

Witness name: Lord Edmund Nigel Ramsay Crisp

Statement No.: WITN3996001

Exhibits: [WITN3996002] - [WITN3996025]

Dated: [03.09.2020]

## INFECTED BLOOD INQUIRY

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### FIRST WITNESS STATEMENT OF LORD CRISP

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I am providing this witness statement in response to a Rule 9 request from the Inquiry dated 21 November 2019.

I, Nigel Crisp, will say as follows:-

#### **Section 1: Introduction**

1. My name is Lord Edmund Nigel Ramsay Crisp. I was born on GRO-C 1952. My address has been made available to the Inquiry. I graduated from the University of Cambridge in 1973 with a degree in Philosophy. I am an Honorary Fellow of the Institute of Healthcare Management.
2. At the time of preparing this statement, I understand that the process of disclosure of records between the Department of Health and Social Care (“DHSC”) and the Inquiry is still far from complete. Where I am able to assist with the queries raised, I have done so in this first statement. I confirm that I will provide a second statement to address the wider issues that have been raised concerning my time in office in the period 2000–2006, once the process of disclosure of the records from that period is more complete. Rather than deferring all of my written statement to that stage, I have attempted to address now the more specific points raised concerning Lord Jenkin of Rodin’s request for access to records, from his time as Secretary of State for Health.

## **Section 2: “Experience as a Manager and Executive within the NHS 1986 – 2000”**

### ***Experience***

3. My career in the NHS began in January 1986, when I took up post as the Unit General Manager (“UGM”) of the Mental Handicap Unit of East Berkshire Health Authority.
4. In April 1988 I became the UGM for Wexham Park Hospital, a part of the East Berkshire Health Authority. I became Chief Executive of the Heatherwood and Wexham Park Hospitals NHS Trust on its formation in April 2001.
5. In July 1993 I took up post as UGM of the Churchill John Radcliffe Hospital, a part of the Oxfordshire Health Authority. I became the Chief Executive of the Oxford Radcliffe Hospital NHS Trust on its formation in April 1994.
6. I joined the Civil Service as the Regional Director for South Thames of the NHS Executive in 1998 and subsequently became the Regional Director for London in 1999.

### ***Role of a manager and Chief Executive***

7. The role of a manager within the NHS depends on the seniority of the post. In general terms the role is to lead the relevant team, working within the agreed parameters and policies and using the resources available to deliver the required service.
8. A UGM would have responsibility for managing a service unit within the parameters, policies and resources determined by the District Health Authority and was directly accountable to the District General Manager.
9. A Chief Executive of an NHS Trust had a broader role which included the management of all assets and estates, the employment of all staff, the setting of budgets and the development of policy within the Trust. They were accountable

to a Chair and Board who approved policy and who at that time were appointed by the Secretary State for Health.

***Policy advice***

10. A UGM had relatively little input in policy, all of which was determined at higher levels. A Trust Chief Executive had greater authority over Trust policies subject to the Trust Board, the policies of purchasing authorities and GPs, and regional and national NHS policy.
11. In my experience there were four main mechanisms through which clinical advice was regularly sought – the Trust Board or District Management Team, the management or executive teams, through having clinician managers, and via the Medical Advisory Committee.
12. Trust Board and District Management Teams had Medical and, very often, Nursing Directors who participated in all decision making and also had specific responsibilities, varying from organisation to organisation, which related generally to clinical management, quality, safety, clinical priorities and future clinical direction.
13. Similarly, executive management teams always had a Medical Director and most also had Nursing Directors and other clinicians involved. In my experience, the normal process would be for the clinical members to formulate policy proposals on clinical issues that would then be presented to the Team or the General Manager or Chief Executive for discussion, challenge and decision making.
14. Many managers are clinicians. I introduced a clinical management structure into both the Trusts I ran. This included Clinical Directors who took most of the decisions for their speciality.
15. Units and Trusts also had a Medical Advisory Committee, which had different names in different organisations, but with the overarching role of representing medical views to the management.

16. In addition, the purchasing or commissioning of services from the Units or Trusts was supervised by GPs and other clinicians.

