

## CHAPTER 1

# **The Home Office: An Overview**

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The Home Office was formed as a department of government in 1782 when the pre-existing and all-embracing office of Secretary of State was divided up between a new Home Department and Department for Foreign Affairs. Some Home Office functions, principally national security and border controls, extend to the United Kingdom as a whole, but its jurisdiction is for the most part limited to England and Wales and there are separate arrangements in Scotland and Northern Ireland. Alongside the Treasury, the Home Office and Foreign Office have always ranked as the foremost departments of state. Thus, also, political responsibility for the Home Office, which rests with the Home Secretary, automatically made him<sup>1</sup> a senior and powerful member of the Cabinet.

**THE 'OLD' HOME OFFICE**

It would be impossible in a hand book of this kind to chart all the formative developments that have affected the Home Office during its three centuries and more lifespan. But it is possible to convey a sense of weight of its responsibilities and of how it became the organization that it had become by the 21<sup>st</sup> century. Essentially, as the government department responsible for internal affairs in England and Wales (what some foreign jurisdictions describe as a Ministry of the Interior) the Home Office was responsible for what can be broadly described as law and order, or keeping order, including by trying to make sure not only that crime was prevented or offenders apprehended, but also that undesirable aliens were kept out of the country, or deported to their country of origin. Indeed, in early times, it was often concerned with putting down riots, insurrection and other major disturbances, including by calling on the militia in the days before formal police forces. It also rooted out subversives, foreigners in particular.<sup>2</sup>

**Principles of justice and a network of relationships**

The Home Office was always concerned with principles of justice and attempts to humanise the criminal law and its application. Its work became progressively more complex and sophisticated throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. Some former Home Office functions such as health, education and labour (or

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<sup>1</sup> Historically all Home Secretaries were men: see the list at the end of *Chapter 9*.

<sup>2</sup> Any survey of the first decade or so of the 20<sup>th</sup> century will reveal a fear of 'strangers' akin to that of the early 2000s; and the same can be said for various other time frames.

nowadays 'employment') were transferred early on to separate and often new ministries. By the end of the latter century, the remaining Home Office 'core tasks' involved a complicated set of relations with other government departments, especially the old Lord Chancellor's Department (LCD),<sup>3</sup> the courts, the judiciary and agencies such as the police, the Crown Prosecution Service (CPS) (from 1986), the originally locally-based Probation Service, and within the Home Office itself HM Prison Service and the Immigration Service.

### **Building a safe, just and tolerant society**

The main responsibilities as they existed at the pre-2007 Home Office lay across a broad spectrum spanning such areas as criminal law, policing, prisons, probation, immigration, asylum, deportation and extradition. It also issued passports. Among other things and from time-to-time it took lead responsibility for such diverse matters as social equality, diversity and race relations. Eventually it came to work with individuals and communities with the aim of 'building a safe, just and tolerant society'.<sup>4</sup> By the 21<sup>st</sup> century, its web-site also signalled that it was concerned with 'enhancing opportunities for all' in relation to which 'rights and responsibilities go hand-in-hand'.<sup>5</sup> Other telling slogans indicated that its remit included making sure that 'the protection and security of the public are maintained and enhanced'. This is not to say that the new Home Office described in this book has abandoned such ideas, but its livery, emphasis and presentation have altered – and some responsibilities have changed hands as will be described below and in subsequent chapters.

### **Departments, directorates, units and groups**

The old Home Office was organized under a permanent Secretary of State and had a number of departments, including, notably, the Criminal Department, Immigration Department, Police Department, Prison Department (after the separate Prison Commission was dissolved in 1963) and a General Department. There were also various units such as the Research Unit (see *Chapter 8*) and a short-lived Probation Unit. Some of its responsibilities, chiefly those in relation to criminal justice policy, prisons and the Probation Service it began to style the 'Criminal Justice System' (CJS), albeit that a good part of the CJS fell outside of the remit of the Home Office, notably the courts and legal services. The old Home Office structure also included, e.g. a Legal Advisors' Branch; separate and independent inspectorates of constabulary, prisons and probation; and a Prisons

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<sup>3</sup> Later the Department of Constitutional Affairs (DCA) and then the Ministry of Justice (MOJ) as explained later in the chapter.

<sup>4</sup> A slogan that accompanied the Home Office logo.

