- manager, headteacher or principal of education institution
- medical advice and information from a health care professional identified by the responsible commissioning body;
- psychological advice and information from an educational psychologist;
- advice and information in relation to social care;
- advice and information from any other person the local authority thinks is appropriate;
- from Year 9 onwards – advice to assist with preparation for adulthood and independent living'

¹² Section 36(8)

¹³ Section 36(4)

¹⁴ Section 36(10)

¹⁵ Special Educational Needs and Disability Regulations 2014, reg 5

¹⁶ Special Educational Needs and Disability Regulations 2014, reg 6

- where it appears that the child or young person is either visually or hearing impaired or both, the school or placement should consult with a person who is qualified to teach children or young people with visual or hearing impairment before they provide their advice.

In addition, the local authority must obtain advice from anyone the child's parent or young person reasonably requests they seek advice from¹⁷. This might include private therapists or support workers or a treating consultant.

It is at this stage in the process that you need to ensure that an advice is being obtained specifically on the child or young person's social communication interventions from a trained professional such as an RDI consultant who will carry out an RDA-R assessment which will give a complete picture of the child or young person's strengths and weaknesses, possible co-occurring conditions and developmental obstacles. This assessment consists of select, age appropriate activities that are administered, followed by a session between the consultant and the child or young person. In addition, information on potential activity themes, communication and environmental modifications, as well as the level of support and provision needed ("scaffolding levels") would emerge from the assessment process. Based on the initial assessment a comprehensive short term plan for the child or young person and objectives are set.

You should ensure that the RDI consultant understands that the assessment relates specifically to the child or young person's educational needs and the plan / provision will be delivered within a school environment.

A list of RDI consultants can be obtained via:

<http://www.rdiconnect.com/find-a-consultant/unites-kingdom>

If the local authority refuses to obtain such advice then the following assessments are useful clinical tools to measure children and young people's needs in relation to social communication which you may wish to ask the local authority's educational psychologist to complete when preparing their advice:

- The Social Responsiveness Scale (SRS)
- The Vineland Adaptive Behaviour Scale (VABS)

The advices obtained must consider the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision. When a request for advice is made, it must be provided within a maximum of 6 weeks subject to limited exceptions¹⁸.

When securing an EHC needs assessment the local authority must also consider whether the child's parent or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs assessment, and if it considers that such information, advice or support is necessary, it must provide it¹⁹.

If a local authority decides, following an EHC needs assessment, not to issue an EHC plan, it must inform the child's parent or young person within a maximum of 16 weeks²⁰ from the request for an EHC needs assessment.

Where the local authority decides to issue an EHC plan, the child's parent or young person must be provided with a draft plan and given at least 15 days to provide their views²¹.

¹⁷ Reg 6(h)

¹⁸ Special Educational Needs and Disability Regulations, reg 8

¹⁹ Reg 9

²⁰ Reg 10

²¹ Reg 13(1)(a)

The entire process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the local authority's attention) until the final EHC plan is issued, must take no more than 20 weeks²².

The Education, Health and Care Plan

All EHC plans must include the following sections²³, which must be separately identified from each other:

- A. the views, interests and aspirations of the child and his parents or the young person**
- B. the child or young person's special educational needs**
- C. the child or young person's health care needs which relate to their special educational needs;**
- D. the child or young person's social care needs which relate to their special educational needs or to a disability;**
- E. the outcomes sought for him or her;**
- F. the special educational provision required by the child or young person;**
- G. any health care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs;**
- H.**
 - (i) any social care provision which must be made for the child or young person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (section H1) and**
 - (ii) (ii) any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section H2);**
- I. the name of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person; and**
- J. where any special educational provision is to be secured by a direct payment, the special educational needs and outcomes to be met by the direct payment**

In addition, where the child or young person is in or beyond Year 9, the EHC plan must include (in sections F, G, H1 or H2 as appropriate) the provision required by the child or young person to assist in preparation for adulthood and independent living, for example, support for finding employment, housing or for participation in society²⁴. **This will be important when considering provision and outcomes for children young people with autism in relation to their social communication needs.**

Outcomes

EHC plans must also specify the outcomes sought for the child or young person in Section E²⁵.

EHC plans should be focused on education and training, health and care outcomes that will enable children and young people to progress in their learning and, as they get older, to be well prepared for adulthood. EHC plans can also include wider outcomes such as positive social relationships and emotional resilience and stability. Outcomes should always enable children and young people to move towards the long-term aspirations of employment or higher education, independent living and community participation.

