

Supporting sustainable conduct and behaviours during the litigation lifecycle

Greener Litigation's principal objective is to support the courts and court users in becoming carbon neutral (and ultimately carbon negative) and to encourage lasting change in litigation practice.

Ahead of its all-member meeting in September 2022, Greener Litigation surveyed members on how they think the project could make the greatest impact. Almost 23% of members answered, "by helping members to understand the carbon impact of their practices" or "enabling members to reduce their carbon impact through technology". A further 33% answered "by driving cultural change within the legal profession".

This short guide aims to help signatories to the Greener Litigation Pledge, and all members of the legal profession in England and Wales, to better understand the ways in which they can implement the behaviours encouraged by the Greener Litigation Pledge in their day-to-day practice during key litigation stages. Many (if not most) of these considerations will apply equally to dispute resolution professionals outside of England and Wales.

The sections below follow the litigation lifecycle, highlighting steps at each stage which members of the legal profession and others involved in litigation in England and Wales can take to reduce their carbon emissions. They are not intended to be prescriptive, but to inspire and enable change. The considerations set out below may also apply to other forms of dispute resolution, such as ADR.

In each case, regard must of course be had to the Civil Procedure Rules, and the relevant Court Guide. Some references to the CPR and Court Guides have been provided in this toolkit; they are intended to be useful pointers rather than an exhaustive list.

At the outset of any matter, consider whether to draw the Greener Litigation Pledge commitments to the attention of your client, law firms representing the other parties, and any barristers, experts or other parties involved in the dispute. You may wish to use the pre-action wording on sustainable conduct, the wording on sustainable conduct for directions (CMC) or the wording for use at the Pre Trial Review / directions for trial which are all available on the [Resources section](#) of the Greener Litigation Pledge website.

The following references are correct as at April 2024.

Stage of the matter

At all stages		CPR / court guides – useful pointers
Documents	<p>Be mindful of how many documents (including soft copy / electronic) are created – each uses energy to create, and to store. Consider using cloud-based case management/ case preparation tools that allow for online collaboration, avoiding the proliferation of duplicates.</p> <p>Although printing hard copy documents is usually less environmentally-friendly, emails and data storage still have a carbon footprint.</p> <p>Consider using an ink-saving font.</p>	<p>CPR 1.4(2)(h) and (l)</p> <p>Commercial Court Guide – B.2 and Appendix 12</p> <p>Technology and Construction Court Guide – Section 3.8</p>
Printing	<p>Avoid printing wherever possible. Where printing is a must, unless otherwise required it should be black and white, double-sided and ideally use recycled paper and sustainable printer inks.</p>	<p>CPR PD 32 para 27.15</p>

Bundles	<p>Even where electronic bundles are not compulsory or the norm, consider whether parties, their legal representatives and the court can use electronic bundles, to the exclusion of hard copies.</p> <p>Where one or more party requires hard copy bundles, consider whether all parts of a bundle have to be printed, or only some.</p> <p>When sending hard copy bundles, consider the most environmentally friendly way to do so. Consider using couriers whose vehicle fleets are electric, or couriers/delivery services local to the area to minimise unnecessary mileage.</p>	<p>CPR PD 32 paras 27.6, 27.9, 27.11 & 27.15 and CPR PD 51O paras 10 & 13</p> <p>Commercial Court Guide – Appendix 7</p> <p>Employment Tribunal Presidential Guidance – Guidance Note 2</p> <p>Chancery Guide – Chapter 21, paras 21.65 and 21.67 and Appendix X</p> <p>King’s Bench Guide – paras 3.41 – 3.45</p> <p>Technology and Construction Court Guide – Sections 5.3.6, 5.11, 15.2.4, 15.7.3 and Appendix J</p>
Travel	<p>Where possible, travel should be kept to a minimum. This includes travelling for meetings which could be conducted online, and for hearings which could be conducted remotely (as to which, see below).</p> <p>Where travel is necessary, thought should be given to the most sustainable mode of transport, including sharing transport.</p> <p>Bear in mind that if you are within walking distance of the other party/parties to a meeting, a meeting in person may be more sustainable than having a virtual meeting.</p>	
Procurement and service providers	<p>When selecting litigation service providers (e.g. document hosting platforms, transcription services, catering provision) ask about the provider’s environmental commitments and action, and make that part of the decision-making process.</p> <p>Environmental credentials or commitments to consider include whether the services provider has an Environmental Policy in place, whether the provider measures their carbon footprint and if emission reduction targets have been set and validated.</p>	
Email and messaging	<p>Every email has a carbon footprint. Consider whether an email is necessary and who needs to receive it.</p> <p>Sharing documents via e-mail will create duplicates stored in different servers, and therefore will typically use more energy. Consider using a shared drive or case management/case preparation provider that allows for collaboration and visualisation of documents by different stakeholders under secure access controls.</p> <p>Consider altering the settings in your Teams/ Slack accounts, so that old messages are deleted after a set period, in line with your organisation’s data retention policies.</p>	<p>CPR 6.15 and CPR PD 6A 4.1-4.3</p> <p>Commercial Court Guide – Appendix 12</p> <p>Technology and Construction Court Guide – Section 4.6</p>