<sup>5</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

and Probation Ombudsman. Before May 2007, the Home Office listed several hundred sponsored or linked organizations at its web-site.

### **The Home Office pre-fix**

Over the years, the words 'Home Office' had become a prefix for various functions, tasks, regulations or instructions which are again indicative of its sprawling responsibilities, interests and influence. Examples include such diverse point of reference as:

- the Home Office Circular (or HOC), a document created centrally concerning, e.g. the implementation – or frequently the suggested interpretation of – legislation, including for distribution to interested parties and stakeholders such as the criminal courts,<sup>6</sup> police, prison and probation services;<sup>7</sup>
- the Home Office pathologist who still attends at murder or similar crime scene and emergencies and who may later give evidence in court; and
- Home Office advisor, a description given to any number of individuals from within or outside of government, including academia - on whom the department might call upon from time-to-time for information, advice, expertise and support in a range of specialist fields.<sup>8</sup>

### **A transferring out of responsibilities**

Gradually, however, the process of 'transferring out' continued. The LCD became responsible for the administration of magistrates' courts and later for human rights and elections;<sup>9</sup> whilst the Department for Culture, Media and Sport took over broadcasting and gambling and the Department for Communities and Local Government (as it now is) that for the Fire and Rescue Service and later community relations. Other responsibilities, such as animal welfare and disaster management (formerly 'Civil Emergencies' or 'Civil Contingencies') remained with the Home Office or came to be shared with other government departments.

A main task was the development and implementation of new criminal justice legislation, including the creation, updating and abolition of offences, bail related procedures and the legal framework within which sentences were passed

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<sup>6</sup> Surprisingly with hindsight, given judicial independence. Rightly or wrongly, this potentially influential Home Office advice could sometimes be misread by judges, etc. as telling them what the law meant, or what outcomes were deemed to be acceptable.

<sup>7</sup> HOCs or their modern-day equivalent can nowadays be viewed online at [www.circulars.homeoffice.gov.uk](http://www.circulars.homeoffice.gov.uk)

<sup>8</sup> So too, e.g., historically and ominously, the Home Office List of approved public executioners in the days before the abolition of capital punishment (1965 onwards); and the Home Office 'Table of Drops' setting out the length of rope to be used.

<sup>9</sup> All three of which moved to the old LCD in 2001.

by the courts. In summary, by and prior to the 2007 Home Office-split there was a patchwork of sometimes tenuously related responsibilities, some of which were discharged via sponsored organizations, executive agencies, directorates, or ultimately the private sector or voluntary sector, including:

- criminal law (offences and penalties); bail, procedure and sentencing (above) (now principally an MOJ task but with other departments proposing new offences in their own areas of responsibility such as the Department for Transport in relation to road traffic law or, in the case of the Home Office, public safety and public protection issues of the kind noted in *Chapter 2* or so as to ensure a ready response to terrorism as noted in *Chapter 5*);<sup>10</sup>
- crime reduction programmes (*Chapter 4*);
- advice and support on crime prevention (*Chapter 4*);
- co-ordination within the criminal justice system (now largely a matter for the cross-departmental Office for Criminal Justice Reform (OCJR): see under the heading *Partnership*, below);
- anti-social behaviour (see *Chapter 4*);
- mentally disordered offenders (now MOJ);
- support for victims of crime and witnesses (including via the independent Victim Support and the Witness Service) (now MOJ);
- criminal injuries compensation (now MOJ);
- community issues including volunteering (now MOJ);
- animal procedures, e.g. approving experiments or licensing laboratories;<sup>11</sup>
- coroners (now MOJ);
- misuse of drugs (*Chapter 8*);
- issues concerning terrorism and terrorists (*Chapter 5*);
- immigration, asylum, deportation and citizenship (*Chapter 6*); and
- general oversight of the police (*Chapter 3*), HM Prison Service (HMPS) (now MOJ) and youth justice (now a mutual interest and shared responsibility of the MOJ and a new Department for Children, Schools and Families) and the Youth Justice Board (YJB)(now MOJ).