Paragraph 9.66 of the Code of Practice states that an:

"outcome can be defined as the benefit or difference made to an individual as a result of an intervention. It should be personal and not expressed from a service perspective; it should be something that those involved have control and influence over, and while it does not always have to be formal or accredited, it should be specific, measurable, achievable, realistic and time bound (SMART). When an outcome is focused on

²² Reg 13 (2)

²³ Reg 12

²⁴ Special Educational Needs and Disability Regulations 2014, reg 12(3)

²⁵ Para 9.64 Code of Practice

education or training, it will describe what the expected benefit will be to the individual as a result of the educational or training intervention provided.”

Outcomes are not a description of the service being provided – for example the provision of RDI is not an outcome. In this case, the outcome is what it is intended that RDI will help the individual to do that they cannot do now and by when this will be achieved.

In all cases, EHC plans must specify the special educational provision required to meet each of the child or young person’s special educational needs. The provision should enable the outcomes to be achieved.

The EHC plan should also specify the arrangements for setting shorter term targets at the level of the school or other institution where the child or young person is placed. Professionals working with children and young people during the EHC needs assessment and EHC plan development process may agree shorter term targets that are not part of the EHC plan. These can be reviewed and, if necessary, amended regularly to ensure that the individual remains on track to achieve the outcomes specified in their EHC plan. Professionals should, wherever possible, append these shorter term plans and targets to the EHC plan so that regular progress monitoring is always considered in the light of the longer term outcomes and aspirations that the child or young person wants to achieve. In some exceptional cases, progress against these targets may well lead to an individual outcome within the EHC plan being amended at times other than following the annual review.

Examples of the types of outcomes that might be included in an EHC plan for a child or young person with social communication needs following the provision of social communication interventions are set out below.

Ensuring social communication needs are met through an EHC Plan

Firstly, the local authority is only required to put in place provision in section F of the plan if it is necessary to meet a need in section B of the plan. It is therefore important that all of the child’s social communication needs and extent of the difficulties and impact this has on the child or young person are clearly described in the plan to justify the need for specialist interventions.

It is also important to note that the Code of Practice says at 9.61 that where a young person or parent is seeking an innovative or alternative way to receive their support services – particularly through a Personal Budget, but not exclusively so – then the planning process should include the consideration of those solutions with support and advice available to assist the parent or young person in deciding how best to receive their support. RDI is an innovative way of receiving support to meet social communication needs and local authorities must consider these.

Below is a template of which gives examples of the information to include within an EHC Plan to ensure that a child or young person’s social communication needs and interventions are appropriately provided for.

Please note that all EHC plans must be specific to the individual child the template below is an example of good practice in relation to addressing social communication needs through an EHC plan only. It does not include any other needs or special education provision a child might require.

Label	Section	Information to include to ensure social communication needs are met
A	The views, interests and aspirations of the child and his or her parents or the young person.	<ul style="list-style-type: none"> • Ensure that the child or young person’s aspirations for paid employment, independent living and community participation, play, health, schooling, independence, friendships, further education and future plans are included here as they will help to inform the outcomes for the child or young person.

		<ul style="list-style-type: none"> • A summary of how to communicate with the child or young person and engage them in decision-making.
B	The child or young person's special educational needs.	<ul style="list-style-type: none"> • All of the child or young person's identified special educational needs must be specified. • It is important that all of the child's social communication needs are included in this section as clearly as possible as the local authority only as a duty to provide support to meet the special educational needs which are identified in this section. The outcomes section will also be informed by the child's current needs and difficulties. • Social communication needs might include: <ul style="list-style-type: none"> • delayed or disrupted joint attention; • impaired social and cognitive development; • impairments in reciprocal social interaction and social communication; • rigid thinking which can lead to inflexible behaviour; • lack of perspective-taking and social reciprocity leading to a focus on self and an inability to see the 'bigger picture'; • difficulties with emotional regulation leading to 'challenging' behaviours; • Impairments in episodic memory leading to lack of resilience and low self-esteem. • It is important that the child or young person has had appropriate clinical assessments during the EHC needs assessment process to identify the extent of their needs in relation to social communication and how these impact on their learning and that the outcomes of those assessments are included in this section on the plan.
C	The child or young person's health needs which are related to their SEN.	<ul style="list-style-type: none"> • The EHC plan must specify any health needs identified through the EHC needs assessment which relate to the child or young person's SEN. • Although a child or young person's social communication needs will generally be regarded as a special educational need, sometimes the child or young person may have related health needs in this area which may require input from health professionals outside of the school environment. This might include where the child or young person's social communication needs are impacting on their mental health and they require input from mental health or specialist NHS

