

Legal Briefing

Ted Lowery considers a judgment which confirmed that necessity is the mother of implication

Svella Connect Limited v Virgin Media Limited
[2026] EWHC 2223 (TCC)

In the Technology and Construction Court

Before the Honourable Mr Justice Pepperall

Judgment delivered 26 August 2026

The facts

For the purposes of undertaking works to expand the UK fibre optic data networks on behalf of its customer Nexfibre, Virgin retained contractors under framework agreements. Following Nexfibre's publication of its anticipated volume of installations, Virgin entered into negotiations with its framework contractors to provisionally allocate the anticipated work.

On 7 May 2019, Virgin entered into a framework agreement with NMCN plc. Two further framework agreements with NMCN were completed on 14 February 2020 but during October 2021, NMCN entered administration and the framework agreements were novated to Svella. All the agreements included mutual rights of termination for convenience.

During negotiations for the provisional allocation of work for 2025, Svella sought a larger volume of work and raised claims in respect of earlier work carried out under the 2020 framework agreements. Virgin rejected the claims, requested improvements in Svella's performance and proposed reduced rates. Under an exit & settlement agreement dated 24 July 2024, Svella waived its claims under the 2020 framework agreements and Virgin agreed to award further work under the 2019 agreement.

Schedule 2 to the exit & settlement agreement identified some 96,372 planned installations allocated

to Svella. However, Nexfibre subsequently scaled back its plans for 2025, leaving Svella with only around 26,000 planned installations.

Svella commenced proceedings during 2024, alleging fraudulent misrepresentation, intimidation, causing loss by unlawful means and breaches of alleged implied terms of good faith. Svella argued that the framework agreements and the exit & settlement agreement were relational contracts requiring a high degree of communication, cooperation and long-term, substantial financial commitment from both parties based on mutual trust and confidence. As such, each agreement was subject to a duty of good faith, which was implicit in the parties' understanding and necessary to give business efficacy.

Virgin contended that implied terms as to good faith were neither necessary to give business efficacy to the parties' agreements nor consistent with the express terms of the agreements. In the alternative, Virgin denied it was in breach of any implied terms as to good faith including on grounds that it was under no obligation to place any work with Svella, had retained the right to place work with alternative contractors and in circumstances that the framework agreements were terminable at will.

During December 2025, Virgin applied for summary judgment and Svella cross-applied for permission to serve amended particulars of claim which included a new case on the good faith implied terms.

Svella subsequently agreed to abandon the bulk of its pleaded claims so that the remaining issues on the applications were whether the court should grant Virgin summary judgment/strike out Svella's good faith case and whether Svella should be given permission to plead its new good faith case in the draft amended particulars of claim.

The issues

With the focus on summary judgment principles, the issues were: (i) did Svella have no real prospect of establishing that obligations of good faith should be implied into the framework agreements and into the exit & settlement agreement; and (ii) did Svella have no real prospect of establishing its new case for breach of such implied terms.

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The decision

Regarding issue (i), the judge reviewed the case law concerning implied terms generally and the implication of good faith obligations in relational contracts, concluding that the critical enquiry should not be whether the contract is relational but whether the parties' agreement has been fully set out in their contract and, if it has not, whether the pleaded terms should be implied. When considering proposed implied terms of good faith in long-term collaborative agreements, the judge observed that the court may well be assisted by considering as a sense-check the indicia outline in *Bates v Post Office (No. 3)* [2019] EWHC 606 (QB) but noted that these indicia are not an alternative to the proper application of the orthodox rules concerning the implication of terms.

The judge concluded that the framework agreements were not relational contracts and that a sense-check – by reference to each of the Bates indicia – confirmed there was no basis for implying in fact the implied terms pleaded by Svella. Equally, there was no basis for implying the pleaded terms in law where the framework agreements were not relational contracts and proof of a relational contract did not anyway give rise to duties of good faith as a matter of law. The touchstone remained necessity and there had been no attempt by Svella to establish that the implied terms as to good faith were obvious or necessary. Hence there was no real prospect of establishing the pleaded implied terms at trial.

The judge reached a similar conclusion *apropos* the exit & settlement agreement, commenting that it was inherently unlikely that duties of good faith should be implied into a carefully negotiated settlement agreement intended to bring a troubled contractual relationship to an end.

Regarding issue (ii), the judge granted Svella permission to amend its particulars of claim save in relation to the new case on the implied terms as to good faith, which upon analysis, he considered had no merit.

Commentary

This case undermines any presumptions that, if not expressly catered for, a duty of good faith will be implied into a relational contract. Irrespective of the

status of the contract, the court should analyse the parties' express bargain and consider whether on conventional principles any pleaded implied term as to good faith is made out, applying the key criterion of necessity.

Ted Lowery
October 2026