**Section 3: “Experience as NHS Chief Executive: 2000- 2006”; and**

**Section 4: “Experience as Permanent Secretary 2000 – 2006”**

17. I will address and introduce the roles of NHS Chief Executive and Permanent Secretary for Health together, because during my tenure and for the only time, these were combined and I fulfilled both roles simultaneously.
18. The combined role as NHS Chief Executive and Permanent Secretary at the Department of Health (“DH”) was advertised and I successfully applied for the role, taking up the position in November 2000. I carried out the role until my retirement in March 2006.
19. The two posts had different responsibilities. As NHS Chief Executive I was responsible for the management of the NHS in England and was the accounting officer to Parliament for its expenditure. As Permanent Secretary I was responsible for the management of the DH and the provision of support to the Secretary of State and ministers and was the accounting officer to Parliament for its expenditure. In both roles I was personally accountable to the Cabinet Secretary and worked within the policies determined by the Secretary of State and Government.
20. The priority I was given by the Secretary of State upon my appointment was delivering the NHS Plan which had just been accepted as Government policy and which covered many areas of health and health care policy. My understanding was that it was considered vital at the time that the combined resources of NHS management and the DH were concentrated on delivering improvement in the NHS which was one of the Government’s major priorities. I recommended that the posts were split again on my retirement and two people were appointed to succeed me.

21. In practice, of necessity, I focussed on the Chief Executive aspects of my role which were mainly concerned with delivery of the NHS Plan and its targets rather than the formulation of policy. I was assisted in this role by a team of experienced regional and national directors. Key targets included improved cancer care, quicker treatment in Accident and Emergency and universal access to thrombolytic therapy following a suspected heart attack.
22. I spent about 80% of my time on the Chief Executive role but, of course, remained responsible for the provision of policy advice to ministers. I was assisted on the policy advice side and in my Permanent Secretary role by a number of very experienced Civil Servants; most notably by Sir Liam Donaldson who, as the Chief Medical Officer ("CMO"), took the lead on most clinical matters and in my final years in the role by Hugh Taylor, who became my successor as Permanent Secretary.
23. We appointed a number of National Clinical Directors (colloquially referred to as Tsars) covering different speciality areas who together with the CMO, the Chief Nursing Officer and senior civil servants actually provided most of the advice on clinical issues on my behalf. However, I would expect my private office and sometimes myself to be copied into and possibly consulted on submissions on major issues and could choose to intervene. The ultimate responsibility for such advice remained with me.
24. The initial ideas for new policies could come from many different places including the politicians and their special advisors but, wherever there were clinical issues involved they would always be tested with the senior clinicians and their advice would be sought.
25. The Rule 9 request asks me to set out my knowledge of what was known or discussed at meetings and in other communications between ministers and officials regarding (i) the use of infected blood or blood products within the NHS; and (ii) prosecutions in France of ministers and blood transfusion service officials; as well as (iii) my knowledge of any reaction in government or within the

DH to the infection of haemophiliacs with AIDS and hepatitis via infected blood products and blood transfusions.

26. In order to provide as much assistance as I can on these issues, I will need access to the records from the time which I understand are part of the ongoing disclosure process. As I set out in the introduction to this statement, I will provide a further statement to address these issues when the documentary records are available.

#### **Section 5: “Destruction of Documents at the Department of Health”**

27. I have been asked to provide detail of any policy or procedure relating to the destruction of ministerial papers across the DH and to provide details of any policy to destroy documents in the Department after ten years or under a ten-year rule.
28. The Department’s responsibility to make arrangements for the selection of records which ought to be permanently preserved and for their safe-keeping was an important one, shared by all government departments. The operational implementation of the policy was for the officials in each relevant business unit, with oversight and guidance from the Departmental Records Office.
29. The guidance that applied during my time as Permanent Secretary and Chief Executive was “For the Record: A Guide for Record Managers and Reviewing Officers” [WITN3996002]. There was also guidance issued in July 2001 on the management of Private Office Papers [WITN3996003]. These policies were in place to seek to meet the Department’s obligations under the Public Records Act 1967. The Departmental Records Officer (“DRO”), Brendan Sheehy, has provided the Inquiry with a witness statement dated 10 October 2018. He is best placed to provide the Inquiry with more detailed information on the policies and their implementation. I do not recall any particular rule concerning destruction of documents at the ten year point. Again, however, the DRO is best placed to provide evidence on this aspect.

30. In answer to the question raised by the Inquiry of the procedure that anyone destroying DH documents would have to follow, there would have been a clear expectation that destruction of documents should only occur in accordance with the applicable document retention policies.
31. I have been asked for, “...*details of circumstances in which this procedure would not be followed either intentionally or in error*”. There should be no circumstances in which the policy is intentionally not followed. Human error is always a risk but the policy and training in records management would have been designed to seek to reduce that risk. As I shall refer to below, in the context of relevant records in relation to blood products that have been destroyed, I was informed that recommendations for improved practice had been made and implemented.
32. In 2004–2005, Lord Jenkin of Roding the former Secretary of State for Health had dealings with the DH following his request for access to documents, from his time as Secretary of State for Health. I address this in Section 6 below. In answering Lord Jenkin’s request, I was made aware of the destruction of some records that occurred in the 1990s and therefore pre-dated my time in post at the Department. Other than in that context, I am not aware of any decision to destroy any documents in the DH relating to self-sufficiency in blood and blood products, the use of blood and blood products and the risks of using these products. Any such destruction should only have occurred if the records were judged, in accordance with the applicable policy, to be records that were not required for retention.
33. I should make clear that I was never asked to agree to, nor would I have agreed to, any such improper destruction of records, whether on this policy issue or any other.

