



IMPROVEMENT THROUGH INVESTIGATION

**Independent review of the handling by The Royal
Wolverhampton NHS Trust of concerns raised by and related
to Mrs Haynes-Kirkbright**

A report for
NHS Trust Development Authority

January 2016

Authors:

Lucy Scott-Moncrieff

David Scott

Derek Mechen

© Verita 2016

Verita is a management consultancy that works with regulated organisations to improve their effectiveness and levels of service. It specialises in conducting independent investigations, reviews and inquiries.

Verita

53 Frith St

London W1D 4SN

Telephone **020 7494 5670**

Fax **020 7734 9325**

E-mail enquiries@verita.net

Website www.verita.net

Contents

Introduction and summary

1	Introduction	5
2	Terms of reference	7
3	Executive summary	8

Background to the review

4	Details of the review	18
5	Chronology	24
6	Mrs Haynes-Kirkbright's employment	25

First stage of investigations

7	The coders' complaints	55
8	Events of 2 July 2012	68
9	Grievance investigation	71
10	Investigation of Mrs Haynes-Kirkbright's grievances in email of 2 July	79
11	Report into grievance investigations	90
12	First whistleblowing investigation	101
13	First whistleblowing report	115

Second stage of investigations

14	Disciplinary procedure	120
15	Mrs Haynes-Kirkbright and the Daily Mail	121
16	Second whistleblowing investigation	123
17	Second whistleblowing report	140
18	Disciplinary investigation	159
19	Events following conclusion of disciplinary investigation	167

Summary of process

20	Did the trust follow due process with regards to its policies and procedures and the legislation?	168
21	Was Mrs Haynes-Kirkbright protected under PIDA?	172
22	Other relevant matters	182

Appendices

Appendix A	Team biographies	188
Appendix B	Interview list	190
Appendix C	Document from clinical coding department raising concerns about Mrs Haynes-Kirkbright, distributed on 12 April 2012	191
Appendix D	Letter from Mr Stringer to Mrs Haynes-Kirkbright dated 25 April 2012	195
Appendix E	Response from Mrs Haynes-Kirkbright to concerns raised about her, sent by email 2 July 2012	197
Appendix F	Mr Stringer's response to Mrs Haynes-Kirkbright's email dated 2 July 2013	203
Appendix G	OP92 - Clinical coding policy	214
Appendix H	Allegation table from second whistleblowing investigation report	222
Appendix I	Letter from Mr Loughton to Mrs Haynes-Kirkbright dated 9 December 2013	223
Appendix J	Email exchange between Mr Stringer and Mrs Haynes-Kirkbright dated 5 and 6 March 2012	225

1 Introduction

1.1 Mrs Sandra Haynes-Kirkbright started work at Royal Wolverhampton NHS Trust (the trust) on 17 October 2011 as head of clinical coding and data quality. In early 2012 she started raising concerns with her line manager and colleagues about working practices in the coding department and elsewhere.

1.2 The trust suspended Mrs Haynes-Kirkbright in July 2012. The suspension continues at the time of writing.

1.3 On 1 March 2013 the Daily Mail published a front page article reporting that Mrs Haynes-Kirkbright had alleged that:

- she had been headhunted by the trust and offered almost double her previous salary to fiddle the death rates at the trust
- every rule in the book was broken to try to improve the death rate, without saving lives
- she reported fraudulent practice to her boss as the trust was charging the local primary care trust for expensive procedures they had not done.
- she was ordered not to put her concerns in writing in case they reached the Press
- she was suspended after refusing to take part in a cover-up.

Comment

Mrs Haynes-Kirkbright has always maintained that she did not make all the allegations attributed to her.

1.4 The Daily Mail published another front-page article on 2 March 2014 saying that Mrs Haynes-Kirkbright was facing disciplinary proceedings, and possibly the sack, for having spoken to the Daily Mail in breach of the trust's media policy.

1.5 The secretary of state for health asked for information about the situation, and was told that the disciplinary proceedings were the culmination of four interconnected

internal investigations at the trust concerning Mrs Haynes-Kirkbright, none of which had resulted in a formal hearing to establish the facts.

1.6 The disciplinary proceedings were put on hold, and the Trust Development Authority subsequently asked Verita to review what had happened and to bring clarity to a complex picture.

1.7 Verita is a consultancy specialising in the management and conduct of investigations, reviews and inquiries in public sector organisations. Lucy Scott-Moncrieff, a Verita senior associate, led the review, supported by David Scott, also an associate, and Derek Mechen, a Verita partner (their biographies are shown at appendix A).

1.8 Our report was delivered to the Trust Development Authority in March 2015. Factual information about the trust and individuals was correct at that time and has not been updated. The TDA then obtained legal advice on issues regarding publication, which over time have been resolved.

2 Terms of reference

2.1 This independent review is commissioned by The NHS Trust Development Authority. The terms of reference for the review are as follows.

- To produce a detailed timeline of events since Mrs Haynes-Kirkbright's appointment at The Royal Wolverhampton NHS Trust (the trust) in October 2011.
- To establish whether the trust has followed due process with regard to its policies and procedures and the legislation in investigating and handling:
 - Mrs Haynes-Kirkbright's whistleblowing allegations. This includes commenting on whether Mrs Haynes-Kirkbright is a protected whistleblower
 - the collective grievance submitted against Mrs Haynes-Kirkbright in April 2012
 - the bullying claims made by Mrs Haynes-Kirkbright against two trust directors in July 2012.
- To comment on whether the trust investigations concerning Mrs Haynes-Kirkbright have been robust and the findings reasonable based on the evidence.
- To report on any other relevant matters that arise in the course of the review.

2.2 The report will set out the findings of the Mrs Haynes-Kirkbright case and be placed in the public domain.

3 Executive summary

Background

3.1 This review was triggered by an article in the Daily Mail alleging that disciplinary proceedings were being taken against Mrs Haynes-Kirkbright, head of clinical coding and data quality at the trust, because she had reported malpractice at the trust when speaking to a Daily Mail reporter the previous year.

3.2 The fact that Mrs Haynes-Kirkbright was subject to disciplinary proceedings as a result of her conversation with the Daily Mail was not disputed: Mrs Haynes-Kirkbright has never denied the event, or that she knew she was talking to a reporter, and the trust clearly explained that it was her contact with the reporter that led directly to the disciplinary proceedings.

3.3 Whistleblowers have the protection of the law, so if Mrs Haynes-Kirkbright met the legal definition of a whistleblower, she should not have been made subject to disciplinary proceedings for raising her concerns with the Daily Mail.

3.4 We were asked to look at the way the trust investigated the allegations in the original Daily Mail article, as well as earlier allegations by and about Mrs Haynes-Kirkbright and to comment on whether the investigations had been robust and the findings reasonable, based on the evidence.

3.5 We were not asked to give a view on whether the allegations by Mrs Haynes-Kirkbright were true. In whistleblowing terms this is not necessary, as an honestly mistaken whistleblower is still protected by the law.

3.6 Mrs Haynes-Kirkbright acknowledged speaking to the reporter, and willingly agreed that she had made some of the claims in the first article but she denied having made all of them.

3.7 The earlier allegations were made by Mrs Haynes-Kirkbright within a few weeks of starting at the trust and related to the way the trust coded inaccurately that led to it being overpaid and the way it dealt with queries about claims for payment from the commissioning PCT. Mrs Haynes-Kirkbright raised these matters with the director of

finance, Mr Kevin Stringer, who was her line manager, but they were not resolved to her satisfaction.

3.8 In April 2012 the coders in Mrs Haynes-Kirkbright's department raised a collective grievance against her management style and the reforms of their working practices that she had introduced. The chief executive, Mr David Loughton, called a meeting with Mr Stringer and the director of human resources (HR), Mrs Denise Harnin, on 20 April to discuss how to deal with this. On 24 April Mr Stringer and Mrs Harnin had a meeting with Mrs Haynes-Kirkbright to discuss the grievances and Mrs Haynes-Kirkbright was given the choice of being suspended while a full investigation took place, or accepting a final written warning and continuing in work. Mrs Haynes-Kirkbright went off sick the next day. Subsequently, on 2 July, she received a letter from Mr Stringer discussing her return to work. She emailed the trust on the same day, rejecting the offer of a final written warning, challenging the allegations made by the coders, making her own complaints against the behaviour of the coders, making allegations of misconduct against Mr Stringer, Mrs Harnin and another employee and raising her concerns at the coding issues that she had been speaking to Mr Stringer and others about prior to her going off sick.

3.9 She was suspended, and grievance and whistleblowing investigations were set up and reports produced. These concluded that Mrs Haynes-Kirkbright's complaints and concerns had little or no substance, but that the complaints against her justified a disciplinary investigation, which duly took place and which recommended a disciplinary hearing.

3.10 Before that hearing could take place, Mrs Haynes-Kirkbright had spoken to the Daily Mail reporter, which then led to the second whistleblowing investigation and report. Once again, this found that there was no substance in the concerns Mrs Haynes-Kirkbright had raised, and considered that there was evidence that Mrs Haynes-Kirkbright had breached the trust's media policy in talking to the press and that there was evidence that she was not a protected whistleblower as she had not raised her concerns in good faith. A further disciplinary investigation took place, and reported that there should be a disciplinary hearing to consider the original grievances raised by the coders, the breaches of policy identified in the second whistleblowing report, and whether the trust had lost trust and confidence in Mrs Haynes-Kirkbright because of her actions.

3.11 This hearing has not yet taken place as proceedings were suspended when this independent review was commissioned by the TDA.

Overall conclusions

3.12 We found several examples of the trust not having followed due process in its policies and procedures and the legislation in investigating and handling the allegations by and about Mrs Haynes-Kirkbright.

3.13 The trust investigations of Mrs Haynes-Kirkbright's whistleblowing allegations were significantly flawed, and to the extent that their findings were used as a basis for the subsequent disciplinary procedure, the justification for that procedure was also flawed.

3.14 With a few exceptions, the findings were not reasonable based on the evidence.

3.15 Our review revealed some evidence of a lack of governance and proper management at senior levels. We have provided evidence and findings on this separately to the TDA, which is commissioning an independent governance review of the trust. The TDA will pass this material to those conducting the review, the outcome of which the TDA will publish. The specific evidence and findings that we have identified to the TDA for the purpose of publication as part of the governance review will be published in full at the same time.

3.16 Mrs Haynes-Kirkbright was not treated fairly by the trust.

Specific conclusions reached in sections 6 to 18

Mrs Haynes-Kirkbright's employment

3.17 Mrs Haynes-Kirkbright claimed that she was offered the job of head of clinical coding and data quality before it was advertised and that the recruitment process was a sham. Trust managers deny this and we have no proof, but Mrs Harnin provides independent evidence to justify Mrs Haynes-Kirkbright's belief.

3.18 Initially she worked successfully with colleagues to ensure accuracy of clinical coding for patients who had received palliative care.

3.19 Mrs Haynes-Kirkbright identified systematic coding and reporting irregularities that was to the financial advantage of the trust. She was able to correct this but when she raised concerns that the PCT was not being given relevant information about these irregularities, her concerns were dismissed and not seen as whistleblowing.

3.20 Mrs Haynes-Kirkbright was asked by her line manager to make assumptions about the reasons for a patient's atypical length of stay, when this was not apparent from the notes and the PCT had raised a query. She was put under strong pressure and when she resisted she was seen as obstructive and difficult. Her refusal was in accordance with good practice. Her expressed concern about this matter was not recognised by her line manager as whistleblowing, as it should have been.

3.21 The trust did not deal with the whistleblowing concerns that Mrs Haynes-Kirkbright raised in accordance with their whistleblowing policy or at all.

The coders' collective complaints

3.22 Mr Loughton knew of Mrs Haynes-Kirkbright's concerns about the trust's approach to the PCT with regard to coding irregularities by 20 April 2012. He did not, as he should have, initiate a whistleblowing investigation. Rather, he instructed two of his executive directors to ensure that Mrs Haynes-Kirkbright's concerns did not interfere with the Monitor visit.

3.23 The approach taken by Mr Stringer did not accord with good practice. He did not seek to verify the allegations before deciding what action to take against Mrs Haynes-Kirkbright.

3.24 He and Mrs Harnin seem not to have recognised that the allegations of the coders related both to behaviour and competence and that the competency allegations needed to be probed by Mr Stringer, who had apparently not previously noticed any competency problems in the department.

3.25 What he chose to do was not in accordance with formal trust policy and was unfair on Mrs Haynes-Kirkbright.

3.26 His justification that the informal policy they adopted was intended to save Mrs Haynes-Kirkbright from the stress of suspension and formal investigation does not explain why no attempt to validate the complaints or to warn Mrs Haynes-Kirkbright was made before the meeting on 24 April.

3.27 The trust did not follow due process with regard to its policies and procedures in its initial handling of the coders' collective complaint.

The events of 2 July 2012

3.28 The trust responded promptly to Mrs Haynes-Kirkbright's email and recognised that whistleblowing allegations needed to be dealt with in accordance with the whistleblowing policy. However, it apparently made no attempt to validate the complaints of the coders while Mrs Haynes-Kirkbright had been off work or to separate complaints about behaviour from complaints about competence.

3.29 A number of the matters Mrs Haynes-Kirkbright raised were not investigated, and no reason was given for this.

The grievance investigation of the coders' collective complaints

3.30 The investigators were fair and thorough in obtaining evidence from the coders to back up the collective complaints. They did not sufficiently challenge coders who sought to justify disobeying Mrs Haynes-Kirkbright's instructions about new ways of working.

3.31 They were limited in their investigation by their terms of reference, which excluded a consideration of the allegations made by Mrs Haynes Kirkbright about the coders. However they could have done more to investigate the context in which Mrs Haynes-Kirkbright's alleged behaviour took place.

3.32 When they interviewed Mrs Haynes-Kirkbright they challenged her on managerial decisions that they were in no position to evaluate as they were not in her department.

3.33 These limitations inevitably meant that the investigation into the coders' complaints gave only part of the picture.

The grievance investigation of Mrs Haynes-Kirkbright's complaints against Mr Stringer and Mrs Harnin

3.34 This part of the investigation was unsatisfactory for a number of reasons.

- It was into Mrs Haynes-Kirkbright's allegations against Mr Stringer and Mrs Harnin, yet Mrs Haynes-Kirkbright was the last person to be interviewed. This meant that the investigators did not have the benefit of her detailed descriptions of the way she was treated when they interviewed Mr Stringer and Mrs Harnin.
- Mr Stringer was allowed to describe his view of Mrs Haynes-Kirkbright rather than being asked to describe and explain his own behaviour.

3.35 We consider that the interviewers were in a difficult position; both Mr Stringer and Mrs Harnin were executive directors and senior to them, and Ms Harnin was line manager to one of them. The trust should have appointed someone at executive director level to undertake the investigation into Mrs Haynes-Kirkbright's allegations against Mr Stringer and Mrs Harnin.

Report of the grievance investigation

3.36 The report on the investigation accurately reflected the coders' evidence, and the findings that Mrs Haynes-Kirkbright had a case to answer on the coders' complaints about her behaviour were reasonable based on the evidence.

3.37 However, other findings were not reasonable, because they were either not based on the evidence, were based on partial evidence or were beyond the competence of the investigators to make a reliable finding.

3.38 The report into the allegations made by Mrs Haynes-Kirkbright reflected the inadequacy and limitation of the investigation and its findings cannot be relied upon.

The first whistleblowing investigation

3.39 The investigation was not robust, in that important questions were not asked, relevant witnesses were not interviewed, inconsistencies were not probed and unsupported assertions were not challenged.

The report of the first whistleblowing investigation

3.40 We consider that the matters were not investigated robustly, or even adequately in some cases, and the report reflects this. The interviewers failed to interview significant witnesses and failed to question the reliability of Mr Stringer's evidence. The investigators relied on the Audit Commission and draft internal audit reports which the scope or detail of those reports could not justify. The report's conclusions accurately derive from Mr Stringer's evidence. However, the failure to obtain or seek corroborating evidence and the inappropriate reliance on the two reports makes it impossible to rely on them.

3.41 Dr Odum was in charge of the investigation and is responsible for its findings.

The first disciplinary proceedings

3.42 The process for the disciplinary procedure was carried out correctly, and it was right for the hearing to be postponed when Mrs Haynes-Kirkbright raised the question of whether her medical condition was a factor in her behaviour.

Mrs Haynes-Kirkbright and the Daily Mail

3.43 The trust complied with its whistleblowing policy in ordering an investigation after it became aware that Mrs Haynes-Kirkbright had raised concerns about the trust with the Daily Mail.

The second whistleblowing investigation

3.44 The investigators did not look into the matters that Mrs Haynes-Kirkbright was still concerned about and had raised with the Daily Mail, but spent most of their efforts looking at matters that Mrs Haynes-Kirkbright denied having raised with the reporter. There was sense in this because the trust needed to be on sure ground in refuting the allegations made by the Daily Mail about palliative care and fiddling the death rate. By focusing on these aspects of the published article, the investigators ignored the matters on which Mrs Haynes-Kirkbright was actually whistleblowing.

3.45 The interviewers did not treat Mrs Haynes-Kirkbright fairly at the second interview because they gave her the impression that they still wanted to know about what she had said, whereas in reality they were trying to establish whether she was entitled to whistleblowing protection.

3.46 The interview with Mr Stringer was unprofessionally perfunctory.

3.47 The investigation was inadequate.

The report of the second whistleblowing investigation

3.48 The failure to look at all the new matters and the reliance on the inadequate first whistleblowing investigation and its conclusions undermine the findings in the investigation.

3.49 We consider that the evidence did not support the findings that Mrs Haynes-Kirkbright's "new" allegations were unfounded.

3.50 The investigation was not robust, in that it did not look into matters that had previously been investigated, despite Mrs Haynes-Kirkbright's evidence that she was not satisfied with the outcome of the earlier investigation. This lack of rigour is reflected in the report.

The second disciplinary investigation

3.51 The report is clear, well organised, and comprehensive. It goes step by step through the allegations against Mrs Haynes-Kirkbright and sets out the investigating officer's findings on each.

3.52 It does not revisit the conclusions of the earlier investigations. It follows that as those investigations were flawed as set out above, the conclusions of the report cannot be relied upon.

3.53 Some of the findings did not reflect the evidence.

Did the trust follow due process with regards to its policies and procedures and the legislation?

3.54 The trust's HR policies we looked at as part of this review are generally fit for purpose. However, some have passed their review date and should be reviewed as soon as possible.

3.55 The trust's whistleblowing policy does not reflect changes in the law and practice and was due for review in November 2014. The policy is out of date and does not appear to be fit for purpose.

Was Mrs Haynes-Kirkbright protected under the Public Interest Disclosure Act 1998(PIDA)?

3.56 With regard to her internal whistleblowing disclosures, we consider that Mrs Haynes-Kirkbright is a protected whistleblower.

3.57 With regard to her acknowledged whistleblowing to the Daily Mail we consider that Mrs Haynes-Kirkbright is a protected whistleblower.

3.58 With regard to the allegations in the Daily Mail, which Mrs Haynes-Kirkbright denies having made, the trust would have to come to an evidence-based view on what she did or

did not allege before reaching any conclusion on whether a PIDA issue remained to be decided.

4 Details of the review

Approach, methodology and structure

4.1 The review was undertaken in private both in Wolverhampton and in London. It comprised 22 formal interviews, other discussions, and an examination of all available relevant documents.

4.2 We conducted interviews with every individual identified as relevant and who agreed to participate. These included both current and former employees of the trust. A list of interviewees is given in appendix B.

4.3 The trust provided us with substantial documentation about Mrs Haynes-Kirkbright's recruitment to and employment at the trust and the various internal investigations that took place. We also looked at many internal policies and procedures.

4.4 We offered interviewees the opportunity to be accompanied at meetings and to comment on the factual accuracy of interview transcripts or to add to them. Where appropriate relevant extracts of this report were shared with interviewees for comment while it was in draft.

4.5 In view of the complexity and interrelatedness of the various matters, we decided to adopt a linear approach in setting out what the evidence reveals about the sequence of events.

4.6 Much of the evidence concerned technical clinical coding matters so we considered that we needed an independent coding expert to help us understand the different positions.

4.7 We consequently met with Sue Eve-Jones, managing director of the Professional Association of Clinical Coders UK, an organisation that promotes the professional practice of clinical coding in the UK. Sue is also head of clinical coding and data quality at Taunton and Somerset NHS Foundation Trust. We refer to her views in the body of the report.

4.8 This review is not part of any disciplinary process.

4.9 Section 5 of our report sets out the chronological summary relevant to this case.

4.10 Section 6 provides a background to Sandra Haynes-Kirkbright's employment at the trust.

4.11 Sections 7 to 13 provide the detail of the first stages of the grievance and whistleblowing investigations and sets out our findings of them.

4.12 Sections 14 to 18 reports on Sandra Hayne's-Kirkbright's dealings with the Daily Mail and provides detail on the second stage of the whistleblowing investigation and the first disciplinary investigation

4.13 Sections 19 to 22 cover events after the second Daily Mail article and various governance matters.

Background and context

The Royal Wolverhampton NHS Trust

4.14 The Royal Wolverhampton NHS Trust was established in 1994 and is one of the largest providers of acute healthcare in the West Midlands. It offers a comprehensive range of services to Wolverhampton, the wider Black Country, South Staffordshire, North Worcestershire and Shropshire.

4.15 The trust has two main sites; New Cross Hospital with more than 800 beds and West Park Hospital with 82 beds as well as more than 20 community sites.

4.16 In 2011/12, the trust had 155,000 admissions and more than 500,000 outpatient attendances.

4.17 It employs nearly 7,000 staff and has an operating budget of £380 million.

4.18 The trust is run by a board of directors responsible for setting the strategic direction, ensuring high standards of clinical care, financial stewardship and for responding to the health needs of the population it serves.

4.19 The board comprises the chairman, chief executive, four executive directors and five non-executive members. Other non-voting members also attend the Board.

4.20 The chief executive, David Loughton, is the trust's accountable officer. He has been in post since 2004.

4.21 Kevin Stringer, director of finance and information, is the executive director and board level lead for clinical coding. He started at the trust in 2009.

4.22 The other executive directors are Mrs Cheryl Etches, chief nursing officer (in post since 2005), Dr Jonathan Odum (2011), medical director and Mrs Gwen Nuttall, chief operating officer (since 2012).

4.23 Mrs Maxine Espley, director of planning and contracting, attends the Board as a non-voting member, as does Mr Sultan Mahmud, interim programme integration director. Mr Mahmud has recently returned to work at the trust from NHS England. In 2012 he was an associate director with a particular interest in mortality performance.

4.24 Mrs Harnin, director of HR, also a non-voting member, attended the board until she left the trust in April 2014. She had been in post since February 2006.

4.25 The trust board has undergone a number of changes of membership in recent years. Since 2012, there have been three permanent chairmen and a high turnover among the other non-executive directors. The board has had five chairmen during David Loughton's time as chief executive.

4.26 Below board level and since integration with Wolverhampton PCT provider services in March 2011, the trust has adopted a divisional management structure. It has two clinical divisions covering hospital and community services, a division for estates and facilities and a corporate services division.

4.27 In late 2012, the trust's application for Foundation Trust (FT) status - a process started in early 2011 - was turned down by Monitor after a Care Quality Commission (CQC) inspection raised concerns about staffing levels. However, the trust continues to work towards FT status.

4.28 The trust has been inspected six times by CQC since registration in April 2010. The latest inspection in September 2013 was part of CQC's new in-depth hospital inspection programme and the subsequent report was largely favourable, although a number of areas were identified as requiring improvement. These included the responsiveness of care for older patients, the shortage of midwives, the need to ensure greater adherence to clinical processes and systems and issues around end of life care.

Coding

4.29 Every spell of care a patient receives, from admission to discharge, receives a code. The code will identify the primary diagnosis of the patient, any secondary diagnoses, treatment given and the time the patient remained in hospital.

4.30 The primary diagnosis is the reason the patient is being treated in hospital, for instance, cancer, childbirth, or fractured head of femur. Secondary diagnoses are factors that may affect the treatment or outcome, such as high blood pressure, diabetes, asthma or obesity. These are also known as co-morbidities.

4.31 The codes are entered into a database by coders, who receive the records of patients at the end of spell of care and who translate the medical notes into the appropriate codes. Accurate coding requires full and precise descriptions of primary diagnosis; personal characteristics such as age and sex; postcode (a proxy for levels of deprivation); co-morbidities; procedures; length of stay; and detailed knowledge of the relevant codes by the coders.

4.32 Coding provides a wealth of detailed information for hospital managers and clinicians, NHS commissioners, regulators and the public. Two areas of particular significance at the trust at the time covered by this investigation were Payment by Results (PbR) and Hospital Standardised Mortality Rate (HSMR).

Hospital Standardised Mortality Rate

4.33 The HSMR is a method of comparing mortality levels in different years or for different sub-populations in the same year, while taking account of differences in case mix. The ratio is of observed to expected deaths (multiplied conventionally by 100). Thus if mortality levels are higher in the population being studied than would be expected, the HSMR will be greater than 100.

4.34 For all of the 56 diagnosis groups, the observed deaths are the number that have occurred after admission in each NHS trust during the specified time.

4.35 The expected number of deaths in each analysis is the sum of the estimated risks of death for every patient.

4.36 A hospital may have an above-average number of deaths in a year compared to other hospitals with similar patient numbers but have a below-average HSMR once the seriousness of the diagnoses and co-morbidities and the vulnerabilities caused by age, youth and/or deprivation are taken into account. Equally, a lower-than-average death rate may be accompanied by an above-average HSMR if the general health and prosperity of the local population and the conditions for which patients received treatment meant that the expected number of deaths have been exceeded.

4.37 Accurate coding requires skill and is essential to ensure that the HSMR is correct: above-average HSMRs are seen as a warning sign that avoidable deaths may be occurring. If the above-average HSMR is accurate, this should allow managers and clinicians to identify areas of weakness and take steps to strengthen them. On the other hand, if the high HSMR is inaccurate (for instance because the consultants do not give a full list of co-morbidities, or the coders fail to record those morbidities in the notes), managers and clinicians will waste time looking for weaknesses that do not exist. In addition, the hospital's reputation for safety will be jeopardised.

4.38 HSMRs are published every year and are an important indicator of the standard of service and quality of care of a trust.

Payment by Results (PbR)

4.39 This system of payment allocates a monetary value to each spell of care. This is the notional cost to the hospital of providing the treatment needed during the consultant episode to that particular patient with their particular diagnoses, co-morbidities, personal characteristics and treatment needs.

4.40 Accurate coding is essential to ensure that the hospital receives what they are entitled to from those who commission their services. It is also essential to ensure that hospitals are not overpaid.

4.41 The scope and financial impact of PbR has been implemented incrementally. In terms of scope, the system began in a small way in 2003-2004, was extended in 2004-2005 and for most trusts included only elective care in 2005-2006. In 2006-2007 the scope of PbR was extended to include non-elective, accident & emergency, outpatient and emergency admissions for all trusts.

5 Chronology

Date	Event
17 October 2011	Mrs Haynes-Kirkbright starts work at the trust
21 October 2011	Mrs Haynes-Kirkbright comments on flaws in palliative care coding and starts improving the coding process
12 April 2012	Coding department make a collective complaint against Mrs Haynes-Kirkbright
13 April 2012	Mrs Haynes-Kirkbright takes time off for family reasons
23 April 2012	Mrs Haynes-Kirkbright returns to work
24 April 2012	Mrs Haynes-Kirkbright called in for meeting with Mr Stringer and Mrs Harnin (also staff side union representative) to discuss coders' complaint
25 April 2012	Mrs Haynes-Kirkbright goes off sick
2 July 2012	Mrs Haynes-Kirkbright makes whistleblowing allegations and grievance complaints in emails to trust
24 July 2012	Mrs Haynes-Kirkbright returns to work and is suspended
August 2012 to January 2013	Complaints by coders and grievances by Mrs Haynes-Kirkbright investigated and report produced
July to November 2012	Whistleblowing allegations by Mrs Haynes-Kirkbright investigated and report produced by Dr Odum and HR support
16 January 2013	Mrs Haynes-Kirkbright informed of findings of grievance investigation report and of the proposed disciplinary proceedings
End of February 2013	Mrs Haynes-Kirkbright talks to reporter from Daily Mail
1 March 2013	Article published in Daily Mail
March to September 2013	Second whistleblowing investigation and report by Dr Odum and HR support
9 December 2013	Mrs Haynes-Kirkbright informed of outcome of second whistleblowing report
December 2013 to February 2014	Disciplinary investigation and report by Mrs Espley
28 February 2014	Mrs Haynes-Kirkbright informed of disciplinary proceedings
2 March 2014	Second article in Daily Mail

6 Mrs Haynes-Kirkbright's employment

6.1 Mrs Haynes-Kirkbright is an American from Texas who moved to England in 2006 after marrying an Englishman. From 2006 to 2007 she worked as a clinical coder at Tameside NHS Trust, before moving to Mid Staffordshire NHS Foundation Trust in 2007 as clinical coding service and data quality manager. She remained at Mid Staffs until moving to the trust.

Mrs Haynes-Kirkbright's recruitment

6.2 In July 2011 the trust advertised for a head of clinical coding and data quality, accountable to the chief financial officer, at a salary of £45,254-£55,945. This was a new post, as the chief financial officer, Kevin Stringer, explained to us:

“There was all the work that was being done in the trust around mortality, around clinical coding, the PbR audit report, where we thought we weren't at the appropriate level... I also had an opportunity to look at the strategic nature of the role, because unusually I had two heads of IT because we brought community services together...I redesigned the role.”

6.3 Mr Mahmud, associate director, told us:

“We were on the lookout for a new head of coding and coding information improvement...”

“I went to see Sandra, just because I had understood that she had a really good process around mortality, capturing things electronically, sending information up to consultants for corroboration, a really sleek process. I picked up that she was quite good, in terms of managing staff, so I went to see her, essentially to understand what they were doing and what we could kind of pinch with pride, if you like. When I saw her I was incredibly impressed with the way she conducted herself...”

“Generally, I was talking about her process around mortality coding and she said, ‘I will send you whatever information you need.’ At the end of that conversation I

said to Sandy, 'Look, we are on the lookout for somebody to head up our coding, because we think it needs improvement, I am sure you have a really good set of skills, I would encourage you to apply.'

6.4 Mr Stringer told us that he had seen and spoken to Mrs Haynes-Kirkbright a couple of months before the advert was published, when Mr Mahmud had brought her up for a meeting:

"I'd spoken to her about what are you doing at Mid Staffs that we can learn from...Sultan brought her here for a specific meeting about opportunities to learn from what was going on at Mid Staffs. This was prior to me redesigning the job and placing adverts."

6.5 Mrs Haynes-Kirkbright, then clinical coding service and data quality manager at Mid Staffordshire NHS Foundation Trust, confirmed that she went to visit Mr Stringer and Mr Mahmud before the advertisement came out.

6.6 She told an internal investigation on 3 October 2012:

"Before the job existed I was brought down. I was invited to meet Mr Stringer by Sultan to listen to how I had managed in Stafford to get people up to national standards....They were... 'what would it take to get you here?' And I was told 'we will have to create a position and then run this through HR and all the committees and bells and whistles and then we will call you.'"

6.7 She told us, as she had told the internal investigations and the Daily Mail, that Mr Stringer had told her that the job description had been designed around her skills and abilities and was hers for the taking.

6.8 Mr Stringer denied this, and pointed out to us that in fact the job description had not been designed around Mrs Haynes-Kirkbright's skills and abilities, in that Mrs Haynes-Kirkbright proved unable to provide support, management or leadership to the data quality team, with the result that in February 2012 this responsibility had to be taken away from her. It is also the case, as set out in Appendix F, that Mrs Haynes-Kirkbright claimed that she had expressed reservations before making her formal application as to whether some of the requirements in the published job description matched her skills. She

says that she was told that she need not worry about this, as these extra responsibilities had been put in to justify the salary that she had requested.

Comment

It is correct that Mrs Haynes-Kirkbright proved unable to carry out her responsibilities for the data quality team. However her post at Mid-Staffs was clinical coding service and data quality manager; her application for the post described her data quality skills and experience; her references confirmed that she had the experience and skills for the post at the trust; and at her recruitment interview her answers to questions on data quality scored mainly 4s and 5s out of 5.

Finding

F1 Whatever the subsequent problems, there seems to be no doubt that the job description matched Mrs Haynes-Kirkbright's apparent skills and abilities.

6.9 She also told us that she met the chief executive, David Loughton:

"I met him in the hallway when they first brought me down to meet Mr Stringer. They said this is Dr Odum and this is Mr Loughton, and he goes 'I hear you're coming to work for us', and we shook hands and that was the extent of it."

6.10 Mr Loughton told us that these were words of encouragement rather than a guarantee that she would get the job, as that was not a decision for him to make.

6.11 When internal investigators asked Mr Stringer and Mr Mahmud about Mrs Haynes-Kirkbright's allegation that she was offered the job before the position was advertised they denied it and said the recruitment process had been genuine. They confirmed this when they spoke to us.

6.12 However, Mrs Harnin, director of HR at the time, who has now left the trust, told us that Mr Loughton knew that Mrs Haynes-Kirkbright was offered the job before it went out to advertisement:

“David shared it openly with us, and that’s how he is ... ‘We’re getting this person from Mid Staffs, she’s great, she’s top drawer, she’s the best there is ... sorted Mid Staffs out and she’s coming here’.

“Q: And that was before she was interviewed?

A. Yes ... David told us she was coming to us before the process and the advert.

“Q. He told you?

No, the execs in the round...Wednesday morning is our directors’ meeting and we have on the agenda a standing item called show and tell ... and that’s when we say David, this is your slot, this is where you tell us what you’ve been meddling with on our agenda; it’s tell us now before we find out out there. It’s done very tongue-in-cheek, and he’ll say you have to catch me first. Basically this is where this type of agenda item comes up and we’ll say we’ve heard on the corridor that we’re having a new director, and this is where he’d say. It’s in that kind of forum that this would have come up. It’s in my head and I can’t make it not ... She was the chosen one. This would have been his type of language. We want some of what she’s been doing at Mid Staffs here; we want to be the best in clinical coding and she’s the one you’ve got to have.”

6.13 She also told us that once Mr Loughton had expressed this view, she believed it was inevitable that Mrs Haynes-Kirkbright would be offered the post by Mr Stringer unless something was revealed that showed her to be unsuitable.

6.14 Mr Loughton does not dispute that the dialogue around Mrs Haynes-Kirkbright happened but told us his comments would have been made on the assurance that ‘all directors around the table’ are ultimately responsible for making decisions in their own areas of responsibility and would be held accountable for those decisions. He did not consider that they would be influenced by what he said.

Comment

Mrs Haynes-Kirkbright would not have known of these comments, but this undisputed account adds weight to her account of the comments that were made directly to her.

6.15 Mrs Haynes-Kirkbright was interviewed in August 2011 for the post of head of clinical coding and data quality. The interview panel consisted of Mr Stringer, Mr Mahmud and a senior IT colleague.

6.16 Mr Stringer recalls that the IT colleague had concerns:

“It was more about a very direct, very robust style, and the question from [the colleague] was, in essence, how’s that going to go down with the team and will that be an issue going forward. It was more about the way in which she presented herself at interview and concerns about overall style and approach.”

6.17 Mr Mahmud told us:

“A. It was fine; it was just a normal interview. She did really well, she is very eloquent, has quite a lot of dynamism, she did well.

“Q. Not sufficiently well to convince all three of the panel members though?

A. From what I can recall, I think Kevin was quite impressed, [the IT colleague] had some questions, I think, but not to the point where she was saying ‘Oh, I absolutely would not want this person’. From my recollection it was a fairly normal interview panel.

“Q. What were [the IT colleague}’s reservations about?

A. Specifically I cannot remember, I think it was about cultural fit. Sometimes somebody tingles your spine, in the sense that you do not quite know what it is. I think for me, from my characterisation of events, [the IT colleague] just had a feeling...”

6.18 Her references from senior colleagues at Mid Staffs were taken up and were largely positive:

“Sandie works hard and is extremely dedicated to her place of work. We have in fact spoken about ensuring she always takes her holidays...Her clinical Coding experience is superb and potential income contribution to the trust is undoubted... Sandie is a hard-working and committed individual....She has been instrumental in turning round our clinical coding team...Sandie has tremendous experience to offer as a clinical coder and has served the trust well..’ and ‘Steadfast, trustworthy and thorough in all assignments detailed. Has a ‘get done’/’can do’ attitude to everything (always achieved)...Strong multi-skill sets. Ability to think outside the box considerable. Executive director material. Needs to be on the fast track for this.”

6.19 But also:

“She has a strong and individual personality (which is not always suited to everyone), and is not afraid to express and stand by her opinions and ‘can be over-ambitious (not really a weakness but a personal frailty).”

6.20 We asked Mr Stringer whether these comments had rung any warning bells, particularly in light of the reforming managerial role that Mrs Haynes-Kirkbright was expected to take up. He said not:

“...in the context of the whole reference, it’s fairly glowing. Again we didn’t perceive anything that needed following up. Again, Sultan was fairly active externally, and had he heard of any issues about her leadership style and creating real problems, I’m pretty sure he would have raised those at the interview.”

6.21 Mrs Haynes-Kirkbright was sent a written offer of employment on 17 August, at a salary of £51,718. Subsequently Mrs Haynes-Kirkbright negotiated with Mr Stringer to get her salary up to £54,454. He explained that he had done this to reflect the evidence she had provided about the extra travel she would have to get to work, and the fact that she had been paid overtime in the job at Mid Staffs. He told us the increase was agreed with HR.

6.22 The HR records show that the vacancy was advertised at a salary between £45,254 and £55,945pa, in pay band 8b. On 17 August 2011 the offer of employment letter signed by Kevin Stringer said:

“Based on your current salary the offer was originally Band 8b - point 39 £48,983 however, as we discussed taking into account the additional travel I am prepared to offer Band 8B - point 40 £51,718.”

6.23 Mrs Haynes-Kirkbright emailed her rejection to Mr Stringer on 18 August 2011, saying:

“I would require at least the 6th level or top of a Band 8b in order to justify taking it.”

6.24 Mr Stringer spoke to Mrs Haynes-Kirkbright and wrote to her on 19 August 2011 to *“confirm the final contract offer of £54,454 (band 8b/point41).”* This was one incremental point, and about £1,500, below what Mrs Haynes-Kirkbright had asked for in her email, and Mr Stringer told us it was entirely within the trust’s *Retention and retirement* policy.

6.25 He also told us that the amendments to the original salary offer had been agreed with HR, but Mrs Haynes-Kirkbright’s personnel file contains no record of this.

Comment

Mrs Haynes-Kirkbright told us that she had been headhunted and told in advance that the job was hers. She also told this to the Daily Mail and those undertaking the internal grievance and whistleblowing investigations.

The trust did not accept this when it investigated her claims and Mr Stringer and Mr Mahmud firmly denied it. They said other eligible candidates applied and that the appointment was made on merit in the usual way.

Finding

F2 We cannot know the truth of this matter but we think it understandable for Mrs Haynes-Kirkbright to have believed that she had been employed by the trust after a sham recruitment process and that the job was hers for the taking.

Mrs Haynes-Kirkbright at work

6.26 Mrs Haynes-Kirkbright told us she had been employed with the specific remit to bring the coding department up to the standards of those at Mid Staffs. This involved changing and improving what the coders did and how they did it.

6.27 She started work at the trust on 17 October 2011, and had a handover period until her predecessor left at the end of October.

