Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 18 October 2021 – Monday, 25 October 2021

Virtual Hearing

Name of registrant:	**Ashleigh Naylor**
NMC PIN:	13E3007E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – March 2014
Area of registered address:	Saltburn-by-the-Sea
Type of case:	Misconduct and Conviction
Panel members:	Mary Hattie (Chair, registrant member) Allwin Mercer (Registrant member) Jan Bilton (Lay member)
Legal Assessor:	Fiona Moore
Panel Secretary:	18 – 22 October 2021: Catherine Acevedo 25 October 2021: Ruth Bass
Nursing and Midwifery Council:	Represented by Ruth-Ann Cathcart, Case Presenter
Miss Naylor:	Not present and unrepresented
Facts proved:	1, 2.1, 2.2, 2.3, 2.4, 2.5.1, 2.5.2, 3 and 4
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Strike off order**
Interim order:	**Interim suspension order – 18 months**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Naylor was not in attendance and that the Notice of Hearing letter had been sent to Miss Naylor's registered email address on 16 September 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Naylor's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Cathcart, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Miss Naylor has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Naylor

The panel next considered whether it should proceed in the absence of Miss Naylor. It had regard to Rule 21 and heard the submissions of Ms Cathcart who invited the panel to continue in the absence of Miss Naylor. She submitted that Miss Naylor had voluntarily absented herself.

Ms Cathcart submitted that there had been no engagement at all by Miss Naylor with the fitness to practice process since her representative came off the record in January 2021 and there is no information that she is seeking representation elsewhere. She submitted

Miss Naylor has not requested an adjournment and there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Naylor. In reaching this decision, the panel has considered the submissions of Ms Cathcart and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Naylor;
- Miss Naylor has not engaged with the NMC since January 2021 and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Six witnesses are due to attend to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2017;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Naylor in proceeding in her absence. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Naylor's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence. The panel will have due regard to submission made by Miss Naylor at an earlier stage in the process.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Naylor. The panel will draw no adverse inference from Miss Naylor's absence in its findings of fact.

Details of charge

That you, a Registered Nurse:

1. On 10 February 2017, potted up medication when this was prohibited.

2. On 8 May 2017, in relation to the dispensing and handling of methadone:

2.1 Dispensed methadone for administration when there was no prescription in place,

2.2 Did not obtain a signature from a witness to the dispensing to verify the amount taken form the bottle and the amount remaining, in the Control Book,

2.3 Gave the keys to the Controlled Drug Cupboard to Colleague A,

2.4 Attempted to obtain a verifying witness signature from a person, Colleague B, who was not a witness to that dispensing, and/or

2.5 Carried methadone:

2.5.1 in an open medicine pot, and/or

2.5.2 through the prison from Colleague B to the Healthcare Unit

3. On 15 June 2017, potted up medication when this was prohibited.

And, in light of the above, your fitness to practice is impaired by reason of your misconduct.

Background

The NMC received a referral about Miss Naylor's fitness to practise on 13 October 2017. The referral came from the Head of Healthcare at HMP Frankland, G4S Health Services UK Ltd. At the time of the concerns raised in the referral, Miss Naylor was working as a nurse at HMP Holme House.

The regulatory concern identified and investigated by the NMC was

- Mismanagement of medication

The alleged facts are as follows:

Between February and June 2017, Miss Naylor made a number of medication administration errors whilst working at HMP Holme House. These included:

- Potting up medication on 10 February 2017 and 15 June 2017
- Not abiding by the Prison's Controlled Drug policy on 8 May 2017 when dispensing methadone

On 10 February 2017 Witness 3 had recently joined the team at HMP Holme House and had been allocated to shadow Miss Naylor in the segregation unit. She became concerned at how she was administering medications. This was because she observed Miss Naylor putting each prisoner's medications into individual pots and then put the prisoner's initials on the pots. Witness 3 goes on to say that Miss Naylor then went to each cell, carrying all the pots in her hands, and handed out the pots to each prisoner. After the observation Witness 3 spoke with her manager Witness 2 about what she had seen and to seek clarification on whether it was the correct procedure in the segregation unit. Miss Naylor's position is that Witness 3 was responsible for medicine administration that shift and she was unaware any 'potting-up' had taken place on 10 February 2017.

