CASE NOTE · TECHNOLOGY AND CONSTRUCTION COURT

Another blow to the "relational contract" and pleading the "elusive concept of good faith"

Svella Connect Limited v Virgin Media Limited [2026] EWHC 2223 (TCC), Pepperall J, 26 August 2026

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GOOD FAITH · RELATIONAL CONTRACTS · IMPLIED TERMS · BATES V POST OFFICE · SETTLEMENT AGREEMENTS · SUMMARY JUDGMENT · TCC

1. Despite long-running academic and judicial misgivings about whether good faith should play any role at all in English contract law, duties of good faith have become a customary battleground in High Court commercial disputes. As commented on in a previous 4 Pump Court case note[1], the judgments of Sir George (now Lord) Leggatt in **Yam Seng Pte Ltd v International Trade Corporation Ltd** [2013] EWHC 111 (QB) and **Al Nehayan v Kent** [2018] EWHC 333 (Comm) swung open the door to claims based on a breach of an implied duty of good faith after he characterised certain contracts as 'relational contracts' underpinned by a duty of good faith. The popularity of bringing claims based on a breach of a duty of good faith has expanded so much that in **Candey v Bosheh** [2022] EWCA Civ 1103, Coulson LJ observed 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" [31]. Coulson LJ added, perhaps with a sense of foreboding, "Only a relatively few have succeeded."

2. **Svella Connect Limited v Virgin Media Limited** [2026] EWHC 2223 (TCC), handed down on 26 August 2026, adds more first-instance snow to the avalanche. The Judgment is the latest comprehensive treatment of implied duties of good faith in English law and provides an important review of the concept of a "relational contract". The Judgment also provides guidance on the requirements for pleading a viable cause of action for breach of an implied duty of good faith.

3. Sanjay Patel KC and Daniel Churcher of 4 Pump Court appeared for the successful Defendant, Virgin Media Limited, and were instructed by Gurbinder Grewal and Alice Andreoletti of Mantle Law.

Background and issues

4. Since 2023 Virgin Media has been developing fibre-optic networks for a single customer: nexfibre. It constructs and expands these networks through a number of framework contractors, of which Svella was one.

5. The system by which Virgin Media allocated work to framework contractors was as follows: (1) before the start of each financial year, nexfibre would publish an anticipated plan for volume and location of work for the following year; (2) Virgin Media would then negotiate with its framework contractors to provisionally allocate the anticipated work; (3) the framework contractors would be invited to produce a formal proposal for installation works which would then be submitted to nexfibre for approval; and (4) nexfibre would decide whether to approve each proposal. ([9]-[11])

6. Under this system, Virgin Media and Svella entered into a series of Framework Agreements. Subsequently in early 2024 Svella and Virgin Media fell into dispute about various matters, including the rate applicable to certain of Svella's works, alleged underpayments and the quality of Svella's works more generally [13]. Shortly thereafter the parties entered into an Exit & Settlement Agreement (the "ESA") dated 24 July 2024 under which Svella waived any contemplated claims under two of the Framework Agreements and Virgin Media agreed to grant conditional assignments of further work in relation to the remaining Framework Agreement ([15]), subject to reservations, including that work orders should go through "the necessary governance process" ([35]).

7. Ultimately, the market turned and in November 2024 nexfibre scaled back its plans for the 2025 financial year. The effect of this was that fewer than a third of the installations anticipated in the ESA were now planned for the upcoming financial year ([17]).

8. Svella commenced proceedings against Virgin Media. Initially it alleged six different causes of action. Svella alleged that Virgin Media breached the express provisions of the ESA by failing to allocate to it the further work contemplated by that agreement but also made claims in fraudulent misrepresentation, duress, causing loss by unlawful means and breach of implied duties of good faith. It also claimed aggravated and exemplary damages, as well as disgorgement, equitable compensation or an account of profits ([1]).

9. Virgin Media issued applications for summary judgment and strike-out on all of the tortious claims, the duress claim and the claim for breach of duties of good faith. Faced with Virgin Media's application for summary judgment and/or strike out, and a separate application to strike out the entirety of its 187-page Reply, Svella abandoned all tort claims and duress claims and its original particulars regarding good faith. However, it applied for permission to replead its claim for breach of an implied good faith obligation.

10. The issue before Pepperall J was therefore whether Svella had a real prospect of success in arguing that a duty of good faith should be implied into the Framework Agreements and the ESA and that (if they existed) the implied duties had been breached ([55]).

The law before Svella Connect Limited v Virgin Media Limited

11. Pepperall J began by setting out the general principles governing the implication of terms, which are well known and uncontroversial. A term may be implied in fact where necessary to give business efficacy to the agreement: **Marks & Spencer v BNP Paribas Securities Services Trust Co (Jersey) Ltd** [2015] UKSC 72. Alternatively, a term can be implied in law where this is provided for by statute, or as a necessary incident of a class of contractual relationship: **Liverpool City Council v Irwin** [1977] AC 239.

