Investigation name:	**Rashan Charles**
IOPC reference:	2017/089454

> Summary of IOPC conclusions

A summary of our conclusions and our rationale is set out below.

> Misconduct: breaches of police standards of professional behaviour

> Allegations

It is alleged that officer BX47 may have breached the standards of professional behaviour.

1. It is alleged that BX47 did not provide appropriate information in relation to the legal powers he used for his initial detention of Mr Charles and that therefore his use of force against him had been unlawful.

No case to answer.

2. It is further alleged that the initial rationale given by BX47 in a witness statement for taking Mr Charles to the ground, restraining him and handcuffing him (i.e. to prevent him from putting something in his mouth), was called into question by body worn video recorded at the time of the restraint.

No case to answer.

3. Further, it is also alleged that BX47 continued to restrain Mr Charles after the officer was aware that he was suffering from a medical emergency.

No case to answer.

4. Finally, it is alleged that there was an indication that he had failed to abide by MPS policy and the College of Policing's Authorised Professional Practice (see below) by failing to call an ambulance immediately and failing to inform colleagues that he was dealing with a medical emergency, and that BX47 continued to restrain Mr Charles after he believed that he had something in his mouth or that he had swallowed drugs.

No case to answer.

> Summary of rationale

At the end of this investigation, the IOPC must decide whether there is sufficient evidence upon which a reasonable tribunal, properly directed, could find on the balance of probabilities that the actions of Officer BX47 amount to misconduct.

In December 2017, a file of evidence was given to the Crown Prosecution Service (CPS) to consider if the actions of Officer BX47 could amount to common assault. The CPS confirmed in January that it would be taking no further action.

The IOPC's decisions are based on a review of the final report and supporting evidence including the body-worn video (BWV), supporting statements and experts' opinions provided by Ian Read (Safety Trainer), Martin Graves (Use of Force expert), Dr Chapman (Pathologist), Professor Vanezis (Consultant Forensic Pathologist) and Dr Soar (Consultant in Intensive Care Medicine and Anaesthesia).

We also considered the National Police Chief's Council's Personal Safety Manual (PSM), Faculty of Forensic and Legal Medicine's recommendations for the management of choking in police care, the MPS Emergency Life Support (ELS) Guidance and training and disciplinary records for Officer BX47. The latter do not indicate any history of proven discrimination on the part of Officer BX47.

There is insufficient evidence upon which a reasonable tribunal, properly directed, could find misconduct.

In our view, Officer BX47's conduct is better categorised as 'unsatisfactory performance', which is an inability or failure of a person serving with the police to perform the duties of their role to a satisfactory standard. The shortfalls in performance identified below can be addressed at a meeting between Officer BX47 and senior management.[1]

> Allegations 1 and 2

A police officer is permitted to use force against another in circumstances where such force is necessary, proportionate and reasonable.

The vehicle in which Mr Charles was a passenger failed to stop after a police carrier attempted to pull it over. Mr Charles left the vehicle and started running. BX47 stated that he believed the occupants of the car were fully aware of the police presence, that police wanted them to stop and that they had a clear intention to evade police.

[1] Unsatisfactory performance means an inability or failure of a police officer to perform the duties of the role or rank they are currently undertaking to a satisfactory standard or level. The nature of unsatisfactory performance procedures is determined by the officer's borough or Operational Command Unit but will typically involve a meeting with line managers to discuss the issues and any additional training required. This process is set out by Police (Performance) Regulations 2012.

The collective decision taken by officers to stop the vehicle was reasonable and not racially motivated, and the statutory power to stop the vehicle was used appropriately. BX47 had reasonable grounds for suspicion, required under section 1 of the Police and Criminal Evidence Act (PACE), to stop and search Mr Charles.

BX47 pursued Mr Charles into a shop. BX47 stated that, due to the nature of what had just occurred with the car, Mr Charles' behaviour, and the reason for the carrier's deployment in the area in the first instance, it was possible Mr Charles may have a weapon concealed on him.

BX47 explained that, when he attempted to detain Mr Charles from behind, he took hold of his arms to prevent him reaching either for anything on his person or for a glass bottle from the shelf next to him. BX47 explained how he tried to move him to a less confined area with fewer hazards or obstructions with the intention of detaining him for a search.

Mr Charles resisted, struggled and pulled one of his hands free, and seemed to be trying to force his hand into his mouth. This is confirmed by CCTV and Body Worn Video (BWV) footage captured in the shop.

BX47's justification for taking Mr Charles to the floor was to gain control of him and to prevent him placing his hand or any objects into his mouth. BX47's actions are supported by the BWV and CCTV evidence in the shop, which captures events from the moment Mr Charles appears to place an object in his mouth or attempt to swallow it, until the package is later removed from his mouth by a paramedic.

BX47 had grounds to suspect that Mr Charles may be in possession of a prohibited article or drugs. His belief of the perceived risks made the restraint reasonable, necessary and proportionate with the lawful aim of searching Mr Charles.