On 8 May 2017, Miss Naylor is alleged to have initially dispensed methadone (a controlled drug) without having had sight of a valid prescription from the General Practitioner (GP), Colleague B. Colleague B had only verbally indicated he might prescribe 20ml. The methadone was not signed for by two people in accordance with policy, and it was then transported by Miss Naylor through the prison, to the in-patient unit and back. Miss Naylor also gave the keys to the controlled drug cupboard to an unqualified member of staff to return to the secure key cupboard prior to completing the process of administering the medication and obtaining a signature.

On 15 June 2017, Witness 4 was working with Miss Naylor. She observed Miss Naylor 'potting up' medicines. Miss Naylor then locked the medication away, ready for the lunchtime medication round. Witness 4 was conscious this did not appear to be a safe practice and reported the matter to the charge nurse. Miss Naylor denied the *'potting-up'* medication incident on 15 June 2017.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Cathcart on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Naylor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Head of Healthcare at HMP and YOI Low Newton in County Durham;
- Witness 2: Nurse at HMP Holme House
- Witness 3: Staff Nurse HMP Holme House
- Witness 4: Bank Staff Nurse HMP Holme House
- Witness 5: Inpatient Sister at HMP Holme House
- Colleague B: GP at HMP Holme House.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the weight to attach witness and documentary evidence provided by the NMC.

The panel then considered each of the disputed charges and made the following findings.

Charge 1

1. On 10 February 2017, potted up medication when this was prohibited.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 3, Witness 2 and Miss Naylor's responses.

The panel took into account that Witness 3 was a direct witness to the charge. She gave clear and consistent evidence which gave a detailed account of the incident. Witness 3 said in her statement

'The registrant then proceeded to put each prisoner's medication into pots and stacked all the pots up together. The pots are small paper containers which are not sealed. The registrant had written initials on the pots to identify each prisoner and then took all the pots out in one go to the cells, carrying them in her hands.'

The panel also noted that Witness 3 recalled clearly that on this day she had not been administering medication and had only been shadowing/observing Miss Naylor. Witness 3 states

'*I did not administer the medication myself, as I was just observing so I cannot confirm whether the correct medication was eventually handed out but I assumed it was.'*

The panel took into account the evidence of Witness 2. Witness 2's evidence supported that Witness 3's role had been to shadow Miss Naylor on the medication round. Witness 2 also gave evidence that Witness 3 reported her concerns to her later that day.

Miss Naylor's response in the local investigation was that it had been Witness 3 who dispensed and administered the medication on the day in question. The interview notes state

> [Miss Naylor] *stated that she didn't tell* [Witness 3] *how to do the medicines that day that she got on with this whilst she occupied herself undertaking other tasks. She was under the impression that* [Witness 3] *was capable, and had administered medicines in the segregation unit that day* [Miss Naylor] *stated that she did not administer any medications during the alleged incident and that she was unaware that potting up had taken place.'*

The panel also had sight of *Guidance Document On The Inappropriate Practise of 'potting up'.* Witness 2 gave evidence that there were posters referring to this guidance document around the unit. The panel also had sight of the *Medicines Management Policy* which states '*No medicinal product may be removed from its container/packaging except for immediate administration.'* The panel was satisfied that *'potting up'* medication was not permitted.

Having found Witness 3's evidence to be credible and reliable, the panel accepted Witness 3's account of the incident. The panel determined on the balance of probabilities that Miss Naylor potted up medication when this was prohibited. The panel therefore found charge 1 proved.

Charge 2.1

> *2. On 8 May 2017, in relation to the dispensing and handling of methadone:*
>
> *2.1 Dispensed methadone for administration when there was no prescription in place*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and Miss Naylor's responses.

Colleague B gave a detailed and consistent account and was a direct witness to the incident. The panel found his evidence to be credible and reliable. In Colleague B's interview he confirmed that the methadone had been poured out prior to the prescription being written and gave oral evidence that the methadone had been poured before he entered the room where the drug cupboard was to sign and hand over the prescription. Colleague B was very clear that for a controlled drug to be dispensed it would be illegal to give a verbal order/prescription. In oral evidence, Colleague B confirmed that the methadone had been poured before he had signed the prescription.

Miss Naylor wrote in her reflection that

> *'The doctor came into the office I was working from and verbally handed over the quantity of methadone, 20ml, he was going to prescribe. The doctor then remained in the office waiting for the prescription to print while I poured the methadone*.'

