

CAMPAIGN FOR GREENER ARBITRATIONS

Global Launch of the Green Protocols Public Consultation Draft

Session 1 – 29 January 2021

Session 2 – 3 February 2021



Welcome to the Global Launch of the **Green Protocols**

Working Group



Anish Patel
Three Crowns
anish.patel@threecrownsllp.com



Cherine Foty
Jones Day
cfoty@jonesday.com



Christine Falcicchio
Sopra Legal
christine@sopralegal.com



Kiran Sanghera
HKIAC
ksanghera@hkiac.org



Maguelonne de Brugiere
Herbert Smith Freehills
maguelonne.debrugiere@hsf.com



Nicola Peart
Three Crowns
nicola.peart@threecrownsllp.com



Rekha Rangachari
NYIAC
rrangachari@nyiac.org



Sarah Vasani
Addleshaw Goddard
sarah.vasani@addleshawgoddard.com

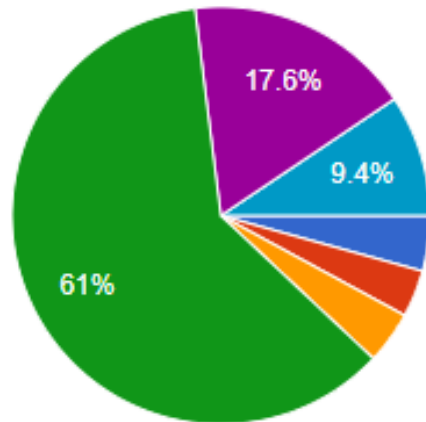


Stuart Bruce
Vice Chair, ICC UK Energy &
Environment Committee
stuart.a.bruce@gmail.com

Welcome to the Global Launch of the **Green Protocols**

In which region are you primarily located?

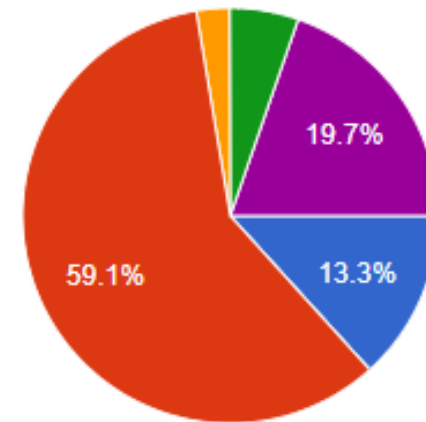
467 responses



- Latin America
- MENA - Middle East North Africa
- Africa
- Europe
- Asia
- US / Canada

Please indicate your primary affiliation

467 responses

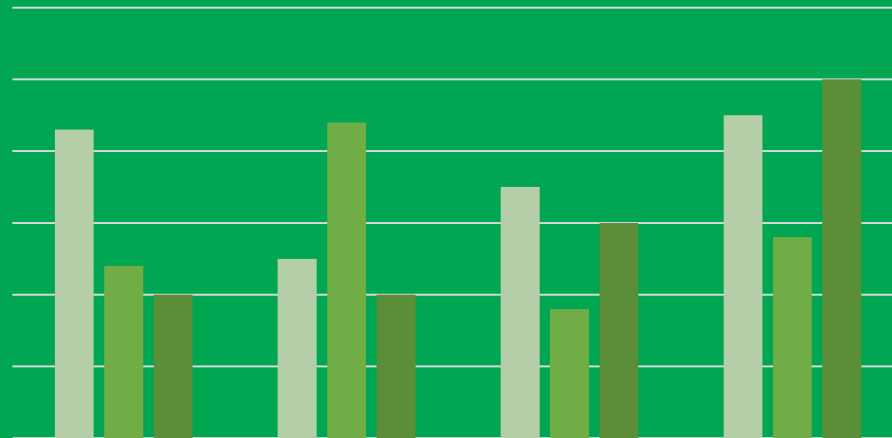


- Arbitrator
- Law Firm / Chambers
- Institution / Hearing Venue / Conference Organiser
- In-House
- Other

POLL

“Energy sustainability is essential - but the word has a much broader meaning. It means long-term thinking about how we manage our businesses, invest in social spending, and plan for the future. This requires vision and leadership, and it requires citizen engagement.”