This is also the conclusion of the 'use of force' expert, Mr Graves, who concluded that, although the techniques used were "*unorthodox*" and "'*not textbook*' *in application*", the restraint was a viable, logical and reasonable option, in line with MPS and National Policy procedure. A review of the BWV evidence and the evidence of Mr Graves indicates that, although Officer BX47's arm does momentarily appear around Mr Charles' throat, it does not appear to be tightened around the throat area. None of the experts consulted in the case concluded that the manoeuvre caused any injury to Mr Charles' throat, nor directly contributed to Mr Charles' death.

Witness 1 and BX47 stated that Mr Charles continued to struggle after being taken to the ground. Dr Soar's assessment was that Mr Charles was resisting the initial restraint, and it was likely Mr Charles was choking when being taken to the ground. Therefore, once on the floor, it was likely that Mr Charles was struggling to breathe. This is supported by the CCTV and the BWV. It would not have been possible for BX47 to distinguish between the two states when he handcuffed Mr Charles to the rear.

In relation to the use of handcuffs, expert evidence confirms this is "*best and safe practice*". The reason stated by BX47 for the use of handcuffs is reasonable as the sole officer at the scene, namely to free his hands to carry out other tasks such as the search and minimise risks to himself.

Accordingly, there is no case to answer in relation to allegations 1 and 2.

Although use of restraint may have been reasonable, the nature of the restraint has been described as unorthodox and deviating from recognised techniques. As a result, there are issues of unsatisfactory performance that should be urgently and appropriately reviewed and addressed by the officer's line manager with BX47 at a meeting with senior management.

> Allegations 3 and 4

Officer BX47 was aware shortly after taking Mr Charles to the floor that he was dealing with a medical emergency. This is borne out by the audio recording of the conversations between BX47 and Witness 1 and their interaction with Mr Charles. At that point, BX47's priority changed from restraining Mr Charles to providing urgent medical assistance.

The investigation report suggests BX47 may have failed to follow recognised first-aid protocols and ELS training when he identified Mr Charles was in distress, and that the cause was likely to be an obstruction in his windpipe.

The evidence in the report strongly suggests that BX47, having recognised Mr Charles had breathing difficulties, omitted to follow recognised first-aid protocols and ELS training. The report indicates a potential breach of the MPS policy and the College of Policing's Authorised Professional Practice by BX47 in delaying over one minute to call an ambulance to deal with the medical emergency, and when BX47 suspected Mr Charles might have swallowed drugs.

Mr Graves estimates that the delay was between one minute and thirty-six seconds and one minute and fifty-six seconds. The report also states that, although BX47 placed Mr Charles onto his side in response to the medical emergency (to prevent positional asphyxia), this is not a recognised position for a casualty suffering from the symptoms displayed by Mr Charles.

In deciding whether these failures may be sufficient to breach police standards of professional behaviour, the version of events set out by BX47, as well as the evidence of Witnesses 1 and 3 and the additional context provided by the BWV footage and accompanying audio recording have been considered.

BX47 explained that, initially, he was concentrating on Mr Charles' hands, not his face. Mr Graves highlights that BX47 did carry out some checks on Mr Charles, and the evidence of Mr Read, a Safety Training Officer, is that it is common for the stress

produced by conflict situations to "*cause the parts of the brain concerned with concentration, judgement and analytical skills to be less efficient*".

However, BX47 was conscious of Mr Charles attempting to put an object in his mouth and should have considered and managed the risk of choking sooner in deciding whether to conduct the restraint.

Although BX47 did attempt to provide some first-aid assistance to Mr Charles, the eyewitness account of Witness 1 indicates BX47 was in a state of shock when confronted with these circumstances and that he appears to have 'frozen' rather than calling, or asking someone else to call, an ambulance.

These failings, although they may not have been causative of Mr Charles' very sad death, do represent a significant failure to perform the role satisfactorily through lack of competence or capability on the part of BX47. The evidence suggests that the tragic situation that developed in the shop did so rapidly, taking BX47 by surprise to the extent that he 'froze'.

In our opinion, these failures were not deliberate and it is acknowledged by witnesses present at the scene, and in expert evidence gathered in this investigation, that BX47 did his best in difficult circumstances. Officer BX47 accepted many of these failings at the recent inquest.

Considering these factors, the shortcomings identified under allegations 3 and 4 in this investigation represent a failure to perform the role satisfactorily through lack of competence or capability, and therefore should be dealt with as unsatisfactory performance, addressed through a meeting with senior management.

> Referral to the Crown Prosecution Service (CPS)

In order to make a referral to the Crown Prosecution Service the IOPC must find an indication that a criminal offence may have been committed and it would be appropriate to refer a file to the CPS to make a charging decision. The following criminal offences were carefully considered throughout the investigation in relation to the actions of Officer BX47 on 22 July 2017:

a. common assault

b. misconduct in public office

c. gross negligence manslaughter

d. breaches of the Health and Safety Act 1974

> Common assault

On 11 November 2017, Officer BX47 was informed he was the subject of a criminal investigation in respect of common assault. BX47 was issued a criminal caution and interviewed on 4 December 2017.