12. Pepperall J then gave a comprehensive overview of the authorities on implied terms of good faith as they have developed over the last decade ([56]-[81]):

13. In his seminal decision in **Yam Seng Pte Ltd v International Trade Corporation Ltd** [2013] EWHC 111 (QB) Leggatt J (as he then was) decided that a duty of good faith could be implied into 'relational contracts', being

contracts characterised by a "high degree of communication, co-operation and predictable performance based on mutual trust and confidence and involve expectations of loyalty which are not legislated for in the express terms of the contract but are implicit in the parties' understanding and necessary to give business efficacy to the arrangements" (at [142]). Leggatt J doubted, however, that English law was ready to imply a duty of good faith into all commercial contracts as a matter of law.

14. Leggatt LJ revisited the issue in **Sheikh Al Nehayan v Kent** [2018] EWHC 333 (Comm). He held in that case that a term imposing a duty of good faith arose in fact, but also decided obiter that the same term could be implied in law as a necessary incident of the legal relationship created by a relational contract. Leggatt LJ explained that one of the features of a relational contract was that parties "have not tried to specify, and […] it may be impossible to specify" the spirit and objectives of their bargain (at [167]).

15. Later cases have doubted that a duty of good faith was a necessary incident of a "relational" contract so as to give rise to a term implied in law — Pepperall J agreed with Freedman J's analysis in **Ellis v John Benson Ltd** [2025] EWHC 2096 (KB) that "the general drift is in favour of an implied term in fact" (at [298]).

16. Previous authorities had dealt with the relationship between the recent cases on good faith and relational contracts and the orthodox test for the implication of terms. In **Cathay Pacific Airways Ltd v Lufthansa Technik AG** [2020] EWHC 1789 (Ch), John Kimbell QC sitting as a Deputy High Court Judge concluded: "A good faith term may be implied as a matter of fact in a relational contract but there is [no] special rule for incorporation in a relational contract. Each term must be considered against the usual test for implied terms" (at [218(c)]).

17. When considering whether a contract contains the relevant "relational" factors, Pepperall J considered the nine "Bates factors" articulated in **Bates v Post Office Ltd** [2019] EWHC 606 (QB). However, Pepperall J sounded a note of caution about those criteria and their utility:

    (a) Pepperall J referred to the growing body of case law that cast doubt on whether it is right in principle to imply a duty of good faith into a contract by reference to whether a list of "relational" indicia are present. Pepperall J referred to **UTB LLC v Sheffield United Limited** [2019] EWHC 2322 (Ch), where Fancourt J held (at [203]) that "Rather than seek to identify and weigh likely indicia of a 'relational contract' in the narrower sense used by Leggatt LJ, it is, I consider, preferable to ask oneself first — as Leggatt LJ did in [**Al Nehayan**] — whether a reasonable reader of the contract would consider that an obligation of good faith was obviously meant or whether the obligation is necessary to the proper working of the contract."

    (b) Pepperall J also referred to the judgment of Coulson LJ at [41] in **Candey v Bosheh** [2022] EWCA Civ 1103, who described the criteria as "merely a sense check rather than as a series of statutory requirements".

    (c) Pepperall J concluded (at [74]) that there are "dangers in analysing [a] case purely by reference to the Bates criteria" and instead relied on them as a "sense check" in the manner described by Coulson LJ in **Candey**.

The Court's decision

18. Despite the recent weight of authority on implied terms of good faith and relational contracts, various important questions remained unanswered or unclear before the Svella case, namely:

    (a) How should the category of relational contracts be defined? Is it right to define relational contracts as contracts where parties "have not tried to specify, and which it may be impossible to specify" their spirit and objectives?

(b) How should cases based on an implied duty of good faith be pleaded? Or inversely, what makes a pleaded case alleging breach of an implied term of good faith liable to strike out and/or summary judgment?

(c) Should the implied duty of good faith be framed as a term implied in law or in fact? What are the key ingredients for both?

(d) As to implication in fact: what are the prospects of success for pleading an implied term of good faith in the context of a settlement agreement?

19. Taking the above authorities into account, Pepperall J formed the following conclusions:

20. Pepperall J appeared to disagree with part of the way that Leggatt LJ defined the category of relational contracts. Leggatt LJ's definition of a relational contract as one where the parties "have not tried to specify, and which it may be impossible to specify" the spirit and objectives of their bargain was described by Pepperall J as "curious" ([82]). Pepperall J cast doubt on whether it was right to categorise a contract as relational by reference to whether there is a gap in the drafting of their contract ([82]).

21. When deciding whether a duty of good faith should be implied into a contract, the critical enquiry was not whether the contract was relational but whether the alleged implied term was necessary. Pepperall J described necessity as a "touchstone" ([113.2] and [128.2]).

