

# A nudge in the right direction



Lucy Greenwood & Leonor Díaz-Córdova discuss impactful steps we can all take towards a greener future in arbitration

## IN BRIEF

► With an ever more urgent focus on the need to combat climate change, it is essential that human behaviour is 'nudged' towards the greener option as a default choice.

It is now almost universally accepted that human activity has caused climate change, and that behavioural changes are an essential mitigation measure. The recent United Nations Climate Change Conference (COP26), which took place last November, has produced the 'Glasgow Climate Pact', which has been described as neither a triumph nor a train wreck.

Aside from the limitations of international diplomacy, a greater appreciation of the scale of the climate change emergency has led to a welcome focus on accelerating action to combat it. The question for us all is how we achieve the collective behavioural change that is urgently required, and it is here that principles of behavioural economics may be applied to facilitate that change.

Economists Richard H Thaler and Cass R Sunstein introduced the concept of 'nudging' to the wider public in a 2008 book titled *Nudge: Improving Decisions About Health, Wealth and Happiness*, with a revised edition released in 2021.

Nudges can be particularly impactful given we all suffer from status quo bias, preferring inertia over action and opting for the path of least resistance. Yet, inertia is not an option in the fight against climate change. International arbitration practitioners have been slow to wake up to the issue in our industry; they cannot be slow to act. There needs to be focused, sustainable change in our practices to reduce our collective carbon footprint. But we need a significant nudge to get us there.

## First rule: make it easy

The Campaign for Greener Arbitrations has paved the way to make it easy to go green by promoting a series of Green Protocols, intended to guide the effort to reduce the environmental impact of international arbitrations.

- 1. The Green Protocol for Arbitral Proceedings and the Model Green Procedural Order:** This protocol (and accompanying order) outlines a series of measures suggested to conduct proceedings in a more environmentally sensitive manner. Examples of measures contained in this protocol include conducting remote proceedings, refraining from printing materials and avoiding unnecessary travel.
- 2. The Green Protocol for Law Firms, Chambers and Legal Service Providers Working in Arbitration:** This protocol shifts focus to the day-to-day operations of organisations. To encourage compliance among colleagues, firms are urged to appoint 'Green Ambassadors' to develop policies and best practices within their organisations.
- 3. The Green Protocol for Arbitrators:** This protocol is a guide for arbitrators; the key components of energy, travel and waste considerations are noted as they pertain to the working environment and practices of arbitrators.
- 4. The Green Protocol for Arbitral Institutions:** With direct input from institutional representatives, this protocol was developed to provide guidance for both the internal operations of institutions and in their management of arbitrations.

- 5. The Green Protocol for Arbitration Conferences:** Serious consideration should be given to hosting virtual events rather than in-person events, particularly for those who plan multiple conferences annually.
- 6. The Green Protocol for Arbitration Hearing Venues:** Facilitators of hearing venue spaces are encouraged to employ technology platforms to promote digital presentations and file sharing as a way to reduce the reliance on paper during proceedings.

## Second rule: make it the default

The second rule of a successful 'nudge' is to make it a default position: every part of an international arbitration practice must be viewed through an environmental lens. One of the main action points on this is with regards to travel. Prior to the pandemic we would travel for initial kick-off meetings, to finalise submissions, to meet and interview witnesses or experts, for procedural conferences, for hearings, for networking, for conferences.

The greatest green challenge that arbitration practitioners face as we emerge from the pandemic will be making travel the exception, rather than the norm. Where travel is considered necessary, there are steps that can be taken to ensure that it is done in a more environmentally friendly way. For example, is a flight necessary, or can the trip reasonably be done by train? Making it a default position that we will not travel will mean that when we do travel, we do so on an informed basis.

## Conclusion

The Green Protocols are a nudge in the right direction; making remote hearings the default option is another meaningful nudge.

As a community we have been slow to wake up to the issue of climate change. Now we are awake, we need to move quickly to implement the changes to our practices that are urgently required.

We are confident that the arbitration community has a strong collective will, and that the efforts to fight climate change will increase. Let's view all aspects of arbitration through an environmental lens, let's make green choices easy, and let's make them the default choice.

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