

17th Annual Review of the Arbitration Act 1996 – Tuesday, 26 March 2019
 Judicial Decisions – December 2017 to February 2019

	Case	Date	Section ✓ = application succeeded * = application failed	Summary
Anti-Suit Injunctions				
1.	Michael Wilson & Partners Ltd v Emmott [2018] EWCA Civ 51	31 January 2018	✓ *	Anti-suit injunction discharged where foreign court proceedings not in breach of arbitration agreement; but fresh injunction granted on the grounds of abuse of process preventing party advancing claims in those proceedings which it had lost in a previous arbitration with the defendant or matters which were contrary to findings in that arbitration.
2.	Atlas Power Limited v National Transmission and Dispatch Co Ltd [2018] EWHC 1052 (Comm)	04 May 2018	✓	A final anti-suit injunction was granted preventing defendant from challenging an English arbitration award by court proceedings in Pakistan. The English court had exclusive supervisory jurisdiction.
3.	Mobile Telecommunications Co. Ltd v Al Saud [2018] EWHC 1469 (Comm)	18 May 2018	✓	Final anti-suit injunction granted preventing defendant from trying to re-litigate in Saudi proceedings matters the subject of a prior English award in which it had participated and which it had not challenged in the English courts.
4.	Sabbagh v Houry [2018] EWHC 1330 (Comm)	31 May 2018	✓	Interim injunction granted preventing defendants from prosecuting an arbitration in Lebanon where English court had previously ruled that the claimant was not bound by the arbitration clause on the basis that to permit the defendant to continue the Lebanese arbitration would be vexatious and oppressive
5.	Nori Holding Ltd v Public Joint-Stock Co Bank Otkritie Financial Corp [2018] EWHC 1343 (Comm)	06 June 2018	✓	Anti-suit injunction granted to restrain Russian proceedings in breach of an arbitration clause notwithstanding Russian proceedings included insolvency claims but injunction could not be granted to restrain Cypriot proceedings as that would be in breach of the Brussels Recast Regulation; West Tankers followed.

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6.	Perkins Engines Co. Ltd v Ghaddar [2018] EWHC 1500 (Comm)	08 June 2018	✓	Interim anti-suit injunction granted preventing defendant from bringing proceedings in Lebanon in breach of an English arbitration agreement.
7.	Qingdao Huiquan Company v Shanghai Dong He Xin Industry Group Co. Limited [2018] EWHC 3009 (Comm)	25 September 2018	✓	Interim anti-suit injunction granted preventing defendant from bringing Chinese court proceedings in breach of English arbitration agreement by which it was bound notwithstanding a delay of 13 months after the claimant had been served with Chinese proceedings.
8.	W Bockstiegel GmbH & Co Reederei KG MS BBC Colorado v Chilena Consolida Seguros Generales SA [2018] EWHC 3690 (Comm)	03 December 2018	✓	Injunction continued to restrain Chilean proceedings in breach of arbitration clause.
9.	Catlin Syndicate (underwriting as XL Catlin Syndicate 2003) v Weyerhaeuser Co [2018] EWHC 3609 (Comm)	21 December 2018	✓	Final anti-suit injunction granted restraining defendant from pursuing proceedings in Washington in breach of arbitration clause providing for English arbitration.
Interim Measures				
10.	Dreymoor Fertiliser Overseas Pte Limited v Eurochem Trading GmbH [2018] EWHC 2267 (Comm)	24 August 2018	*	Claimant's application to continue an injunction from the English court preventing the defendant from using evidence and documents obtained under a US Code s.1782 application in arbitrations in the UK refused on grounds of comity and because the English court took the view the US Court had reached the right decision in any case. If it had been an application under s.44 Arbitration Act, it would have been bound to fail.

