

21 KEY ARBITRATION DEVELOPMENTS FROM 2020

17. The English High Court denies enforcement despite the Award debtor's failure to make payment in breach of the Award

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Beware

Section 66 of the Arbitration Act allows for swift enforcement of Awards in England, but recent case law shows **English courts will take a robust approach** and refuse to grant enforcement where the underlying award:

- is **not sufficiently clear**; and
 - **does not establish a clear right** to every aspect of the payment.
- Claimants are therefore advised to **carefully review the dispositive section** of their awards and ensure they are clear enough for enforcement.

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In April 2020, the English High Court warned that it would not enforce awards which fail to establish a **clear 'right to payment'**.

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The Award provided for D to pay C US\$34.6 million plus interest of US\$10.2 million, but **no interest payable if the principal sum was paid on time.**

D paid final instalment of the principal sum 2 weeks late.

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C sought for the full amount to be paid under an **acceleration clause** of the Award, which stated:

*“In the event that the Respondent fails to pay... the Instalments or any part thereof on or before the requisite date, the [principal sum and interest] ...**will become due and owing in full and payable immediately.**”*

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On this basis, C obtained an order under Section 66(1) of the 1996 Arbitration Act "to enforce the operative part of the Award" which included the full amount; principal sum and interest.

D applied to set aside the order and crucially alleged that C had orally agreed final instalment could be delayed.

It was held that the court could not order enforcement of the outstanding sum under Section 66, in a **situation that required further adjudication.**

The outstanding instalment had **fallen due under the acceleration clause of the Award.**

However, since **the Award had not established a right to payment of the accelerated sum,** it had not been adjudicated.

The enforcement **order was therefore set aside.**

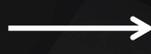
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Source

A v B [2020] EWHC 952 (Comm),

22 April 2020

Link: bit.ly/AvB2020

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