



DATE DOWNLOADED: Wed Aug 12 16:21:53 2020
SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 20th ed.

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your license, please use: [Copyright Information](#)

SHOULD ENGLISH CONTRACT LAW ADOPT A GENERAL DUTY TO NEGOTIATE IN GOOD FAITH?

Jason Chen

The reluctance to impose a general duty of good faith in negotiations in English law lies principally in deep-seated objections to the concept,¹ mainly that it would exacerbate uncertainty and that agreements to negotiate are unenforceable.² The first part of this essay will examine how the courts have historically approached good faith, and illustrate the reasoning behind their hesitance to recognise such a duty. Next, there will be a discussion over how recent developments in case law have equipped courts with practicable solutions to mitigate the definitional uncertainty and the unenforceability of agreements to negotiate in good faith. It is submitted that the willingness of the courts to uphold the enforceability of negotiation clauses lends support for the imposition of a duty, and that with sufficient supporting evidence, even bare negotiation agreements should be enforceable. The third section will outline the benefits of a duty of good faith, namely harmonisation with civil law jurisdictions, the promotion of a more consensual approach to negotiation and greater protection of parties' legitimate expectations, which make its implementation a worthwhile pursuit. Finally, it is submitted that as many elements of good faith are already embedded in the common law, the adoption of such a duty should not give rise to many obstacles.

Keywords: contract, contract law, good faith, duty of good faith, common law, civil law, freedom of contract

1. THE HISTORICAL DEVELOPMENT OF THE LAW ON GOOD FAITH

The definition of good faith under English law has gradually expanded in recent years. In *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd*, Bingham LJ defined good faith as essentially a “principle of fair and open dealing”.³ He noted that “English law has, characteristically, committed itself to no such overriding principle but has developed piecemeal solutions in response to demonstrated problems of unfairness.”⁴ Since then, the meaning of good faith has gradually expanded to encompass the principle of a respect for the ‘common purpose’ of the parties, which has enabled courts to assess good faith cases on a contextual basis.⁵

Likewise, the court’s approach to good faith in relation to negotiations has also been in a state of flux throughout history. *WN Hillas & Co Ltd v Arcos Ltd* laid the groundwork for a relatively broad approach,⁶ where Lord Wright’s dictum established that even if negotiations do not result in a contract, “there is a contract (if there is good consideration) to negotiate”,⁷ implying that agreements to negotiate could be enforceable. However, this was to be reversed by later cases such as *Courtney & Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd*, and the leading House of Lords decision in *Walford v Miles*, which both adopted strict

¹ Ewan McKendrick, *Contract Law* (11th edn, Palgrave 2015) 217.

² *ibid*; See.

³ *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1987] 1 QB 433 439 (CA).

⁴ *ibid*.

⁵ See Henry Hoskins, 'Contractual Obligations To Negotiate In Good Faith: Faithfulness to the Agreed Common Purpose' (2014) 130 *Law Quarterly Review* 131.

⁶ *WN Hillas & Co Ltd v Arcos Ltd* [1932] All ER Rep 494 (HL).

⁷ *ibid* 505.

approaches.⁸ In *Courtney*, Lord Denning reversed the principle in *Hillas*, holding that an agreement to negotiate would not be binding as it would be too uncertain, and that the courts would be unable to estimate damages.⁹ *Walford* concerned the sale of a business by the defendants to the claimants.¹⁰ The parties drew up a lock-out agreement, where the claimants provided a ‘comfort letter’ from their bank, in exchange for an agreement that the defendants would terminate negotiations with other parties.¹¹ In spite of this, the defendants later sold the business to a third party, and the claimants brought an action for breach of the lock-out agreement, as well as a breach of the alleged lock-in agreement to continue negotiations in good faith.¹² In affirming Lord Denning’s judgment in *Courtney*, Lord Ackner claimed that the agreement was unenforceable, as the concept of negotiating in good faith was “inherently repugnant to the adversarial position of the parties when involved in negotiations” and “unworkable in practice”.¹³ Together, these two judgments effectively encapsulate the main objections to adopting a duty of good faith.

