This year, in the high-profile dispute between the Post Office and many of its sub-postmasters, Fraser J set out what characteristics might signify that a contract is “relational” and what he felt an implied duty of good faith (or fair dealing) meant in practice.

Having explained that the “circumstances of the relationship, defined by the terms of the agreement, set in its commercial context, is what decides whether a contract is relational or not” at paragraph 725 of a lengthy judgment Fraser J set out the characteristics which he felt were relevant when considering whether or not a contract was a relational one or not:

1. “there must be no specific express terms in the contract that prevents a duty of good faith being implied into the contract;
2. the contract will be a long-term one, with the mutual intention of the parties being that there will be a long-term relationship;
3. the parties must intend that their respective roles be performed with integrity, and with fidelity to their bargain;
4. the parties will be committed to collaborating with one another in the performance of the contract;
5. the spirits and objectives of their venture may not be capable of being expressed exhaustively in a written contract;
6. they will each repose trust and confidence in one another, but of a different kind to that involved in fiduciary relationships;
7. the contract in question will involve a high degree of communication, co-operation and predictable performance based on mutual trust and confidence, and expectations of loyalty;
8. there may be a degree of significant investment by one party (or both) in the venture. This significant investment may be, in some cases, more accurately described as substantial financial commitment; and
9. exclusivity of the relationship may also be present.”

Fraser J explained that the list is not to be considered exhaustive and that none of the characteristics are determinative (the exception to this being where a term expressly prevents the implication of a duty of good faith – that, he said, will be the end of the matter). However the list does give a flavour of the sorts of relationship which are most likely to be considered relational ones.

What does good faith mean? Where good faith (sometimes called “fair dealing”) is implied into a contract, the judge is of the view that it:

“does no more than require a party to refrain from conduct which in the relevant context would be regarded as commercially unacceptable by reasonable and honest people”.

What does relational mean? Fraser J explained that the list is not to be considered exhaustive and that none of the characteristics are determinative (the exception to this being where a term expressly prevents the implication of a duty of good faith – that, he said, will be the end of the matter). However the list does give a flavour of the sorts of relationship which are most likely to be considered relational ones.