

# Criminal Justice: An Overview

The notion of justice has traditionally had two components: first, a fair outcome to a process of negotiation, or the fair resolution of conflict; and, second, the exercise of authority through procedures which are recognised and legitimate (sometimes described as 'due process'). Hence, e.g. 'social justice' is about the fair distribution of power and wealth among a nation's citizens. All kinds of justice stand above the immediate interests of any one individual, section of society or community, and above those of government or other forms of power and influence. Either aspect of justice noted above may be stressed at different times according to shifts in priorities or concerns, but both must be present in any situation where it is claimed that 'justice is being, or has been, done'.

### **Criminal justice: a brief survey of context and meaning**

The term 'criminal justice' is used in several contexts, but chiefly to encompass the chain of events, activities, tasks or functions that constitute the official response to perceived problems of law and order, including, such as

- crime prevention and crime reduction;
- the arrest and prosecution of suspects;
- the hearing of criminal cases by the courts;
- sentencing and the administration and enforcement of court orders;
- parole and other forms of licence for prisoners; and
- work with offenders or ex-offenders in prison or in the community.

Other common shades of meaning are those pointing to:

- a dedicated form of justice that applies in relation to criminal cases as opposed to civil, family or administrative matters—and that has its own laws, principles, rules, procedures, codes, practices and thinking; or
- any of a range of outcomes flowing from decisions at given stages of the criminal justice process, e.g. whether to interview or arrest someone, charge them with an offence, grant them bail, find them guilty, fine people, pass a community sentence or send them to prison, or—at the end of that process—whether to release them back into the community.

This handbook looks at each of these strands. It does so by focusing on day-to-day events from the point in time when an offence is discovered until the case has run its course. It describes the components of the official framework for

criminal justice and the roles of the various 'key actors'. It deals with the effects of Criminal Justice Acts (and similar legislation) and notes the guiding principles, strategies and thinking that lie behind the modern-day arrangements for a Criminal Justice System (CJS) in England and Wales, including those involving the private, voluntary, charitable or non-statutory sectors.

## KEEPING THE PEACE

As a rudimentary statement, criminal justice is about keeping the peace, or what is sometimes described as 'The Queen's Peace', given that the theory is that all criminal offences (*Chapter 2*) are offences against or 'remissible only by' the state as represented by the sovereign. A day-to-day reminder of this is the fact that prosecutions are brought or sentences administered in the name of the reigning monarch, as symbolised in *Regina v. Smith* or designations such as Crown Prosecution Service, Her Majesty's Court Service or Her Majesty's Prison Service. The need to keep the peace by using sanctions of one kind or another against people who do not obey the criminal law is confirmed by societal needs ancient and modern and few communities have existed without resort to such mechanisms.<sup>1</sup> The hue and cry of Anglo-Saxon times, the pillory, stocks and public executions of old are all part of the same continuum of controls that nowadays find expression in forms of imprisonment, fines and the generic community sentence. What is also different in the present day is, e.g. the speed of events, the vast range of crimes that exist, the opportunities and methods of committing many kinds of offence and the ease with which there may arise a concerted public (or media) outcry for something to be done. But the underlying—and ultimately political—question remains: what should be done about lawbreakers. Not everyone agrees that punishment is the answer. Whilst noting the existence of such views (see, e.g. the reference to restorative justice in *Chapter 13*), this handbook describes the practical arrangements for criminal justice as they exist today, whatever their imperfections.

## THE CRIMINAL JUSTICE SYSTEM (CJS)

Certain parts of the criminal justice process are of quite ancient origin, such as the magistrates' courts, High Court and appellate jurisdiction of the House of Lords (pending a new Supreme Court: see *Chapter 4*), whilst others developed in the Victorian era, such as the first regular police forces. Some are of more recent origin such as the Crown Court (which was created by the Courts Act 1971),

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<sup>1</sup> There are said to be a small number of remote and isolated communities untouched by crime as we know it that have largely attracted the attention of anthropologists rather than criminologists.

Crown Prosecution Service (CPS) (Prosecution of Offences Act 1985), the Youth Court (1991), Youth Justice Board (1998), National Probation Service (NPS) (under administrative changes in 2001),<sup>2</sup> Criminal Defence Service (CDS) (also 2001) and Serious Organized Crime Agency (SOCA) (2005).