-Joe Kaeser, Siemens AG



Remarks from Jones Day



Linda Hesse

Partner – Capital Markets Practice (Paris)

The Campaign for **Greener** Arbitrations



Lucy Greenwood
Keynote Speech



Christine Falcicchio

Sopra Legal,

Miami



Sarah Vasani

Addleshaw Goddard,
London



Maguelonne de Brugiere

Herbert Smith Freehills,
London



Kiran Sanghera

HKIAC,
Hong Kong



Rekha Rangachari

NYIAC,
New York



Olivier André

Freshfields Bruckhaus

Deringer, New York



Nicola Peart

Three Crowns, Washington,
DC



Cherine Foty

Jones Day,

Paris

Introduction to the Protocols

The **Green Protocols** provide practical ways to implement the Campaign for **Greener Arbitrations' Guiding Principles**, which asks the arbitration community to commit to:

1. Creating a workspace with a reduced environmental footprint by looking for opportunities to reduce energy consumption and waste;
2. Corresponding electronically, unless hard copy correspondence is expressly needed in the circumstances, while also being mindful that email has a carbon footprint;
3. Encouraging the use of videoconferencing facilities as an alternative to travel (including for the purposes of conducting fact finding or interviews with witnesses);
4. Avoiding printing, requesting the use of electronic rather than hard copies of documents and promoting the use of electronic bundles at hearings;
5. Using, where possible, suppliers and service providers who are committed to reducing their environmental footprint (including for the purposes of arranging an arbitration hearing);
6. Considering and/or suggesting, where appropriate, that witnesses or experts give evidence through videoconferencing facilities, rather than attend hearings in person;
7. Avoiding unnecessary travel and using videoconferencing facilities as an alternative;
8. Considering and questioning the need to fly at all times and offsetting carbon emissions for any arbitration-related travel.

Introduction to the Protocols

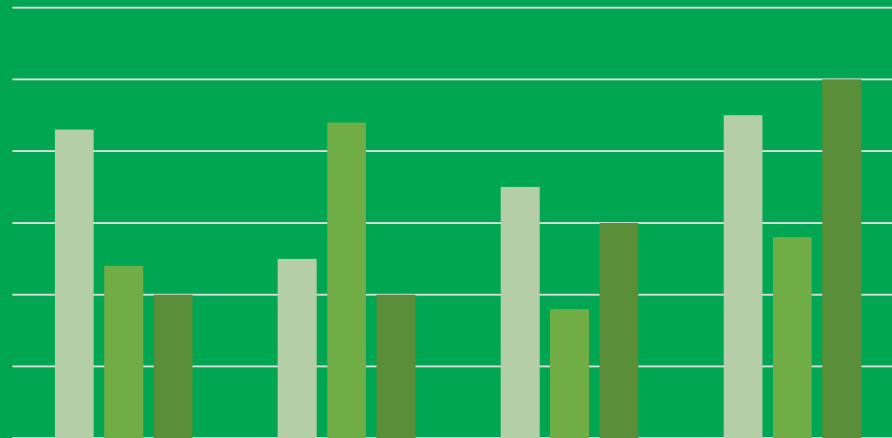


Our behaviour impacts the environment.

POLL

“Sustainability makes good business sense, and we're all on the same team at the end of the day. That's the truth about the human condition.”