		services outside of school.
D	The child or young person's social care needs which are related to their SEN or to a disability.	<ul style="list-style-type: none"> • The EHC plan must specify any social care needs identified through the EHC needs assessment which relate to the child or young person's SEN. • Although a child or young person's social communication needs will generally be regarded as a special educational need, sometimes the child or young person may have related social care needs in this area which may require input from social care outside of the school environment. This might include: <ul style="list-style-type: none"> ○ The need to develop friendships outside school ○ The need to access appropriate leisure activities
E	The outcomes sought for the child or the young person.	<p>Example outcomes in respect of social communication interventions might include:</p> <p><u>Long Term:</u></p> <ul style="list-style-type: none"> • Improved mental flexibility – the child or young person is able to rapidly & effectively review options and select the best-fitting responses in the face of complex, dynamically-changing, uncertain environments • Adaptive planning - the child or young person understands that even the most careful plans and well thought-out strategies will inevitably require revision when executed in real-world settings • Improved self-directed learning and emotional growth - the child or young person is strongly motivated to gain more understanding and competence in their world • Improved internal motivation – the child or young person shows an improved desire to expand what they can do, where they can do it and with whom they can do it • Improved ability to learn from mistakes - the child or young person actively seeks to construct and revise meaning wherever and whenever they can, including personal and shared experiences and experiences of failure as well as success. • Improved episodic memory – the child or young person can retrieve memories of competence from previous activities/events in order to help decide what to do when faced with uncertainty and possible failure • Improved emotional regulation – the child or young person better able to 'stop and think' before acting; better able to recover from setbacks. <p><u>Examples of short term outcomes:</u></p>

		<ul style="list-style-type: none"> ○ YP is motivated to seek out challenges rather than sameness ○ YP seeks out additional perspectives and different options during problem-solving ○ YP takes responsibility for co-ordinating simple co-regulatory interactions ○ YP has learned to maintain behavioural coordination when participating in different role-based joint activities ○ YP is able to repair coordination breakdowns: ○ YP responds to changes in non-verbal communication ○ YP initiates and maintains enthusiasm during interactions ○ YP is able to use social referencing when faced with uncertainty ○ YP takes part in episodes of joint attention ○ YP is able to self-regulate ○ YP is able to inhibit actions after they have been initiated, but not yet completed <p><u>The outcomes which are set should be based on advice obtained during the EHC needs assessment or annual reviews</u></p> <p><u>Appendix 1 to this guide provides an example of how social communication provision can meet needs and achieve outcomes identified</u></p>
F	<p>The special educational provision required by the child or the young person.</p>	<ul style="list-style-type: none"> • Provision must be detailed and specific and should normally be quantified, for example, in terms of the type, hours and frequency of support and level of expertise²⁶, including where this support is secured through a Personal Budget. • Provision must be specified for each and every need specified in section B. It should be clear how the provision will support achievement of the outcomes. <p>The description of provision to meet social communication needs, consistent with NICE guidelines might include:</p> <p>“XX requires a social communication intervention programme to be devised by a trained guide supervisor with expertise in social communication interventions for children and young people with autism and to be delivered by a trained adult guide.</p> <p>The programme should include:</p> <ul style="list-style-type: none"> • Provision of an adult guide to work with XX for 1 hour per day during sustained periods of joint engagement in accordance with the programme devised by the guide supervisor. • The guiding engagement will take place in distraction free / low stimulus environment on a 1-1 basis and should include video footage