#### **Section 6: “Lord Jenkin”**

34. The Inquiry has asked me to address. “*information on why in his evidence to the Archer Inquiry ... Lord Jenkin gave evidence that you had told him on 13 April*

*2005 that papers relating to infected blood and blood products had been intentionally destroyed”; “...why in a subsequent answer in the House of Lords on 19 April 2006 Lord Warner said that these papers had been destroyed in error” and to “clarify ... if papers were intentionally destroyed or destroyed in error.”*

35. The late Lord Jenkin was Secretary of State for Health and Social Services from 4 May 1979–14 September 1981.
36. On receiving this request I had some, but only limited recollection, of dealing with Lord Jenkin on this issue. My memory is of a telephone call from Lord Jenkin in which he essentially told me that records from his time in office had been destroyed and asked for a meeting. I do not have any memory of the meeting with Lord Jenkin on 13 April 2005, although from the records (see below) I entirely accept that I did meet him on that occasion. I have a further recollection of him saying something to me in passing in the House of Lords which I think was about him speaking in a debate on the subject in the House in 2009.
37. Electronic records available to the current DHSC have been searched to try to identify relevant records in relation to this issue. Save for my very limited memory as set out above, I am dependent on these records. I understand that the disclosure process is ongoing and if further records become available, I will provide an updated or further statement to cover those further records.
38. I will address the following issues in turn: Lord Jenkin’s initial contact with the Department; my meeting with Lord Jenkin; Lord Jenkin’s subsequent correspondence and dealings with the Department; the answer given in the House of Lords by Lord Warner on 19 April 2006; and whether papers were intentionally destroyed or destroyed in error.

#### ***Lord Jenkin’s initial contact with the Department***

39. On 14 December 2004, Lord Jenkin wrote to Lord (Norman) Warner who at that time was the Parliamentary Under-Secretary of State for Health in the House of



Lords [WITN3996004]. Lord Jenkin enclosed his exchange of letters with Mr [GRO-B] who had raised questions in his capacity as the [GRO-B] representative of the Scottish Haemophilia Groups Forum and [GRO-B] [GRO-B] the UK Haemophilia Society. Mr [GRO-B] had asked Lord Jenkin for copies of relevant meeting minutes from his time in office and what was referred to as a “secret Westminster-funded report”. To facilitate answering that request, Lord Jenkin was seeking assistance in relation to the ‘secret report’. He was requesting Lord Warner to consult officials and let him know whether there was any point in his taking the matter further.

40. Lord Warner replied to Lord Jenkin on 27 January 2005 [WITN3996005]. On the issue of records, Lord Warner said this:

*“I do understand your wish to be helpful to Mr [GRO-B]. As you rightly say, however, it is very difficult to go back some 25 years to recollect details, especially as many of the people involved are, sadly, no longer with us.*

*My officials have carried out a search of the relevant files, but can find no trace of information relating to the ‘secret Westminster-funded report’ that Mr [GRO-B] mentions.*

*However, I understand that Mr [GRO-B] also wrote to staff at the Scottish Executive, who have traced a report of the Haemophilia Centre Directors’ Hepatitis Working Party for the year 1980/81. A copy of this report has already been sent to Mr [GRO-B], but I am enclosing a further copy for your records. I apologise for the poor quality of the copy, which is of course over 20 years old.”*

41. In the subsequent correspondence which I have seen, there is no further significant mention of the “secret Westminster-funded report” to which Mr [GRO-B] and subsequently Lord Jenkin had referred. I do not have any direct knowledge of what report was being referred to by Mr [GRO-B] but I would infer that the provision of the 1980/81 report of the Haemophilia Centre Directors’ Hepatitis Working Party, which had been identified as the relevant document, had met that part of Mr [GRO-B]’s request.