On 22 December 2017, the IOPC sent a file to the CPS to consider a possible charge of common assault. On 19 January 2018, the CPS decided that there was insufficient evidence for a realistic prospect of a conviction and so no prosecution would be brought.

> Misconduct in public office

The offence of misconduct in public office is committed when a public officer wilfully neglects to perform their duty and/or wilfully misconducts themselves to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification.

While there is evidence of potential shortcomings in the performance of BX47 after the restraint, there is no evidence of wilful, deliberate misconduct or neglect.

Additionally, the conduct of BX47 must fall so far below acceptable standards as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification. The courts have said that the threshold is a high one, and a mistake, even a serious one, is not enough.

The potential mistakes of BX47 could not be assessed as falling so far below the standard of conduct to amount to the criminal offence of misconduct in public office.

> Gross negligence manslaughter

Gross negligence manslaughter is committed when a person kills, but does so without the intent to kill or cause grievous bodily harm, and where the death is a result of a grossly negligent (though otherwise lawful) act or omission on the part of the defendant.

There must be a duty of care owed to the person who has died, a breach of that duty of care which causes (or significantly contributes to) the death of the victim; and that the breach of duty should be characterized as gross negligence which is so bad or reprehensible that it should be a crime.

Having detained Mr Charles, BX47 owed him a duty of care as a detained person.

Pathologist Dr Chapman gave the probable cause of Mr Charles death as cardiac arrest caused by upper airway obstruction by a foreign body. He stated that he could not rule out the restraint contributing to the cause of death.

A second pathologist, Prof Vanezis, also considered that the restraint played some part in the death when he gave the cause of death as "*upper airway obstruction by a foreign body during a period of restraint*". Prof Vanezis considers that the movement of the package into a position likely to cause obstruction may have occurred during the restraint.

Our report sets out details of Officer BX47's failure to follow recognised first-aid protocols and training. These failures may be sufficient to breach the duty of care owed to Mr Charles. However, they would also have to be considered to be the cause of the death to meet the threshold of gross negligence manslaughter.

Dr Soar reaches conclusions about the possibility of Mr Charles surviving the incident if BX47 had followed protocols and called an ambulance earlier and makes it clear that his findings are made on the "*balance of probabilities*".

This is not enough for a jury to be able to reach the threshold for a criminal conviction, as that finding would need to be made "*beyond reasonable doubt*".

The findings of Dr Soar in particular do not support the required threshold of causing or significantly contributing to the death. Therefore, there is no indication that this offence may have been committed.

> Health and Safety Act 1974

Finally, Section 33 of the Health and Safety Act 1974 states that an individual commits an offence if they breach the statutory duty set out in section 7(1) of the Act, namely:

"*It shall be the duty of every employee while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work;*

"and as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with."

Section 33 also creates an offence for the MPS as a body corporate if it fails to comply with its duty under s3(1) of the Act, namely:

"*It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety*."

Police officers are specifically permitted to use reasonable force in certain circumstances. The CPS is satisfied that the force used by BX47 in restraining Mr Charles was reasonable and lawful, therefore these acts would be unlikely to breach the duty under the Act.

Based upon the evidence of Mr Graves set out in the report, BX47 did not follow recognised first-aid protocols and ELS training, especially in the delay in calling an ambulance and in failing to put Mr Charles into a recognised position after the restraint and when it was evident that he may have swallowed something.

This evidence supports a view that, despite failing to take all appropriate recognised steps, BX47 did attempt to provide first-aid assistance to Mr Charles.

The Health and Safety Executive (HSE) has developed guidance to which the CPS will have regard in any charging decision. In particular, the HSE has recognised that in the context of policing:

- Many incidents they face occur without warning, and individual officers may be confronted with situations outside their experience and training.
- Some of the incidents they deal with develop and change at speed.
- They have to respond to dangerous situations not of their own making that create the risks – this is different to most other sectors where it is the employer's own business that creates the risks.

While there is evidence that there were potential shortcomings in the performance of BX47 after the restraint, taking into account the guidance, there is insufficient evidence that those failures were sufficiently flagrant or reckless for it to be appropriate to make a referral to the CPS for consideration of a prosecution under Section 7 Health and Safety at Work Act 1974.

As identified by our investigation, there is some conflict in national guidance on the appropriate response when officers believe someone may have swallowed objects.

However, the training provided to officers by MPS was up-to-date and consistent with at least one version of the guidance; failures to follow first-aid protocols were not due to a lack of training.

Taking account of the above, there is no or insufficient evidence for any indication of an offence on the part of the MPS as a body corporate.