

CTTT: Matter Our Operator and Our Retirement Village Residents.

Part A Background

1. Our village rejected the budget initially for Payroll Tax and our operator said that they were unhappy with our rejection as we were the only group village to do so.
2. Our village rejected the amended the budget on the grounds that :
 - (i) our operator had not justified the Head Office Management fee charges in accordance with the Regulations 26(e) and 17(2) of Act and
 - (ii) that our operator was claiming that loose items of capital replacement should be funded by our village residents by special resolution under section 30. We were told that we were the only our operator's group village not using clause 30 for capital item replacement.
3. The removal of the payroll tax of \$24000 was offset by other budget amendments to reduce the budget costs by around \$12000.
4. The Head Office Management fee calculation for our Village was found, verbally, to be higher than that charges to all other villages in our operator's group although the method of allocation between villages was the same. Our Village increase was 12% and others 4%.
5. On Solicitors advice we subpoenaed the budget papers for Recurrent expenses and Capital Works for the other villages broken down to show the goods and services to which they relate and the approximate cost of those goods and services.

Part B CTTT Hearings

1. The first hearing was a Directions Hearing with a CTTT Senior Member. We had lodged the subpoena for documents (A.5) with the CTTT and it was returned to us eight days before the hearing. We were required to serve this on our operator a clear seven business days before the hearing and we were not aware of this and served it at noon on the sixth day before the hearing. At the hearing our operator gave a notice in writing that they had not had sufficient time to obtain the documents and raised other objections. The CTTT Senior Member explained the timetable to us and as we did not comply he said he would consider the admissibility of the various items on that day. We had requested around ten items most of which our operator rejected on the grounds that they related to other villages, there were privacy concerns and some related to the corporate operations of our operator and were therefore confidential, and our operator also said that some of the information requested was available at the Village and had been given to the Finance sub committee convenor. The CTTT Senior Member considered this but said that another village with the same operator was near us physically so he would look at one of the documents for a comparable basis. We received only two out of the ten items requested and they were to be produced at the next hearing.

The points that residents should be aware of are:

- (i) ***When appearing at a CTTT hearing there is only one spokesperson allowed and they sit at the front with other residents beside them or behind them who can offer notes to the spokesperson***
- (ii) ***A subpoena for the production of documents is lodged at the OFT office who forward it to the CTTT registrar who stamps it and returns it by post to the Resident who lodged it and there appears no set timetable for this.***
- (iii) ***The subpoena must be served on an employee of the operator over the age of 18 at an address of the operator.***
- (iv) ***The subpoena must be served giving the operator seven business days before the date of the hearing for the production of the documents.***

- (v) ***The residents should request a short adjournment to consider the operators objections in the letter produced to the hearing.***
- (vi) ***Then you should be prepared to fully explain the reasons for the requested items with clarity. Do not be overawed by the proceedings. Do not be reticent in arguing your case.***

2. The next hearing was a Directions Hearing with another CTTT Member for our operator to produce the two documents as directed in the first hearing. In the meantime our operator had issued a subpoena for the production of our Residents Committee minutes and Residents Forum Meeting. This subpoena was served less than a clear seven business days before the hearing so we wrote a letter for production at the hearing advising that the subpoena was late and that the minutes requested were confidential and should not be available to our operator. When we went to give this to the CTTT Member our President was waved away and the CTTT Member directed to adjourn to a room for conciliation. our operator made a statement that they were still reluctant to give the documents despite the previous CTTT direction. A young lady from the CTTT was to act as the mediator however she was unaware of retirement villages saying “well if the residents don’t like it why don’t they just leave?” She soon realised she was out of her depth with and a non hearing CTTT member acted as mediator from then. After continuing discussion for a while the CTTT Mediator said that he would like to make a few comments. He said that the operator should recognise that the residents concerns were genuine and that animosity could be built up quickly and take years to fade so a give and take attitude was preferable to a CTTT action for these reasons also the fact that our operator were the applicant and they had to prove their case not the respondents. In the spirit of give and take another resident said that we would consent to the minutes being given and our operator should do the same with what they had been directed to do. This was done and we returned to the CTTT Member who accepted the documents being exchanged by consent and said that he would have a date set by the Registrar for the final hearing

The points that residents should be aware of are:

- a. ***Do not be overawed by the proceedings and stand up for your opinions***
 - b. ***Do not consent to items that you have reservations about, argue them to the Member***
3. At the directions hearing on the 25th November with The CTTT Senior Member our operator was directed to provide their final submissions by the 17th December 2010 and we had until the 27th January to produce our response, which allowed a comparable time as the legal fraternity closed over Christmas and new year, our operator s were represented on the phone by the Operators Solicitor.
We understood from CTTT mediator at the previous mediation hearing that what the Parties submitted was what they had to rely on at the final hearing. The resident’s spokesperson later asked the CTTT and they said that additional evidence could be produced if the CTTT Member allowed it.