Mrs Haynes-Kirkbright and coding

6.28 The trust accepts that Mrs Haynes-Kirkbright identified and either dealt with or tried to deal with various problems with coding during her period of active employment. Some of these problems were referred to in the Daily Mail articles and considered in the internal whistleblowing investigations.

6.29 During the handover period in October Mrs Haynes-Kirkbright started reviewing the accuracy of the coding. Mr Mahmud asked her on 20 October to evaluate and comment on the accuracy and robustness of the coding for palliative care in the case of patients who had died in hospital.

6.30 If an inpatient receives care from specialist members of the palliative care team, and then dies, a coding of palliative care will ensure that their death will not be taken into account when calculating the hospital's standardised mortality rate because it will be seen as unavoidable. If the palliative care coding is not used, the mortality rate will show as higher than it should be, suggesting that the hospital is not as safe as it actually is.

6.31 Conversely, if a patient is admitted when dangerously ill, but does not receive specialist palliative care before they die, their death will be taken into account in calculating the standardised mortality rate of the hospital. A palliative care code must not be used because this will show the death rate as lower than it actually is, suggesting that the hospital is safer than it is.

6.32 Standardised mortality rates are seen as an important indicator of the quality of care a hospital provides, so getting the coding right is essential.

6.33 Mr Mahmud told us he had tried to fix the problem before Mrs Haynes-Kirkbright arrived, and his email to her of 20 October was intended to check with her if he had been successful.

6.34 Mrs Haynes-Kirkbright responded next day and then again on 27 October, saying she had done a quick audit of 11 cases on the palliative care ‘list’ and found that only five patients had received formal palliative care and had been correctly coded. Some of the other cases should have been coded for palliative care, and one of them had been incorrectly coded as having received specialist palliative care when in fact the patient had received only palliative radiotherapy, which does not come within the coding category for specialist palliative care. This was particularly troubling to her as it gave a false positive error rate of nine per cent *“but we do not want to submit errors at all”*.

6.35 Mrs Eve-Jones, the coding expert that we consulted with during the investigation, commented:

“The one that worries is the last one, where the patient did not have palliative care from the team and yet the code was added and submitted to SUS. Who added it?”

Comment

Clearly, more needed to be done and a good deal of time and effort was spent in the next few months trying to nail down accurate palliative care coding.

6.36 After the email exchange in October, Mr Mahmud asked Mrs Haynes-Kirkbright to draft a policy for palliative care coding.

6.37 Mrs Haynes-Kirkbright attended her first Mortality Assurance Review Group (MoRAG) meeting on 16 November, when she put forward her proposals. The minutes of the meeting record:

“SK has risk assessed the process and with consultants will review all deaths and obtain clinical approval prior to assigning any palliative care code. The increase in the actual numbers of palliative care referrals to the trust’s specialist palliative care team in the last 18 months was also noted.”

6.38 Mr Mahmud told us:

“One of the things I was really keen to happen was I wanted Sandra to come to MoRAG, which was the executive group. My feeling was, our improvement in mortality was spectacular for lots of reasons actually, but the nub of it is... 200 less people died from the previous year...that is an incontrovertible fact, but...what I did think through was the negative connotation. I said ‘If people are going to say they have fiddled it, to avoid that or to safeguard us, it is better to have Sandra, a person with a really good reputation, a credited coder, who has been through really difficult times at Mid Staffs, has a really good process, to be in the conversation with the directors.’ I found that really positive and David would ask her questions and Cheryl would ask her questions and they would get insight into the process of how coding works.”

6.39 Mr Mahmud emailed Mrs Haynes-Kirkbright and others on 21 March 2012 to say they were going to do spot audits:

“...for assurance purposes. Given the phenomenal success of our mortality reduction, there may be external scrutiny -but even if there isn’t this is something we should do anyway.”

6.40 He went on to explain his plan to get further validation from the specialist palliative care team of the cases where specialist palliative care justifying Z515 coding had been provided.

6.41 He told us:

“I mentioned this to Sandra and she was quite pleased with that, she said ‘This will get you an IG Level 3...if you follow this through...Basically, in terms of making sure that we are doing the right thing, this will be the highest level of governance for information,’ and I thought ‘Great’.”

Comment

At this point palliative care coding seemed to be sorted out to everyone’s satisfaction.

Local coding agreements

6.42 Mrs Haynes-Kirkbright told us that she found a file containing the local agreements the department had with the various consultants in different areas.

6.43 She explained that the purpose of a local agreement was to provide a short cut for coders in certain carefully defined circumstances. For instance, if a procedure could be carried out in a number of ways, all with their own codes, but the procedure was always carried out in the same way at the trust, a local agreement would link the procedure with the code for the way it was always carried out, so the coders would not have to search the notes for clarification on this point.

6.44 Local agreements should never override national policies.

6.45 She found that a number of the local coding agreements in the file overrode national policy and seemed to have no other purpose than to increase the income of the trust by ‘up-coding’.

Comment

It was not part of our remit to investigate the factual basis of Mrs Haynes-Kirkbright's beliefs. Therefore we do not make any finding about the validity of this allegation. Please also see comment after paragraphs 6.57 and 6.57.

6.46 She told us that one of the local agreements dealt with the common situation where heart surgeons carry out a diagnostic angiogram and then if necessary put in a therapeutic stent to improve blood flow. Under the national coding guidelines at that time, if the angiogram and stent took place on a single occasion, only the stent could be coded for PbR purposes.

6.47 However, if the angiogram took place on one occasion and the stent was put in on a subsequent occasion, both the angiogram and the stent could be claimed for under PbR.

6.48 Mrs Haynes-Kirkbright told us:

"...they were running through their angiogram clinic, more or less, and putting stents where they were to be done in theatre, and then charging for both, specifically to get the higher HRG [health resource group]. The difference was about £1,000.

"Q. How do you know they were doing it specifically?"

A. It said in the local agreement that, since they were doing both an angiogram and a stent at the same time, that we were to code for both of them in a single theatre visit. When I told them that they couldn't do that, they said, 'Well, how are we supposed to get that HRG, then?'"

6.49 HRGs help organisations to understand their activity in terms of the types of patients they care for and the treatments they undertake. They enable the comparison of activity within and between different organisations and provide an opportunity to benchmark treatments and services to support trend analysis over time.

6.50 HRGs are used as a means of determining fair and equitable reimbursement for care services delivered by providers. Their use as consistent 'units of currency' supports standardised healthcare commissioning across the service.

6.51 There is some evidence that it was well known that the local agreement was not in accordance with national guidelines. The following exchange took place when one of the coders was interviewed during the grievance investigation:

"A. One of her things was getting rid of all policies and procedures and if we are not coding to national standards then we are going to stop doing it and she stopped us doing a few bits and pieces. She got rid of all the policies and procedures but it turns out that some of the policies and procedures that she had ripped up would have lost the hospital money.

"Q. But they were against guidelines?

A. That was what she had said to me. We knew about the cardiac one because the issue with the cardiac coding is a long long issue you know. It has gone on a long time with the manager before Sandy as well you know, that is not a new issue.

"Q. Gone on in a long way before as in...knowingly against guidelines?

A. Yes.

"Q. Did we know that that was known in that way?

A. I don't know...it was a consultant's instruction I think, or...this hospital had got our own way of doing things and it happened to go against national standards but it was all documented, it was classed as a local policy so it's not an illegal kind of thing.

"Q. No, you have that leeway, don't you? Consultant does something a bit wacky that is a lot more expensive than his mate down the M25 does, they are allowed some almost discretion.

A. That's it, yes, but when Sandy started she said we are coding to national standards or nothing. Well, obviously from what she said to me it sounded like there were people kicking up a fuss about it. This is what she said to me: 'I've caused a lot of problems because we are going to have to revert to national standards, we are going to have to start coding these angiograms properly...and

they don't like it because it is going to lose money, but 'she said 'If I'm forced to code these things I'll blow the f'ing lid of this place. I'll go to the Express and Star'."

Comment

This exchange reveals that:

- *apparently the coders, their manager and the relevant consultant knew that the local agreement was against national guidelines*
- *the coders believed that local policies were allowed to override national guidelines*
- *the interviewers also believed this*
- *Mrs Haynes-Kirkbright had revealed an intention to blow the whistle if she was forced to do something that she knew to be wrong.*

6.52 We had not seen the local agreements coding book when we met Mrs Haynes-Kirkbright. The medical director, Dr Jonathan Odum, told us he had asked several times to see the book when he was investigating the whistleblowing allegations but it was never produced. We asked for a thorough search to be made and the book was found, with a number of local agreements in it, including this one.

6.53 The local agreement for angiograms and stents was as follows:

"Cardiac catheterisation and angiography where applicable to be coded in addition to PCI.

Cardiac catheterisation only -NOT to be coded in addition to PCI

3 June 2011"

6.54 Mrs Eve-Jones commented:

"There is a fundamental policy that, if you have a diagnostic intervention proceeding to a therapeutic intervention on the same site, within the same operative - or, in this case, cath lab setting - then you would only code the

therapeutic. Across the board, there are a few exceptions to those, but they are ones for which we have been given a specific standard. So no, it is a fundamental policy: if I go and do a diagnostic arthroscopy on your knee and then decide to carry on to excise some cartilage or repair a tendon, then I would not code the diagnostic but I would only code the therapeutic.”

6.55 We asked if this was something that a coding manager should have known, and Mrs Eve-Jones said that it was.

6.56 We discussed with Mrs Haynes-Kirkbright a local coding agreement for children admitted overnight with head injury. She explained what happened when such a child arrived at hospital:

“...they look him over, and do whatever investigations they do - something like an X-ray, and MRI or just carry out observation of the child. They say, ‘Well, he looks as though he’s okay, or he looks as though he might not be okay, but we will observe him overnight.’ That generally attracts a code for head injury - just head injury.

“Q. Which is about £900 or something.

A. There are various pricing ranges but it is a small amount of money compared to if the same child is diagnosed with an intracranial head injury which means that they have damaged their brain in some way, or they have affected part of the brain... That was close to £2,000: it was significantly more money, and they were coding every single child that went through that paediatric unit who stayed overnight as intracranial head injury.”

6.57 The local agreement sets out:

“With effect from 1 April 2010: It is the policy of the paediatric department within the trust that children with minor head injuries are not admitted to the ward C1/C2. On admission, the expectation is that an intercranial injury has been sustained and the child is treated as if this was the case. Therefore the most appropriate ICD code in these instances is S06.9.”

6.58 The agreement is signed by Mrs Haynes-Kirkbright's predecessor and a consultant paediatrician.

6.59 We asked Mrs Eve-Jones whether she would expect a properly trained and qualified coding manager to know that this was wrong, and she told us that she would expect such a coding manager to know absolutely that this was not appropriate.

Comment

As we were not asked to judge the validity of Mrs Haynes-Kirkbright's beliefs, we did not interview her predecessor. However after we submitted sections of the report to senior managers at the trust, they contacted Mrs Haynes-Kirkbright's predecessor, whose explanation is given at paragraph 12.12.

6.60 Mrs Haynes-Kirkbright said that when she told Mr Stringer of these poor practices he told her they should be stopped and she instructed the coders accordingly. She had arranged an audit cycle on her computer and was going to start looking at coding in the new financial year, April 2012. However, she went off sick before she was able to start this so she did not know if the practice had stopped or not.

Coding conversation with surgeon

6.61 Mrs Haynes-Kirkbright told us that a surgeon came to see her and asked:

"A... 'How do I make more money on what I'm doing?' I said, 'All you have to do is to document what you are doing, and we will get you spot on every penny you deserve.' So he said, 'If you can't tell me what I need to write down to make more money, what good are you?' I said, 'I'm just telling you how it works and there is nothing I can do about the rules.' He got quite flustered with me and left.

"Q. Did you have the impression that this surgeon was worried that he was under-coding, or that he wanted to over-code?"

A. He wanted to find out how to make more money and that was specifically what he said. I told him that there were problems in the department with people who just coded a couple of codes and went on. I said, 'What you need to do is to make sure that you have all of your comorbidities that affect the case written down, and those sorts of things.' He said, 'What if I wrote that I did this? What would I get for it?' I told him that that was not how it worked, and I didn't think he needed to ask me. He was just not very happy about it. I told him what I could tell him, and that he needed to make sure that we are aware of every comorbidity which makes it a more complex case, or any other intra-procedural procedures that he did, which may or may not be code-able, so that we could get the best capture. I was more or less just telling him to get his house in order and write his notes as clearly as possible and then leave it to us, to do the rest. I knew that has an impact because that is what I had done back in Stafford when I was there, in the service in Stafford. We got everything - we got the doctors and started talking to them, and told them that if they put all this down we would help them. That is what I was brought in to do at Wolverhampton'.

She explained that she was looking for, and finding, areas where under-coding was taking place, such that the trust was not getting paid what it was entitled to in many cases. 'It would then be like swings and roundabouts, in that it would all come out in the wash. You might lose £1,000 per episode here, but you might be picking up the same amount, or more sometimes, over there. However, that didn't fly very well.

"Q. Sticking with this surgeon, with you saying all of that, that wasn't exactly what he wanted? You have the impression that what he wanted was to know how to game the system?

A. It was how to get more money, yes, from what he was doing. He wanted to be doing the same thing but to have more money for it. It was all around, 'What if I wrote this, or what if I wrote that?' In the process of engaging with [doctors], I have played around with the HRG Grouper and showed them. For instance, if you have a person who comes in with a broken arm, but they also have diabetes, high blood pressure, hypercholesterolaemia and all of that, then you have a higher HRG than if you don't list all these other things, because they are a more complex case. I had done that before, but he wasn't interested in that: he just wanted to make more money..."

6.62 She explained that she thought those who wanted to know how to achieve ‘up-coding’ were motivated by wanting to increase the income of the trust so that their department would in turn be given a bigger budget:

“It is always important to the doctors to make more money. Nobody wants to be a bad doctor. You don’t become a doctor to be a bad doctor. They want to be good doctors but they also want to make sure that their department shines.”

6.63 Mrs Eve-Jones commented:

“The difficulty with things like this - and I obviously have no evidence that this is how this policy came about - is that it could be because there was a misunderstanding about the rules. However, there are definitely examples in other organisations where coding managers have come under pressure from clinicians, because the clinicians say ‘The trouble is, we only get £150 but actually the care that we had to provide is the same as if this had been the case, and therefore we want that to be reflected.’ Of course, that is not the way that the payment system should work. If that had been done overtly, then it is fraudulent under the PbR code of conduct and, of course, it ultimately skews the whole thing because, if you have individual organisations behaving in that way, then there it becomes more difficult to see where there are anomalies in the payment system.”

Comment

We do not know who this surgeon was, and so have no way of discussing the matter with him or judging the accuracy of Mrs Haynes-Kirkbright’s perception of his intentions and motives. Nor do we have any information on the views of consultants generally to coding for PbR. However, this is a clear example of Mrs Haynes-Kirkbright’s belief that there was a culture of deliberate ‘up-coding’ at the trust.

Responding to PCT queries on coding length of stay

6.64 Mrs Haynes-Kirkbright claims that she and Mr Stringer disagreed on the coding of patients whose length of stay had been atypical, without the reason being clear from the coding.

6.65 She told us that the PCT would seek further information every month on the reasons for the length of stay of certain patients and she understood that it had been the practice of the previous head of coding to make assumptions on the likely reason for any such unusual length of stay, rather than going back to the doctor to establish the reason.

6.66 Mrs Haynes-Kirkbright said assumption had no place in the coders' way of working.

6.67 Mr Stringer denies that there was any disagreement between himself and Mrs Haynes-Kirkbright on this point, and told us that he accepted that coders could not speculate on reasons, but could only code on the basis of what was in the notes.

6.68 The PCT would not pay for these patients' treatment until they had the answers. Mr Stringer told the grievance investigation:

"We do a lot of activity for Commissioners. We send the information off to them for payment in their role as commissioners. They are allowed to look at that detail and challenge some of the contents. And they come back in a variety of queries. What we've then got to do is respond to those queries appropriately and if the Commissioners agree to the response, they then say yes, we will pay for the activity. Now, I have to say, up until Sandra's commencement, this wasn't an issue brought to my attention. It just went on, between the Information Department, the Coding Team and the finance function. And to my perception, the Commissioners queries went very well ... really well done. When Sandra started, I think she obviously took a very different view, and on one occasion she refused to actually engage at all with any of the queries, and took a very formal view. And I think she used the words, that some of the issues were fraudulent, which obviously I kind of reacted to at that point. Her...relationships with her peer group [in Finance, Information and Health Records] became increasingly difficult and it got to a point where on the 29 February, I had no choice but to get everybody in a room and say, how are we going to work through this...Because if we cannot sort this, we have a backlog and we're not going to get paid for these activities."

6.69 He explained that he asked a senior IT manager to find a solution, which the manager then set out in an email:

“Reviewing these queries they need to be answered by someone with the knowledge of procedures, coding and comorbidities and is comfortable finding their way through the notes, the only other option I can see other than coders doing this is to send these queries to the Drs who completed the discharge summary but the process for distribution, chasing and consistency would be a cottage industry in its own right, and wouldn't get the queries resolved in a timely manner.

“Therefore to clear the backlog I think we need to consider overtime for some of the coders to review the case notes and draft responses (a sentence per query), with any they don't feel able to do being reviewed by a wider group. This would then inform the wider discussion on how this work proceeds as business as usual.”

Comment

Although Mr Stringer eventually confirmed to Mrs Haynes-Kirkbright that coders could not make assumptions but could only code what was in the notes, this clearly followed a period of disagreement, during which a senior IT manager suggested a solution that specifically excluded sending notes back to consultants for the reason for length of stay to be given.

Mr Stringer told us that there was no resistance to engaging with consultants on data queries. However this email from the senior IT manager indicates otherwise.

6.70 Mrs Haynes-Kirkbright did not accept the validity of his proposal, using what Mr Stringer considered to be provocative language in an email:

“....such as unfounded speculation and alleged fraudulent practice. Now, I did speak to Sandy personally on the back of that and had a meeting and I said that was unprofessional language. I think some of it was factually incorrect and there was potential that this could bring the trust into disrepute, through the language

that she was using in the Organisation. We actually had the meeting ... I think some of it was around language, I think the use of the word fraud in particular. I have one perception of what that means and I think Sandra had a different perception of what that meant.”

6.71 Mrs Haynes-Kirkbright also said in this email:

“If the coders are forced to give you some unfounded speculation regarding why a patient was in hospital for a certain period of time, I will make it abundantly clear to everyone in the trust and the PCT that this information is by no means based in fact. Also, just because something is likely to become a 'cottage industry' (a euphemism I assume for hard work) is no reason not to do the thing properly.”

Comment

The senior IT manager’s email, and Mrs Haynes-Kirkbright’s response to it, do not accord with Mr Stringer’s claim that there was no resistance to taking these queries back to consultants.

6.72 In an interview as part of the grievance investigation, on 3 October 2012, Mrs Haynes-Kirkbright described what happened:

“[The senior IT colleague] sent out an email and I wrote a response: ‘I’m not going to do it. I’m not going to participate in what I consider fraudulent practice... and he immediately called me to his office...and he yelled at me. He said ‘Why would you put something like that in an email, you can never put anything like that in an email because the press can get hold of it through Freedom of Information Act’ and ‘Well, if you don’t do it, I won’t write it’ you know. But he was just yelling at me and he was like... ‘Do you stand by this email’ ...he goes ‘Where’s your evidence?’ ...you know he was yelling at me ‘Where is your evidence. Where is your evidence’ and then he said ‘Are you going to blow the whistle, is that what you’re going to do? You are going to blow the whistle’, and I went ‘What are you talking about? I’m talking about this, I can’t say why a patient’s been in hospital because I don’t have the qualification to do that. What are you talking

about blow the whistle?’ ‘Well you said this is fraudulent so you’re going to blow the whistle aren’t you?’ and I went ‘Well that wasn’t my plan’ and he goes ‘What was your plan then?’ I said ‘I was trying to get your attention, you know that there is something going on that I can’t participate in because it’s not right’. He goes ‘Well I’m just very disappointed in you. I can’t believe you would write something like that’.”

6.73 Mr Stringer told us that Mrs Haynes-Kirkbright’s account of this meeting was incorrect, and that it was brought to a successful conclusion as evidenced in the subsequent e-mail from Mrs Haynes-Kirkbright, which said there was no intent to deliberately defraud the PCT, accepted that he was not asking clinical coders to clinically verify length of stay and was proposing processes to work with departments to answer the queries raised. The email exchange between Mr Stringer and Mrs Haynes-Kirkbright is at appendix J.

Comment

Mrs Haynes-Kirkbright and Mr Stringer give different, but not entirely inconsistent accounts of this meeting. Unfortunately Mr Stringer was not asked about it when he was interviewed during the grievance investigation into his conduct, as detailed in section 10.

According to Mrs Haynes-Kirkbright she was whistleblowing, whether or not she used the word. She was also following the correct procedure by doing so to her line manager.

She confirmed that she had no problem with reviewing the notes to see if any reason for atypical length stay had been overlooked, but that beyond this neither she nor the coders had the knowledge to produce a reliable answer.

According to Mr Stringer’s account, this was not a whistleblowing meeting, but a meeting at which Mrs Hayne-Kirkbright’s concerns were addressed and resolved.

These two accounts cannot be fully reconciled, although they are not totally inconsistent. However there is independent evidence from others that Mrs Haynes-

Kirkbright was very concerned about the trust's practice in this area at that time, which tends to support her contention that her challenge of the existing system was putting her at odds with colleagues.

In view of the fact that she had been brought in to reform coding and data quality, it is somewhat surprising that her expertise in this area was not given due weight.

Finding

F3 Mrs Haynes-Kirkbright's account was made within a few months of the meeting, whereas Mr Stringer was not asked about it until we asked him, over two years later. We therefore consider that Mrs Haynes-Kirkbright's recollection is more likely to be accurate.

6.74 Mrs Eve-Jones explained how she would deal with such a query from the PCT:

"The first thing I would do would be to read through the case notes and see whether there was a coding error. In other words, was there actually something else going on which wasn't recorded? Sometimes, it could be something quite subtle, which you don't really have very good codes for...quite often you get someone where their daughter was going to have them back at home after their hip replacement but now she has gone down with the flu. In theory, there should then be a code which explains that it was a length of stay increase because there was no one available to offer care but a coder might have missed that..."

"It is never appropriate for a coder or anyone else who is not the clinician or healthcare professional directly involved in the patient's care, to add or subtract a diagnosis or a treatment. That would be totally inappropriate...we would send the record back and if the clinician said, 'Oh yes, I don't know what has happened here because, actually, they had X, Y and Z', then I would insist that a retrospective entry was made and signed by the responsible clinician. It would never be done on the basis of an email pinging back or something like that."

Comment

We deal with the conflicting accounts of this matter further in our review of the first whistleblowing investigation and report in section 13.

Mrs Haynes-Kirkbright and the coding department

6.75 In addition to sorting out the problems with coding, Mrs Haynes-Kirkbright planned to reform the coding department. She introduced new ways of working and a policy, signed off by the trust, that all coders should work towards becoming accredited clinical coders. Some of these reforms met with disapproval from the coders and later became subjects of the investigation into the coders' complaints.

6.76 Mrs Haynes-Kirkbright recalled that the trust was seeking foundation status at the time, and was focused on getting its governance arrangements in good order, including having all the right policies. This included a clinical coding policy, which she drafted and which was approved, having been considered by relevant committees and HR. In this policy she tightened up the time limits for coding each month's notes, and introduced a requirement that all coders would become qualified after two years' training.

New policy on accreditation

6.77 Some of the coders objected to the new policy. Some were experienced despite their lack of qualification and felt that working to pass the accreditation exam was an unnecessary burden. Mrs Haynes-Kirkbright explained that coding was still developing as a speciality and expectations were changing. For many years 'equivalent experience' had been accepted as an alternative to qualification but that position was being overtaken by a recognition that best practice required coders to be qualified.

6.78 In the first quarter of 2012 while Mrs Haynes-Kirkbright was still at work, the training requirements had not yet been put in place and she tried to show the coders that it would not be an unacceptable burden because it would take place during working hours and would be within their capabilities.

6.79 She felt that some of the coders showed their disapproval by taking time off:

“I had rolling sick outs. People were calling up, coughing, and saying ‘I can’t come to work’, and things like that. I would say, ‘Okay, when do you think you will be back?’ As soon as that person came back, someone else would go off. After half a dozen of these, when you could see that it was this one, then that one, then this one, then that one, you just thought, this is ‘blue flu’¹. There was nothing serious enough in most cases to keep them off work for just the amount of time you could self-certify for, and then come back. At one point I had to call Mr Stringer and tell him that I didn’t have enough people in here to do the day job. There weren’t enough people in the seats to do the day job and I needed to let him know that ... He didn’t get back to me. He was on a couple of days off and, when he came back, it was shortly before I took a week off. It was a family emergency, which I took as holiday, but we never got back to talking about it.”

New ways of working in the coding department

6.80 When Mrs Haynes-Kirkbright arrived and for many years before, the coders went to their designated wards every day to collect the notes of discharged patients and take them back to the department for coding. A coder interviewed in one of the investigations said he spent two or three hours a day out of the office every day on this task.

6.81 Mrs Haynes-Kirkbright introduced a system whereby this procedure continued only for the seven busiest wards, while coders allocated to the other wards would remain in the office and code the cases from electronic records, arranging to have paper notes delivered to the office if necessary. It worked well at first, with targets met for the first time, and sickness absence coming down from 10.71 per cent and 10.30 per cent in October and November 2011 (in the month before Mrs Haynes-Kirkbright took charge and her first month in charge), to zero per cent in January and February 2012. In March it rose to 11.64 per cent and in April was 8.69 per cent.

¹ ‘Blue flu’ is the American term used to describe the tactical use of sickness absence as a negotiating tool for workplace disputes when strike action is unlawful.

6.82 During early 2012 the department was understaffed, through sickness and holiday absence. Mrs Haynes-Kirkbright felt that some of this showed a lack of commitment, and resistance to the changes she was introducing. She therefore ordered that coders should not cover for colleagues in their absence. She also insisted that coders should ensure that each month's coding should be completed promptly, even when some of the previous month's coding was still outstanding.

6.83 A large backlog of work had built up by April 2012. Mrs Haynes-Kirkbright thought it was caused by the coders, not by the new ways of working.

6.84 One problem Mrs Haynes-Kirkbright identified and stopped was misuse of the 'time off in lieu' trust policy. She explained during the investigation into the complaints raised by the coders that coders who had used up their leave entitlement were asking to take time off in lieu for overtime that they had undertaken before she had taken up her post, and which had been signed off by her predecessor. Mrs Haynes-Kirkbright had been told that her predecessor had signed the hours off retrospectively, rather than following the trust policy that overtime had to be agreed and signed off in advance. The policy also required any time off in lieu to be taken within 30 days of the overtime, rather than being accumulated and used at the time that suited the coder. She had one request for 38 hours off in lieu from a coder who worked 20 hours a week, so in effect seeking nearly two weeks off.

6.85 She insisted that clear trust rules be followed, without exception, even though this would mean coders would not be granted the time off they were expecting.

Comment

It seems likely that this insistence on complying with the rules caused resentment in coders who lost time off in lieu as a result.

6.86 Mr Stringer was aware of the tensions in the department. He supported Mrs Haynes-Kirkbright's attempts to improve the professionalism in the department and felt she was making progress but he was also receiving approaches from people raising concerns about the way she was introducing these changes:

“I sat down with Sandra and had quite a direct conversation about style, approach and a number of other things. I was alerted to yes, you’re doing things and changing, but the process and the way you’re going about it is definitely being perceived as being difficult and problematic.”

6.87 He explained that he had this conversation with her at the beginning of February 2012:

“... so within the space of four months there were signs coming back to me that a number of changes she was making were having a real adverse impact on the staff.”

6.88 Mr Mahmud recalls that he had a positive relationship with Mrs Haynes-Kirkbright throughout her time at the trust when they were tackling coding issues relating to the mortality statistics. As a result, she would discuss other issues with him:

“When she talked to me about coding practices, she talked to me generally about the team and she said that she felt the team was dysfunctional, that they needed to up their game, they needed to do better. In such circumstances I would just gently talk to her about cultural differences, I said, ‘Look, you are American, we are British and we have a different way of doing things. Notwithstanding that, I think you need to make your issues but communicate them in a way that will get people’s attention.’ I said ‘Kevin [Stringer, director of finance] is a very, very reasonable chap, you need to talk to Kevin around these issues, so if you think there is fraud, really put it out on the table, but make sure you do it in a careful and considered way.’ That was my advice to her.”

6.89 He also told us:

“In terms of the other aspects, she raised things on two or three occasions and I said ‘Look, talk to Kevin, he is your line manager, he is a really reasonable guy, just put it out on the table in a respectful way, I am sure it will get resolved.’ She would come in quite upset and I would just warm her up and say ‘You have a really good brain on these shoulders, think about the issue from different angles, think about the other person as well, think about your impact on others,’ all the

classical things we do in management, and then she would go away quite enthused and talk to Kevin. At one point Kevin thanked me, he said 'I don't know what you said, but she has turned the corner, so to speak.

"At the same time I had picked up, from whisperings of staff, that it was really, really difficult for the staff as well. I had a version of Sandy and the staff had a version of Sandy, which is the real Sandy? None of us know, but, clearly, it was big enough for the staff to do what they did..."

6.90 He recalls having a conversation with her in which he warned her that swearing in the office was unacceptable and that it reflected badly not only on her but also on the directorate as well. She responded positively.

6.91 Mr Stringer said he felt that the difficulties and problems were being well managed professionally: he and Mrs Haynes-Kirkbright were having direct conversations, exploring the issues and agreeing a way forward:

"...up until the point at which there was a department-wide grievance, I believed we were managing the issues professionally. When Sandra went off [for a family emergency], I said great, you can have some time if you need it, fantastic, and we were managing the issues...The relationship had its moments, there were direct conversations, but my view is that as senior managers we need to get some of this on the table, we need to understand the issues and agree a way forward."

6.92 Mrs Haynes-Kirkbright has a different recollection of this period. She explained that the imminent birth of a child within her family had made her anxious as it reminded her of an earlier bereavement in her family:

"I am always a little jumpy when they are little bitty, because that is how he was when he passed on...When I was still working at Stafford and [a relative] was born, he was really quite small and delicate-looking and he made me very, very nervous, but I had more flexibility to work from home for a few days if I needed to. I had more support around me, by people who knew me and cared what was going on. I just muddled through it. I was a bit needy and not really probably very pleasant to be around for a month or two, but I got through it and everybody was fine. There were no complaints or issues.

“I was already having huge problems at Wolverhampton... I was being treated rather shabbily and I was coming back crying from one-to-ones with Mr Stringer, because of the things he was saying to me, and the way he was saying them to me. I was having trouble with the staff, who were very cold and distant, and obviously not wanting to speak with me or engage with me in any way, with the exception of perhaps one or two people.....”

6.93 She explained that although she was very anxious about the approaching birth of the baby she did not mention this to colleagues: *“I try not to bring my home to work, because that never really works very well.”*

Comment

Mrs Haynes-Kirkbright was unaware that her anxiety was adversely affecting her behaviour, and those around her were not aware that she was anxious and she would have benefited from more help.

6.94 Mrs Haynes-Kirkbright left work for a family emergency on 13 April and returned on 23 April.

Conclusion

6.95 Mrs Haynes-Kirkbright claimed that she was offered the job of head of clinical coding and data quality before it was advertised and that the recruitment process was a sham. Trust managers deny this and we have no proof, but Mrs Harnin provides independent evidence to justify Mrs Haynes-Kirkbright’s belief.

6.96 Initially she worked successfully with colleagues to ensure accuracy of clinical coding for patients who had received palliative care.

6.97 Mrs Haynes-Kirkbright identified systematic coding and reporting irregularities that were to the financial advantage of the trust. She was able to correct this but when she

raised concerns that the PCT was not being given relevant information about these irregularities, her concerns were dismissed and not seen as whistleblowing.

6.98 Mrs Haynes-Kirkbright was asked by her line manager to make assumptions about the reasons for a patient's atypical length of stay, when this was not apparent from the notes and the PCT had raised a query. She was put under strong pressure and when she resisted she was seen as obstructive and difficult. Her refusal was in accordance with good practice. Her expressed concern about this matter was not recognised by her line manager as whistleblowing, as it should have been.

6.99 The trust did not deal with the whistleblowing concerns that Mrs Haynes-Kirkbright raised in accordance with their whistleblowing policy or at all.

7 The coders' complaints

7.1 The coding department prepared a document on 12 April 2012 setting out their complaints about Mrs Haynes-Kirkbright's managerial decisions, the alleged consequences, and her alleged behaviour (see appendix C). The allegations were that she had created a huge backlog of work through her management decisions, made inappropriate changes to leave arrangements and job descriptions, and behaved unprofessionally by swearing, breaching staff confidentiality, and intimidation.

Meeting of David Loughton, Mr Stringer and Mrs Harnin on 20 April 2012

7.2 Mrs Harnin told us:

"I didn't work Fridays, I was lucky enough to do a four-day week and it was the only one occasion in eight years when Mr Loughton called me in on a Friday. I went and he presented me with this issue. I wasn't aware that Kevin was having difficulties with coding, etc. I wouldn't be because there's an HR manager who feeds in to provide support at that level.

"I knew nothing up until then, and the driver was that Monitor was due to come in and start the FT [foundation trust] process the following Monday [see para 4.27]. The lady was allegedly making assertions around impropriety in respect of coding, aimed in Kevin's direction. Basically David's instruction was kick this into the long grass, which is one of his infamous sayings, which puts some distance there, and get her out of the way while Monitor's here, we'll sort it out thereafter...that's the bottom line and we didn't want those things being said while Monitor was starting there and the finance director having questions over him, basically a way had to be found to get this lady either away or back in line...

"The task in hand was to have this conversation with her to see what the scope was: was there scope for us or we would have to take appropriate action, because David's fear was having this going on within the department and the challenges of the finance coding arrangements that would have been crawled over as part of the Monitor process, which is how it goes.

“Q. When David called you in did he know that Sandra was raising queries over coding?”

A. Yes.

“Q. How did he know that?”

A. Kevin would have told him. I walked in on the Friday and David and Kevin are in his office, and this is what’s going on...I was told at that meeting that there had been ongoing discussions between Kevin and her regarding her conduct, and he was finding it more and more difficult to manage her, and there were lots of ifs and buts and examples around that. I was told in that meeting that she was calling into question Kevin’s credibility (my word) around coding and that he as an FD was tolerating this. In detail you then find out that the irregularities to which she was alluding was the alleged miscoding of cancer patients which could, if true, have led to financial gain (again I’m using crude words) in the financial recompense of that with the PCT. Kevin’s credibility was put to me in that meeting.

“Q. Kevin was saying on the one hand we have this grievance - And on the other hand she’s bad-mouthing me, or words to that effect.

A. Yes.

“Q. David was saying we have Monitor coming in next week, this has to be sorted.

A. Yes..... Putting it in a nutshell but making it sound very crude, the task in hand was to have this conversation with her to see what the scope was: was there scope for us or we would have to take appropriate action, because David’s fear was having this going on within the department and the challenges of the finance coding arrangements that would have been crawled over as part of the Monitor process...”

7.3 Mrs Harnin had mentioned this meeting when interviewed in the grievance investigation in September 2012. She had explained that Mr Stringer had detailed the complaints made about Mrs Haynes-Kirkbright’s style and behaviour and Mr Loughton and Mr Stringer had also referred to the visit of Monitor that had just started and the level of scrutiny that this would engender and therefore the extent to which Mr Stringer would have time to deal with the complaints. Another important issue she had mentioned was the work the trust had been doing on its mortality statistics:

“A lot’s happened in the last 12 months to...basically improve our ways of measuring mortality and we are in fact the leading light in this area now, Professor Jarman himself has been over it and endorsed its approach so we were keen to understand anything and to remedy anything that was set to potentially undermine that success. And again of course the mortality success feeds into the monitoring process, so everything was kind of interlinked....There was the complaint by the Coding Staff, there was the background and file note from Kevin’s previous discussions with Sandra herself, and then there was the context of what we were going through with Monitor to the FT [Foundation trust] process and the challenge it would bring. There were also what I would refer to as serious fraud assertions, assertions around fraud relating to Coding activity which she purported the FD endorsed. You’ll appreciate it was a difficult conversation, because David and I needed to have the conversation with Kevin as Finance Director to ask what could be meant by that, and we had to ask the direct question. What assurance could he give or provide that there wasn’t fraudulent activity? Kevin’s response was conclusive from his perspective that he genuinely did not believe there to be fraud. He recognised the way to challenge that would be to get the auditors in, and run scrutiny through that, but he genuinely did not believe, and gave myself and the chief executive assurance, there to be activity that was fraudulent and intentionally so, and that for me was key.”

Comment

When an allegation is made that a director is knowingly presiding over fraudulent conduct, it needs to be investigated. An investigation that consists merely of the chief executive asking the director if the allegation is true is a completely inadequate response.

7.4 Mr Loughton told us that he was aware that Mrs Haynes-Kirkbright had raised the issue of ‘fraudulent practice’ but through discussion with Mr Stringer and his own understanding of how the NHS works he was satisfied that this was a misunderstanding of terminology. He recalls discussing carrying out an internal audit, although no audit was carried out at this time. He did not consider that Mrs Haynes-Kirkbright was raising concerns at work such as to trigger a whistleblowing investigation. She told us that his

main concern at the meeting was the fact that the Staff Side union representative, was raising significant concerns in relation to the functioning of the coding department and Mrs Haynes-Kirkbright's management style and practices. In her experience it was extremely unusual for the staff side union representative to raise concerns at his level as he found her adept in finding resolution within the management hierarchy. Hence, he took the concerns very seriously. He recalled that the focus of the meeting was to have a plan in place for resolution and team building as quickly as possible, so as not to undermine the good work that was and continued to be done.

Comment

Mr Stringer told us that the staff side union representative raised these concerns directly with him. She did not accept our invitation to meet, so we do not have the benefit of her recollection of which executive she first spoke to.

We can find no reference to a team building plan in any of the interviews with Mr Stringer or Mrs Harnin.

Finding

F4 On balance, we consider that Mrs Harnin's account of the meeting is most likely to be correct. She mentioned it in September 2012 during the internal grievance investigation, and her account to us is consistent with that earlier account.

7.5 Mr Loughton also commented on Mrs Haynes-Kirkbright's allegations of fraud in PbR:

"This business about fraud...that just shows a lack of understanding. This game goes on. We put a bill in every month to the PCT, as it was then. They have an army of accountants and coding people that go through and try and get the bill to come down, so it's all about the coding people. It is constantly verified.

“Q. What Sandra was saying was that she did find things had been done in terms of coding -

A. You would do.

“Q. Yes, absolutely. She said she put a stop to them. But what she was concerned about was when she said ‘look, we need to be transparent with the PCT about this, we need to tell them that we’ve consistently been doing this wrong’, then she was told ‘well, it doesn’t really matter, it all comes out in the wash’.

A. It does. At the end of the day, and it is going on as we speak, it doesn’t matter what I put on the code, the coding is now irrelevant because we’re going to help the CCG now stay within their cash limit. It isn’t real money in a way....What we do with the incorrect coding, we put a bill into the then PCT. They have people that audit that and verify it and then pay it. Let’s assume that we put in something that was wrong, the PCT have kept it wrong.”

7.6 We discussed the incorrect local coding agreements. Mr Loughton was clear that there was no need to draw these matters to the attention of the PCT because *“on the scale of things, [the financial impact] would be very, very small”* and *“It does all come out in the wash”*. He also told us that he did not believe that there was any attempt at the trust to defraud the PCT.