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Stay of Legal Proceedings				
11.	China Export & Credit Insurance Corp. v Emerald Energy Resources Ltd [2018] EWHC 1503 (Comm)	22 June 2018	s.9 *	Stay refused under s.9 of English court proceedings brought in relation to a promissory note with a non-exclusive English jurisdiction clause notwithstanding defendant intended to run defences arising out of a separate agreement between the same parties which was subject to an English arbitration clause.
12.	Mercato Sports (UK) Ltd v Everton Football Club Co Ltd [2018] EWHC 1567 (Ch)	12 July 2018	s.9 ✓	Stay granted of proceedings by sports agency and agent against football club as the parties' dealings were governed by the FA Rules which incorporated an arbitration clause which was binding on the Claimants as registered intermediaries under the Rules.
13.	Sodzawiczny v Ruhan [2018] EWHC 1908 (Comm)	26 July 2018	s.9 ✓	Stay granted where court proceedings brought in relation to matters subject to arbitration clause in a deed of settlement including issues as to the enforceability of the deed itself; non-signatory parties also entitled to stay under Contracts (Rights of Third Parties) Act 1999 as the deed conferred the right to arbitrate on them and thus the right to a stay.
14.	Maelor Foods v Rawlings Consulting (UK) Ltd [2018] EWHC 1878 QB	6 July 2018	s.9 ✓	Stay granted where court proceedings concerned matters within the scope of the arbitration clause in a JCT contract and not within limited exception in relations to court proceedings to enforce the decision of an adjudicator notwithstanding that the court proceedings might result in the adjudicator's decision being held incorrect and thus unenforceable.

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Extensions of Time to Commence Arbitration				
15.	Three Arbitrations, Re [2018] EWHC 1399 (Comm)	11 June 2018	s.12 *	Applications to extend time for commencing arbitrations under s.12 refused where certain claimants had not acted expeditiously in commencing arbitrations after contractual time bar had taken effect; granted to one claimant that had acted expeditiously.
16.	Haven Insurance Co Ltd v EUI Ltd (t/a Elephant Insurance) [2018] EWCA Civ 2494	08 November 2018	s.12 ✓	Court of Appeal upheld first instance decision granting extension under s.12 where claimant had made an unilateral but understandable mistake in failing to commence arbitration within contractual time limit.
Removal of an Arbitrator				
17.	Allianz Insurance plc v Tonicstar Ltd [2018] EWCA Civ 434	13 March 2018	s.24/s.34 *	Court of Appeal overturned first instance decision removing barrister arbitrator; held that requirement for 10 years “experience in insurance or reinsurance” did not limit eligibility to those directly involved in the business but extended to barristers with such experience. Overturned Company X v Company Y which had held that such arbitrators had to be involved in the trade themselves.
18.	Halliburton Co. v Chubb Bermuda Insurance Ltd [2018] EWCA Civ 817	19 April 2018	s.24 *	Court of Appeal upheld first instance decision refusing to remove arbitrator who had been appointed by the same party in two other related arbitrations but who had not disclosed those matters when appointed in the current arbitration. Such disclosure should have been made but the omission was accidental and did not give rise to a real possibility of bias. The mere fact that an arbitrator accepted appointments in multiple references involving the same or similar subject matter with only one common party did not itself give rise to an appearance of bias as the arbitrator could be trusted to approach each case with an open mind.