2. OVERCOMING THE OBJECTIONS TO A DUTY OF GOOD FAITH

A. Definitional Uncertainty

One of the chief concerns over the imposition of a duty of good faith is that it would create too much uncertainty due to the lack of a “clear and unequivocal definition”.¹⁴ This is reflected by Lord Ackner’s comment on the difficulty in assessing bad faith objectively: “[h]ow can a court be expected to decide whether, *subjectively*, a proper reason existed for the termination of negotiations?”¹⁵ However, a number of recent cases regarding contract performance have clarified the language of this elusive concept. In *Berkeley Community Villages v Pullen*, Morgan J recognised that satisfying the requirement of good faith involved adherence with the agreed common purpose and expectations of the parties.¹⁶ Compared to the definition given by Bingham LJ in *Interfoto*, Morgan J’s definition places a particular emphasis on collaboration between parties.¹⁷ This stance was further affirmed in *Mid Essex Hospital Services NHS Trust v Compass Group UK and Ireland Ltd*, where Jackson LJ interpreted good faith as parties working together honestly to fulfil the purposes set out in a clause between the parties.¹⁸ When applied, the flexibility of this common purpose principle gives the courts the discretion to assess the facts of a case with a contextual, purposive approach.

While the above definitions concern cases involving contract performance, they are easily applicable to negotiations as well. A practical application of this is in the case of *Gold Group Properties Ltd v BDW Trading Ltd*,¹⁹ where the defendant entered into an agreement to build housing on the claimant’s land in return for a portion of revenue.²⁰ The agreement prescribed

⁸ *Walford v Miles* [1992] 2 AC 128 138 (Lord Ackner); *Courtney & Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd* [1975] 1 WLR 297 (CA).

⁹ *Courtney* (n 8) 301.

¹⁰ *Walford* (n 8) 128.

¹¹ *ibid* 129.

¹² *ibid*.

¹³ *ibid* 138.

¹⁴ Reshma Korde, 'Good Faith And Freedom Of Contract' [2000] UCL Jurisprudence Review 142, 149.

¹⁵ *Walford* (n 8) 138.

¹⁶ *Berkeley Community Villages v Pullen* [2007] EWHC 1330 [97] (Ch).

¹⁷ *ibid* [69]-[70].

¹⁸ *Mid Essex Hospital Services NHS Trust v Compass Group UK and Ireland Ltd* [2013] EWCA Civ 200 [112]. (CA).

¹⁹ *Gold Group Properties Ltd v BDW Trading Ltd* [2010] EWHC 1632 (TCC).

²⁰ *ibid* [3]-[4].

an obligation to act in good faith, and detailed minimum sales prices subject to negotiation by the parties.²¹ Eventually, the property market dropped, meaning that the minimum prices were unlikely to be met.²² Subsequently, the parties could not agree on the pricing, the defendant did not develop the site, and the claimant brought an action against the defendant.²³ One issue that was considered was whether the claimant breached the good faith obligation by failing to renegotiate the pricing.²⁴ In applying the definition of good faith established in *Berkeley*, Stephen Furst QC held that due to another clause prohibiting either party from seeking to “increase its profit or reduce its loss at the expense of the other”,²⁵ the claimant was not obligated to negotiate, as the defendant’s profit would be increased at the expense of the claimant.²⁶ However, the defendant may be obligated to do so, as a reduction in price would not have affected the defendant’s profit, but “might have been necessary to permit the Agreement to be performed as envisaged.”²⁷ The courts’ interpretation of the clause allowed the intentions of the parties to be upheld, and thus it appears that the common purpose definition has allowed the courts to take a principled approach to mitigating the issue of uncertainty.

B. The Unenforceability of Agreements to Negotiate in Good Faith

i. Negotiation Clauses

Closely linked to uncertainty is the argument that agreements to negotiate in good faith are unenforceable. However, recent case law shows that this depends on the type of negotiation agreement. In *Walford*, Lord Ackner stated that in particular, a “bare agreement to negotiate has no legal content”,²⁸ citing the difficulty of the courts in construing these agreements and the entitlement of parties to be free from contract.²⁹ Here, it is essential to make a distinction between the bare negotiation agreement that Lord Ackner refers to, and a negotiation clause in a pre-existing contract. The *Walford* principle of unenforceability still applies to bare agreements, but Hoskins notes that Lord Ackner’s wording did not encompass negotiation clauses.³⁰ Through this loophole, recent cases have been able to give enforceability to these clauses, as the contract tends to provide a suitable framework to construe the intentions of the parties with sufficient certainty using the “purposive approach” described above.³¹

An example of this is Longmore LJ’s judgment in *Petromec Inc v Petroleo Brasileiro SA Petrobras*.³² Here, the parties included a clause to negotiate in good faith over the extra costs involved over changes to an earlier contract to upgrade an oil production platform, provided that the defendant would compensate the claimant for the extra cost.³³ The enforceability of the clause was not in doubt as the parties had established sufficient intention by virtue of the agreement having been drafted by solicitors, and Longmore LJ commented that in spite of *Walford*, “it would be a strong thing to declare unenforceable a clause into which the parties

²¹ *ibid* [13].