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<sup>10</sup> The Home Office used to have oversight of the criminal law, in the sense that any proposal to create a new offence needed Home Office approval and the Home Office would apply tests such as how it would be enforced; whether it was reasonable, e.g. what were the ingredients of the offence and what special defences were to be provided if any; whether the problem could be dealt with in other ways; whether the offence should be tried summarily by magistrates or on indictment in the Crown Court; and whether the proposed penalties were proportionate. The Cabinet's Legislation Committee wanted to be satisfied that the Home Office was happy with all that before it allowed the sponsoring department to introduce a Bill in Parliament.

<sup>11</sup> Attracting activists - or terrorists in modern times: see, generally, *Chapter 5*.

In 2002, the newly created National Probation Service (NPS) became a directorate of the Home Office and in 2003 the National Offender Management Service (NOMS) was formed as an umbrella organization for both HMPS and the Probation Service under the UK's first commissioner of correctional services.<sup>12</sup> This is now an omnibus MOJ function. Another re-arrangement occurred in 1995 when a former responsibility of the Home Secretary for looking into miscarriages of justice passed from the Home Office to the Criminal Cases Review Commission (later 'Authority') (CCRA) following the report of a Royal Commission on Criminal Justice that also contained certain early pointers in the direction of an MOJ.<sup>13</sup>

### **The move towards a Ministry of Justice**

To the tutored constitutional eye, various of the responsibilities formerly falling to the Home Office lay uneasily with what can be described as an essentially law enforcement-oriented agency. This is well-documented by David Faulkner, a former deputy secretary at the Home Office and now with the Oxford University Centre for Criminological Research in his authoritative work *Crime, State and Citizen: A Field Full of Folk*. After reviewing the relevant literature, he concludes that 'the case for a Department of Justice now deserves serious debate'.<sup>14</sup> Such views became yet more tenable and respectable<sup>15</sup> in the post-Human Rights Act 1998 era when even the ancient role of the Lord Chancellor was revised to ensure that the UK was compliant with the fair trials principles of the European Convention On Human Rights.<sup>16</sup> Nonetheless, in 2003, it was still possible for Home Secretary David Blunkett MP to successfully resist a move to create an MOJ that involved some reduction in Home Office areas of responsibility.

By 2007, other considerations prevailed. Famously and as already noted in the *Preface* to this work, the creation of the MOJ and, centrally, the giving up to the MOJ by the Home Office of the latter's responsibilities with regard to NOMS and the Parole Board occurred after the then Home Secretary, Dr John Reid, concluded that the Home Office had become 'not fit for purpose'.<sup>17</sup> This revelation came in the wake of events that included:

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<sup>12</sup> Martin Narey. 'Corrections' is frequently used nowadays to signify penal sanctions. The term originated in the USA as a synonym for punishment related functions: which were, presumably, intended to correct the behaviour of offenders. It appears to have gradually entered the penal lexicon of the UK from the mid-1990s onwards.

<sup>13</sup> Royal Commission on Criminal Justice (1993), *Report* (Cm. 2263), HMSO.

<sup>14</sup> Second edition, 2006; Waterside Press. See, in particular, *Chapter 21* of that work.

<sup>15</sup> It is interesting that historically they may have been seen as radical or even subversive.

<sup>16</sup> See the companion volume to this work, *The New Ministry of Justice: An Introduction*.

<sup>17</sup> Government later sought to limit this to the Immigration Department. But it was widely taken to refer to the Home Office as a whole: *Chapter 10*.

- a long history of ‘failure’ to control actual or supposed abuses of immigration and asylum, going back to the early 1960s at least, and made worse by the convulsions that followed the collapse of communism and the opening up of the European Union to once Eastern bloc countries (*Chapter 6*);
- the London bombings of 7 July 2005 (and similar but unsuccessful attempts including that of 21 July 2005) (*Chapter 5*);<sup>18</sup>
- detention without trial being held to be unlawful by the courts (*Chapter 5*);
- control orders being diluted in a similar way (*Chapter 5*);
- the ‘foreign prisoner crisis’ whereby such prisoners were not being adequately considered for deportation after serving their sentences in the UK, in accordance with prior judicial recommendations (*Chapter 5*); and
- re-offending by some serious offenders after they were released from prison (see further for this and associated triggers for change in *Chapter 10*).