### An era of change

The past 20 years have seen an unprecedented acceleration in the pace of change alongside a greater concentration on crime prevention, crime reduction and the use of enhanced forms of surveillance, technology, databases and recording systems as aids to policing or evidence gathering. The many significant landmarks include:

- the Human Rights Act 1998: see, in particular, *Chapters 2 and 5*;
- a sequence of Criminal Justice Acts: *Chapter 2*;
- a revised sentencing framework (with new kinds of sentence and criteria for decision-making) as provided for in the Criminal Justice Act 2003 (*Chapter 9*) that also contains other landmark reforms;
- the creation of a Sentencing Guidelines Council (SGC) (again under the 2003 Act): *Chapter 9*;
- a Police Reform Act 2002, fresh methods of policing, police units and a National Policing Improvement Agency (NPIA): *Chapter 11*;
- the reorganization of many other criminal justice services, including the court, prison and probation services as noted at appropriate points in the chapters which follow;
- the creation of 3,000 extra criminal offences: *Chapter 2*;
- a joint Criminal Procedure Rule Committee (CPRC): *Chapter 2*;
- innovations such as the anti-social behaviour order (ASBO) (*Chapter 2*) and other secondary ways of tackling crime as used, e.g. by local authorities, government departments and the private sector; and
- a new governmental approach to the co-ordination of services that finds expression at the highest level in Cabinet committees and at national or local level in Crime and Disorder Reduction Partnerships (CDRPs), a National Criminal Justice Board (NCJB) and Local Criminal Justice Boards (LCJBs): see, especially, *Chapter 15*.

As described in *Chapter 5*, there will be a new Supreme Court from the autumn of 2009 as part of a tranche of reforms brought about by the Constitutional Reform Act 2005 and in the background to all public affairs there is a debate about the need for enhanced democratic involvement at all levels: *Chapter 15*.

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<sup>2</sup> The Probation Service existed in local form from the early-1900s until 2001. By 2008, following the creation of local Probation Trusts and other contemporary developments, official statements again began to refer to 'The Probation Service', not the NPS: see further re these events in *Chapter 13*.

### **Other contextual factors**

The above and many other developments—all of which are dealt with in their own setting within the chapters that follow—are in addition to a major restructuring of ministerial and departmental responsibilities described under the heading *Ministry of Justice*, below, a more polarised politics of crime and punishment in the wake of September 11, 2001, a global context for organized crime, an escalating UK prisoner population, concerns about internal<sup>3</sup> security and border controls and continuing developments in the contrastingly enlightened fields of restorative justice and penal reform. Indeed, a good deal has changed since the first edition of this work appeared in 1995, including, as noted in the *Preface* the fact that there is now a more recognizable Criminal Justice System (CJS) as opposed to a more disparate collection of component parts. At a time of such far-reaching change it seems ever more important to reiterate the importance of the values and principles on which justice ultimately rests: integrity, decency, fairness, openness, visibility and accountability.

### **CJS Online**

For some years, a web-site has existed under the designation 'Criminal Justice System' or 'CJS'. The CJS home page states that the purpose of the CJS:

... is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent. [It] is responsible for detecting crime and bringing it to justice; and carrying out the orders of courts, such as collecting fines, and supervising community and custodial punishment.

CJS Online also notes that the key goals of the CJS are:

- to improve the effectiveness and efficiency of the CJS in bringing offences to justice;
- to increase public confidence in the fairness and effectiveness of the CJS;
- to increase victim satisfaction with the police and victim and witness satisfaction with the CJS;
- to consistently collect, analyse and use good quality ethnicity data to identify and address race disproportionality in the CJS; and
- to increase the recovery of criminal assets by recovering (i.e. confiscating) £250m of assets acquired through crime by 2009-10.<sup>4</sup>

Under the heading 'Working Together to Cut Crime and Deliver Justice' the authors refer to the Criminal Justice Strategic Plan 2008-2011 against

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<sup>3</sup> The term 'homeland security' is an Americanism, but the concept also resonates in Europe.

<sup>4</sup> Confiscating these via the criminal and civil courts, freezing assets pending the outcome of court proceedings when appropriate, and using powers conferred by the Proceeds of Crime Act 2002.

which the development of criminal justice provision now takes place and which sets out how the CJS agencies 'will work together to deliver a justice system which:

- is effective in bringing offences to justice, especially serious offences;
- engages the public and inspires confidence;
- puts the needs of victims at its heart; and has
- simple and efficient processes.'

These broadly stated and powerful sentiments are at times hard to relate to the myriad day-to-day responsibilities discharged by the various bodies and individuals described in this handbook. Nonetheless, the strategic plan and its associated links are nowadays fundamental to developments and they demand study by anyone seeking a complete understanding of the topic.<sup>5</sup>

### Front line services

In the everyday front line of the CJS are police officers, police community support officers (PCSOs), Crown prosecutors, defence lawyers, forensic scientists, judges, prison officers, probation officers, criminal psychologists and a range of other 'actors' as described in later chapters. Many of them work within the CJS for a living, often for their entire careers. Other roles are performed by volunteers, such as magistrates (also known as justices of the peace) (JPs), members of the Parole Board, Independent Monitoring Board (IMB),<sup>6</sup> Victim Support and the Witness Service, or belong to groups which are directly involved in crime prevention initiatives (such as Neighbourhood Watch or Safer Communities). Any citizen aged 18 or over can be required to carry out jury service in the Crown Court after being chosen at random from the electoral roll and summoned to attend court for that purpose. After listening to witnesses and studying other relevant evidence, he or she will take part in critical decision-making concerning the guilt or otherwise of an accused person who is on trial for (what is likely to be) a serious offence. Certain CJS functions may involve the private sector, as with privately managed prisons, prisoner escorts (who convey, or 'transport', prisoners to and from court premises, or between prisons), scientific or technological services and security guards.

