Good Faith in English Contract Law: What Svella v Virgin Media Means for Long-Term Commercial Contracts

By Jonathan Morton | September 23, 2026

RELATED PRACTICES Construction Litigation, Energy Litigation, Construction, Litigation

English contract law has never been comfortable with good faith. Unlike many civil law systems, England has resisted any overarching principle that contracting parties must deal with one another fairly. Commercial parties enjoy wide freedom to pursue their own interests, but the boundaries of that freedom, where the court will step in to regulate behaviour, are tested with increasing regularity. A Technology and Construction Court decision from August 2026 has brought those boundaries into sharp focus.

A Tradition of Scepticism

There are sound reasons for this approach. A general duty of good faith would introduce obligations that are inherently ambiguous and open for debate, threatening the predictability and contractual certainty prized by the traditional approach of English Law. Discipline on party behaviour is supposed to come from what the contract actually says, not from some unwritten code of fair dealing.

That is not to say good faith plays no role. The courts have long recognised it in specific contexts (insurance, partnerships, employment) and parties are, of course, free to agree expressly to act in good faith. What English law has refused to do is imply such a duty across the board as a default rule.

Where the parties include such express reference to “good faith” in their contracts, this will be enforced, and the courts have held that, in general terms, this means honest, not in “bad faith”, conduct, though the precise meaning will always depend on the details of the contract itself and the wider factual nexus.

The Rise of "Relational Contracts"

However, the traditional resistance to a more general implied duty came under sustained pressure following Leggat J’s (as he then was) landmark 2013 decision in *Yam Seng Pte Ltd v International Trade Corporation Ltd*. The High Court held that certain long-term, collaborative contracts (referred to as "*relational contracts*") could give rise to implied duties of good faith, on the basis that such contracts involve a degree of communication, co-operation and trust that the parties may not have spelled out in writing.

The concept proved popular with claimants. In the years that followed, a checklist of nine characteristics of a relational contract was developed by the High Court in *Bates v Post Office Ltd (No.3)* [2019], including factors such as the long-term nature of the arrangement, significant financial commitment, exclusivity and expectations of loyalty. As the Court of Appeal observed in

Candey v Bosheh & Anr [2022], there had then been "*something of an avalanche*” of such claims seeking to demonstrate a relational contract, but relatively few succeeded. The Court of Appeal warned that "*the elusive concept of good faith should not be used to avoid orthodox and clear principles of English contract law*".

Svella Connect v Virgin Media: Drawing the Tine

The most recent comprehensive judicial treatment of the issue came in August 2026 with *Svella Connect Limited v Virgin Media Limited* [2026] EWHC 2223 (TCC). The dispute arose from framework agreements under which Svella carried out fibre-optic network installation for Virgin Media. When the relationship broke down, Svella argued that Virgin Media had breached implied duties of good faith under both those agreements and a subsequent settlement agreement.

Mr. Justice Pepperall granted summary judgment for Virgin Media on the entirety of the good-faith claim.

First, Pepperall J held that the critical question is not whether a contract can be labelled "relational" but whether an implied term of good faith is *necessary*. He described necessity as a "*touchstone*". A court should start by analysing the express terms and ask whether the parties have left a gap that needs filling.

Second, the judge cast doubt on one element of Leggatt J’s original definition, observing that "*it is curious to categorise a contract as relational or not by reference to whether there is a gap in the drafting*". A long-term collaborative arrangement can inherently be a relational contract based on its nature and express terms (such as explicit good-faith obligations), even if no contractual gaps exist covering the spirit of that arrangement that require terms to be implied.

Third, and importantly for commercial practice, the judgment confirmed 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*".

Finally, Pepperall J endorsed treating good faith as a term to be implied in fact (on the basis of necessity in the individual case) rather than as a term implied in law simply because a contract is classified as relational.

What This Means for Commercial Parties

For businesses operating under long-term contracts in sectors such as energy, infrastructure and outsourcing, the implications are potentially significant.

As is usually the case under English Law, the courts will not rewrite a bargain one party has come to regret. If your contract deals comprehensively with matters such as work allocation, pricing, performance and termination, it will be difficult to argue that an implied duty of good faith is needed to fill a gap.

If you want protections (around collaboration, transparency or fair dealing), include them expressly and define how they are intended to operate. Relying on a court to imply them after the event is an increasingly uncertain strategy.

At the same time, good faith in such contexts is not dead. It remains relevant in genuinely incomplete agreements where the parties have left important matters unresolved. It also remains of associated relevance in the exercise of contractual discretions under the so-called *Braganza* principle.

The *Braganza* duty, established by the Supreme Court in *Braganza v BP Shipping Ltd* [2015], applies where a contract gives one party the power to make a decision exercising its unfettered contractual discretion. In those situations, the courts will imply a term that the decision must be made honestly, not arbitrarily, and on the basis of relevant considerations only.

Consider a long-term energy or infrastructure contract under which one party assesses the other’s compliance with service levels. The *Braganza* duty requires that assessment to be carried out rationally: The assessing party cannot cherry-pick data and extrapolate findings without justification. The duty does not, however, extend to absolute contractual rights, such as termination on notice. Nonetheless, this duty is an important one, and we have, on more than the odd occasion, found a client was successfully able to rely upon it in scenarios where its contractual counterparty had acted unfairly and in bad faith.

In more general terms, the message from *Svella* is one of precision, not hostility. The courts are not opposed to good-faith obligations, but they insist on being shown why a particular obligation is necessary in the specific contract at hand. The trend runs firmly towards express terms, contractual certainty and the orthodox principles that English commercial law has long championed. As always, the message remains to ensure your contracts are clear and state precisely those protections and obligations you wish them to cover.