

O come all ye faithful - the latest on good faith in English law

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Phones 4 U Limited (“P4U”) entered into a contract with EE (a mobile network operator), which provided for P4U to act as a sales intermediary for EE (the “Contract”).

Clause 13.11 of the Contract provided that:

“EE hereby undertakes and agrees with P4U that it will act in good faith and not carry out any activity designed to reduce or avoid the making of any Revenue Share Payment(s) to P4U as contemplated by this Agreement”

Over a period, a number of the mobile networks within the UK notified P4U that they would be terminating their intermediary agreements with P4U, meaning that P4U’s commercial position was very fragile.

On 12 September 2014, EE sent P4U a letter, stating that it would not be extending or renewing the Contract. This notification proved to be the straw which broke the proverbial camel’s back and P4U subsequently entered into administration.

P4U argued that the issuance of this letter was in breach of an obligation of good faith, which EE was required to abide by, because EE had decided not to renew the Contract at the time the letter was sent, but sent it anyway, with the intention to drive P4U under.

An obligation of good faith under English Law

English law, unlike many other (particularly civil, but some common law) legal systems does not recognise a general duty of good faith. Parties are entitled to act in their own interests when performing contracts and are not required to take heed of the interests of their counterparts.

That notwithstanding - the “sea of selfishness” in English law, where contract law allows parties to act sharply and entirely in accordance with their own interests despite the impact this may have on other parties (provided they otherwise comply with the contractual requirements), contains an archipelago of good faith, with multiple distinct islands, where parties are constrained in how they can exercise their contractual rights. As Lord Hodge held in *Pakistan International Airline v Times Travel* [2021] UKSC 40, English law has “relied on piecemeal solutions in response to demonstrated problems of unfairness”.

[Read the full article here.](#)