42. As a subsequent letter from Lord Warner and other materials show, it would have been after receiving this letter that Lord Jenkin telephoned my office, because he had taken from Lord Warner's letter of 27 January 2005 that the Department had inadequate file records.
43. There is a record that shows that Lord Jenkin spoke with the head of my private office; Shaun Gallagher. On 9 February 2005, Shaun Gallagher emailed regarding the telephone call that Lord Jenkin had made. This is one of a series of emails dealing with the appropriate response to Lord Jenkin [WITN3996006]. He requested that Zubeda Seedat (a member of PH6 with policy responsibility for this area) should draft a further response to Lord Jenkin which should be cleared with the Parliamentary Under-Secretary of State for Public Health (then Melanie Johnson) who had the ministerial policy lead in this area at that time. The emails show that Zubeda Seedat drafted both a background note, dated 28 February 2005 [WITN3996007] and a further letter to be sent by Lord Warner.
44. It would appear that when the further letter was sent from Lord Warner's office to Lord Jenkin on 10 March 2005 [WITN3996008], it inadvertently included the background note as well. This background note said that the original reply was,  
*"...drafted by the correspondence unit using a number of standard lines... It ... left Lord Jenkins (sic) with the impression that we had inadequate file records."*
45. This and the misspelling of his name may have given Lord Jenkin the impression that he was not being treated as he would expect a former Secretary of State to be treated and that, as noted below, he felt he was being denied access to his papers.
46. The full letter is as set out in the exhibit but on the question of records, Lord Warner said this:  
*"I have been advised that you recently contacted Sir Nigel's office about my letter dated 27 January. I understand that you expressed concern about the Department's filing and record management systems.*  
  
*I would firstly like to correct the impression I may have given that we hold no records on the treatment of haemophilia patients, blood safety and related*

*issues. The Department of Health has a Departmental Records Office (DRO) that holds closed files on these areas. These files have been subject to a branch review.*

*Clearly, keeping good records is fundamental to the day to day running of the Department. We recognise that much of the work we do has long term consequences and accurate records are essential if future users are to be able to see why certain decisions were made, or why certain things did or did not happen. This is a message that is regularly communicated and reinforced to staff."*

47. Later in his reply, Lord Warner suggested that Mr **GRO-B** may wish to approach the National Blood Authority and the United Kingdom Haemophilia Centre Directors Organisation directly in relation to their records, and sought clarification of Mr **GRO-B**'s request in relation to National Blood Transfusion Service records.

***My meeting with Lord Jenkin on 13 April 2005***

48. On 16 March 2005, emails from my office show that Lord Jenkin then requested a meeting with me on the basis that he believed he was being denied access to his Ministerial papers to which he had a right of access under the Ministerial code [WITN3996009].
49. This was the background to my meeting with Lord Jenkin on 13 April 2005.
50. As would be normal for a meeting of this kind, I received a written briefing ahead of the meeting [WITN3996010]. The briefing is dated 11 April 2005 and was provided by William Connon from the General Health Protection team. It included:
- a. At Annex I a copy of the original correspondence from Lord Jenkin to Lord Warner;
  - b. At Annex II, the two letters in reply from Lord Warner;
  - c. At Annex III, a short note on the review of internal papers on the issue of self-sufficiency in blood products;

- d. Background briefing on the issue of contaminated blood products; and
- e. Background briefing on the record management system in DH.

51. I would not have had any first-hand knowledge of the circumstances in which earlier Departmental records (from before my time in the Department) had come to be destroyed so I would have been reliant on this briefing. As was convention, the briefing gave a suggested 'line to take' which included the following:

*"LINE TO TAKE*

- *Many key papers from the 1970s and 1980s have been destroyed. During the HIV litigation in 1990 many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.*
- *We have been in touch with Departmental Records Office to check which files related to the treatment of haemophilia patients and blood safety are still in existence from the period between 1979-1981. We have obtained a list of some files from this period. However, at first glance it is not clear about the extent to which these files will hold papers that Lord Jenkin will have handled. It would require significant staffing resource to go through these files to identify official papers that Lord Jenkin handled at the time."*

52. The background briefing included the further information that:

*"9. There have been many changes in record keeping practices since Lord Jenkin was Secretary of State:*

- *The organisation of Departmental record keeping was de-centralised in the early 1980s,*
- *The number of documents and copies of documents being created in the department grew dramatically as the use of photocopiers became widespread,*
- *The NHS Executive's move to Quarry House in 1992/3 led to a temporary relaxation of the rules for decision-making on the retention of files,*

- *The Department carried out a substantial training and awareness programme in 1993/1994 to improve the quality of record keeping and the guidance available,*
- *We have now rolled out a Department-wide electronic records system to help keep track of email and a range of other electronic records.*

*10. But the principles of good record keeping and the advice given to staff have been fairly consistent. In particular, the policies and procedures for the management, review and disposal of files and documents are designed to meet the Department's own administrative needs and the Public Records Act."*

