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Three examples of changing law

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IT'S a funny old world. The times, they certainly are a-changing. Three developments, all from England, struck me last week as exemplifying the changing environment in which the judicial system and lawyers are now operating.

The first was an advertisement in the Times law pages, publicising "judicial candidate roadshows". Eight of these are being held over three months by the Judicial Appointments Commission in England, aimed at everyone eligible to hold judicial office, including "current judges looking to move up the ladder and those thinking about their first judicial appointment". The roadshows are free of charge but, presumably in anticipation of the large numbers who will be interested, we are told that "space is limited".

It is an interesting concept that judges should look to "move up the ladder" but, if one thinks about it, entirely understandable. No doubt the advertisement could have been expressed differently and there will a certain amount of tut-tutting about the wording (and a reassurance that it wouldn't happen here in Scotland...) but why not make sure that aspiring judges are given the opportunity to explore their career development, by talking with current judges and others who can help them to assess their futures? This process may help to sort out those who are suited to the role and those who are not. However, it does represent a shift in attitudes towards the judiciary.

The second was an address given by Mr Justice Lightman, a senior judge in the chancery division of the High Court in London, which I read last week. In an address to the law firm SJ Berwin, the judge was critical of the government's approach to conditional fees in England and contrasted the government's willingness to spend millions on luxuries such as the Millennium Dome and the Olympic Games with its unwillingness to provide funds on essentials such as affording access to justice.

He went on to criticise the Court of Appeal in England for placing two obstacles in the path of the development of mediation "as the only available recourse of those who cannot afford the costs and risks of litigation". He refers to the argument that requiring a party to proceed to mediation would contravene the European Convention on Human Rights, and to the placing of the onus to show that a party acted unreasonably (in refusing to give mediation a chance) on the party so contending.

He suggests that both of these propositions are "unfortunate" and "clearly wrong and unreasonable".

The address deserves to be read in full but what is interesting is the willingness of a serving judge to make these comments, directed against both the government and his judicial superiors. Fortunately, in the UK, the implications of doing so are not as serious as in, for example, Zimbabwe where serving judges have suffered arrest and detention for doing what they think is right to uphold the rule of law.

Finally, last week I found myself working alongside a senior English Queen's Counsel in London in a half-day session for 60 legal executives of an international oil services company.

Our topic was not the law or its application but instead was techniques for negotiating in difficult situations.

Neither my colleague nor I are in practice at the Bar any more, but we are still fully employed as mediators and consultants. A number of senior QCs in London are following a similar path.

It occurred to me that this represented a significant shift in emphasis in that we are now using our understanding of the law and the legal system in quite different ways, still in a sense acting as "counsel", but with a broader remit and scope, reflecting the contemporary needs of many users of professional services.

All of these developments are responses in a changing world in which the expectations of legal services and the legal system are changing fundamentally.