

# INSIDE ARBITRATION: WHETHER VIRTUAL OR PHYSICAL, WE CAN DO MORE TO MAKE ARBITRATION HEARINGS SUSTAINABLE

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Legal Briefings

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Our study comparing the carbon impact and expense of virtual hearings with in-person equivalents reveals in person hearings have on average 19 times the carbon footprint of virtual hearings, and are 6% more expensive.

At a stroke, the Covid-19 pandemic normalised virtual arbitration hearings. The disputes community made use of arbitration's procedural flexibility to quickly adapt processes to ensure ongoing proceedings were not halted by the global travel restrictions as the pandemic raged. With the world now reopening, many users of international arbitration are at a crossroads: return to old habits and hold hearings in-person or keep certain pandemic practices and make use of virtual hearings?

To get to the bottom of whether virtual hearings are less carbon intensive and expensive than in-person alternatives and to identify the most environmentally unfriendly aspects of each, Herbert Smith Freehills recently conducted a case study. This culminated in a comparison of medium-sized international arbitration seated in London, using metrics from our database of cases.

This research followed on from our [previous study](#) into the carbon footprint of legal counsel in proceedings (throughout the duration of an arbitration from start to finish). Following the results of these studies, our London arbitration team has launched an environmental sustainability initiative aimed at helping our clients reduce the carbon footprint of their arbitrations by introducing changes to the way our cases are run. As part of our relationship with clients, throughout their arbitrations, we can explore ways of working that will directly impact on the carbon footprint of the proceedings, and help clients meet their own sustainability goals. Get in touch if you would like to hear more.

## **IN-PERSON HEARINGS - A FAR GREATER CARBON FOOTPRINT AND HIGHER COSTS**

Our case study comparing in-person hearings with procedurally similar virtual hearings identified the in-person hearing in our case study as giving rise to 111 tonnes of carbon dioxide equivalent (CO<sub>2</sub>e). This is **19 times** that of the carbon footprint of an identical hearing taking place virtually (estimated to give rise to 6 tonnes CO<sub>2</sub>e). This CO<sub>2</sub>e difference is the equivalent of the average amount of CO<sub>2</sub> generated by 15 people in the EU during an [entire year](#). The comparative analysis also found in-person hearings around **6% more expensive** than virtual hearings - a difference translating into tens of thousands of pounds sterling.

### **Striving for sustainability in the way we work**

At HSF, we have stringent sustainability targets, as do many of our clients. As a business, we strive to find fresh ways to ensure we work in a more environmentally sound fashion, and assist clients in meeting their targets. We can partner with you to run your arbitrations in a greener way. This can help:

- minimise your carbon footprint and reduce that of your arbitrations;
- assist in meeting your own sustainability targets and goals;
- align the way we work with your sustainable business model;
- protect and strengthen your brand value and reputation.