53. As I have indicated, I do not have any recollection of the meeting itself. However, I would have drawn on this briefing and relied on it in explaining to Lord Jenkin why some records had been destroyed.
54. At this stage, at least on the basis of the records I have seen, it would appear that my attention had *not* been drawn to the internal audit report from April 2000 which had concluded that the destruction of a specific group of other documents, while an arbitrary and unjustified decision, was most likely taken by an inexperienced member of staff and would have been prevented had the person marking files for destruction been aware of their importance (see further below).
55. It was my normal practice to follow the line to take in dealing with matters where I had no direct or personal knowledge such as this and there is nothing in subsequent records within the department to suggest that I didn't follow this line. If I had not followed the line I believe that my office would have alerted the relevant civil servants so that this was taken into account in future correspondence. The email from Shaun Gallagher written on the day of the meeting makes no reference to my having taken a different position but only refers to what we agreed at the meeting. Therefore, while I do not have an actual recollection of the meeting or what precisely I said, all that I can say is that I would expect it to have been in line with the briefing that I had received.

### ***Lord Jenkin's subsequent correspondence and dealings with the Department***

56. On the same day as the meeting, Shaun Gallagher emailed Zubeda Seedat with a brief note of what was agreed at the meeting. The email concentrated on how Lord Jenkin's access to records was to be taken forward. It recorded my request that when people such as former Secretaries of State write in to the Department, they should receive an appropriate level of attention in the response they receive. It also recorded that I had requested to see the All-Party Parliamentary Group's report on Hepatitis C, to which Lord Jenkin had referred in our meeting [WITN39960011]. Shaun Gallagher also sent a follow up response to Lord Jenkin [WITN39960012].

57. Lord Jenkin was then able to access papers retrieved from his time in office and study them in person. He requested copies. On 6 October 2005 [WITN39960013] and 19 October 2005, [WITN39960014] Zubeda Seedat and William Connon provided Lord Jenkin with sets of papers. William Connon's letter referred to Lord Jenkin's concerns about the limited files available to him, explaining that:

*"...as you know we requested all files relating to your period in office, dealing with haemophilia patients who were infected with contaminated blood products. A number of files from the 1970's and 1980's have in fact been destroyed but we have made available to you all those which are currently held."*

58. On 25 October 2005 Lord Jenkin replied to William Connon [WITN39960015]. Lord Jenkin was grateful for the assistance that had been provided to him by Mr Connon and Ms Seedat but intimated a wish for a further meeting with me:

*"With regard to the missing files, Sir Nigel warned me when I saw him earlier in the year that a number of files dealing with contaminated blood had been destroyed after the settlement of all the HIV claims. While this may in fact represent what happened, I find it difficult to believe that this was an appropriate cull. I intend to make a further appointment to see Sir Nigel with a view to seeking an explanation of why this happened. The Department must have known that there were many more outstanding cases of people who claimed to have been infected by contaminated blood, and indeed, many of the present generation of*

*haemophiliacs fall into this category. However, that is not a matter for you and I will pursue it with Sir Nigel."*

59. On the same day, Lord Jenkin did write to me seeking a further meeting, [WITN39960016]. Having noted that he had now had access to his papers, Lord Jenkin said:

*"However, as you indicated at the outset, all the files which would have borne upon this subject of contaminated blood products no longer exist. I have to say that I find this extremely surprising given that the Government must have known that there were many further cases of people suffering contaminated blood, notably haemophiliacs, some of whom have contracted various forms of Hepatitis.*

*I would very much like to come and discuss this with you and to explore why it was thought right to destroy these files. They represent, by any standards, a most unhappy chapter in the Department's history and I would be very distressed indeed if this was felt to be an adequate reason for their destruction."*

60. Following this, on 22 November 2005 and as part of dealing with the response to Lord Jenkin, Zubeda Seedat asked for sight of the audit report that had been referred to as having addressed the destruction of documents. [WITN39960017]. That internal audit report is dated April 2000 and sets out the result of an assessment made at that time of how the destruction of some of the documents had come to happen. [WITN3996018].
61. A week later, Zubeda Seedat provided me with a briefing in which it was suggested that I should decline a further meeting with Lord Jenkin. This was on the basis that he had been advised from the outset that papers from the 1970s and 1980s were missing, and that a further draft letter to Lord Jenkin would set out in detail the Department's understanding about why papers were destroyed. I accepted the advice that the draft letter set out the detail of the Department's understanding of why the papers had been destroyed and sent the written response on 1 December 2005 [WITN39960019].