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<sup>5</sup> These plans can be accessed at [www.cjsonline.gov.uk](http://www.cjsonline.gov.uk), a government sponsored web-site, but whose exact provenance and capacity to speak for the CJS as a whole are somewhat unclear. CJS Online lists as constituent parts of the CJS, the MOJ, Home Office and Office of the Attorney General. It omits the courts (which the government cannot speak for, but which form a substantial part of the CJS and are, in effect, its 'hub': see the next heading in this chapter) as well, e.g. as the non-statutory, voluntary and private sectors. Its sweeping, sometimes disembodied, assertions reflect many modern-day public pronouncements and bringing 'crime' or 'offences' to justice (see the quotes in the text above), e.g. is a somewhat novel use of English.

<sup>6</sup> There is an IMB for each prison: see *Chapter 14*.

## THE CRIMINAL COURTS: THE HUB OF THE CJS

The criminal courts stand at the centre of the CJS.<sup>7</sup> It is:

- with an eye to the demanding standards of the criminal courts and the ever-present possibility that there could be a need to provide evidence at a trial that investigators, prosecutors and defence lawyers act; and
- it is the outcomes of court decisions that set the tone, direction and parameters of what follows, whether, e.g. in terms of probation officers or psychiatrists providing pre-sentence reports (PSRs) or those on an offender's mental state, or prison governors, psychiatrists and other qualified individuals providing longer term risk assessments during a prisoner's sentence that may affect when and for how long he or she will be held in prison (if allowed back into the community at all).<sup>8</sup>

That said, there are aspects of criminal justice which operate independently of the courts. At a given stage in the criminal justice process, it may be the imminent decision, e.g. of a Crown prosecutor or the Parole Board, on which attention is focused. Other examples are cautioning by the police, diversion schemes that seek to avoid the need for formal action (*Chapter 7*), prison discipline or recall to prison following release on licence. The police also have an increasing and sometimes controversial role and accompanying range of powers to deal with situations, mostly involving aspects of public disorder, by means of 'on the spot' fines. But in general terms and for the general run of cases, it is the court that remains the primary focal point.

### **The criminal courts and the separation of powers**

The courts are in a relatively isolated position due to the constitutional doctrine of the separation of powers—the principle that the Legislature (Parliament), Executive (Government) and Judiciary (courts) should be independent of one another. Neither Parliament nor Ministers can dictate to the courts what a particular law means or how it should be interpreted or applied in an individual case. Similarly, what sentence should be imposed on an offender (in the absence of express statutory provision for what are known as mandatory sentences of which there are few, if increasing in number). Determination of the facts of a case is for jurors or magistrates; interpretation of the law and its application to

<sup>7</sup> There have been intermittent references to other services moving 'centre stage': as with the then locally-based Probation Service in the 1990s. Describing courts as at the hub of the CJS is less about importance than useful in terms of exposition. All services are interdependent: *Chapter 2*.

<sup>8</sup> There are some 40 prisoners, known as 'natural lifers', who will never be allowed out of prison.

the facts in a given situation is a matter for the judge when directing a jury or magistrates acting on guidance from a qualified court legal adviser.

This is not to say that judges and magistrates may not share the wider aims and purposes of the CJS as a whole. Court user groups facilitate some dialogue, but largely on administrative matters, whilst the involvement of the judiciary in a range of cross-agency or multi-agency forums, committees and training events has tended to change the stance of the judiciary in modern times, but with due safeguards to prevent undue or improper influence. Central in bringing the courts into the 'criminal justice fold' was the creation of a National Criminal Justice Board (NCJB) together with Local Criminal Justice Boards (LCJBs) in various areas of the country (see, also, later in the chapter).

When the Ministry of Justice (below) was created in 2007 and the courts brought within its remit alongside HM Prison Service (HMPS) and the National Probation Service, judicial independence was reinforced by what is called 'The Concordat', an accommodation agreed by the Lord Chancellor with the judiciary via the Lord Chief Justice and the Judicial Office (see, further, *Chapter 12*). Even before that time, the Constitutional Reform Act 2005 had placed a duty on the Lord Chancellor to protect the independence of the judiciary. The relationship between Government and its aspirations for such boards remain to be fully worked through in the light of these competing, if essential, considerations.

The interdependent nature of the CJS as a whole—and the underlying rationale for this—is noted later in the next chapter.

### **The criminal courts in summary**

The criminal courts currently comprise:

- magistrates' courts: *Chapter 3*;
- the Crown Court: *Chapter 4*;
- the High Court, Court of Appeal and House of Lords, soon to become the Supreme Court (known as the higher courts): *Chapter 5*; and
- the youth court—a part of the magistrates' court with special responsibility for people below the age of 18 years: a note on which also appears at the end of *Chapter 3*.