The panel also took into account the interview notes made by Witness 1 which stated

> *'In relation to the incident with the Methadone, I queried why the dose had been poured before a prescription had been written.* [Miss Naylor] *stated that this wasn't unusual although acknowledged that it was not good practice.'*

The panel considered that, on the balance of probabilities, that Miss Naylor did not have the prescription printed and signed in her hand before she dispensed the methadone as the prescription was being written at the time by Colleague B. It noted that Miss Naylor does not dispute that she poured the Methadone before the prescription was completed. The panel accepted Colleague B's evidence that a prescription for a controlled drug requires it to be printed and signed before it can be acted upon. The panel determined that Miss Naylor dispensed methadone for administration when there was no prescription in place. The panel therefore found charge 2.1 proved.

Charge 2.2

> *2. On 8 May 2017, in relation to the dispensing and handling of methadone:*
>
> *2.2 Did not obtain a signature from a witness to the dispensing to verify the amount taken form the bottle and the amount remaining, in the Control Book,*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and Witness 5 and Miss Naylor's responses.

Miss Naylor's account is that she poured the methadone from the bottle in the presence of a *Health Care support Worker* (HCA), Colleague A. Colleague A then left to return the keys to the inpatient unit and from there went home. Colleague A did not sign as the second checker to verify the amount taken from the methadone bottle nor the amount remaining in the controlled drugs book.

The interview notes state

> *'*[Miss Naylor] *stated that the methadone was witnessed by Health Care support Worker,* [Colleague A] *however* [Colleague A] *left and did not do the secondary signature for the methadone".*

The panel also took into account the *Standard Operating Protocol* which states that the same two members of staff must be present for the entirety of the controlled drugs procedure. Witness 5 confirmed in response to questioning about whether it would be possible for one person to check the drugs in the cupboard, and then another sign for administering that it was not as it would be *'secondary dispensing'*. Witness 5 was clear that the second checker should be *'with you until the end'*.

Colleague B ‘s evidence is that when he walked into the dispensing room to retrieve the prescription from the printer for signing, Colleague A was not present and that he did not see Colleague A after this, but that 20ml of methadone had been dispensed.

The panel concluded that on the balance of probabilities Miss Naylor removed and poured out the methadone whether or not in the presence of Colleague A. If Colleague A had been present at the time it was poured, a signature was not obtained from her and she then left without the full procedure being completed. The panel therefore found charge 2.2 proved.

Charge 2.3

> *2. On 8 May 2017, in relation to the dispensing and handling of methadone:*
>
> *2.3 Gave the keys to the Controlled Drug Cupboard to Colleague A,*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 5 and Colleague B.

The panel took into account that in her reflective piece, Miss Naylor acknowledges that

> *‘I locked the CD cupboard and handed* [Colleague A] *the keys to put safely away in the inpatients department as she left.*’

Miss Naylor later acknowledges:

> ‘*I have since read the relevant G4S policy and realise best practice would have been to keep the CD cupboard keys on my person until everyone was happy and the methadone had been administered and signed for.’*

The interview notes also stated

> '[Miss Naylor] *acknowledged that she should not have handed the keys to* [Colleague A] *to return to Healthcare, and that they should be in the possession of a qualified member of staff".*

Witness 5 told the panel that Colleague A had returned the keys to the in-patient unit. Witness 5 was clear that an HCA is not allowed to hold any controlled drug keys. She told the panel that the registered nurse holds the keys on a chain at all times. Witness 5 told the panel that to access the drugs key cupboard a fingerprint is recorded. In response to questioning Witness 5 confirmed that she checked the electronic data which showed that Colleague A had returned the keys to the cupboard.

This was supported by Colleague B's evidence that Miss Naylor told him that she did not have the keys and that Colleague A had returned them to the inpatient unit.

The panel also had sight of the *Medicines Management Policy* which clearly states

> *'13.3 The nominated person(s) is/are entirely responsible for the safe and secure storage of drugs and shall be responsible for the custody of the keys or allocation of key codes. They may decide to delegate duties, but the responsibility always remains with them.'*

The panel accepted Miss Naylor's responses and concluded on the balance of probabilities that she gave the keys to the controlled drug cupboard to Colleague A. The panel therefore found charge 2.3 proved.