²² *ibid* [10].

²³ *ibid* [4].

²⁴ *ibid* [88].

²⁵ *ibid* [27].

²⁶ *ibid* [91].

²⁷ *ibid* [100].

²⁸ *Walford* (n 8) 138.

²⁹ *ibid*.

³⁰ Hoskins (n 5) 158.

³¹ *ibid* 159.

³² *Petromec Inc v Petroleo Brasileiro SA Petrobras* (No 3) [2005] EWCA Civ 891 (CA).

³³ *ibid* [106].

have deliberately and expressly entered.”³⁴ Similarly, in *Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd*, Teare J found that a negotiation clause prescribing that the parties enter “friendly discussions” before arbitration was enforceable,³⁵ as it was clear that “no term [was] missing” from the agreement,³⁶ and that the parties intended to use the clause as a measure to resolve disputes.³⁷ These two cases show that, when supplied with an adequate framework where the intention of the parties is clear, the courts are at least willing to uphold the enforceability of negotiation clauses, giving credibility to the idea that the imposition of a duty is viable.

ii. Bare Negotiation Agreement

Despite the dearth of supporting case law, it is arguable that even bare negotiation agreements ought to be enforceable if sufficiently certain. This view stems from the *laissez-faire* concept of freedom of contract, which provides that parties should have the freedom to form contracts without government intervention.³⁸ Trakman and Sharma point out that an agreement to negotiate in good faith essentially amounts to a serious intention by parties to take certain steps while negotiating.³⁹ As long as parties provide a suitable means from which to interpret their intentions, as outlined above, and give sufficient consideration, then according to the freedom of contract, there does not seem to be a justifiable ground to hold a negotiation to enter into contracts unenforceable.⁴⁰ Precise documentation such as “a negotiating agenda outlining the issues to be negotiated” could be a workable solution to reinforcing the certainty of a bare agreement.⁴¹ In *Petromec*, Longmore LJ’s statement that the courts should not arrive at a “blanket unenforceability of the obligation” purely because of the difficulty of an issue reflects the court’s desire to respect the freedom of contract,⁴² as well as a preference to assess the individual circumstances of each case.⁴³ Nevertheless, the lack of recognition over the enforceability of bare agreements remains a significant stumbling block, not least because *Walford* is a binding House of Lords decision. Therefore, clarification on the enforceability of bare agreements would necessitate either an Act of Parliament or a Supreme Court decision to overrule the judgment in *Walford*.

³⁴ *ibid* [121].

³⁵ *Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd* [2014] EWHC 2104 (Comm), [2015] 1 WLR 1145 [58].

³⁶ *ibid* [64].

³⁷ *ibid*.

³⁸ Ewan McKendrick, *Contract Law* (11th edn, Palgrave 2015) 3-4.

³⁹ Leon Trakman and Kunal Sharma, 'The Binding Force Of Agreements To Negotiate In Good Faith' (2014) 73 Cambridge Law Journal 598, 621.

⁴⁰ *ibid*.

⁴¹ *ibid* 622.

⁴² Hoskins (n 5) 142, quoting *Petromec* (n 32) [119].

⁴³ Hoskins (n 5) 142.

3. POTENTIAL BENEFITS OF A DUTY OF GOOD FAITH

Since the discussion above has demonstrated that courts have adapted practicable solutions to some of the issues of negotiations in good faith, this section will explore the numerous benefits that a duty of good faith can entail.

A. Harmonisation of Civil Law and Common Law

Firstly, the imposition of such a duty may improve the certainty of international contracts. In contrast to the approach of English law, many other common law and civil law jurisdictions such as the U.S., France and Germany have codified provisions of good faith in the Uniform Commercial Code, French Civil Code and German BGB, respectively.⁴⁴ This can lead to difficulties with transnational exchanges,⁴⁵ and litigation in particular can be especially complicated because of the lack of a universal standard.⁴⁶ Thus, a good faith duty may help to bridge the gap between common and civil law jurisdictions, as parties from different jurisdictions would have a clearer idea of what to expect in negotiations.⁴⁷ The nature of EU legislation is that it may cause an erosion of certain common law principles.⁴⁸ But, on the contrary, recognition of a duty of good faith could give English law greater influence in the development of EU law,⁴⁹ though this prospect may be precluded with the UK's renouncement of EU membership.

