Briefing Paper

Right to Buy Consultation Paper

February 2012

Introduction

Communities and Local Government unveiled its consultation paper on the right to buy in November 2011, announcing proposals to increase the cap on discounts to £50,000. The new cap would double the maximum discount available in much of the country, while trebling it in most parts of London.

The revival of the right to buy, first announced during autumn's Conservative Party conference, has been met with concern from some local authorities among fears that they would not be allowed to retain receipts from sales locally. Communities & Local Government said that the consultation would consider the different methods in that the receipts can be used to deliver replacement affordable rent homes on a one-for-one basis, as pledged by the government.

Housing minister Grant Shapps said the government was *'determined to maintain the number of affordable homes for rent'*, repeating the commitment that *'every additional home that is sold will be replaced by a new affordable home on a one-for-one basis'*. The Local Government Association has called for receipts to be retained in full by local councils and for councils to be allowed to decide on discount rates.

'If the receipts are pooled nationally, not only will this lead to money being wasted on bidding processes and Whitehall bureaucracy, but it could hit families hard who are desperately waiting for an affordable home in their local area,' said David Parsons, chairman of the Local Government Association's environment and housing board.

'It is paramount that councils are given the ability to decide the discount tenants receive, to ensure that there is enough money from right to buy sales to build enough new homes. Any flat national rate would be arbitrary and could produce unexpected results due to house price variations across the country.

'In respect to the receipts from right to buy sales, it is vital that all of the money raised is kept by councils, to enable them to quickly invest in affordable housing locally. Councils are trusted by local people to ensure that housing meets their needs and must be given the means to do so."

In the course of this briefing paper we will discuss the different responses to the consultation from various organisations and people to discover its key points and the meaning behind them in a practical context.

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Summary of Consultation

Under the current Right to Buy legislation council tenants have the right to buy their home at a discount. Where a council makes a Right to Buy sale, the receipts are subject to pooling. The council may retain the administrative costs of the sale and the costs incurred on improving the dwelling up to three years before the sale. After those costs have been taken into account, the council may retain 25% of the remaining receipts and the balance of 75% is paid to government. Housing association tenants who transferred with their homes from council landlords have a preserved right to buy.

The Government now intends that net receipts from sales (after allowable costs, repayment of housing debt and currently forecast receipts for councils and central government) should be used to replace the additional homes sold as a result of the higher discount levels. That is, all Right to Buy sales above current predicted levels will be replaced by new homes for Affordable Rent funded (in part) by the additional Right to Buy receipts. Communities & Local Government has produced a model for the calculation of the amount of debt to be repaid that is based on the tenanted market value model that has been used for the calculation of opening debt for self-financing.

The receipt needed to fund replacement will only be a fraction of the cost of a new home. This is because most of the funding for new affordable rented homes comes from borrowing by the provider against the future rental income stream and, in many cases, cross-subsidy from the landlord's own resources, including land. The consultation document sets out this Government's detailed proposals to change the caps on discounts and the rates that will apply to Right to Buy sales.

The consultation was based on:

- Proposals to increase caps on the Right to Buy discount
- Protections for tenants who exercise their Right to Buy
- Preventing abuses
- Rural areas
- Exclusions
- Proposals for councils on allowances and deductions from Right to Buy receipts
- Proposals for councils in apportioning Right to Buy receipts
- Proposals for changes to the Local Authority (Capital Finance and Accounting) Regulations 2003
- Proposals for delivering Right to Buy replacement homes for Affordable Rent
- How Right to Buy will work in the housing association sector

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- Working with lenders.

Proposals for Tenants

To qualify for Right to Buy or Preserved Right to Buy, tenants must have spent five years as public sector tenants. Once eligible, current discount rates are:

- For houses: 35% of the property's value plus 1% for each year beyond the qualifying period up to a maximum of 60%
- For flats: 50% plus 2% for each year beyond the qualifying period up to a maximum of 70%.