-Paul Polman, former head of Unilever



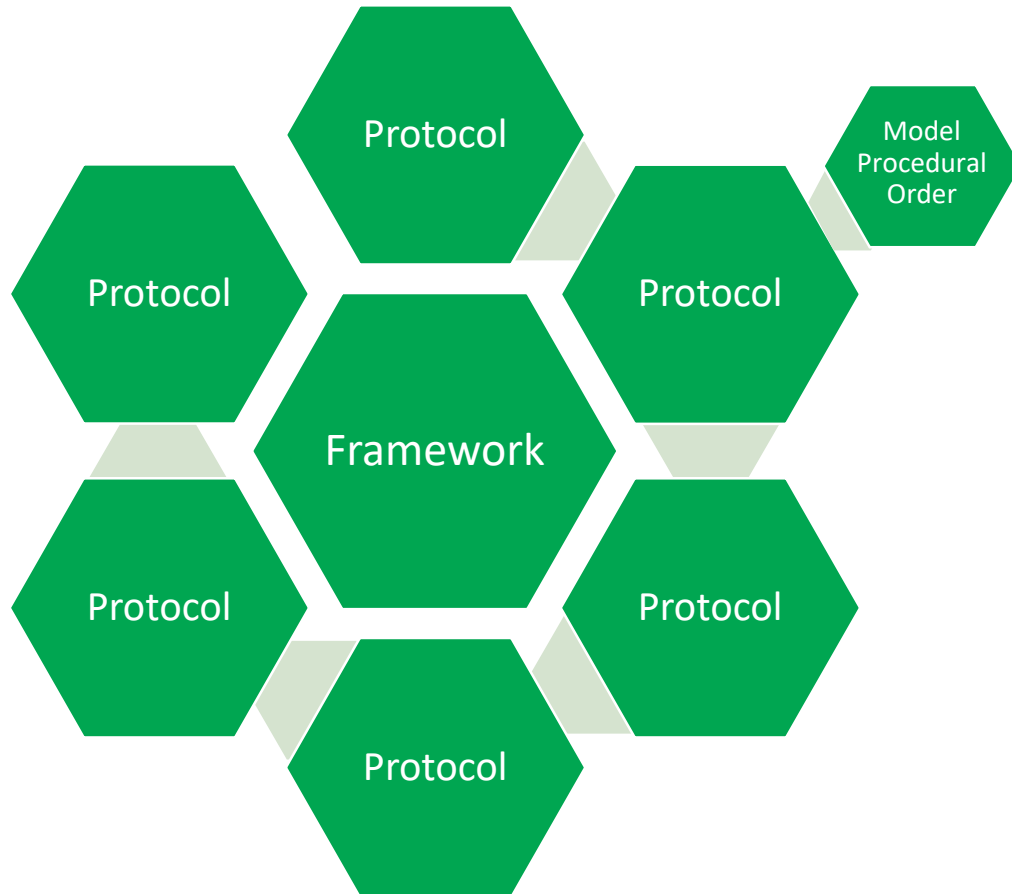
Introduction to the Protocols

Three Main Areas of Focus

The Campaign's work indicates that by focusing on **three areas**, practitioners could substantially reduce carbon emissions.

1. Adopting **clean forms of energy**
2. Reducing use of **long-haul travel**
3. **Reducing waste**, for example by eliminating hard copy filings altogether

Introduction to the Protocols



1

Framework

6

Green Protocols

1

Model Procedural Order

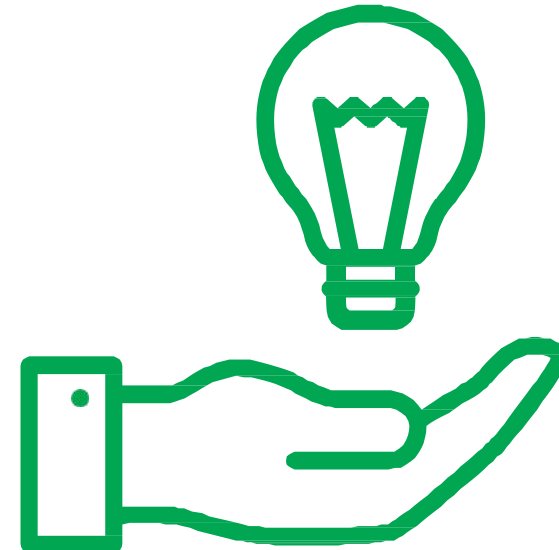
Introduction to the Protocols

Selecting the Relevant Green Protocol

- ❖ The **Green Protocol for Arbitral Proceedings** provides Parties and arbitrators with tangible measures to implement in specific arbitral proceedings by party agreement or by Tribunal order.