62. My letter read as follows:

*“Thank you for your letter of 25 October requesting a meeting to discuss record management in the Department of Health. I was pleased that you have been able to identify some papers to help you with your enquiries.*

*When we met in April I explained that certain papers dating back to the 1970’s and 1980’s had been destroyed. I appreciate that you would like to discuss this further, however I thought it would be helpful to write to you about this issue instead. Naturally, I am concerned that important files from this period no longer exist. Although these events took place a long time ago, my officials have undertaken to explore why important documents were destroyed.*

*As previously mentioned, it is our understanding that during the HIV litigation in the 1990’s many papers from that period were recalled for the purpose of the litigation. We understand that papers were not adequately archived and were subsequently destroyed in error in the early 1990’s.*

*Officials have also established that a number of files were marked for destruction in the 1990’s. Clearly, this should not have happened. When the discovery was made that files had been destroyed, an internal review was undertaken by officials. I understand that a decision, most probably made by an inexperienced member of staff, was responsible for the destruction of a number of files. The decision to mark the files for destruction was not a deliberate attempt to destroy documentation. It is very unfortunate that the staff member at the time was not fully aware of the significance of the files and the possibility of future litigation.*

*I am aware that this explanation may disappoint some haemophilia lobby groups and I am very sorry that the Department no longer holds many papers going back to the 1970’s and 1980’s.*

*All Departmental staff are informed about the principles of good record keeping. In particular the policies and procedures for the management, review and disposal of files and documents are designed to meet the Department’s own administrative needs and the Public Records Act. A key development in the Department over the past few years has been the introduction of an electronic*



*records system to help keep track of e-mail and a range of other electronic records.”*

63. On 14 December 2005, Lord Jenkin replied in these terms: [WITN39960020]

*“Thank you for your letter of the 1st December.*

*As you may imagine this has caused a considerable stir both among some of my colleagues in the House and among the haemophiliac community in the country.*

*The immediate point that occurs to me is that your fourth paragraph entirely contradicts the explanation you gave me to me orally when we met in your office on Wednesday, 13th April. You then gave me to understand that the destruction of the contaminated blood files was the result "of a decision" to dispose of them as, following the settlement of the HIV cases, there seemed to be no useful purpose in retaining them in the PRO. I am quite certain that I did not misunderstand you; there was no suggestion whatever in what you said that the destruction of the files was the result of an administrative cock-up! Despite what you say that this did not represent "a deliberate attempt to destroy documentation", I am sure that you will recognise that this latest explanation will do nothing to dispel the widely held view among haemophiliacs and others that this was in fact the true explanation.*

*I would be grateful if you would now tell me what is the status and progress on the review of the hepatitis C cases about which Zubeeda Seedat spoke to me while I was examining such files as remain. I have been in touch with Alf Morris who has shown me a letter to him of the 27th July from Melanie Johnson, MP. I enclose a copy of this letter. I can only repeat to you the comment that I made to Ms. Seedat that I could not see how the review could possibly be completed with the crucial files having been destroyed.*

*However, I would now ask when this report can be expected? The attached letter suggested that there was a draft in existence 18 months ago — what has happened since then? When can we expect the report to be published?*

*All this seems to me to be a very serious case of maladministration by the Department of Health and I am consulting urgently with colleagues as to whether the matter should be referred to Ms. Ann Abrahams, the Parliamentary Ombudsman for the Health Service.*

*I am copying this letter to Lord Morris of Manchester, to Earl Howe, Opposition Spokesman on Health in the House of Lords and to David Amess, MP, Chairman of the All Party Group on Hepatitis.”*

64. Later in December 2005, the issue arose again as a result of a Parliamentary Question tabled by Lord Morris of Manchester. The question concerned what inquiries the DH had received from former Health Ministers to examine files dating from their years at the Department. Lord Warner was due to answer this question and a number of officials including Zubeda Seedat, William Connon and Ailsa Wight were involved in drafting and clearing the response. The background briefing gave similar information on the destruction of papers, to that which I had recently received in responding to Lord Jenkin [WITN39960021].
65. On 6 February 2006, I received further briefing from Zubeda Seedat addressing Lord Jenkin’s letter to me of 14 December 2005, including a draft reply [WITN39960022]. I provided a response to Lord Jenkin in line with the draft that was sent to me. The background part of this briefing suggests that Ms Seedat’s team had only got hold of the April 2000 internal audit report part way through Lord Jenkin’s enquiries, having obtained it from colleagues in the Department’s Solicitor’s division. Her briefing explained that this was the reason that my response of 1 December 2005 had referred to further papers being destroyed.
66. On 9 February 2006, the Secretary of State Patricia Hewitt responded to correspondence from Charles Clarke MP (who had written on behalf of his constituent GRO-A) [WITN39960023]. The Secretary of State’s reply included reference to my letter to Lord Jenkin of 1 December 2005. She repeated that the records had been destroyed in the period 1994–1998 and that I had accepted that they should not have been destroyed and that she did not believe the Department could go further in examining the causes of the mistake.