There is also the Courts Martial network of military tribunals to deal with service personnel. These are part of a parallel system of law and order for servicemen and servicewomen and there is analogous provision for the Navy and Royal Air Force. They are governed by many of the same rules and

principles as the ordinary courts (often in this context referred to as the 'civil courts')<sup>9</sup> but their precise workings are beyond the scope of this book.

## OTHER KEY CRIMINAL JUSTICE SERVICES

Each of the criminal justice services has its own status, culture and traditions in terms of independent decision-making, both in relation to government departments and *vis-à-vis* one another, but although this is sometimes specifically embraced by the law it is not part of the same high constitutional doctrine that applies in relation to the courts of law.<sup>10</sup> Some services can be seen as closer to the centre than others and thereby more susceptible to the edicts of the Executive or cross-agency influences,<sup>11</sup> but individual officers still have to use their own discretion within whatever framework exists in their own field. The reality is that police officers, Crown prosecutors, probation officers and prison governors all discharge their duties subject to a mix of personal judgement, training, 'career upbringing' and working cultures against a backdrop of policy requirements, codes, 'standing orders', instructions, standards and Best Practice as these apply to their own service.<sup>12</sup> The main participants include:

- **the police** as the preventers, detectors and investigators of crime. Many police forces have an 'administration of justice department' or 'justice unit' to deal with court-related matters. Other key functions include those of local custody sergeants and gaolers. Whilst relatively local forms of policing have survived in the face of Government moves aimed at rationalisation and amalgamation, some aspects of police work do now occur on a nationwide basis: *Chapters 6 and 11*;
- **the Crown Prosecution Service (CPS)** which is now responsible for most prosecution decisions (other than the most minor or urgent) and can take over a case from other public prosecutors or a private prosecutor. It is the CPS that since 2003 has decided on the appropriate charge following police investigations. All CPS files are reviewed on a continuing basis applying the twin test described in *Chapter 7* and cases can be discontinued or withdrawn by the CPS. It employs solicitors, barristers and what are known as 'designated case workers': *Chapters 7 and 12*;

<sup>9</sup> Not to be confused with civil courts that deal with civil as opposed to criminal matters.

<sup>10</sup> But it is reinforced by human rights law, especially re a fair trial: see *Chapter 2*.

<sup>11</sup> Both HMPs and the NPS would appear to have been moved in that direction. In 2008, MOJ links to the Parole Board were held by the higher courts to be too close: *Chapter 14*.

<sup>12</sup> But there have been commentators who see an emergent 'police state'. The arguments, debates and intricacies of this are beyond the scope of this work.

- **other law enforcement agencies** include the Serious Fraud Office (SFO); Serious and Organized Crime Agency (SOCA); Revenue and Customs; Department for Work and Pensions; Health and Safety Executive; Trading Standards; TV Licencing (TVL); National Society for the Prevention of Cruelty to Children (NSPCC) and Royal Society for the Prevention of Cruelty to Animals/Birds (RSPCA) and Royal Society for the Protection of Birds (RSPB): *Chapter 11*;<sup>13</sup>
- **the Criminal Defence Service (CDS)** which provides state funded legal representation under the auspices of the Legal Services Commission (LSC): *Chapter 12*;
- **legal representatives**, i.e. solicitors and barristers who can appear to represent (or 'speak for') either side (or 'party') in a criminal case as advocates and subject to rules about rights of audience: *Chapter 12*;
- **the Probation Service** which manages and supervises offenders and provides a range of related services to courts. Probation officers are subject to National Standards, e.g. for the 'Supervision of Offenders in the Community'; 'Preparation of Pre-sentence Reports' (PSRs); and 'Release on Licence' (i.e. from prison). The NPS also provides or facilitates a range of centres, hostels, programmes and schemes for offenders/ex-offenders as well as bail schemes for people who are awaiting trial or sentence. Additionally, probation officers work in or alongside prisons including in relation to 'throughcare', sentence planning and early release schemes: *Chapters 8, 9, 13; and 14*;
- **HM Prison Service (HMPS)** that provides secure and controlled environments in some 140 establishments operating a range of prison regimes for different categories or kinds of offender, from those for short-term offenders (often in local prisons) to life sentences for dangerous, high-risk or long-term prisoners: *Chapter 14*;<sup>14</sup>
- **the Youth Justice Board, youth offending teams (YOTs) and youth offending panels (YOPs)** to provide for juveniles: see within *Chapter 3*;
- **local authorities** who have various responsibilities for vulnerable adults and children as well as community safety, crime prevention and prosecution duties, including with regard to the environment, bye-laws, consumer protection, school attendance and the formulation of an annual youth justice plan: see, in particular, *Chapters 3 and 13*. They use various secondary methods of crime prevention, e.g. in relation to tenancies, contracts, planning permission and other environmental responsibilities.