The **Model Green Procedural Order** provides draft language which can be easily adopted by Tribunals to implement sustainability measures in the conduct of an arbitration.

- ❖ The **Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration** provides legal advisors and their employees with suggested sustainability measures for minimising their environmental impact which can be integrated into daily operations or adopted on a case by case basis.
- ❖ The **Green Protocol for Arbitrators** provides individual arbitrators with practical guidance to minimise their environmental impact during the course of arbitral proceedings.
- ❖ The **Green Protocol for Arbitral Institutions** provides arbitral institutions with practical guidance on minimising their environmental impact.

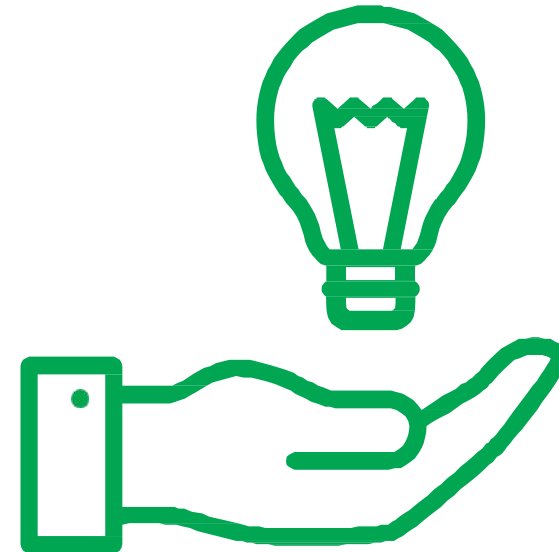


Introduction to the Protocols

Selecting the Relevant Green Protocol

In addition to arbitration proceedings, the **Green Protocols** also contribute measures which can be adopted by the wider arbitration community, including those who organise conferences and provide hearing venues.

- ❖ The **Green Protocol for Arbitration Conferences** suggests measures which can be adopted to reduce the environmental impact of arbitration conferences.
- ❖ The **Green Protocol for Arbitration Hearing Venues** provides arbitration facilities and hearing centres with measures to minimise their environmental impact as regards their daily operating procedures or as related to a particular arbitration.



Introduction to the Protocols

Sustainable Measures

The sustainable measures in the **Green Protocols** focus on the use of clean energy, the avoidance or reduction of travel, and the avoidance or reduction of waste. These areas are specifically addressed under the following categories:

- ❖ Using clean energy
- ❖ Reducing energy consumption
- ❖ Minimising printing and use of paper
- ❖ Encouraging recycling
- ❖ Limiting use of single use items/eliminating plastic
- ❖ Partnering with “green” organisations
- ❖ Travelling responsibly
- ❖ Incentivising staff
- ❖ Engaging in social responsibility initiatives
- ❖ Offsetting carbon emissions



Introduction to the Protocols

Adopting Appropriate Sustainable Measures

In determining which sustainable measures are appropriate for a particular arbitration, the Parties or the Tribunal, as appropriate, should consider, amongst other matters:

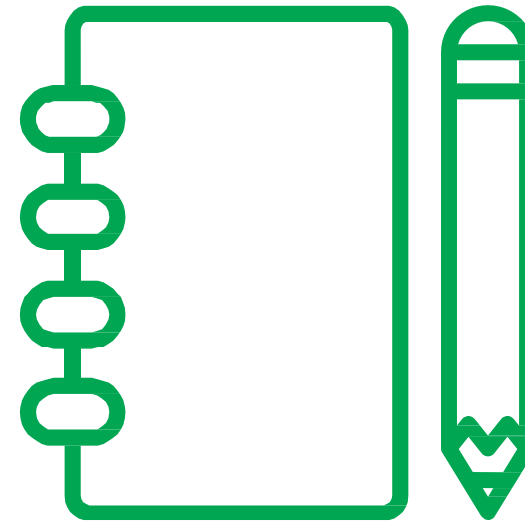
1. the applicable law(s), including but not limited to: the law governing the dispute; requirements of the seat of arbitration; the requirements in jurisdictions where Parties may seek to enforce their award; and the institutional or ad hoc procedural rules adopted;
2. the size of the arbitration, including: the number of Parties; the location of the Parties and the arbitrators; the anticipated volume of witness and expert evidence; the range of issues in dispute; and the complexity of the issues;
3. the arbitrators' and Parties' ability to communicate and prepare documents electronically, including the availability and reliability of such electronic resources;
4. the burden and costs of implementing sustainable measures incurred by the Parties, arbitrators and/or the administering institutions;
5. the impact of any such measures on the efficiency of the arbitral process;
6. the impact of any such measures on the diversity of appointments of counsel and arbitrators; and
7. the availability of cybersecurity measures to protect the integrity and confidentiality of arbitral proceedings.



