

TIME FOR CHALLENGING AN ARBITRATION AWARD

The extent of the residual jurisdiction of the courts to interfere with the awards of arbitrators has always been the subject of much debate between those who believe that the court should have ultimate control and those who argue for finality of awards and the consequent absence of any right of appeal. In England, the balance is struck by allowing appeals and court control of arbitrations in the limited circumstances set out in section 67 (lack of Jurisdiction), section 68 (serious irregularity) and Section 69 (appeal on point of law) of the Arbitration Act 1996. One of the many factors limiting the involvement of the court in reviewing awards is the need under section 70(2) for the application to be made within 28 days of the award. Section 80(5) gives the Court a discretionary power to extend this time limit.

The recent case of *L Brown & Sons Ltd v Crosby Homes (North West) Ltd* [2008] EWHC 817 has reinforced the need to get on with things and comply with the 28 day deadline. In this case, the tribunal made an award in favour of the defendants. The 28 day period for challenging the award expired on 23 November 2007. On 28 January 2008 the claimant applied for an extension of time to issue a section 68 application. The courts are generally slow to grant such extensions on the basis that to approach this issue in any other way would be inconsistent with the policy of the courts not interfering in arbitral proceedings expressed in section 1 of the Arbitration Act. The leading case relating to the circumstances in which an extension of time will be granted is *Kalmneft v Glencore International AG & Anor* [2001] EWHC QB 461, in which Colman J identified seven criteria which are of relevance, the first three of which have been subsequently held to be the most important:

- The length of delay.
- Whether in permitting the time limit to expire and the subsequent delay to occur, the party was acting reasonably in all the circumstances.
- Whether the respondent to the application caused or contributed to the delay.
- Whether that respondent would by reason of the delay suffer irremediable prejudice in addition to mere loss of time if the application proceeded.
- Whether the arbitration had continued during the period of delay and, if so, what impact a determination of the application might have on the progress of the arbitration or the costs incurred.
- The strength of the application.
- Whether in the broadest sense it would be unfair to the applicant to deny him the opportunity to have the application determined.

The court in *Brown* applied these criteria to the facts and held that there was a substantial delay (66 days) for which the claimant (not the defendant) was responsible and for which there was no good reason. The claimant's solicitors had known about the grounds for the application in good time to make a section 68 application within the 28 days and indeed had written to the opponents in connection with such an application. The court also held the claimant's internal staffing problems (which they claimed made it difficult for anybody at the firm to prepare the application) was not a good reason to grant an extension of time because they could have instructed junior counsel to do so.