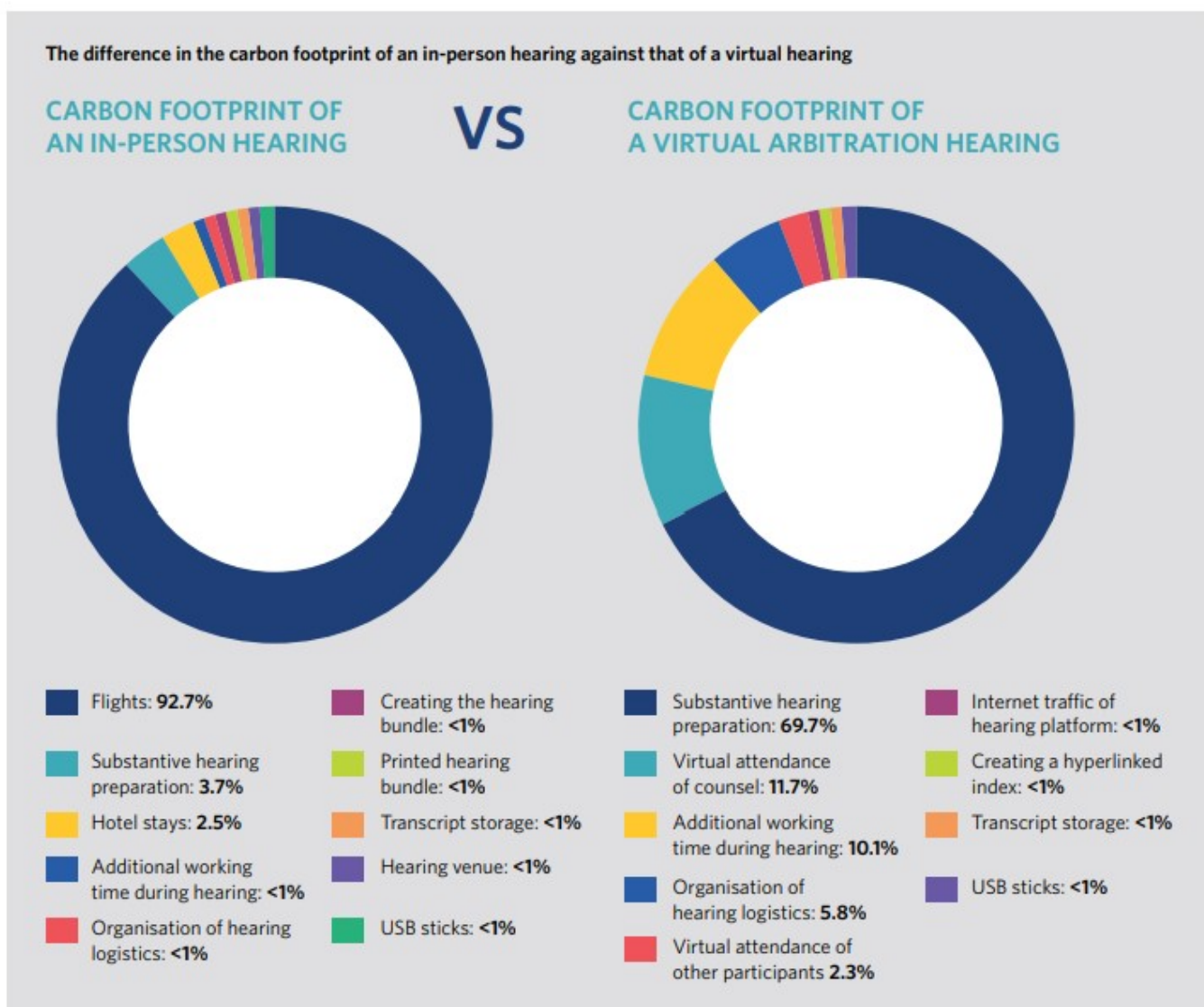
## **SOURCES AND METHODOLOGY**

The case study analyses the carbon footprint and costs of two notional arbitration hearings (one virtual and one in-person) in a medium-sized international commercial arbitration seated in London.

The study is based on data collated from our matters; our experience of preparing for and attending hearings of both formats over the past two and a half years; and data from external sources.<sup>1</sup>

The case study assumed a five-day hearing, comprising eight sitting hours every day including breaks. It assumed any in-person hearing would take place in London, with a number of participants being required to travel for the hearing as set out below, and any virtual hearing would be hosted on Zoom.

The review accounted for the emissions and costs associated with the preparation for the hearing by the parties' counsel teams, as well as attendance at the hearing by the parties, their counsel, witnesses (both factual and experts) and the tribunal. It also accounted for the carbon footprint and costs associated with the hearing venue and provider of the virtual hearing platform (for in-person and virtual hearings respectively).<sup>2</sup>



## CASE STUDY INSIGHTS

### *Carbon footprint of in-person hearings against virtual hearings*

In the case of in-person hearings, the top three contributors to carbon emissions were identified as:

- **Travel:** Flights (coming in at around 103 tonnes CO2e) accounted for **92.7%** of the total carbon emissions of the hearing;
- **Substantive hearing preparation:** The time spent by the counsel teams in preparing for the hearing (including, for example, drafting submissions and cross-examinations, but excluding time spent regarding the logistical preparations for the hearing) accounted for **3.7%** of the emissions;
- **Accommodation:** The third largest contributor of emissions were the **hotel stays**, for those participants who are assumed to have travelled to London for the hearing, which amounted to **2.5%** of the emissions identified.