<sup>13</sup> Each of these organizations has a web-site that can readily be found on the internet.

<sup>14</sup> Special hospitals (i.e. secure hospitals) exist for the detention of mentally impaired people who may have committed serious crimes, some of whom are 'guilty but insane' or 'unfit to plead'. See further and generally, *Mental Impairment: A Note in Chapter 13*.

- **doctors** and **psychiatrists** who work in prison healthcare centres or in the community and may be called upon to provide reports on the physical or mental condition of an offender or alleged offender for use by a court or for other risk-assessment purposes: *Chapters 13 and 14*;
- **the non-statutory, voluntary and charitable sectors** which provide services to various parts of the CJS or direct to offenders, victims or their families, including through Nacro,<sup>15</sup> Victim Support (VS), the Witness Service (WS), research, information and penal reform: *Chapter 13*; and
- **the private sector** which provides services for purchase by the public sector part of the CJS, such as drug or alcohol treatment schemes, prison building, finance and management (i.e. 'private prisons'), prisoner escort services (which transport prisoners to and from court) and a wide range of resources for the security industry: see, especially, *Chapters 9 and 14*.

### **Those people directly affected by CJS processes and outcomes**

Increasingly, CJS processes have been designed to be 'user friendly' with regard to those most directly affected by decision-making or CJS arrangements:

- **accused people** (or 'defendants') when even the most outwardly undeserving people must be guaranteed a fair trial (below);
- **witnesses** and other people who assist the process of justice who must be treated in a proper manner at court and in certain cases protected by the police under witness protection schemes. Note also the reference to the Witness Service above: *Chapter 13*; and
- **victims of crime** who although not directly involved in criminal proceedings, except when they appear as witnesses, should be kept informed about the progress of their case, treated with sensitivity and consulted concerning certain matters. The extent to which courts may now receive information concerning the position, concerns and views of victims has altered quite significantly in modern times from the former situation whereby, apart maybe from giving evidence in court, they were relegated to the sidelines: see, also, *Chapter 15*.

### **The wider criminal justice family**

Beyond the formal parts of the official CJS lies what is sometimes styled 'the wider criminal justice family'. This includes people or services involved in the work of organizations such as Nacro, the Howard League for Penal Reform, Prison Reform Trust and Unlock<sup>16</sup>—together with a rich assortment of people with less visible roles, such as those who befriend offenders or act as mentors<sup>17</sup>

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<sup>15</sup> The crime reduction charity.

<sup>16</sup> The National Association for Ex-offenders: see, further, *Chapters 13 and 14*.

<sup>17</sup> For juveniles, especially, but also and increasingly other people at-risk of offending.

to people who are set on 'going straight' following a term in prison, or citizens engaged in local crime prevention projects, schemes or charities. Some such organizations are sponsored or receive other support from official channels.

## THE MINISTRY OF JUSTICE (MOJ)

The network of official, formal, contracted or approved 'justice-based' arrangements was formerly somewhat less well-suited in terms of its links or connections to particular government departments and occasionally quite misplaced in terms of expected allegiance. The disparate and disjointed nature of criminal justice began to diminish during the 1980s and especially following Lord Woolf's report into prison disturbances in 1991,<sup>18</sup> which led to the creation of the then national Criminal Justice Consultative Council with its area committees comprising leaders of the different agencies.<sup>19</sup> It continued through initiatives such as 'working together' and 'partnership' whereby the various separate services aimed for a more coherent or 'end-to-end' approach which sought to understand and allow for the distinctive roles, responsibilities and problems of those making decisions at other points in the criminal process.

### The move towards an MOJ

An extension of these events were the various forums, meetings, committees and similar groupings—at various levels of responsibility within the then national, regional, area or local CJS hierarchy—which reflected a varied mix of centralisation, delegation, multi-agency, multi-service or multi-departmental participation. Another logical step was the move to an MOJ.<sup>20</sup> Whilst certain constitutional issues remain to be fully resolved, mainly in relation to the judiciary (and so far as adults<sup>21</sup> are concerned), that part of criminal justice provision which touches on matters of *justice* as opposed, e.g. to policing (or what is sometimes termed maintaining *law and order*) can be traced to the MOJ, which as already indicated was created in 2007. In contrast, matters such as 'homeland security' and 'border controls' connect to the Home Office (which was re-structured at the same time in 2007): see the separate section, below. Seemingly in recognition that juveniles remain children—with regard to whom parents and schools have certain responsibilities—many aspects of youth justice passed to the new Department of Children, Schools and Families, but often in conjunction with the MOJ.

<sup>18</sup> This 1991 report represented a watershed in CJS thinking in that it looked behind prison riots and tensions to underlying and contributory causes.

<sup>19</sup> Which morphed into the NCJB and LCJBs mentioned in various parts of the text.

<sup>20</sup> See, e.g. *Crime, State and Citizen: A Field Full of Folk* (2<sup>nd</sup> edn, 2006), Faulkner D, Waterside Press.