²⁶ See page 166 of the Code of Practice

		<ul style="list-style-type: none"> • A video camera and uploading software will be required • The trainee guide will require a 6 month training period working in situ with the child for one hour per day in order to become a competent guide. Further training and supervision will be provided on an ongoing basis as described below. • The guide will be allocated 3 hours per week to review the footage against objectives set by the guide supervisor and plan activities for guiding engagements in line with XXX's timetable for the week ahead • The trainee guide will be supervised by the guide supervisor who will analyse the footage and provide feedback on a weekly basis. The guide supervisor will need 1 hour per week to review the 20 mins of footage submitted. The supervisor will also provide quarterly hour long skype sessions during which new guiding objectives can be discussed and demonstrated. • The guide supervisor will then undertake annual clinical assessments of progress of both young person and adult guide.
G	Any health provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN.	If any health needs are identified in section C they should be met through provision in this section.
H1	Any social care provision which must be made for a child or young person under 18 resulting from section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDPA)	<p>If any social care needs are identified in section D, then the provision required to meet those needs should be set out here. In relation to social communication needs, it may be that a child or young person has needs for support or assistance outside of term time through school holidays and this provision should be set out here with the same level of detail as with section F.</p> <p>It may be that the child's social communication needs require social communication interventions to be provided outside of school for example when the child is accessing short breaks, play or leisure activities. This provision would be a service that the local authority could provide under section 2 of the Chronically Sick and Disabled Persons Act 1970 (CSDPA) after carrying out a section 17 assessment of the child's needs.</p>
H2	Any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN	If the young person is over 18 and has social care needs relating to social communication then the provision required should be set out here.
I	Placement	<ul style="list-style-type: none"> • The name and type of the school, maintained nursery school, post-16 institution or other institution to be attended by the child

		<p>or young person and the type of that institution (or, where the name of a school or other institution is not specified in the EHC plan, the type of school or other institution to be attended by the child or young person).</p> <ul style="list-style-type: none"> • These details must be included only in the final EHC plan, not the draft EHC plan sent to the child's parent or to the young person. <p>Some children's social communication needs may be such that they require a placement that specialises in delivering social communication interventions such as Bright Futures School. The type of provision that would need to be identified in section F in order for such a school to be named in the EHC plan would include:</p> <ul style="list-style-type: none"> • The student requires a placement where all staff are trained social communication guides and there is a qualified RDI Consultant who works on site to supervise ongoing intensive staff training and to work individually with each pupil. • The student requires a high ratio of pupils to staff full-time 1-1 input from a trained guide. • The student requires a placement which has a total focus on social communication and developing relationships so students are immersed in a culture which seeks to exploit every available opportunity for social and emotional development. • The student requires a learning environment where relationships between students are carefully managed and nurtured, with the school's over-riding concern being to prevent a social communication breakdown.
J	Personal Budget (including arrangements for direct payments)	<ul style="list-style-type: none"> • This section should provide detailed information on any Personal Budget that will be used to secure provision in the EHC plan. It should set out the arrangements in relation to direct payments as required by education, health and social care regulations. • The special educational needs and outcomes that are to be met by any direct payment must be specified here. • You may wish to ask the local authority for a direct payment for the parts of the plan which relate to social communication so that you can employ an RDI consultant and guide to deliver the social communication interventions described in Section F.
K	The advice and information	<p>Check that all the advice and information gathered during the EHC needs assessment must be set out in appendices to the EHC plan. There should be a list of this advice and information.</p>

Personal Budgets

A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC plan. It can include funding for education, health and social care.

The new right to a personal budget and right to request a direct payment in respect of SEN provision offer new opportunities to parents and young people to be able to use funding available to access specialist interventions such as social communication intervention which may not ordinarily be commissioned or available within local authorities – such as those provided by a Relationship Development Intervention Consultant.

This is recognised in the new Code of Practice which says at paragraph 9.61 that where a young person or parent is seeking an innovative or alternative way to receive their support services – particularly through a Personal Budget, but not exclusively so – then the planning process should include the consideration of those solutions with support and advice available to assist the parent or young person in deciding how best to receive their support.

It is therefore important that parents, young people and professionals working with them understand how personal budgets and direct payments work, and when they can be accessed.

Under the Children and Families Act 2014, parents and young people have a right to request a personal budget²⁷ figure be included on the EHC plan and each local authority must have a policy on personal budgets as part of their Local Offer²⁸ which should include:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets,
- how that funding will be made available,
- clear and simple statements of eligibility criteria and the decision-making processes.

The local authority is not required to prepare a personal budget for special educational provision which is secured by the local authority under an arrangement with a third party (such as the NHS) where the local authority pays an aggregate sum for the provision and a notional amount for that child's particular provision cannot be disaggregated without having an adverse impact on other services or if it would not be an efficient use of the local authority's resources²⁹.

