

## 21 KEY ARBITRATION DEVELOPMENTS FROM 2020

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# 9. Compelling witnesses in the UK to give evidence in foreign-seated arbitrations

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Pursuant to section 44(2)(a) of the Arbitration Act, it is possible to **compel** a person in the UK to give **oral witness evidence by deposition** in connection with a **foreign-seated arbitration**.

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*“[T]he English court has the **same powers** under subsection (2)(a) in relation to arbitrations, wherever their seat, as it has in relation to civil proceedings before the High Court or the County Court.”*

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# Significance

- Useful for **critical but possibly uncooperative** third-party witnesses (e.g. an ex-employee)
- An order under section 44(2)(a) has the same force as an order to give evidence before an English Court (i.e. failure to comply will be contempt of Court)
- Confirms the Court's willingness to adopt **broad interpretations** of the Arbitration Act 1996 and opens the door for further debate about **other sub-sections of section 44** applying to non-parties (e.g. orders requiring the preservation of evidence)

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## Source

*A and B v C, D and E (Taking evidence for a foreign seated arbitration)* [2020] EWCA Civ 409

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