ZK v London Borough of Redbridge [2020] EWCA Civ 1597, (2020) 23 CCLR 575, concerned a challenge to a 'decentralised' provision by the local authority to services in school for visually impaired children (whereby there was no 'pool' of teaching resources available when a VI child first attended a school). This could result in the delay of teaching services in some cases. The challenge had the potential for wide impact as the vast majority of teaching assistants for VI children are recruited and employed in decentralised systems. However the Court of Appeal decided that the decentralised provision was not irrational and, on the facts, there was no inherent likelihood that the local authority would fail to comply with its legal obligations such as the duty to secure the educational provision set out in the claimant's Education, Health and Care Plan, as required by section 42 of the Children and Families Act 2014. In addition, a claim that the public sector equality duty had been breached failed in circumstances where the local authority was discharging its functions expressly to meet the needs of a protected group.

The Court of Appeal was more receptive, however, in another case involving children's services. In *R (Article 39) v Secretary of State for Education* [2020] EWCA Civ 1577, (2020) 23 CCLR 603, the Court found that the secretary of state had failed to consult children's rights organisations and the Children's Commissioner before introducing changes to services as a result of the COVID-19 crisis which were substantial and wide-ranging and, when implemented, had the potential to have a significant impact on children in care. Even though the changes were urgent there was time for a short consultation, and no reason why the Children's Commissioner and other groups could not have been included.

A further case brought because of rules introduced to deal with the effects of the pandemic was *Davies v Wigan Council and another* [2020] EWCOP 60, (2020) 23 CCLR 636, which concerned the right to visits in care home for a woman who had been married for 37 years. As vice-president of the Court of Protection, Hayden J referred to a letter clarifying guidance on the role of care homes in the pandemic in which he said:

> *It is recognised that receiving visitors is an important part of care home life and that maintaining some opportunities for visiting to take place is critical for supporting the health and wellbeing of residents and their relationships with friends and family … Emphasis is correctly, in my view, placed on the importance of Care Home providers, families and local professionals working together to find the right balance between the benefits of visiting on wellbeing and quality of life, and the risk of transmission of COVID-19 to social care staff and vulnerable residents as we enter national restrictions.*

AMDC v AG and another [2020] EWCOP 58, (2020) 23 CCLR 661, is essential reading for all experts asked to give an opinion for the Court of Protection on the question of capacity of a patient. In the case were parties and the court were dissatisfied with the report provided by a consultant psychiatrist as to whether a patient with frontal lobe dementia had capacity to consent to sexual relations with another care home resident. Significantly different conclusions had been reached at different times without clear explanations of why the conclusions had changed or how the evidence as a whole fitted together. There was a lack of a cogent explanation for why the presumption of capacity had been displaced in relation to the decisions under consideration. The court provided detailed guidance for experts. Importantly, the court explained that an expert report on capacity is not a clinical assessment but should seek to assist the court to determine certain identified issues. The expert should therefore pay close regard to (i) the terms of

the Mental Capacity Act and Code of Practice, and (ii) the letter of instruction, and it is important that the parties and the court can see from their reports that the expert has understood and applied the presumption of capacity and the other fundamental principles set out at section 1 of the Mental Capacity Act 2005.

R (AA) v London Borough of Southwark [2020] EWHC 2487 (Admin), (2020) 23 CCLR 649 was a case which emphasised the importance of a local authority taking into account all relevant factors when carrying out a re-assessment of needs under section 17 of the Children Act 1989. The local authority had to consider evidence which had been provided to it and make reasonable enquiries – a single unsuccessful home visit could have been followed up with at least a telephone call to find out the true position of the family. The judge decided that the failure was more than just a procedural flaw and the section 17 assessment should be quashed.

R (W, a child by his litigation friend J) v Secretary of State for the Home Department [2020] EWHC 1299 (Admin), (2020) 23 CCLR 673 concerned whether Home Office guidance explained properly to staff that 'no recourse to public funds' (NRPF) provisos should not be attached to visas where applicants and their families, on route to establishing a right to settlement, were at risk of imminent destitution (in addition to those who were actually destitute). The claimant's solicitor had had twenty cases where proceedings had to be issued before the Home Office would accept the point. The Divisional Court found it 'impossible to identify the message that the Secretary of State is under a legal obligation not to impose, or to lift, the condition of NRPF in a case where the applicant is not yet suffering, but will imminently suffer, inhuman and degrading treatment without recourse to public funds'. This gave rise to a real risk of unlawful decisions in a significant number of cases, and the court declared that the relevant guidance was unlawful

MC v Cygnet Behavioural Health Ltd and the Secretary of State for Justice [2020] UKUT 230 (AAC), (2020) 23 CCLR 699, is an Upper Tribunal (UT) case which considered the interplay between the Mental Health Act 1983 and the Mental Capacity Act 2005, and provides some clarity in the aftermath of the Supreme Court case of *M v Secretary of State for Justice* [2019] AC 712 which decided that tribunals could not attach conditions to a discharge which amounted to a deprivation of liberty. The patient had been detained under 1983 Act since 1993 but applied to be conditionally discharged. She continued to need medical treatment but there was no need for it to be delivered in a hospital. However, the patient lacked capacity to make decisions about her accommodation, care and treatment, and the only way that treatment could be delivered was if there was a deprivation of her liberty under the 2005 Act. The First-tier Tribunal could not impose a condition to that effect, but the UT decided that it did have the power to co-ordinate its decision with the provision of an authorisation for deprivation of liberty under the 2005 Act, where that would be in the best interests of the patient.