Charge 2.4

> *2. On 8 May 2017, in relation to the dispensing and handling of methadone:*
>
> *2.4 Attempted to obtain a verifying witness signature from a person, Colleague B, who was not a witness to that dispensing,*

This charge is found proved.

In reaching this decision, the panel took into account Colleague B and Miss Naylor's responses.

Colleague B gave a detailed and consistent account and was a direct witness to the incident. The panel considered Colleague B's written and oral evidence to be very clear and consistent. Colleague B told the panel in his oral evidence that Miss Naylor asked him to sign the controlled drugs book and administration chart but that he was unhappy to do so as he had not carried out the necessary checks i.e. the amount of methadone poured and the amount of methadone left in the controlled drugs cupboard. While Colleague B was able to confirm that the 20ml poured looked accurate, in his words that *was 'beside the point'* and *'not acceptable'* as he had not carried out all the other necessary checks.

In his internal statement Colleague B wrote

> '*I expressed my concern that I was not happy to sign the administration chart as I did not see where she got the methadone from and I would not sign the control drug register as I could not check the remaining methadone left. I understand it's compulsory to check these issues*.'

Colleague B's oral evidence is that when he walked into the dispensing room, Colleague A was not present and he did not see Colleague A after this but that 20ml of methadone had already been poured. The drug cupboard was locked so he could not see how much remained in the bottle to check this against the register. Miss Naylor asked him to sign for the dispensing and administration of the methadone. When he asked to carry out the required checks, he was told the drug keys had already been returned to the inpatient unit by Colleague A.

Miss Naylor wrote in her reflection that

> '[Colleague B] *then remained in the office waiting for the prescription to print while I poured the methadone and he and a healthcare assistant checked the quantity'*.

Miss Naylor does not indicate where Colleague B was in the office when she was pouring the medication.

In Miss Naylor's interview with Witness 1 it is noted

> [Miss Naylor] *was under the impression that* [Colleague B] *had witnessed her pouring the dose of methadone, that he had 'witnessed' it from the doorway. I queried whether that would be an appropriate check of a controlled drug and she eventually acknowledged that it was not.'*

The panel found Miss Naylor's accounts to be inconsistent.

Having found Colleague B's evidence to be credible and reliable, the panel accepted his account that he had not witnessed the dispensing of the methadone in question. The panel determined on the balance of probabilities that Miss Naylor had attempted to obtain a verifying witness signature from Colleague B, who was not a witness to that dispensing. The panel therefore found charge 2.4 proved.

Charge 2.5.1

> *2. On 8 May 2017, in relation to the dispensing and handling of methadone:*
>
> *2.5 Carried methadone:*
>
> *2.5.1 in an open medicine pot,*

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague B and Witness 5 and Miss Naylor's responses.

The panel took into account that Miss Naylor wrote in her reflection

> '*The safest thing to do was keep the methadone on my person and retrieve the keys from the inpatients department. At this point there was only the prisoner which the methadone was intended for who was not locked in a cell*.'

It was noted in the interview with Witness 1 that *'*

> *'*[Miss Naylor] *described how she was unable to secure the methadone as she no longer had the keys, and that* [Witness 5] *could not assist as she was alone on the inpatient unit, therefore she had no option other than to carry the methadone over to inpatients and collect the keys. She admits that this is bad practice.'*

Colleague B confirmed in his statement that

> '*Miss Naylor immediately and without warning and in angry attitude, picked up the glass cup containing the presumed 20 ml methadone she poured and left the room.'*

Colleague B told the panel that a controlled drug should not be transported this way and that a controlled drug needed to be moved in a '*controlled way*'.

Witness 5 described Miss Naylor entering the inpatient unit with a cup of methadone after she'd received a phone call from her to say that Colleague B would not counter-sign the controlled drugs log for methadone. When asked how she knew it was methadone in the cup Witness 5 said she could *'clearly see it was a green substance she had in the cup'*.

The panel accepted Miss Naylor's responses and determined that on the balance of probabilities Miss Naylor had carried methadone in an open medicine pot. The panel therefore found charge 2.5.1 proved.