The our operator’s submissions were not received by the 17th December and we complained to the CTTT who advised everyone on the 20th December that they should comply with the procedural directions.

The letter also said in the second paragraph “failure to comply may result in an adjournment of the hearings and/or any submissions received after the compliance date not being admitted into evidence”

4. OUR VILLAGE received a letter from The Operators Solicitor dated the 24th December arriving on 30th December which said in part that they enclosed 2 “ witness statements upon which our clients intends to rely on “ for the final proceedings.

Both The resident’s spokesperson and I mentioned the lateness in our submissions to the final hearing.

The points that residents should be aware of are:

- (i) My opinion is that operators and their lawyers disregard the procedural directions of the tribunal and this should be emphasised orally at the next hearing.***
- (ii) There should be compliance with the statement that the parties intend to rely on for the proceedings.***

1. After the directions hearing in November we issued a further subpoena to produce documents as we still had the statement that we were the only our operator 's village out of step . We did run the subpoena past our solicitor before issue and allowed until the 14th January for production and a hearing was set for that date before a CTTT Member.
2. The Operators Solicitor wrote a letter to the Registrar complaining that some of things we had asked for previously and some relating to other villages should not be given to us.
3. We attended and were surprised that the solicitor for the operator was on the phone. The hearing Member asked for an explanation and advised the Operators Solicitor that he was required to produce the documents to the Tribunal and the Tribunal Member would decide whether we should have access. The CTTT Member said that he would demand that they be produced within 14 days and asked what our position was. I replied that the documents were important to our response but we had got one of them for another of our operator's village and that the return date was after the day set for our final hearing and we did not want it deferred. Therefore we would not seek access to the documents. The Operators Solicitor subsequently wrote to the CTTT Registrar saying the Member had exceeded his authority and they were considering taking everyone to the District Court. I do not know what happened.

The points that residents should be aware of are:

- (i) Do not ask for documents that have had a direction previously made no matter how important it is to your response. This may have related to one of the many items we asked for and should have got earlier.***
- (ii) In light of subsequent delays we may have been better to take an adjournment and added those documents that the member allowed.***

1. The final hearing was held on the 3rd March 2011 with the CTTT Senior Member with The resident's spokesperson speaking for us and our operator by the Operators Solicitor. Our strategy was that we had produced a good submission by the directed date that responded to all the points in the our operator's application. This strategy was based on advice that at a previous hearing on another matter our village owner o and a solicitor had repeatedly commented that they would rely on their written statement. The CTTT Senior Member opened the hearing saying that he had not read the submissions and this concerned which had been with the CTTT for more than five weeks.
4. He had our submission which was in a 25mm thick binder and was presented with a 75mm binder for the our operator's submission. The CTTT Senior Member asked if we had a similar binder to present and we said that we understood that the evidence submitted by the required date was the evidence that we had to rely on for the final proceedings as the Operators Solicitor had said previously in their letter of the 24th December.
5. The CTTT Senior Member said that he would take submissions on the evidence submitted and the Operators Solicitor said that he objected to two items in our response both of which r our operator elated to him. The first was a print out from the Operators Solicitor's web-site relating to the Operators Solicitor's qualifications and RVA representation at high level and many Retirement Village matters before the CTTT and he didn't like his photo. When asked by The CTTT Senior Member our spokesperson replied that we were representing ourselves and we felt that we were disadvantaged because we did not have legal representation. The CTTT Senior Member then said that we could have legal representation and our spokesperson replied that this was not affordable and contrary to the listed outline of the CTTT. However the CTTT Senior Member allowed the

objection. The second item was a magazine article written by Arthur Koumoukelis which agreed with our submission on the operator's responsibility for capital items. We said this but The CTTT Senior Member allowed the objection. Both of these items were in our response submitted as required by the 27th January.

It was then our turn to object and we rapidly looked up the list of documents and two stood out and we objected to these. The first were minutes from a conciliation meeting held in November where the minutes were taken by the operator not supplied to us until that hearing despite written requests for them, the CTTT Senior Member allowed our objection.