<sup>21</sup> People aged 18 and over. Ministerial demarcation disputes were reported at certain stages.

These two key departments<sup>22</sup> have separate roles, functions and areas of responsibility, but are linked to Parliament via ministerial responsibility and to No 10 Downing Street via a number of Cabinet Committees, including a Cabinet Committee on Crime and the Criminal Justice System (CCCCJS). Civil servants also liaise at various levels within the MOJ, Home Office and other departments.

### **MOJ responsibilities summarised**

The MOJ draws together various strands of activity, responsibility and duty under a broad remit encompassing 'matters of justice' and 'constitutional affairs'. In the context of criminal justice these can be summarised as follows:<sup>23</sup>

- working 'trilaterally' with the other departments that make up the central government strands of the CJS, chiefly the Home Office and Office of the Attorney General (the latter noted in *Chapter 14*);
- HM Courts Service (HMCS) (see, mainly, *Chapters 3 and 4*);
- support for the judiciary, including:
  - a Judicial Office in place of the former negligible administrative support for the Lord Chief Justice and senior judiciary;
  - appointments via a new Judicial Appointments Commission (JAC);
  - an independent Office for Judicial Complaints (OJC); and
  - a Judicial Communications Office (JCO)(all noted *Chapter 12*);
- the National Offender Management Service (NOMs)
  - Probation Service (*Chapter 13*);
  - HM Prison Service (HMPS) (*Chapter 14*);
- sponsorship of:
  - HM Inspectorates of Prison and Probation;
  - Independent Monitoring Boards (IMBs) (*Chapter 14*);
  - the Parole Board (*Chapter 14*); and
  - the Prisons and Probation Ombudsman (*Chapter 13*);
- legal aid and the Community Legal Service (CLS), through the Legal Services Commission (LSC) (*Chapter 12*);
- sentencing policy, including sponsorship of:
  - the Sentencing Guidelines Council (SGC); and
  - the Sentencing Advisory Panel (SAP) (both dealt with in *Chapter 9*);
- sponsorship of the Law Commission (concerned with law reform);
- hosting the Office for Criminal Justice Reform (OCJR)(this chapter);

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<sup>22</sup> Certain other government departments have power to levy administrative penalties and undertake in-house law enforcement and prosecutions. They too connect to the Legislature and to the heart of Government via Parliamentary responsibility and various Cabinet Committees.

<sup>23</sup> Developed from a list of MOJ responsibilities provided at [www.justice.org](http://www.justice.org).

- the Privy Council Secretariat and the Office of the Judicial Committee of the Privy Council (*Chapter 5*); and
- human rights (*Chapter 2*).

Apart from the restructuring of the Home Office (below), responsibility for youth justice is now shared between the newly-created Department for Children, Schools and Families and the MOJ, including in relation to funding and policy concerning the Youth Justice Board (YJB) (noted in *Chapter 3*). A list of all the organizations that are sponsored by the MOJ can be found at the MOJ web-site.<sup>24</sup> In this handbook it is only possible to provide a bare outline of these matters. For a full treatment and ‘top down’ perspective, see the companion to this work, *The New Ministry of Justice: An Introduction*.<sup>25</sup>

### The Office for Criminal Justice Reform

The Office for Criminal Justice Reform (OCJR) (noted in the list above) is sponsored by the MOJ. This key cross-departmental team supports all criminal justice agencies ‘in working together to provide an improved service to the public’. As a cross-departmental organization, OCJR reports to ministers in the MOJ, Home Office and Office of the Attorney General. Its goal is ‘to deliver the National Criminal Justice Board’s (NCJB’s) vision of what the CJS will look like in 2011’. It does so by providing Local Criminal Justice Boards (LCJBs) with ‘an overall framework and guidance to facilitate reform at a local level’.

### The Lord Chancellor

In 2007, the ancient role of Lord Chancellor, an office whose origins can be traced back for around 1,000 years, was combined with that of Justice Secretary at the head of the new MOJ. Until this and other developments in the Constitutional Reform Act 2005, and somewhat uniquely under the British constitution, the role required the occupant to play a part in all three arms of state (see the reference to the doctrine of the separation of powers elsewhere in this chapter). He<sup>26</sup> was formerly a senior member of the Cabinet, speaker of the House of Lords and head of the judiciary—a function sometimes performed in practice by sitting in the House of Lords as a Lord of Appeal, i.e. as a judge (*Chapter 12*). The Lord Chancellor was also responsible for ensuring the efficient administration of justice and the courts (as well as for promoting certain reforms to the *civil* law). Since the MOJ and the 2005 Act, the tri-partite nature of the role has come to an end along with responsibility for the selection and appointment,

<sup>24</sup> [www.justice.gov.uk](http://www.justice.gov.uk)

<sup>25</sup> *The New Ministry of Justice: An Introduction* (2007), Gibson B, Waterside Press. All later such references in this work are to that publication which serves as a useful companion volume.

