

Letter in the New Law Journal

Manufactured law

We are accustomed to judge-made law. We are not accustomed to judges admitting they manufacture law. So what -are we to make of the following?

In *R v Chief Constable of the North Wales Police, ex pAB* [1997] 4 All ER 691 Lord Bingham CJ said (at 699) that the duty of a public body not to disclose prejudicial information without sufficient reason "rests on a fundamental rule of good public administration, which the law must recognise and if necessary; enforce". Buxton J said (at 703) that the public law obligations of such bodies as the police "include observance of the fundamental rules of good public administration, which this court will if necessary enforce".

There is no Act that imposes such a law, so their Lordships must be talking about common law rules. Yet in over 50 years in the law I have never before heard of general rules of the common law requiring all public bodies, on pain of penalties, to observe "the fundamental rules of good public administration".

I suspect that if there ever were such a law there would be much argument as to the precise content of these rules. This is a lot of room for dispute in this-area, and widespread debate . would be needed before there could be general agreement.

Neither judge attempted to formulate these so-called "rules", or state upon what authority they were called into being in their judgments. While no doubt public bodies should be well administered, I have never before heard that this salutary principle is to be enforced by *certiorari*, *mandamus* and the rest.

What these two judges said was admittedly *obiter*, but is it not all rather alarming?

Francis Bennion Oxford