**The answer given in the House of Lords by Lord Warner on 19 April 2006**

67. On 19 April 2006, in the House of Lords on oral questions on Hepatitis C and contaminated blood products, there was the following exchange between Lord Jenkin and Lord Warner [WITN39960024]:

**“Lord Jenkin of Roding asked Her Majesty's Government:**

*Whether the Department of Health's report Self-sufficiency in Blood Products in England and Wales, published on 27 February, is a complete account of the circumstances leading to the infection of National Health Service patients with HIV and hepatitis C due to contaminated blood products.*

**The Minister of State, Department of Health (Lord Warner):** *My Lords, the report published on 27 February examined key issues around self-sufficiency in blood products in the 1970s and early 1980s. The review was commissioned following suggestions that implementation of what was called the "self-sufficiency policy" in blood products in this period might have avoided haemophiliacs being treated with infected blood products. The report makes it clear that it was based on surviving documents from 1973, but that self-sufficiency would not have prevented infection of haemophiliacs with hepatitis C.*

**Lord Jenkin of Roding:** *My Lords, that is all very well, but is the Minister aware that this report, internally produced by his own department, has been roundly condemned by many, including the Haemophilia Society? The society said that the report was*

*"a blatant attempt to gloss over the details of the events of the time and even to lay blame at the door of the patients themselves".*

*Bearing in mind that the department "inadvertently", as the Minister said in response to me in an earlier Question, destroyed all its own files on contaminated blood products and that much new information has recently come to light in the United States, Canada, Ireland and Scotland, is there not now an unanswerable case for a full and impartial public inquiry into what really has been one of the major medical disasters in the National Health Service?*

*Lord Warner: My Lords, I do not accept any of those remarks. We regret that the papers were destroyed in error, which was, I think, explained to the noble Lord in a meeting with the former Permanent Secretary to the Department of Health. I think that it has been explained to him on a number of occasions that there was no deliberate attempt to destroy past papers. We understand that many of the papers were, unfortunately, destroyed, but I have to say that that did not take place under this Government.*

*I understand the way in which parts of the report may have been interpreted by people from the haemophilia world, and I have enormous sympathy with the circumstances that they face. It is regrettable if it has had that impact on them, but it is a fair and accurate report on what it was asked to do—to identify many of the events and chronology in that period, which were quite complex, and the extent to which the policy of self-sufficiency would have avoided contaminated blood being used by haemophiliacs. The report makes it very clear that the self-sufficiency policy would not have achieved that objective.”*

68. By this stage, mid-April 2006, I had retired from the Department. I am not therefore able to speak to the particular briefing that led to Lord Warner’s answer to this Parliamentary question. The indication that the destruction was in error was consistent with what officials had advised me ahead of my response to Lord Jenkin of 1 December 2005, relying on the April 2000 audit.

***Whether papers were intentionally destroyed or destroyed in error***

69. The Inquiry’s Rule 9 request ends with a request that I clarify whether the papers were intentionally destroyed or destroyed in error. As to this:
- (1) The precise extent to which papers were in fact destroyed was reported on at a later stage after my retirement and is not something on which I can comment from first-hand knowledge. However, I understand that some of the papers were later retrieved from the Claimants’ solicitors in the litigation and others were found by the Department. In that regard, I have seen the DH “Review of Documentation Relating to the Safety of Blood Products

1970-1985 (Non A Non B Hepatitis)", dated May 2007 which had a section on the 'Missing Files' [WITN39960025].

- (2) The destruction of documents being referred to occurred before I was in post and I did not at the time, nor do I now, have any direct knowledge of whether it was deliberate or in error. I was relying on the briefing that I was given as to what was understood about the circumstances in which the documents had been destroyed.
- (3) As I have explained, I do not recall what either Lord Jenkin or I said at the meeting and therefore do not know why Lord Jenkin believed, as he said in his letter of 14 December 2005, that I had said:

*"[...]that the destruction of the contaminated blood files was the result "of a decision" to dispose of them[...]"*

- (4) There is no suggestion in the contemporaneous materials within DH that I have seen, including the briefing for the meeting with Lord Jenkin, that the destruction was the result of a deliberate decision in the sense of anyone knowingly acting outside Departmental policy. However at least some of the destruction appears to have been deliberate in the sense of being the result of poor and unjustified decisions and/or bad archiving practice:

- (i) One set of documents involved was the papers from the 1970's and 1980's which were the subject of recall for the HIV litigation in 1990. In relation to these documents, the briefing being given to me, as above, was that many of the key papers were destroyed. I was told that many of them had been recalled for the litigation but were then "not adequately archived" and "were unfortunately destroyed" in the early 1990's. According to the later May 2007 report, I understand that it is in relation to these files that some copies of missing documents were returned by the Claimants' solicitors and, later, 102 registered files were found at Wellington House. At the time I

met Lord Jenkin, however, these papers were believed to have been destroyed.