Devices	Remember to use devices (laptops, printers, etc.) in the most energy-efficient way, including considering whether they need to be on charge all day, and by turning them off at the end of each day and when not in use.	
Pre-action		CPR / court guides – useful pointers
Research, case analysis and preparatory work	Use electronic versions of textbooks and other research resources where possible.	
Correspondence	<p>To the extent possible and appropriate, send correspondence only by email.</p> <p>In pre-action correspondence, refer to your or your firm’s commitments as a signatory to the Greener Litigation Pledge, and invite other parties to confirm their adoption of the Greener Litigation Pledge and/or its principles. Recommended wording for litigators to use when corresponding at the pre-action stage is available on the Greener Litigation Pledge website.</p>	
Issue, pleadings and applications		CPR / court guides – useful pointers
Communication with the court, including filing	Where possible (in many cases it is compulsory), use CE-File, email or an appropriate online portal to communicate with the court and file documents.	<p>CPR 7.12, CPR 5.5, CPR PD 5B, CPR PD 51O, CPR PD 7C, CPR PD 51R and CPR PD 51ZB</p> <p>Commercial Court Guide – Appendix 12</p> <p>The Employment Tribunals Regulations 2013 – Regulation 85</p> <p>Chancery Guide – Chapter 1, paras 1.28-1.30 and Chapter 21, paras 47 & 57</p> <p>King’s Bench Guide – Para 3.48 and paras 3.3 to 3.5</p> <p>Technology and Construction Court Guide – Sections 3.8, 4.5, 6.1.2, 6.5, 6.7 and 17.4</p>
Service	Consider effecting service only by email (noting restrictions imposed by CPR Part 6).	CPR 6.15 , CPR 6.17 , CPR 6.23 , CPR 6.26 , CPR 6.29 , CPR PD 6A and CPR PD 7C
Case management		CPR / court guides – useful pointers
Directions	Propose the adoption of the Greener Litigation language for case management directions which reflects the parties’ commitment to conducting the litigation as sustainably as possible. Recommended wording for litigators to use that could be incorporated into draft directions orders at the CMC is available on the Greener Litigation Pledge website .	<p>CPR 1.4(2), CPR 3.1(2)(d), CPR 3.1(2)(m), CPR 3.16(2), CPR 28.13 and CPR 29.4</p> <p>Technology and Construction Court Guide – Sections 5.3, 5.5.6, 5.6.3 and 14</p>

Document review and disclosure		CPR / court guides – useful pointers
Data storage	<p>Store only such data as is necessary for the time it is required: use technology to remove unnecessary and duplicated documents, including emails.</p> <p>If a significant volume of hard copy documents exists, consider allowing other parties to inspect the documents in person to decide which ones require disclosing. Note the requirements of CPR 31 and PD57AD.</p>	<p>CPR 31.9(1), CPR PD 31A para 2, CPR PD 31B paras 6, 8, 9 & 20 and CPR PD 57AD paras 3.1(6), 5.5, 9, 13.1 & 13.4</p> <p>Commercial Court Guide – E.2 and Appendix 15</p> <p>Employment Tribunal Presidential Guidance – Guidance Note 2</p> <p>King's Bench Guide – Para 10.36</p> <p>Technology and Construction Court Guide – Section 11.1.3</p>
Evidence		CPR / court guides – useful pointers
Factual witness evidence	<p>When proofing a witness, consider whether it is necessary to meet in person, or whether the same objectives could be met if the session were conducted remotely. See below for evidence at hearings.</p> <p>Consider whether the witness can use and refer to electronic copies of the documents and/or electronic bundles to which you may want to refer them, rather than providing them with hard copy bundles as a matter of course. If it is necessary for legal representatives and witnesses to meet in person, consider using the most sustainable mode of transport.</p>	<p>CPR 32.3, CPR PD 32 para 29.1, Annex 3 to CPR PD 32 and Appendix to CPR PD 57AC para 3.10(2)</p> <p>Technology and Construction Court Guide – Section 12.4</p>
Expert witness evidence	<p>Similar considerations apply here. Consider whether meetings can be held remotely and, where this is not possible, consider the most sustainable mode of transport. Think also about who needs to travel to and attend any meetings which are held in person. See below for evidence at hearings.</p>	
Hearings		
Remote vs in person	<p>For each hearing, consider whether it could usefully and appropriately be held remotely. If so, invite comments from other parties about proposing this to the court. If the court has automatically scheduled an in-person hearing, consider writing jointly to the court to confirm the parties are happy for the hearing to be done remotely.</p> <p>Recommended wording for litigators that could be used at the Pre Trial Review or incorporated into directions for trial is available on the Greener Litigation Pledge website.</p>	<p>CPR 23.1, CPR PD 23A paras 6.1 - 6.3 and CPR 39.1(1)(a)</p> <p>Commercial Court Guide – F.1.7</p> <p>The Employment Tribunals Regulations 2013 – Rule 46</p> <p>Chancery Guide – Appendix Z and Para 21.64</p> <p>Technology and Construction Court Guide – Section 4.3</p>