<sup>26</sup> All Lords Chancellor to date have been men.

or recommendation for appointment, of virtually all judges, judicial officers and magistrates in England and Wales (and Northern Ireland). The Justice Minister (the new and alternative name for the Lord Chancellor) is now a departmental Minister like any other.<sup>27</sup>

## THE HOME OFFICE

Following the changes of 2007, the basic Home Office can be broadly described as being responsible for maintaining law and order and its remit summarised as follows:

- public safety and the protection of the public;
- the police and policing via independent local police forces and local police authorities (*Chapter 11*);
- crime prevention and crime reduction as the lead department but in partnership with other government departments;
- terrorism and other emergencies, including through an Office for Security and Counter-Terrorism that provides advice to ministers, develops policy and provides security measures;
- border controls, asylum and immigration via a unified Border Agency or 'Border Force' as it is sometimes described;
- safeguarding personal identity, e.g. through the development of identity cards and associated developments; and
- a range of miscellaneous responsibilities linked to the above such as the pursuit of scientific development and research.

The Home Office retains pre-existing links with MI5 and (along with the Foreign Office) the government listening station GCHQ.<sup>28</sup> There are further links to the Cabinet Office and its committees. In this handbook it is only possible to provide a bare outline of its responsibilities. For a fuller treatment and a 'top down' perspective, see *The New Home Office: An Introduction*.<sup>29</sup>

### The Home Secretary

The office of Secretary of State, like that of the Lord Chancellor, is of ancient origin. It was formalised in 1377 and its holders became powerful figures under

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<sup>27</sup> For consistency, the description 'Lord Chancellor' is used throughout this work even though departmental or media reports now veer towards 'Secretary of State for Justice', 'Justice Secretary' (especially when referring to prison-related or probation-related duties), or maybe 'Justice Minister'. For the background and nuances, see *The New Ministry of Justice, Chapter 9*.

<sup>28</sup> The Security Services have themselves been in transition: a specialist area of study.

<sup>29</sup> *The New Home Office: An Introduction* (2007), Gibson B, Waterside Press. All later such references in this work are to that publication which serves as a useful all round companion volume.

the Tudors. In 1782 the office was divided between the Secretary of State for the Home Department (or Home Secretary) and the Secretary of State for Foreign Affairs (Foreign Secretary). The Home Secretary occupies a key role in relation to public safety and protection (including from terrorism), policing, UK borders, deportation and related aspects of criminal-justice policy-making.<sup>30</sup> In recent years and post-Human Rights Act 1998 the Home Secretary has found himself in conflict with the judiciary on a number of occasions concerning who should set tariffs for life sentence prisoners (*Chapters 9 and 14*).

## OTHER KEY NATIONWIDE ARRANGEMENTS

Apart from ministerial responsibility and the existence of key government departments, CJS Online (see earlier in this chapter) points to the National Criminal Justice Board (and its associated local boards) as ‘a radical new initiative’ under which the heads of each agency have been held collectively responsible for the performance of the system as a whole: ‘As well as being accountable to the Government, [the NCJB and each LCJB] is accountable to YOU, the public, whom it serves . . . The result is a far more integrated system which is already starting to show major improved performance’. As already noted, the NCJB has been a major mechanism for involving the judiciary in particular in the wider issues that affect whether a service is being properly provided—or ‘delivered’. Like the Sentencing Guidelines Council (*Chapter 9*), the NCJB is now a well-established and respected national institution. The Government itself also plays a key role through Cabinet committees. This is further noted in *Chapter 15* under the section on *Partnership and Working Together*.

## UNDERSTANDING THE CJS

Knowledge of each CJS stage and the way in which it relates to others is fundamental to a sound understanding of the CJS and allows the reader to view it from varying perspectives. It is also necessary to view the individual roles of the services (or agencies) and ‘actors’ described in *Parts III and IV* of this book both individually and as parts of a coherent whole. The relationship is sometimes described as one of ‘interdependence’, a term first coined in the mid-1980s and that has gone hand-in-hand with the idea that the CJS as a whole is responsible for the efficient and effective delivery of a key public service.

<sup>30</sup> Many statutes give the Home Secretary power to make delegated legislation of a procedural, regulatory or technical nature. He or she is no longer, post-MOJ, primarily responsible for criminal justice legislation, but remains a partner to this via Cabinet committees: *Chapter 15*.

## Interdependence

A certain level of fragmentation of responsibilities acts as a considerable restraint on the abuse of power, coercion or improper pressure to achieve a particular outcome. The validity of concerns expressed by some commentators in the past may now seem more sound and less radical in an era in which a Prime Minister has been interviewed by the police as a witness and key aides placed under investigation. Add to this continuing concerns about the legality of the Iraq War or events in relation to the dropping of an investigation of a prosecution in relation to BAE Systems (now BAES) and Saudi interests on the pretext of national security and it is easy to see why there is a need to be meticulous in such matters. In a liberal democracy there may be strengths in a process in which the constituent parts—some of which operate more closely alongside the interests of the state (or are more susceptible to influence from the centre or from political interests) than others—function independently of one another. Yet, as also noted in the first edition of this book and subsequently reiterated in the 2002 White Paper, *Justice for All*,<sup>31</sup> it can also be a weakness.