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19.	RJV v HB [2018] EWHC 2950 (Comm)	05 November 2018	s.24/s.68 *	See 45 below.
Jurisdictional Challenges				
20.	Exportadora de Sal SA de CV v Corretaje Maritimo Sud-Americano Inc. [2018] EWHC 224 (Comm)	09 February 2018	s.67 *	Claimant's challenge under s.67 failed where it had taken part in the proceedings without objection and in any event had lost the right to object by operation of s.73(1). The court commented that witness statements should be limited to matters of fact intended to be proved and should not contain comment and submissions.
21.	Jiangsu Shagang Group Co Ltd v Loki Owning Co Ltd [2018] EWHC 330 (Comm)	01 March 2018	s.67 ✓	Court set aside award for \$68m against claimant under s.67 holding tribunal was wrong in finding that claimant had guaranteed charterer's obligations and was thus party to arbitration clause.
22.	GPF GP Sarl v Poland [2018] EWHC 409 (Comm)	02 March 2018	s.67 ✓	Court upheld Claimant's application under s.67 to set aside an award on jurisdiction in an arbitration arising out of a bilateral investment treaty on the basis that the tribunal had erred on concluding that its jurisdiction was limited. The court made clear that a s.67 application was a re-hearing and therefore the tribunal's conclusions carried no legal or evidential weight.
23.	A v B [2018] EWHC 1370 (Comm)	13 April 2018	s.31/s.67 ✓	Award under s.31 holding tribunal had no jurisdiction on basis that the charterparty provided for LCIA arbitration set aside under s.67 where Court held there was jurisdiction and the arbitrators had accepted appointment under LMAA terms.
24.	Dreymoor Fertilisers Overseas PTE Ltd v Eurochem Trading GmbH [2018] EWHC 909 (Comm)	24 April 2018	s.67/s.32 *	Challenges to the jurisdiction of an LCIA and ICC tribunal failed where the arbitrations clauses in question were wide enough to include claims of bribery; Fiona Trust applied.

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25.	Uttam Galva Steels Ltd v Gunvor Singapore Pte Ltd [2018] EWHC 1098 (Comm)	10 May 2018	s.67 *	The court dismissed the s.67 application by the Claimant on the basis that the underlying arbitration clause was widely worded and covered all the issues in dispute. The Claimant had also waived its s.67 rights by serving points of defence in the arbitration after it was aware of the potential jurisdiction challenge.
26.	PAO Tatneft v Ukraine [2018] EWHC 1797 (Comm)	13 July 2018	s.67 *	Ukraine failed in its application to set aside an order enforcing an arbitration awarding in favour of the Claimant as the underlying disputes were disputes that Ukraine had agreed to submit to arbitration pursuant to a bilateral investment treaty and accordingly the State Immunity Act 1970 s.9 applied so as to deprive Ukraine of state immunity.
27.	Bond v Mackay [2018] EWHC 2475 (TCC)	25 September 2018	s.67 *	The Court rejected a challenge under s.67 on the basis that the claim in question was in fact part of the matrix of the proceedings even though the relevant contractual provision was not expressly referred to in the pleadings. The award was varied to make plain that the disputed claim was within the jurisdiction of the arbitrator.
28.	Sonact Group Ltd v Premuda Spa [2018] EWHC 3820	12 December 2018	s.67 *	Challenge to award failed where court agreed with tribunal that a separate exchange of emails recording terms of settlement of demurrage claim also subject to arbitration clause in charterparty.
29.	J v K [2019] EWHC 273 (Comm)	24 January 2019	s.67/s.68 *	Held that the tribunal did have jurisdiction to revisit and substitute its own determination for a determination made by an independent expert in relation to the construction of a very large superyacht.

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30.	Filatona Trading Ltd v Navigator Equities Limited [2019] EWHC 173 (Comm)	07 February 2019	s.67 *	s.67 (and s.68) challenge dismissed where it was held that the tribunal was correct to hold a Russian businessman was a disclosed principal to an agreement and therefore the tribunal had jurisdiction to decide that his shares should be purchased by the counterparty despite the fact that the businessman was not named in the agreement.
Procedural Irregularity				
31.	P v D [2017] EWHC 3273 (Comm)	28 November 2017	s.68 ✓	There had been a serious irregularity pursuant to s.68(2)(d) where the tribunal had failed to deal with and determine a claim made in the arbitration for contribution from another party. The claim was remitted to the tribunal for determination.
32.	Progas Energy Ltd v Pakistan [2018] EWHC 209 (Comm)	09 February 2018	s.70(7)/s.68 ✓	Defendant's application that the claimant bringing a s.68 challenge provide security for the unpaid costs due to the defendant pursuant to the award succeeded; claimant ordered to give security of £400,000; the fact a litigation funder was funding the s.68 challenge made it all the more appropriate to order security.
33.	X v Y [2018] EWHC 741 (Comm)	12 February 2018	s.68/s.57 *	S.68 challenge failed where claimant should have sought clarification of the award under s.57(3)(a) but failed to do so within the 28-day time limit from the date of the award; in any case, there had been no irregularity and the challenge was in reality a disguised attack on the tribunal's legal conclusions.
34.	No Curfew Ltd v Feiges Properties Ltd [2018] EWHC 744 (Ch)	07 March 2018	s.68 *	Arbitrator who had misunderstood the evidence in a rent review arbitration had not had power to amend the award under s.57 to correct it as there had been no clerical mistake or error; but challenge to amended award under s.68 failed as to have upheld challenge would have given the tenant a windfall and therefore the tenant could not demonstrate that it would suffer a substantial injustice under s.68.