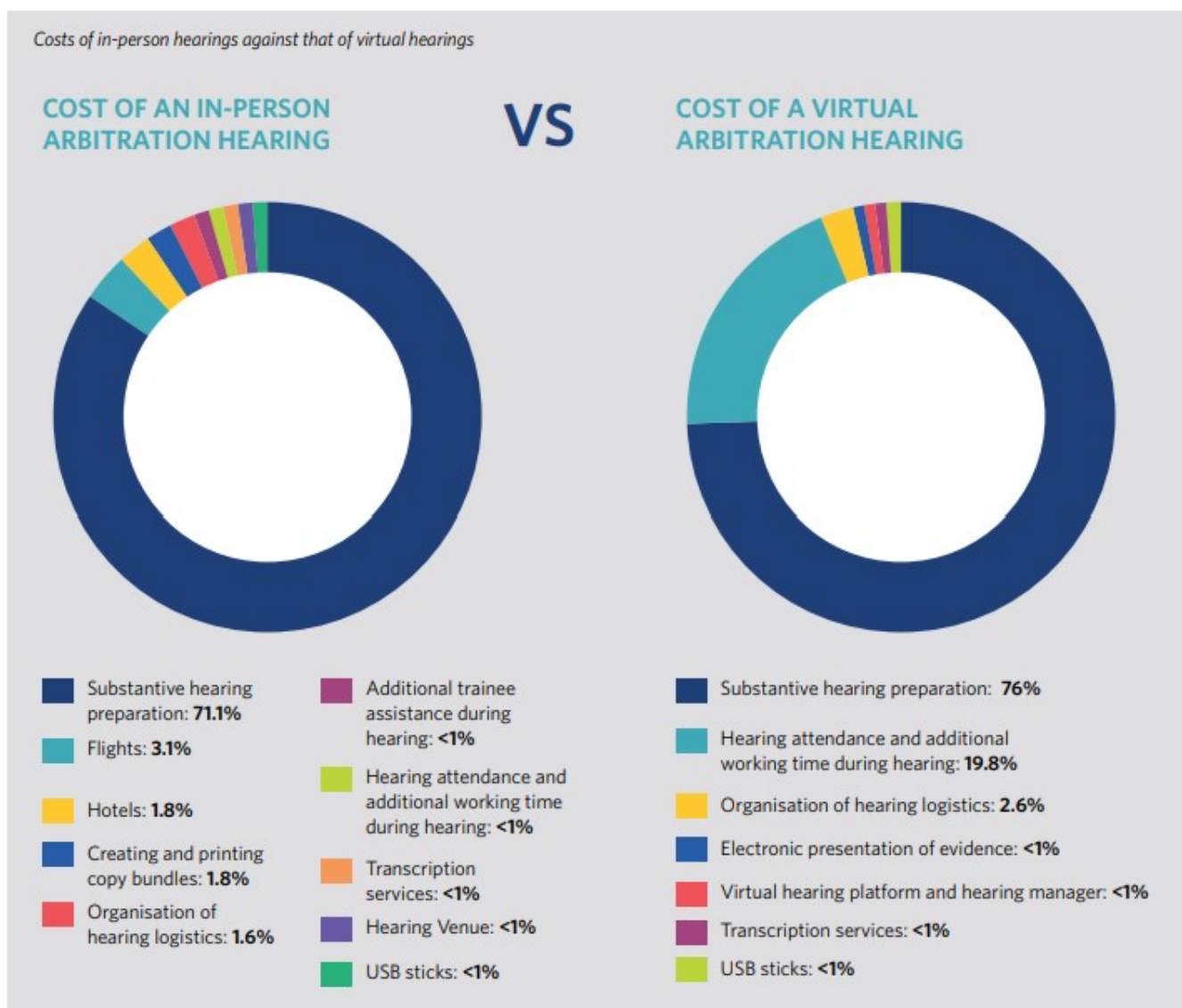
Even though the remaining carbon contributors identified in the charts above amount to less than 1% each of the total carbon emissions, they should not be written off as insignificant. The cumulative carbon footprint of these remaining categories remains greater than the carbon footprint of a virtual hearing in its entirety.