Charge 2.5.2

2. On 8 May 2017, in relation to the dispensing and handling of methadone:

2.5 Carried methadone:

2.5.2 through the prison from Colleague B to the Healthcare Unit

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 5, Witness 1 and Miss Naylor's responses.

The panel took into account that Miss Naylor wrote in her reflection

'*The safest thing to do was keep the methadone on my person and retrieve the keys from the inpatients department. At this point there was only the prisoner which the methadone was intended for who was not locked in a cell*.'

It was noted in the interview with Witness 1 that

'[Miss Naylor] *described how she was unable to secure the methadone as she no longer had the keys, and that* [Witness 5] *could not assist as she was alone on the inpatient unit, therefore she had no option other than to carry the methadone over to inpatients and collect the keys. She admits that this is bad practice.'*

Witness 1 sets out in her supplementary statement that methadone should be contained in a locked box when it is being carried through the prison. Witness 1 specified the security risks of carrying unsecured medication through a prison as well as the risks to the integrity of the medication.

The panel considered that on the balance of probabilities Miss Naylor had carried methadone through the prison from Colleague B to the Healthcare Unit. The panel therefore found charge 2.5.2 proved.

Charge 3

3. On 15 June 2017, potted up medication when this was prohibited.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 4 and Miss Naylor's responses.

The panel took into account that Witness 4 was a direct witness to the charge. She gave clear and consistent evidence which gave a detailed account of the events of 15 June 2017. Witness 4's evidence was that she saw Miss Naylor *'potting up'* medication and then putting them away in the medication cabinet for later. Witness 4 confirmed that she was concerned that this was not normal practice and that there are risks in *'potting up'* medication. When Witness 4 asked Miss Naylor what she was doing she replied '*potting them up'* to *'save time'*.

Witness 4 acknowledged that she had not challenged Miss Naylor at the time about what she was doing. She told the panel that she was newly qualified and that, in all honesty, she did not know why she hadn't questioned it except to say that it was her first shift, she was nervous and had not worked with Miss Naylor before. Witness 4 did however immediately report what she had seen to her manager.

Miss Naylor denied the incident happened in her interview with Witness 1. The notes of the interview stated

> *'When I asked if* [Miss Naylor] *had put the medications in a pot in advance, 2 tablets in one pot, and 1 tablet in another and then place then in the cupboard, she denied that this had occurred.* [Miss Naylor] *refuted the allegation of potting up, and denied that this incident had occurred.'*

The panel also had sight of *Guidance Document On The Inappropriate Practise of "potting up".* Witness 2 gave evidence that there were posters referring to this guidance document

around the unit. The panel also had sight of the *Medicines Management Policy* which states '*No medicinal product may be removed from its container/packaging except for immediate administration.'* The panel was satisfied that *'potting up'* medication was not permitted.

Having found Witness 4's evidence to be credible and reliable, the panel accepted Witness 4's account of the incident. The panel determined on the balance of probabilities that Miss Naylor potted up medication when this was prohibited. The panel therefore found charge 3 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel was reminded that this is a two-stage process. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Naylor's fitness to practise is currently impaired as a result of that misconduct. In this case Ms Cathcart invited the panel to consider the issue of misconduct first, and to reach a determination on misconduct prior to moving on to the consideration of impairment. The panel accepted the advice of the legal assessor who endorsed this approach, explaining that issues may arise after the determination on misconduct which may require to be addressed before a decision on impairment is reached. The panel was directed not to speculate on what those issues might be but to restrict itself to the issue on whether the charges found proved amount to misconduct.

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Cathcart invited the panel to take the view that the facts found proved amount to misconduct. She referred the panel to '*The Code: Professional standards of practice and behaviour for nurses and midwives 2015*' (the Code) and the terms of the Code the NMC considered are engaged in this case:

Ms Cathcart identified the specific, relevant standards where Miss Naylor's actions amounted to misconduct. She submitted that the conduct found proved in this case is very serious.

Ms Cathcart submitted that preparation in advance of more than one patient's medication is not acceptable as it introduces an unnecessary risk in to the administration process. She submitted that it could result in the wrong individual receiving medication intended for another person. It is the risk and potential for error from this practice which makes this conduct serious, regardless of whether any harm did in fact occur. The two nurses on separate occasions witnessed Miss Naylor *'potting up'*, immediately reported events to their superiors which demonstrated the seriousness of the misconduct and that if fell below the standards expected of a registered nurse.