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35.	Orascom TM Investments SARL v Veon Limited [2018] EWHC 985 (Comm)	22 March 2018	s.68 *	Challenge under s.68(2)(d) rejected; claim form did not provide a clear and succinct definition of s.68 claim. It was not satisfactory to refer to a supporting witness statement which should contain evidence, not comment or argument.
36.	Reliance Industries Ltd v Union of India [2018] EWHC 822 (Comm)	16 April 2018	s.68/s.33 ✓ *	One of claimant's s.68 challenges upheld where tribunal failed to address one particular issue. A tribunal was not obliged under s.33 to put all aspects of its analysis to the parties where the point at issue was squarely in play. The doctrine of foreign act of state equally applicable in arbitration as in court proceedings and was not waived by a state simply by agreeing to arbitrate.
37.	SCM Finncial Overseas Ltd v Raga Establishment Ltd [2018] EWHC 1008 (Comm)	03 May 2018	s.68/s.33 *	Tribunal was not in breach of either s.33 or s.68 in refusing to defer issuing an award pending the outcome of concurrent proceedings in Ukraine in circumstances where no certainty as to when judgment would be given in those proceedings. The decision was within the tribunal's wide discretion and not unfair.
38.	Navigator Spirit SA v Five Oceans Salvage SA [2018] EWHC 1108 (Comm)	15 May 2018	s.68/s.33 *	Appeal arbitrator in salvage arbitration had acted fairly under s.33 in deciding the case on an issue not pleaded or argued below but which he believed her had raised with the parties at the hearing albeit the claimant party had not appreciated the point; even if the arbitrator has acted unfairly, that did not constitute an irregularity under s.68 as no convincing evidence that the result would have been different had the claimant had the opportunity to respond on the new issue so no substantial injustice.

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39.	Grindrod Shipping Pte Limited v Hyundai Merchant Marine Co. Ltd [2018] EWHC 1284 (Comm)	24 May 2018	s.68/s.41 *	The arbitration claim was struck out by the tribunal under s.41(3) for inordinate and inexcusable delay and the court held that claimant had had an opportunity to address the points in play on that issue. The s.68(2)(a) claim failed on the basis that the claimant had failed to demonstrate not only that there had been a serious irregularity in the way the tribunal had dealt with the s.41(3) but that there had been any 'substantial injustice' as the court was not persuaded that the tribunal might have reached a different conclusion had the claimant had a fuller opportunity to address arguments as to why its claim should not be struck out.
40.	T v V [2018] EWHC 13928 (Comm)	16 May 2018	s.68/s.41 *	S.68(2) challenge failed where arbitrator made an award without conducting an oral hearing as provided for in s.41(7)(c) after the claimant had failed to comply with a peremptory order. The claim form should have set out the details of the s.68 application rather than in the supporting witness statement.
41.	Asset Management Corp of Nigeria v Qatar National Bank [2018] EWHC 2218 (Comm)	12 July 2018	s.68 *	S.68 challenge held to be totally without merit as thinly-disguised attack on the merits; application had twice previously been refused on the papers.
42.	Dera Commercial State v Derya Inc. [2018] EWHC 1673 (Comm)	13 July 2018	s.68/s.69/s.41 *	Claimant unsuccessfully challenged under ss.68 and 69 award striking out its claim for inordinate and inexcusable delay under s.41(3) where claimant had delayed for almost 4 years after commencing arbitration within the contractual one-year limitation period.
43.	A v B Queen's Bench Division (Technology & Construction Court) [2018] EWHC 3366 (TCC)	27 July 2018	s.68/s.33 *	S.68 challenge failed where tribunal had subsequently held certain oral evidence of a witness given at an earlier hearing inadmissible as not within scope of witness statement and parties were made aware issue of admissibility would be dealt with in final submissions; no serious irregularity and no s.33 breach.