7.7 He was also dismissive about the value or relevance of coding:

“If you want a statement from the CCG, they have just walked in and said we’re bankrupt. I’ve said ‘okay, how much have you’ve got?’, so it doesn’t matter what the codes say now. I will not spend more than £280 million. I can understand where this comes from: Sandra’s desire to get it all absolutely perfect, and that’s right and proper from her point of view, but then at a different level, there is a different scale of things. We agree a contract at the start of a year, and whatever the outturn is, is going to be different. As you probably know, virtually 50 per cent we’re not in that position; 50 per cent of the trusts in this country are in deficit, so the coding is just a waste of time.”

Comment

Mr Loughton recalls that his focus was on ensuring that Mrs Haynes-Kirkbright did not undermine the Monitor visit, particularly with regard to the good story they had to tell on their mortality statistics.

Mr Loughton was dismissive then, and remains dismissive, about Mrs Haynes-Kirkbright's concerns that the PCT was not being given the information it was entitled to on various PbR coding mistakes and irregularities. No action was taken at this stage on Mrs Haynes-Kirkbright's serious concerns. No audit was commissioned and no investigation was put in place. This was a further breach of the whistleblowing policy, as the concerns were now known to the chief executive and had therefore been escalated.

Mrs Harnin's evidence suggests that the fraud allegation was the main cause for concern. Mr Loughton denies this, but, as explained above, we consider that Mrs Harnin's recollection of the meeting is more likely to be correct.

Mr Loughton told us that despite his belief that there was no issue regarding coding, he did suggest an internal audit on the basis of the concerns that Mr Stringer had raised with him about Mrs Haynes-Kirkbright's initial concerns. He told us that the audit was not commissioned until 5 July, and that this was down to timing and not for any other reason, although he acknowledged the fact that Mrs Haynes-Kirkbright had raised serious concerns at work, in writing, on 2 July.

Finding

F5 We believe it was Mrs Haynes-Kirkbright's email of 2 July, rather than the meeting of 20 April, that triggered the commission of the audit on 5 July.

7.8 Mrs Harnin also told us that if she had not been called in by Mr Loughton she would not have been involved in dealing with the grievance because one of her team would have

been allocated to it as Mrs Haynes-Kirkbright was too junior for her to have dealt with on a disciplinary matter.

Finding

F6 Mr Loughton knew of Mrs Haynes-Kirkbright's concerns about the trust's approach to the PCT with regard to coding irregularities by 20 April 2012. He did not, as he should have, initiate a whistleblowing investigation. Rather, he instructed two of his executive directors to ensure that Mrs Haynes-Kirkbright's concerns did not interfere with the Monitor visit.

Meeting of Mrs Haynes-Kirkbright, Mr Stringer, Mrs Harnin and the staff side union representative on 24 April 2012

7.9 On 24 April, the day after Mrs Haynes-Kirkbright returned to work, she was called to a meeting with Mr Stringer and Mrs Harnin. She had had no warning of the coders' complaints or the purpose of the meeting. She was given a choice: either to accept the allegations in the complaints document, which would result in her being given a final written warning that would remain on her record for 18 months or challenge the allegations, which would result in her suspension while the allegations were investigated and could lead to her dismissal depending on the outcome of the investigation.

7.10 We asked Mr Stringer why he had decided to go down this route. He told us that the trigger was a meeting that he had with the Staff Side union representative, in which she told him about the content of the grievance document and her intention to take the matter forward in accordance with the disciplinary policy:

"I'd spoken to Denise Harnin, and said how on earth are we going to keep this department going forward and Sandra on the straight and narrow as best I can do that. How do I keep them both focused on the job they're employed to do; is there any way that we can cut to the chase. We came up with what I think was an HR suggestion that an approach should be made...that said these were the issues, if you agree that you were in the wrong we'll forego the normal process, we'll get straight to the endpoint and that will be a final written warning. It was on the

basis of trying to get the department on an even keel, to try and keep Sandra employed without going through a forced suspension and all the damage that can do. I'm very aware that suspension takes a long time. I know it's without prejudice but my experience is by the time you get through an investigation you're three or four months down the line; I wanted a manager in the department doing the job she was employed to do. So we made that without prejudice offer that initially Sandra had accepted on the day, and then went off sick, and then you know the sequence of events."

Comment

Mr Stringer did not mention the 20 April meeting with David Loughton, or the Monitor visit while explaining his reasoning for the 24 April meeting. He subsequently told us that he did not remember the meeting with Mr Loughton and Mrs Harnin on 20 April, but accepted that it had taken place. He did not recall Mr Loughton's recollection that the non-policy final written warning process was agreed at this meeting.

Mr Loughton's recollection was that an important part of the meeting of 24 April was to agree a support plan for Mrs Haynes-Kirkbright and the coding department. Mr Stringer never mentioned this. Unlike Mr Loughton he also told us that the Monitor visit was irrelevant to the way in which action was taken following the coders' complaints.

Finding

F7 The inconsistencies between the accounts of Mr Loughton and Mr Stringer reinforce our view that Mrs Harnin's account of the purpose of the meeting is to be preferred.

7.11 We pointed out to Mr Stringer that this procedure was not in accordance with the trust's HR policies and that if Mrs Haynes-Kirkbright had accepted the quick deal, she would have been denied a number of important employment protection rights. He told us that he was acting in accordance with HR advice.

7.12 Mrs Harnin agreed with us that the process was not formal trust policy, but said that it had been used successfully before and was being considered for approval by the trust.

Comment

HR is a source of advice and information for managers. Mrs Harnin could, and did, offer advice to Mr Stringer on an alternative to immediate suspension and formal investigation, but it was for Mr Stringer to decide whether to accept that advice. He had been Mrs Haynes-Kirkbright's line-manager for over six months and was aware of her character and personality, as well as the stress she must have been under with the family emergency she had just been through. He has to take responsibility for the decision to hold this meeting in this way and its unfortunate outcome.

7.13 Mr Stringer has recently insisted to us that he was not aware of the reason for Mrs Haynes-Kirkbright's absence. However, in 2012 he prepared a response to her complaints against him contained in her 2 July email (see Appendix F) which covers this point. In response to her statement that "On 15 April a [family emergency arose] and I contacted my line manager to tell him I would need some emergency annual leave" he wrote "I spoke to Ms Haynes-Kirkbright on this issue and said the trust would support her and agreed to annual leave at short notice for two days."

Comment

This is a small point, but the fact that Mr Stringer is now so certain that he did not know the reason for Mrs Haynes-Kirkbright's absence does somewhat undermine his position on the other occasions when he disputes the accounts of others.

7.14 Mrs Haynes-Kirkbright was given a copy of a letter (see appendix D), prepared in advance, confirming the details of the meeting and saying the coders' complaints:

"...raises significant concerns in relation to:

- *Your management style*
- *Your alleged persistent and foul bad language*
- *Your perceived intimidation and harassment of team members*

“All of which constitute acts of gross misconduct under trust policies.”

7.15 It confirmed that Mrs Haynes-Kirkbright had been offered the choice of accepting the allegations and accepting a final warning with immediate effect and no right of appeal or being suspended immediately pending a full investigation that could result in any sanction up to and including dismissal. These options were described as *“over and above normal policy (although set no precedent)”*.

7.16 Mr Stringer recalled that Mrs Haynes-Kirkbright accepted the compromise during the meeting, although his letter does acknowledge that she had initially denied the allegations. Mrs Harnin recalled that no decision was reached before Mrs Haynes-Kirkbright left. Their recollection is that Mrs Haynes-Kirkbright was clearly upset, but they inferred that she had sufficient composure to understand her position and the compromise she was being asked to accept. Mrs Haynes-Kirkbright’s recollection is that she was shocked, upset and distraught and asked to go home.

Comment

This interview was conducted with the express aim of getting Mrs Haynes-Kirkbright to agree a compromise to avoid time-consuming disciplinary processes and to draw a line under serious allegations of poor management and behaviour. We think the trust stood to gain significantly more than Mrs Haynes-Kirkbright from this approach. Mrs Haynes-Kirkbright would have been justified in claiming that her rights as an employee were not protected by the trust, and that she was unfairly pressured during the interview to concede important protection given to her in employment law. She would also have been justified in inferring that any subsequent concerns the trust had about her performance or behaviour would have led swiftly to her dismissal if she had accepted the written warning.

Given how seriously the trust appeared to take these issues and the likely consequences for Mrs Haynes-Kirkbright, she must have been under great pressure during this meeting to accept the trust's offer. It is not considered good practice to press an employee into such a serious decision in the context of an interview, the more so when she must have felt outnumbered. She had had no warning of what was to be discussed and no opportunity to prepare her defence. It is relevant that she was not accompanied, although she had been offered the chance to find a companion, albeit at short notice. In the context of the interview, she would have had no one to confer with, or to help her deal with the pressure. This is not good practice, and against the trust's own policies. Mrs Haynes-Kirkbright probably did not know that if she had accepted the compromise, she would have given away her right to appeal against a serious disciplinary penalty. This is against the trust's disciplinary procedure, ACAS guidance and employment law, which protect employee rights in such circumstances.

If Mrs Haynes-Kirkbright had accepted the offer, she would have been brought 'back in line' in accordance with Mr Loughton's wishes. Later in this report we discuss the trust's strict policy on disclosure of information. If Mrs Haynes-Kirkbright had been at work during the Monitor visit and had raised her concerns, she would have been in breach of that policy and having accepted a final written warning as part of this offer, she would have been vulnerable to dismissal.

Mr Stringer and Mrs Harnin do not seem to have recognised that not all the complaints made by the coders were suitable to be dealt with as grievances or possible disciplinary matters.

In considering the team's complaints about Mrs Haynes-Kirkbright's approach to managing change, they should have recognised that these were competence or capability issues and not appropriate to be dealt with under the Disciplinary Policy and Procedure. They should have ensured that the trust addressed these issues under its Capability Policy. The complaints of the team about Mrs Haynes-Kirkbright's intemperate language and behaviour could, however, have been investigated appropriately as potential disciplinary matters. Neither course of action appears to have been considered by Mr Stringer or Mrs Harnin in their haste to push through the compromise solution.

Finding

F8 The handling of this meeting by Mr Stringer was a serious failing. He was acting under a clear imperative from the chief executive to ensure Mrs Haynes-Kirkbright did not embarrass the trust while Monitor staff were on site. However, he failed to anticipate the possible consequences of the actions and precipitated Mrs Haynes-Kirkbright into a highly defensive and ultimately adversarial response to the actions she believed the trust was determined to take against her. Mrs Haynes-Kirkbright's own grievance of 2 July 2012 and most of the difficulties that she and the trust experienced after that can be traced to this meeting.

Events of 25 April

7.17 Mr Stringer wrote to Mrs Haynes-Kirkbright with a copy of the letter she had been given at the meeting. The letter confirmed the terms of the agreement that Mr Stringer believed he had reached with Mrs Haynes-Kirkbright at the meeting and invited her to sign to agree and accept the conclusion of the matter on the terms agreed.

7.18 By the time Mrs Haynes-Kirkbright received this letter she had been to her GP, had been signed off sick for two weeks and had emailed Mr Stringer to let him know about the stress related illness her GP considered was affecting her.

7.19 Mrs Haynes-Kirkbright has not been at work since 24 April 2012. She was signed off sick until 24 July, when she was found by occupational health to be fit to return to work. As soon as she returned to work she was suspended and has been ever since.

Conclusions

7.20 Mr Loughton knew of Mrs Haynes-Kirkbright's concerns about the trust's approach to the PCT with regard to coding irregularities by 20 April 2012. He did not, as he should have, initiate a whistleblowing investigation. Rather, he instructed two of his executive directors to ensure that Mrs Haynes-Kirkbright's concerns did not interfere with the Monitor visit.

7.21 The approach taken by Mr Stringer did not accord with good practice. He did not seek to verify the allegations before deciding what action to take against Mrs Haynes-Kirkbright.

7.22 He and Mrs Harnin seem not to have recognised that the allegations of the coders related both to behaviour and competence and that the competency allegations needed to be probed by Mr Stringer, who had apparently not previously noticed any competency problems in the department.

7.23 What he chose to do was not in accordance with formal trust policy and was unfair on Mrs Haynes-Kirkbright.

7.24 His justification that the informal policy they adopted was intended to save Mrs Haynes-Kirkbright from the stress of suspension and formal investigation does not explain why no attempt to validate the complaints or to warn Mrs Haynes-Kirkbright was made before the meeting on 24 April.

7.25 The trust did not follow due process with regard to its policies and procedures in its initial handling of the coders' collective complaint.

8 Events of 2 July 2012

8.1 Mr Stringer wrote to Mrs Haynes-Kirkbright on 2 July 2012 telling her that because her sickness absence had reached the trigger point of 20 consecutive days in a 12-month rolling period, she was being invited to a meeting on 9 July:

“...to discuss and explore the reason for your absence and the likelihood of your early return to work by identifying some measures that could potentially be put in place to aid your return to work.”

8.2 On the same day Mrs Haynes-Kirkbright responded in a seven-page typed document (see appendix E). This consisted of matters that can be grouped under four headings:

- 1) Responses to the allegations contained in the coders' complaint document of 12 April
- 2) Allegations of misconduct by coders in response to her reforms
- 3) Concerns about coding and about how her concerns had been dealt with
- 4) Allegations of bullying and intimidation by Mr Stringer and others.

Comment

The 12 April collective complaint had been in abeyance since the meeting on 24 April, and there had been no action on Mrs Haynes-Kirkbright's whistleblowing allegations. Mrs Haynes-Kirkbright's rejection of the coders' allegations brought that matter back to life, and there were now both old and new matters raised by Mrs Haynes-Kirkbright that could not be ignored.

8.3 The email of 2 July triggered two investigations:

- a grievance investigation dealing with the grievances of the coders in their 12 April document and Mrs Haynes-Kirkbright's allegations of bullying and intimidation in her 2 July email
- a whistleblowing investigation into her concerns about coding and how her concerns had been dealt with.

8.4 This approach was agreed at a meeting between Mrs Haynes-Kirkbright and the deputy head of HR on 12 July.

8.5 A number of matters raised by Mrs Haynes-Kirkbright's email were not dealt with by either investigation:

- a claim that the team manager had told her that some coders consistently requested leave at the beginning of the month when the workload was at its most difficult and busy
- her belief that the grievance was motivated by coder resentment that they would be required to get accredited
- her allegation of a refusal by coders to follow her instructions and to engage in slowdowns, in response to her tightening up overtime arrangements
- her claim that a coder, at an exit interview, told her that before her arrival her predecessor had *“called the coders into her office and said I had a reputation of being hard to work for and they should all keep a notebook detailing anything I did or said that struck them as ‘wrong’ so they could get rid of me if they wanted to do so”*
- her belief that coders were deliberately calling in sick for long periods in response to the new policy requiring them to obtain accreditation, and a claim that the team manager had told her that some of the coders, when told they would have to obtain accreditation by exam, had said *“All right, I’ll show her”*.

Finding

F9 It is not clear if these are grievance allegations or raising concerns at work. However they were not dealt with either under the grievance investigation nor the whistleblowing investigation, which was a failing.

Conclusion

8.6 The trust responded promptly to Mrs Haynes-Kirkbright's email and recognised that whistleblowing allegations needed to be dealt with in accordance with the whistleblowing

policy. However, it apparently made no attempt to validate the complaints of the coders while Mrs Haynes-Kirkbright had been off work or to separate complaints about behaviour from complaints about competence.

8.7 A number of the matters Mrs Haynes-Kirkbright raised were not investigated, and no reason was given.

9 Grievance investigation

9.1 The terms of reference for this part of the investigation were:

“...to fully understand the facts pertaining to the allegations raised by the staff within the clinical coding department against Mrs Haynes-Kirkbright in a document received into the trust dated 12 April 2012.

“Allegations

Your management style

Alleged persistent foul language

Alleged intimidation and harassment of team members

Breaches in confidentiality in respect of employee personal information.”

9.2 The investigation was carried out by a senior nurse with HR support. They interviewed: six coders; the coding team manager; and Mrs Haynes-Kirkbright between 6 August and 13 September 2012. The coders were chosen by the coding manager because she thought they would be most likely to have direct evidence of the allegations.

9.3 We asked the investigator why she was asked to do the report and how she went about it. She told us she had experience in the trust of doing investigations and of being on hearing panels as a hearing officer. She also has relevant experience investigating misconduct matters outside the NHS.

9.4 She told us that the terms of reference were drafted by the HR department, and she had been through them with her HR support to make sure they covered what she needed to cover in light of the complaint document submitted by the coders and Mrs Haynes-Kirkbright’s email of 2 July. She was fairly sure that Mrs Etches, chief nursing officer, had also been involved in this process.

Scope of investigation

9.5 We asked her about the allegations Mrs Haynes-Kirkbright had made in the 2 July email about the conduct of the coders. For example, one allegation in Mrs Haynes-Kirkbright's email of 2 July was that:

'... there were sudden rolling sick-outs where first one and then another employee were calling in sick for weeks at a time. It looked deliberate to me as it was so widespread and persistent over the months following the approval and pending publication of the new coding policy on the Intranet. I discussed this with the Team Manager who agreed it was likely the coders were angry at the new policy. At one point she said some of the coders who were told they needed to sit the ACC said 'All right, I'll show her'.'

9.6 The team manager, confirmed to us that this comment had been made to her: "We don't like it but we will do it. And some of them said: 'right, I'll show her'".

9.7 The investigator told us she knew of Mrs Haynes-Kirkbright's allegations about the coders' behaviour but that this was not for her to investigate, although she acknowledged that if she had found the coders' allegations to be unfounded or had become aware in the course of her investigation of evidence of poor behaviour by coders, this could have "muddied our waters".

Comment

We accept the investigator's explanation. However, there was a missed opportunity here.

Finding

F10 Mrs Haynes-Kirkbright made specific allegations of misconduct against the coding department. These should have been investigated, and if this investigation was not the right place to do so, a separate investigation should have been set up.

9.8 The interviews and the report show that the investigators considered that Mrs Haynes-Kirkbright's management decisions as well as her behaviour were within the scope of the investigation: in the report 'Concerns in style of management' include "*cessation of current coding; [banning] cross-cover for sickness absence; restrictions to booking of annual leave; working practices creating financial risk*".

9.9 The risks of this approach are made clear by Dr Odum's comment to us:

"The issue in all of this is that agenda for reform of the group was Sandra's, by and large, which [her temporary successor] is now implementing. It was a problem dealing with Sandra but she had great ideas for reforming the group."

Comment

These matters are not properly the subject of a grievance investigation since they relate to managerial competence rather than to behaviour. Including them in the grievance investigation meant that no proper evaluation could be made of the validity of her decisions and the extent to which they caused the backlog.

Finding

F11 The trust was wrong to seek to deal with these matters by way of a grievance investigation. The proper course would have been to institute a performance management review. This would have allowed a proper assessment of the validity of Mrs Haynes-Kirkbright's managerial decisions, and the extent to which they caused the backlog in the department. The conclusions of such a review would have allowed those investigating the complaints about Mrs Haynes-Kirkbright's behaviour to put them in context, and perhaps to have realised that the allegations by Mrs Haynes-Kirkbright about the coders' conduct was also relevant to their investigation.

Methodology of the investigation

9.10 The investigator established that all 20 members of the coding department stood behind the grievance, so it was not necessary to interview all staff, nor did Mrs Haynes-Kirkbright request this. The interviewees were chosen because they had been identified as present at the times of certain incidents reported in the 12 April grievance.

Involvement of Mr Stringer in raising the grievance

9.11 Mrs Haynes-Kirkbright believed that Mr Stringer had encouraged the coders to complain because he was unhappy with her response to the trust's way of dealing with the PCT on atypical length of stay. She also believed that the key driver for the complaint was her introduction of a policy that all coders should be qualified.

9.12 However, the transcripts of the interviewed coders show that the trigger was Mrs Haynes-Kirkbright's determination to stick to her reformed working processes even when asked for a temporary moratorium to deal with the considerable backlog created by the long Easter weekend (6-9 April 2012).

9.13 The coders asked to be allowed onto the wards to deal with the backlog, and the team manager made the request on their behalf on 10 April, and reported back to them that Mrs Haynes-Kirkbright's response was to refuse, saying: *"I don't give a s..t if the coders have five days backlog."*

9.14 In her interview with the investigator Mrs Haynes-Kirkbright flatly denies this use of language.

Comment

The trigger for making the complaints was the increasing backlog, caused, as far as the coders were concerned, by Mrs Haynes-Kirkbright's managerial decisions. They were entitled to raise a grievance on these matters but the trust should not have allowed managerial performance matters to be dealt with in a grievance investigation.

Obtaining evidence in support of the specific complaints

9.15 The transcripts show that all the coders were asked questions about the matters raised in the complaints document of 12 April. They did not all confirm all the allegations, for instance, two said they had not heard her swear, and four said they had not heard her breach confidentiality. Some of them also acknowledged that Mrs Haynes-Kirkbright had made sensible decisions about reforming working practices in the department, but that these had failed through lack of staff.

Comment

This questioning appeared to us to be fair and thorough as far as it went and within the terms of reference set.

Issues not dealt with, or not dealt with thoroughly, in interviews with coders.

9.16 The witnesses were not asked about the allegations of bad faith and bad behaviour made against them by Mrs Haynes-Kirkbright, nor were they asked to comment on the allegations made by Mrs Haynes-Kirkbright about Mr Stringer's involvement in the grievance.

9.17 Where the witnesses spoke of their failure to comply with policy, they were not challenged on this.

9.18 For example, a coder was asked what she did when told that she was not to go to the wards to collect notes:

“Q. Did that stop you going out?”

No, it's my job you know, it's what I'm employed to do, it's my job and that's what I did.”

Comment

In view of the investigator's comments it is surprising that this apparent willingness to defy a management decision was not challenged or seen as evidence of poor behaviour by the coder.

9.19 This coder also confirmed, as did a number of others interviewed, that Mrs Haynes-Kirkbright was helpful and receptive if asked for advice on a coding issue.

9.20 They were all asked whether the complaints about Mrs Haynes-Kirkbright arose from her being a new broom with new ways of doing things rather than from her failings as a manager. All the coders were clear that it was the latter.

Comment

This would have been an opportunity to explore their responses to her changes, but the opportunity was not taken.

9.21 The team manager and others considered that Mrs Haynes-Kirkbright was frustrated at the problems in the department but were not asked about their possible contribution to this frustration.

First reference to external whistleblowing

9.22 Two of the coders also mentioned conversations with Mrs Haynes-Kirkbright when she said she would go public about some of the things she was being asked to do or that were going on.

Comment

The grievance investigators clearly saw this as evidence of unprofessional behaviour, through talking like this to more junior members of the team. However, with hindsight, it is also evidence that Mrs Haynes-Kirkbright was seriously concerned about perceived malpractice at the trust at an early stage and well before the coders' complaints were raised with her on 24 April. This is independent evidence that Mrs Haynes-Kirkbright believed that she had reason to whistleblow before she was aware of the coders' complaints.

Mrs Haynes-Kirkbright's interview with the investigators

9.23 Mrs Haynes-Kirkbright had a challenging interview, with both interviewers pressing her to justify her policy decisions as well as her specific decisions on particular issues. They encouraged her to consider the point of view of the coders. She gave detailed explanations for her decisions and actions and denied that she had bullied or harassed the coders either intentionally or unintentionally.

Comment

Mrs Haynes-Kirkbright was asked to justify her management decisions because this was part of the remit of the investigation. However, those interviewing her were in no position to judge her reasons, which, once again, underlines the unsuitability of including these matters in this investigation.

Conclusion

9.24 The investigators were fair and thorough in obtaining evidence from the coders to back up the collective complaints. They did not sufficiently challenge coders who sought to justify disobeying Mrs Haynes-Kirkbright's instructions about new ways of working.

9.25 They were limited in their investigation by their terms of reference, which excluded a consideration of the allegations made by Mrs Haynes Kirkbright about the

coders. However they could have done more to investigate the context in which Mrs Haynes-Kirkbright's alleged behaviour took place.

9.26 When they interviewed Mrs Haynes-Kirkbright they challenged her on managerial decisions that they were in no position to evaluate as they were not in her department.

9.27 These limitations inevitably meant that the investigation into the coders' complaints gave only part of the picture.

10 Investigation of Mrs Haynes-Kirkbright's grievances in email of 2 July

10.1 The same team also investigated Mrs Haynes-Kirkbright's allegations against Mr Stringer, Mrs Harnin and the staff side union representative under the following headings:

"The management style of Kevin Stringer

Alleged bullying and victimisation by Mr Stringer

Alleged intimidation by Mr Stringer, Denise Harnin and [the staff side union representative] in respect to their behaviour at the meeting on the 24th April 2012

Allegation of failing to follow trust procedures in respect to the handling of the grievance raised against Mrs Haynes-Kirkbright."

10.2 The scope of the investigation was to determine:

- *"If there is a case to answer in respect of the allegations raised against Mr Stringer*
- *If there is a case to answer in respect to the handling of the meeting of the 24th April*
- *If there was a procedural breach in respect of the handling of the grievance raised against Mrs Haynes-Kirkbright."*

Methodology

10.3 For this part of the investigation, Mr Stringer, Mrs Harnin, an HR employee and Mrs Haynes-Kirkbright were interviewed.

Interview with Kevin Stringer

10.4 Mr Stringer prepared a document before his interview (appendix F) in which he set out all Mrs Haynes-Kirkbright's allegations against him, with his responses. His interview began with his going through this document, and the rest of the interview dealt with clarifications and expansions on what he had said.

10.5 His response to Mrs Haynes-Kirkbright's allegation that he had interviewed her before the job was advertised is ambiguous. His comment in his preparatory document:

"... no interview was arranged. This was merely a contact introduced by Sultan Mahmud - it was an opportunity to discuss how another organisation operated its clinical coding' and at interview: 'My first introduction to Sandra was through Sultan Mahmud....it was an opportunity to discuss how another organisation deals with its coding, given some of the challenges that we knew we had in clinical coding."

10.6 He seems to acknowledge that a meeting took place about coding but that there was no suggestion that this was a prelude to a job offer.

10.7 He was not pushed on the allegation that the recruitment process was a sham.

10.8 In relation to the meeting on 24 April, and his intention of *"drawing a line under the allegations and move the department on"*, he confirmed that he assumed, based on what he already knew, that *"on balance of probability, on balance of the evidence we'd seen and heard in the organisation to that point, we believed there was a case on behalf of the staff side....it was a without prejudice discussion to try and draw a line under that particular issue and move the department on fairly quickly."*

10.9 He was asked why he had dealt with the matter so urgently, without due process. He replied that he wanted Mrs Haynes-Kirkbright back at work, changing and improving a dysfunctional department, where there was considerable national and trust pressure to improve coding.

Comment

This was a perceptive question, and Mr Stringer's reply, although plausible, was not the whole story. He did not mention the meeting with Mr Loughton, or the undesirability of this issue coming to the attention of the Monitor team.

It may be that the interviewers were not aware of these aspects of the case, because Mr Stringer and Mrs Harnin (who mentioned them several times) were interviewed the same day and there is some evidence that Mr Stringer's interview came first. However, if that was the case, the interviewers should have noticed the discrepancy and followed it up.

Mr Stringer was not asked whether he thought about the desirability of having such a meeting without giving Mrs Haynes-Kirkbright notice of its purpose or of the fact or contents of the grievance when she had just returned to work after an anxious and stressful family emergency.

He should have been asked to comment on the possibility that a grievance being raised so soon after Mrs Haynes-Kirkbright had joined the trust suggested that she had not been given the managerial support she was entitled to.

Finding

F12 These were failings by the investigators.

10.10 In relation to the various coding issues raised by Mrs Haynes-Kirkbright, Mr Stringer made a number of assertions the interviewers did not challenge:

“...the payments by results regime is incredibly complex and is open to some interpretation by operational, finance and information people, so we can, in two like organisations, for very good reasons, make two very different interpretations I have no evidence whatsoever that we intentionally defrauded anybody in the system. So, in my response here, I have really set out that we do follow national guidance. I absolutely supported Sandra in making sure that was the case. As part of her getting into the organisation and as part of an audit commission, external audit review, there were clearly local working practices that Sandy was unhappy with and quite rightly in my opinion, she took a professional view about those and changed them. And I have absolutely no problem with that where we thought it was inappropriate.”

10.11 Mrs Eve-Jones told us:

“It is not open to interpretation by other people. The PbR system, the rules and the code of conduct, is very clear. It explains which areas are and are not covered, which things have best practice tariffs, and what evidence applied. The tariffs are set against HRGs and so there is very little flexibility within that, unless it has been specifically negotiated between the provider and the commissioners.

...The only area where organisations find that they can slew the things around - but not in the context of any of the examples we have been talking about - is on the definitions for ward attender, outpatient and day case and so on.”

Comment

The technicalities of this issue were for the whistleblowing investigators. He should have been asked about his conduct, not his views on Mrs Haynes-Kirkbright’s coding skills.

10.12 He explained what had happened when Mrs Haynes-Kirkbright had been asked to deal with queries from the PCT on unusual length of stay:

“My view always was that clinical coding need to operate within the professional boundaries of what they do, so if following ICD10 and OPCS says, we shouldn’t be using that code, Sandra should make the case professionally the way the organisation should be doing it. I think we would then want to say to the operational team, to the information team and the finance team, is this sensible based on what we do and what are the consequences? And if the judgement is we have got to follow what is national guidance, then we would do it. Now, to answer the question, has she got the power to do it? I don’t think the policy is totally clear that she has. At the very least she should have made people aware, like myself, that this was going to be potentially a big consequence in the organisation, this is my recommendation, I suggest that... or I make a

recommendation that and I would then if necessary consult with other people and then agree it.”

Comment

Once again, Mr Stringer is talking about Mrs Haynes-Kirkbright’s conduct, not his own.

10.13 Mrs Eve-Jones commented on this quote from Mr Stringer:

“What is this person saying? One minute it is saying ‘Of course, and it is actual policy’, but then, the undercurrent there is that ‘we would reserve the right to say no.’ What is appropriate, of course, is that if you discover something through internal audit, or if there are to be changes which you know will make a difference, then of course you would report those. This is because the people who need to know are obviously the ones running the budgets...

“Ultimately, nobody within the organisation has the right to say that we will code against national standards. It comes back to the PbR code of conduct and the fact that the whole payment system relies on people following the rules. The minute you say ‘Oh, well, sorry, there’s a new way of doing that, or a new code, but we’re not going to follow it’, you are in breach of that.”

10.14 The investigators did not put to Mr Stringer (or any of the other witnesses) Mrs Haynes-Kirkbright’s allegations that he had been abusive to her; that she had been bullied into silence; that her refusal to comply with the responses to the PCT against her conscience led to bullying and ostracising; and that she was victimised by Mr Stringer when she informed colleagues of her remit to reform coding.

Interview with Mrs Harnin

10.15 Mrs Harnin was open with the internal investigators about the meeting she and Mr Stringer had with Mr Loughton on 20 April and the matters that were discussed, as set out at in section 7.

10.16 Mrs Harnin explained the reason for going down the “*informal*” route of dealing with the coders’ complaints, which echoed the reasons given by Mr Stringer, with the added acknowledgement of the pressure caused by the Monitor visit.

10.17 She was not asked whether she thought about the desirability of having such a meeting without giving Mrs Haynes-Kirkbright any notice of its purpose and without giving her any notice of the fact or contents of the grievance, at a time when she had just returned to work after an anxious and stressful family emergency.

10.18 She conceded that, despite her best efforts to make the meeting fair to Mrs Haynes-Kirkbright, she could “*imagine why, on reflection, she might have felt railroaded*” although she doubted if Mrs Haynes-Kirkbright felt this at the time.

Interview with HR manager

10.19 The HR manager was interviewed about Mrs Haynes-Kirkbright’s allegation that she had not received good support from management with her proposed changes in the coding department.

10.20 He confirmed that he had discussed the process for managing sickness absence and told her of the policy and how to implement it. This included dealing with employees who she believed went off sick when they were not really ill.

10.21 He explained that his advice did not seem to be what Mrs Haynes-Kirkbright wanted:

“In terms of the advice that I was giving to her and how that was received what I would probably say is that ... it was I wouldn't say difficult ... I would say it was difficult in the sense that Sandra was quite clear as to what she wanted and why

she wanted to do it and I had to I wouldn't say rein her in but I had to be quite prescriptive about how you need to go about doing things. She was clear what she wanted and I think she had a level of tolerance as to you have to follow a process and we have to dot the I's and cross the T's. I am not so sure that she necessarily bought into that but then that to be honest that's no different than a lot of other managers who are being told ... a manager wants to change their structure, wants to get it done asap has to go through a period of consultation and allow for some feedback from the staff and it's HR that are you know the managers are perceiving it as that HR are blocking it so that that wasn't unusual. So it was difficult but I wouldn't say she wasn't being receptive to it."

10.22 They also discussed her intention to require all coders to receive ACC accreditation.

10.23 The HR interviewer asked:

"Q: ... the staff's grievance is this is a huge piece of work. Its significant failure rates that they would have to have given an awful lot of their own private time to have passed something that was very challenging and they felt that they had the equivalent experience and although no one said anything my issue is if they are that poor why aren't they on capability and, so it broadens ... so was there ever that level of dialogue?"

"A: There was dialogue ... Sandra's view, Sandra's clear view was that there were some staff within her team who didn't have the qualification and who weren't working at the required level and her view was that if they were to pass the qualification they would be working at the required level. That's when we got talking about an HR Framework because she is wanting to make some of the changes we were talking about, how staff would go through that. She didn't think that the qualification was a difficult qualification to achieve. and she was talking about that if staff failed there was an opportunity for a resit. So her view was one it's a standard it's not a difficult standard to achieve, the qualification is not a difficult qualification to pass."

"Q: So in your opinion was it a very big ask of the staff to participate?"

“A: From Sandra's description no, no and [the staff side union representative] was in the discussion as well rather and she didn't raise that as a concern.

“Q: Okay because we don't know the scale but it's just that's clearly been put across to us.”

Comment

This HR manager's evidence appears to be that the new accreditation policy was being pursued in accordance with good practice.

He was presumably being interviewed about Mrs Haynes-Kirkbright's claim that she did not get good HR support, so it is curious that he was asked about the rightness or otherwise of Mrs Haynes-Kirkbright's policy decisions, which clearly relate back to the coders' complaints, not Mrs Haynes-Kirkbright's allegations.

The issues discussed in this interview were not included in the terms of reference for this part of the investigation.

Interview with Mrs Haynes-Kirkbright

10.24 In her interview Mrs Haynes-Kirkbright expanded on her email of 2 July.

10.25 She gave a vivid account of her recollection of events surrounding the coding of reasons for length of stay.

10.26 She confirmed that she had not changed her view about what she had been asked to do but had simply rephrased her concern because Mr Stringer was unhappy with the reference to fraud. She felt that he was more concerned with this than her complaint that she was being asked to continue with an improper practice. She recalled her conversation with him about this:

“Are you going to blow the whistle? Are you going to blow the whistle?” “About what?” you know. I thought this was what I was doing. When I wrote to him I

thought that's what I was doing. Hello, over here, you know. There's a problem, big problem. This needs to be fixed, you know. But he was just, he didn't want to hear it. I'd done something unforgivable by writing an email and he wanted me to apologise to him in another email and say I was wrong, so okay. I went and told Sultan he was being horrible to me and he went "Well he's not that bad, but you've just got to get used to him". Okay, I'll try, you know. Because it is true, sometimes you have a bit of a personality clash and you just have to sort of keep working at it and figure out what the other person's about then you can fix it. So I was trying to keep trying and that's why I didn't go to anyone else at the time. But it wasn't getting any better. ... I mean I should probably have just at that point gone to someone higher up and said that is just bad and it's not happening, it's not working, you know. I do know you can't just lay your financial books wide open for all comers to see but there did seem to be an awful lot of cloak and daggering around PbR and coding and how it was done because there's obviously, I had quite a bit of experience of coding and commissioning In Stafford I was actually working with the couple of people that they had brought in and had a recording coding costing and reporting programme that I had been working with for about a year prior to coming here, so I did know quite a bit about how it is supposed to work."

Comment

The interviewers did not realise that Mrs Haynes-Kirkbright was not only whistleblowing at this point but knew she was whistleblowing.

10.27 Mrs Haynes-Kirkbright described her experience in the meeting of 24 April, including the fact that she was presented with a letter to sign if she was willing to accept the allegations in the coders' complaints document.

10.28 The investigators focus in their questioning on this part of Mrs Haynes-Kirkbright's grievance on details of the meeting, such as the exact role played by the staff side union representative, whether Mrs Haynes-Kirkbright was asked if she wanted to have someone with her etc. The interviewers also emphasised that at the time of the interview Mrs Haynes-Kirkbright was given a choice between a 'quick and dirty' way of dealing with the matter or the full official process, involving suspension and full investigation. It was also

suggested that the quick and dirty process was intended to help senior managers accused of gross misconduct: “*Did Denise Harnin at any point explain to you that it was out of process but not out of precedence and it’s something they afford senior managers not to have to go through what we are going through now?*”

Comment

The investigators seem to have missed the thrust of Mrs Haynes-Kirkbright’s complaint about this meeting, which was that it was sprung on her without a word of warning and without any knowledge of the existence of the complaints document.

Finding

F13 Focusing on the detail of how the meeting was conducted without looking at the likely effects of such allegations being made out of the blue on a woman who had just returned to work after a family emergency was a failing.

10.29 Mrs Haynes-Kirkbright was the last person interviewed before the report was written. This in itself is problematic, as we set out below.

Conclusions

10.30 This part of the investigation was unsatisfactory for a number of reasons.

- It was into Mrs Haynes-Kirkbright’s allegations against Mr Stringer and Mrs Harnin, yet Mrs Haynes-Kirkbright was the last person to be interviewed. This meant that the investigators did not have the benefit of her detailed descriptions of the way she was treated when they interviewed Mr Stringer and Mrs Harnin.
- Mr Stringer was allowed to describe his view of Mrs Haynes-Kirkbright rather than being asked to describe and explain his own behaviour.

10.31 We consider that the interviewers were in a difficult position; both Mr Stringer and Mrs Harnin were executive directors and senior to them, and Ms Harnin was line manager to one of them. The trust should have appointed someone at executive director level to undertake the investigation into Mrs Haynes-Kirkbright's allegations against Mr Stringer and Mrs Harnin.

11 Report into grievance investigations

Complaints by coders

11.1 The report concluded that:

“The allegations and evidence generated through the investigation give rise to some potentially serious issues which had a widespread impact on the employee/manager relationships within the clinical coding department under the management of Mrs Sandra Haynes-Kirkbright.”

11.2 It said that Mrs Haynes-Kirkbright believed the allegations were untrue and/or had been raised in bad faith, and that they were in response to encouragement by Mr Stringer to raise concerns and also because of the new rules requiring qualification. It noted that Mrs Haynes-Kirkbright had several times mentioned the need for staff to obey rules.

11.3 The report found no evidence of collusion by Mr Stringer, and found no evidence to support the allegation that staff concerns were not raised in good faith or were exaggerated.

11.4 It concluded that Mrs Haynes-Kirkbright had a case to answer in relation to all four of the elements of the grievance raised on 12 April.

Comment

This work appears to have been undertaken conscientiously and thoroughly within its own limits.

However, while there is evidence to support the allegations made by the coders in their grievance, the limits and inadequacies of the investigations result in important parts of the report not doing justice to Mrs Haynes-Kirkbright.