- (ii) In relation to the documents some of the minutes and background papers to the Advisory Committee on the Virological Safety of Blood which were covered by the April 2000 internal audit, the destruction was undoubtedly 'deliberate' in the sense that someone deliberately marked them for destruction within 1 - 4 ½ years, and they were then destroyed in accordance with that instruction. The audit suggests that this was an *"[...]arbitrary and unjustified decision, most likely taken by an inexperienced member of staff"* and a *"[...] bad decision[...]made worse by the short destruction dates assigned[...]"*. The audit suggested that, *"[...]the destruction of these files would have been prevented had the person marking files for destruction, been aware of their importance"*. It is clear that the findings of this earlier internal audit were being drawn upon in late 2005 and early 2006 in answering how the destruction of papers had occurred.

### **Section 7: Witness statement of Lord Owen**

70. I provided this statement in draft form to the Inquiry in December 2019. I have now also been provided with a copy of the witness statement of Lord Owen, dated 5 February 2020.
71. At paragraphs 60-61 of his statement, Lord Owen refers to Lord Jenkin's evidence to the Archer Inquiry and to a letter which Lord Jenkin wrote to Carol Grayson the day after our meeting of 13 April 2005 [LDOW0000352]. In Section 6 of my statement, above, I have sought to assist the Inquiry by providing as much information as I can about my meeting with Lord Jenkin, and the associated issues surrounding destruction of some Department of Health records which had pre-dated my tenure as Permanent Secretary and NHS Chief Executive.

72. At paragraph 62 of his statement, Lord Owen explains his increasing dissatisfaction with the responses he received from the Parliamentary Ombudsman and the Department of Health, against the background of destruction of papers from Lord Owen's time in office as a Health Minister in the mid-1970s. While accepting that he does not have the facts to make a considered judgement, Lord Owen raises the concern that it has been asked whether there was a deliberate decision to destroy all papers which could have been relevant were prosecutions to take place in the UK. That comment is not raised specifically about me. Nevertheless, I wish to emphasise what I have said in paragraph 33 of this statement. I was never asked to agree to, nor would I have agreed to, the destruction of documents for such improper motives. More specifically, it was never suggested to me that records had been (or should be) destroyed to avoid prosecutions. I would never have permitted or condoned any such course of action. Had this ever been suggested to me, I would both have remembered it and taken appropriate action.

### **Section 8: Conclusion**

73. The destruction of papers in the early 1990's should clearly not have happened. That was a point I made to Lord Jenkin in my letter of 1 December 2005 and I want to repeat that this should simply not have occurred. My meeting with Lord Jenkin in April 2005 was designed to clarify matters and ensure that he had access to the remaining files from his time in office. I am very sorry that it seems instead to have confused the issue, and to have increased the concern about the circumstances in which some documents were destroyed in the early 1990's.

### **Statement of Truth**

I believe that the facts stated ~~in this witness~~ statement are true.

Signed \_\_\_\_\_ GRO-C: Lord Crisp

Dated \_\_\_\_\_ *3 September 2020*

## **Exhibit List**

Exhibit number	Corresponding page/s in PDF bundle
WITN3996002	pages 1-111
WITN3996003	pages 112-122
WITN3996004	pages 123-125
WITN3996005	pages 126-127
WITN3996006	pages 128-131
WITN3996007	page 132
WITN3996008	pages 133-134
WITN3996009	pages 135-136
WITN3996010 <sup>1</sup>	pages 137-149
WITN3996011	page 150-151
WITN3996012	page 152
WITN3996013	page 153
WITN3996014	page 154
WITN3996015	page 155
WITN3996016	page 156
WITN3996017	page 157
WITN3996018	pages 158-167
WITN3996019	pages 168-175
WITN3996020	pages 176-177
WITN3996021	pages 178-184
WITN3996022	pages 185-188
WITN3996023	pages 189-191
WITN3996024	page 192
WITN3996025	pages 193-228

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<sup>1</sup> Annex I of this exhibit is a copy of the original correspondence from Lord Jenkin to Lord Warner. Whilst it is not marked 'Annex I' and we have been unable to locate the original 'Annex I', we presume it would have contained this correspondence and so have inserted it at the relevant place in the exhibit bundle.