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44.	Nea Rota SA v Valencia Shipping Corp [2018] EWHC 2181 (Comm)	14 August 2018	s.68/s.33/s.69 *	S.68/s.33 challenge failed where claimant had failed to take the opportunity to properly plead a point before the tribunal despite being invited to do so; s.69 challenge failed at the outset as the challenged finding was obiter.
45.	RJ v HB [2018] EWHC 2833 (Comm)	26 October 2018	s.68 ✓ *	S.68 claim succeeded where arbitrator granted relief on a basis not argued or sought by either party. Court not (probably) empowered to remove arbitrator under s.68, that being reserved to s.24 where arbitrator could be a party. Award remitted to arbitrator.
46.	Fleetwood Wanderers Ltd (t/a Fleetwood Town Football Club) v AFC Fylde Ltd [2018] 11 WLUK 540	30 November 2018	s.68/s.33 ✓	S.68/33 challenges succeeded where arbitrator had made enquiries and elicited information which proved determinative in the award without notifying the parties or giving the parties the opportunity to make representations; had the parties made submissions it could have affected the result. Award remitted to arbitrator to allow him to consider arguments on the disputed issue.
47.	Midnight Marine Ltd v Thomas Miller Speciality Underwriting Agency Ltd (formerly Osprey Underwriting Agency Ltd) [2018] EWHC 3431 (Comm)	12 December 2018	s.68/s.69 *	Claimant's challenge to an award dismissing claim as time-barred failed and no basis for s.69 application; court observed that there should be an expedited procedure to weed out unmeritorious applications short of a full hearing; court also assessed costs summarily at £30,000 where the parties had spent £151,000 as not in the interests of arbitration for costs on that scale to be incurred.
48.	Ali Allawi v Islamic Republic of Pakistan [2019] EWHC 430 (Comm)	15 February 2019	s.68/s.70 *	Application for an extension of time under s.70(3) to bring a s.68 challenge refused because of the extensive delay in making the application without good reason and because the substantive challenge was weak.

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Questions of Law/Appeal on Points of Law				
49.	Daewoo Shipbuilding and Marine Engineering Co. Ltd v Songa Offshore Equinox Ltd. [2018] EWHC 538 (Comm)	16 March 2018	s.69/s.17/s.57 *	S.69 appeal of corrected award not possible as made outside 28-day period in s.70(3) for appealing. The period runs from the date of the original award not the date of the corrected award as the corrections were not material to the challenge. No extension of time granted to claimant as the delay of 24 days in applying was significant in comparison to 28 days for appeal allowed by the Act
50.	Uniteam Marine Shipping GMBH v MS “United Tenorio” [2018] EWHC 1593 (Comm)	23 March 2018	s.69 ✓	Appeal allowed where tribunal went wrong in construing a standard form so was an issue of general public importance; case remitted to tribunal.
51.	Seatrade Group NV v Hakan Agro DMCC [2018] EWHC 654 (Comm)	26 March 2018	s.69 ✓	Appeal allowed where tribunal had gone wrong in construing a standard form charterparty and point was one of general public importance.
52.	Equitas Insurance Ltd v Municipal Mutual Insurance Ltd [2018] EWCA Civ 991	04 May 2018	s.69 ✓	Court of Appeal allowed appeal under s.69 where the point of law was one of general public importance (reinsurance of mesothelioma claims) and the tribunal’s conclusion open to serious doubt
53.	Goodwood Investments Holdings Inc. v Thyssenkrupp Industrial Solutions AG [2018] EWHC1056 (Comm)	09 May 2018	s.45 ✓	Parties agreed to the court determining an issue of law under s.45 as to whether a settlement had been reached in the course of an arbitration hearing; court determined no such settlement had been reached and arbitration hearing continued.