This list is not exhaustive. Any explanation of why events rapidly changed must have a longer and more complex background, some of which is noted in *Chapter 10* which looks at the transition into a fresh era. But a kind of malaise had set in accompanied by defensiveness on the part of Ministers concerning any kind of criticism, perhaps exacerbated by the need to repel sometimes unjustified or excessive media criticism. Rightly or wrongly, there also seems to have been a Home Office perception that judges were becoming intransigent when they ruled against Ministers on a technicality or due to international obligations under human rights law. Not only were judges openly criticised but at times lawyers were singled out as villains and ‘bad mouthed’ for raising technical points.<sup>19</sup>

## THE NEW HOME OFFICE

As intimated in the *Preface*, the ‘new’ Home Office is represented in an amalgam of four key strands of development in United Kingdom public affairs that crystallised in 2007 and that can be usefully re-iterated here:

- first, the reorganization - or the ‘transferring out’ – that occurred at the ‘old Home Office’ in May of 2007 when some of its previously central responsibilities for the criminal law and for prisons and probation were

<sup>18</sup> All after 11 September 2001 and the destruction of the Twin Towers, New York, USA.

<sup>19</sup> There was even an on the hoof suggestion at one stage that the law should be altered to counter technical defences, in so much as juries would no longer be obliged to acquit an accused person in such circumstances. How this might work was not explained. More considered Home Office documents talked ‘firm’ rather than ‘tough’ about ‘rebalancing the system’ or ‘rebalancing justice’; terms that had earlier featured in the White Paper, *Justice For All* (2002; Cm 5563) that preceded the Criminal Justice Act 2003.

relinquished to a freshly created Ministry of Justice (MOJ), following earlier transfers out of the kind that have already been described;

- second, the leaner, 'slimmed-down' variety of Home Office that resulted, free to concentrate on such matters as homeland security, border controls and matters of a public safety cum law and order nature;
- third, the advantages – but also the associated issues of accountability and legitimacy - that for the Home Office and its many partners flowed from an acceleration in scientific advances - such as those in relation to cyber-technology, forensics (especially DNA), data storage and data sharing, surveillance, monitoring, intelligence gathering, risk analysis and assessment and other modern-day tools of the kind described in *Chapter 3*;
- fourth, the new and seemingly more balanced approach to the grand debate on crime and punishment – and terrorism in particular – that was accompanied in its later stages by a distinctly changed approach to public pronouncements, following a change of Prime Minister and the appointment of the UK's first woman Home Secretary, Jacqui Smith.<sup>20</sup>

As also noted in the *Preface*, other analyses are possible and some commentators might point, in particular, to an unprecedented build up in criminal justice legislation and prison overcrowding. As explained in *Chapter 10*, an estimated 3,000 new offences were created in the decade to 2007 wherein the prisoner population had risen from around 60,000 to some 80,000; and from 42,000 to 60,000 in the decade before that. It peaked in 2008 at around 83,500. Whatever the justification, this all led to noticeable tensions including from time-to-time as between the Government, the police, the courts, the correctional services, civil liberties and penal reform groups. Signs of change were soon evident following the 'Home Office split' as noted in various chapters of this book.

## KEY OBJECTIVES OF THE NEW HOME OFFICE

According to its own web-site,<sup>21</sup> the Home Office, in its new guise, is the government department responsible for leading

the national effort to protect the public from terrorism, crime and anti-social behaviour: we secure our borders and welcome legal migrants and visitors. We safeguard identity and citizenship. We help build the security, justice and respect that enable people to prosper in a free and tolerant society.

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<sup>20</sup> For a useful profile see that in the *Sunday Times*, 22 July 2007.

<sup>21</sup> [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

As noted in *Chapter 4*, targeting 'respect' has moved from the margins of official thinking on crime prevention and crime reduction to a mainstream role in the relatively short time since the first UK anti-social behaviour orders (ASBOs) were introduced by the Crime and Disorder Act 1998.

The work of the Home Office is organized around what it describes as seven key objectives contributing to an 'overriding mission to protect the public'. These are 'to:

- help people feel safer in their homes and local communities;
- support visible, responsive and accountable policing;
- protect the public from terrorist attack;
- cut crime, especially violent, drug and alcohol-related crime;
- strengthen . . . borders, fast track asylum decisions, ensure and enforce compliance with . . . immigration laws, and boost Britain's economy;
- safeguard people's identity and the privileges of citizenship; and
- work with ... partners to build an efficient, effective and proportionate Criminal Justice System (CJS)'.

