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BRIEFING

Time Limits for Challenging Arbitral Awards

29 July 2026

A recent decision of the Commercial Court, *E v F* [2026] EWHC 1493 (Comm), has re-affirmed the strict approach English courts take to the statutory time limit for challenging an arbitral award. The Commercial Court refused a State's application to amend a challenge to an arbitral award, where the amendment was sought 162 days after the award was issued, more than five times the statutory 28-day deadline. The application was refused even though the original challenge had been brought before the deadline.

Key issues

1. A late amendment to a challenge engages the court's discretion under section 80(5) of the Arbitration Act 1996 to extend the time limit for bringing a challenge, even where the proposed amendment does not introduce a new ground of challenge.

2. The principles governing the exercise of the court's discretion apply with equal force to amendment applications. The bar is not automatically lower for late amendments than it is for late challenges.

3. Extensions of time are available, but only in genuinely exceptional circumstances. It is therefore important to give urgent consideration to any possible challenge avenues as soon as the relevant arbitral award is issued and to seek advice early.

Legal Framework

An arbitral award issued in an English-seated arbitration is final and binding unless successfully challenged in the High Court. A challenge must be brought within a 28-day period. The date on which that 28-day period will start depends on a variety of factors, including whether there has been an appeal or review process within the arbitration itself (*e.g.* in tiered arbitration processes like GAFTA / FOSFA) and whether a party has made a material application for a correction of the award. The details are set out in section 70 of the Arbitration Act 1996 (the "**Act**"), which was amended by the Arbitration Act 2025 (although the relevant amendments apply only to arbitrations commenced after 1 August 2025). Once the 28-day countdown has started, it is generally applied strictly, since it "*reflects the principle of speedy finality which underpins the Act*" (per Popplewell J as he then was in *Terna Bahrain Holding Co WLL v Al Shamsi* [2012] EWHC 3282 (Comm)).

Section 80(5) of the Act gives the court a discretion to extend the 28-day period. The principles which the court will apply when considering whether to exercise that discretion are well-established, having been first set out by Colman J in *Kalmneft JSC v Glencore International AG* [2001] EWHC QB 461 (the so-called "**Kalmneft factors**"). The primary factors in *Terna* were said to be:

(i) the length of the delay;

(ii) whether, in permitting the time limit to expire and the subsequent delays to occur, the party was acting reasonably in all the circumstances; and

(iii) whether the respondent to the application or the arbitrator caused or contributed to the delay.

In addition, the court will consider:

(iv) whether the respondent would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed;

(v) whether the arbitration has continued during the period of delay and, if so, what impact on its progress or costs the determination of the application might now have;

(vi) the strength of the application; and

(vii) whether in the broadest sense it would be unfair to the applicant to be denied the opportunity of having the application determined.

E v F

The decision in *E v F* issued in June 2026 confirms that the above Kalmneft factors will also be used where an applicant launches a challenge within the 28-day period but subsequently seeks to amend the challenge after that period has expired, even where the amendment does not seek to introduce a new ground of challenge.

E v F concerned a State's challenge of an award issued against it in an investment treaty arbitration on 31 July 2025. The State brought proceedings in the Commercial Court to challenge the award under sections 67 and 68 of the Act on 27 August 2025, within the 28-day period. However, the State applied to amend its claim on 9 January 2026, over five months after the award had been issued. F opposed some of the proposed amendments.

Knowles J rejected the State's argument that the Kalmneft factors applied with less force to an amendment application as compared to an original challenge application. While the existence of an in-time claim was a material point to be considered, it should not automatically make it easier to obtain an extension of the 28-day period. Such an outcome might encourage the scenario where "*the challenge launched in time was based on one bad point and a major wide ranging set of challenges is then sought to be introduced by way of amendment.*"

The State sought to explain the delay by reference to the time required to involve new lawyers and the slower process of obtaining instructions where a state is involved. However, Knowles J was not persuaded that the State had acted reasonably in allowing so much time to pass. In any event, the State described its proposed amendments as "*refinements*", "*merely developments of points already pleaded*" and "*not new*", which may also have contributed to the judge's conclusion that it would not be unfair to refuse the amendments.

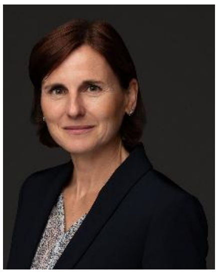
Strict but not absolute

Whilst the court's approach to the 28-day deadline is strict, it does not set an impossible bar for applicants. Extensions are granted in certain circumstances, particularly where there has been fraud. For example:

- In *Minister of Finance (Inc) v International Petroleum Investment Co* [2021] EWHC 2949 (Comm), a challenge issued 511 days out of time was nonetheless permitted. It was alleged that the consent award in an arbitration under a Bilateral Investment Treaty had been procured through the dishonest conduct of Mr Najib Razak, the former Prime Minister of Malaysia, as part of wider fraud. The applicants were Malaysian state entities over which Mr Razak exercised effective control, such that any challenge alleging fraud on his part would have been impossible while he remained in power. The parties agreed that the delay that had accrued while Mr Razak was in power should therefore be excused: the contested delay was therefore the 173 days after Mr Razak left power. Baker J was critical of the applicant for that delay, but ultimately held that it would be unjust to deny it the chance to challenge the award in the particular circumstances of that case.
- *Celtic Bioenergy Ltd v Knowles Ltd* [2017] EWHC 472 (TCC) was a challenge to an award issued in a commercial arbitration. The applicant became aware only after the award was issued that the respondent had withheld correspondence which directly contradicted its case. Jefford J found that the award had been obtained by fraud and allowed the extension of time: the delay in bringing the challenge was a consequence of the fraud and it would be unfair for the challenge not to be determined.

Conclusion

The window for challenging an arbitral award in England is short and the courts have very limited appetite for extending it. *E v F* demonstrates how important it is to get the challenge right first time: courts are unlikely to be sympathetic to late attempts to amend a challenge once the 28-day period has expired. It is therefore important for an aggrieved party to give urgent thought to any possible challenge avenues as soon as the relevant arbitral award is issued and to seek advice early.



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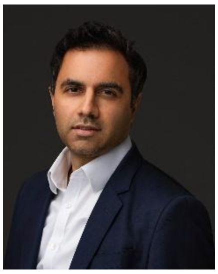

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