For instance:

- *There is a discussion about Mrs Haynes-Kirkbright's introduction of new working practices, which was said to have created a backlog. Reference is made (para 4.16) to the size differences between the trust and Mid Staffs, where Mrs Haynes-Kirkbright had previously worked, the trust is shown to have more than twice as many beds and admissions as Mid Staffs, and about three times as many full time equivalent coders. The implication is that the larger size of the trust meant that systems that had worked at Mid Staffs would not necessarily work at the trust.*
The obvious point was not made that the trust had proportionately 50 per cent more coders but were not achieving the standards of Mid Staffs.
- *One of the coders said he spent two or three hours each day going to the wards to collect notes.*
The logic of re-organising working practices to give coders two or three more hours a day in the office coding was never explored with coders or acknowledged in the report.
- *In para 4.26 the report says: "Mrs Sandra Haynes-Kirkbright states she left messages for Mr Stringer with his secretary expressing her concern about sickness and staffing levels but did not receive any return instruction. She took a passive management role waiting for feedback from her manager/his secretary. This was not robustly chased nor formally identified by Mrs Sandra Haynes-Kirkbright through its entry onto the departmental risk register".*
In fact, throughout her interview Mrs Haynes-Kirkbright explained the efforts she was making to deal with the high levels of sickness absence. The fact that she seemed to be unsuccessful does not mean that she was being passive.
- *In para 4.28 the report says that "The amount of sickness absence appears to have been compounded by the behaviour of Mrs Sandra Haynes-Kirkbright in her vigorous management".*
Five of the six coders interviewed mentioned being off sick for one week, two weeks, three weeks, one month and eight or nine weeks in March and April 2012, but none of them suggested that this was because of Mrs Haynes-

Kirkbright's behaviour. On average, during these two months, the six coders interviewed were off sick for 36 per cent of the working week.

We are surprised that the interviewers did not notice the astonishingly high level of sickness absence experience by this fairly large proportion of the coding department, and ask them about it.

- *Ms Harnin told us that she became aware that coders were going to occupational health, complaining of stress, after Mrs Haynes-Kirkbright's interim replacement was appointed:*

"... they were starting to malign the new replacement manager. They were beginning to get a sense of 'better the devil you know' and 'at least we knew where we were with Sandra'.

Q. Right okay.

A. They were starting to turn against [her]...I can't remember the specifics but it was because of that that [a manager] came and tapped my shoulder and said 'just be aware that we're thinking we're sorting Coding; maybe we're not, it hasn't gone away there's a new chapter.'

We do not know if this information was provided to the investigator. It should have been because it is significant and relevant.

- *In para 4.42 there is a reference to anecdotal allegations that Mrs Haynes-Kirkbright was not working her allotted hours. This had not been mentioned in the original grievance, and the report says it was not possible to verify the allegations.*

This being the case, the anecdotal but unverifiable evidence can only have a prejudicial impact and it is difficult to see why it was included.

- *In para 4.59, under the heading of 'Intimidation and harassment of team members', the report says that a coder describes how Mrs Sandra Haynes-Kirkbright's instruction not to go on the wards each day nor cover sickness absence resulted in colleagues surreptitiously going to his ward areas to help him catch up after he had had sick leave. .This coder also describes how Mrs Sandra Haynes-Kirkbright's instruction not to go on the wards each day resulted in him feeling foolish being present on a ward but only undertaking*

part of his duties consequently undertaking the 'banned duties' and asking that no-one say anything as he felt intimidated.

We can understand that this coder may have been afraid of being found out directly disobeying Mrs Haynes-Kirkbright's orders new working practices, but we cannot understand why his fear of this outcome could be an example of intimidation or harassment by Mrs Haynes-Kirkbright.

- *In para 4.74 there is criticism of Mrs Haynes-Kirkbright for not dealing effectively with the level of sickness absence in the coding department, despite this being drawn to her attention in an email from Mr Stringer during her first month at the trust.*

In fact, the sickness absence statistics made available to us and equally available to the investigators showed a rapid improvement in sickness absence from 10.71 per cent in October 2011 (before Mrs Haynes-Kirkbright took charge) to 10.30 per cent in November, down to 5.07 per cent in December and then zero in January and February 2012 before jumping up again to 11.64 per cent in March and 8.69 per cent in April.

- *In para 4.84 the report says "Mrs Sandra Haynes-Kirkbright during interview, when the staff perspective was further explored, did not accept any responsibility for her actions and further relied on a line of defence that she had been told to do what she did at Mid Staffordshire FT and therefore did not feel that her actions and the consequences were inappropriate."*

This does not reflect Mrs Haynes-Kirkbright's evidence. She took complete responsibility for the changes she imposed upon the department, and explained the reasons for them in considerable detail, little of which is set out in the report. She did not, however, take responsibility for the coders' reactions to her changes, which she considered necessary and urgent. She acknowledged that she could be blunt, but felt that this was no bad thing.

- *In paras 4.62-4-68 Mrs Haynes-Kirkbright is criticised for "Implementing a fundamental change of the requirements for the staff to have a qualification Accredited Clinical Coding [ACC] not previously required - without any formal consultation."*

This requirement was part of the clinical coding policy that Mrs Haynes-Kirkbright had been asked to prepare as part of the trust's application for

foundation trust status, and the policy had gone through the appropriate governance process and been signed off in the usual way. At the time Mrs Haynes-Kirkbright went off sick, the accreditation policy had not been implemented, and it is clear that Mrs Haynes-Kirkbright was discussing with staff how they could achieve the qualification. The investigators are entitled to find that she did this in the wrong way, but in fact they seem to challenge the policy itself, which goes beyond their remit.

Finding

F14 These examples all relate to management decisions or their alleged consequences and should not have been dealt with in a grievance investigation unless a performance review had been carried out and conclusions reached on these matters.

11.5 The report set out evidence from the witnesses under a series of headings but did not say what conclusions it came to in relation to each. The report found a case to answer on each of the four grievance headings, but did not make explicit links between these findings and the evidence it set out under the subheadings.

11.6 This meant that it was not possible to establish what evidence it had relied on and what it had rejected so we do not know if the investigators accepted anything Mrs Haynes-Kirkbright said.

Finding

F15 We consider that the report should have put its findings at the end of each section, so that Mrs Haynes-Kirkbright and any disciplinary panel would know whether the investigators accepted any of Mrs Haynes-Kirkbright's explanations for her policies and behaviour and if not why not. It should also have commented on the fact that staff were deliberately going against management instructions, and have given a view on whether this was justified and if so why.

11.7 We asked the investigator about this aspect of her report. She acknowledged that this should have been done and explained:

“I think because you’re living it, so much is in your head, that you join the dots in your head and it’s so detailed in your head that you forget that your reader hasn’t got the detail or hasn’t sat in front of staff who all had some degree of upset and distress while they were being interviewed. ...This document; it hasn’t finished its journey. It was handed back in January 2013 to the case manager, to Cheryl, and it hasn’t moved since so we haven’t had the opportunity, Cheryl and I, to go through it to look at the light and shade within it, to say, “I can see how you got there but it’s not explicit,” which we would have to have done had we then been presenting the management case to progress.”

Finding

F16 We accept this and we also accept that her report was simply a stage in the process and would have been subject to challenge by colleagues before and at any disciplinary hearing. However, for the reasons given above, we feel that the report as it stands does not do justice to Mrs Haynes-Kirkbright’s side of the story.

Comment

We are also concerned that the investigators did not see any significance in the fact that five out of six of the coders interviewed had had significant sickness absence in the two months before Mrs Haynes-Kirkbright was interviewed on 24 April. The sample of coders chosen for interview had been selected by the team manager on the basis that they were most likely to have direct evidence on the allegations in the complaint document. This seems logical, but the result was that the sample was skewed towards those who had the most challenges in dealing with Mrs Haynes-Kirkbright’s changes. The average sickness absence in March and April 2012 was 11.64 per cent in March and 8.69 per cent in April. The average over the two months for the six coders interviewed was 36 per cent. This makes them a significantly unrepresentative sample.

The interviewers did not detect from the team manager's explanation of how she had selected the coders for interview that it was likely that a number of the coders would have put their name to allegations of which they had no direct evidence. This was reinforced when some of the coders they did interview denied having witnessed some of the alleged bad behaviour of Mrs Haynes-Kirkbright in the grievance document they had signed.

Report into Mrs Haynes-Kirkbright's allegations against Mr Stringer and Mrs Harnin

11.8 The report on this part of the investigation sets out the evidence by the various witnesses in relation to the four allegations. It then has a summary:

"Summary

"The trust has a duty of care to staff and a requirement to take management action when required, and acted upon the collective grievance in launching this investigation.

"The management practices exhibited by Mrs Sandra Haynes-Kirkbright, and her behaviour had been noted during the six months prior to her sickness absence following the meeting of 24 April 2012, Complaints made from line managed staff and others had not improved despite issues being brought to her attention. Mr Stringer believed these behaviours were impacting adversely on processes, systems and individuals and the collective grievance brought by the coding team gave weight to the significance of this impact.

"The apparent helplessness of the coding team gave impetus to interventional management and the decision to hold the meeting of April 24; the rationale being to bring any shortcomings in Mrs Sandra Haynes- Kirkbright's management style and performance to her attention, to gain her acceptance of the short comings and conclude the matter without the need for a protracted, detailed disciplinary investigation which could have a damaging impact on relationships and the department. And to halt the 'spiralling out of control' within the coding department. This type of approach is not without precedence for the trust when senior managers are involved in situations of this nature and a pragmatic response

is believed to be more appropriate for all parties concerned rather than the protracted process of a full investigation. The findings indicate that the meeting of the 24 April 2012 was an initial meeting to determine a way forward that was agreeable to all parties and therefore there does not appear to be any intention to unilaterally deny Mrs Sandra Haynes-Kirkbright her rights.

“It appears that the meeting was an opportunity to afford her with a pragmatic alternative to the full process of an investigation with all members of her staff which could have a potentially damaging impact upon the relationship between them and their line manager. The letter of the 25 April 2012 [Appendix 22] clearly indicates that she had the right to trust procedure if she chose this option and as such there was no failure to follow the trust grievance procedure as the discussions had not reached a point where the procedure had been invoked.”

Comment

This summary does not deal at all with Mrs Haynes-Kirkbright’s allegations about the management style of Mr Stringer or bullying and victimisation by him. It would have been difficult for it to do so because those allegations were not put to him. It also seems to endorse the unorthodox procedure followed on 24 April because it was claimed to be well intentioned and had worked before.

We deal in section 7 with the finding that the meeting on 24 April and subsequent letter of 25 April did not amount to a failure to follow the trust disciplinary procedure ‘as the discussions had not reached a point where the procedure had been invoked’.

Report conclusions

11.9 These are:

- that the four allegations by the coders are substantiated and there is a case to answer under the disciplinary procedure
- that the four allegations by Mrs Haynes-Kirkbright are not substantiated.

11.10 The authors recommend that a formal disciplinary hearing be conducted to consider all the findings.

11.11 They also observe that they are concerned at the:

“... widespread nature of the difficulties and potentially damaged relationships within the department between the team and Mrs Haynes-Kirkbright and Mrs Haynes-Kirkbright and Mr Stringer.”

Comment

The investigators appear to have used different criteria in determining whether the allegations against Mrs Haynes-Kirkbright and those made by her were substantiated.

There is evidence for and against all the allegations made against Mrs Haynes-Kirkbright by the coders, and in each case it seems that the investigators considered evidence sufficient for the matter to go to a disciplinary hearing where both sides of the evidence would be put.

However, with the allegations made by Mrs Haynes-Kirkbright, the investigators appear to have assumed from Mr Stringer’s answers on other matters that Mrs Haynes-Kirkbright’s specific evidence against Mr Stringer of bullying and victimisation was unsubstantiated. Mr Stringer was interviewed a month before Mrs Haynes-Kirkbright so her descriptions of his behaviour on particular occasions was not even put to him. Where matters were put to him, his justifications were always preferred over Mrs Haynes-Kirkbright’s allegations.

The investigator told us that when she used the word ‘unsubstantiated’ she meant that she had not found enough evidence to substantiate the allegations, not that she had found no evidence at all.

The report does not provide details of why it rejects Mrs Haynes-Kirkbright’s allegations.

The report does not deal with all of Mrs Haynes-Kirkbright's allegations.

The investigators stretched the definition of 'trust procedures' to include a procedure that all concerned acknowledged was 'out of process'. This then led to a finding that the allegation that Mr Stringer had 'failed to follow trust procedures in respect of the handling of the grievance raised against Mrs Haynes-Kirkbright' was unsubstantiated.

Findings

F17 The records show that Mrs Haynes-Kirkbright was interviewed after all the other witnesses. It would have been good practice to hear from Mrs Haynes-Kirkbright on her allegations before interviewing those against whom the allegations were made.

F18 We found the investigator a convincing witness and we believe that she intended to carry out a fair and dispassionate investigation. However, for the reasons given above, we consider that the outcome of the investigation and the report of it were unfair to Mrs Haynes-Kirkbright. All the flaws we identify were to Mrs Haynes-Kirkbright's disadvantage, suggesting unconscious bias.

Timing

11.12 The witness interviews took place between 6 August and 3 October 2012, and the report was signed off on 15 January 2013. The investigator told us she had written the whole report herself, besides doing her day job, and had had to review transcripts of many hours of evidence and had often worked late into the evening. She acknowledged that the report had taken a long time to finish. She had discussed drafts with her HR support, to get her views on whether the report reflected the evidence but had not had the opportunity to do so with anyone else.

Finding

F19 This was a complex report, with many allegations and many witnesses. We accept that the investigator had to find the time to do so in her busy schedule and have no criticism to make of the time it took.

Conclusion

11.13 The report on the investigation accurately reflected the coders' evidence, and the findings that Mrs Haynes-Kirkbright had a case to answer on the coders' complaints about her behaviour were reasonable based on the evidence.

11.14 However, other findings were not reasonable, because they were either not based on the evidence, were based on partial evidence or were beyond the competence of the investigators to make a reliable finding.

11.15 The report into the allegations made by Mrs Haynes-Kirkbright reflected the inadequacy and limitation of the investigation and its findings cannot be relied upon.

12 First whistleblowing investigation

12.1 The first whistleblowing investigation was carried out by the trust's medical director, Dr Jonathan Odum, assisted by a HR employee. The introduction to the report set out the methodology which consisted of three main features:

- interviews with Mrs Haynes-Kirkbright and Mr Stringer
- an internal audit conducted by the trust's auditors RSM Tenon, commissioned by the chief executive on 5 July 2012, specifically in response to Mrs Haynes-Kirkbright's allegations, to investigate the clinical coding practices of the trust
- a desktop review of the PbR data assurance framework by the Audit Commission.

Internal audit of coding practices

12.2 The high level objectives of the trust in commissioning the internal audit were defined as:

- a review of clinical coding to assess if any of the local practices go against coding standards
- an assessment into whether there are issues with the trust's adherence to PbR rules.

12.3 The draft report (we have not seen a finalised report) commented:

“Based on our testing we did not identify any issues that suggest the trust has designed or operating [sic] its processes to 'up-code'.”

12.4 This report was sent to Mrs Haynes-Kirkbright before her interview on 26 September 2012. It was described by Dr Odum as *“dealing with her allegations”*.

12.5 However, whatever the intentions of the chief executive in commissioning the review, the report does not deal with Mrs Haynes-Kirkbright's allegations.

12.6 The auditors say the audit was part of the approved periodic plan for 2012/13, and describe their work as a clinical coding process review. They described the scope of the review as follows.

“We have performed a systematic audit, reviewing each aspect and stage of the clinical coding function, in accordance with the agreed scope. The audit included a review of both the design and operation of controls and whether control activities have been established to ensure that risks to the achievement of the organisation's objectives are managed effectively.

“When planning the audit, the following limitations were agreed:

- We will be undertaking a systems based review of the processes in place to code patient activity; however, we have not checked and challenged the clinical coding activity undertaken by the trust's Clinical Coders;*
- The review has not included Community based services as these are managed by the Business Systems manager at West Park Community Hospital and are covered by a "block" contract;*
- The review will not include any assessment around the clinical quality of the data being provided: and*
- Our work will not provide an absolute assurance that material errors loss or fraud do not exist.*

“The approach taken for this audit was a System-Based Audit.”

12.7 The auditors analyse the trust's clinical coding policy in some detail, and find a number of areas of sound control design and some areas of improvement. This policy was created by Mrs Haynes-Kirkbright and approved by the trust management team in March 2012 (appendix G).

12.8 They found a number of areas where the policy was not being complied with. These were not to do with coding decisions but rather the lack of internal reviews, the failure to monitor the implementation of recommendations made by the Audit Commission and the failure to monitor trends in the queries from the PCT.

12.9 The auditors did not audit any actual coding. Where their report talks about coding outcomes, it relies entirely on the Audit Commission's report in February 2012 on the PbR data assurance framework.

12.10 When Mrs Haynes-Kirkbright was asked about this report in her interview with Dr Odum and his HR colleague she said:

“The scope looked at the systems that were in place in the Coding Department. It was looking at processes and things of that nature. The actual coding of the work that was done here in the trust was where I had the most concerns, and that's one thing they didn't look at. They didn't challenge the coding of the information as it was given to the coders.”

Comment

It is not surprising that the auditors did not identify any issues that suggested the trust has designed or was operating its processes to 'up-code'.

Mrs Haynes-Kirkbright had not expressed concerns about the policy that she herself had written, and she always made clear that the coders were only doing what they were asked to do when following local agreements. Her concern was with the attitude of her line manager and others in the trust to the evidence she produced of deliberate up coding. This report says nothing about those matters and can in no sense be thought to address those issues.

It is puzzling that the trust did not notice that the audit did not meet the high level objectives referred to above and even more so that the internal investigators did not pick up Mrs Haynes-Kirkbright's comments that the scope of the audit did not deal with her concerns. This is a serious failing because the subsequent reports all referred to this audit as evidence that Mrs Haynes-Kirkbright's concerns were unfounded.

12.11 In December 2014 the trust provided us with documentation to show that it had contacted the previous head of coding who had explained that the local coding agreement on angiograms and stents, referred to in section 6, had been present elsewhere in the West Midlands prior to Mrs Haynes-Kirkbright identifying it at the trust, and was the subject of discussion as to whether it might contravene a national coding standard.

12.12 She also explained that an auditor had challenged the coding of a head injury as ‘intercranial injury’ when it should have been ‘unspecified head injury’. The previous head of coding recalled that a *“leading clinician disagreed with the auditor on this particular point, stating that children who were admitted were always treated as if they had sustained a more severe head injury because they received higher than average care, more intensive nursing care, more frequent observations, and so on...”*. As a result, the local agreement, which she thought was legitimate, was created in April 2010.

Comment

This is useful information, and it would have strengthened the investigation if it had been obtained as part of the investigation rather than in response to our review of the investigation.

12.13 The auditors commented that the coders extracted pertinent information from the patients’ notes they reviewed *“which may be in the form of a code (e.g. R104 I10 etc.) or the description of a procedure or diagnosis”*.

12.14 We asked Mrs Eve-Jones for her views on this:

“It is a bad practice because clinicians, and consultants in particular, have a great deal of exposure to codes but only through their private practice. Those codes do not have the same robust rule-set, because they are not used for statistical analysis. Furthermore, they are not the same as our codes anyway. The bottom line is that clinicians are trained as clinicians and they are not trained to use disease and procedure classifications.”

Comment

Coding is used for diagnostic as well as PbR purposes. Doctors working in private practice may need to use diagnostic codes, but do not need to take into account the specific obligations of PbR coding, which is purely for the NHS.

Allowing clinicians to put codes instead of procedures or diagnoses on the notes seems risky. Clinicians may make a mistake in using a code, and may continue to make the same mistake, and the coders will not spot it.

Mrs Haynes-Kirkbright's interview of 26 September 2012

12.15 Mrs Haynes-Kirkbright went into some detail about her concerns about the local agreements on 'up-coding' for children with a head injury kept in overnight and for cardiology patients receiving a diagnostic and therapeutic intervention on a single occasion (see section 6).

12.16 She was clear that the coders did not know that they were coding incorrectly because they were unqualified and just doing as they were instructed. She did not know if the consultants knew that the local agreements amounted to 'up-coding' because she had not been able to speak to them. Her main concern was that when she drew these over-claims to the attention of [a finance department manager] *"they didn't care"*, and told her that there was no need to discuss reimbursement with the PCT: *"She said 'well, it doesn't matter anyway, because we have already agreed that one for this year'."*

12.17 Mrs Haynes-Kirkbright was clearly dismayed at this approach, which she described as fraudulent.

Comment

The interviewers were open about their lack of knowledge of the local coding issues, and said that they would seek further information. However, Dr Odum told us that he had been unable to do so as he had been told that the file could not be found. Our

requests were more successful and the file was produced to us from the coding department.

The whistleblowing investigators did not interview the head of finance about the allegation made by Mrs Haynes-Kirkbright in paragraph 12.14.

12.18 Mrs Haynes-Kirkbright also referred to the PbR *Code of conduct*, which set out the trust's obligations of candour and transparency.

12.19 The version of the document relevant at the time of these investigations was published in February 2012 and can be found online. Among its provisions are:

"1.6.

Under PbR, activity is paid for on the basis of the number and complexity (i.e. case mix) of cases treated. Importantly, the case mix classifications, prices and payment rules are set at national level and are not subject to local negotiation except as specifically defined in PbR guidance...."

12.20 It also provides that all organisations operating PbR will:

"... behave and treat each other transparently, openly and fairly....share information with each other whenever appropriate [and] consult and involve each other in decisions and changes wherever appropriate."

12.21 Another provision was that:

"Providers will code and bill for activity fairly, accurately and promptly in line with national guidance on reporting under PbR and the provisions of the contract. This guidance will be reviewed annually and reporting timescales will be reduced in support of the principle that billing and payment should be 'right first time'."

12.22 Mrs Haynes-Kirkbright also described in some detail the pressure on her to provide reasons for length of stay when the PCT asked for further information.

12.23 She confirmed that she considered this to be *“fraudulent or near fraudulent practice”* because *“they were trying to get the money by getting me to say something that wasn't true.”*

12.24 She agreed that there almost certainly would be a justification for the length of stay but reiterated that it was not for her to speculate what it might be. She also confirmed her view these queries should simply be sent back to the consultants treating the patients for them to provide the narrative.

12.25 She explained that the matter was still unresolved when she went off sick in April. She had checked that the coding was accurate on all the matters referred back by the PCT and had returned them to the finance department but that on her last day at work she had received an email from finance saying that the PCT was not satisfied and wanted narrative.

12.26 The interviewers discussed Mrs Haynes-Kirkbright's perception of the relationship between the trust and the PCT, which Mrs Haynes-Kirkbright described as *“not transparent...not open...more of an adversarial stance”*. Mrs Haynes-Kirkbright gave an example of a meeting with the PCT that she went to with colleagues. She was invited because audit was on the agenda and the Audit Commission audit had recently taken place. She said that on the way to the meeting one of her colleagues told her:

“...you know, any time we meet with these people, anybody who goes to these commissioning meetings or any of these other PCT meetings, just watch what you say. Don't say anything to them, you know, because they'll just take it the wrong way and they'll make the worst of it, and you know we just try to be really careful what we say around the PCT. I actually said 'You might want to let me out of the car and I'll walk back because I'm, if they ask me a straight question I'll give them a straight answer. You know, they ask me how the PbR audit went and well, you know 'Could have been better'...”

12.27 We asked Mr Loughton about this:

“Q. Sandra said that she had been given very clear instructions that in conversation with, for instance, the PCT or CQC or whatever, her job is to answer questions but not to volunteer anything.

A. *Correct. I have that approach approved by CQC - I did a lecture tour for CQC. What has happened is that when CQC send a team of inspectors into hospitals, when this hospital inspection regime first started off, someone would say something just off the cuff, without any evidence, and then they send 20 inspectors into an area, and it came to absolutely nothing. It was actually one of our ward managers, before our CQC inspection, who actually said to her staff 'assume you're in a coroner's court, answer the question you're asked, nothing more, nothing less, and don't embellish it'. That's where the whole thing came from. Sir Mike Richards endorsed that approach... It's not trying to shut people up. As you see, we have done an audit on whistleblowing. There's no question of us trying to shut people up, but also, you have to have something that's evidence-based.'*

12.28 We also asked raised this with Mrs Harnin, mentioning that we had been told that there was "very, very tight control over what people could and couldn't say":

A. *...Several of my colleagues at my level do operate like that.*

Q. *Does David?*

A. *Yes. Yes and it's a standard mantra; answer the question and shut up.*

Q. *Do you think the way that your colleagues deal with that comes from David? Is that where it starts?*

A. *It's David's mantra. Another senior colleague in nursing parlance is of that ilk. When we've had briefings, in readiness for CQC visits and the like, it's a kind of standard drill 'answer the question and then shut up, don't elaborate'.*

Q. *Was any explanation given for that particular approach?*

A. *I'd be transposing my own explanation of what I think they're trying to achieve by it rather than anything having been said.*

Q. *Okay; well, what's your impression?*

A. *It's about control isn't it? It's about other people not scoring own goals or bringing any embarrassment to the trust. There's also, it happens in many places, distrust between the provider organisations and the commissioners etc., because if they can then use the information for commercial gain they can use it to*

challenge, you know, running of services or contracts. In a commercial parlance I get it. You don't want to give away your hand."

Comment

We see a significant difference between discouraging speculation and legitimate comment. It is not clear to us that this distinction is properly recognised in the way this policy has been communicated at the trust.

12.29 There was a long discussion between the interviewers and Mrs Haynes-Kirkbright about the definition of fraud. The interviewers set out that fraud to them would involve a deliberate intent to commit a criminal act:

"Mrs Haynes-Kirkbright: 'The really big one was when they just said 'oh, don't worry about it, we've already got the cash....that's the one that freaked me out.'

HR interviewer: And that's maybe right, but again fraud is deliberate intent as opposed to retrospectively breathing a big sigh of relief, so I'm not saying it's right. I'm saying again, does it meet the definition of fraud, probably not.

Mrs Haynes-Kirkbright: The British definition.

HR interviewer: Yes absolutely.

Mrs Haynes-Kirkbright: As opposed to the Texan definition of fraud.

HR interviewer: Yes

Jonathan Odum: Well maybe I don't know the Texan definition of fraud.

Mrs Haynes-Kirkbright: I guess someone gives you a £100 note and you should have had a tenner, and you just go 'hey, lucky me' and stick it in your pocket, that's fraud, you know. You got something you weren't due.

Dr Odum: Well you see to us that would be just...

Mrs Haynes-Kirkbright: Luck?

HR interviewer: Well no

Dr Odum: Probably. There's a moral obligation to sort of...

HR interviewer: there might be a moral issue with it, but it wouldn't be fraud in the legal definition in this country.

Dr Odum: It wouldn't be fraud. Probably where you'd deliberately persuaded someone to give you a \$100 bill when actually...

HR interviewer: Upfront lying about that.”

Comment

This is a remarkable exchange. The interviewers are focusing on the legal definition of fraud rather than on the substance of what Mrs Haynes-Kirkbright is saying, which is that people were behaving dishonestly by not being open with the PCT about coding issues that had provided the trust with money it was not entitled to, and in seeking to perpetuate a system in which guesswork replaced knowledge in explaining atypical length of stay.

Interview with Mr Stringer on 31 October 2012

12.30 Dr Odum explained that the meeting was to discuss the three allegations made about coding practices by Mrs Haynes-Kirkbright in her 2 July email; that there are inappropriate coding practices within the trust that amounted to or bordered on fraud if still continuing; that a requirement for coders to report to the PCT on reasons for length of stay for certain patients amounts to fraudulent practice; and that Mr Stringer and finance colleagues were keen to exploit PbR in ways not always scrupulous.

12.31 Mr Stringer mentioned the internal audit report, and felt that it vindicated his belief that nothing untoward was going on in coding.

Comment

Mrs Haynes-Kirkbright had already told the investigators that the scope of the audit did not cover the matters of concern to her. They did not inform Mr Stringer of this and he did not identify this as a problem.

12.32 He said he knew nothing of local coding practices or problems with them until Mrs Haynes-Kirkbright told him about them and supported her putting them right. Overcharged

money should have been repaid to the PCT and year-end negotiations to reach agreement on a final figure would have *“everything on the table”*.

12.33 He explained that the discussions with the PCT were carried out by a manager in finance, so he was not familiar with the detail, but:

“There is no deliberate intent ever to withhold anything from the Commissioners. If we have inappropriately coded then we should tell the commissioner about that, if that means we have to pay it back, then we should pay it back.”

Comment

This is an articulation of good practice in accordance with the PbR code of conduct.

12.34 The interviewers then told him what Mrs Haynes-Kirkbright had told them during her interview on 26 September.

12.35 Mr Stringer explained that a negotiation takes place at the financial year end when various issues are discussed and a decision made to agree a final figure for the year, based on a broad-brush approach rather than resolving every disagreement or challenge. The agreement includes a right to re-open the negotiation if the final figure is outside an agreed range, usually a million pounds either way. He suggested that this was probably what the manager in finance was referring to when she told Mrs Haynes-Kirkbright *“It doesn’t matter anyway, because we have already agreed that one for this year”*. He pointed out that the PCT would have seen the Audit Commission report and could have come back to them on the paediatric or cardiology references in the report.

12.36 The interviewers seemed satisfied with this.

12.37 Mrs Eve-Jones commented on this approach:

“A. It is certainly unethical, and certainly in contravention of the Payment by Results code of conduct, which says that an organisation should adhere to the rules. Okay, there are a number of grey areas but ones like the two examples we

have discussed, where it is not grey, they are in breach of the Payment by Results code of conduct.

“Also, under that code of conduct, and also all of the agreements between providers and commissioners, there is a responsibility to flag up if you are going to have a significant change in practice. In other words, if you are going to be doing things differently, recording things differently, or providing or taking away a service, then all of that should be a part of the regular meetings that are held between the provider and the commissioner.

“...If we actually discovered that we had been coding something completely incorrectly, which had been to our advantage, I think I can fairly safely say that in our organisation not only would this be pointed out but, if it was easily within our gift to do it, we would correct backwards...

“That would be the approach that I would expect and in fact in one of the first PbR audits I did for the Audit Commission we actually discovered a coding policy that had been misinterpreted by the coders. It was a genuine misinterpretation in that they had not understood the clinical side of it and the organisation, when it was explained to them, reimbursed all the cases.

“Q. It therefore wouldn’t be enough to say, ‘Oh, look, they can see it for themselves and pick up on that.’?”

A. Absolutely. They should have said overtly, ‘As you will have seen’ - and it is actually quite surprising that it didn’t come up, because the exit meetings after PbR audits are supposed to include a representative from the trust and the clinicians.”

12.38 HR interviewer:

“Okay so we have not hidden anything. So in terms of did Kevin go back and open a dialogue, no, but we were absolutely aware that they were aware anyway, notwithstanding us not having got our own house in order.”

Comment

We found no evidence that the investigators made enquiries about whether the PCT knew about these over-codings and if so what their reaction to them was, or that they spoke to the manager in finance to discover her understanding of what was discussed with the PCT in the negotiations.

They did not question the considerable differences between Mr Stringer's statement of the trust's good practice about openness and his subsequent more nuanced description of how this worked in practice.

His description of how the process works in practice is supported by Mr Loughton's evidence to us.

Finding

F20 The investigators should have recognised that the trust's duty of openness under the PbR *Code of Conduct* had probably been breached, and should have investigated further.

12.39 Mr Stringer was asked about the issues Mrs Haynes-Kirkbright raised on providing information on length of stay. He confirmed her account of the matter to a certain extent. However, he said he had told her that if she could not answer clinical queries the cases could be referred to clinical colleagues. He also asserted, as he had done in his interview in the disciplinary investigation, that *"the payment by results rules are very complex and are open to interpretation"*.

Comment

Mr Stringer's evidence that he had told Mrs Haynes-Kirkbright that she did not have to go beyond her professional competence is a crucial factor in establishing whether Mrs Haynes-Kirkbright had been asked to create narratives without knowing the facts. In view of Mrs Haynes-Kirkbright's detailed criticism of him on this point, they

should have sought further evidence from other employees involved in the discussions.

In view of the PbR Code of Conduct, to which the investigators had specifically been referred, it is surprising that they did not challenge his comment that the PbR rules are open to interpretation.

12.40 Mr Stringer denied ever having told Mrs Haynes-Kirkbright not to be open with non-executive directors or others and said that he was not aware of anyone else having said this to Mrs Haynes-Kirkbright.

Comment

In view of Mr Loughton's evidence at 12.27 above, it is curious that Mr Stringer was not asked about the inconsistency between the well-known confidentiality policy and his claim not to know Mrs Haynes-Kirkbright had been told about it.

Finding

F21 The investigators were far too willing to accept Mr Stringer's evidence, including his evidence on technical coding matters in which he acknowledged that he was not expert, without challenge. They also failed to follow up acknowledgement by Mr Stringer that the PCT had not been informed of systemic coding inaccuracies that had led to the trust being paid more than it was entitled to. These were failings.

Conclusions

12.41 The investigation was not robust, in that important questions were not asked, relevant witnesses were not interviewed, inconsistencies were not probed and unsupported assertions were not challenged.

13 First whistleblowing report

13.1 The report is dated November 2012.

13.2 The introduction identifies the following whistleblowing allegations from Mrs Haynes-Kirkbright's July 2 email:

- "1) There are inappropriate coding practices within the trust that amount to fraud if still continuing, or border on fraud;*
- 2) That a requirement for coders to report to the PCT on reasons for length of stay for certain patients amounts to fraudulent practice; and*
- 3) That Kevin Stringer and finance colleagues were keen to exploit Payments by Results in ways which were not always scrupulous."*

13.3 It also explains that it does not cover Mrs Haynes-Kirkbright's allegations of harassment or bullying.

13.4 The findings on allegation 1 include an acknowledgement that some coding practices operated outside national guidance (which was never disputed), but says that they did not find evidence to suggest fraud. They quote Mrs Haynes-Kirkbright saying that she did not think the coders or the staff in the finance department were being dishonest.

13.5 They also rely on no evidence of fraud being identified by the Audit Commission, or the internal audit, despite the fact that the Audit Commission clearly did not look for the reasons for the incorrect local coding and the internal auditors did not look at individual codes but relied on the data from the Audit Commission report.

Finding

F22 The investigators should have tried harder to get to the bottom of the incorrect local coding agreements. Even though they could not obtain the local coding book, they should have made enquiries in the paediatric department to ascertain how this incorrect coding policy had been agreed. They could have tried to contact Mrs Haynes-Kirkbright's predecessor, to see what she had to say.

13.6 The findings on the first allegation also refer to Mrs Haynes-Kirkbright's claim that the way finance dealt with the matter, when she told them about the up-coding, was fraudulent. They accepted Mr Stringer's explanation that outstanding issues were dealt with in year-end negotiations, and that that must have been what had happened here. Dr Odum told us that he was sufficiently familiar with the way the system worked to accept the explanation given by Mr Stringer as correct.

Finding

F23 Against Dr Odum's confidence in the correctness of the trust's systems for reconciling coding inaccuracies has to be set the fact that Mrs Haynes-Kirkbright had been brought in to reform coding and data quality at the trust. It therefore seems somewhat perverse to reject Mrs Haynes-Kirkbright's concerns that these inaccuracies were being dealt with incorrectly. Checking the position with the PCT would have put the position beyond doubt.

13.7 On the second allegation they find that Mrs Haynes-Kirkbright should not have been asked to create data, but that the attempts to make her do so were not fraudulent. They rely on the evidence from both Mrs Haynes-Kirkbright and Mr Stringer that what she was being asked to provide was a convincing explanation for an atypical length of stay that would have occurred for a good reason. Dr Odum told us:

"Mrs Haynes-Kirkbright was not asked to 'guess' at the reasons for the atypical length of stay and she expressed the view that she was not clinically trained and therefore giving a clinical rationale for the stay was out with her professional competence. This view was not challenged and was even accepted by Kevin Stringer in his e-mail of the 5th March 2012 despite the fact that the previous coding manager had undertaken this duty and the process had run smoothly."

Comment

Dr Odum's view seems inconsistent with his finding that Mrs Haynes-Kirkbright was asked to create data.

13.8 It is apparent from her interviews and from what she has said to us that she describes fraudulent behaviour as behaviour that is not open and transparent and that is intended to lead to a financial benefit. The fact that the trust might be entitled to the benefit was not the point for her; the problem was the guessing.

Comment

To the extent that such guesswork would lead to the trust being paid for work done but not properly evidenced, it would be obtaining what it was not entitled to, as providing reliable evidence is an essential part of the claim.

13.9 Despite his finding that Mrs Haynes-Kirkbright should not have been asked to create data, Dr Odum confirmed to us that he did not accept that she had been asked to make educated guesses. Dr Odum's position is that Mrs Haynes-Kirkbright was initially refusing to arrange for notes to be reviewed to see if a reason for atypical length of stay was on the notes but had been overlooked by the original coder.

Finding

F24 This would be a very unreasonable position for Mrs Haynes-Kirkbright to take up, and quite inconsistent with her commitment to full and accurate coding. It seems hardly credible that Mrs Haynes-Kirkbright would describe being asked to check the accuracy and completeness of coding as being asked to act fraudulently. Furthermore, if this had been her position, it seems equally unlikely that Mr Stringer would have responded, as he did, by reviewing the practice of Mrs Haynes-Kirkbright's predecessor, to see if there was evidence of fraud. In our view the balance of the evidence supports Mrs Haynes-Kirkbright's account of being asked to create data to explain atypical length of stay.

13.10 They concluded that much of the third allegation, of practice that was not always scrupulous by Mr Stringer and others, had been covered in their findings on the first allegation. On the remaining part of this allegation, that there was a lack of transparency

and being less than forthcoming with non-executive directors, they conclude that there had been a misunderstanding between what Mr Stringer had said about sharing information with NEDs and others and what Mrs Haynes-Kirkbright had understood him to say, so the allegation was unproven.

Comment

The report does not deal with Mrs Haynes-Kirkbright's evidence of a specific occasion when she was told to be careful what she said to the PCT.

Findings

F25 The report reflects the limitations of the investigation. The investigators did not find evidence to support Mrs Haynes-Kirkbright's allegations because it scarcely looked for any. They accepted Mr Stringer's evidence without challenge. They got hung up on definitions of fraud without paying attention to the bigger picture of alleged systemic poor practice in creating incorrect local coding policies; withholding relevant information from the PCT on the basis that it could find it out for itself; and cutting corners in providing information on reasons for length of stay based on guesswork.

F26 The report shows that the investigators decided that Mrs Haynes-Kirkbright's allegations did not amount to allegations of fraud, so her concerns were without substance.

Conclusion

13.11 We consider that the matters were not investigated robustly, or even adequately in some cases, and the report reflects this. The interviewers failed to interview significant witnesses and failed to question the reliability of Mr Stringer's evidence. The investigators relied on the Audit Commission and draft internal audit reports which the scope or detail of those reports could not justify. The report's conclusions accurately derive from Mr Stringer's evidence. However, the failure to obtain or seek corroborating evidence and the inappropriate reliance on the two reports makes it impossible to rely on them.

13.12 Dr Odum was in charge of the investigation and is responsible for its findings.

14 Disciplinary procedure

14.1 Mrs Haynes-Kirkbright had a meeting with Mrs Etches, director of nursing, on 16 January 2013 when she was told the conclusions of the grievance and whistleblowing investigations.