A request for a personal budget can be made at any time during the EHC needs assessment process or when a draft EHC plan is prepared.

There are four ways in which a personal budget can be delivered³⁰:

- Direct payments – where individuals receive the cash to contract, purchase and manage services themselves
- An arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the plan (these are sometimes called notional budgets)
- Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- A combination of the above.

The first step in setting a personal budget figure is for the local authority to provide an indication of the level of funding required. This is called an "indicative budget" or "indicative figure". It can be calculated through a resource allocation scheme or banded funding system but this should only be a starting point and local authorities should be clear that any figure discussed at this stage an indicative amount only.

The final allocation of funding budget must be sufficient to secure the agreed provision specified in the EHC plan and must be set out as part of that provision³¹.

²⁷ Section 49(1)

²⁸ Code of Practice, para 9.96

²⁹ Special Educational Needs (Personal Budgets) Regulations 2014/1652, reg 4A

³⁰ Code of Practice, para 9.101

Local authorities must consider each request for a personal budget on its own individual merits. If a local authority is unable to identify a sum of money for a particular provision they should inform the child's parent or young person of the reasons.

For example, the local authority might agree that the provision is needed but may be unable, at that point in time, to disaggregate funding that is currently supporting provision of services to a number of children and young people.

Direct Payments – a type of personal budget

As explained above, one of the ways in which funding from a personal budget can be accessed is through a “direct payment”. A direct payment is a cash payment made by the local authority to the child's parent or young person to contract, purchase and manage services themselves.

A local authority may only make direct payments where they are satisfied that³²:

- the recipient will use them to secure the agreed provision in an appropriate way;
- where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;
- the direct payments will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and
- securing the proposed agreed provision by direct payments is an efficient use of the authority's resources. This means in practice a local authority will only agree to make direct payment for special educational provision where it will not cost them anymore than if they provided the provision themselves or through their existing contracting arrangements.

Where a direct payment is proposed for special educational provision, the early years setting, school or college must agree to a direct payment being used before it can go ahead³³.

Where local authorities and health partners do not have trained social communication intervention professionals available to deliver provision, parents and young people may wish to request direct payments in order to fund this provision directly.

Challenging Decisions

There are a number of ways to challenge decisions made in relation to EHC needs assessments and plans and the rights of appeal vary depending on the particular decision being challenged.

The following decisions can be challenged to the First Tier (Special Educational Needs) Tribunal³⁴:

- A refusal to carry out an EHC needs assessment following a request
- A refusal to make an EHC plan following an assessment
- If you disagree with sections B, F or I of the EHC plan
- The local authority refuse to make requested amendments to an EHC plan following an annual review
- The local authority refuse to carry out a re-assessment following a request
- The local authority cease to maintain an EHC plan

In addition to the above, from 1 April 2015, there is now a pilot scheme that provides that where an appeal is made against a pilot local authority³⁵ that provides the Tribunal with the power to recommend the health care and social care needs and health and social care provision that should be specified in the EHC plan³⁶.

³¹ Code of Practice, para 9.102

³² Special Educational Needs (Personal Budgets) Regulations 2014, reg 6(1)

³³ Special Educational Needs (Personal Budgets) Regulations 2014, reg 9

³⁴ Children and Families Act 2014, section 51

³⁵ The local authorities included in the Pilot Scheme are: Barking and Dagenham London Borough Council, Bedford Borough Council, Blackpool Council, Cheshire West and Chester Council, Ealing London Borough Council, East Riding of Yorkshire Council, Hackney London Borough

It is important to note that a tribunal appeal must be lodged within 2 months of the letter from the local authority informing you of one of the decisions above.

Parents and young people who wish to make an appeal to the Tribunal may do so only after they have contacted an independent mediation adviser and discussed whether mediation might be a suitable way of resolving the disagreement³⁷. This requirement does not apply where the appeal is solely about the name or type of the school, college or other institution named on the plan.

Where a parent or young person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months after written notice of the local authority's decision was sent, and inform the mediation adviser that he or she wishes to appeal and inform the mediation adviser whether they wish to pursue mediation³⁸.

