

CASE NOTE

When commercial commitment outruns contractual protection.

What *Svella Connect Ltd v Virgin Media Ltd* means for contractors relying on framework workload.

THE COMMERCIAL POSITION

Expectation can become exposure before it becomes entitlement.

Framework appointments can become commercially significant before individual packages are formally awarded. Expected workload may influence workforce planning, management resource, operational capacity, supply-chain commitments and overhead recovery. A contractor can therefore make significant business commitments around an anticipated pipeline before that pipeline becomes an enforceable contractual entitlement.

The recent Technology and Construction Court decision in *Svella Connect Ltd v Virgin Media Ltd* [2026] EWHC 2223 (TCC), handed down on 26 August 2026, illustrates that risk. Although much of the legal significance of the judgment concerns good faith and implied contractual terms, its wider commercial importance for contractors lies in a more fundamental question: does the contractual protection supporting anticipated workload match the commercial commitment being made around it?

01 Forecast is not entitlement.

Virgin Media used framework contractors to deliver fibre-network works. Before each financial year, anticipated work was identified and provisionally allocated, with matters including price, performance and contractor capacity influencing the allocation process. The arrangements therefore gave contractors meaningful visibility of potential future workload and required a degree of forward resource planning.

The contractual position was nevertheless materially more qualified. The Framework Agreements expressly provided that there was no guarantee that Svella would be appointed to carry out any works. Individual orders formed separate contracts, competing quotations could be sought and the final award decision remained Virgin Media's. The court also recorded that actual volumes had historically fallen below those initially anticipated.

Pepperall J therefore characterised the agreements as essentially providing the terms upon which Svella had **pre-qualified to compete for work**, rather than guaranteeing that anticipated work would ultimately be awarded. For contractors, the distinction is important. A forecast can support business planning without creating an entitlement; a provisional allocation can indicate likely workload without guaranteeing utilisation; and appointment to a framework does not necessarily create a contractual right to future work.

02 Commitment can move ahead of protection.

The greater commercial risk arises when the contractor begins committing its own resources around the anticipated pipeline. Under the arrangements considered in *Svella*, contractor capacity was relevant to workload allocation and the contractual machinery included resource planning. At the same time, the actual award of future work remained materially more qualified.

This creates a potential asymmetry: **a contractor may plan or maintain capacity around anticipated workload without receiving an equivalent contractual commitment that the capacity will actually be utilised**. That does not make such an arrangement commercially inappropriate. Framework clients frequently require flexibility and future programmes may depend upon funding, approvals, demand or other external factors. The important issue is whether the contractor understands that allocation of risk and reflects it in its pricing, resourcing and commercial decisions before fixed cost or operational dependency develops around the expected pipeline.

Svella also relied upon significant financial commitment when advancing its good-faith case. The court found, however, that the Framework Agreements did not require any particular investment or financial commitment, and that the investment surrounding Svella's acquisition of NMCN's business did not itself enlarge the rights contained in the framework documents.

The broader principle is significant: **the scale of a contractor's commercial reliance upon a relationship does not increase the contractual protection underneath that relationship**. A business can become progressively more committed while its contractual rights remain unchanged.

THE COMMERCIAL ASYMMETRY

Capacity can be committed before utilisation is protected.

A contractor may plan or maintain capacity around anticipated workload without receiving an equivalent contractual commitment that the capacity will actually be utilised.

03

Collaboration does not rewrite the bargain.

The Framework Agreements required the parties to act in a spirit of mutual trust and co-operation. Svella nevertheless sought to establish wider implied duties of good faith. The TCC rejected that case and returned to the parties' express contractual bargain.

Pepperall J emphasised that these were detailed commercial agreements dealing with workload allocation, competitive quotations, performance, termination and collaboration. The purpose of implying terms was to fill gaps left by the parties, not to rewrite matters they had already addressed. The existence of collaborative wording therefore did not provide an alternative route to rights that the substantive provisions of the agreements did not contain.

For contractors, the commercial consequence is more important than the underlying doctrinal debate. **Collaborative language should not be relied upon as protection against a commercial risk that the operative contractual provisions allocate differently.** Longstanding relationships, forecasts, mutual trust provisions and expectations of future work can all carry considerable commercial weight, but where guaranteed workload, exclusivity or another commercial outcome is fundamental to the contractor's position, the relevant protection needs to be found in the contractual rights themselves.

04

When commitment becomes contractual.

The subsequent Exit & Settlement Agreement provides a useful contrast. By July 2024, relations between the parties had deteriorated. Svella agreed to exit two of the framework arrangements while Virgin Media agreed to provide further work through the remaining Lightning framework.

The workload position now became considerably more specific. The settlement identified an FY25 allocation of 74,000 installations plus 22,000 brought forward and provided for a defined proportion of that allocation, together with limited postcode exclusivity and future workload commitments. Those obligations remained subject to negotiated qualifications including governance, performance and whether particular projects proceeded.