14.2 We do not have minutes of this meeting but the trust has explained that at this meeting:

“Mrs Haynes-Kirkbright said very little and did not enquire specifically about the allegations she had raised. However, she asked for clarification as to whether only the allegations against her were being taken forward. Cheryl Etches [Case Manager] confirmed this to be the case.”

14.3 The disciplinary hearing was listed for 12 February and Mrs Haynes-Kirkbright was asked to submit any representations by 25 January. On that day Mrs Haynes-Kirkbright emailed her submissions, saying that she believed any inappropriate behaviour was a result of (at that time undiagnosed) illness which she was still suffering from while the investigations into the allegations against her were being carried out.

14.4 Mrs Espley wrote to Mrs Haynes-Kirkbright on 1 February 2013 saying that in light of her submissions regarding her recent medical history it would not be appropriate to proceed with the hearing without further information about her health. It would be necessary to obtain medical reports about her health.

14.5 Her interview with the Daily Mail was published on 1 March 2013, which effectively suspended the disciplinary process. However the trust went ahead with obtaining medical evidence.

Conclusion

14.6 The process for the disciplinary procedure was carried out correctly, and it was right for the hearing to be postponed when Mrs Haynes-Kirkbright raised the question of whether her medical condition was a factor in her behaviour.

15 Mrs Haynes-Kirkbright and the Daily Mail

15.1 In late February 2013 Mrs Haynes-Kirkbright received an unannounced visit at her home from a Daily Mail journalist, who asked to interview her about her work at Mid-Staffs. Mrs Haynes-Kirkbright was happy to talk to him because she believed that there had been a misreporting, based on a misunderstanding, of the cause of some of the deaths at Mid-Staffs. From her personal knowledge of her work at Mid Staffs she knew that some of these deaths had been under-coded or miscoded, which led to Mid Staff's HSMR appearing higher than it actually was. The conversation moved to the work she had been doing at the trust.

15.2 On 28 February 13 the trust was sent an email by the journalist setting out various allegations under two headings:

“Allegations against Wolverhampton regarding coding to bring down HSMR:

- 1) That between 2009 and 2011 it coded everyone on the palliative contact list as palliative care deaths even if they were not treated at the hospital as palliative care patients, which is against national guidelines.*
- 2) Hired an independent company in the summer/autumn 2011 to advise coders how to increase the Charlson index by adding causes of patients' deaths, which were not written on the doctors' notes.*
- 3) Sultan Mahmud Assistant Director, co-ordinated a plan to bring down HSMR through coding.*
- 4) Headhunted Mrs Haynes-Kirkbright, who was behind improvements in HSMR figures in Mid-Staffs, as Head of Clinical Coding and Data Quality for an increased salary. Then suspended her, officially for swearing, after she suggested fraudulent activities were taking place in the miscoding of dead patients for financial gain.*

“Allegations regarding misconduct for financial gain:

- 5) In cases, such as percutaneous intervention (PCI and proceed) the trust was coding as if two separate operations were being done, when in fact two procedures, such as an angiogram and a stent, were being performed during the same operation. This will have earned the trust more money than it was due and is against national guidelines.*

6) When the PCT informed the trust certain payments for treatments could not be put through because of irregularities (e.g. not matching other patterns for the HRG), coders were instructed to make up excuses to make sure the money went through, without consulting doctors.

7) Labelling all child head injuries as ‘intercranial’ even when this was not the case, allowing the trust to claim more money for each patient.

8) Kevin Stringer, Finance Director, telling coders they would be costing the trust hundreds of thousands of pounds if they did not comply.”

15.3 On 2 March 2013 the Daily Mail carried a front-page article arising from the interview with Mrs Haynes-Kirkbright¹.

15.4 As a result of the email and the article, a second whistleblowing investigation was initiated by the trust.

Conclusion

15.5 The trust complied with its whistleblowing policy in ordering an investigation after it became aware that Mrs Haynes-Kirkbright had raised concerns about the trust with the Daily Mail.

¹ <http://www.dailymail.co.uk/news/article-2286770/Expert-claims-NHS-ordered-cover-Hospital-hired-fiddle-death-figures.html>

16 Second whistleblowing investigation

16.1 A consultant was appointed as case investigator, assisted by the HR employee who had been involved in the first whistleblowing investigation. They conducted interviews with five members of staff. Dr Odum, medical director assumed control of the investigation following this consultant's departure from the trust to take up a more senior post, and he and his colleague interviewed Mrs Haynes-Kirkbright. In addition to the staff interviews, the investigation considered a range of other documentary evidence including, but not limited to:

- a Dr Foster report on mortality rate reduction at the trust
- minutes of MoRAG meetings (the internal committee with responsibility for mortality in the trust)
- email correspondence between Professor Jarman and the trust
- the investigation reports into concerns raised by and against Mrs Haynes-Kirkbright
- an internal audit report by RSM Tenon
- the PbR data assurance framework.

Interview with an information officer, on 21 March 2013

16.2 This information officer was asked about the allegation that between 2009 and 2011 everyone on the palliative care contact list was coded as palliative care deaths even if they were not treated at the hospital as palliative patients, which was against national guidelines.

16.3 His response is hard to follow because he was trying to explain a system that had changed over time, and he was making the point that he just did as he was asked. However, he clearly says that for a period at least:

"...we would obtain listings from the Somerset system. The Somerset module has a listing of patients who on a routine basis have had palliative care or a palliation by the palliative care team...the idea was that the list itself was supposed to be the standard list so we could use that."

Comment

The sample of 11 palliative care cases mentioned at para 6.33 above came from the information officer's palliative care list for September 2011. Its inaccuracies are referred to in that section. If this is the Somerset list that he refers to, Mrs Haynes-Kirkbright's concerns about its use as a basis for Z51.5 coding seem well founded.

16.4 The information officer said he was not involved in the work on the Charlson index. He was involved in trying to reduce the HSMR through coding, but through correct coding, not through bending the rules.

16.5 He described the pressure coders are under, which did not allow time for checking to see if data provided was accurate:

"We just obey the rules and get on with it.

Consultant : Are the rules quite explicit?"

A: Oh yes."

Comment

The HR interviewer had heard Mr Stringer say in his evidence to the earlier whistleblowing investigation that coding was 'open to interpretation'. The consultant would not have known this. It would have been helpful to the investigation if the HR interviewer had explored this point with the information officer.

Interview with Mrs Haynes-Kirkbright

16.6 Dr Odum and his HR colleague interviewed Mrs Haynes-Kirkbright on 26 March 2013.

16.7 Dr Odum explained that that the purpose of the interview was to establish what Mrs Haynes-Kirkbright had said to the reporter and what further information she could give them to help them investigate any whistleblowing concerns.

16.8 The HR interviewer said:

“... [The consultant] is doing the investigation and he will be investigating all the allegations. What we have got to just decide is to what extent are they in your words? Which ones did the Daily Mail misrepresent?...that way we will understand exactly what the allegation is...if you can give us any indication of the evidence you have got or where [the consultant] should be looking, then it will make his investigation a lot more thorough and a lot more complete, and that is the totality of today’s meeting...I know you mentioned in one of your letters or your email, you know, contract and stuff, that’s not what we are here for. This is about Jonathan getting assurance that...these allegations have been fully investigated...so that’s the total purpose of this meeting, okay? Because I know you are concerned about getting legal representation etc.”

Comment

It was good practice to interview Mrs Haynes-Kirkbright not only on the substance of the Daily Mail allegations, but also on whether Mrs Haynes-Kirkbright’s allegations had been correctly reported.

16.9 Dr Odum refers to the investigation of palliative care coding undertaken as a result of the Daily Mail article, and indeed an audit was carried out at the request of the trust by a senior and independent NHS-approved clinical coding auditor and trainer. She reported in July 2013, having sampled 200 episodes all of which included the Z51.5 palliative care code. The episodes took place between August 2011 and September 2012. However, the Daily Mail allegation referred to the trust’s practices between 2009 and 2011. Mrs Haynes-Kirkbright’s allegations related to the time before she arrived and the first two months of her time at the trust. As with the internal audit carried out as a result of her 2 July 2012 email, the terms of reference of this audit largely failed to deal with Mrs Haynes-Kirkbright’s allegations.

Comment

If our report leads to an internal review of these investigations, looking into how the terms of reference were agreed and by whom, it could provide a useful lesson in how best to use an audit to investigate alleged poor practice.

Finding

F27 Mrs Haynes-Kirkbright should have been interviewed before the audit took place because her evidence at interview was that the criticisms attributed to her by the Daily Mail on the trust's mortality rates and mortality data were largely inaccurate.

16.10 Mrs Haynes-Kirkbright confirmed to the investigators that between 2009 and 2011 the trust coded everyone on the palliative contact list as palliative care deaths even if they were not treated at the hospital as palliative care patients, which was against national guidelines. She confirmed that she had advised coders and Mr Mahmud that they were doing it wrongly and they accepted her advice, but she did not know whether coding was actually altered because she had no opportunity to audit before going off sick. She did not impute any bad motive to Mr Mahmud for establishing the earlier incorrect practice.

16.11 She also agreed that she had said that Mr Mahmud had co-ordinated a plan to bring down HSMR through coding, but that she was not criticising him. He was focused on accurate coding so as to achieve an accurate HSMR.

16.12 She denied having claimed that:

- fraudulent activities were taking place in the miscoding of dead patients for financial gain
- that every rule in the book had been broken to try to improve mortality rates,
- that the trust hired an independent company in the summer/autumn 2011 to advise coders how to increase the Charlson index by adding causes of patients' deaths which were not written on the doctors' notes,
- that she had been hired to 'fiddle' death rates.

16.13 However, she readily acknowledged that she had made these allegations in relation to the local coding agreements; the failure to inform the PCT of overcharging arising from these agreements; and the pressure put on her to provide educated guesses about the reasons for atypical length of stay. She also explained that there had been a suggestion made by the company looking at the Charlson Index that co-morbidities noted on a previous admission might be added to the notes of a later admission, but that this had not been approved, and in any event had not been to do with coding patients who had died.

16.14 She also confirmed that she had been headhunted at a greatly increased salary to fix (by which she meant 'sort out') the coding at the trust.

16.15 She denied having said that she had been suspended for refusing to take part in a cover-up, and explained that she had said that her troubles at the trust began after she started 'cancelling all the lucrative bits.'

16.16 She also said she believed that the lucrative local practices were a more serious problem than the investigators seemed to think because they had been done for financial gain:

"The coding manager at the time would have been fully informed about PbR and coding. I had had doctors coming to me going what if I wrote this, what would I get, where is the money, what kind of money would I, how much difference would it make if I write this and I am like, but you just need to write what you do and not worry about the money, we worry about it, if we find you are doing something that you could get more for, that is our job to let you know but not to sit here and figure out how to make more of it...that was the whistle that I wanted to blow when I started saying things."

16.17 She was also uncertain whether the practices she thought she had stopped had been re-introduced.

16.18 The investigators made clear that they would not re-investigate the allegations of financial gain that had already been investigated.

Comment

The interview shows that the investigators were thorough in establishing what Mrs Haynes-Kirkbright had said and she was given a proper opportunity to explain her views.

The decision not to look again at earlier concerns meant that the investigators mainly looked into the claims by the Daily Mail that Mrs Haynes-Kirkbright said she had not made and did not look again at those matters which she had escalated after having raised them internally. External escalation is a recognised and legitimate whistleblowing activity for someone who considers that their internal whistleblowing has not been dealt with properly. However, the investigators did not pick up that this was the whistle being blown on an unsatisfactory earlier investigation. Perhaps this is not surprising because they had also carried out the earlier investigation, presumably to their own satisfaction.

The documents we have seen do not include any terms of reference for this investigation. The letter informing Mrs Haynes-Kirkbright of the investigation states: "We would like to discuss the allegations made by you to the Daily Mail..." The lack of any formal terms of reference means that it was not until the report was produced that the boundaries of the investigation became visible. We do not know who decided on these boundaries, or if anyone did other than the investigators.

Finding

F28 The decision not to look again at Mrs Haynes-Kirkbright's earlier concerns and to review the way they had been previously investigated was a failing.

F29 The lack of any written terms of reference was a failing.

16.19 The consultant and an HR colleague carried out three interviews on 5 April 2013.

Interview with coding department representative

16.20 The coding department representative was asked about the clinical coding for palliative care between 2009 and 2011. She replied that the allegation was untrue because “*we only code patients that have received specialised palliative care that have been treated by the hospital*”. She did not know if the system of validation had been in place before Mrs Haynes-Kirkbright’s arrival at the trust.

Comment

The coding department representative could give no useful evidence on the allegation made by Mrs Haynes-Kirkbright because she was not working in the coding department at the relevant time.

16.21 She was then asked to respond to a number of the allegations made by the Daily Mail, including allegations that Mrs Haynes-Kirkbright had denied making in her interview with Dr Odum and his colleague 10 days earlier.

Comment

We do not know whether the consultant read the transcript of Mrs Haynes-Kirkbright’s interview before he carried out these interviews. He should have done so and if it was not available the HR interviewer should have ensured that he was aware of what Mrs Haynes-Kirkbright had said.

The interviewers did not say why they asked about allegations Mrs Haynes-Kirkbright denied having made, so we cannot know if the consultant knew of her denials but did not believe them, did not know of her denials, or knew of her denials and believed her but thought the Daily Mail might have another source of information.

Interview with Mr Mahmud, previously associate director of delivery, on 5 April 2013

16.22 He gave detailed evidence about the process of improving palliative care clinical coding. He confirmed the use of the Somerset list but said that Mrs Haynes-Kirkbright approved it, and was also aware of a further refinement for double-checking that was introduced shortly before Mrs Haynes-Kirkbright went off sick.

16.23 He said the work on the Charlson index had been legitimate (not denied by Mrs Haynes-Kirkbright), and on this occasion the HR interviewer did put to him Mrs Haynes-Kirkbright's comments on the process.

16.24 He confirmed that he co-ordinated plans to bring down HSMR but said that accurate coding was only a part of this and that quality of care and information sharing between consultants were also part of the plan.

16.25 He denied having headhunted Mrs Haynes-Kirkbright or that her interview was a sham.

Comment

Neither the email nor the article suggest that the trust's recruitment process was a sham.

16.26 He denied the claim that every rule in the book had been broken to try to improve mortality rates without saving lives.

Comment

Mrs Haynes-Kirkbright had already denied having said this.

16.27 Mr Mahmud was asked to comment on the allegation that Mrs Haynes-Kirkbright had been hired to fiddle the death rates. He denied this and said he was disappointed that Mrs

Haynes-Kirkbright would allege that the mortality figures had been fiddled, and that the paper would publish the allegations without checking with the trust.

Comment

The HR interviewer had already divulged one explanation Mrs Haynes-Kirkbright had given about what she had actually said to the reporter so it is strange that she did not tell Mr Mahmud that Mrs Haynes-Kirkbright denied having made this allegation.

Interview with palliative care nurse, on 5 April 13

16.28 This nurse was asked questions on palliative care coding, and confirmed that when Mrs Haynes-Kirkbright arrived the coding needed improvement, that an improved process was put in place with Mrs Haynes-Kirkbright's knowledge, approval and involvement. He also described how previously it had been possible for patients to be innocently but inaccurately coded as palliative care patients.

Interview with Mr Stringer, chief financial officer, transcript undated

16.29 He denied having headhunted Mrs Haynes-Kirkbright and that the recruitment process was a sham.

16.30 He denied that she was offered double her salary (Mrs Haynes-Kirkbright acknowledged that this was incorrect when interviewed by Dr Odum).

Comment

This was a brief interview - the transcript is less than two pages of A4. The investigators do not ask Mr Stringer about Mrs Haynes-Kirkbright's allegations of being forced out for stopping lucrative but incorrect local coding practices.

Finding

F30 It is surprising that the consultant did not satisfy himself on this important issue.

16.31 This series of interviews concludes the obtaining of oral evidence on the allegations made by and in the Daily Mail.

Second interview with Mrs Haynes-Kirkbright on 22 August 2013

16.32 The letter inviting Mrs Haynes-Kirkbright to this meeting was sent on 1 August and referred to the trust:

“... conducting an investigation into allegations raised about the coding practices within the trust under the trust’s whistleblowing policy following an article which appeared in the Daily Mail on 2 March 2013.”

Comment

The article is variously referred to by witnesses as having been published on 1 or 2 March. It was published online on 1 March and on paper on 2 March.

16.33 Mrs Haynes-Kirkbright was invited to attend:

“... so that we can address some further questions and points of clarification to you and also so that we can update you on the progress of our investigation to date.”

16.34 Dr Odum started the meeting by describing the purpose of the meeting as:

“... really to pick up some points and further questions following the interviews that we did a couple of months ago [actually five months earlier in Mrs Haynes-Kirkbright’s case]...we have got to a point with the report where we have got

some further questions to ask, so we were wanting to go through some questions with you and take your responses and for clarity the interview remains under the whistleblowing policy.”

16.35 However, in reality, the interview was about Mrs Haynes-Kirkbright’s conduct, actions and motivation.

Comment

The letter of 1 August and the opening remarks by Dr Odum clearly suggest that this meeting was being held under the same terms as the earlier meeting on 26 March 2013.

Mrs Haynes-Kirkbright had asked to be legally represented at that meeting, which had been refused, with the explanation that ‘the purpose of the meeting is purely fact finding and is to allow us to better understand the nature of the allegations that you raised to the press. This approach was reinforced in the investigator’s opening remarks.

Finding

F31 The areas covered in this interview were legitimate. However the interviewers should have been clearer in advance about the areas this interview was to cover. Their failure in this regard could give the impression of a second ambush, the first being the interview on 24 April 2012.

16.36 Mrs Haynes-Kirkbright was asked how the interview with the Daily Mail journalist had occurred. She explained that he had just turned up one evening, unannounced and without prior contact, when she was at home with her family, and had asked to talk about her experience at Mid Staffs. He told her in a subsequent phone conversation that he had taped the conversation, which she had not known at the time. No money was asked for or offered.

16.37 She explained that the conversation had turned from Mid Staffs to Wolverhampton when the journalist was talking about his investigations into palliative care coding in the Midlands, which he believed was being abused to improve HSMRs in various trusts. Mrs Haynes-Kirkbright gave an example of a coder in another hospital who had been pressured to miscode and how she had helped her resist the pressure. She also described the coding problems she had found on arrival at Wolverhampton and what she had done to improve them:

“It wasn’t always just Wolverhampton, it was West Midlands this, did anybody ever tell you that and you know it was all over the place....I thought he was going to write about Mid Staffs....the rest of it is just peripheral conversation but you can’t tell what people are going to get out of conversations.”

16.38 She was asked why she had spoken to him about Wolverhampton when she was still an employee of the trust. She said that she had not given any patient identifiable information *“we were just chatting....I wasn’t violating any confidentiality rules that I was aware of.”*

16.39 She was asked why she had not raised the palliative care issues internally before speaking to the press, and she said she has raised them with Mr Mahmud at the time.

Comment

Mrs Haynes-Kirkbright had clarified in her first interview what she had said to the reporter about palliative care, which was indeed what she had spoken to Mr Mahmud about when she was working at the trust. In that same interview she had denied making the ‘new’ allegations reported in the Daily Mail.

16.40 The investigators tried to establish if she believed that the problems were continuing, to which she said she did not know:

“I hadn’t heard anything from anybody about it since I mentioned it to Sultan. I hadn’t heard anything else from that point, so I don’t know...”

16.41 They pointed out that if the coding problems had been corrected, and the journalist had been told this, the published story might have been different.

“Dr Odum: So given the sensitivities around palliative care coding and mortality and HSMRs and all the inferences that can be made from that, as were made about Stafford, when you were having that conversation with the reporter which included all of that, how did you think that was going to be interpreted by the reporter and then what could happen in terms of publicity?”

“Mrs Haynes-Kirkbright: I didn’t think anything would happen, you know.’ I didn’t think anything, I was just answering a question’ She explained that they were discussing the prevalence of palliative care miscoding in the Midlands ‘and was it like completely fabricated and I said well, no, I knew about Walsall and when I got here it was happening at Royal Wolverhampton and I don’t know, maybe it’s going on in Dudley, it is possibly happening in Burton....from what I have been told by somebody and what I have personally seen. So I think there is a lot of misunderstanding about how it is supposed to be used and people latched onto the idea that if a person was under a palliative care team they didn’t count towards the HMSR so it’s been used all kinds of ways all over the NHS....I wasn’t trying to make anyone look bad. I mean if that’s what you are getting at, I wasn’t trying to cause a ruckus for anybody.”

“Dr Odum: You were having the conversation, knowing how inflammatory, potentially, the information was that you were giving a reporter by the fact that you work here and what you were telling him...”

“Mrs Haynes-Kirkbright: But I had never talked to a reporter before, so I didn’t know. I asked my husband if the Daily Mail is a good paper and he said yes, it’s alright. I figured if I tell the truth they will print the truth, I didn’t know it was going to cause trouble.”

Comment

Dr Odum’s reaction is understandable. Mrs Haynes-Kirkbright’s unguarded description of the palliative care coding problems she found at the trust undoubtedly

gave the journalist the hook to hang his story on. It is also likely that her willingness to respond to questions, and the probable detail and complexity of her answers, would have created some confusion about what exactly she was alleging, and whether it amounted to allegations of dishonesty.

However, her answers in this interview and the earlier one of 26 March make clear that she was not alleging dishonesty in palliative care coding. It also seems clear that Mrs Haynes-Kirkbright was not whistleblowing on this point, whether or not the journalist thought she was. Her comments about problems in palliative care coding at the trust were being made in the context of an explanation of general problems in this area and how she had solved them at Mid Staffs.

16.42 The interviewers then go through again the allegations made by the Daily Mail to confirm what Mrs Haynes-Kirkbright had actually said and what had been “*manipulated or changed*” by the reporter.

16.43 She confirmed what she had said at her previous interview, with some elaborations.

16.44 A conversation took place about all the work done at the trust to improve and validate palliative care coding. Mrs Haynes-Kirkbright said she knew of some of this work and not other parts, but she was not aware of any improvements in coding because she had not done any audits before she went off sick.

16.45 She was asked about the findings of the first whistleblowing investigation report, which had been given to her a few days earlier:

“Mrs Haynes-Kirkbright ‘I still think it was a problem, but if you don’t think it’s a problem it’s not my business, so that’s okay.

Dr Odum: So you disagree with the outcome of the conclusions?

Mrs Haynes-Kirkbright...a lot hinges on whether they meant to do something or not...I think they did, you didn’t.

Dr Odum: Intent, yes.

Mrs Haynes-Kirkbright: You think there was no intent, I think there was; we just have to agree to disagree. I'm not the judge so it is not my business. I've done what I needed to do; I've said what I needed to say."

Comment

Mrs Haynes-Kirkbright had been clear in the first interview that she had been raising concerns about local coding agreements, explanations for atypical length of stay and lack of openness with the PCT on coding mistakes, which had benefited the trust financially. Here, she is clear that she is not satisfied with the way the trust dealt with her concerns. Despite this, the investigators do not appear to consider the need to look at her escalated concerns.

16.46 When we invited Dr Odum to comment on this point he explained that they had not reinvestigated the earlier matters because Mrs Haynes-Kirkbright had not escalated her concerns:

"Mrs Haynes-Kirkbright could have followed the escalation process available to her within the whistle blowing policy, however, she did not raise any new information regarding the concerns."

Comment

Dr Odum clearly did not recognise, even at this end stage, that Mrs Haynes-Kirkbright was escalating her concerns when she spoke to the reporter.

The change of lead investigator after some witnesses had been interviewed may have undermined the strength of the investigation.

16.47 There was then a conversation about the timing of the previous year's disciplinary process, and Mrs Haynes-Kirkbright was asked whether she had anything to add before the interview ended.

“Dr Odum: We’re going to wind up the meeting, so really it’s an opportunity for you to...”

Mrs Haynes-Kirkbright: Well, I didn’t know what you were going to ask me so there’s not a lot to prepare. I think I have repeated myself over and over, pretty much the same things I keep saying.

“Q: Yes, it’s just clarity...obviously we’ve interviewed other people and where there are potentially variations it’s important to make sure that we haven’t misheard or that you get an opportunity to clarify. That’s why we had the point of clarity earlier and obviously we haven’t previously why you spoke to the Press because what we were focusing on the first time we met you was, these are serious allegations, we really want to get them sorted in the public good. This was around, okay, now we know what those allegations are and we’ve investigated those, why did you do it in the way you did it? And that’s really been the purpose of today’.

“Mrs Haynes-Kirkbright: Well, see I didn’t intend to do anything. I was just cooking dinner and the guy showed up and he started talking and we just talked. That’s it. Didn’t mean nothing. I wasn’t trying to hurt anybody’s feelings.”

Comment

The investigators were focused on the palliative care allegations, and this comment by Mrs Haynes-Kirkbright seems consistent with her claim not to have been raising concerns on this issue.

The fact that Mrs Haynes-Kirkbright had not sought the interview would not undermine her right to any whistleblowing protection provided by the law.

16.48 Mrs Haynes-Kirkbright sent a long email to Dr Odum and his colleague on 27 August expanding and clarifying some of her evidence. She asked that it be included with the interview transcripts. His colleague responded and said that she would add the email as an addendum to the transcript from the meeting.

Comment

We found no evidence that this was done and the email is not listed in the appendices to the report.

Conclusion

16.49 The investigators did not look into the matters that Mrs Haynes-Kirkbright was still concerned about and had raised with the Daily Mail, but spent most of their efforts looking at matters that Mrs Haynes-Kirkbright denied having raised with the reporter. There was sense in this because the trust needed to be on sure ground in refuting the allegations made by the Daily Mail about palliative care and fiddling the death rate. By focusing on these aspects of the published article, the investigators ignored the matters on which Mrs Haynes-Kirkbright was actually whistleblowing.

16.50 The interviewers did not treat Mrs Haynes-Kirkbright fairly at the second interview because they gave her the impression that they still wanted to know about what she had said, whereas in reality they were trying to establish whether she was entitled to whistleblowing protection.

16.51 The interview with Mr Stringer was unprofessionally perfunctory.

16.52 The investigation was inadequate.

17 Second whistleblowing report

17.1 A 31 page report was then produced by Dr Odum and his HR colleague.

17.2 The introduction sets out the allegations contained in the Daily Mail email of 28 February 2013 and the article of 2 March 2013. It then extracts allegations that had not previously been made in Mrs Haynes-Kirkbright's email of 2 July 2012 or in her subsequent interview for the first whistleblowing investigation and puts them into a grid, reproduced at appendix H.

Comment

This grid is said to be of the allegations Mrs Haynes-Kirkbright was claimed to have made to the Daily Mail. However, allegation 6 is not one that the Daily Mail claims Mrs Haynes-Kirkbright made, the email of 28 February lists this separately as the journalist's own work, and this was acknowledged by the consultant while interviewing the information officer.

It is unfortunate that all allegations are not listed, as this might have revealed to the investigators the limits of their earlier investigations/and or revealed to those reading this report the limitations of them. For instance, the allegation of "Kevin Stringer, Finance Director, telling coders they would be costing the trust hundreds of thousands of pounds if they did not comply" was not raised with any of those interviewed, but that does not come through from this list.

17.3 Dr Odum disagrees with our comment:

"We think the approach taken was reasonable as it allows the discussion to be explored in more detail as it was important to be as clear as we could be that what Mrs Haynes-Kirkbright was telling us was truthful. We had only her account of the conversation with the reporter and no way of corroborating this except by interviewing the reporter, which we had no intention of doing."

Comment

It is not at all clear to us how the investigation was improved by attempting to establish what Mrs Haynes-Kirkbright acknowledged she had said, what she denied having said, and whether she was telling the truth in her denials without including these goals in the grid.

The lack of clarity here underlines the problems caused by not having any written terms of reference for this investigation.

Finding

F32 It would have been helpful if the grid had included columns setting out what Mrs Haynes-Kirkbright accepted or denied, and whether the investigators believed her denials. It would also have been helpful to have included in the grid the concerns raised with the journalist which were not being investigated, and the reason for this.

17.4 The report confirmed that Mrs Haynes-Kirkbright had explained to the investigators that a number of the allegations had been misreported or were stated out of context so the meaning was not as she had intended:

“Rather than redefining the allegations at this stage of the investigation the approach taken was that where there are inconsistencies between what the Daily Mail alleged and what Mrs Haynes-Kirkbright purported to have said this has been detailed within the body of the findings against each allegation.”

17.5 Dr Odum told us:

“The investigation clearly had to define what were Daily Mail allegations (and potentially journalistic licence) which needed investigating in their own right and those allegations which were Mrs Haynes-Kirkbright’s and also required investigating.

“Thus the investigation was into all new allegations irrespective of the primary source.”

Comment

The report is entitled ‘Whistle blowing investigation into allegations raised about the coding practices within the trust’.

This in itself creates some ambiguity, as one would expect a whistleblowing report simply to be about concerns raised by a whistleblower. However Dr Odum makes it clear that the report is actually concerned with the allegations made by the Daily Mail, but not including those that had been investigated in the first whistleblowing investigation.

In the interests of completeness and to avoid any suggestion of a cover-up, it made sense to deal with what the Daily Mail alleged as well as what Mrs Haynes-Kirkbright alleged. However, the two should have been clearly distinguished from the time Mrs Haynes-Kirkbright explained her position on the allegations attributed to her in her interview on 26 March. No inconvenience would have been caused because the investigation was in its early stages and only one other witness had been interviewed.

This decision caused considerable confusion, as can be seen in the analysis of the report’s findings below.

Furthermore, the decision not to look at the matters raised with the Daily Mail that had been previously investigated meant that matters on which Mrs Haynes-Kirkbright was whistleblowing to the Daily Mail were excluded.

Allegation 1

“That between 2009 and 2011 it coded everyone on the palliative contact list as:

- Palliative care deaths, even if they were not treated at the hospital as palliative care patients, (which is against national guidelines).”*

17.6 The investigators confirmed that:

“It appears that there was a period of time when deceased patients could have been assigned a Z51.5 code inappropriately in that although they were referred to the Palliative Care Team their subsequent treatment did not meet the criteria for the Z51.5 code.....Mrs Haynes-Kirkbright was asked to review and advise on the appropriateness of the mechanisms in place. Mrs Haynes-Kirkbright reviewed the process and although she found it inadequate was not against its continued use as long as additional measures were put in place to validate the data.”

17.7 Despite this evidence, they decided that the allegation was unfounded because ‘although there was a period of time when sub-optimal coding practices took place, this was not as detailed in the allegation and there is evidence that when the matter was identified robust validation processes to ensure this did not continue were put in place. It is also clear that the trust took an open approach to asking her for her views on this matter and indeed on a range of other coding matters’.

Comment

Whatever the detail of how it came about, it seems clear that the use of a list led to some patients being coded as palliative care patients when they were not, which was the claim Mrs Haynes-Kirkbright made. The facts that remedial action was taken and that the trust was open about its mistakes are irrelevant because Mrs Haynes-Kirkbright never claimed otherwise. The work that was done on palliative coding is set out in section 6 and reflects well on the trust.

17.8 The report also says evidence indicates that Mrs Haynes-Kirkbright was aware of the changes that were put in place to verify the use of the Z51.5 code, although she maintained that she had not received confirmation of this.

Comment

We have seen an email to Mrs Haynes-Kirkbright from March 2012 confirming the new arrangements for palliative care coding. However, Mrs Haynes-Kirkbright had been dealing with crises at work and at home before being off sick for two months with a stress-related condition and was then suspended from work so she had no access to the hospital IT system, including her emails since her departure in April 2012. It would have been sensible to have refreshed her memory with the March 12 email that brought her up to date on the new validation process, to see if she remembered it.

Allegation 2

“Hired an independent company in the summer/autumn of 2011 to advise coders on how to increase the Charlson Index - by adding causes of patients' deaths which were not written on doctors' notes.”

17.9 The report notes that Mrs Haynes-Kirkbright accepts she told the reporter about the work Newton was doing to improve the coders' understanding and use of the Charlson Index for co-morbidities but that she had denied having said that Newton advised coders to add causes of death that were not written on doctors' notes. They explained that she had told them that Newton had discussed with her the possibility of coding co-morbidities noted on previous admissions but not on the current admission, and that she had told them that this would not be acceptable.

17.10 They go on to say that: ‘The information given by Sultan Mahmud in his interview corroborates Mrs Haynes-Kirkbright's version of events and confirms that no inappropriate advice was given to coders and no inappropriate practice as described was implemented at the trust’ and that therefore the allegation was unfounded.

Comment

Simply finding that an allegation that Mrs Haynes-Kirkbright denied making was unfounded is insufficient and potentially unfair.

The investigators were investigating two matters; who had made the allegation and was it true?

Mrs Haynes-Kirkbright acknowledged making the first part of the allegation but not the second, and Dr Odum has told us that he accepts her account.

Finding

F33 The report should have made it clear that Mrs Haynes-Kirkbright had not made an unfounded allegation.

Allegation 3

“Sultan Mahmud, Assistant Director, coordinated a plan to bring down HSMR through coding.”

17.11 The investigators confirmed that Mrs Haynes-Kirkbright agreed she had said this, but that she had not suggested any impropriety.

17.12 Mr Mahmud confirmed that he was trying to bring down the HSMR but that improving the accuracy of coding was only a part of the plan.

17.13 The investigators interpreted the allegation as imputing impropriety and they found the allegation unfounded because the independent review of palliative care coding had found no evidence of wrongdoing.

Comment

As with the previous allegation, they have looked at what the Daily Mail alleged, not what Mrs Haynes-Kirkbright acknowledged having said. They give no view on whether they believed Mrs Haynes-Kirkbright's account or not, which would have been helpful.

The allegation was not published in the Daily Mail article but was in the email from the reporter.

Allegation 4

- “1. Headhunted Sandra Haynes-Kirkbright, who was behind improvement in HSMR figures at Mid Staffs, as Head of Clinical Coding and Data Quality in 2011 for an increased salary (almost double).*
- 2. Sandra Haynes-Kirkbright was hired to fiddle death rates*
- 3. Sandra Haynes-Kirkbright was suspended after refusing to take part in a cover-up/ suspended her, officially for swearing, after she suggested fraudulent activities were taking place in the miscoding of dead patients for financial gain.”*

17.14 The report sets out the evidence of Sultan Mahmud that although Mrs Haynes-Kirkbright had been encouraged to apply for the post, the recruitment process was genuine. They also quote a member of staff who had applied for the job and who felt the process had been genuine. They found that the suggestion Mrs Haynes-Kirkbright had been headhunted was unfounded.

Comment

They knew that Mrs Haynes-Kirkbright believed the recruitment process was a sham but in fact this allegation is not made in the Daily Mail article or the preceding email. Headhunting, in employment terms, does not necessarily denote choosing someone for a job without going through a proper recruitment process, which should always involve open and fair competition in the public sector. Executive recruitment agencies are often called head-hunters: if they are asked to deal with the process of appointing someone to a senior position they will contact people whose careers seem

to fit them for the post and invite them to apply for it. Any such individual, even if appointed through a proper process, may refer to themselves as having been headhunted.

We would have expected a senior HR employee, such as the investigator in this case, to have been familiar with this concept.

Mr Mahmud and Mr Stringer encouraged Mrs Haynes-Kirkbright to apply, so the basic claim that she was headhunted appears to have been correct.

17.15 The claim that she was offered almost double her Mid Staffs salary was also rejected, on the basis that she was being paid £47,000 at Mid Staffs and £54,475 at the trust.

Comment

There is some confusion about what Mrs Haynes-Kirkbright was actually paid at Mid Staffs, and how much was salary and how much overtime/bonus. However, it is clear that:

- *the trust did not consider it was paying her twice what she was getting at Mid Staffs*
- *Mrs Haynes-Kirkbright negotiated an initial salary rise of several thousand pounds above the initial offer.*

Paying Mrs Haynes-Kirkbright nearly twice her previous salary might be seen as evidence of improper behaviour. We found no evidence to support this allegation, though the willingness to agree to Mrs Haynes-Kirkbright's demand for a higher starting salary does show that the trust was keen to employ her.

17.16 The investigators found no evidence that Mrs Haynes-Kirkbright had been hired to ‘fiddle’ death rates. They commented that Mrs Haynes-Kirkbright denied in one interview having said this but in another seemed to agree that she had. They quoted an extract from her first interview in March 2013:

“Dr Odum: Okay, right the next bullet point down, ‘Sandra Hayes-Kirkbright was hired to fiddle death rates’.

Mrs Haynes-Kirkbright: I did not say that. Actually I was surprised when I saw that. I said they wanted me to fix the HSMR, they wanted me to ...fix the coding and I explained to him the word fix is in the context of correct or repair not as in fiddle and I explained that at least twice that it was to fix it, it even says it in the article, they wanted me to fix it but they wanted me to fix it correctly, you know which I think puts context to the way I was using the word fix, he even wrote that down and still used this but he was absolutely determined that he was going to get a death rate article. I did say that you hired me to fix it but I believe I made the context quite clear as to what I meant.

Dr Odum: Fix correctly as opposed to fix fiddle?

Mrs Haynes-Kirkbright: Yes, that that was what I was given ... the task I was given was to fix the coding and improve the mortality to whatever level it should be at.”

17.17 They commented that Mr Mahmud agreed with this and they therefore accepted that this was an accurate description of what Mrs Haynes-Kirkbright had been asked to do and there was no evidence that she had been brought in to fiddle death rates.

17.18 They then went on:

“It should however be noted that she gave a different account to this in her second interview during as to how she would define fix in the context of her interview with the Daily Mail, see extract from her second interview below:

Mrs Haynes-Kirkbright: I said that they wanted me to fix it but they didn't want me to fix it correctly.

Q: I think it's the fact that you ... Fix a figure meaning 'repair' followed by 'but not in (the right way', is slightly more towards fiddle than fix, as in get it right, so, to me ... So you said, 'I was asked to fix the figures but not fix it correctly'.

Mrs Haynes-Kirkbright: It's like you hired me but that wasn't what you wanted.

Q: And did you explain what it was we did want?

Mrs Haynes-Kirkbright: That's what that whole other whistleblowing thing was about. They wanted me to do things that I didn't think were exactly ethical and I didn't want to do them."

Comment

The investigators made a decision about whether Mrs Haynes-Kirkbright was telling the truth when she denied having made this claim. However, their reasoning is faulty because the context of this second extract is different from the context of the first.

17.19 The discussion about fixing and fiddling in the first extract relates to the quote in the article that Mrs Haynes-Kirkbright *"was hired to fiddle its shocking death rates"*.

17.20 The second extract relates to the quote in the article that Mrs Haynes-Kirkbright was *"asked to 'fix' the figures"*.

17.21 Her comments make clear that in this second extract she was not alleging deliberate wrongdoing regarding HMSR but was accusing the trust of asking her to miscode for PbR purposes.

Comment

We do not see how the investigators could reasonably use the different extracts to show that Mrs Haynes-Kirkbright was being untruthful in what she said.

17.22 The report went on to say:

“The initial email received by the trust from the Daily Mail (see appendix 1) states this allegation clearly, therefore it appears likely that it was an allegation that Mrs Haynes-Kirkbright made to the Daily Mail and was not as she initially claimed a matter of misinterpretation by the Daily Mail reporter of her comments.”

Comment

In fact, the email contains no reference to Mrs Haynes-Kirkbright being hired to fiddle the trust’s death rates. It contains several allegations about miscoding for gain, which Mrs Haynes-Kirkbright never denied making.

The investigators used comments and allegations about coding for gain to find that Mrs Haynes-Kirkbright had said that she had been hired to fiddle the death rates.

Finding

F34 This is unsatisfactory.