If you wish to challenge a decision or failure which is not listed above, then you can either pursue a formal complaint or consider challenging the decision through a process known as "judicial review". The types of decision which can be challenged this way include:

- Failure to provide provision which is set out in the Plan
- The contents of the social care and health sections of the Plan;
- Failure to comply with duties under the Local Offer – for example regarding its contents or failing to consult;
- Refusal to provide a personal budget or award direct payments;
- The use of a policy or eligibility criteria limiting access to assessment or provision which is arguably unlawful.

In all cases however, judicial review must be used as a last resort and the court will not grant permission unless it is satisfied that there is no suitable alternative remedy such as using the complaints process or appealing to the Tribunal.

It is important to note that any judicial review challenge must be brought promptly and in any event within three months of the original decision being challenged. The court has discretion to extend time where it is fair and just to do so but it cannot be assumed that this will happen in any particular case. It is therefore important to consider at an early stage whether a formal complaint to the local authority and/or Ombudsman will provide a satisfactory remedy to the concerns or whether a legal challenge by way of a judicial review is more appropriate. If you are unsure, then you should seek legal advice at an early stage so that a solicitor can discuss the options with you.

Availability of Legal Aid

Despite significant government cuts, legal aid remains available for the following types of work:

- Legal advice and assistance in preparing an appeal to the Tribunal (but not representation at the Tribunal itself). This form of legal aid is known as "Legal Help".
- Legal advice and assistance in relation to the provision of community care services (including those provided by CCGs) – this is known as "Legal Help".
- Legal Representation (including Investigative Representation) for judicial review applications and some other 'public law' matters – for example, some applications to the Court of Protection in relation to the health and welfare of adults who lack capacity to make certain decisions.

Legal aid will only be granted if a merits and financial means test are met.

Council, Kent County Council, Lambeth London Borough Council, Liverpool City Council, Sandwell Metropolitan Borough Council, Stockport Metropolitan Borough Council, Wokingham Borough Council

³⁶ The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) (Pilot) Regulations 2015

³⁷ Children and Families Act 2014, section 55(3)

³⁸ Special Education Needs and Disability Regulations 2014, reg 33

A parent or young person seeking access to legal aid for an SEN case or disability discrimination case should go to the legal aid checker on the GOV.UK website to find out if they are eligible or contact the Civil Legal Advice (CLA) service on 0845 345 4 345.

For advice and assistance in relation to a potential judicial review, parents or young people do not have to phone CLA first and can contact a legal advisor directly for specialist advice³⁹.

Sources of advice and support

There are a number of specialist charitable organisations who can provide advice and assistance, particularly if the individual is not eligible for legal aid or does not have the funds to pay privately for legal advice. These include:

- IPSEA is a registered charity offering free and independent advice to parents of children with special educational needs in England and Wales on:
 - local authorities' legal duties to assess and provide for children with special educational needs;
 - exclusions of children with special needs/disabilities;
 - actions or inaction by local authorities and/or schools which discriminate against children with disabilities

General Advice Line: 0800 018 4016 for advice on: Problems with schools; requesting statutory assessment; proposed statements; annual reviews; possible disability discrimination; exclusion from school, etc.

Tribunal Help Line: 0845 602 9579 for next-step advice on SEN appeals and disability discrimination claims to the Special Educational Needs and Disability Tribunal including whether the individual requires casework support

<https://www.ipsea.org.uk/>

- Contact a Family National SEN Advice Service provides education specialist advisers from Monday-Friday, 9.30-5.00 pm to answer queries: 0808 808 3555 and can help on any aspect of education in England and Wales. <http://www.cafamily.org.uk/advice-and-support/sen-national-advice-service/>
- National Autistic Society Education Rights Service. The Education Rights Service provides impartial, confidential information, advice and support on education rights and entitlements for parents and carers of pre-school and school-age children with autism to help them get the educational support their child needs. Call: 0808 800 4102 and leave a message on their answering service and they will call you back (free from landlines and most mobiles). <http://www.autism.org.uk/advocacy>
- SOSISEN runs an independent confidential telephone helpline for parents and others looking for information and advice on Special Educational Needs (SEN). Helpline: 020 8538 3731. They also hold drop in advice sessions. <http://www.sossen.org.uk/index.php>

Further research to support a case for RDI as educational provision

Like most other interventions for autism, RDI as an intervention has yet to be studied in a peer reviewed randomised, controlled trial. However, there is excellent peer reviewed evidence to support key individual aspects of the RDI methodology. Please see the link below:

http://guidingexceptionalparents.com/documents/2015_RDI-publication%20list.pdf

Disclaimer: This guide has been produced by Zoe Thompson, Friends of Bright Futures School in conjunction with Polly Sweeney, Associate Solicitor at Irwin Mitchell LLP and Steve Broach, barrister at Monckton Chambers. It is based on the law as it stands in June 2015. It is not intended to replace legal advice on the facts of a specific case and no liability is accepted for any adverse consequences of reliance upon it.