Pepperall J nevertheless expressly distinguished this position from the original frameworks: the Settlement Agreement provided **guaranteed volume, subject to caveats.**

The contractual progression can therefore be understood as a spectrum running from **forecast workload, through provisional allocation and an opportunity to compete, to conditional commitment and contractual entitlement.** Those positions should not be treated as commercially equivalent.

The distinction became particularly important when the underlying FY25 programme was subsequently reduced. Of 96,372 installations identified under the settlement arrangements, only around 26,000 were later planned for the year, materially affecting Svella and giving rise to further contractual disputes.

THE POSITION IN VIEW

Not all workload signals carry the same protection.

01	02	03	04	05
Forecast workload	Provisional allocation	Opportunity to compete	Conditional commitment	Contractual entitlement

05 Retrospective protection is the weaker position.

The subsequent litigation provides perhaps the most important lesson for contractor commercial strategy. Once the relationship had deteriorated, Svella sought to rely upon implied good-faith obligations alongside its express contractual case. By the summary judgment hearing, a substantial number of pleaded claims had been abandoned and a 187-page Reply had been withdrawn.

The judgment does not establish what the litigation cost either party and no assumption should be made about that. The procedural history does, however, illustrate the strategic difficulty of attempting to establish additional contractual protection after the commercial relationship has already broken down.

Pepperall J’s reasoning was particularly clear. If Virgin Media was contractually obliged to provide committed workload under the later Settlement Agreement, Svella could pursue that express contractual entitlement. If no such obligation existed, an implied duty of good faith could not create it merely because the commercial outcome had become adverse.

This distinction is fundamental. **An express contractual entitlement gives the contractor a defined position to enforce. Retrospective reliance upon an implied obligation may first require the contractor to establish that the protection exists at all.**

Not every future commercial risk can or should be converted into an express guarantee. However, where a contractor intends to commit significant resource, cost or business strategy around an expected outcome, controlling that exposure while the position remains live provides a materially stronger foundation than attempting to reconstruct protection after the relationship deteriorates.

06 Test commitment against protection.

The lesson from *Svella* extends beyond telecommunications frameworks. Similar exposure can arise around future project phases, anticipated variations, programme forecasts, preferred-contractor arrangements, letters of intent and other commercial expectations that influence contractor decisions before corresponding contractual rights have been secured.

Where material commitment is being made around anticipated workload, contractors should establish what is merely forecast and what is actually guaranteed; when a provisional allocation becomes an enforceable order; what discretion remains over award, reduction or reallocation; whether capacity must be maintained without corresponding utilisation protection; what conditions qualify any committed volume or exclusivity; and how committed resource and cost will be treated and substantiated if anticipated work does not proceed.

Importantly, that assessment should not end at contract signature. A framework representing manageable exposure when entered into can become materially more significant if the contractor later expands its workforce, dedicates further management resource or becomes increasingly dependent upon the anticipated pipeline. The relevant question is therefore not simply what was signed, but **whether the contractual protection continues to match the commercial exposure subsequently being assumed.**

WHAT CONTRACTORS SHOULD TEST

Keep the commercial commitment proportionate to the protection supporting it.

- | | |
|--|---|
| <ul style="list-style-type: none">• What is forecast and what is actually guaranteed? | <ul style="list-style-type: none">• When does provisional allocation become an enforceable order? |
| <ul style="list-style-type: none">• What discretion remains over award, reduction or reallocation? | <ul style="list-style-type: none">• Must capacity be maintained without utilisation protection? |
| <ul style="list-style-type: none">• What conditions qualify committed volume or exclusivity? | <ul style="list-style-type: none">• How will committed resource and cost be evidenced if work does not proceed? |

LEGALBUILD VIEW

The commercial lesson from *Svella*.

Svella Connect v Virgin Media should not be reduced to the proposition that framework agreements do not guarantee work. Some do, and the later arrangements in this case demonstrate that workload commitments can be created contractually.

The more significant contractor lesson concerns the relationship between **commercial commitment and contractual protection**. A contractor can progressively increase its exposure around anticipated work without acquiring any corresponding increase in contractual entitlement. Where the client retains substantial flexibility, that may represent an entirely legitimate commercial allocation of risk, but it needs to be understood before significant reliance develops around it.

Contractors should therefore distinguish carefully between **what is forecast, what is provisionally allocated, what is conditional and what is contractually committed**, and ensure that their own commercial commitment remains proportionate to the protection supporting it.

Commercial exposure is better controlled while expectations, commitments and contractual rights can still be aligned — before the difference between expectation and entitlement becomes a recovery problem.

POSITION PRINCIPLE

Commercial commitment should not move materially ahead of the contractual protection supporting it.

Source: *Svella Connect Limited v Virgin Media Limited* [2026] EWHC 2223 (TCC), Mr Justice Pepperall, Technology and Construction Court, 26 August 2026. Approved judgment published by The National Archives.