17.23 They considered unfounded the allegation that Mrs Haynes-Kirkbright was suspended after refusing to take part in a cover-up or that she was suspended, officially for swearing, after she suggested that dead patients were being fraudulently miscoded for financial gain.

17.24 They acknowledged that Mrs Haynes-Kirkbright denied having said she had been asked to take part in a cover-up and had not said that the miscoding for financial gain was in relation to dead patients. *“She did however maintain that she believed that her suspension was directly as a result of her raising concerns regarding coding practices that were out with national guidance.”*

17.25 They accurately describe the circumstances known to them in which Mrs Haynes-Kirkbright had been suspended, and go through the outcomes of the various investigations,

to show that Mrs Haynes-Kirkbright's concerns had been proved groundless. They concluded that it was technically possible for Mrs Haynes-Kirkbright to have been suspended for raising her PbR concerns because she had done this 'informally' before the coders raised their grievance.

17.26 However, they claimed that the trust had already addressed these concerns before she raised her formal whistleblowing complaint in July 2012. Also the majority of the concerns she raised as:

"... part of her whistleblowing in July 2012 were already in the public domain as part of the PbR report published in May 2012. This therefore raises doubts about why the trust would want to go to such lengths to discredit/silence Mrs Haynes-Kirkbright through suspension. The timeline also indicates that Mrs Haynes-Kirkbright only raised the allegation, that attitudes had changed towards her after the bullying and harassment concerns had been raised against her. In addition, the trust's first response to addressing the concerns raised against Mrs Haynes-Kirkbright was to offer a pragmatic approach to resolving the matter expediently by offering Mrs Haynes-Kirkbright the chance to accept responsibility for her actions, commit to address the issues and accept a final written warning. If Mrs Haynes-Kirkbright had accepted this offer then suspension would have been avoided. It therefore appears that the allegation is unfounded."

Comment

It is not accurate to say 'the majority of the concerns she raised as part of her whistle blowing in July 2012 were already in the public domain as part of the PbR report published in May 2012'.

Her main concerns, relating to the trust's approach to PCT requests for information, to correcting systematic miscoding and to withholding information from the PCT, were not mentioned in the PbR report.

It is not correct that she complained that attitudes had changed towards her only after the coders raised their grievance. The evidence of Mr Stringer, Mr Mahmud and some coders in the grievance investigation shows that Mrs Haynes-Kirkbright was

open about the difficult relationship that she had with others in relation to these PbR issues.

It is correct to say that if Mrs Haynes-Kirkbright had accepted the final written warning offered on 24 April she would not have been suspended. However, to then assert that this shows no connection between her raising PbR concerns and being suspended seems simplistic.

This is particularly so because the HR interviewer was present when Mrs Harnin told the grievance investigators about the meeting that Mr Loughton called on 20 April 2012 (see section 7) where these allegations by Mrs Haynes-Kirkbright were expressed as a significant driver for the 24 April meeting.

Allegation 5

“Every rule in the book was broken to try to improve mortality rates - without saving lives.”

17.27 The report confirms that Mrs Haynes-Kirkbright had said that “every rule in the book was broken” but had not said that this was “without saving lives”. She said it referred to the local coding agreements.

17.28 The report finds no evidence to support the allegation ‘as reported’, and sets out the evidence of mortality reviews etc. to support this finding.

Comment

The finding relates only to what the Daily Mail claimed Mrs Haynes-Kirkbright had said. It does not deal with her evidence about what she said.

Finding

F35 If the investigators did not believe Mrs Haynes-Kirkbright, they should have said so and explained why. If they did believe her, they should have made a finding in respect of her assertion that *“they were breaking every coding rule in the book. I was talking about that large volume of coding agreements.”*

Allegation 6

“The figures show the impact this had. HSMR went down from 115 in 09/10 to 100 in 2011/12. The current level is 98.32. Meanwhile, in 2009, the percentage of patients dying while under palliative care was 2.19 per cent. By 2011, this had risen to 20.3 per cent).”

17.29 The investigators found that this allegation was unfounded.

Comment

Mrs Haynes-Kirkbright did not make this allegation and the investigators knew this. The consultant said it was not an allegation when he raised the matter with the information officer. Furthermore, they knew that Mrs Haynes-Kirkbright had had an unexpected meeting with the journalist for which she had had no opportunity to prepare. She would not have had these facts and figures at her fingertips, and there is no suggestion that the information had come from Mrs Haynes-Kirkbright.

Finding

F36 The investigators should have made it clear that this allegation had not been made by Mrs Haynes-Kirkbright.

17.30 The report went on to consider Mrs Haynes-Kirkbright's reported remarks that she said "*she wouldn't have her dog treated at the hospital*" and that "*patient care was as bad or worse than Stafford*".

17.31 In both cases Mrs Haynes-Kirkbright had acknowledged making similar but not the same remarks, and put them in context to explain why she had done so.

17.32 On the first remark the investigators said there was:

"...no evidence to suggest that there were any underlying concerns regarding patient care or quality of treatment. Mrs Haynes-Kirkbright confirmed that the comment was made as a direct result of her feelings towards the trust in light of the way she felt she had been treated as an employee."

Comment

It would have been helpful if the report had given her explanation a little more fully:

"...what I actually said was that I would not send a dog I did not like up there. But what we were talking about was, I told him that I would not want to be treated here because I did not think I had been treated fairly from an employment point of view, and so when the doctors are carrying on at me to have my eyes checked for diabetic retinopathy, I went where do you get that treated? At Wolverhampton? No I would not come here I wouldn't send a dog up here."

17.33 The investigators say they cannot determine if Mrs Haynes-Kirkbright made the second remark as reported or if she said, as she claimed, that she had simply said that patient care was no better and no worse than at Stafford.

17.34 The report then goes on to make findings on the way the concerns were raised.

17.35 It gives an accurate précis of Mrs Haynes-Kirkbright’s evidence about how she came to be interviewed and how she had come to speak about her work at the trust in the way that she had. It said:

- that she had been given copies of the trust’s disciplinary and media policies in 2012 which outline the responsibilities of employees in respect of confidentiality and disclosure to the media
- that she had not sought to justify her actions in talking to the press in the context of the public having a right to know or in respect of believing the trust was not taking her concerns seriously
- that she was unclear whether she was raising concerns that had not been adequately dealt with or just chatting.

Comment

Most of this is accurate but the last point is not. She was not asked her motivation for raising the matters that had been dealt with in the first whistleblowing investigation. In fact, she makes a couple of references to this: “I said I’d been suspended at the same time we were having all these other conversations about the money and the processes and the things that I didn’t think were legitimate and that it just looked really fishy” and “I’ve done what I needed to do; I said what I needed to say”. The investigators did not follow up these comments.

17.36 The final finding was that:

“It appears that she had a general conversation with the reporter on a range of topics rather than any intent to raise matters into the public domain in order to ensure that they were appropriately addressed. There were also a range of topics that she discussed with the reporter about trust business that she did not actually have concerns about, e.g. role of Newtons, role of Sultan Mahmud.”

Comment

The investigators asked Mrs Haynes-Kirkbright questions relevant to establishing whether she was protected by whistleblowing legislation; for instance asking her if the journalist had paid her; how the conversation had turned from Mid-Staffs to the trust; whether she thought she was whistleblowing or 'just having a chat; and whether she was reporting matters that she knew had already been properly resolved.

However they did not follow up Mrs Haynes-Kirkbright's comment that the trust "wanted me to do things that I didn't think were exactly ethical and I didn't want to do them" nor did they explore why she had raised this with the reporter.

17.37 The report made a finding on each of the allegations made by Mrs Haynes-Kirkbright or the Daily Mail. It then had a section headed 'Manner in which concerns were raised'. At the time the report was written, for a disclosure to be protected under whistleblowing legislation it had to be made in good faith, and if it was made externally, e.g. to a journalist, the person making the disclosure has to have some substantive basis for his belief; and the concern should have been raised internally first.

17.38 This section of the report did not refer specifically to these requirements, but its findings were relevant to them, concluding that:

"there was a lack of clarity regarding the majority of the matters that she discussed in respect of whether she was raising concerns that she felt had not been adequately addressed by the trust or was in fact just chatting to him about some of the operational concerns that she had witnessed at the trust.

"She did not justify her actions in respect of talking to the press in the context of the public having a right to know or in respect of believing that the trust was not taking her concerns seriously.

"When asked why she had not raised some of the concerns previously within the trust she stated that the first whistleblowing allegations had been focused on financial dealings and as she had already mentioned the palliative care coding

concerns with Mr Mahmud so she figured that the people who needed to know already did.

17.39 The summary of the report then raised concerns that Mrs Haynes-Kirkbright had not been acting in good faith.

Comment

These findings and this summary clearly cast doubts on Mrs Haynes-Kirkbright's entitlement to protection under whistleblowing legislation. We do not consider that Mrs Haynes-Kirkbright's evidence justifies such conclusions. The interviewers do not explain why they reject Mrs Haynes-Kirkbright's assertion that the concerns she raised had previously been raised internally, nor do they explain why they did not respond to Mrs Haynes Kirkbright's evidence that she had talked to the journalist about her perception that they had "heavily pressured to do things I didn't think were right regarding the financial position of the trust".

17.40 The summary found no evidence to support Mrs Haynes-Kirkbright's allegations or those made by the Daily Mail, where different.

17.41 She had not raised some of these matters before, so it queried her motivation in speaking to the press. It recommended that:

"...the trust should investigate whether it was reasonable of her to bring these matters to the Daily Mail rather than the trust, especially as she must have known that such a discussion would have a damaging impact on the trust."

17.42 The report did not cover all the new allegations. No explanation is given for this.

Conclusions

17.43 The failure to look at all the new matters and the reliance on the inadequate first whistleblowing investigation and its conclusions undermine the findings in the

investigation.

17.44 We consider that the evidence did not support the findings that Mrs Haynes-Kirkbright's "new" allegations were unfounded.

17.45 An explanation should have been given for failing to look at the concerns Mrs Haynes-Kirkbright raised with the Daily Mail about the way the trust dealt with coding irregularities and queries on coding from the PCT.

17.46 The investigation was not robust, in that it did not look into matters that had previously been investigated, despite Mrs Haynes-Kirkbright's evidence that she was not satisfied with the outcome of the earlier investigation. This lack of rigour is reflected in the report.

18 Disciplinary investigation

18.1 The second whistleblowing report was not revealed to Mrs Haynes-Kirkbright but on 9 December 2013 she received a letter from Mr Loughton (appendix I) saying that he had received the report, that there was no evidence to support her allegations and that he therefore found the allegations unfounded: *“There are, however serious concerns arising out of the manner of your discussions and disclosures to the press that require investigation and as such I have instigated an investigation in accordance with the trust’s disciplinary policy.”*

18.2 He then set out the alleged breaches of the trust’s disciplinary, raising concerns at work and media policies that Mrs Haynes-Kirkbright had committed, and told her that Mrs Espley would be the investigating officer, supported by the HR employee who had supported the leads in the other investigations.

18.3 He said that any investigation would also consider whether there was a loss of trust and confidence in her by the trust.

Interview of Mrs Haynes-Kirkbright on 7 January 2014

18.4 She was asked whether she knew that her conversation with the Daily Mail reporter was a breach of the trust’s media policy, and she said she did not; that she had not read the policy, and that shortly after her arrival at the trust she had been told that that there was nothing to stop her talking to a Private Eye journalist about Mid-Staffs. She also said that she had not read the disciplinary policy and had not used it while working at the trust.

18.5 She was asked how the interview with the Daily Mail journalist occurred, and explained it as she had in her interview on 22 August.

18.6 She was asked about how the conversation turned to the trust, and explained as before, but more clearly and fully.

18.7 She also explained more fully how she came to tell him about her PbR concerns.

18.8 She confirmed that she had not spoken about the palliative care problems in her first whistleblowing interview because she had been told to stick to what she had raised in her email of 2 July.

18.9 She was taken through the allegations in the Daily Mail email of 28 February. She answered in accordance with her previous interviews. For the first time she was asked about the allegation that Mr Stringer had told coders they would be costing the trust hundreds of thousands of pounds if they did not comply. She explained that she had told the reporter that Mr Stringer had said this to her when she was refusing to create explanations for atypical length of stay. She further explained that she had not alleged that Mr Stringer had said this to coders.

18.10 She confirmed that she had spoken to anyone she could get to listen about her concerns on coding, including the Audit Commission about the local agreements, the board chair, Mr Mahmud, and Dr Odum.

18.11 She was asked about her alleged comments about not sending a dog to be treated at the trust and that the trust was as bad, or worse, than Mid-Staffs and she gave the same responses as before, with more detail and context.

18.12 She was asked how the journalist got the names and job descriptions of Mr Stringer and Mr Mahmud. She denied having named them but then accepted that she might have mentioned them in passing which would have allowed the journalist to get their full names and job descriptions from the trust website.

18.13 The HR investigator pointed out that in an earlier email Mrs Haynes-Kirkbright had said that she had not named any individuals, and Mrs Haynes-Kirkbright said that she meant patients, not colleagues:

“They are human beings that I work with, they are not patients, they are not subject to confidentiality. In the same way as the general public doing their jobs, Joe Bloggs, whatever...I said ‘well, I talked to him, I whistleblow to the finance director, the associate director, these guys, that guy. I told them and they just said don’t worry your little head about it.”

Comment

Here is more evidence, not responded to, that Mrs Haynes-Kirkbright had raised the PbR matters with the reporter because she was not satisfied with the way her original concerns had been dealt with.

18.14 She confirmed that she never knew if palliative care coding was accurate after changes were brought in as she never had a chance to audit:

“That is the whole problem here at Wolverhampton in that they would leave me with a sort of answer and then never hear anything again.”

Comment

This exchange does not make clear whether she was asserting deliberate wrongdoing in coding palliative care.

This meeting was set up and conducted in accordance with the trust’s Disciplinary Policy and procedures. The transcript shows the range of topics covered and the quality of Mrs Haynes-Kirkbright’s replies in response to questions from the investigating officer. Mrs Espley was at pains to clarify at the start of the meeting all the allegations against Mrs Haynes-Kirkbright, and the interview appears to have been conducted amicably and professionally.

By the time of this interview the investigators of the grievance and whistleblowing investigations had all satisfied themselves that Mrs Haynes-Kirkbright had raised unsubstantiated concerns; behaved badly to her team; and breached the terms of her contract by talking to the press. The same HR employee was an investigator in all those matters as she was in this. It is unsurprising that the interviewers did not probe answers by Mrs Haynes-Kirkbright that contradicted the earlier findings.

Conclusion

18.15 The interview with Mrs Haynes-Kirkbright was reasonably thorough and the right questions were asked. It would have been better if some of her answers had been probed to get a clearer understanding of what she was trying to convey.

Report of disciplinary investigation

18.16 The report into the disciplinary investigation by Mrs Espley was finalised on 20 February 2014. Its terms of reference were:

“...to fully understand the facts pertaining to the manner of the disclosure of information that Mrs Haynes-Kirkbright made to the press. The investigation considers whether Mrs Haynes-Kirkbright has acted in breach of a number of RWT’s policies and procedures, namely: Disciplinary policy and staff rules relating to Standards of behaviour and conduct; Raising concerns at work policy and Media relations policy.”

18.17 In summary, the allegations were that Mrs Haynes-Kirkbright had behaved recklessly or negligently in disclosing information to the Daily Mail and in expressing opinions that were untrue and damaged the trust’s reputation, and that in doing so she had breached trust rules on confidentiality and relations with the media. The trust would also consider whether because of this it had lost trust and confidence in Mrs Haynes-Kirkbright.

18.18 The methodology was to accept the findings of the first and second whistleblowing reports. Mrs Haynes-Kirkbright was the only person interviewed.

Comment

On the assumption that the previous investigations had also been thorough and fair, and that the conclusions were accurately derived from the evidence, the investigator was entitled to rely on those earlier investigations. It was reasonable to take further

evidence only from Mrs Haynes-Kirkbright, rather than reinvestigating the earlier matters.

18.19 Following her interview with Mrs Haynes-Kirkbright and the desktop documentation review she had conducted, Mrs Espley produced the disciplinary investigation report dated 20 February 2014. It concluded that, in respect of all the allegations, sufficient evidence existed of a case to answer and that the allegations should be considered by a disciplinary panel - the next stage in the disciplinary procedure.

18.20 The report recommends *“the disciplinary panel would benefit from a smaller number of reframed allegations broken down into specific questions that the disciplinary panel needed to consider”*.

18.21 The report goes on to propose the wording for these reframed allegations, and to suggest an additional area, outside the original allegations, for the disciplinary panel to consider whether or not Mrs Haynes-Kirkbright was a whistleblower acting in good faith.

Comment

It is generally not good practice to make significant changes to disciplinary allegations against an employee, who has the right to a clear explanation of what he/she is alleged to have done. This clarity would be at risk if this changes significantly as the process goes on. Mrs Haynes-Kirkbright would have been entitled to challenge the reframed allegations before the next stage of the process if she felt they were not appropriate. The process did not get that far.

18.22 The report found evidence of a case to answer on all the allegations, which should be considered by a disciplinary panel, and that a panel should also consider whether trust and confidence has broken down with Mrs Haynes-Kirkbright as a result both of these issues and of the findings of the investigation into the coders' grievances.

Comment

The report contains a careful analysis of Mrs Haynes-Kirkbright's evidence in relation to each of the allegations, identifying admissions, denials and inconsistencies. It did not identify any weaknesses or inconsistencies in the two whistleblowing investigations, possibly because Mrs Espley did not look for them.

18.23 The analysis of allegation 1 seems fair and balanced but in concluding that Mrs Haynes-Kirkbright was naïve, reckless or negligent says that she spoke to the press 'without having raised all or any of these matters with her employer'. In fact, she had previously raised all these matters, other than matters of opinion although not all had been covered by the previous investigations.

18.24 The report says that Mrs Haynes-Kirkbright was inconsistent in saying she "*didn't expect her comments to be published, which is at odds with her assertions that she was whistleblowing to the press and just wanted the truth to be known.*" This seems to overlook that Mrs Haynes-Kirkbright was consistent, when asked, in saying that she wanted her PbR allegations to be published. She also explained that she thought her discussion with the journalist about death rates was background information, not whistleblowing.

18.25 One of the purposes of the investigation was to consider if Mrs Haynes-Kirkbright had breached the raising concerns at work policy, but the report makes no finding on this point, nor is the policy mentioned in the body of the report.

18.26 Mrs Espley made clear at interview with us that much of the production of this report had been driven by her HR colleague and the trust's lawyers. She has relatively little experience of senior staff disciplinary investigations (none in her three years at the trust, and her last one elsewhere in 2008/2009), and she said she has had limited experience of handling whistleblowing cases.

Comment

The way the terms of reference were set out, the way the report was written, and the way the report recommended reframing the allegations for the disciplinary hearing suggest a praiseworthy determination to make this report as comprehensive as possible.

18.27 Ms Espley confirmed at interview that her HR support had drafted the document and that the trust's lawyers had been involved in this process. She told us *"I didn't personally sit and write all the investigation document"* and *"when the draft came back I went through it line by line, made a number of amendments to the draft, and I stand by that final version. I may not have drafted the first draft but I absolutely signed off the final version"*. She was clear that she considered her role to deal only with the conduct and behaviour allegations against Mrs Haynes-Kirkbright, and that she had tried not to stray into the whistleblowing allegations.

18.28 In recommending that the question of trust and confidence be considered by a disciplinary panel, Mrs Espley relied not only on Mrs Haynes-Kirkbright's contact with the Daily Mail but also on the outcome of the investigation into the coders' grievance and her allegations against colleagues of fraud. The coders provided evidence in support of their grievance that would justify initiating disciplinary proceedings against Mrs Haynes-Kirkbright.

Comment

The failure to investigate Mrs Haynes-Kirkbright's concerns about the coders and the failure to investigate properly her concerns about possible fraud meant that a disciplinary hearing only into the matters investigated in the grievance and second whistleblowing investigations would be unlikely to do justice to Mrs Haynes-Kirkbright.

Insofar as the question of trust and confidence derives from the contact with the Daily Mail, this finding also becomes unreliable.

Conclusion

18.29 The report is clear, well organised, and comprehensive. It goes step by step through the allegations against Mrs Haynes-Kirkbright and sets out the investigating officer's findings on each.

18.30 It does not revisit the conclusions of the earlier investigations. It follows that as those investigations were flawed as set out above, the conclusions of the report cannot be relied upon.

18.31 Some of the findings did not reflect the evidence.

19 Events following conclusion of disciplinary investigation

19.1 On 27 February 2014 an email was sent to Mrs Haynes-Kirkbright with a letter from Mrs Gwen Nuttall, chief operating officer, attached. The letter, dated 28 February 2014, confirmed that the investigation process was complete. Based on the findings from the two disciplinary investigations the decision was made to hold a disciplinary hearing. This was arranged for 18 March 2014.

19.2 On 3 March 2014 a second article appeared in *The Daily Mail*. The article included extracts of the letter sent to Mrs Haynes-Kirkbright on 27 February and alleged that Mrs Haynes-Kirkbright was facing disciplinary action as a result of whistleblowing.

19.3 Jeremy Hunt, secretary of state for health, made a public announcement calling for the matter to be formally investigated. On the same day Mr David Flory, chief executive of the Trust Development Authority, wrote to Mr Loughton, chief executive of the trust, instructing him to postpone any disciplinary actions pending a review of the circumstances surrounding the case.

19.4 On 5 March 2014 Mr Loughton sent Mr Flory a summary report outlining the details of the case and a chronology of events to date.

19.5 On 7 March 2014 Verita were commissioned to carry out this independent review.

20 Did the trust follow due process with regards to its policies and procedures and the legislation?

20.1 Since joining the trust on 17 October 2011, Mrs Haynes-Kirkbright's various issues were handled under a wide range of HR policies. Most of the casework was managed under the following:

- HR03 - Disciplinary policy
- HR06 - Grievance policy
- HR15 - Prevention of harassment and bullying policy
- HR16 - Raising concerns at work - whistle blowing policy
- No formal action with Mrs Haynes-Kirkbright was taken by the trust under HR19 - Capability policy, although we have observed (see section 7) that it should have been used early in Mrs Haynes-Kirkbright's career at the trust to address issues concerning her managerial competence.

20.2 Mrs Haynes-Kirkbright's sickness absence was briefly dealt with in July 2012 under HR13 - Management of sickness absence policy but no further action under this policy ensued. We have therefore not reviewed it.

20.3 We have reviewed the policy documents shown above to assess whether they are fit for purpose and meet generally accepted standards in the NHS and beyond. All the policies are 'sponsored' by the executive director of HR and are subject to the trust's normal document control arrangements to ensure that they are regularly reviewed and kept up to date. Copies of all the documents were supplied by the trust.

20.4 HR03 - Disciplinary policy was due for review in May 2013. The policy is clear and meets commonly accepted standards for such policies. Its attachments, detailing the various procedures for investigating and handling disciplinary cases, are comprehensive and provide guidance to support delivery of effective case management.

20.5 HR06 - Grievance policy was due for review in May 2013. The policy is clear, meets commonly accepted standards and its attachments contain guidance to enable effective management of grievances.

20.6 HR15 - Prevention of harassment and bullying policy was due for review in May 2014. The policy is clear and comprehensive, meets commonly accepted standards, and sets out procedural guidance to allow for effective management of alleged harassment and/or bullying.

20.7 HR16 - Raising concerns at work - whistle blowing policy is due for review in November 2014. We think the trust should have brought forward this review in light of a number of significant developments in recent months. As things stand, the policy is not up to date and does not appear fit for purpose.

20.8 We are aware that a number of other NHS bodies have already reviewed their policies in light of two key developments. First, the Francis report, which addressed a number of issues relevant to raising concerns at work. Second, the impact of several important new provisions that changed the Enterprise and Regulatory Reform Act 2013 as it relates to public interest disclosures. These provisions removed the requirement for a whistleblower to demonstrate “*good faith*” in raising concerns, so an employee now need show only that he/she held a reasonable belief about the alleged wrongdoing. Employees now need to demonstrate clearly that he/she believed that a disclosure would be in the public interest. The new provisions extend the vicarious liability of employers for the actions of their employees in the event that a whistleblower is harassed or victimised, and make individuals personally liable in such circumstances. They are therefore at financial risk if a whistleblower wins an employment tribunal claim. Finally, the new provisions make changes to the definition of “*workers*”. Some NHS bodies have responded by adding non-executive directors and volunteers to the list of people the policy covers. The new provisions apply to disclosures made on or after 25 June 2013. Mrs Haynes-Kirkbright’s disclosures pre-date this, so it would still be legitimate for the trust to seek to establish that she had acted in good faith in making them.

20.9 HR19 - Capability policy appears to be overdue for review, having been scheduled for this in May 2012. The policy is clear and covers the main issues involved in managing capability. It contains procedural guidance in its attachments to enable effective management of capability cases.

Comment

The HR department in the trust is responsible for the trust's HR policies. However, most of the policy documents we saw are overdue for review. Our assessment of their fitness for purpose suggests that most are still legal and adequate for the purposes of dealing fairly and consistently with the issues they cover.

The exception is HR16 - Raising concerns at work - whistle blowing policy. This needs to be reviewed as a matter of urgency because it does not reflect the law.

20.10 We comment above in detail on instances where we consider the trust failed to follow its own processes or failed to make the best decisions in the cases under review. The trust made a bad start in seeking to deal pragmatically with the complaints against Mrs Haynes-Kirkbright by her team. Mr Stringer took no formal action under the capability policy before he received this complaint to address any performance or behaviour issues Mrs Haynes-Kirkbright was exhibiting. Neither did he use the raising concerns at work - whistle blowing policy to treat as whistleblowing any of the miscoding issues she raised. These failures to act promptly under the appropriate procedures were compounded by an ill-considered attempt to reach a compromise with Mrs Haynes-Kirkbright that ultimately led to her adverse reaction on 2 July 2012.

20.11 Mr Stringer offered this compromise knowing it was out of process. We think not enough thought was given beforehand to analysing the team's complaints and separating them into issues to be dealt with properly under capability and disciplinary policies. The opportunity to start the formal processes correctly was deliberately not taken. It became clear from evidence we gathered that the imperative to deal expeditiously with Mrs Haynes-Kirkbright came directly from the chief executive, who wanted to prevent her saying anything about the coding issues to officials from Monitor. We inferred that most of the adverse reaction from Mrs Haynes-Kirkbright in early July 2012 stemmed directly from the way the trust treated her on 24 April.

20.12 When it became clear that Mrs Haynes-Kirkbright would not accept the compromise offer, the trust belatedly set about dealing with the growing list of cases it now had to manage. These processes would include investigating the complaints against Mrs Haynes-Kirkbright by her team and dealing with her response. The trust would have to deal with

Mrs Haynes-Kirkbright's allegations that Mr Stringer, Mrs Harnin and the staff side union representative had treated her unfairly and that she believed she was being set up to be dismissed. The trust would also have to address the formal allegations that Mrs Haynes-Kirkbright had made around the inappropriate coding practices.

20.13 The trust decided to investigate the staff complaints and Mrs Haynes-Kirkbright's allegations about trust management's behaviour towards her as potential bullying and harassment, and told Mrs Haynes-Kirkbright that they would be investigated under the procedures in the disciplinary policy. This investigation was set up appropriately under its terms of reference but we think the trust again missed an opportunity to separate the complaints about Mrs Haynes-Kirkbright's managerial competency from those that alleged intemperate behaviour. We say above that issues of alleged incompetence should have been investigated and addressed under the capability policy.

20.14 The trust decided that a separate investigation would be conducted under the trust's raising concerns at work - whistle blowing policy. This investigation would address Mrs Haynes-Kirkbright's whistleblowing allegations. This was the correct decision, and this investigation was set up with appropriate terms of reference.

20.15 We also comment above about the trust's handling of the second whistleblowing case and the final disciplinary case against Mrs Haynes-Kirkbright.

Conclusions

20.16 The trust's HR policies we looked at as part of this review are generally fit for purpose. However, some have passed their review date and should be reviewed as soon as possible.

20.17 The trust's whistleblowing policy does not reflect changes in the law and practice and is due for review in November 2014. The policy is out of date and does not appear to be fit for purpose.

21 Was Mrs Haynes-Kirkbright protected under PIDA?

21.1 We considered whether Mrs Haynes-Kirkbright made a protected disclosure under the Public Interest Disclosure Act 1998 (PIDA), and whether she is entitled to its protection. Our review does not seek to be a definitive legal analysis because the costs of engaging lawyers to produce the review would have been significant. Rather, we sought to evaluate the issues from an experienced managerial perspective.

The Public Interest Disclosure Act 1998 (PIDA)

21.2 PIDA came into force on 2 July 1999. It protects whistleblowers from detrimental treatment by their employer and allows them to bring action against their employer if they are victimised as a consequence of their whistleblowing. It protects employees who make disclosures of certain types of information from retribution such as dismissal or being passed over for promotion. Where such retribution takes place, the employee may bring a case before an employment tribunal, which can award compensation. The provisions of PIDA form part of UK employment legislation under the Employment Rights Act 1996.

21.3 The main consideration for an employee making a disclosure of information is to ensure that he/she does so in a way that ensures he/she receives the protection from employer reprisal or retribution that PIDA affords. In order to achieve this, an employee's disclosure must meet several criteria. For the legal protection to apply, the information revealed by the whistleblower must concern specific wrongdoing as set out in the act. The disclosure must also be made in one of the ways set out in the act.

21.4 Information disclosed by a whistleblower must allege one or more of the following issues:

- “(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.”

21.5 Disclosures may be made within the organisation. A qualifying disclosure is made in accordance with PIDA if the employee makes the disclosure, in good faith, to his/her employer. Essentially, this means that the disclosure is made honestly so that the concern can be addressed. An employee who in accordance with a procedure whose use by him is authorised by his employer makes a qualifying disclosure to a person other than his employer is to be treated for the purposes of PIDA as making the qualifying disclosure to his/her employer. The authorised procedure in this case is the trust’s policy, HR 16 - Raising concerns at work - whistle blowing policy. The requirement for an employee to make a disclosure “*in good faith*” was omitted by the Enterprise and Regulatory Reform Act 2013 and is not applicable to disclosures made on or after 25 June 2013. Mrs Haynes-Kirkbright’s disclosures pre-date these changes, and it is appropriate for her actions to face a “*good faith*” test.

21.6 A qualifying disclosure is made if it is done in the course of obtaining legal advice. Disclosures are also qualified if they are made in good faith to a prescribed person. Qualifying disclosures may also be made in other circumstances, particularly if the employee reasonably believes that the evidence of the wrongdoing might be destroyed in the event of a disclosure to the employer. Employees making disclosures are required to “*reasonably believe*” that the information disclosed, and any allegations in it are substantially true. They must not make disclosures for the purposes of personal gain.

21.7 Disclosures may be made outside the organisation. Wider disclosures (e.g. to the police, the media, MPs, consumers and non-prescribed regulators) are protected if they are reasonable in all the circumstances and not made for personal gain. A wider disclosure must also fall within one of four broad circumstances to trigger protection. These are that (a) the whistleblower reasonably believed he would be victimised if he had raised the matter internally or with a prescribed regulator; or (b) there was no prescribed regulator and he reasonably believed the evidence was likely to be concealed or destroyed; or (c) the concern had already been raised with the employer or a prescribed regulator; or (d) the concern was of an exceptionally serious nature.

21.8 The provisions of PIDA cover employees, workers, contractors, trainees, agency staff and every professional in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply to this act.

Mrs Haynes-Kirkbright's actions in raising concerns at work - October 2011 to July 2012

21.9 Mrs Haynes-Kirkbright said she began raising concerns within weeks of starting her job at the trust on 17 October 2011. There is good evidence that Mrs Haynes-Kirkbright had discussed in one-to-one meetings with Mr Stringer concerns she had about coding practices in the trust that were outside national guidance, and about information-sharing with the PCT, which she felt, was potentially fraudulent. Mrs Haynes-Kirkbright said she identified these inappropriate practices shortly after taking up her post and drew them to the attention of her management colleagues. She said she and Mr Stringer had heated discussions about the matter. There is also evidence that Mrs Haynes-Kirkbright had discussed her concerns at length with some of her subordinates and had told a number of them that she planned to blow the whistle on the trust.

21.10 We have seen no evidence that the issues Mrs Haynes-Kirkbright raised had been escalated or were being addressed at higher levels of management. We could find no documentary evidence that the trust had recorded any of Mrs Haynes-Kirkbright's concerns under the provisions of the whistleblowing policy.

Comment

Despite the lack of formal recording and action, we think that Mr Stringer, Mrs Haynes-Kirkbright's line manager, must have been aware that she was raising significant concerns at work, and that her assertions should have been taken more seriously. The trust should have responded by testing more rigorously the facts of the matters she was raising, but this did not appear to happen until after her 2 July 2012 email.

Mrs Haynes-Kirkbright's disclosure to external solicitors

21.11 Mrs Haynes-Kirkbright wrote to a solicitor on 30 April 2012 asking for his help and advice about how the trust had treated her in relation to the collective grievance against her from the clinical coding team. She wrote: *"I discovered a number of practices in the department that were against national guidance and in some cases would constitute fraud if they were to carry on after I had discovered them"*. Mrs Haynes-Kirkbright also wrote in identical terms to another firm of solicitors on 2 May 2012.

Comment

The trust may not have been known at the time about this correspondence between Mrs Haynes-Kirkbright and the solicitors, but this action could be interpreted as whistleblowing under PIDA. This would have given Mrs Haynes-Kirkbright the protection of the law. PIDA allows a qualifying disclosure to be protected if it is made in the course of obtaining legal advice.

Mrs Haynes-Kirkbright's whistleblowing - 2 July 2012 letter

21.12 Mrs Haynes-Kirkbright wrote to the trust on 2 July 2012 raising a number of issues about alleged malpractice. These were part of a two-part letter in which she also responded in detail to allegations of harassment and bullying made against her by the clinical coding team. Mrs Haynes-Kirkbright made allegations of her own about the way the trust had treated her trust. In particular, she alleged that she had been *"victimised to the point of suffering illness"* by trust management.

21.13 In the whistleblowing part of her letter, Mrs Haynes-Kirkbright alleges that she had *"discovered a number of practices in the department that were against national guidance and, in some cases would constitute fraud if they were to carry on after I had discovered them"*. She says she had identified *"what I thought was a fraudulent practice regarding the responses which the PCT expected about how long a patient was in hospital"*. She also alleges that Mr Stringer and finance colleagues *"seem very keen to exploit PbR in ways that are not always scrupulous"*. The trust dealt with the whistleblowing elements of this letter under the provisions of its policy.

Comment

Mrs Haynes-Kirkbright's aim in blowing the whistle on the trust's working practices was clearly described - "I can help New Cross become more transparent and honest and I can help assure the board and the public that the coding function operates as it should". This suggests that she was acting in good faith, and had a reasonable belief that malpractice in the trust was potentially fraudulent. She had already raised similar issues informally with trust management but alleged "I have been warned to keep certain information to myself, not to put anything in emails and to not tell the PCT anything in face-to-face meetings. I was also warned not to be forthcoming with the non-executive directors and the chairman of the board as they have 'too much power'". This appears to have been the main reason for her whistleblowing.

21.14 As to any other motives in making these disclosures, Mrs Haynes-Kirkbright was driven to formalise the whistleblowing allegations by her perception of how management had treated her. Her motives for raising the issues do not appear to have been driven by personal gain: it is hard to see how she could have profited personally from exposing them. By then she felt under attack by trust management and feared for her job - *"I know that I am being set up to be constructively dismissed by New Cross"*. No malice can be inferred from her disclosures, apart from the need she must have felt to protect her livelihood.

21.15 This should have alerted the trust to the seriousness of the whistleblowing, and should have led trust management to assume that the disclosure would be protected by PIDA. The trust treated these disclosures as whistleblowing and began an appropriate handling strategy to deal with them. However, the trust had doubts about the honesty and sincerity of Mrs Haynes-Kirkbright's motives.

21.16 Employment tribunals have considered cases where the good faith of whistleblowers has been questioned. Any attempt by an employer to prove that a whistleblower is not acting in good faith inevitably questions the honesty and integrity of the individual. In such circumstances tribunals have generally ruled that an employer must show comprehensive and credible evidence that an employee is mischief-making, pursuing an ideological cause or acting maliciously for personal gain. The trust did not put

forward evidence in investigating the 2 July 2012 whistleblowing to imply that Mrs Haynes-Kirkbright had not been acting in good faith. It would be reasonable, therefore, to conclude that the trust was not asserting that her disclosures of 2 July 2012 were made maliciously or in bad faith.

Finding

F37 We think Mrs Haynes-Kirkbright was entitled to make a disclosure under PIDA. She had disclosed information outside the trust in the course of seeking legal advice. Inside the trust, she had disclosed information about one or more of the malpractices covered by PIDA. She disclosed the information in good faith and had a reasonable belief that her disclosures were accurate and substantially true. She did not disclose the information for personal gain. Her motives were partly influenced by her fears for her job. The trust did not put forward evidence that she was acting in bad faith. Mrs Haynes-Kirkbright's disclosure of 2 July 2012, and the earlier concerns at work that she had raised within the trust should have been protected under PIDA.

Mrs Haynes-Kirkbright's subsequent whistleblowing - 28 February 2013 onwards

21.17 The trust received an email from a Daily Mail reporter on 28 February 2013 alleging that the trust was manipulating coding data *"to mask the number of patients dying needlessly"*. The reporter named Sultan Mohammed (*sic*) and referred to Mrs Haynes-Kirkbright's suspension from duty *"after she suggested fraudulent activities were taking place in the miscoding of dead patients for financial gain"*.

21.18 An article appeared in the Daily Mail on 1 March 2013 in which Mrs Haynes-Kirkbright was identified as a whistleblower. The article raised a number of matters not in Mrs Haynes-Kirkbright's 2 July 2012 email as well as matters that were. These allegations and those in the email of 28 February 2013 were considered by the trust to be whistleblowing by Mrs Haynes-Kirkbright, and were investigated under the provisions of policy HR 16 by Dr Odum.

21.19 The investigation established that Mrs Haynes-Kirkbright denied having made some of the allegations, but freely acknowledged having made others.

21.20 Dr Odum's report concluded *"The investigation found no evidence to support any of the allegations that Mrs Haynes-Kirkbright raised."* Dr Odum questioned Mrs Haynes-Kirkbright's motives in making these additional disclosures to the Daily Mail.

"This raises the question of whether the matters were raised in good faith. The trust should investigate whether it was reasonable for her to bring these matters to the Daily Mail rather than the trust, especially as she must have known that such a discussion would have a damaging impact on the trust."

21.21 In section 16 above we analyse the case made by the investigators to support this view. As set out there, the investigation did not look afresh at allegations made by Mrs Haynes-Kirkbright to the Daily Mail, which had already been looked at in the grievance, and first whistleblowing investigations, which substantially undermines this conclusion.

21.22 Mr Loughton wrote to Mrs Haynes-Kirkbright on 9 December 2013. He told her *"there is no evidence to support the allegations that you raised. I therefore find that the allegations are unfounded"*. The letter advised Mrs Haynes-Kirkbright that an investigation would now take place in accordance with the trust's disciplinary procedure.

