

Carved in Sand: The Persuasion Paradox at the Heart of Expert Witness Training

An Op-Ed on the “Becoming an Expert Witness” CPD Programme, with particular reference to Module 2

BECOMING AN EXPERT WITNESS

Certification Training

 16 CPD Hours

 Certificate in Expert Witness Practice | CPD Credits

OVERVIEW

This programme equips participants with the knowledge, skills, and professional competencies required to perform the role of an expert witness effectively, independently, and in accordance with the law and best practices.

STRUCTURE

Module 2		Expert Report Writing and Opinion Development	6 CPD Hours (Three-Part)
Purpose		To develop participants' ability to prepare clear, persuasive, independent and procedurally compliant reports.	
Part A	Foundations of Reporting	1. Legal requirements for expert reports 2. Expert assumptions and instructions 3. Methodology and evidential reliability 4. Distinguishing facts from opinions 5. Structuring reports for maximum clarity and impact 6. Writing persuasive but independent opinions	
Part B	Developing Opinions		
Part C	Report Writing		

Module 3		Expert Meetings, Joint Statements and Oral Evidence	4 CPD Hours (Two-Part)
Purpose		To equip experts with the practical skills required for expert conferences, joint statements, hearings and cross-examination.	
Part A	Discussions and Joint Statements	1. Expert-to-expert communications 2. Ethical and procedural challenges 3. Concurrent expert evidence ("hot-tubbing") 4. Tribunal and judicial expectations.	
Part B	Giving Oral Evidence		

There is a sentence buried in Module 2 of the ‘Becoming an Expert Witness’ programme that deserves to be read twice. Among the skills participants are promised under “Report Writing” is the ability to draft opinions that are, in the programme’s own words, **‘persuasive but independent.’**

It sits there quietly, three words apart from a contradiction — persuasive, *but* independent — as though the conjunction could do the work that decades of evidence law have struggled to do. It cannot. And the fact that a certification programme can print that phrase without pausing over it is itself the story.

The Promise Module 2 Makes

Module 2 is the technical spine of the course. Six CPD hours, three parts, moving from the foundations of expert reporting through the development of opinions to the architecture of the report itself. On paper it is unimpeachable, statements of truth, methodology, evidential reliability, causation analysis, quality assurance, peer review. This is the vocabulary of rigor, and any programme that trains experts to distinguish fact from opinion, or to disclose the limits of their own certainty, is doing necessary work. Tribunals and courts across the common-law world, have no shortage of expert reports that fail on exactly these grounds, reports that assume rather than reason, that advocate rather than assess.

But sit with Part C for a moment longer. *“Structuring reports for maximum clarity and impact.” “Presenting technical evidence to non-specialists.” “Use of graphics, schedules and appendices.”* Each is defensible in isolation. Clarity is not corruption, and a well-designed schedule has never perjured anyone. The difficulty is cumulative. A curriculum that trains impact alongside independence, in the

same six hours, without ever interrogating the tension between them, is not neutral. It is quietly teaching that the tension does not exist.

Independence Is Not a Communication Style

The doctrinal foundation of expert evidence, in Nigeria's Evidence Act 2011, in England's CPR Part 35, in the IBA Rules that arbitral tribunals reach for when domestic procedure runs thin, rests on a single idea articulated most famously in *The Ikarian Reefer* [*National Justice Cia Naviera SA v. Prudential Assurance Co. Ltd.* [1993] 2 Lloyd's Rep 68, 81- 82; [1993] F.S.R. 563; [1993] 37 E.G. 158], the expert's overriding duty is to the tribunal, not to the party paying the invoice. Independence, on this account, is not a tone. It is a structural commitment that survives contact with an unhelpful conclusion. An independent expert is one whose opinion would not change if the retaining letter had come from the other side.

Persuasiveness, by contrast, is inherently party-facing. One does not persuade a tribunal in the abstract. One persuades it *of something*, and in adversarial or quasi-adversarial proceedings that something is rarely neutral. It is the version of causation, quantum, or liability that favours the instructing party. To train an expert simultaneously in independence and persuasion, without drawing the line between them in blood, is to leave the boundary to the individual conscience of a professional who is, not incidentally, being paid by one side of the dispute. That is precisely the condition that produces the "hired gun", not a villain twirling a moustache, but a competent, well-meaning specialist who has never been told, clearly and structurally, where advocacy begins.

The CPD-Industrial Complex

There is a second, less comfortable concern, and it is the commodification of expertise itself. That is not objectionable per se, professionalisation has raised standards across many fields. But when the market rewards experts who are retained again, and reappointment correlates more with usefulness to counsel than with the tribunal's confidence in their independence, a training programme that teaches 'impact' alongside impartiality is arguably training for the market rather than for the courtroom. The customer of most expert witness CPD is not the tribunal. It is the expert who wants more instructions, and the law firms who want experts who perform well. Hence, persuasive architecture should be read, at least partly, in that commercial light.

Concurrent expert evidence "hot-tubbing," which the programme itself flags in Module 3 was developed specifically as an institutional corrective to this problem. Put the experts in the same room, facing each other and the tribunal simultaneously, and let genuine independence reveal itself in real time, because performance is harder to sustain under contemporaneous cross-questioning than in a solitary, lawyer-edited report. That the same curriculum trains report-writing impact in Module 2 and then trains experts to withstand cross-examination technique in Module 3 suggests, if anything, that the programme's own architects sense the risk, teaching the disease's charm in one module and its likely cure in the next, without ever naming the connection between them.

Fair Reading

None of this means the programme is cynical, or that its design intend to manufacture advocates in expert's clothing. A fair reading would say, clarity of communication serves the tribunal, because an inaccessible report that buries a sound opinion in jargon fails the tribunal just as surely as a biased one does. Teaching an accountant or an engineer to write for a judge who is neither, is a genuine public good. The critique here is not that communication skill is illegitimate, it is that the programme, as structured, never forces participants to confront the exact point at which **“clear” tips into “persuasive,” and “persuasive” tips into “advocacy.”** That silence is the pedagogical failure, not the individual skills being taught.

What Is Carved in Sand

Arbitration prides itself on flexibility, on procedural cultures shaped by IBA Rules and CIArb guidance rather than rigid codes. That flexibility is a strength, but it is also why the independence of the expert witness has always been a norm carved in sand rather than stone, reasserted tribunal by tribunal, case by case, rather than permanently fixed. Training programmes are one of the tides that either deepen those grooves or erode them.

If Module 2 is to be one of its kind in the way its own ambitions suggest, it should not merely teach experts how to be persuasive and separately remind them to be independent. It should teach the line between the two as the central, examinable competency.

The sand will hold the shape it is given. The only question is which hand is doing the carving, the tribunal's duty, or the client's brief.

The views expressed are offered as critical commentary on curriculum design in expert witness training and are not directed at any individual, institution, or named practitioner.