

When cancer charities cause cancer, who is responsible?

[@Clive_Bates](#) [@Threthny](#) [@Orionvapes](#) [@Hifistud](#) *Date of guilty knowledge passed for snus v cigarettes? Should be sued for lives lost?*

— *Lesley Anna Lawless (@LeeAnnaLawless)* [October 13, 2013](#)

This [twitter exchange](#) about a week ago raised the interesting question of accountability for the campaigning and policy positions adopted by ‘health lobbyists’ - usually from registered charities. Are they liable in law or otherwise accountable if they press policies they know or should know do not work or actively cause harm? In this case, I refer to the health charities’ support for a ban on snus, in the face of [all the evidence](#). The role of [Cancer Research UK’s support for the ban on snus](#) is especially troubling as it funds or otherwise influences so many other groups and academics. This gets to the heart of their charitable status, which under the Charities Act 2011 requires a them to have a charitable purpose that meets a test for a ‘[public benefit requirement](#)’ (it is worth reading this - it applies equally to the stance they take on e-cigarettes). It turns out they are required to take account of evidence and can’t just make up positions that their staff feel comfortable with:

- *a purpose must be beneficial - this must be in a way that is identifiable and capable of being proved by evidence where necessary and which is not based on personal views*
- *any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit - this is also based on evidence and not on personal views*

Who is responsible? As the Charity Commission guidance suggests, it is a [CR-UK’s trustees](#) who ultimately bear responsibility. However, it is good and fair practice to approach the management board of any charity to try to get a resolution before going to trustees and ultimately to the Charity Commission. So the tweet reminded me of an attempt I made last year to question CR-UK’s approach. Rather than try to engage with CR-UK’s ‘policy’ people (who I think

are the source of the problem), I thought I would raise it with the [CR-UK Executive Board](#) member responsible for science, [the Chief Scientist, Professor Nic Jones](#). But he didn't seem that willing to scrutinise the organisation's position, preferring to rely on what looks like briefing from the very policy colleagues he ought to be challenging: here is the [exchange from last year](#).

What next? This also coincided with a letter to the Secretary of State for Health on snus ([Why is the EU banning Europe's most successful anti-smoking strategy?](#)) from a number of experts in the field of nicotine science, epidemiology and public health, calling for the end of the 25-year error that has led to the snus ban. If Professor Jones wouldn't listen to me, I wondered whether he would take these others more seriously. So the next stage was to write to him again. He hasn't yet replied and he may never - I don't want to rush him. So, I'll now leave it a while, see what happens and then decide what to do next.

*To: Professor Nic Jones
Chief Scientist
Cancer Research UK*

13 October 2013

Dear Professor Jones

Re: Cancer Research UK support for banning oral tobacco (snus)

You may recall our exchange last year on Cancer Research UK's position on banning smokeless 'oral tobacco' (also known as snus). For ease of reference, I attach the [consolidated exchange](#). I must declare I was surprised that the serious issues raised - a cancer charity supporting policies that are likely to increase cancer - did not prompt a more searching look at this issue.

I thought, therefore, you may be interested in seeing this [letter from experts in the field nicotine, psychology and public health to Secretary of State Jeremy Hunt](#) explaining why the policy of banning snus is unscientific, unethical and lethal. It also has serious implications for the way we address the potential of other low risk alternatives to smoking, such as e-cigarettes. If major charities raise theoretical concerns to justify restrictions and then refuse to lift support for those restrictions when the evidence shows no basis for concern and strong evidence of significant benefits, then we risk bearing unintended consequences

of inappropriate restrictions on low risk alternatives to cigarettes (ie more people smoking).

I was prompted to write to you again today when a member of the public asked how Cancer Research UK is held to account when it takes positions that more likely than not are causing harm. They were making the point that the organisation was now past 'the date of guilty knowledge' for harm caused by the ban on snus. This is a legal concept that identifies the point when a reasonable person or organisation should know and take responsibility for any harm caused by their actions. This may not be a matter for the courts in practice, but I think it is relevant more generally to accountability and responsibility of charities and their boards and trustees. CR-UK through its own campaigning and its funding and influence of a number of groups and alliances has been instrumental in campaigning for the ban on snus to be retained in the European Union, and it now looks likely this will succeed. Though this is a 'win' for CR-UK's campaigning, it is an unambiguous loss for public health and more harm will be the result.

May I suggest that you test the CR-UK positions on these issues a little more rigorously, and perhaps set up an ad hoc independent review to advise you? That sort of due diligence would be a reasonable expectation for a member of the Executive Board.

If you would like contact details for any of the signatories to the attached letter to Jeremy Hunt I can provide them. If you have any questions or would like to invite further opinions, I am sure at least one of us would be able to assist.

Yours sincerely

Clive Bates

Disclosure: no competing interest

Why is the snus issue important? A couple of well-intentioned people have suggested we drop the snus issue and move on. Snus, they say, will stay banned and actually it isn't likely to take off in the UK any time soon. I beg to differ for the following reasons...

1. Good policy making. Snus provides proof of concept for harm reduction and

how this is handled may have important lessons for e-cigarettes. It is important that the harm reduction concept is recognised not rejected by charities, governments and WHO as potentially millions of lives are at stake. We should want governments to make good policy, and to be prepared to campaign for it.

2. Accountability of charities and campaigners. Health campaigners used many of the same arguments to get snus banned that they now use to justify restrictions on e-cigarettes (gateways, dual use, reduced quitting etc). However, when evidence clearly showed these were not problems and beyond doubt that snus was beneficial, the campaigners did not change their position. This contributes evidence to support the theory that objectives other than health are driving these campaigners. Note that they did not have to actively campaign for it - they could have said nothing or acknowledged a

3. Harm reduction potential. It is argued that it may never be a big thing in the UK but...

- No-one can be sure of how the product might evolve over time or how tastes might develop;
- Even if only a few hundred people wished to use it in Britain instead of smoking, it's impact would be beneficial. Why deny a Swedish ex-pat in London this choice.
- This issue is addressed at European Union level (through a ban) and we should consider the implications at a European level - including in Finland or Denmark, as well as Sweden.
- It doesn't cost anything to lift a ban, so even a small effect will be cost-effective

4. Ethics. The ban raises serious ethical questions about the state denying a person access to a much safer product than the market leader. It is important that the issues of principle are scrutinised and the underlying philosophy challenged - not least as it bears on other aspects of tobacco and public health policy.

5. Legal challenge. It is likely that any lifting of the snus ban would arise from legal challenge to the internal market regulation that justifies the ban. If that happens, I would like people to know that it is good for public health and not just tobacco interests overturning sound health policy. When and if a challenge arises, the level of awareness and context in which it happens will be important.