

Insights

NEC, FRAMEWORK AGREEMENTS AND GOOD FAITH

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Summary

Arguments about good faith still come before the courts, covering whether such a term should be implied or how an express good faith term should be interpreted. In *Svella Connect Ltd v Virgin Media Ltd* [2026] EWHC 2223 (TCC) the issue was the test for implying such a term, when the contract already included an express good faith obligation, and the relevance of a contract being relational. In this BCLP Insight, Shy Jackson takes a closer look at this case.

The key issue in this case was whether the agreements between the parties were relational contracts and, if so, whether that meant a duty of good faith should be implied. Some but not all of the agreements being considered were based on NEC4 and included the obligation to act in a spirit of mutual trust and co-operation. As explained below, the argument for implying a wider good faith obligation was unsuccessful in this case.

Background to the claim

The dispute involved contracts for fibre optic data networks throughout the UK and three Framework Agreements that Virgin originally entered into with NMCN plc, which were novated to Svella in October 2021 after NMCN was placed into administration.

Contracts were awarded based on an "Opportunity Plan" setting out the planned volume and location of work for the following year. This was followed by a negotiation to allocate the work, which also took account of the contractor's past performance measured against delivery rate, installation quality, and health and safety compliance and the contractor's capacity for the work. The allocation was provisional and subject to final approval and formal proposals, before works could start. Work was historically allocated based on the Opportunity Plan, but the actual volume of work carried out was often lower than that originally anticipated and in some years contractors did not obtain all of the work that had been provisionally allocated to them.

The original claim by Svella was for fraudulent misrepresentation, intimidation, causing loss by unlawful means, breaches of alleged implied terms of good faith in three Framework Agreements and in a later Exit & Settlement Agreement, aggravated and exemplary damages and disgorgement, equitable compensation or an account of profits. Svella then dropped most of the claims (and withdrew its 187 page Reply in its entirety) save for the claims based on breaches of the alleged good faith terms.

The court therefore had to address Virgin's application for summary judgment or striking out Svella's good faith case, while Svella applied for permission to plead its new good faith case.

The implied terms of good faith

Svella's position was that the Framework Agreements were relational contracts, in that they required a high degree of communication, co-operation and predictable performance based on mutual trust and confidence and involved expectations of loyalty. It was also said that there was an expectation that the relationship would be long term, requiring substantial financial commitment by the parties so as to give rise to a mutual intention that the parties perform with integrity and fidelity to their bargain.

On that basis, Svella argued that there was an implied term of each of the Framework Agreements that each party:

- would act honestly towards the other party;
- not conduct itself in a way which was calculated to frustrate the purpose of the contract; and
- not act in a manner which would be regarded as commercially unacceptable by reasonable and honest people.

Svella then argued that Virgin started putting pressure on it from about March 2024 and thereby acted in breach of both the express terms of the Framework Agreements and the implied term of duty of good faith. The conduct that Svella complained about included a suggestion to use ladders instead of a mobile elevating work platform to save costs, reducing work volumes so as to make the Framework Agreements less profitable, and a threat not to renew or extend the Framework Agreements.

This was followed by an Exit & Settlement Agreement, which Svella claimed was also a relational contract, in that it required a high degree of communication, co-operation and predictable performance based on mutual trust and confidence and involved expectations of loyalty.

Virgin's position was that there was no basis for implying terms of good faith, bearing in mind the express terms of the agreements, and it denied a breach of any such alleged terms. Virgin's

position was that "*Svella's allegations of bad faith against Virgin Media seek to cast perfectly ordinary conduct as nefarious.*"

The Court's decision

The judge began by reviewing the terms of the Framework Agreements, noting that they each contained an express term at clause 10.2 that the parties would "*act in a spirit of mutual trust and co-operation*", and then also looking at the Exit & Settlement Agreement and the terms it contained.

This was followed by a detailed review of the legal principles which govern the implication of terms in general, whether by law or in fact, looking at the leading judgments in **Marks & Spencer plc v BNP Paribas Securities Services Trust Co. (Jersey) Ltd** [2015] UKSC 72, [2016] AC 742 and **Société Générale v Geys** [2012] UKSC 63, [2013] 1 AC 523 as well as the earlier decision in **Philips Electronique Grand Public SA v British Sky Broadcasting Ltd** [1995] E.M.L.R. 472 (CA).

Having set out the general test, the judge went on to review the authorities that deal with implying obligations of good faith. Not surprisingly, he began by reviewing the decision in **Yam Seng Pte Ltd v International Trade Corporation Ltd** [2013] EWHC 111 (QB) and later decisions that addressed the concept of relational contracts, including the decision in **Bates v Post Office (No. 3)** [2019] EWHC 606 (QB).

This was followed by a discussion as to how the criteria identified in the **Bates** decision operated in practice, covering some of the cases which cautioned against the use of such criteria as a basis for implying terms. In that regard, the judge observed that the test for whether a term should be implied remained the same, and had to be considered in the context of the express terms agreed by the parties.

On that basis, the judge concluded that the key issue was not whether the contract is relational but whether the parties' agreement has been fully set out in their contract and, if it has not, whether a term should be implied.

In the context of this case, he observed that the Framework Agreements were each detailed commercial agreements that were based upon NEC standard terms with each agreement running to over 200 pages, including the obligation to act "*in a spirit of mutual trust and co-operation*" and additional limited and one-sided express obligations of co-operation. On that basis, he found that there was no gap in these detailed agreements that required terms to be implied and that the alleged good faith terms were not so obvious that both parties would have confirmed that they intended to agree such terms in response to the hypothetical officious bystander's question.

The judge then went through the **Bates** criteria as a sense check, but found that this did not affect his decision regarding the agreements, as they were not relational contracts and there was no basis for implying the good faith terms as argued by Svella.

Key takeaways

As the judge noted, Coulson LJ had already observed in **Candey v Bosheh** [2022] EWCA Civ 1103 that there has been "*something of an avalanche of claimants in recent years trying to show that the contract into which they seek to imply the term is a relational contract*" but only "*relatively few*" have succeeded.

The claim in **Candey**, however, was by a firm of solicitors against their former client, and of course the **Yam Seng** decision concerned an informal short agreement for the distribution of certain fragrances bearing the brand name "Manchester United".

In the context of construction contracts, the key point is that the main standard forms already include express obligations of good faith. This no doubt influenced the judge's thinking, as he highlighted the existence of clause 10.2 in this case due to the use of an NEC4 contract. Similarly, the JCT 2024 suite of contracts includes an equivalent obligation under Article 3 (discussed in [JCT 2024 contracts – good faith in practice | BCLP - Bryan Cave Leighton Paisner](#)).

When using these forms, the issue will be less about whether such contracts are relational and whether additional terms are to be implied, but more about how the express terms which have been included should be interpreted in each case based on its facts and any other terms included in the contract. It is therefore unlikely that parties will now stop raising such arguments, but they may need to think more carefully about how they are to be presented. In that respect, it is still worth looking at the **Van Oord UK v Dragados UK** [2021] CSIH 50, where it was held that clause 10.1 was not "*merely an avowal of aspiration*" (see [Scottish appeal court says NEC is not a charter for contract breaking | BCLP - Bryan Cave Leighton Paisner](#)).

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