Each of these objectives encompasses a large agenda in itself as described in the chapters that follow. The last item, partnership, deserves special mention here and demonstrates that the Home Office remains involved in and committed to other shared objectives (see later in the chapter).

## THE BASIC HOME OFFICE REMIT

The Home Office remit - directly or indirectly and either in its own right or in partnership (below) - in terms of the discharge of its responsibilities on an everyday basis, can, post-2007, be summarised as:

- public safety and the protection of the public (*Chapter 2*);
- the police and policing via independent local police forces and local police authorities (*Chapter 3*);
- crime prevention and crime reduction as the lead department but in partnership with other government departments (*Chapter 4*);
- terrorism and other emergencies, including through an Office for Security and Counter-Terrorism that provides advice to Ministers, develops policy and provides security measures (*Chapter 5*);
- border controls, asylum and immigration via a unified Border Agency (or as it has been more dramatically described 'Border Force') (*Chapter 6*);
- safeguarding personal identity, e.g. through the development of identity cards and associated developments (*Chapter 7*); and

- a range of miscellaneous responsibilities linked to the above such as the pursuit of scientific development and research (*Chapter 8*).<sup>22</sup>

It was reported by the national media that as part of the Home Office split John Reid, the then Home Secretary, sought unsuccessfully to wrest MI6 from the Foreign and Commonwealth Office, it having been argued for some time in certain quarters that this part of the Security Service might be better placed under the Home Office. It retains its pre-existing links with MI5 and in tandem with the Foreign Office, the government listening station GCHQ, all with strong links to the Cabinet Office as described in *Chapter 5*.

## RELATIONSHIP TO THE MOJ

The relationship between the 'old' Home Office and the then LCD was at one time rather distant, reflecting the former's own concern not to appear to be interfering with the judiciary, with which the LCD was closely identified due to the fact that the majority of judges and magistrates were appointed by the Lord Chancellor and that as head of the judiciary he<sup>23</sup> could sit as a judge (and some Lord Chancellors regularly did so).<sup>24</sup> Various protocols and understandings, unwritten but absorbed by civil servants and practitioners within the culture of their own departments or fields of work, existed to protect both the Home Office and LCD/DCA from judicial interference, and similarly the judiciary itself from interference by the Home Office or LCD/DCA and any other government department. The relationship became closer with attempts to 'manage' the Criminal Justice System (CJS) that began during the 1980s and under the more stringent financial regime which the Treasury was imposing at that time. The situation needed careful handling at a time when the Home Office began to include legislation on sentencing within its attempts to manage the system, something that it did in response to a Government emphasis on the three Es: efficiency, economy and effectiveness.

There was also, with hindsight, the somewhat peculiar scenario that emerged in the 1980s and early-1990s whereby practitioners and the courts began to strongly influence the shape of criminal justice policy by taking what were commonly called 'initiatives' of their own, according to their own perceptions of

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<sup>22</sup> See also *Chapter 8* and *Appendix II* to this work.

<sup>23</sup> All Lord Chancellors have been men as were the first two Justice Secretaries.

<sup>24</sup> Notably, Lord Hailsham in the 1970s. Under the Constitutional Reform Act 2005 these and other judicial functions were moved to the Lord Chief Justice. But the new, post-2007, Secretary of State for Justice and Lord Chancellor has a duty to protect the independence of the judiciary which dates back to 2005. Also known as the Justice Secretary that term is used in this handbook unless the context dictates otherwise.

what criminal justice was intended to achieve. Central amongst these was what became the alternative to custody movement from the mid-1980s onwards. Among connected phenomena was a fall in the numbers of juveniles being sent to custody from a high of around 8,000 a year to some 2,000. This and similar moves served to hold the adult prisoner population at around 45,000 as opposed to the 80,000 plus population of today. These shifts were largely determined 'on the ground' or at the 'grass roots', sometimes via multi-agency strategies. Only a few of them did central government feel able directly to support, but general endorsements did sometimes appear in White Papers, Green Papers and by extension legislation for the courts to use. It was largely, perhaps, this lack of coordination as between government policy and often local and variable decision-making<sup>25</sup> that led to moves to create the statutory sentencing framework that appeared first in the Criminal Justice Act 1991 and later that of 2003.