Who needs to be there?	<p>As with meetings, if a hearing is to take place in person, carefully consider who needs to be there. For example:</p> <ul style="list-style-type: none"> • Could witnesses give evidence via video link? • Could client representatives who are not giving evidence or required to give immediate instructions watch proceedings via a live link? • Could any members of the legal team watch proceedings via a live link, rather than travelling to court? • If there is to be a transcription, does the transcriber have to be physically present? 	<p>CPR 32.2(1)(a), CPR 32.3 and CPR PD 32, para 29.1 & Annex 3</p> <p>Commercial Court Guide – H.4.1 and D.71</p> <p>Technology and Construction Court Guide – Section 5.8</p>
------------------------	---	--

Illustrative examples

To help illustrate the difference that sustainable choices like those set out in the Greener Litigation Pledge can make, Planet Mark have calculated the carbon emissions associated with some fictitious - yet realistic - litigation scenarios.

Witness preparation

Scenario A

The claimant has issued proceedings in the Commercial Court in London and has instructed a legal team based in London.

In order to prove the claimant's case, the legal team determines evidence from four factual witnesses will be required.

The claimant is a Scottish company and two of the witnesses still work for the claimant at its base in Edinburgh. The third witness lives in Hong Kong and the fourth in Texas, USA.

The legal team decides to interview each of the witnesses in person. In preparation for these witness interviews, each witness is sent two lever arch files of documents in hard copy by courier.

One partner, three associates and a trainee fly to each of Edinburgh, Hong Kong and Texas for the witness interviews. Travel schedules are not coordinated so they all arrive at different times and take a taxi to their 5* hotel. At the end of the interviews, the lever arch files are couriered back to London.

Much later, when the witness statements have been drafted and approved by the witnesses, a hard copy of the witness statement and quite voluminous exhibit is sent to each witness for them to sign and return to the legal team in London by post.

Carbon footprint is **51 tonnes** of CO2 equivalent (the vast majority of which is caused by flights). This is equivalent to approximately **249 return journeys from London to Edinburgh by car**, or **45 return flights from London to New York**.

Scenario B

The legal team determines that the credibility of the two witnesses who still work for the claimant and are based in Edinburgh is crucial to the case, and so wants to interview them in person.

The witnesses in Hong Kong and Texas, whilst important, go to smaller points and so the legal team determines it would be possible to conduct their witness interviews remotely.

A senior associate and a trainee from the law firm's Glasgow offices conduct the in person interviews in Edinburgh, travelling together by train. They take with them a device (e.g. an iPad) on which there is loaded an electronic bundle of documents they would like to show the witnesses.

For the witnesses based overseas, they are given access to an electronic bundle of documents to which they will be referred during their witness interviews, and a series of meetings takes place remotely, with the law firm's lawyers based in the UK.

Much later, when the witness statements have been drafted and approved by the witnesses, each is sent an electronic version of the witness statement and quite voluminous exhibit, for signature by DocuSign.

Carbon footprint is **0.02 tonnes** of CO2 equivalent (the vast majority of which is caused by train journeys). This is equivalent to approximately **one return journey from London to Reading by car**.

Case management conference (CMC)

Scenario A

The CMC at the Commercial Court in London court is expected to last no more than one hour as almost all the points have been agreed.

Each party has instructed a counsel team to attend the CMC for them (each side with one senior and one junior barrister), and the solicitor team for each party (one partner, three associates and a trainee, as above, all based in London) will also be attending, together with four client representatives who will fly down from Edinburgh.

Both the judge and counsel have insisted on using hard copy bundles, which has resulted in the printing (and couriering) of some 3,000 pages.

During the course of the hearing, it becomes apparent that two additional documents should be added to all the bundles, so a trainee takes a taxi back to the office to print off the requisite number of copies, and takes a taxi back to insert the documents into each copy of the bundles.

Carbon footprint is **1.2 tonnes** of CO2 equivalent (the vast majority of which is caused by flights). This is equivalent to approximately **6 return journeys from London to Edinburgh by car**, or **1 return flight from London to New York**.

Scenario B

The court, claimant and defendant all agree that as the hearing is estimated to last less than half a day it should be conducted remotely. The court gives permission for client representatives to attend via a live link from Edinburgh.

In light of the decision to hold the hearing remotely, counsel and the court agree no hard copy bundles need to be prepared and instead rely exclusively on electronic bundles.

During the course of the hearing, it becomes apparent that two additional documents should be added to the bundles, so a trainee adds these electronically from her desk during the hearing.

Carbon footprint is **0.006 tonnes** of CO2 equivalent. This is equivalent to approximately one **one-way journey from London to Windsor by car**.

About this guide

This guide has been produced by the Steering Committee of the Greener Litigation Project, in collaboration with Planet Mark. The estimated carbon impact of the two hypothetical illustrative examples in this guide was calculated by Planet Mark.

Planet Mark is a sustainability certification organisation that supports businesses to understand and measure their carbon emissions and social impact, helping members to reduce their carbon emissions towards Net Zero. To find out more, please visit <https://www.planetmark.com/>, or contact Jo Little, jo.little@planetmark.com.

First Edition, April 2024