Two of these three top emissions contributors fall away when looking at virtual hearings (travel and accommodation) – unsurprisingly the carbon footprint of virtual hearings therefore looks vastly different.

For virtual hearings:

- **Substantive hearing preparation** accounts for almost **70%** of the carbon emissions associated with a virtual hearing, despite being the same in terms of hours as for an in-person hearing;
- **Virtual attendance of counsel**, assumed to have joined from their respective offices, amounts to just under **12%** of the total emissions; and
- **Virtual attendance of other participants**, such as witnesses and arbitrators (who are presumed to have joined from a home office) accounts for just over **2%** of the virtual hearing emissions.

Other categories of emissions, such as those relating to the hyperlinked bundle, USB sticks and internet traffic from the hearing platform, amount to less than 1% of the total emissions each.



A cost comparison of different aspects of the hearing conducted identified significant costs savings associated with virtual hearings (up to 6%), despite the additional time required to co-ordinate, and host a virtual hearing.

While substantive hearing preparation makes up the majority of costs for both hearing types, the **lack of flights, hotels and hard copy bundle costs** (which collectively represent around 7% of the total in-person hearing costs) all translate into savings for the parties. Although organising the logistics of a virtual hearing was found to be more expensive than organising an in-person hearing, the overall cost was relatively low.

In any event, this is a cost that can be expected to decrease over time, as hearing providers and practitioners become more familiar with organising virtual hearings and the process becomes more efficient.

## CONCLUSION: WHICH FORMAT TO GO FOR?

The short answer is: it depends. Deciding whether to hold a hearing virtually or in-person involves a range of practical and strategic considerations. The environmental impact and cost of the hearing are just two such factors to take into account. They compete with others such as the location and availability of participants, the amount of witness evidence, the number of languages used in the hearing, the availability of reliable technology and considerations regarding the format that would be most conducive to effective advocacy in a given case.

Rather than being understood as a blanket endorsement of virtual hearings, the true value of the HSF case study lies in identifying the most carbon-intensive aspects of hearings. This enables parties to reduce their environmental impact and reduce their carbon footprint where possible, even if a virtual hearing is not the best choice for the case at hand.

### **At HSF, we are committed to reaching net zero by 2030**

#### **Our recent achievements :**

In FY 20/21, we reduced our overall emissions by 76%.

- 100% of our energy in the London, Belfast, Brussels and Madrid offices comes from renewable sources.
- We are one of 13 of the world's leading companies that form the Global Alliance to support and help scale the innovative and ground-breaking solutions developed by the finalists of The Earthshot Prize.
- Working with the Science Based Targets Initiative, we have set a number of ambitious targets, including:
  - transitioning to 100% renewable energy where possible;
  - offsetting part of the carbon emissions we produce from 2020 to 2026; and
  - removing any emissions produced to achieve net zero by 2030.

We are signatories of the [Green Pledge \(Arbitration\)](#) and the [Green Litigation Pledge](#) and our team members sit on the steering committees for both.

#### **Our carbon offsetting project: The Sichuan Household Biogas Programme**

- In support of our goal to reduce our global carbon footprint, we offset the CO2 emissions associated with the travel to Hong Kong and Sydney for our most recent global partners conferences.
- Through this carbon offsetting project, we have supported over 2,800 impoverished families in rural China so far by helping fund an initiative that gives low-income people access to clean, convenient and free biogas for cooking, heating and lighting.
- We intend to grow this initiative and support 5,000 families by 2026.

For more information, or to request a copy of our brochure "Towards Greener Arbitrations: Achieving greater environmental sustainability in the way we work", contact partners Craig Tevendale and Amal Bouchenaki, senior associate Maguelonne de Brugiere, associate Olga Dementyeva, or your usual Herbert Smith Freehills representative.

1. This includes data from a leading London hearing centre (for in-person hearings) and data relating to the energy consumption of attending Zoom calls (for virtual hearings). Owing to a lack of available data from third party suppliers, we did not consider the emissions of third-party transcribers, but included their costs.
2. This article is based on an article that was first published in GAR on 12 April 2022

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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