## ENCOURAGING COHERENCE AND CONSISTENCY

Much may have been achieved by the above mentioned developments in terms of progressive thinking about sentencing, but it is also possible to describe the scenario as wholly dysfunctional. Tensions arose because, historically speaking, there never was any such thing as a fixed sentencing rule or framework for decision-making. Indeed, the further back one looks, statements, e.g. about the purposes of sentencing were passed from judge to judge, magistrate to magistrate or judge to magistrate via the appeals process or 'training days'. What a Crown Court judge said at a meeting of magistrates, e.g. about the need to lock up a particular kind of offender (or not as the case may be) could carry enormous weight and become a point of reference for years to come. The conventional wisdom and oddments of law about sentencing were distilled in the 1970s Home Office publication, *The Sentence of the Court*,<sup>26</sup> a fact that now seems wholly surprising in an era when the responsibility for such legislation has been passed to the MOJ and pronouncements on sentencing to the MOJ-linked Sentencing Guidelines Council (SGC). Studying *The Sentence of the Court* shows that great emphasis was placed by courts on 'general (but then largely unqualified and sometimes uncertain) objects of sentencing', such as punishment, reparation, retribution, deterrence, reflecting public concern and rehabilitation. Additionally,

<sup>25</sup> Sometimes dubbed 'justice by geography'.

<sup>26</sup> The first Home Office edition was published in 1980. Four later editions were published by Waterside Press (1995, 1998, 2000, 2002) after the Home Office and LCD signalled that they had no further interest in that publication. This is interesting in the context of the present discussion, in that these were created by a group of interested practitioners who, in effect (and in conjunction with the Judicial Studies Board (JSB)) determined the content of what became widely used, quasi-official texts and guidance.

great weight was given to a relatively small number of key rulings of the Court of Appeal with regard to appeals against sentences imposed by the Crown Court and leading commentators, foremost amongst whom was the highly respected Cambridge University-based academic Dr David Thomas QC.

### **Moves towards a more structured approach to sentencing**

As already indicated, this may have worked in a functional sense and in an era when government was largely unconcerned with anything more than handing to the courts a range of powers, but it hardly stood up to scrutiny in terms of a coherent approach to sentencing as a whole – including its costs, resource demands and overall aims. Commentators such as David Thomas were saying things to the effect: ‘Leave it to the judges’. Whilst such sentiments corresponded with a meticulously constitutional approach to judicial independence and were the order of the day, they perhaps left too much to chance. Within the Home Office attempts were being made to make sentencing more coherent within a joined-up system of working in which the effects of decision-making took greater account of penal strategy across the board.<sup>27</sup> Against this background, the creation of a new-style MOJ capable of co-ordinating criminal policy can be argued as a major advance and long overdue.<sup>28</sup> If tensions have existed in recent years with the judiciary, they have tended to be in areas where judicial discretion has been constrained, as with mandatory or minimum sentences for certain serious or repeated offences. In the end, it is Parliament that reigns supreme and which, subject to any wider human rights considerations, determines what the law should be through the democratic process.<sup>29</sup>

## **SHIFTS IN RESPONSIBILITY – THE NEW MOJ**

Since the Home Office split of 2007 and accompanying transfer of responsibilities to the MOJ, the latter’s responsibilities can be summarised as follows:<sup>30</sup>

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<sup>27</sup> Key events of this era included the Criminal Justice Acts of 1982, 1987 and 1991 and a Parole Review of 1988. *The Parole System in England and Wales: Report of the Review Committee* (Chair Lord Carlisle), Cm 532, HMSO. See, further, *The New Ministry of Justice*. A powerful critic of ‘leaving it to the judges’ was Professor (then Dr) Andrew Ashworth who was one of the first commentators to propose a sentencing council.

<sup>28</sup> For some further comments on sentencing see the end of *Chapter 2*; and for an excellent survey of events relating to this period, see *Crime, State and Citizen: A Field Full of Folk* (Second edition 2006), Faulkner D, Waterside Press.

<sup>29</sup> This begs the question of how effective that process is in terms of real democracy, but that is a different issue, one being pursued in the Government/MOJ White Paper, *The Governance of Britain* (2007; Cm 7170) and via a Constitutional Renewal Bill (2008).