21.23 Mrs Espley, investigating officer for the disciplinary case, wrote to Mrs Haynes-Kirkbright on 10 December 2013 setting out the allegations against her and arranged to interview her on 7 January 2014. Mrs Espley concluded her investigation report on 20 February 2014 by finding evidence of a case to answer against Mrs Haynes-Kirkbright on all the allegations and that they should be considered by a disciplinary panel. Mrs Espley also recommended that the disciplinary panel consider whether trust and confidence with Mrs Haynes-Kirkbright had broken down. She recommended reframing the allegations against Mrs Haynes-Kirkbright for the panel to consider, in particular *"that her behaviour was not justified by her being a whistle-blower in good faith"*. She added: *"Mrs Haynes-Kirkbright has raised a potential defence to the allegations - namely that she was a whistle-blower acting in good faith. I have taken legal advice as to the appropriate questions to place before the panel in relation to this issue"*.

Comment

Mrs Espley's report was the first time the trust had formally questioned Mrs Haynes-Kirkbright's good faith in disclosing information and alleged malpractice. The disciplinary panel would have tested the trust's hypothesis that she had not been acting in good faith, where her motives in blowing the whistle on the trust would have been a matter of judgement. The allegations against her were comprehensively reframed, presumably by the trust's lawyers, in preparation for the disciplinary panel and extra questions were prepared to test Mrs Haynes-Kirkbright's conviction that she had been acting in good faith. This suggests that the trust had latterly become concerned that her disclosures would be protected under PIDA unless they could prove they had been made in bad faith, maliciously or with personal gain in mind.

21.24 The trust's view that Mrs Haynes-Kirkbright had not acted in good faith rests on the interpretation that they placed on her actions in allegedly raising new concerns with the Daily Mail that had not formed part of her first formal whistleblowing - the letter of 2 July 2012. The trust has inferred that Mrs Haynes-Kirkbright was angry about the way she had been treated, and that this led her to make further unfounded allegations and comments about the trust that undermined its reputation. The trust cited concerns that Mrs Haynes-Kirkbright did not follow the appropriate internal processes before talking to the Daily Mail.

Comment

Mrs Haynes-Kirkbright denied making new allegations of wrongdoing at the trust and also claimed that one of her comments about the quality of care at the trust had been twisted to make it a criticism rather than a comment.

Finding

F38 The significance of these denials to the case against her is not properly dealt with in this report.

21.25 The same HR employee provided support to the various directors handling Mrs Haynes-Kirkbright's various cases, and has provided most of the continuity in how the trust has dealt with Mrs Haynes-Kirkbright. We found the issue of Mrs Haynes-Kirkbright's motives formed a substantial part of her thinking in supporting the investigation by Mrs Espley. We asked if the trust believed at any time that Mrs Haynes-Kirkbright was protected under PIDA. She replied:

"I think it is a really complicated one, because there was always a question mark about her motivation, reasonable good faith and stuff, but we afforded her all the rights in terms of the Whistleblowing 1 and, in Whistleblowing 2 we again treated her as if it was a protected disclosure, in my opinion anyway, right until the very end when we raised the question mark. Do I, personally, think that there was a motivation of good faith? I would say, at this stage of where I am and the contradictions in her story and the moving targets she seemed to be hitting when it suited her purposes, I would suggest not".

21.26 Mrs Haynes-Kirkbright has consistently defended her motives for blowing the whistle on the alleged malpractice in the trust. She has been clear throughout that she was concerned that financial malpractice was being condoned at a senior level and that she had been victimised for persistently pointing this out.

21.27 The trust has yet to produce definitive evidence that Mrs Haynes-Kirkbright did not act in good faith in making the disclosures to the Daily Mail, and there is a significant risk that they will be unable to support such assertions. An employment tribunal would expect to see convincing evidence of malice, mischief-making, ideology or personal gain as drivers of a "*bad faith*" disclosure. The trust is unable to proceed with the disciplinary panel where it would have sought such evidence and its lawyers are reportedly not wholly confident that Mrs Haynes-Kirkbright's disclosures should not be protected. We think the evidence for the trust to sustain this view is insufficient.

Conclusions

21.28 With regard to her internal whistleblowing disclosures, we consider that Mrs Haynes-Kirkbright is a protected whistleblower.

21.29 With regard to her acknowledged whistleblowing to the Daily Mail we consider that Mrs Haynes-Kirkbright is a protected whistleblower.

21.30 With regard to the allegations in the Daily Mail, which Mrs Haynes-Kirkbright denies having made, the trust would have to come to an evidence-based view on what she did or did not allege before reaching any conclusion on whether a PIDA issue remained to be decided.

22 Other relevant matters

22.1 We identified five issues:

- recruitment
- duty of confidentiality
- whistleblowing
- conduct of investigations of concerns raised about and by Mrs Haynes-Kirkbright
- other relevant matters.

Recruitment

22.2 Mrs Haynes-Kirkbright and Mrs Harnin, the then director of HR, believe that, either completely or in part, Mrs Haynes-Kirkbright's recruitment was not a fair, open and transparent competition, as required for public sector appointments such as hers. Mrs Harnin does not consider Mrs Haynes-Kirkbright's position to be unique.

Duty of confidentiality

22.3 There appears to be a conflict between the trust's enforcement of its employees' duty of confidentiality and the requirement that the trust be open with its commissioners and others. For instance the PbR *Code of conduct* requires providers of treatment, such as the trust, to be:

"... responsible for the timeliness and accuracy of data required as part of the transaction process under PbR and in support of commissioners' responsibilities in reviewing health needs assessment and demand forecasts. As such, providers should ensure that data is sufficiently accurate for its intended purposes, utilising internal and external reviews to highlight areas for improvement, ensuring staff with responsibilities for coding and recording activity use processes in line with the latest national guidance, and that there is senior level accountability for data quality within the organisation."

22.4 There is also a requirement for organisations and individuals in the PbR system to “*behave and treat each other transparently, openly and fairly*” and to “*share information with each other wherever appropriate*”.

Whistleblowing

22.5 Mr Loughton forwarded to us an internal audit report *Whistleblowing policy and awareness* dated 18 September 2014. It drew on the results of a staff survey carried out as part of the audit.

22.6 The report found that “*there have been no reports submitted to the Governance and Legal Department in accordance with the policy and 37 per cent of the responses [to the survey] suggested that there would be issues to prevent them coming forward*”. No timeframe is given, and since none is given in the terms of reference, we assume that this finding is based on evidence gathered since the policy was introduced. We know it was last revised in 2011 but do not know when it was introduced.

22.7 We asked Mr Loughton:

“Q. Does that cause you anxiety?”

A. No, not at all. I think if you did that in any organisation in the NHS you would come up with similar things.

Q. Yes, but do you think that some people might feel that because of what’s happening with Sandra it’s best not to whistle-blow?”

A. I think that is a culture throughout the NHS, yes, absolutely right.

Q. What, don’t stick your head above the parapet? Do you think that’s a sensible response for people who have an anxiety about something going on?”

A. No, I don’t but the whole thing, and this is your wider context thing you are working on, any chief executive I talk to, anyone that you discipline now, ends up elsewhere.

Q. The other way of looking at it is that the NHS is under such scrutiny and there is competition in the NHS and so reputation management is hugely important and whistleblowing hardly helps reputation management.

A. No, I wouldn't agree with that... These people that whistle-blow, whatever, they don't really do that much reputational damage. They don't. Where I worry about reputational damage, I worry about the coroner giving me verdict of death by lack of care; that would be a big one. You go and really harm a patient, and someone goes and whistle-blows, because the thing is, is there any foundation in it? Have we been killing people? If someone whistle-blows and says 'We've killed six people' and they are proved to be right, that's damaging; saying 'we've done it', that doesn't, because that doesn't sell many newspapers.

Q. ...In Sandra's case she was making these allegations of fraud... long before she was complained against...so she wasn't doing it in response to the disciplinary.

A. But not being funny about it, people like Sandra Haynes-Kirkbright really can't do me that much reputational damage saying things like that. No-one cares. What people care about that read newspapers, watch their television, is harm to patients. That's what they care about. If I'm fiddling money and stuff like that, it wouldn't even get printed. No-one's that bothered. It's not sensational enough, is it? ... And some people would probably give me a pat on the back and say 'If you are fiddling to try and get more money for the hospital, good on you'.

Comment

Mr Loughton may be right that the public and the media are only concerned about harm to patients, although we suspect that the views of the public and media are rather more sophisticated than he realises. However commissioners and regulators demand more from the managers of trusts and Mr Loughton gives an unfortunate impression of not being bothered by these requirements.

Mr Loughton may also be right that a similar proportion of staff in any trust would have issues about coming forward with concerns. However, that is no reason for complacency.

Conduct of investigations of concerns raised about and by Mrs Haynes-Kirkbright

Findings of the investigations

22.8 We analysed the investigations and their findings in detail and noted many occasions where the scope of investigations, the terms of reference of audits relied upon in the investigations, the questions and the conclusions, were inadequate and/or unfair to Mrs Haynes-Kirkbright. We did not find a single error or failing in the investigations that was favourable to Mrs Haynes-Kirkbright.

22.9 It is difficult to avoid the conclusion that this one-sidedness is no co-incidence and that it has meaning.

22.10 We found no evidence to suggest a conspiracy by those carrying out the investigations to treat Mrs Haynes-Kirkbright unfairly. However, we feel that the following factors probably influenced the investigators:

- the meeting called by Mr Loughton with Mrs Harnin and Mr Stringer on 20 April 2012, when Mr Loughton made clear that dealing with Mrs Haynes-Kirkbright so that she could not adversely affect the Monitor inspection was a priority
- the meeting on 24 April 2012 when Mr Stringer and Mr Loughton assumed that the coders' complaints were well founded
- the failure to ensure that Mrs Haynes-Kirkbright's complaints against the coders were investigated, which could have provided context
- the failure to consider the evidence that some coders were complaining about Mrs Haynes-Kirkbright's replacement, which also provides context
- the decision of the second whistleblowing investigators and the second disciplinary investigator to rely on earlier findings, with the result that earlier failings were overlooked and earlier unreliable findings were seen as more robust than they were.

22.11 There is also Mrs Harnin's opinion, that "*when Mr Loughton takes a turn for the worst against any individual, there's usually only one end to that journey.*"

22.12 If the investigators shared this view, it seems possible that the rigour of their investigations would be affected by a sense of the likely outcome for Mrs Haynes-Kirkbright.

Comment

We were not able to test this with the investigators because our interviews with them took place before our interviews with Mrs Harnin.

Delay and oversight

22.13 The investigations started after the receipt of Mrs Haynes-Kirkbright's email of 2 July 2012 and had not reached a hearing by 3 March 2014 when the secretary of state for health ordered a review.

22.14 Some of this delay was caused by Mrs Haynes-Kirkbright's conversation with the reporter in February 2013, and the subsequent article in the Daily Mail, but nonetheless the process went on for too long.

22.15 There appeared to be little oversight of the quality of the investigations. One witness explained to us that the strength of the conclusions reached in her investigation would be properly, tested at the following disciplinary hearing. However, what happened in reality is that none of the findings were tested before being allowed to go forward to influence the next investigation.

22.16 Many of our findings about the failings in the investigations are apparent from the papers the trust provided to us and were available to the investigating officers to interrogate as we have done.

22.17 The lack of proper oversight was a failing. Mr Loughton told us that Mrs Harnin is responsible for this failing. We disagree. Once Mrs Haynes-Kirkbright took a grievance against her, she could have no formal role in the proceedings and someone else with the time, experience and authority should have been appointed.

Other relevant matters

22.18 Our review revealed some evidence of a lack of governance and proper management at senior levels. We have provided evidence and findings on this separately to the TDA, which is commissioning an independent governance review of the trust. The TDA will pass this material to those conducting the review, the outcome of which the TDA will publish. The specific evidence and findings that we have identified to the TDA for the purpose of publication as part of the governance review will be published in full at the same time.

Team biographies

Lucy Scott-Moncrieff

Mental health and human rights lawyer, Lucy Scott-Moncrieff is a long-term associate of Verita. She is a former president of the Law Society of England and Wales, and chairs its Equality, Diversity and Inclusion Committee. She is a Commissioner with the Judicial Appointments Commission and a part time judge for the Mental Health Tribunal. She is co-chair of the International Bar Association's Access to Justice and Legal Aid Committee and chair of the advisory board of the UK Administrative Justice Institute.

Her voluntary work includes being a trustee of LawWorks and of the Howard League for Penal reform and a member of the Prime Minister's Dementia Challenge Group.

Lucy has written and broadcast regularly on legal issues over the years.

For Verita she has carried out a number of complex and high profile reviews including the death of a patient during routine day surgery, the action of a SHA in relation to the dismissal of a trust chief executive, and the care and treatment of serial killer Daniel Gonzales.

David Scott

David Scott is an experienced human resources director, having operated at board/executive level for 15 years in private and public sector organisations. He is effective in managing employee relations in challenging environments, and is highly skilled in delivering cultural and performance improvements in complex organisations. His most recent appointments include interim CEO of the Duke of Edinburgh's Award where he remains a trustee, an executive level position at First Group Buses London, and between 2004 and 2005 interim director of workforce and strategic HR at Kent and Medway Strategic Health Authority.

Derek Mechen

Derek has been involved in healthcare for over 30 years, holding senior operational management positions in both the NHS and independent sector. He has also worked for the National Audit Office where he led value-for-money studies and spent a year on exchange at a teaching hospital in Chicago. He has overall responsibility for the quality of all investigations, and along with Chris Brougham heads up Verita's Leeds office.

Interview list

Current trust staff

- Sandra Haynes-Kirkbright
- David Loughton - chief executive
- Kevin Stringer - chief finance officer
- Jonathan Odum - medical director
- Cheryl Etches - director of nursing
- Maxine Espley - director of planning and contracting
- Occupational health and wellbeing representative
- Senior HR Representative
- C coding department representative
- HR manager
- Nursing and midwifery education & development representative
- Clinical coder

Former trust staff

- Denise Harnin - former HR director
- Sultan Mahmud - former associate director (now commissioning director, NHS England Shropshire and Staffordshire)

Other

- Sue Eve-Jones - managing director, Professional Association of Clinical Coders UK

Document from clinical coding department raising concerns about Mrs Haynes-Kirkbright, distributed on 12 April 2012

Coding Function Issues

The department at the moment has the worst backlog it has ever had due to recent actions by Sandy Haynes-Kirkbright, the Head of Clinical Coding and Data Quality. In early March 2012 we were unable to input our coded work as we were instructed to code the deceased backlog that Sandy had herself not done. This, combined with the instruction not to cover the majority of wards during the first week of every month and the build up of annual leave has led to a gradual stacking up of work over the last few months.

In the middle of March 2012 the above problems combined with annual leave, sickness and three members of staff leaving caused a virtual collapse in the clinical coding function. During this time, Sandy instructed the coding staff to abandon all ward cover for staff taking annual leave and those on sick leave. Many coders attended ICD10 update courses during this period which we feel should have been cancelled to address the problems we faced and at least some effort should have been given into providing ward cover.

In the past the coding team have **always** maintained a coding function regardless of the issues we have faced as we are all well aware of the consequences. We have been in equally dire positions before and have as a group always managed to cover wards or activity, it seems to be the norm now that it acceptable to leave wards uncoded, not cover annual leave, not cover sickness when historically this is clearly the number one rule that should not be broken. It causes financial risks, unnecessary stress to staff members, creates a bad impression of our department and causes untold problems to wards and the coding office where vast amounts of casenotes need to be stored.

As of the 12th April 2012, we have again been instructed not to cover any wards for staff on annual leave or sick to concentrate on the March backlog, this will prolong the problems well into the future. We all feel that some ward cover should be provided as we have always managed to do so in the past, yet Sandy is adamant that the wards will not be covered.

We feel the above actions represent a **serious financial risk to the trust**. We are now in the position that we are not coding to the best of our abilities as we are under pressure to reduce the backlog. It also appears that of today, a considerable amount of coding will miss the April financial deadline, this could have been avoided without some of the decisions that were made.

Annual leave

We have been refused annual leave during the first week of every month since Sandy started. This was supposed to be a temporary measure until April 2012 but it now seems it will be an ongoing measure. This has clearly contributed to the Coding Function issues as listed above as staff annual leave is now congested or pushed along to the end of every month. There is no written policy stating the above rule and we understand from Unison that we cannot be held to this instruction?

Today 12th April 2012, staff members are also being refused annual leave for the third and fourth weeks in April due to the current backlogs (not of our own making).

Staff issues

1. There have been multiple breaches of Staff confidentiality regarding sickness. Sandy will openly mention or discuss with other managers or members of staff in open view of everyone in the office reasons for an individuals sickness. Staff members have also openly been belittled or mocked behind their backs due to the nature of their sickness and spoken to in an aggressive intimidatory manner when phoning the office.

There are multiple incidents (details can be supplied at later date) but one happened on the 12th April 2012 when a member of staff who is on sick leave with a serious condition phoned the office as required to update management regarding a sick note. The call was taken in the middle of the office therefore breaching confidentiality and several staff witnessed Sandy "snapping" at the member of staff on the phone. When the phone was put down the following was said by Sandy "**We would not be in this position if the F.....g coders would turn up to work**". This incident was witnessed by four members of coding staff and we suspect a manager from the Information department who later said to one of the coders that we should not let her talk to us like that.

2. A member of staff was shouted at in an unacceptably aggressive manner (30/03/12) while trying to inform Sandy of a potential problem with the coding in a set of deceased casenotes. The response from Sandy was as follows:

"Not our problem haven't got time to deal with this. IT, its their problem just get the notes out of the office!!!! It says file on these notes, can't you read what I have written?"

The above incident reduced the member of staff to tears. This we feel was particularly unacceptable as the coding of deceased casenotes is of a particularly high importance at the moment.

3. On the 10th April 2010 we are ordered not to cover wards by Sandy as mentioned earlier. We all expressed our surprise at the decision as it followed the Easter bank holiday. We mentioned our concerns to [...] (a manager) who agreed with our concerns and said she would have a word with Sandy. [This manager] returned later and informed a member of staff that the response she had from Sandy was as follows "**I don't give a S..t if the coders have five days backlog**".

In mid March during the peak of staff absence, Sandy came out of her office and ordered all coders not to cover any wards for those on sick leave and annual leave it was followed by the following statement along the lines that "**they might think again about going off sick when their wards aren't covered**". Witnessed by several coders.

4. Earlier this year an order not to cover any wards on a particular date range was placed on the wall in the coding office. The notice ended with a threat of disciplinary action to the level of "gross misconduct" if the order was not obeyed. It seems we could be theoretically sacked for trying to do our work to the best of our abilities and avoid the creation of the backlogs that have created our current situation. The notice was removed not long after we voiced our dismay to [a manager]. (photograph of notice available)

5. In regard to the national coding qualification it has been mentioned by Sandy that if we don't sit the qualification then "there are plenty of jobs at ASDA". The whole situation regarding the qualification needs looking at deeper. The new coding policy that has been recently introduced requires us to have the qualification but we feel this contradicts the national AFC profile for a senior clinical coder.

6. On multiple occasions Sandy uses bad language in front of or in earshot of members of staff both in the coding department and Information department. We find the use of such language wholly unacceptable for a manager in her position, extremely intimidating and unprofessional.

7. We are made to feel our jobs are not particularly safe, veiled threats about ASDA and constant criticism of the way we work and New Cross Hospital in general have reduced the departments morale to shreds.

Sandy told three members of NX staff approaching retirement a story from her previous employment at Stafford regarding three members of her staff who similarly were approaching retirement that they better think again if they think they think they're going to get a "comfortable, cushy job". We feel this story was fabricated and was clearly aimed at the NX staff.

Three members of staff have left in the last couple of months, at least two of them due to the current issues we have.

8. Staff on sickness leave are harassed or pressurised into returning to work while still under a sickness certification from a doctor. Two members of staff have been recently harassed by Sandy while under clear instructions from their GPs or Occupational Health that they are clearly not fit for work. One member of staff recently returned to work from sickness against a directive from Occupational Health that the staff member should remain on sick leave until the following week.

A member of staff has also sent a sicknote into the office and Sandy phoned the GPs office as she claimed she could not read the writing on the note without first asking for the member of staffs permission.

We no longer feel that we can trust Sandy with personal information.

9. We are now genuinely frightened to raise any issues or problems we have regarding the day to day management of the office due to the wildly unpredictable behaviour mentioned above. We have witnessed episodes of almost complete loss of control, shouting complaints across the office, storming out of the office when things go wrong or she cannot get her own way with another department. In the opposite direction we have witnessed Sandy very emotionally upset on at least three separate occasions.

10. Many staff from the Coding and Information offices have witnessed Sandy openly criticising other departments and managers who she has come into contact with and has either clashed with personally or have refused Sandys requests or demands.

11. We recently filled out a Stress Questionnaire which Sandy wanted us to all fill out in a negative fashion to demonstrate we are all too stressed to be able to cover the wards, this is not the case.


12. During the recent events, all coding staff have been working flat out to try to reduce the huge coding backlog. We have come together as a group in the best way we can to try to improve the situation while still following Sandys instructions which are obviously detrimental to the Coding Function. Whilst in the midst of absolute chaos we discovered that Sandy had told [a manager] not to do any overtime, to work their 7.5 hours and then go home at the exact time in a way of proving we have not got sufficient staff to do the job. During the last few weeks

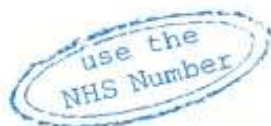
Sandy has started at her allotted time and has left the office at 3.30 every day. This revelation has clearly had an adverse effect of the staff who have begun to think that much of the recent events have been engineered in some way in response to the recent denial for request for extra coding staff.

Other Issues

The Coding staff will now ask that all pending, planned or future changes in Job Descriptions, Contracts, working hours, Office policies and Terms and Conditions be conducted with Staff Side and HR staff present.

Letter from Mr Stringer to Mrs Haynes Kirkbright dated 25 April 2012

The Royal Wolverhampton Hospitals 
NHS Trust



Date: 25th April 2012

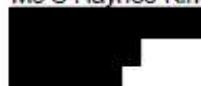
Our Ref: DH/DW

New Cross Hospital
Wolverhampton
West Midlands
WV10 0QP

Tel: 01902 307999

PRIVATE AND CONFIDENTIAL

Ms S Haynes-Kirkbright



Dear Ms Haynes-Kirkbright

Further to our meeting of Tuesday 24th April 2012 at which I was supported by Denise Hamin, Director of Human Resources, I am writing to summarise the outcome of our discussions.


This meeting arose out of complaints in relation to your behaviours and personal conduct and more recently a collective grievance raised by our Staffside Lead on 18 April 2012 (on behalf of all staff within your department). The content of the grievance against you is detailed within a four page letter and raises significant concerns in relation to:

- Your management style
- Your alleged persistent and foul bad language
- Your perceived intimidation and harassment of team members.

All of which constitute acts of gross misconduct under Trust policies.

I explained the seriousness of the allegations and the Trust's responsibility to protect its staff from such behaviours in the workplace; hence the appropriateness to enact the Trust's Disciplinary Policy. Given the sensitivities of the situation and the potential future impact on both yourself and the team, I explained that there were two potential options for consideration.

- Either conclude the matter and issue a final warning with immediate affect with no right of appeal.
- Immediate suspension with full investigation which may result in any sanction up to and including dismissal.

The Trust has taken into account the potential disruption and employment relations equally in offering these options which are over and above normal policy (although set no precedent). Your initial response was to deny the allegations however, 

Chairman: Barry Picken
Chief Executive: David Loughton CBE
Preventing Infection - Protecting Patients

A Teaching Trust of the University of Birmingham



Continued

_____ joined the meeting to give clarification and context to the complaints from the staff.

The basis of the conclusion of the meeting being that it is accepted that with the agreement of both parties the matter is concluded together with sanction, without the usual requirement to proceed to a formal process. This letter therefore confirms the terms of the agreement between the Trust and yourself.

This agreement between you and the Trust is as follows:

- You accept the allegations constituting gross misconduct
- The matters will not proceed to a full disciplinary process for the reasons specified above
- The agreed sanction will be a final written warning which will remain on your personal file for a period of 18 months from the date of this agreement; this letter serves as the written warning which will start from the date of this letter.

In the event of further complaints, the Trust will be entitled to review its position and in light of any further evidence not included in the detail of this decision making.

You will appreciate that this has been a difficult situation for all parties and we have endeavoured to balance our responsibilities appropriately. We trust that we can move forward together and to have a constructive working relationship in the interests of moving the service forward.

Yours sincerely



Kevin Stringer
Chief Financial Officer

The terms of this letter are hereby agreed and accepted

Signed
On behalf of RWHT

Signed
Employee



Kevin Stringer
Chief Financial Officer

Sandy Haynes-Kirkbright
Head of Clinical Coding and Data Quality

Response from Mrs Haynes-Kirkbright to concerns raised about her, sent by email 2 July 2012

Dear Denise:

I wish you and I had met under better circumstances, however things are as they are and no one can change this fact. This document is meant as a response to the grievance I was presented with without benefit of ACAS guidelines.

The meeting I was called to was only a half hour before it occurred and I was given no clue what it concerned. I was completely caught off-guard and I therefore believe I was purposely caused distress and victimized.

I have been in contact with ACAS since I was confronted by yourself, Mr. Stringer (my line manager) and the lead for staff side. ACAS informs me that the grievance I was accused of should have been presented to me and I should have been given an opportunity to respond and have another person to support me if necessary. This was neither given nor offered. Instead I was attacked by all parties involved and will be entering a grievance for your failure to treat me fairly. This will arrive by separate e-mail which I intend to send to the Trust Board and ACAS.

Nevertheless, I would like the delayed opportunity to give my side of the story that was printed in the grievance I was handed a few weeks ago.

Firstly this scurrilous document was signed by no one. I expected reasonably that any attack on my management of the Clinical Coding Department would have at least have been included the signatures of those who were aggrieved. This would have provided me the opportunity to address the issues presented. This did not occur nor was it offered.

I will address each paragraph of the document, but first I would like to say that since I was 'head-hunted' from Stafford Mr. Stringer has been not only difficult, but abusive to me as I have identified areas of coding practice at RWHT that are not only against national standards, but also are either outright fraud if continued in their present pattern or bordering on fraud. This is verified by the most recent PBR audit which is now on the Audit Commission Website.

I have been told over and over not to speak frankly with members of the Board and the PCT as they have 'too much power' and will hurt the trust. I refuse to be bullied into silence and I will not under any circumstances 'keep my mouth shut' when I think something wrong is happening.

Leaving Mr. Stringer's inappropriate behaviour behind at the moment, I will address the accusations in the unsigned grievance I was presented with a couple of weeks ago.

Page 1, paragraphs 1-5

This is a diatribe against the way I am reforming the coding department's methods of work in line with what national guidelines require. This is what I was hired by RWHT to do. I was told by one of the coders that the coding team at RWHT have been left at times for years without a coding manager and so have developed for themselves what they believe is the 'right way' to do the job of coding. High HMSRs and the fact that they were never finished on the date set by national guidelines prove, and the general attitude that short-cuts were best proves this to be false.

The statement in paragraph 5 regarding serious financial risk to the trust is not a judgement band 4 coders could make. I assume the bold and underlined words are from Mr. Stringer. He and [a manager] have been very hostile since I discontinued a coding for a day case Cardiology procedure which involved PCI and proceed. Discontinuing the way the coders were recording this as 2 procedures cost the Trust £250K they should not have been receiving under the rules of PBR.

There have also been numerous occasions when I was instructed to carry out responses to the PCT which I was unable to give in good conscience. Specifically, I was instructed to say 'why' patients were kept in longer or less time than the average. I, as a non-medically trained individual, could not answer these questions. They should have been directed to medical personnel. When I expressed these reservations, [senior colleagues] all ganged up to try and force me to carry out these validations. My refusal has led to further bullying and ostracization at RWHT. I was willing to keep fighting my corner until the way this grievance was used to bully me made me I realized how deeply dysfunctional the relationship with Mr Stringer has become.

Page 1 paragraph 6 regards the provision for annual leave. I put this in place because the [a manager] informed me that there was an issue with some coders consistently requesting leave at the beginning of the month when the work in the department was at its most difficult and busy. This disadvantaged the rest of the team who were working full out towards the deadlines. When there have been legitimate reasons why a coder needed a few days off at this busiest of times, the leave has been granted. I said that until the team was meeting it's deadlines consistently at 5 days following the end of a given month no routine leave would be scheduled in the first week of a month due to the needs of the department. In all other circumstances a Manager [...] schedules leave at her discretion. This is part of her job description and I do not tell her how to do it. As a matter of fact, due to a family emergency, I was not even in the office during the time period mentioned in the grievance.

Page 2 paragraph 1 describes perceived breeches of staff confidentiality regarding sickness and harassment regarding sickness. This is simply not true. The staff themselves discussed openly why others are off sick. I have not mocked anyone regarding their illness. There was one occasion recently where a member of staff was injured at a sporting event at Cheltenham. Another member of staff who was with him at the time was telling the story of how his buddy had called him on his mobile phone at the time of the incident. He was laughing and joking with the other

coders about this. I made a comment about how I had once injured myself with a very sharp knife while slaughtering chickens back in the States. The cut was to the bone and required numerous stitches. I said I told everyone it was a 'chicken bite' and suggested the rather than saying he had been run over by a car he should have said it was a 'Mustang' since he was at a horse race and Mustang is both a type of horse and a car. I was not mocking the injured individual, I was intending to join in the apparent general good humour about what I assumed was a minor injury.

The second part of the paragraph is also apparently a confabulation of what really happened. I remember this incident and although I was frustrated at the amount of sickness in the month in question and the subsequent lack of staff to do the 'day job', I did not snap at the coder on the phone. In fact I said very little. I was uncomfortable taking the call in the office, but had been handed the phone by the coder who had answered it. I asked this coder to transfer the call to my office, but was told they did not know how. When I hung up the phone [a manager] had walked up to me and given me an update as to where the coding stood in terms of completeness. I made a remark to the effect that there were a lot of people out of the office and we would not be in this position if the others who had 'colds' would simply bother to show up. I did not use an expletive and certainly not the word indicated.

Page 2 paragraph 2 indicates I 'shouted' at a coder. I did not. I told this coder that the fact that the PAS system appeared to indicate a different doctor than the notes would not in fact stop the coding of the episode. Given the fact that in this Trust it can take several days for someone to amend an inaccurate PAS record and the fact that we were very behind due to illness and vacation, the record should be coded, a note made and the problem referred to IT for correction at a later date. When I found [a manager] in the office kitchen counselling the obviously upset coder I was flabbergasted. I had had no intention of upsetting the woman and apologised profusely on the spot for any distress I caused her. She said to me that she accepted this sincere apology and I thought that was the end of it.

Page 2 paragraph 3 relates something [a manager] apparently said that I had said. It is not a quote of me and if it is a true account of what she told the coders, I was not aware of it. [This manager] and I have always had a bit of an issue with communication. I mentioned this in her annual review. I think the problem is cultural and possibly has to do with her understanding of my spoken English. The second half of this paragraph refers to a time earlier in March when a coder called in sick for a week between 2 scheduled weeks of vacation. Because of this coder's sickness pattern, I did say that I suspected this was merely an excuse to get extra time off. At the time I must have thought it was funny. Again I can only admit that mistakes were sometimes made, but never in a malicious manner. This was in fact a lapse on my part and I will unreservedly apologize for this to all concerned if given the chance to do so.

Page 2 paragraph 4 particularly upsets me. [A manager] had informed me that some of the coders had said within the office that simply completing the month we were working on was not what they wanted to do. I told her to issue a direct order that they should only work on the current month. She did this and subsequently put up the notice that is mentioned in this paragraph. When I learned what it said I asked her to remove it as it was a bit harsh, but I stood by my directions and spoke to all the

coders to tell them it was vitally important we concentrate on finishing each month in turn and not let the schedule slip to just before the freeze date as they were used to doing.

Page 3 paragraph 5 actually contains the crux of the matter I believe has led the coders to make this grievance. They are as a group very reluctant to become accredited. There are only 2 coders amongst them who are actually qualified for the job. A manager] gave the coders a six to I think eight question coding exercise which she required 80% to pass. The actual national exam lasts 6 hours, has 7 practical coding scenarios and a number of quick fire questions as well as a theory portion. The required pass is 90% for the practical coding portion and 60% for the theory portion. Although she somehow convinced the agenda for change people that this is equivalent to a qualification it is obviously not. All coders were informed that they would need to pass this exam during their recent annual reviews which were conducted by [a manager]. She told me many of them said that 'I will show her.' This of course meant me. It appears that this grievance is how they are making good on the threat. I have developed and submitted a training plan which would allow each coder to actually gain the skills they lack in order to have a good chance of passing the exam , however since a number of them are part time they are reluctant to accept training. At one meeting I held with all the coders a member of staff asked if I was asking them to 'abandon their children' in order to do this training. I responded that this was of course not the case and everyone would have plenty of time to make alternate arrangements for childcare prior to attending any courses.

Page 3 paragraph 6 alleges that I used 'bad' language. I assure you I have no recollection of such and no one ever spoke to me within the department regarding this. I did get a lot of blank looks from staff when I spoke to them. I attribute this to their lack of understanding of my accent and mode of speech as I am an immigrant to England and therefore do not 'sound' like them. I did on occasion try to clarify certain phrases I had heard in the office. I maintain I have always been both friendly and professional.

Page 3 paragraph 7 is ridiculous. I was brought to Wolverhampton to make changes. I was not criticizing the way the coders worked, I was telling them that many of their 'policies' went completely against national guidance and needed to be changed in order for the department to comply with national guidelines for a coding department. This included the fact that all coders should be qualified. Approaching retirement was no reason to not become qualified. In fact I related to the staff that if I were to exclude certain staff on the basis of their age, I would be behaving in an ageist fashion and be in violation of employment law. All staff would be included in training and testing regardless of their age.

Page 3 paragraph 8 is clearly inflammatory and also untrue. I spoke with the two staff mentioned only in a supportive way. I asked both of them to please help the department by returning to work as soon as possible as the department was suffering and we really needed their assistance. I did not in any way 'harass' the people in question. I merely requested their help 'if they were able' in view of the shortage of staff. As for calling the GP regarding an illegible note, I did this. I did not require the staff members 'permission' to do so. The writing on the sick note was

illegible to both myself and [a manager]. How they found out I was doing this, I do not know. Either they have super-human hearing or they were listening at the walls.

Page 3 paragraph 9 is rhetoric regarding how the writer of the paper believes the staff 'feel'. This paragraph also insults me with allegations of 'wildly unpredictable behaviour'. These allegations are untrue and if the truth be told are 'wildly untrue distortions' by provincial and small minded persons who do not recognize any behaviour that is not their own. This paragraph in particular shows that the writer of the paper harbours prejudice against me as a non-native to England person.

Page 3 paragraph 10 notes that 'many' staff have 'witnessed' me criticising other departments and suggest that this is a failing. I have said things about inefficiency in a number of departments. I do not think I should be muzzled when it comes to my opinions. Again anyone who 'heard/ any of this must have been straining their ears to do so.

Page 3 paragraph 11 is simply a lie. I contacted the lady in charge of Health and Safety and asked about the Stress Questionnaire in order to engage staff in resolving what was obviously a very stressful situation in the office. I asked them all individually to fill it in honestly and to not 'hold back'. In retrospect and in view of the obvious vindictiveness of the staff I should not have bothered. After the forms were evaluated I requested further help from the Health and Safety lady and we set up an appointment she later cancelled for reasons I do not recall. In the interim I asked the staff for 'ideas/ on how to reduce the stress as was suggested on the form. I received no reply from anyone.

Page 4 paragraph 12 is the final full paragraph of this 'complaint'. The 'huge coding backlog' mentioned was created by the staff **not** working 'flat out' or following my instructions. When they did follow my instructions in the first month or so, the backlog was cleared and only re-created by their refusal to continue to follow the instructions given and by deliberate slow-downs. I did not authorise overtime as there was no room in the pay budget for this. I also told staff they were not to simply work over as and when they felt like it and then try to claim back this as 'time owing' unless the extra hours were approved in advance and the time was taken back during an agreed period. It came to my notice that the staff were not following this rule and I asked [a manager] to assure that they began to follow it. This is not a failing or a victimisation of the staff, it was to take charge of the hours of working which have to my knowledge not been regulated before. Just before this complaint was made, there were a couple of members of staff who were asking to 'take back' time they had supposedly worked before I even became the Head of Coding and which had supposedly been worked over six months ago.

The line regarding my hours of work is supposedly from staff, but sounds like a criticism Mr. Stringer made on a couple of occasions. I routinely arrived at work at 7:30am and worked at least 8 hours before departing for home. I am contracted to work 37.5 hours a week. I did this without fail and in doing so fulfilled to contract I have signed. Many of the staff reportedly arrive at 6:30 am when no management staff are available. I have repeatedly spoken with HR about how to rectify this issue, but again have not been supported in making a change.

The final line of the complaint asked that changes be conducted with staff side and HR. All changes to policy were conducted with the approval of HR and the Trust Board's approval. No changes to Terms and Conditions have occurred. I do not think this is a problem. I do re-iterate that this entire complaint is in response to the new Clinical Coding policy and the requirement that the coders become accredited. Any additions to this must have come from my supervisor as he was most concerned that the changes in the department might 'cost' the Trust money.

I will not sign a final warning regarding my behaviour as I have done nothing inappropriate or unprofessional. I have done nothing wrong. With little or no support I have attempted to turn around a badly failing and un-trained department whose working practices were not in line with national guidance on coding. I have drafted policies which never existed prior to my appointment and have revoked practices which violated national guidance for coding and in some cases were bordering on fraud in the way they collected funds which New Cross was not entitled to collect under PbR.

This concludes my 'response' to this initial complaint. I would like to remind you that I was not asked for this as a part of the complaint procedure and that I have only done this on my own. In a separate letter I am sending my own complaint regarding the way my appointment has been handled and how I have been treated since taking up the post of Head of Clinical Coding and Data Quality at New Cross. I will not just take this lying down. I will not be set up for dismissal for simply doing my job. I will not allow the persons who have victimised me to just push me aside when they should have been celebrating my ability to make the changes I was hired to make.