Ms Cathcart submitted the seriousness of dispensing and administering a controlled drug is evidenced by the very fact that specific legislation, polices and operating procedures apply to its management and administration. She submitted that all the witnesses that gave evidence in relation to this charge, highlighted the importance of following procedure when handling a controlled drug. She submitted that the requirement to have two people present to mitigate the risk of an error occurring which could have serious consequences

for the patient. She submitted that failing to follow policies and procedures which reduce the risk of harm, fell seriously short of the standards expected of a registered nurse.

Ms Cathcart therefore submitted that the three charges found proved, amount to misconduct.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Miss Naylor's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Naylor's actions amounted to a breach of the Code. Specifically:

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

18.4 take all steps to keep medicines stored securely, and

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

20.4 keep to the laws of the country in which you are practising

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to"

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

However, the panel was of the view that in relation to charges 1 and 3 Miss Naylor's conduct was not a single incident and she repeated the behaviour after concerns had been raised with her previously regarding the first incident. The panel considered that Miss Naylor demonstrated a wilful failure to comply with policies and procedures and although no harm occurred there was a real risk of harm if the wrong medication had been administered to a patient. The panel was of the view that Miss Naylor was in the presence of two new members of staff one of whom was a newly qualified nurse and Miss Naylor should have acted as a role model. The panel therefore found that Miss Naylor's actions in charges 1 and 3 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel considered that Miss Naylor's actions sub charge 2.1 in dispensing methadone for administration when there was no prescription in place. It considered that although it was not unusual for Miss Naylor to ask for the dose amount before a prescription was

written and signed it was not good practice. The panel considered that taken individually, this sub-charge 2.1 does not meet the threshold of serious misconduct.

In relation the sub-charge 2.3, the panel considered the Medicines Management Policy and noted that although a nurse is entirely responsible for the safe and secure storage of drugs a nurse may decide to delegate duties. The panel considered that Miss Naylor did delegate to Colleague A and Miss Naylor's actions taken individually did not amount to serious misconduct.

The panel considered that Miss Naylor's conduct as found proved in charge 2.2 and 2.4 in not obtaining a signature from a witness to the dispensing of a controlled drug and thereafter attempting to obtain a signature from a colleague when they had not witnessed the dispensing of a controlled drug and was very serious. Miss Naylor's lack of understanding surrounding the specific legislation, polices and operating procedures which apply to the management and administration of controlled drugs fell far below the standard expected of a qualified nurse. Furthermore, her behaviour in asking a colleague to be second signatory when he had not witnessed the controlled drug being dispensed was effectively asking that colleague to compromise his own professional integrity. This was compounded by her attitude towards her colleague when challenging him for failing to do as she asked, despite being in the wrong. The panel considered that Miss Naylor had been the nurse responsible for the controlled medication and she failed to follow policies and procedures intended to reduce the risk of harm. The panel was of the view that Miss Naylor's conduct fell seriously short of the standards expected of a registered nurse and amounted to serious misconduct.

In relation to sub charge 2.5.1 and 2.5.2, the panel considered that the circumstance which led to these charges arose due to her failure to comply with controlled drug administration policy and therefore taken with the other sub charges to amount to serious misconduct.

The panel found that taken collectively Miss Naylor's actions in charges 1- 3 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

After the panel's decision on misconduct Ms Cathcart then asked the panel to consider a further charge, charge 4.

Decision and reasons on service of Notice of Hearing

Ms Cathcart informed the panel that Miss Naylor was sent a second Notice of Hearing to her registered email address on 16 September 2021 containing the details of charge 4. The panel had sight of that email.

The panel took into account that the Notice of Hearing provided details of the allegations including charge 4, the time, dates and venue of the hearing and, amongst other things, information about Miss Naylor's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Cathcart, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Miss Naylor has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Details of charge

4. On 19 November 2018, at the Crown Court sitting at Teeside, were convicted of one count of Aiding and Abetting the Unauthorised Possession of a Device inside a Prison

And, in light of charge 4 above, your fitness to practise is impaired by reason of your conviction.