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54.	Agile Holdings Corp. v Essar Shipping Ltd [2018] EWHC 1055 (Comm)	11 May 2018	s.69 ✓	Court determined issue of law under s.69 notwithstanding objection of one party that the issue was not one the tribunal had been asked to determine; court held a party at the appeal could seek to re-argue whether the issue was one the tribunal had been asked to determine but considerable weight given to decision of judge giving permission to appeal.
55.	Fehn Schiffahrts GmbH & Co. KG v Romani SpA [2018] EWHC 1606 (Comm)	27 June 2018	s.69 ✓	The judge could not determine from the Award whether the issue of law had been answered correctly so the issue was remitted to the tribunal for reconsideration.
56.	A v B Queen’s Bench Division (Commercial Court) [2018] EWHC 2310 (Comm)	31 July 2018	s.69 *	Challenge dismissed where what was at issue was a finding of fact rather than law
57.	HPOR Servicios De Comm Conculoria Lta v Dryships Inc. [2018] EWHC 3451 (Comm)	13 December 2018	s.69 *	S.69 appeal on two issues of law failed where judge decided majority of the tribunal had reached the right conclusion.
58.	Patel v Patel [2019] EWHC 298 (Ch)	18 February 2019	s.69/s.68 ✓	Application under s.69 succeeded as the arbitrator had gone wrong on the law in finding that the parties to a partnership agreement had varied it through a course of conduct; the Court varied the award to reflect the fact that the partnership agreement had not been varied and altered the arbitrator’s allocation of costs to reflect the parties’ actual success.
59.	Silverburn Shipping (IoM) Ltd v Ark Shipping Company LLC [2019] EWHC 376 (Comm)	22 February 2019	s.69 ✓	Appeal of law as to construction of a standard charter party form succeeded.

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Enforcement of Awards				
60.	RBRG Trading (UK) Ltd v Sinocre International Co. Ltd [2018] EWCA Civ 838	23 April 2018	s.103 *	Court of Appeal upheld first instance decision rejecting challenge to enforcement of Chinese award on grounds of public policy; illegality alleged by defendant but held that this had been considered and rejected by tribunal and court should not go behind those findings. No public policy to refuse to enforce an award by reason of a collateral failed fraud attempt and even if there was, this was outweighed by the competing requirement of finality.
61.	Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd [2018] EWHC 1539 (Comm)	20 June 2018	s.101 * ✓	Court had jurisdiction but declined to grant a worldwide freezing order in aid of enforcement of a French award given the limited links with the jurisdiction here and the risks of conflicting and inconsistent orders particularly in light of the prior involvement of the Seychellois court; however, a domestic freezing order was granted as there was a real risk of dissipation.
62.	Micula v Romania [2018] EWCA Civ 1801	27 July 2018	✓	Court of Appeal reversed first instance judgment in ordering Romania to pay £150m into court as security as a condition of granting a stay of the enforcement of an ICSID award but on the basis that non-compliance by Romania would not of itself lead to the stay being lifted. This was to ensure no conflict with a decision of the European Commission (under appeal) which had held that enforcement of the award would constitute prohibited state aid.
63.	Stati v Kazakhstan [2018] EWCA Civ 1896	10 August 2018	s.101 *	Court of Appeal reversed first instance judge in permitting claimant to discontinue application to enforce New York Convention award after allegations of fraud made by defendant; there was no purpose to the English Court deciding the fraud claims after the application to enforce had been discontinued.

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64.	Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd [2018] EWHC 2713 (Comm)	11 October 2018	s.103 *	Application to set aside order granting Claimant permission to enforce a foreign award under s.103 refused on the merits albeit similar challenges had been made and rejected in other jurisdictions but held not identical issues so no issue estoppel.

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