Sincerely,

Sandra Haynes-Kirkbright, ACC
Head of Clinical Coding and Data Quality
RWHT

Mr Stringer's response to Mrs Haynes Kirkbright's email dated 2 July

Letter from Sandra Haynes Kirkbright - e-mail 2nd July 20.02	Response
<p>I have been working in the NHS for nearly 6 years since I arrived in England from Texas. I have enjoyed a quite successful career as a Manager in Clinical Coding first at Tameside Hospital as Coding Co-ordinator, then at Stafford Foundation Trust as Clinical Coding Service Manager.</p>	<p>No comment.</p>
<p>A little over eight months ago I was 'head hunted' from Stafford to New Cross Hospital in Wolverhampton. I was approached out of the blue to give advice as to how to lower their HSMR with Dr. Foster's tools. Although there is no 'trick' to doing this, I told him it all had to do with properly coding the data that is submitted to reflect the true nature of patient illness and treatment. After a long conversation I was asked what it would take to get me to work for Wolverhampton. An interview was arranged with Kevin Stringer to introduce me to him and again I was asked what salary I would seek. I told them I would require at least an 8B in order to leave my then current situation. The following month I was contacted and asked to 'apply' for a position that was advertised on NHS jobs.</p>	<p>No interview was arranged. This was merely a contact introduced by Sultan Mahmud- it was an opportunity to discuss how another organisation operated its clinical coding.</p>
<p>Although the position for which I was hired had been created for me, I expressed reservations prior to even applying for the position as to whether some of my responsibilities in the job description did not match my skills. I mentioned that the phrase 'be responsible for what clinicians record in the case notes' was not even an achievable or desirable goal. I was told not to worry about it, they wanted me because I had a 'blueprint' about how a Coding department should work. They based this on the fact that I had turned around the failing coding department at Stafford. The extra bits in the job description had been put in to 'get around HR' so that they could offer me the salary I had requested.</p>	<p>The vacancy was created as a strategic review of clinical coding took place with the loss of a senior IT colleague] and combination with community services. The role was widened to include additional responsibilities for data quality across the whole trust including community services. A full job description/person specification was produced and the AFC process through [HR] agreed the role as an 8B.</p>

<p>I do indeed have a blueprint for how to run a Coding department and it includes having all the coders become nationally qualified for their job by sitting and passing the NCCQ/ACC (National Clinical Coding Qualification/Accredited Clinical Coding exam). It also includes vigorous training to ensure the coders are fully informed in order to pass the exam and to deliver the work needed for the department to do its job. It requires that there are adequate staff members to do the job and that the equipment and programs in the computers are up to date. None of these conditions existed when I was hired.</p>	<p>Ms Haynes-Kirkbright despite having a role to change the department to improve its performance was very poor at change management, was unable to lead and motivate her department and unable to adapt to a culture that was much more complex and larger in almost every dimension than her previous organisation.</p>
<p>I attended the interview along with several other 'candidates' and received a phone call a couple of hours later congratulating me on my success and offering me the job. The initial salary on offer was considerably less than I expected so I entered into negotiations with Kevin Stringer until I was satisfied with the remuneration. I made arrangements to leave Stafford on good terms and arrived at New Cross on the 17th of October 2011.</p>	<p>A full and proper process was put in place. Ms Haynes-Kirkbright applied and was selected although this was not a unanimous decision by the panel.</p>
<p>I was almost immediately victimized by my new line manager who is the Director of Finance and Information. He was viciously angry I had revealed to the [a manager] and my predecessor] that I was 'brought in' to bring about changes in the coding department. He also was upset that I expressed to him again that some of the duties in my job description were beyond the scope of my experience.</p>	<p>I deny any victimisation and anger. I was forthright with Ms Haynes-Kirkbright as I expected the role to be performed as per the job outline for which she had applied. Feedback to me was that her direct report, the data quality manager was receiving no support, communication or leadership from Ms Haynes-Kirkbright (Appendix 6). I offered support/training but expected her to lead on data quality as well as clinical coding.</p>
<p>Although I was given no local induction for the new role and expressed to my line manager that there was a lot of resistance to change in the department, I was again told not to worry about it and just to do what I had to do.</p>	<p>Ms Haynes-Kirkbright was inducted locally and I personally attended her office to ensure she knew where things were and she responded that she had everything and knew where things were. There is however no local induction form on her file.</p>
<p>Using proven methods, I was able to get the coding workload finished within the 5 day national target instead of the several weeks it had been operating at. This I did within two months of arriving. I was congratulated on this by Mr. Stringer. Even</p>	<p>I wrote to Ms Haynes-Kirkbright on 7 December congratulating her and the team on the performance (see appendix 1). What I was unaware of however was the tactics that had been used which had stopped all annual leave/training/visiting</p>

<p>though we had a rocky start I felt somewhat reassured at this point. This, however, was merely a calm before the storm.</p>	<p>departments for a period without staff discussion and support by HR. This approach had created difficulties with her team.</p>
<p>I discovered a number of practices in the department that were against national guidance and in some cases would constitute fraud if they were to carry on after I had discovered them. Some of these were lucrative for the Trust. One was worth £250,000 in overcharges to the PCT and although discontinuing them was given lip service as being 'good', the atmosphere between my line manager and me became increasingly chilly.</p>	<p>Ms Haynes-Kirkbright did identify local interpretation problems especially during an external audit on behalf of the audit commission. I thoroughly supported her in ensuring that we followed appropriate national guidance. I did however make it clear that it was important that she communicated all the changes to appropriate finance/operational/clinical staff as there were implications for income, activity and clinical audit. Ms Haynes-Kirkbright found this difficult as she adopted a 'just do it' approach and did not understand the wider consequences. I do not recognise the over-charging figure but do recall Ms Haynes-Kirkbright referring to issues within cardiology where we had followed local practices as per other organisations but this was felt to be inappropriate. The Payment by Results system is extremely complex and is open to interpretation but I have no evidence, nor would I sanction that this Trust deliberately defrauds commissioners. The Chief Executive has recently commissioned internal audit to conduct an urgent investigation whereby they had full freedom to investigate any aspect of coding they wished (Appendix 2). The overall recommendations are attached but in particular on page 2 'Based on our testing we did not identify any issues that suggest the Trust has designed or operating its processes to 'up-code'. In fact we identified improvements where the Trust could enhance its potential to improve its depth of coding.'</p>
<p>I requested information from Mr. Stringer on how to access the Trust's risk register to record risks within the Coding Department and was told it would be arranged, but this has yet to occur.</p>	<p>I always encourage my departmental managers to identify risks within their departments. I expect Departmental heads to make contact with the Governance team to put in place the operational mechanics which I asked Ms Haynes-Kirkbright to do. I also include risk as an agenda item in my 121's (as per appendix 3)</p>
<p>Recently, I sent an e-mail to my line manager and others referring what I</p>	<p>The previous coding representative worked closely with finance and information</p>

<p>thought was a fraudulent practice regarding the responses which the PCT expected about how long a patient was in hospital. Although I have no medical qualifications I was expected to say 'why' a patient was in hospital for a given amount of time. Several senior managers in Finance and IT as well as Mr. Stringer himself said I should do it as the previous coding manager had always done it. I expressed the fact that I was unable to say 'why' a patient had been kept in or discharged as this was a clinical judgement no coder could make. I could say what the patient was diagnosed with, what treatments were given and whether the coding was of good quality, but that was all. Mr. Stringer confronted me at an unscheduled meeting and caused me much distress. He said I should never put such information into an e-mail as it could be accessed through Freedom of Information and could cause problems for the Trust. I was instructed to write a letter of apology by e-mail retracting what I had said. I did this.</p>	<p>colleagues to respond to commissioner queries in order that they could be investigated and the Trust paid for the activity it performed. This process was seamless, agreed with commissioners and I had no cause to get involved. When Ms Haynes-Kirkbright commenced she pursued a very different course of action and created severe difficulties with her peer group - Finance [...], Information [...] and Health Records [...] which resulted in Ms Haynes-Kirkbright refusal help/assist creating a backlog with the potential of non-payment of activity totalling tens of thousands of pounds. I was forced to intervene and asked all heads to a meeting on 29 February 2012 to find a way forward. I asked [a senior IT manager] to review and recommend a way forward which he did as per his e-mail (29/2 Appendix 4). Ms Haynes-Kirkbright then replied on 1st March which I thought unprofessional, factually incorrect and possible could bring the Trust into disrepute with language such as 'unfounded speculation' and 'alleged fraudulent practice'. I felt I had to meet with Ms Haynes-Kirkbright which I did on 5th March and put in writing to her after the meeting (Appendix 4). I did not instruct her to write an apology and do not consider Ms Haynes-Kirkbright response on 6 March (Appendix 4) as an apology but a reasonable understanding of our meeting and an agreed way forward.</p>
<p>It was almost immediately clear to me that there is a worrying lack of transparency around the process of PbR (payment by results) at the Trust. At several meetings with different people in the Information and Finance departments I have been warned to keep certain information to myself, not to anything in e-mails and to not 'tell' the PCT anything in face to face meetings. I was also warned not to be forthcoming with the Non-Executive directors and the Chairman of the Board as they have 'too much power'.</p>	<p>I do not believe this to be the case especially with regard to the NEDs and Chairman. Audit Committee have access to PbR Audit Commission reports and internal/external audit and there has been open and frank discussion about clinical coding many times. I am also aware that Ms Haynes-Kirkbright has spoken with the chairman and was not guided/asked in what to say/withhold anything.</p>
<p>The coding manager had departed upon my arrival. I was under the impression that I would be hiring a new Manager, but was told no. The Head of Finance said I was now the coding manager only 'you are more expensive'. This was stunning as all other Heads of Departments have managers</p>	<p>As with other Heads of Department there was a funded budget for Ms Haynes-Kirkbright to work within and for her to decide the most appropriate structure to deliver her departments objectives.</p>

<p>under them.</p>	
<p>I put forward a business case for 2 new coders and 3 new runners as the department was understaffed badly according to the national guidance. I was told by Mr. Stringer that all five positions were approved only to be told the next day that there was not enough funding for this. Several of these types of incidents occurred. They appeared to me to be designed to keep me off balance and to undermine my confidence.</p>	<p>The Trust had great difficulty in being able to fund cost pressures/business cases during the planning round due to the NHS efficiency requirements.</p> <p>I personally argued on behalf of Ms Haynes- Kirkbright's department and was successful in gaining £50k. This together with £43k in reserve made £93k available which I thought was very positive news. I conveyed this in an e-mail dated 22 March (Appendix 5).</p> <p>I did leave the decision on how this was best deployed to Ms Haynes-Kirkbright as she was the expert.</p>
<p>When some of my duties, the ones I had previously expressed as being beyond the scope of my knowledge/were transferred to another manager who did handle similar duties, my line manager suggested my role would be re- banded at a lower level. I expressed I would not sign a new contract as the one I had was only 3 or so months old at that time and the adjustment would surely equalize as the role developed. This made the job very tense for me, but I carried on.</p>	<p>[A data quality representative...] had approached me unsolicited (Appendix 6) and complained about lack of support, management, leadership and interest by Ms Haynes-Kirkbright. I spoke to [a senior IT colleague], Ms Haynes-Kirkbright, and a patient access representative] individually and concluded in the interest of the Trust that data quality should be moved from Ms Haynes-Kirkbright. Everyone agreed and I informed everyone in my e-mail of 9th February 2012 (Appendix 7)</p> <p>I wrote to Ms Haynes-Kirkbright again on 9th February (Appendix 8) and said that with the loss of a substantial part of the role it needed to be replaced by other responsibilities. This was after discussion with [...] on the AFC process and to be fair and consistent with other roles. I was clear I was looking for replacement responsibilities and not a down grade.</p> <p>Please note as set out in my file note of 3rd February I had also unsolicited approaches and complaints as to foul language and potential bullying. I raised these direct with Ms Haynes-Kirkbright on 3rd February but was unable to share names as no-one wanted to take further action.</p>
<p>It emerged that there was no coding policy in place for the Trust and as a policy was required as part of the Information Governance toolkit, I was asked to draft the document in time for the end of the fiscal year. This I did in a very short time and the</p>	<p>I was aware from HR that the requirement for all coders to be qualified (as a new standard was being set and the previous clinical coding manager had judged the coders to be qualified) was problematic and insisted that HR advice be taken before</p>

<p>policy was adopted by the Executive Management Group with the approval of HR and my manager in late March 2012. The policy included the requirement that all coders become qualified.</p>	<p>discussions with the department commenced.</p>
<p>The coders were not happy with this as the exam is quite difficult to pass and requires a substantial amount of study and excellent coding skills which I fear some of them do not currently possess. Although I developed a plan to train everyone up to the necessary skill level many coders who work only part time hours did not want to participate in the training. However there was no outright rebellion over this at first although one coder asked if I expected them to 'abandon their children' in order to take part in training. I was flabbergasted. I responded that this was of course not the case and any extra time on training would either be paid or taken back as time owing and that there would be ample warning in order to make child care arrangements.</p>	<p>No comment</p>
<p>One member of staff chose to take early retirement shortly thereafter. I enquired if this had anything at all to do with me or the changes to the department, but she said it was because she no longer conflict with [a manager] made it not worth it to her to remain in the 23 hours a week job.</p>	<p>No comment</p>
<p>During her exit interview she related a bizarre piece of information. She told me that prior to my arrival the previous Coding Manager had called the coders into her office and said I had a reputation of being hard to work for and they should all keep a notebook detailing anything I did or said that struck them as 'wrong' so they could get rid of me if they wanted to do so. I thought this was very strange, but since I had done nothing to warrant any complaints, I decided not to worry about it. My relationship with Mr. Stringer was already strained and I had plenty of other things to do as there were sudden rolling 'sick-outs' where first one and then another employee were calling in sick for weeks at a time. It looked deliberate to me as it was so widespread and persistent over the month following the approval and pending publication of the new coding policy on the</p>	<p>No comment</p>

<p>Intranet. I discussed this with the [a manager] who agreed it was likely the coders were angry at the new policy. At one point she said some of the coders who were advised they needed to sit the ACC said, 'Alright, I'll show her!'</p>	
<p>I escalated the problem to Mr. Stringer by relating the issue to his secretary as Mr. Stringer was in meetings at the time noting implicitly that we did not currently have enough people to do the job we are tasked with doing due to sickness. I received no reply.</p>	<p>Not true. I spoke to [a senior HR colleague] on at least 2 occasions to ensure that Ms Haynes-Kirkbright had all the support she needed. (Appendix 9 refers). Sickness was one of the key 121 issues on my standard agenda.</p>
<p>I contacted the woman in charge of Health and Safety and received a 'stress evaluation tool'. I sent this to all the coders who were in and asked them to fill it in truthfully. I told each one individually that if there was a lot of stress in the department, which I felt there was, that they should make that abundantly clear so that something could be done to alleviate the problem. The tool operates on a red, amber, green principal. As I expected, the tool came back mostly red. I consulted with the coders asking what I could do to help alleviate the problems. No replies were forthcoming. I again contacted the woman in charge of Health and Safety for guidance. I was told to leave it with her and to date have heard nothing further.</p>	<p>I was aware of the stress return and wanted to discuss this in more detail but was unable to progress as Ms Haynes-Kirkbright went on annual leave and then sick leave.</p>
<p>I did speak with some of the coders who were off sick. I asked if they could come back if we accommodated their needs and brought the work to them since they were valued at the office and we were really short-handed. A couple of them agreed and returned to work. The office followed through with the support offered and the coders in question seemed to be doing fine.</p>	<p>No comment.</p>
<p>On the 15th of April [] a family emergency arose and I contacted my line manager to tell him I would need some emergency annual leave I ended up taking one week off. I told my manager I was happy to take this as annual leave.</p>	<p>I spoke to Ms Haynes-Kirkbright on this issue and said the Trust would support her and agreed to annual leave at short notice for 2 days. It was only on the third day when we rang her at home and asked if she was coming in that she wanted to extend to a week. Ms Haynes-Kirkbright did not ring in asking for an extension.</p>
<p>I arrived back on Monday 23 April to the frostiest reception I have ever encountered.</p>	<p>No comment.</p>

<p>Literally no one in the office spoke to me all day. The following day, I was called to my line manager's office at 10:30 am and confronted by him and the HR manager who presented me with a complaint allegedly from staff side on behalf of my entire office. This complaint/grievance was supposedly made while I was off with the family emergency. The complaint stated there were problems with my management style, alleged I used 'foul' language, bullied staff and made decisions detrimental to the coding function putting the Trust at risk financially.</p>	<p>[A staff side union representative] presented a departmental paper that made very serious allegations against Ms Haynes-Kirkbright. This was extremely serious and given the dysfunctional relationship between Ms Haynes- Kirkbright and her team that had developed the Director of HR and myself had a without prejudice discussion in an attempt to draw a line under the allegations and move the department on.</p>
<p>While I find it strange that band 4 coders could evaluate financial risk to a trust, I am not surprised that this appeared in the complaint as I believe this was actually from Mr. Stringer and referenced the changes I had made which had cost the Trust money it was not due, but had been collecting.</p>	<p>Refute this suggestion. I had no part in any of the contents of the department's case against Ms Haynes-Kirkbright.</p>
<p>When I arrived at the meeting I was suddenly called to knowing nothing previously about any complaints, the Head of Finance and the Head of HR said I had two choices. I could sign a final warning accepting all the allegations without right to appeal or they could launch a full scale investigation which would begin with my suspension and could and implicitly would result in my dismissal. I was completely shocked and distraught. I had an exemplary record previously at all the Trusts I had worked for and had had no official warnings prior to this. There had been a mention that some people did not like the language I used. I assumed this had to do with the fact that spoken Texas English is fairly colourful and perhaps I had been misunderstood. I did ask who said this in the hope I could straighten out the problem. Mr. Stringer refused to tell me the names of the people who had allegedly complained so I could do nothing to discern what the issue really was.</p>	<p>[A staff side union representative] presented a departmental paper that made very serious allegations against Ms Haynes-Kirkbright. This was extremely serious and given the dysfunctional relationship between Ms Haynes- Kirkbright and her team that had developed the Director of HR and myself had a without prejudice discussion in an attempt to draw a line under the allegations and move the department on.</p>
<p>I have consistently called HR to help with the management of change within the department as I knew there were serious tensions, but had not received anything substantial in the way of assistance. I had</p>	<p>I was in regular discussion with the corporate HR lead to ensure that Ms Haynes-Kirkbright was being supported.</p>

<p>likewise spoken to my line manager and another colleague who is senior to me in the organization about the problems in the department and had been told to go back to HR and to work with 'Kevin' as he was not all that 'bad'.</p>	
<p>I was so shocked and upset at the meeting I was called to that I burst into tears and told them I would like to go home. I was not allowed to return to my office although Mr. Stringer did send for my coat. After arriving home I was still in a fraught state and suffering from distressing physical symptoms the next day and so attended my Doctor's surgery. He diagnosed me with a stress related illness and told me to take a couple of weeks off. I informed my line manager by e-mail.</p> <p>Two days later I received the final warning in the mail. There were two copies. One for me to sign and return as there was a stamped self-addressed envelope included and one supposedly to keep. That was last week. I have been on medication for a few days now and I am finally able to relate these details without crying like a baby. I have signed nothing as I am seeking legal advice about the problems at work.</p>	<p>No comment.</p>
<p>I know that I am being set up to be constructively dismissed by New Cross. To go from no problems except for staff absences to final warning regarding my behaviour when they knew I was in a vulnerable state due to a family crisis, I can think nothing else.</p>	<p>Not true.</p>
<p>I have since been told by ACAS that I should have been informed of the grievance against me and that I should have had the opportunity to prepare a defence and have a person available to support me. This did not happen. It was not even offered. I was called about 30 minutes prior to the meeting, not informed what it concerned and given no opportunity to respond except extemporaneously. I could not respond extemporaneously because of my shock and grief at the treatment to which I was being subjected.</p>	

<p>As Kevin Stringer (Director of Finance and Information), Denise Harnin (Director of HR) and the staff side union rep all ganged up on me, I would like to enter a grievance against these three persons for trying to create an unfair atmosphere which intimidated they were seeking to bring about the constructive dismissal of me from my position. Their callous disregard for procedure has caused physical and emotional stresses that have resulted in my current ill health.</p>	<p>No comment.</p>
<p>I would also like to register that I believe the clinical coders have made scurrilous and untrue complaints regarding my work. This is partially due to the previous coding manager's actions and directions, partly due to political issues within the Finance department and partially due to the difficulties I have encountered regarding Mister Stringer's attitude and a lack of Corporate support for my position at Royal Wolverhampton Trust/New Cross.</p>	<p>I had no part in any of the contents of the department's case against Ms Haynes-Kirkbright. Ms Haynes-Kirkbright was being supported and I point to:</p> <ul style="list-style-type: none"> – Additional resources for the department – HR support in all elements – Regular discussions with Ms Haynes-Kirkbright – Support for the policy – Support during the audit for PbR – Support from her peers in finance, information and records
<p>The Clinical Coding department at New Cross is more deeply dysfunctional than any I have ever encountered and I was the manager who turned around Mid Staffordshire NHS Foundation Trust's coding department in the midst of the recent scandal at that Trust.</p>	<p>No comment.</p>
<p>Much needs to be done to remedy the problems with the department and to bring about a properly operating function. I also believe there needs to be a thorough investigation of the way the Finance Department operates. Although Mr. Stringer has said he thinks PbR is 'dead', both he and his finance employees seem very keen to exploit PbR in ways that are not always scrupulous.</p>	<p>I refute the suggestion that we exploit the PbR system. I reference the internal audit work commissioned by the Chief Executive and included at Appendix 2.</p>
<p>I can help New Cross become more transparent and honest and I can help assure the Board and the Public that the Coding function operates as it should but not under the current circumstances and not without true support from my employer following the redress of my grievances and the resolution of the grievances of the coders in a fair and equitable manner.</p>	<p>All of Ms Haynes-Kirkbright's claims should be examined by investigation.</p>

<p>I refuse to sign the 'final warning' as I believe it is part of the plan to dismiss me. I do not really understand why I was brought in to make changes and have since been victimised to the point of suffering illness.</p>	<p>Ms Haynes-Kirkbright has not been victimised in my opinion.</p>
--	--

Kevin Stringer .

5th September 2012

OP92 - Clinical coding policy

Document Control – Template for Policies and Procedures

Reference Number and Policy name: OP92 - Clinical Coding Policy	Version: 1.3		Status: Final	Author: Head of Clinical Coding & Data Quality Director Sponsor: Medical Director
Version / Amendment History	Version	Date	Author	Reason
	1	18/01/12	Head of Clinical Coding and Data Quality	
	1.1	16/02/12	Head of Clinical Coding and Data Quality	Review
	1.2	9/03/12	Policy Committee	Amendments following approval.
	1.3	23/03/12	Trust Management Team	Final amendments and approval
Intended Recipients: All Trust personnel				
Consultation Group / Role Titles and Date: Information Governance Steering Group 14/02/2012, Policy Committee 23/03/2012				
Name and date of Trust level committee where reviewed			Information Governance Steering Group 14/02/2012, Policy Committee 9/3/12	
Name and date of final approval committee			Trust Management Team – March 2012	
Date of Policy issue			March 2012	
Review Date and Frequency [standard review frequency is 3 yearly unless otherwise indicated]			March 2015	

Training and Dissemination: rolling program by Head of Clinical Coding between 04/2012 and 04/2013	
<p>To be read in conjunction with:</p> <ul style="list-style-type: none"> • Data Quality Policy • Health Records Policy – OP07 	
Initial Equality Impact Assessment [all policies]:	Completed Yes / 19/01/12
Full Equality Impact assessment [as required]:	NA

Contact for Review	Head of Clinical Coding and Data Quality
Implementation plan / arrangements [Name implementation lead]	Sandra Haynes-Kirkbright, ACC
Monitoring arrangements and Committee	Information Governance Steering Group
Document summary / key issues covered: Clinical Coding	

VALIDITY STATEMENT

This document is due for review on the latest date shown above. After this date, policy and process documents may become invalid. The electronic copy of this document is the only version that is maintained. Printed copies must not be relied upon to contain the latest updates and amendments.

Contents

Sections	Page
Policy statement	4
Definitions	4
Accountabilities	5
Policy Details	5-6
Financial Risk Assessment	6
Equality Impact Assessment	6
Maintenance	7
Communication and Training	7
Audit Process	7
References	7

Clinical Coding Policy

1.0 Policy Statement [Purpose / Objectives of the policy]

- 1.1 Clinical coding is the process of converting clinical statements into a nationally and internationally recognised format for use by the Trust for a number of purposes including commissioning and payment for services, data reporting for HES (Hospital Episode Statistics) and benchmarking of services.
- 1.2 The data submitted to the national data clearing house SUS (Secondary Users Service) is further utilized by various 'watchdog' organizations such as Dr. Foster's Tools, SHMI and CHKS.
- 1.3 Clinical coding has a variety of uses and represents the activity performed by the Trust it is therefore vital that the data created and submitted is accurate, complete and timely.
- 1.4 This document lays out which procedures the department will employ in order to accomplish the necessary accuracy, completeness and timeliness while maintaining strict patient confidentiality in line with Caldicott guidelines.
- 1.5 This policy will apply to coding done throughout Royal Wolverhampton Hospitals NHS Trust Hospitals Trust. Any clinical coding done in outpatients, inpatients and the community is included in this policy.

2.0 Definitions

- 2.1 **ICD-10** - International Statistical Classification of Diseases and Health Related Problems Tenth Revision. This is issued by the World Health Organization, the Trust will ensure the most up to date version is used after each/any update.
- 2.2 **OPCS** - OPCS Classification of Interventions and Procedures Version 4.6 (April 2011) which is issued by the Stationary Office in the UK. The Trust will always use the most up to date version.
- 2.3 **Patient record** is defined as all information held on the medical treatment of a given patient by the Trust. This includes all paper based and electronic information in any system to which clinical personnel routinely add information and from which data regarding the diagnoses and treatment of patients can be extracted. Such records will by necessity be auditable.
 - 2.3.1 **Auditable** is a term applied to source documentation. It means that the information remains available permanently and may be accessed to prove the validity of a coding assignment when necessary.
- 2.4 **National Clinical Coding Standards** are defined as the instruction, advice and information issued by Connecting for Health in its Clinical Coding instruction manuals for ICD-10 and OPCS as well as

information in the periodically issued Coding Clinics where such instructions have not been superseded by newer instruction.

- 2.5 **Local Agreement** is an agreed code or process at a local level. This is done when there is a need to code a diagnosis or procedure where no national guidance is available. No local agreement may violate a national guideline for any reason.
 - 2.5.1 Where a local agreement has been created and guidance is later issued by the national body, such guidance will immediately replace any local agreement for all future instances.
- 2.6 **Audit** refers to the latest version of Connecting for Health Clinical Coding Audit Guidelines. An Audit will be carried out in accordance with these guidelines and those mandated by the Information Governance Toolkit.
- 2.7 **Caldicott** refers to confidentiality principles laid down in the NHS code of practice. See Attachment 2 Caldicott report: Key principles

3.0 Accountabilities

- 3.1 The Head of Clinical Coding and Data Quality is responsible for the adherence to the policy and will investigate/correct or cause to be investigated/corrected any violations of the policy
- 3.2 The coding team leader is responsible for maintenance of the training log and assuring all coders are up to date in specialty coding and working towards qualification from the national body.

All clinical coding personnel will be required to be accredited as competent in the knowledge and use of national standards for coding. In order to assure the Trust that this is the case, all coders will undertake yearly training and development opportunities in the field of coding. Once every 3 years coders will attend refresher and update training. All coders will work towards undertaking and passing the National Clinical Coding Accreditation (NCCQ/ACC).

 - 3.2.1. It will be the policy of the Clinical Coding Department that all personnel will become accredited as coders.
 - 3.2.2 All coders will undertake offered training and show competence by evaluation at the end of such training.
 - 3.2.3 All coders will rotate through the various coding 'teams' in order to become competent in all areas of coding within the Trust.
- 3.3 Group/Directorate managers are responsible for aiding any investigations, implementing local processes to address any coding/DQ issues affecting the clinical coders function.
- 3.4 Consultants and other clinical personnel are responsible for making sure that all data entered into the patient record is complete. All records will include all diagnoses, co-morbidities and procedures that have occurred.

3.5 All Staff Members are responsible for making sure that any patient record and the date contained therein is accurate, complete and available for the Clinical Coding Department to be able to do their job.

4.0 Policy Detail

4.1 Diagnostic Coding

4.1.1 All diagnostic coding will be done using ICD-10, following all its rules and conventions.

4.2 Procedure Coding

4.2.2 All procedure coding will be done using this OPCS, following all its rules and conventions.

4.3 All information on the diagnosis and treatment of patients in the Trust which is held in any medium will be used by the coders in order to create the most complete, and accurate record of the patient's stay in hospital. The patient record is as defined above in 2.3. This includes only information entered by clinical personnel in the Trust and not information entered or recorded by non-clinical personnel.

4.4 The accuracy of the coding will be 90% at audit.

4.5 No coder will make any agreement with a consultant or other clinical personnel regarding the coding of any specialty. All such agreements will be made only by the Head of Coding in conjunction with a Clinical Director.

4.5.1 All original signed local agreements will be held in the Clinical Coding Policy and Procedures Document in the Coding office. Other copies may be held electronically.

4.6 Regular audit of all coded specialties will be carried out on a rolling monthly basis. Audit will be carried out using the most recent version of Connecting for Health Methodology and reported to the Clinical Director and Directorate Manager for the specialty in question.

4.7 All coders will have training in Caldicott principles and will maintain these standards while carrying out their duties. Any breach of confidentiality will be considered a disciplinary offence and will be handled under the Trust's disciplinary policy.

4.8 Clinician involvement in the verification of clinical coding is mandated by the IG toolkit. In order to comply with this requirement all coded episodes of patients who decease in hospital will be forwarded to the consultant in charge of the patient at the time of their death. This will necessarily include patients from all areas. The coding will be verified by the consultant with any changes noted. The changes will then be made on the PAS system.

5.0 Financial Risk Assessment

1	Does the implementation of this policy require any additional Capital resources	No
2	Does the implementation of this policy require additional revenue resources	No
3	Does the implementation of this policy require additional manpower	No
4	Does the implementation of this policy release any manpower costs through a change in practice	No
5	Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programs or allocated training times for staff.	No
6	Other comments	

6.0 Equality Impact Assessment

An equality impact assessment was completed. Currently there are no large print or complete electronic versions of ICD-10 available. This could have an impact on visually impaired workers. Electronic and large print versions of the classifications will be sought. No other Impacts were identified. (See attached EIA proforma)

7.0 Maintenance*

The policy will be reviewed every two years by the Information Governance Steering Group. The policy will be reviewed and ratified earlier if there are changes to coding guidance which affect the policy and operations of the Clinical Coding Department. The Head of Clinical Coding will be ultimately responsible for the contents of this policy.

8.0 Communication and Training*

The Clinical Coding policy will be available on the Trust Intranet. Training detailed in the policy will be arranged by the Clinical Coding Team Leader for the Clinical Coding Team according to a matrix of options recommended by Connecting for Health

9.0 Audit Process*

Criteria	Lead	Monitoring method	Frequency	Committee
Information Governance	Head of Clinical Coding and	IG toolkit	Yearly	IGSG

	Data Quality			
Regular audit of all coded specialties	Head of Clinical Coding and Data Quality	Connecting for Health Audit Methodology	Monthly basis, rolling program across specialties	Clinical Director and Directorate Manager for the specialty in question.
Clinician Involvement	Medical Director/Head of Clinical Coding and Data Quality	Initially reports from paper returns moving to Web based reporting	Monthly	MORAG
A 200 note IG audit and Payment by Results (PbR) audit	CfH approved auditor and Audit Commission	Audit	Annual	Information Governance Steering Group & Data Quality Group

10.0 References

<http://www.connectingforhealth.nhs.uk/systemsandservices/data/clinicalcoding/codingstandards>

<http://www.connectingforhealth.nhs.uk/systemsandservices/data/clinicalcoding/codingstandards/audit/index.html>

http://www.dh.gov.uk/en/Managingyourorganisation/Informationpolicy/Patientconfidentialityandcaldicottguardians/DH_4100550

This policy must be read in conjunction with:

- Data Quality Policy
- Health Records Policy – OP07

Allegation table from second whistleblowing investigation report

Allegation	Comment
Allegation 1 - That between 2009 and 2011 it coded everyone on the palliative contact list as palliative care deaths, even if they were not treated at the hospital as palliative care patients, which is against national guidelines.	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.
Allegation 2 - Hired an independent company in the summer/autumn of 2011 to advise coders on how to increase the Charlson Index – by adding causes of patients' deaths which were not written on doctors' notes.	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.
Allegation 3 - Sultan Mohammed, Assistant Director, coordinated a plan to bring down HSMR through coding.	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.
Allegation 4a - Headhunted Sandra Haynes-Kirkbright, who was behind improvement in HSMR figures at Mid Staffs, as Head of Clinical Coding and Data Quality in 2011 for an increased salary (almost double).	This allegation was not raised as a formal allegation in the first whistle blowing investigation although the assertion that she had been head hunted for an increase in salary was mentioned during the previous investigation.
Allegation 4b - Sandra Haynes Kirkbright was hired to fiddle death rates	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.
Allegation 4c - Sandra Haynes-Kirkbright was suspended after refusing to take part in a cover-up, after she suggested fraudulent activities were taking place in the miscoding of dead patients for financial gain.	This allegation was not raised as a formal allegation as part of her previous whistle blowing allegations although the assertion that she felt that the allegations against her had been to some extent fabricated/exaggerated in response to concerns that she was raising that were having a financial detriment to the Trust had been mentioned during the first whistle blowing investigation.
Allegation 5 - Every rule in the book was broken to try to improve mortality rates – without saving lives.	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.
Allegation 6 - The figures show the impact this had. HSMR went down from 115 in 09/10 to 100 in 2011/12. The current level is 98.32. Meanwhile, in 2009, the percentage of patients dying while under palliative care was 2.19%. By 2011, this had risen to 20.3%	This allegation was not raised by SHK in her previous whistle blowing allegations and neither was it raised in her interview with the Medical Director undertaken as part of the previous whistle blowing investigation.

Letter from Mr Loughton to Mrs Haynes-Kirkbright dated 9 December 2013

The Royal Wolverhampton 
NHS Trust

New Cross Hospital
Wolverhampton
West Midlands
WV10 0QP

Tel: 01902 307999

9 December 2013

Private and Confidential
Mrs S Haynes-Kirkbright



Dear Mrs Haynes-Kirkbright

Re: Outcome of Whistle Blowing Investigation into Allegations raised about the Coding Practices within The Royal Wolverhampton NHS Trust and related matters

I am writing to inform you that the whistle blowing investigation undertaken into the allegations you raised about the Coding Practices within The Royal Wolverhampton NHS Trust has been concluded. I have received a copy of the investigation report from Dr Odum and the outcome of the investigation is that there is no evidence to support the allegations that you raised. I therefore find that the allegations are unfounded. There are, however, serious concerns arising out of the manner of your discussions and disclosures to the press that require investigation and as such I have instigated an investigation in accordance with the Trust's Disciplinary Policy and Procedure – HR03.

The investigation will consider whether you have acted in breach of a number of Trust Policies and Procedures, copies of which are enclosed, namely:

- Trust Disciplinary Policy and Staff Rules relating to Standards of Behaviour and Conduct;
- Raising Concerns at Work policy
- Media Relations Policy

The allegations are:

- That you behaved recklessly or negligently in disclosing information regarding the Trust to an external source without the Trust's authorisation to do so, which information subsequently became the focus of a front page headline article published in the Daily Mail on the 2 March 2013;

Chief Executive: David Loughton CBE
Preventing Infection - Protecting Patients

A Teaching Trust of the University of Birmingham

WCA 531 02.11.12



-2-

9 December 2013

Private and Confidential

Mrs S Haynes-Kirkbright

- That you behaved recklessly or negligently in expressing opinions regarding the Trust and in doing so, your actions brought the Trust (your employer) into disrepute and/or were to the detriment of the Trust and its reputation;
- That you expressed opinions regarding the Trust to an external press source, the Daily Mail which were damaging and/or untrue;
- That you breached the Trust's requirements for information obtained during the course of your employment to be kept in confidence contrary to HR03, Attachment 1, Staff Rules Relating to Standards of Behaviour and Conduct – Disciplinary Policy section 9.0;
- That you breached the Trust's requirements to only make comment to the press or media in accordance with the Trust's Media Relations Policy contrary to HR03, Attachment 1, Staff Rules Relating to Standards of Behaviour and Conduct – Disciplinary Policy section 9.0;

Trust and Confidence

The investigation will also consider, whether, as a result of the manner of the above disclosures, there has been a loss of trust and confidence in you by your employer.

I have therefore appointed Maxine Espley – Director of Planning and Contracting, to act as the investigating officer. She will be supported by [REDACTED]

Maxine will be in contact with you shortly regarding the investigation. In the meantime, if you have any queries regarding this letter please do not hesitate to contact me.

Yours sincerely,



David Loughton CBE
Chief Executive

Encs

Email exchange between Mr Stringer and Mrs Haynes-Kirkbright dated 5 and 6 March 2012

From: Stringer Kevin (THE ROYAL WOLVERHAMPTON HOSPITALS NHS TRUST)
Sent: 05 March 2012 15:33
To: Kirkbright Sandra (THE ROYAL WOLVERHAMPTON HOSPITALS NHS TRUST)
Subject: RE: Queries on data submission

Sandra,

Thank you for meeting up today at short notice.

Please feel free to raise issues that you have concerns about. I operate an open door policy as I mentioned.

I think we agreed that different interpretations were being placed on the term 'participate in a fraudulent practice' which if I understood it correctly was a term you used as you thought things were done wrongly based on your view of issues whereas my interpretation was a deliberate attempt to mislead. The latter point is a place I can never allow the organisation to be in as it could potentially bring the Trust into disrepute.

This focussed on the answers that were previously given to commissioner queries by the Clinical coding manager.

As you will be aware I asked for a sample of the answers previously given and I cannot see any intent to mislead and that most of the responses were I believed factual. Whether these responses answered the original question I think is difficult to say and one for the commissioners to reflect on and ask for further details if they thought it necessary.

I do however understand your view that a coder cannot answer a question such as why a patient was in hospital for a number of days.

I asked you to detail the type and range of query that you thought the clinical coders could answer so that we could identify how the remaining queries could be dealt with.

At the end of the meeting you detailed a number of internal issues that you believed were challenging you and its on that basis that I have asked my PA to bring our 121 forward to within the next few days so that I can support you where possible on these issues.

Kind Regards

Kevin Stringer
Chief Financial Officer
The Royal Wolvehampton Hospitals NHS Trust

From: Kirkbright Sandra (THE ROYAL WOLVERHAMPTON HOSPITALS NHS TRUST)
Sent: 06 March 2012 15:42
To: Stringer Kevin (THE ROYAL WOLVERHAMPTON HOSPITALS NHS TRUST)
Subject: RE: Queries on data submission

Dear Mr Stringer,

Thank you for clarifying your position on the e-mail which I sent to you in good faith and without any intent to cause you the distress it seems to have engendered.

Perhaps I should have used a different phrase to express my stance that it is fundamentally incorrect to expect a valid reason for a length of stay in hospital from a source that is incapable due to its nature of legitimately formulating such an opinion. While I think the responses were disingenuous from this standpoint, I do not think it was the intention of the previous coding manager to deliberately mislead the PCT for the sake of money. I think her motivation was much more prosaic.

Further, I am pleased that you now understand my view regarding the question of length of stay.

I have looked at the file [the coder] receives monthly. I believe Coding can answer queries regarding high cost spells where the HRG is driven by the procedure. A validation between the information on the theatre system regarding procedures carried out and the coded procedures should provide the answer as to whether the coding and therefore the HRG is valid. I will need access to the Theatre system or I will have to ask Information to provide the data from that system. Further information is available on the Clinical Portal and Euroking as well as from the Cardiac Cath Lab and various other independent systems. I have completed all of the High cost Queries for Months 4 and 6 today and will have Month 5 available early tomorrow. [The coder] has sent these out to the relevant persons.

I have already addressed a couple of the regular queries proactively in order to eliminate them appearing in the queries in the first place. WA14Z is an HRG generated when the coders add Z53.-to the ICD-10 coding. This code is for a planned procedure not carried out. It is only to be applied when a patient is brought in for an elective procedure which is then cancelled for one of several reasons. Unfortunately, due to either training issues or simple misunderstanding the coders sometimes apply the code when patients are admitted on the emergency pathway. [The coder] is sending these to me as they appear on PAS before submission so I can investigate and resolve them. The other query I can stop coming in are the ones regarding the HRG UZ01Z which is generated when the grouper is 'confused' by poor coding. I have asked to review all instances of this prior to the flex submission so that the errors can be resolved.

I have asked to sit down and go through the entire file [the coder] receives monthly so that I can identify other bits that may exist where Coding is the most logical group to answer the queries. I will let you know as soon as such areas are identified. He was unable to go through this with me today due to his SUS submission preparations.

I will see you on Friday regarding the local issues I believe you should be aware of.

Kind Regards,

Sandra Haynes-Kirkbright, ACC

Head of Clinical Coding and Data Quality

RWHT