Background

On 19 November 2018, Miss Naylor pleaded guilty at the Crown Court at Teeside to aiding and abetting the unauthorised possession of a device inside a prison. The offence occurred between 1 April 2016 and 4 October 2017. Miss Naylor aided a prisoner with whom she was in a personal relationship, at HMP Kirkham, to have in his possession inside that prison, without authorisation, a mobile telephone (contrary to section 40D (3A and 3B) of the Prison Act 1952 and section 8 of the Accessories and Abettors Act 1861).

Decision and reasons on facts

This charge concerns Miss Naylor's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

Submissions on impairment

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Miss Naylor's fitness to practise is currently impaired by reason of her misconduct in respect of charges 1, 2 and 3, and her conviction in charge 4. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Ms Cathcart moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Cathcart submitted that this case engages limbs (a) – (c). She submitted that Miss Naylor's actions and omissions in medication management at charges 1-3 put patients at an unwarranted risk of harm. Procedures and protocols are in place specifically to help mitigate the serious risks administering medication presents. She submitted that by ignoring them Miss Naylor's conduct put patients at an unwarranted risk of harm.

Ms Cathcart submitted that Miss Naylor's conduct at charges 1-3 brought the profession into disrepute and breached a fundamental tenet of the profession, namely to practice safely. She submitted that in cutting corners Miss Naylor wilfully increased the risk of harm occurring and demonstrated that the trust placed in her as a nurse was misplaced.

With regard to charge 4, Ms Cathcart submitted that the conduct which led to Miss Naylor's conviction was outside her clinical practice and did not put patients at risk of harm. However, she submitted that her conduct has brought the profession into disrepute and breached one of the fundamental tenets of the profession namely to promote professionalism and trust. Ms Cathcart submitted that Miss Naylor knew the risks in what she was doing but as with her medication administration, took that risk anyway.

Ms Cathcart submitted that it is a matter for the panel as to whether it considers Miss Naylor has taken sufficient steps to address the concerns and whether her level of insight into her practice mitigates the risk of repetition. The NMC's positions is that while Miss Naylor has taken some steps and shown limited insight neither are sufficient to reassure the panel that it is unlikely the conduct will be repeated.

Ms Cathcart submitted that a finding of impairment is necessary in this case to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as its regulatory body. She invited the panel to find Miss Naylor's fitness to practice currently impaired on the grounds of both public protection and it being in the public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and conviction, Miss Naylor's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

> *'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's “test” which reads as follows:

> *‘Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> d) *…’*

The panel determined that limbs a-c were engaged in the *Grant* test. The panel finds that, although no actual harm was caused, Miss Naylor’s misconduct put patients at risk. Miss Naylor’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute by failing to practice safely.

The panel considered that Miss Naylor’s conviction was outside her clinical practice and did not put patients at risk of harm. However, it was of the view that Miss Naylor’s conduct brought the profession into disrepute and breached one of the fundamental tenets of the profession namely to promote professionalism and trust.

Regarding insight, the panel considered that although Miss Naylor made some concessions in her responses, she did not fully accept the concerns raised about her

practice. Miss Naylor has not demonstrated an understanding of how her actions put patients at a risk of harm nor has she demonstrated an understanding of why what she did was wrong and how this impacted negatively on colleagues and the reputation of the nursing profession. Miss Naylor has expressed no remorse for her misconduct in the course of the fitness to practise proceedings.

The panel took into account that evidence of remediation previously submitted by Miss Naylor. It noted that the Medicines Competency assessment was dated as signed on 19 February 2017 and was completed in light of the issues raised on 10 February 2017. Miss Naylor then repeated her conduct 15 June 2017. It also noted that the Administration and Dispensing of Methadone Assessment was signed as completed on 18 March 2017, and yet the concerns at charge 2 occurred on 8 May 2017. The panel was of the view that these assessments do not demonstrate that the concerns have been addressed and raise concerns that despite knowing how medication should be properly administered Miss Naylor chose to ignore the procedures. In the panel's view this demonstrated attitudinal concerns.

With regard to charge 4, the panel considered that Miss Naylor has demonstrated some insight into her actions but noted that she had specifically received anti-corruption training and would have been alert to these issues because of her job role. While she admits in her reflection that '*ignorance is no defence*' the panel considered that she was not ignorant of the law or prison rules, she simply chose to disregard them, much like the disregard she showed for the medication policies and procedures. The panel considered that Miss Naylor's reflection demonstrated some insight, but was not sufficient to address the concerns raised or demonstrate she has learnt from her failings and that they will not be repeated.