22. A term cannot be implied in respect of a matter that the parties have already provided for in their agreement, because the purpose of implication is to fill the gaps left by the parties and not to rewrite their contract ([85]).

23. Pepperall J accepted that he needed to consider whether a duty of good faith should be implied in law given that he was dealing with applications for summary judgment and strike-out. However, he also said (at [87] and [113.2]) that:

> "There is much to be said for the views expressed by Leggatt J in **Yam Seng** that English law has not recognised a requirement of good faith as a duty implied by law into all commercial contracts, and by Freedman J in **Ellis** that the 'general drift' of the cases since **Yam Seng** has been to consider the implication of any duty of good faith in fact rather than in law."

> "I do not in any event accept that proof of a relational contract gives rise to duties of good faith as a matter of law".

24. Pepperall J entered summary judgment against Svella on the entirety of Svella's case on breach of an implied duty of good faith. The judge held that the Framework Agreements and the ESA did not contain any gaps such that it was necessary to imply the pleaded terms of good faith, whether on the basis of necessity or obviousness. Indeed, Svella had "not even attempted to identify such a gap or to explain why the pleaded terms are necessary or obvious" ([95]). This conclusion was strengthened by Pepperall J's application of the Bates factors as a sense check ([97]-[114] and [117]-[128]).

25. The case is also notable for Pepperall J's finding that a settlement agreement was unlikely to be a relational contract [115]. Here, when considering the ESA, Pepperall J began from the "starting point" that "it is inherently unlikely that duties of good faith should be implied into a carefully negotiated settlement agreement intended to bring to an end a troubled contractual relationship".

Pleading cases alleging implied duties of good faith

26. Paragraph 37 of the Judgment records Mr Patel KC's submission that "the time has come for there to be settled rules of pleading in this area so that untenable good faith claims do not come on for trial". While Pepperall J did not expressly set out a list of such rules or guidelines, they can be derived from the Judgment. We think when pleading an implied obligation of good faith, the following steps need to be taken.

27. **Step 1 — the express terms.** Present the relevant express provisions and their effect prior to pleading any implied provision ([56] and [84]).

28. **Step 2 — the gap.** Particularise the 'gap' in the contract the implied term needs to fill:

    (a) A claimant should clearly identify, having regard to the express terms in the contract as a whole, the specific matter for which the contract fails to provide: see [83].

    (b) A failure to specify the gap is likely to render the claim amenable to strike out: Pepperall J noted that in this case, Svella had "not even attempted to identify such a gap" ([95]).

    (c) As part of identifying the gap, one should keep firmly in mind that no term can be implied where such is already covered by express provisions of the contract ([65] and [85]).

29. **Step 3 — the term.** Formulate the implied term: it is important to formulate the proposed implied term as precisely as possible. Pepperall J cited the dictum of Sales J (as he then was) in **Torre Asset Funding Ltd v Royal Bank of Scotland plc** [2013] EWHC 2670 (Ch) at [152]: "where there is a variety of proposed terms or where a proposed term could be expressed in different ways, that may be a good indicator that it is not sufficiently certain."

30. **Step 4 — both limbs.** Address all limbs for both implication in law and implication in fact:

    (a) Pepperall J considered that at the interim stage a claimant should be required to address both implication in fact and implication in law ([87]).

    (b) As to implication in fact, the proposed term will need to meet the well-known **Marks & Spencer** test and plead a case as to why the term falls to be implied on the basis of necessity or obviousness.

    (c) As to implication in law, necessity should also be at the heart of the case: [88]. Set out expressly in the pleading the necessity of the precise implied term.

31. **Step 5 — the sense check.** As part of Step 4 above, consider the Bates criteria as a sense-check: the application of the Bates criteria, or pleading that the contract is relational, should not substitute the proper application of the orthodox rules for the implication of a term in fact ([86]).

32. **Step 6 — breach.** Particularise the case as to breach of the implied term with care: when particularising a breach as to the implied term of good faith, such breach cannot be coextensive with claims of breach pursuant to the express terms ([131]).

33. Good faith claims that cannot satisfy these guidelines are at risk of being tested, and consequently disposed of, at the interim stage.

Conclusion

34. Pepperall J's Judgment in **Svella Connect Limited v Virgin Media Limited** will serve as a useful resource for those litigating in cases involving implied duties of good faith. In the authors' view, the Judgment provides

essential guidance on how to plead such cases, as well as clear dicta confirming the proper role of the "relational contract" label, and the Bates factors, in the implication exercise.

35. The full Judgment can be accessed here.[2]

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4 PUMP COURT · TEMPLE · LONDON · 5 SEPTEMBER 2026

NOTES

1 Stopping the avalanche of implied duties of good faith: a case note on **Candey v Bosheh & Anr** [2022] EWCA Civ 1103, 4 Pump Court.

2 The full Judgment is available on the National Archives Find Case Law service: caselaw.nationalarchives.gov.uk/ewhc/tcc/2026/2223.

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