Introduction to the Protocols

Application of the Framework and Green Protocols

The Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement unless and to the extent the Parties so agree (either in the arbitration agreement or subsequently) or the Tribunal so orders. The Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.



Introduction to the Protocols

The Focus of the Consultation Period

Through this public consultation, comment is now sought on the Framework and Protocols. Having benefitted from the Steering Committee's review, whose members comprise a number of experienced arbitration users, the Working Group is most interested in:

- ❖ **Best environmental practices** that might not have been considered within each Protocol
- ❖ **Whether the language should be mandatory or opt-in.** Specifically, on this point the Working Group hopes that when using language from the Protocols that they are adopted almost verbatim, however it recognises that in some instances stronger language might not be possible for certain users
- ❖ **Whether users see a benefit** to each of these Protocols, and can they see them being adopted either whole or in part.

The Working Group **seeks to avoid a rewrite** of each Protocol, and their provisions, and is instead focused on the above few points.



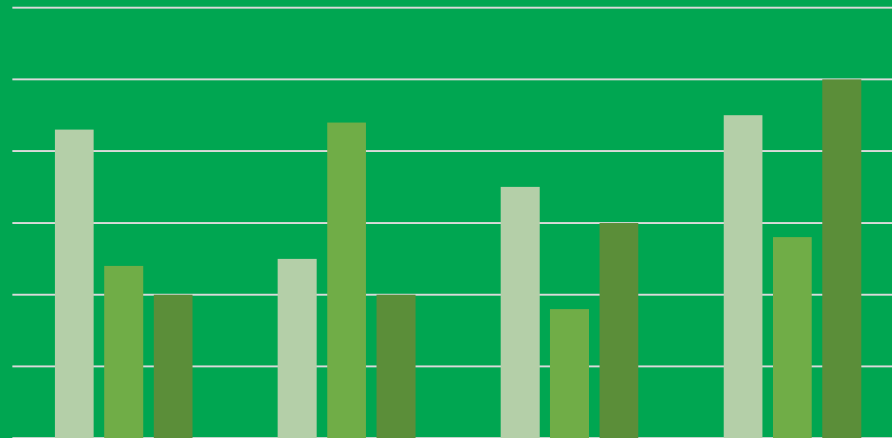
GREEN
PROTOCOLS
CONSULTATION
PAPER

Send feedback to:

protocols@greenerarbitrations.com

by mid-March 2021

POLL



“We must shift our thinking away from short-term gain toward long-term investment and sustainability, and always have the next generations in mind with every decision we make.”

-Deb Haaland, US Representative (D-N.M.), Pending nominee for US Secretary of Interior



20,000 trees

Green Protocol for Arbitral Proceedings



Section I. Initial Commitment



Section II. Conduct of Proceedings



Section III. Written Submissions and Documentary Evidence



Section IV. Document Production



Section V. Witnesses and Experts Preparation



Section VI. Hearings



Section VII. Settlements



Section VIII. Travel Responsibly



Section IX. Offsetting Carbon Emissions

Provides Parties and arbitrators with **tangible measures to implement in specific arbitral proceedings** by party agreement or by Tribunal order.

INITIAL COMMITMENT

Tribunals may officially adopt this Green Protocol for Arbitral Proceedings or component parts thereof as guidance OR as part of a procedural order containing supplementary rules for the proceedings.