³⁹ <https://rightsinreality.wordpress.com/2014/09/13/solicitors-with-expertise-in-disability-and-sen-cases/>

Appendix 1: Needs and Outcomes

As explained above, it is important that for every need identified, there is provision in place to meet that need and an outcome.

Below is an example of the types of need that an RDI assessment is likely to identify in a child/young person with autism. The need is linked here to the impact this is likely to have on the child or young person's ability to access education effectively, the provision that would be needed and the anticipated outcome of that provision.

All the initial outcomes listed below provide the framework for the young person to be able to participate in sustained periods of joint engagement. These states of joint engagement are crucial to learning and development as they set the stage for the young person to 'borrow the thinking' of the adult guide which then enables them to work on emotional regulation, episodic memory, independent problem-solving, flexible thinking. Mastery of these competencies is what leads to adaptive behaviour.

Need	Impact	Provision	Outcome
Struggles to interpret and use non-verbal communication	Will struggle with: social understanding/understanding others; emotional regulation; independent problem-solving.	Adult guide will use specially designed guided participation activities to isolate and work on non-verbal communication individually across 5 different role sets	Identifies the integrated 'package' of a communication partner's non-verbal communication as an invitation to share a common reference point
Demonstrates no or poor social referencing (SR – often mis-named 'eye contact')	Is unable to take on board the views of others in order to help determine what to do in situations of uncertainty	Adult guide will slow the pace of specially designed guided participation activities so that pausing can be used to facilitate SR.	Visually checks to determine communication partner's readiness prior to activity initiation or resumption. Visual checking is followed by appropriate contingent actions based on appraisal of partner's state of readiness.
Struggles to manage novelty and uncertainty	Anxiety – fight, flight or freeze; behaviour that challenges	Adult guide will use specially designed guided participation activities to gradually introduce the young person to more complex novelty and change via cycles of regulation, challenge and new regulation.	Opportunities are created for adaptive and thoughtful responding in the face of novel and increasingly unpredictable settings and unexpected change so that the young person is motivated to seek and enjoy out challenges rather than sameness
Is unable to respond adaptively to a	Communication partner has to do a disproportionate amount	Adult guide will use specially designed guided	Young person uses the adult guide as a

challenge (uncertainty) and to communication breakdowns	of work during social interactions and consequently the partner starts to withdraw from interacting and/or communication breakdowns result in behaviour that challenges	participation activities pitched at the child's edge of competence to build the young person's co-regulatory decision-making so that they can be gradually introduced to more complex challenges. Activities will be specially designed to enable students to encode episodic memories.	reference point to decide what to do when faced with a communication breakdown or the challenge of uncertainty. Eventually, CYP has stored and can access sufficient episodic memories that they can use as a reference point to decide what to do when faced with uncertainty.
Struggles to stay within the limits and boundaries of adults	Will be unable to develop self-control and self-regulation.	Adult guide learns to distinguish between performance demands and limit setting that creates an environment for developmental growth The guide learns how to control the framework of the engagement (physical and attentional focus) so that developmental growth can take place	The young person will be ready to take on a co-regulatory role within a guiding engagement
Fails to appraise their partner's responses and make the necessary revisions in order to keep a social interaction 'on track'	Behaves in a 'rigid' fashion, is 'on own agenda'. Friendships and relationships (if present) will be superficial and/or fleeting.	Adult guide will use specially designed guided participation activities to provide opportunities for the young person to take on increasing responsibility for emotional engagement	Is able to determine the effectiveness of their contributions by appraising their partner's responses and makes the necessary revisions when determining that their contributions have had an unintended impact

In an education setting, it is recommended that a minimum of 1 hour per day is set aside to work in a specially structured guiding activity on the development of the competencies identified in the RDI assessment (the RDA-R).

The degree to which each of the above outcomes are achieved will be determined by a specialised RDI assessment where interaction is videoed and can be analysed by a trained RDI Consultant who can identify parts of the video footage that demonstrates progress.