<sup>30</sup> A full list of MOJ responsibilities is contained in *The Ministry of Justice, etc.* (above); see, in particular, *Chapter 1* and *Appendix II* of that companion volume.

- working ‘trilaterally’ with the other departments that make up the central government strands of the Criminal Justice System (CJS), i.e. the Home Office and Office of the Attorney General (see also later in this chapter under the heading *Partnership and Shared Responsibility*);
- HM Courts Service (HMCS), that now oversees the administration of all of the civil, family and criminal courts in England and Wales;
- support for the judiciary, including:
  - appointments via the newly created Judicial Appointments Commission (JAC);
  - an Office of Judicial Complaints (OJC);
  - a Judicial Office (JO), or secretariat, to serve the Lord Chief Justice and senior judiciary; and
  - a Judicial Communications Office for communications with and between judges and also magistrates;
- the Tribunals Service across the whole of the UK;
- the National Offender Management Service (NOMS), responsible for the commissioning of correctional services and their administration through HM Prison Service (HMPS), the Probation Service (both of which were formerly major Home Office responsibilities) and, in future, competing independent providers of services and facilities;
- sponsorship of:
  - HM Inspectorates of Prison and Probation (formerly Home Office);
  - Independent Monitoring Boards (IMBs) (formerly Home Office);<sup>31</sup>
  - the Parole Board (formerly Home Office);
  - the Prisons and Probation Ombudsman (formerly Home Office);
- legal aid and the more wide-ranging Community Legal Service (CLS), through the Legal Services Commission (LSC);
- sentencing policy, including sponsorship of:
  - the Sentencing Guidelines Council (SGC); and
  - Sentencing Advisory Panel (SAP) (both formerly Home Office);
- criminal, civil, family and administrative law (the first of these formerly Home Office);
- sponsorship of the Law Commission (always an LCD/DCA function);
- hosting the Office for Criminal Justice Reform (OCJR);
- the Privy Council Secretariat and the Office of the Judicial Committee of the Privy Council; and
- constitutional affairs, including:

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<sup>31</sup> Formerly Boards of Visitors, i.e. visitors to prisons with authority to enter their allocated prison establishment at any time and with access to prisoners, charged with reporting to (in future) the Secretary of State for Justice/Lord Chancellor annually and in relation to individual incidents that may occur, at IMB members’ discretion.

- House of Lords reform;
- electoral reform and democratic engagement;
- civil and human rights;
- freedom of information; and
- the management of UK constitutional arrangements and relationships including with devolved administrations for Wales, Scotland and Northern Ireland and Crown dependencies.

The Home Office earlier relinquished its former responsibility for investigating miscarriages of justice when this was transferred to the Criminal Cases Review Commission (CCRC), an independent public body that was set up in 1997 under the Criminal Appeal Act 1995. The first cases of widespread public concern to be dealt with by the CCRC<sup>32</sup> were those of the Guildford Four who were wrongly convicted of the Irish Republican Army (IRA) Guildford pub bombings of 1974, in which five people were murdered and 50 others maimed or injured and to which other people later confessed.

## PARTNERSHIP AND SHARED RESPONSIBILITY

Partnership is a device for cooperation between different agencies and services. In the criminal justice context it grew out of initiatives to encourage multi-agency liaison and ‘working together’. It is generally accepted that where partnership occurs those taking part retain their own professional boundaries, independence and roles but seek to enhance outcomes by sharing, e.g. knowledge, information or resources. The situation is sometimes described as one of ‘interdependence’.

### Coordination at national level

The equivalent of ‘partnership’ at the highest tier of liaison, the central governmental level, consists of a range of involvements including links with:

- other government departments such as the MOJ, Office of the Attorney General and what, since July 2007, has been the Department for Children, Schools and Families, both directly and via a multi-agency Cabinet Committee on Crime and the Criminal Justice System (CCCCJS);
- the Department of Communities and Local Government concerning such matters as race, religion, social cohesion, civil renewal and regeneration;
- the police and the security services MI5 and GCHQ (*Chapters 3 and 5*);
- the Commissioner of the Metropolitan Police Service (MPS) and Association of Chief Police Officers (ACPO) (*Chapter 3*);

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<sup>32</sup> In its then guise of the Criminal Cases Review Authority (CCRA).