For the purposes of the latter, Tribunals and Parties are referred to the [Model Procedural Order](#) components thereof, as indicated below for standardised language.

OR

Parties may incorporate adherence to this Green Protocol for Arbitral Proceedings or component parts thereof into their arbitration agreements as guidance OR as mandatory provisions, to supplement the relevant arbitral rules.

Model **Green** Procedural Order



Section I. Environmental Purpose



Section II. Communications



Section II. Conduct of Proceedings



Section III. Written Submissions and Documentary Evidence



Section IV. Document Production



Section V. Witnesses and Experts Preparation



Section VI. Hearings













Section VII. Travel



Section VIII. Offsetting

Provides **draft language** which can be easily adopted by Tribunals **to implement sustainability measures in the conduct of an arbitration.**

Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration

-  **Section I.** Initial Commitment
-  **Section II.** Use of Green Energy
-  **Section III.** Reduce Energy Consumption
-  **Section IV.** Electronic Operations
-  **Section V.** Legal Advisor Staff
-  **Section VI.** Minimise Printing and Use of Paper
-  **Section VII.** Encourage Recycling
-  **Section VIII.** Limit Use of Single Use Items/Eliminate Plastic
-  **Section IX.** Partner with “Green” Organisations
-  **Section X.** Travel Responsibly
-  **Section XI.** Incentivisation
-  **Section XII.** Social Responsibility
-  **Section XIII.** Offsetting Carbon Emissions

Provides legal advisors and their employees with **suggested sustainability measures** for minimising their environmental impact **which can be integrated into daily operations or adopted on a case by case basis.**

INITIAL COMMITMENT

- A. Legal Advisors commit to work with their leadership teams, with a view to reviewing existing environmental policies and practices and, where appropriate, considering and implementing recommendations from this Green Protocol.
- B. Alternatively, Legal Advisors may appoint “Green Ambassadors” whose role shall be to help develop policies and best practices within the firm, based on these recommendations. Green Ambassadors should periodically report to their senior management on the effect of these policies and best practices.

Green Protocol for Arbitrators



Section I. Initial Commitment



Section II. Minimise Printing and Use of Paper



Section III. Conduct of Proceedings



Section IV. Hearings



Section V. Working Environment



Section VI. Encourage Recycling














Section VII. Offsetting Carbon Emissions

Provides individual arbitrators with **practical guidance** to minimise the environmental impact of their practice, including during the course of **arbitral proceedings**.

INITIAL COMMITMENT

Arbitrators will endeavor to take all practicable steps to ensure that they minimise the environmental impact of their practice.






Green Protocol for Arbitral Institutions

-  **Section I.** Initial Commitment
-  **Section II.** Use of Green Energy
-  **Section III.** Reduce Energy Consumption
-  **Section IV.** Minimise Printing and Use of Paper
-  **Section V.** Encourage Recycling
-  **Section VI.** Limit Use of Single Use Items/Eliminate Plastic
-  **Section VII.** Partner with “Green” Organisations
-  **Section VIII.** Travel Responsibly
-  **Section IX.** Incentivise Staff
-  **Section X.** Social Responsibility
-  **Section XI.** Offsetting Carbon Emissions

Provides arbitral institutions with **practical guidance** on minimising their environmental impact.

INITIAL COMMITMENT
Arbitral Institutions commit to working with their staff and leadership teams, with a view to reviewing existing environmental policies and practices and, where appropriate, considering and implementing recommendations from this Protocol.

Green Protocol for Arbitration Conferences











-  **Section I.** Initial Commitment
-  **Section II.** Venue Selection
-  **Section III.** Event Planning
-  **Section IV.** Conference Registration and Materials
-  **Section V.** Conference Procedures
-  **Section VI.** Use of Green Energy
-  **Section VII.** Reduce Energy Consumption
-  **Section VIII.** Minimise Printing and Use of Paper
-  **Section IX.** Encourage Recycling
-  **Section X.** Limit Use of Single Use Items/Eliminate Plastic
-  **Section XI.** Partner with “Green” Organisations
-  **Section XII.** Travel Responsibly
-  **Section XIII.** Post-Conference
-  **Section XIV.** Offsetting Carbon Emissions

Suggests **measures** which can be adopted to reduce the environmental impact of **arbitration conferences**.