6. The second item we objected to was a statement by a village Manager who had since resigned dated 3rd November 2010 on the grounds that it was not in the applications submission that we had procedural directions to respond to, the manager was no longer employed by our operator and was not present at the hearing. The Operators solicitor said that this had been given to the Residents Committee in November and we were aware of it. The CTTT Senior Member did not allow the objection. **This was probably our major error.** We should have requested a break to review or discover the additional evidence before The CTTT Senior Member decided on that evidence
7. Then The CTTT Senior Member retired for 15 minutes to read the submissions. We may have had another opportunity after the break as we had found other items not support documents to the witness statements but were not sure of the possibility. On the return both parties had to give an oath or affirmation that our witness statements were true. The Operators Solicitor mentioned that my witness statement contained many arguments and opinions that did not comply with the rules of evidence, The CTTT Senior Member said that in the tribunal they did not have to comply but the evidence should be of first hand knowledge and not hearsay.

We both had opening statements, ours was brief and to the point and linked the various witness statements to the Act and summarised our response.

The Operators Solicitor refers to our speaker as "my friend" which is the accepted way of referring to the other party.

The operator's solicitor took five times as long as ours and was in my view disjointed. It included a discourse on the Act and explanation of the provisions of the contracts almost lecturing the CTTT member. Then we broke for Lunch.

After lunch The operators solicitor spoke further on the evidence submitted that day and did not really mention our response which added to the evidence submitted previously on which we felt they had to rely.

The operator's solicitor also went on for a very long time about the statement of the former manager, which as she was not present was not attested to by oath or affirmation and could not be cross examined. It was also not responded to in our submission because it was not included in the operator's solicitor evidence on which we thought they would rely. This was an another error of inexperience on our part and with 20/20 hindsight we should have demanded the right to cross examine even if it had caused a delay.

The operator's solicitor did not really mention the two witness statements provided by the procedural directions and The operator briefly appeared as a witness in relation to our rejection of the Quantity Surveyors report.

The operator's solicitor also went into CTTT decisions including how Queens Lake had been referred to the District Court when the CTTT member in that case rejected the Head office recharge in full suggesting to The CTTT Senior Member that the same course may be followed in our matter if an adverse decision was made.

Our spokesperson said simply that we would rely on our response and not advise the member regarding the law, which he acknowledged with what looked like a grateful nod.

We also thought that the documentation outside the witness statements were there as support to the witness statements and cross-referenced to those statements

The points that residents should be aware of are:

- (1) Do not expect that the operator will NOT bring in new evidence on the day of the hearing, this seems to me a major flaw in the CTTT procedures where expectations of fair play through inexperience can be spoiled by solicitors with more CTTT knowledge***
- (2) Request an adjournment as soon as the operator presents his folder of evidence for the purpose of finding information and documentation on the matters not included in those that were in the original application and those produced in accordance with the procedural directions.***
- (3) Object to anything particularly witness statements not previously given as evidence, examine documents to see if they are referred to in the witness statements previously supplied and if not, they are new evidence after the date of the submissions. Object. Object. Object***
- (4) Be prepared to argue on points raised by the operator, do not rely on witness statements.***
- (5) Be prepared to cross examine to highlight points in the witness statements.***
- (6) Be prepared to require cross examination of witnesses who are not present.***

Part C Witness statements

1. Statements should have details of experience and qualifications to support opinions
2. Witness statements do not have to be signed in front of a JP but affidavits must
3. Statements should be first hand knowledge

Part D After the hearing is over.

At the conclusion of the hearing we were satisfied that we had drawn the attention of the Senior Member to the detail of the statements which we felt were well crafted and factually clear and correct. His statements during the hearing were firm but positive and he had calculated the increase in Head office charges. The CTTT Senior Member said at the close of the hearing that he would hand down his decision by March 31st.

However:

The CTTT Senior Member took ill sometime in March and did not resume his duties until early June.

My opinion is that certain facts were not considered, as our spokesperson noted clause 17(2) in her statement and this was significant. Also our spokesperson enquired about the breakdown of goods and services in her statement and asked further if it included salaries, on-costs, payroll tax, travel expenses or legal fees. Did any of these do work for head office, sales or marketing development of new villages etc.

During the hearing the CTTT Senior Member calculated the increases in fees since last that our statements had said were not explained in accordance with Section 112 (4)

NONE of this was mentioned in the rulings by the CTTT Senior Member which was inconsistent with other recent decisions in the CTTT.

The CTTT Senior Member was away on sick leave from sometime in March until early June.

No other CTTT Senior Member can take over the matter as all the evidence is in the possession of the CTTT Member who is away. A new hearing before another CTTT member is the only way to avoid this delay and should be considered. The CTTT should have an alternative to this procedure.