B. Promotion of a Consensual Approach to Negotiation

A duty of good faith can also foster a cooperative approach to contractual relations, which has appealing public policy implications. English law has a longstanding emphasis on an adversarial approach to negotiation, which was affirmed by Lord Ackner's comment in *Walford* that good faith was incompatible with this adversarial approach as it is "inherently inconsistent" with the position of a negotiating party.⁵⁰ However, the adversarial approach emphasises short-term relationships, whereas modern business practice generally involves long-term relationships.⁵¹ In this regard, the courts have moulded the law to fit commercial practice before, such as the expansion of the doctrine of consideration to cover 'practical benefits' in *Williams v Roffey*,⁵² which has assisted in the "smooth functioning of the construction industry".⁵³ Likewise, other common law jurisdictions, such as Singapore, have also increasingly advocated the benefits of a consensual approach to negotiation.⁵⁴ In *HSBC Institutional Trust Services v Toshin Development Singapore Pte Ltd*, the Singapore Court of Appeal held that an express agreement between parties in a lease agreement to negotiate rental values in good faith should be upheld, as such clauses "are in the public interest, as

⁴⁴ Ewan McKendrick, *Contract Law* (11th edn, Palgrave 2015) 218.

⁴⁵ Trakman and Sharma (n 39) 628.

⁴⁶ *ibid* 600.

⁴⁷ *ibid* 599.

⁴⁸ Mary Arden, *Common Law And Modern Society: Keeping Pace With Change* (OUP 2015) 60.

⁴⁹ *ibid*.

⁵⁰ *Walford* (n 8) 138.

⁵¹ Alastair Mills and Rebecca Loveridge, 'The Uncertain Future Of *Walford V. Miles*' (2011) 4 *Lloyd's Maritime and Commercial Law Quarterly* 528, 532.

⁵² *Williams v Roffey & Nicholls (Contractors) Ltd* [1991] 1 QB 1 13 (Glidewell LJ) (CA).

⁵³ Mills and Loveridge (n 51) 532.

⁵⁴ *Emirates Trading Agency* (n 35) [54].

they promote the consensual disposition of any potential disputes”,⁵⁵ which may in turn prompt parties to seek alternative dispute resolution instead of litigation.⁵⁶ It could also be argued that the courts’ adoption of a purposive approach towards negotiation clauses would improve the transparency of contractual relationships in general, as it will encourage parties to ensure that their intentions are clear.

C. Greater Protection of Parties’ Legitimate Expectations

A justification for the imposition of good faith in negotiations that is held by some members of the judiciary is that English contract law does not sufficiently protect the legitimate expectations of parties at the pre-contractual stage, which can lead to hardship. Lord Steyn famously stated that the protection of reasonable expectations is the “principal moulding force” of contract law.⁵⁷ He has in particular criticised the decision in *Walford* for failing to do so, and expressed his hope that “if the issue were to rise again... the concept of good faith would not be rejected out of hand.”⁵⁸ Likewise, this view was applied in the *Emirates* case, where Teare J claimed that *Walford* had frustrated the reasonable expectation that courts will uphold obligations between commercial parties.⁵⁹ The judgment in *Walford* explicitly references only the tort of negligent misrepresentation as being a recoverable condition for losses stemming from reliance on pre-contractual negotiations, and yet this only compensates for the value of reliance, and not for the expectations from the contract.⁶⁰ If there is no such claim in tort, “there may be no effective remedy at all”.⁶¹ A formal recognition of the duty of good faith could be grounds for expanding the scope of remedies available. Trakman and Sharma suggest that possible remedies could entail compensation for reliance damages, out-of-pocket negotiation expenses, loss of chance to negotiate with a third party, or for the transfer of the defendant’s profits to the claimant.⁶² The possibility of damages is thus also likely to deter parties from acting in bad faith.

