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## Memorandum

To Tim Lloyd  
Cc Project Board (by TL)  
Date 15 March  
From Keith Snook  
Subject Consensus

At the last meeting I was asked to propose a dispute resolution mechanism following my comments that a simple majority (or indeed even a prescribed percentage majority above 50%) at the first asking on a particular issue is not strictly the same as “consensus”. Also, and just to clear the question, we are sure that we are not seeking unanimity on all decision making. It is surprising how often unanimity and consensus are confused. My experience comes particularly from helping set up systems for agreement when the contract writing body JCT incorporated to become [JCT Limited](#).

Up to incorporation the JCT did things by unanimity and whilst in its long history this had only been used twice to completely stop a publication of a contract form, it was seen as a chronic inefficiency and one to be eliminated when the JCT was criticised in the report on the construction industry published following the review (1996) by Sir Michael Latham. Consensus was suggested by Sir Michael as the way forward but with no further commentary as to what this really would mean or how to achieve it. This became the most difficult issue in the negotiations between the various ‘constituent bodies’ (to become ‘members’ upon incorporation) in setting up JCT Limited.

The solution for the JCT with its collegiate Council and member Board ended up being really quite complicated and involved a concept of ‘relevant college’ which would not be appropriate for this group. In JCT a ‘relevant college’ (and there are further procedures for deciding this too!) has more right to be heard than a non relevant college on a particular issue. This sounds very “Animal Farm” but is necessary and does work.

Though rather looking at it from the negative side, ‘consensus’ can be defined as the absence of sustained and reasonable dissent. Some nice woolly words in there ‘sustained’ – how long? ‘Reasonable’ – how measured? But it is precisely this that sets consensus apart from simple or weighted majority voting which implies no need to formally hear and consider the manner of the dissent.

So the simplest way to formalise this is to allow a consultation procedure that ultimately ends up with a measure of majority vote following appropriate consideration and a transparent process.

The JCT process for example (though simplified to exclude the effect of ‘relevant college’ and the separation of a Council on a collegiate basis and Board on a member basis) is as follows:

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- 1 Discussion on issue goes to vote
- 2 One or more party dissents (lets just follow for one)
- 3 The issue is further discussed with particular reference to the substance of the dissent  
*Assume the dissenting argument carries no sway*
- 4 A further vote
- 5 Continued dissent by 1 party
- 6 Issue deferred pending written arguments for either a special meeting or the next meeting (few issues in JCT are incredibly urgent!)
- 7 Further meeting discussion based on written representations  
*Assume the dissenting argument continues to carry no sway*
- 8 A further vote with a 2/3 majority carrying the issue.
- 9 Secretariat ensures that the process is properly documented (usually agreed meeting minutes with attached papers).

The main difficulty with the above is the time that it may take to reach a decision but it does provide a fairly rigorous interrogation of any issue so that at the end of it the participants can demonstrate ‘reasonableness’ and, by the proper documentation of the process, transparency. Since incorporation in 1998 the system has been used on a few occasions to decide very technical and prickly issues that were destined to find themselves written into standard contract forms that are used widely across the industry – pretty heavy decisions!

I would propose a simpler version that comprised steps

- 1 Discussion on issue goes to vote
- 2 One or more party dissents (lets just follow for one)
- 3 The issue is further discussed with particular reference to the substance of the dissent  
*Assume the dissenting argument carries no sway*
- 4 A further vote
- 5 Continued dissent by 1 party
- 6 Majority vote as to whether the issue is ‘weighty’ enough for the process to continue via the presentation of written arguments  
If ‘yes’ (for very important/fundamental issues only) go to 7 and continue  
If ‘no’ go to 9 and continue.
- 7 Issue deferred pending written arguments for either a special meeting or the next meeting
- 8 Further meeting discussion based on written representations  
*Assume the dissenting argument continues to carry no sway*
- 9 A further vote with a 2/3 majority carrying the issue.
- 10 Secretariat ensures that the process is properly documented (usually meeting minutes)

There is of course a much simpler way forward and that is to not use the term ‘consensus’ and to simply resolve all matters by simple majority or weighted majority

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(to be stipulated) vote at the first hearing of the issue. I would suggest that it depends upon the view of the group collectively how important the suggestion that due consideration is made to all dissent from the majority/popular view.

Keith Snook  
RIBA  
March 2006