- various nationally based police organizations including the National Police Improvement Agency and Serious and Organized Crime Agency (SOCA) and related intelligence, databases and facilities for pursuing the proceeds of crime by tracking-down and where possible seizing the assets of offenders and generally disrupting organized crime (*Chapters 3 and 10*);
- other nationwide agencies such as the MOJ-led HM Courts Service, HM Prison Service (especially vis-à-vis the release and subsequent supervision of certain offenders) and Probation Service who share comparable aims and objectives or encompass areas of common concern such as crime prevention, crime reduction or protecting the public;
- a range of regulatory ‘watchdogs’ with their own administrative powers to regulate affairs in given areas of day-to-day life;
- organizations from the third sector<sup>33</sup> in so far as these operate at a national level, many of whom provide resources designed to reduce crime or assist and support ex-offenders who are going straight;
- the National Criminal Justice Board (NCJB) that discusses broadly related issues as between the heads of the criminal justice agencies;
- European and other partner governments, both directly and via organizations such as Interpol and Europol; and
- national media, including influential programmes such as *Crimewatch*.<sup>34</sup>

### Partnership at the local level

At the ‘grass roots’ and more locally-based level, delivery of the services on which the Home Office relies include, e.g.:

- the Crown Prosecution Service (CPS) (whose head, the Director of Public Prosecutions (DPP) reports to the Attorney General (A-G)) (*Chapter 3*);
- Neighbourhood Watch and similar schemes such as Business Watch, Farm Watch and Boat Watch;
- local courts in terms of the provision of support services and general administrative matters, principally via links between police ‘criminal justice offices’ or joint local police/CPS Criminal Justice Units (CJUs) and, in relation to the Crown Court, Criminal Justice Teams (CJTs);
- local prisons;
- local probation services;
- Local Criminal Justice Boards (LCJBs) and their participating agencies;

<sup>33</sup> ‘Third sector’ is usually taken to signify voluntary and community organizations, faith groups and what are sometimes termed ‘social enterprises’. The ‘private sector’ is sometimes called the second sector. Many local organizations of both kinds also provide resources or services. See also generally, [www.thirdsector.co.uk](http://www.thirdsector.co.uk)

<sup>34</sup> BBC1 TV. *Crimewatch* features unsolved crimes and invites viewers to ‘telephone in’.

- local authorities, especially in terms of their own crime prevention and crime reduction responsibilities and initiatives;
- Crimestoppers, an independent UK-wide charity ‘working to stop crime’ and that now operates via the internet as well as by telephone (enabling crimes to be reported more easily) and similar organizations;
- the many more locally based or locally designated bodies whose aims and objectives encompass areas in common of the kind already noted above;
- local media; and
- informal networks of informants who pass information to the police.

There is also a parallel need for managerial arrangements and understandings that translate effectively across hierarchies and levels of authority; and are as comprehensible to heads of departments as they are to local managers and grass roots practitioners – e.g. the front line police officer making an arrest, the Crown prosecutor deciding whether prosecution is in the public interest, the prison officer on the prison landing when preparing a sentence plan – and adequate safeguards for *judicial independence permitting* – for the individual judge or magistrate sitting in court to decide upon the merits of an individual case. Such strategies must also survive over time so that they are equally relevant to and workable by the Parole Board at the ‘back end’ of a sentence many years on.

## THE NEW ERA

It is easy for anyone, whatever their area of expertise, to suggest that events are about to enter a new era and then to predict that it will come to pass. But maybe the pointers above are enough to suggest that it is at least a time to ‘watch this space’ in relation to criminal justice. At the end of this book, *Chapter 10*, entitled *Into a Fresh Era*, attempts to assess the depth of change that the Home Office split has precipitated. It is still relatively early days, but the changes already seem to have triggered first a change of tone or temperature and later more hard-edged criticism as the problems mounted for a new regime.<sup>35</sup> Further examples of this changed context appear in the chapters and appendices that follow.

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<sup>35</sup> As initially demonstrated by unusually supportive media reports such as that which followed the Glasgow Airport terrorist attack of July 2007, in which following her report to Parliament the Home Secretary was ‘praised by all sides for her calmness and confidence with which she had reacted to the crisis’: *The Guardian*, 3 July 2007, p.6. ‘Ministers step up hearts and minds campaign’.