Certain doctrines of English contract law are also recognised as providing less protection to parties when compared to other jurisdictions. The doctrine of promissory estoppel is a prime example, as English law recognises that estoppel can only be used as a ‘shield’ and not a ‘sword’.⁶³ In contrast, the decision of the High Court of Australia in *Waltons Stores (Interstate) Ltd v Maher* established that estoppel could be used as a cause of action.⁶⁴ The claimants of the *Waltons* case, the Mahers, relied on promises made by the defendants that a deal to demolish and erect a new building on the claimant’s land would be carried out.⁶⁵ The claimants began to demolish the building, to the knowledge of the defendants, who then later informed the claimants that it would not proceed with the contract.⁶⁶ The High Court of Australia ruled that while there was no contract, the defendants were estopped from going

⁵⁵ *ibid*, quoting *HSBC Institutional Trust Services v Toshin Development Singapore Pte Ltd* [2012] SGCA 48 [40] (Singapore Court of Appeal).

⁵⁶ *Emirates Trading Agency* (n 34) [54].

⁵⁷ *First Energy (UK) Ltd v Hungarian International Bank* [1993] BCC 533 (CA).

⁵⁸ Johan Steyn, ‘Contract Law: Fulfilling The Reasonable Expectations Of Honest Men’ (1997) 113 *Law Quarterly Review* 433, 439.

⁵⁹ *Emirates* (n 34) [40].

⁶⁰ John Cartwright, ‘Protecting Legitimate Expectations And Estoppel In English Law’ (2006) 10.3 *Electronic Journal of Comparative Law*, 8 <<https://www.ejcl.org//103/art103-6.pdf>> accessed 3 March 2016.

⁶¹ Pedro Barasnevicus Quagliato, ‘The Duty To Negotiate In Good Faith’ (2008) 50 *International Journal of Law & Management* 213, 217.

⁶² Trakman and Sharma (n 29) 625-626.

⁶³ See eg *Combe v Combe* [1951] 2 KB 215, 218.

⁶⁴ *Waltons Stores (Interstate) Ltd v Maher* [1988] HCA 7, (1988) 164 CLR 387 (High Court of Australia).

⁶⁵ *ibid* [1] (Brennan J).

⁶⁶ *ibid*.

back on their promise due to the unconscionability of their actions and the detrimental reliance of the claimant.⁶⁷ This case exemplifies the principle of protecting legitimate expectations,⁶⁸ however, such a remedy would not be available under English law. McKendrick notes that judges may need stronger methods to combat bad faith,⁶⁹ and thus, the imposition of a duty of good faith could potentially be a practicable workaround to areas where existing English law doctrines limit a cause of action.

D. Existing Elements of Good Faith in Common Law

Despite the lack of a formal recognition of good faith, the principles of the doctrine are inherent in common law. In *Yam Seng Pte Ltd v International Trade Corporation Ltd*,⁷⁰ Leggatt J noted that the recognition of an implied duty of good faith in contract performance is “nothing novel or foreign to English law” as it is “consonant to the theme... that reasonable expectations must be protected”,⁷¹ as discussed above. Sometimes, it may lead to the same judgments as that of other doctrines. For example, in *Ingham v Emes* the claimant brought an action against the defendant hairdresser after developing an adverse reaction to hair dye.⁷² However, the claimant failed to disclose to the defendant that she had a known allergy to hair dye, and thus could not recover.⁷³ Powell suggests that the court could have reached the same judgment more directly had a duty of good faith existed at the time.⁷⁴

Finally, several doctrines of contract law, including misrepresentation and undue influence, also have embedded elements of good faith.⁷⁵ The regulation of unfair terms also has a strong overlap with good faith, as identified by Bingham LJ in *Interfoto* in his judgment that parties subject to onerous clauses ought to be sufficiently informed.⁷⁶ Section 62(4) of the Consumer Rights Act 2015 explicitly mentions the phrase “contrary to the requirement of good faith” in determining whether a term is unfair.⁷⁷ That the phrase is explicitly mentioned, and is unchanged from that of the repealed Unfair Terms in Consumer Contracts Regulations 1999,⁷⁸ further reinforces the notion that good faith is not a new concept to English law. Therefore, as its general ethos is consistent to common law, its implementation should, theoretically, not be a major challenge.

The law on negotiations in good faith has seen significant progress in recent years, with the courts laying down a workable definition of good faith. This has been used to successfully enforce negotiation clauses on a contextual basis, supporting the feasibility of the adoption of a general duty of good faith, although the enforceability of bare negotiation agreements may require further clarification. The benefits of a duty of good faith are numerous, and can enhance the protection of legitimate expectations, improve certainty, and foster cooperation between parties in a manner that is consistent to common law principles, making its

⁶⁷ *ibid* [38] (Mason CJ and Wilson J).