Throughout this book there are examples of a broad shift towards a nationwide agenda for participants in the CJS, including in relation to key aims such as crime reduction and crime prevention. Virtually all the criminal justice agencies now experience some degree of strategic direction at national level,<sup>32</sup> whilst decisions about day-to-day implementation are generally taken at area, local or what is sometimes described as operational level. Services have been progressively reorganized, and new organizations have been created to operate within the broad remit but at one remove from government. The judiciary is the exception to this as already noted but is now also playing its part through the NCJB, LCJBs, the SGC and a range of linked mechanisms.

The underlying rationale of interdependence is that each of the constituent parts of the CJS is unavoidably—and to a greater or lesser degree—reliant on other services to properly discharge its own, more specific role. Thus, e.g. the Crown Prosecution Service (CPS) relies on sound information from the police (or other law enforcement agencies) upon which to make a decision about whether there should be a prosecution at all or whether the prosecution tests described in *Chapter 11* are satisfied. In turn the police often require legal advice from the CPS concerning the exact legal scope of an offence. Courts cannot sentence in serious cases without the benefit of a pre-sentence report (PSR) from the Probation Service which, in turn, needs to understand the sentencing guidance issued to judges and magistrates and the factors and concerns that

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<sup>31</sup> (2002) Cm 5563. For some developments in relation to BAES, etc., see *Rule of Law* in *Chapter 2*.

<sup>32</sup> Judicial decision-making is not in itself amenable to 'management' in the normal sense, national or otherwise—but there have been moves to monitor the performance of judges and magistrates. Since 2001, all criminal courts (including magistrates' courts, where many strategic decisions are also still made locally) have been linked via the Court Service (*Chapter 2*).

courts regularly take into account in arriving at their sentence decisions (see, mainly, *Chapter 12*). End-to-end sentencing involves close co-operation between the NPS and HMPS, whilst a whole chain of communications or risk-assessments may be involved in ensuring that everyone concerned has adequate and up-to-date information about any dangers presented by an offender, or knows that he or she is a risk to other people or at risk of self-harm or of committing suicide.<sup>33</sup>

What may seem to be an obvious statement at first sight is not so when viewed against the somewhat autonomous and often self-contained arrangements of the past as already hinted at under the heading *Ministry of Justice*, above. Nowadays, the trend is for the services to work towards better information, sound communications, improved performance, compatible working systems, agreed targets, protocols and understandings and there have been various moves towards geographical compatibility in terms of units or levels of operation. Practice standards are a high priority within each organization and other mechanisms include, e.g. codes of practice, working manuals, guidelines, liaison arrangements, multi-agency teams, task forces and *Partnership and Working Together* as described separately in *Chapter 15*.

## COSTS AND CRIMINAL JUSTICE: A NOTE

The criminal justice system is one of the country's major programmes of public expenditure, and there is inevitable pressure to find savings or to limit the growth in costs as procedures have become more sophisticated and the needs of security have become more demanding. Court delays, uneconomic court houses and procedures, prison regimes, community-based resources, the expensive deployment of police officers as opposed, e.g. to police community support officers (PCSOs) or the use of private sector security guards at sporting events, legal aid and ways of funding research have for many years been targets for efficiency savings, and there has been concern that economies in such areas might sometimes prejudice bringing offenders to justice, including through the conduct of criminal trials and ultimately the integrity or quality of justice itself.

The most difficult area has, however, been the relationship between the sentencing practices of the courts and the capacity of the prison and probation services to give effect to the sentences imposed. Governments have never compromised the courts' independence by seeking to influence their decisions in particular cases, but have at times encouraged courts to use less expensive, non-custodial penalties rather than imprisonment, typically by making non-custodial penalties more 'demanding' or 'effective'. But this encouragement has

<sup>33</sup> Similar examples of essential communications appear throughout this handbook.

been intermittent and its impact has often been counteracted by that on the sentencing climate of government Ministers' rhetoric, on other occasions, concerning the need for 'toughness' in dealing with offenders.

From time-to-time, there has been an emphasis on greater and better use of financial penalties rather than those outcomes which are more severe within the sentencing framework (see, generally, *Chapter 9*). Such attempts have, however, been fraught with difficulty: no government can afford to be seen as 'soft' on crime, and the Judiciary always and rightly resist any appearance of interference by the Executive (see also, generally, under *Criminal courts and the separation of powers* above). The situation is especially difficult when the issue is not about cost but about the system's immediate physical capacity. Some further comments concerning costs and the financial implications of criminal justice decision-making appear in *Chapter 15*.