The panel then went on to consider whether Miss Naylor's conduct was remediable. The panel was of the view that the clinical concerns found proved at charges 1 – 3 are potentially remediable through training and supervision to reduce the risk of repetition. However, the panel considered that these did not arise from a lack of knowledge of the

correct process, but rather a wilful failure to follow policy and procedure indicative of an attitudinal issue which is much harder to remediate. In relation to charge 4, the panel considered that Miss Naylor's conduct is more difficult to remediate but not impossible with developed insight and reflection.

The panel was satisfied that the misconduct in this case is potentially capable of remediation. The panel noted that there is no information about whether Miss Naylor continues to work in a clinical setting. It took into account that since leaving HMP Holme House, Miss Naylor has worked as a registered nurse at Aster Care Home, then subsequently as a team leader before leaving to set up her own cleaning business, without any concerns being raised about her practice. The panel had sight of a number of positive references and testimonials.

However, the panel is of the view that there is a risk of repetition based on Miss Naylor's limited insight, her lack of engagement and the lack of evidence of remediation into the concerns raised. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Naylor's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Miss Naylor's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a strike off order. It directs the registrar to strike Miss Naylor off the register. The effect of this order is that the NMC register will show that Miss Naylor has been struck off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Cathcart informed the panel that, in the Notice of Hearing dated 16 September 2021 the NMC had advised Miss Naylor that it would seek the imposition of a strike off order if the panel found Miss Naylor's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Miss Naylor's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- There were multiple incidents of medication mismanagement
- Miss Naylor's wilful disregard for the law, rules, and procedures in both her professional and personal life

- The seriousness of the conviction in light of Miss Naylor's role as a prison nurse who had undertaken anti-corruption training and should have been aware that her actions were unlawful
- Miss Naylor has not engaged with the proceedings since January 2021
- Miss Naylor's limited insight into her failings and insufficient remediation
- Miss Naylor's conduct put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- Miss Naylor pleaded guilty to the conviction, and demonstrated remorse as identified by the Judge
- In the period where Miss Naylor continued to work as a nurse, and thereafter as a healthcare team leader during her interim suspension until some point in 2019, there were no concerns raised regarding her practice and there were a number of positive testimonials.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Miss Naylor's practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Naylor's registration would be a sufficient and appropriate response. The panel acknowledged that there were identifiable failings with regard to charges 1, 2 and 3. However, it had regard to

the fact that despite Miss Naylor having received relevant training, charges 2 and 3 occurred shortly after that training, and charges 1 and 3 were of a similar nature.

The panel also had regard to Miss Naylor's lack of engagement since January 2021 and the attitudinal concerns it had identified in this case. Miss Naylor had received anti-corruption training and wilfully chose to disregard the law, she had also received training in relation to medication administration but failed to follow policy and procedure. The panel is of the view that in light of Miss Naylor's failure to respond to training, engage with these proceedings and the attitudinal issues identified, there are no practical or workable conditions that could be formulated. The panel concluded that the placing of conditions on Miss Naylor's registration would not protect the public, nor would it adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *…*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel had regard to the fact that the misconduct in this case involved a series of medication mismanagement incidents which occurred after Miss Naylor had been given relevant training. The panel was of the view that this, along with Miss Naylor's disregard to the anti-corruption training she had received, demonstrated deep-seated attitudinal concerns with regard to how she viewed rules and procedures. Miss Naylor was a prison nurse who decided to wilfully disregarded the anti-corruption training, policy, procedures and law to aid and abet an inmate, albeit in a personal and non-work related capacity.

Miss Naylor had a working knowledge of the prison system and the expected standards of behaviour of a registered nurse. In light of Miss Naylor's attitudinal issues, limited insight and lack of remediation, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a strike off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Miss Naylor's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Naylor's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Naylor's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public, mark the importance of maintaining public confidence in the profession, and to send to the public

and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Miss Naylor in writing.

Interim order

As the strike off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Naylor's own interest until the strike off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Cathcart. She submitted that an 18 month interim suspension order was necessary to cover the 28 day period Miss Naylor has to lodge an appeal, and to cover any appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to accommodate any appeal period.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Miss Naylor is sent the decision of this hearing in writing.

That concludes this determination.