⁶⁸ Daniel Davison-Vecchione, 'An Estoppel By Any Other Name' [2012] Surrey Law Working Papers: Short Notes 1, 7.

https://www.surrey.ac.uk/law/pdf/sslwp/An%20Estoppel%20by%20Any%20Other%20Name_Davison%20Vecchione.pdf accessed 12 March 2016.

⁶⁹ McKendrick (n 38) 221.

⁷⁰ *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB).

⁷¹ *ibid* [145] (Leggatt J).

⁷² *Ingham v Emes* [1955] 2 QB 366 (CA).

⁷³ *ibid*.

⁷⁴ Raphael Powell, 'Good Faith in Contracts' (1956) 9 Current Legal Problems 16, 26.

⁷⁵ Korde (n 14) 153.

⁷⁶ *Interfoto* (n 3) 433.

⁷⁷ Consumer Rights Act 2015, s 62(4).

⁷⁸ Unfair Terms in Consumer Contracts Regulations 1999, s 5(1).

implementation an attractive proposition. With the recent expansion in case law in relation to good faith, it will be interesting to see how this area will continue to develop in the future.

BIBLIOGRAPHY**Primary Sources****Cases**

Berkeley Community Villages v Pullen [2007] 3 EGLR 101 (Ch).

Compass Group UK and Ireland Ltd v Mid Essex Hospital Services NHS Trust [2013] EWCA Civ 200 (CA).

Courtney & Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd [1975] 1 WLR 297 (CA)

Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd [2014] EWHC 2104 (Comm).

First Energy (UK) Ltd v Hungarian International Bank [1993] 2 Lloyd's Rep 194 (CA).

Gold Group Properties Ltd v BDW Trading Ltd [2010] EWHC 1632 (TCC).

HSBC Institutional Trust Services v Toshin Development Singapore Pte Ltd [2012] SGCA 48 (CA).

Ingham v Emes [1955] 2 QB 366 (CA).

Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1987] 1 QB 433 (CA).

Petromec Inc v Petroleo Brasileiro SA Petrobras (No.3) [2005] EWCA Civ 891 (CA).

Walford v Miles [1992] 2 AC 128 (HL).

Waltons Stores (Interstate) Ltd v Maher [1988] HCA 7.

Williams v Roffey & Nicholls (Contractors) Ltd [1991] 1 QB 1 (CA).

WN Hillas & Co Ltd v Arcos Ltd [1932] 147 LT 503 (HL).

Yam Seng Pte Ltd v International Trade Corporation Ltd [2013] EWHC 111 (QB).

Legislation

Consumer Rights Act 2015.

Unfair Terms in Consumer Contracts Regulations 1999.

Secondary Sources

Arden M, *Common Law And Modern Society: Keeping Pace With Change* (OUP 2015).

Cartwright J, 'Protecting Legitimate Expectations And Estoppel In English Law' (2006) 10.3 Electronic Journal of Comparative Law <<https://www.ejcl.org//103/art103-6.pdf>> accessed 3 March 2016.

Davison-Vecchione D, 'An Estoppel By Any Other Name' (2012) Surrey Law Working Papers Short Notes Issue 2
<https://www.surrey.ac.uk/law/pdf/sslwp/An%20Estoppel%20by%20Any%20Other%20Name_Davison%20Vecchione.pdf> accessed 12 March 2016.

Hoskins H, 'Contractual Obligations To Negotiate In Good Faith: Faithfulness To The Agreed Common Purpose' (2014) Law Quarterly Review 130.

Korde R, 'Good Faith And Freedom Of Contract' (2000) UCL Jurisprudence Review 142.

McKendrick E, *Contract Law* (11th edn, Palgrave 2015).

Mills A and Loveridge R, 'The Uncertain Future Of *Walford V. Miles*' (2011) 4 Lloyd's Maritime and Commercial Law Quarterly 528.

Powell R, 'Good Faith in Contracts' (1956) 9 Current Legal Problems 16.

Quagliato P, 'The Duty To Negotiate In Good Faith' (2008) 50 International Journal of Law & Management 213.

Steyn J, 'Contract Law: Fulfilling The Reasonable Expectations Of Honest Men' (1997) 113 Law Quarterly Review 433.

Trakman L and Sharma K, 'The Binding Force Of Agreements To Negotiate In Good Faith' (2014) 73 Cambridge Law Journal 598.