INITIAL COMMITMENT

- A. Organisers of arbitration conferences shall adopt this Green Protocol for Arbitration Conferences in preparation of events.
- B. Those Organisers responsible for planning multiple conferences annually shall consider conducting some events via virtual platform rather than in-person to reduce the carbon footprint of the events.

Green Protocol for Arbitration Hearing Venues

-  **Section I.** Initial Commitment
-  **Section II.** Use of Green Energy
-  **Section III.** Reduce Energy Consumption
-  **Section IV.** Conduct of Proceedings
-  **Section V.** Minimise Printing and Use of Paper
-  **Section VI.** Encourage Recycling
-  **Section VI.** Limit Use of Single Use Items/Eliminate Plastic
-  **Section VII.** Partner with “Green” Organisations
-  **Section VIII.** Travel Responsibly
-  **Section X.** Offsetting Carbon Emissions

Provides **arbitration facilities and hearing centres** with measures to minimise their environmental impact as regards their **daily operating procedures** or as related to a **particular arbitration**.

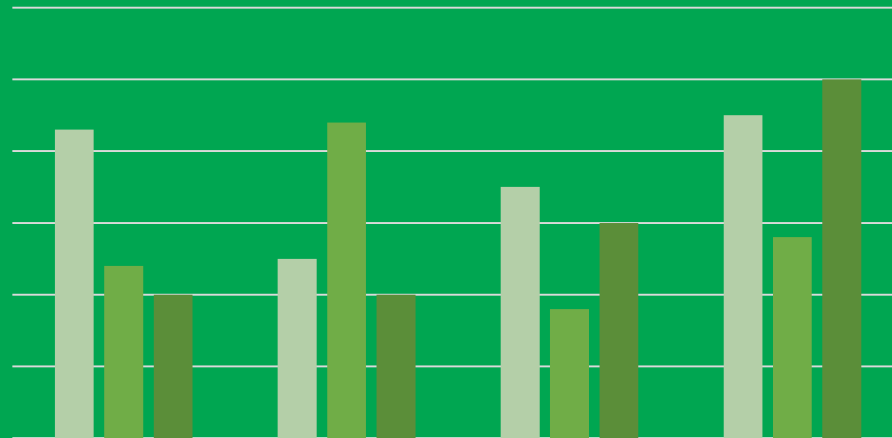
INITIAL COMMITMENT

- A. Facilitators commit to adopt this Green Protocol for Arbitration Hearing Venues or component parts thereof as part of daily operating procedures.
- B. Alternatively, Parties may request venue adherence to this Green Protocol for Arbitration Hearing Venues or component parts thereof, in preparation of and for the duration of a particular matter.

POLL

“The moment we decide to fulfil something, we can do anything.”

- *Greta Thunberg, addressing the Houses of Parliament, UK, on the climate crisis*



Q&A

Q&A Session

Conclusion

The Focus of the Consultation Period

Through this public consultation, comment is now sought on the Framework and Protocols. Having benefitted from the Steering Committee's review, whose members comprise a number of experienced arbitration users, the Working Group is most interested in:

- ❖ **Best environmental practices** that might not have been considered within each Protocol
- ❖ **Whether the language should be mandatory or opt-in.** Specifically, on this point the Working Group hopes that when using language from the Protocols that they are adopted almost verbatim, however it recognises that in some instances stronger language might not be possible for certain users
- ❖ **Whether users see a benefit** to each of these Protocols, and can they see them being adopted either whole or in part.

The Working Group **seeks to avoid a rewrite** of each Protocol, and their provisions, and is instead focused on the above few points.



GREEN
PROTOCOLS
CONSULTATION
PAPER

Send feedback to:

protocols@greenerarbitrations.com

by mid-March 2021