In practice, most Right to Buy discounts are limited by caps set in secondary legislation. These currently range from £16,000 in most parts of London to £38,000 in parts of the South East. The effect of the caps is that the average discount rate received by buyers in England is around 25% - ranging from 13% in London to 32% in the North West.

Proposals for caps, discount rates and eligibility

There is a balance to be made between offering generous discounts and having enough receipts to fund the building of replacement homes.

It is proposed to raise the upper limit (the cap) on the Right to Buy discount entitlement to £50,000 throughout England. This will be implemented by an order made under section 131 of the Housing Act 1985. This more than triples the cap currently applied in most of London and provides a substantial increase in the rest of England.

The government said they were interested in views on whether there is a case for changing the minimum and maximum discount rates applying to houses and flats, or the rate at that tenants qualify for increased percentage discounts.

The government does not intend to change the qualifying period for eligibility. The proposed changes will also apply to the Preserved Right to Buy. Subject to the outcome of the consultation and Parliamentary business, the government plans to implement these changes in April 2012.

Tenants without the Right to Buy

Not all social tenants have a Right to Buy their rented home. Most housing association tenants benefit from a Right to Acquire with slightly different terms and discount arrangements. The proposals for Right to Buy discount do not apply to the Right to Acquire. Some landlords may offer discounted voluntary sales schemes, including Social Homebuy, to assist those tenants without a Right to Buy.

Proposals for Councils

Right to Buy receipts include all receipts from tenants under Right to Buy legislation.

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Additionally, the government propose to include receipts arising from voluntary sales at discounts to secure tenants, including some shared ownership sales as set out in the recent consultation 'Streamlining council housing assets: Disposals and use of receipts'.

Loss of income to the Housing Revenue Account;

The valuations used in calculating the self-financing settlement payments to end Housing Revenue Account subsidy include a forecast of lost surplus income arising from Right to Buy sales under the current Right to Buy policy. The methodology is set out in the consultation on Housing Revenue Account Self-financing Determinations, published on 21 November 2011 on the Department for Communities and Local Government's website. However, under the new proposals to reinvigorate Right to Buy, the government expects sales to be substantially higher than the self financing projections, and they propose that a part of the Right to Buy receipt should be used to pay down the housing debt supportable from the lost income from these additional sales.

Under the proposals for increased discounts the government expects take-up of the Right to Buy to be substantially higher than current levels and the costs of administering sales (successful and withdrawn) will rise correspondingly. Currently councils can deduct the actual administration and transaction costs of successful sales from Right to Buy receipts, but there is no allowance for costs relating to applications under Right to Buy that do not result in a sale.

The government propose what they regard as a simpler, fairer and more transparent system. Councils would no longer need to make and justify expenses claims to central government, making a detailed retrospective allocation of staff time between successful and unsuccessful applications. The government considers that this system encourages inefficiency and creates unnecessary red tape. Instead councils would be able to simply deduct and retain a flat rate per successful sale. They would continue to be able to charge administration costs to the Housing Revenue Account.

Flat rate allowances would be set for each region with regard to the 40th percentile of costs achieved by councils in that region over the last three years. The government considers that adopting a flat rate at the 40th percentile of costs provides a strong incentive to councils to achieve efficiency in their operations. Where councils are able to push costs below this figure they could retain the surplus.

The Government is considering making a further allowance to deduct the costs of handling withdrawn applications. This would be a helpful change for councils from the current position where such costs cannot be claimed. However the government does not currently collect information on the number of cancelled applications and have limited evidence on the costs of administering these. They therefore welcomed any information councils could provide on actual numbers and costs incurred in managing applications that are subsequently withdrawn.

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Selected Consultation Questions

Q2: Do you agree that information currently provided to prospective Right to Buy purchasers is sufficient? If not, what else should be included?

Q3: Do you agree that information currently provided to prospective Right to Buy purchasers is sufficient? If not, what else should be included?

Q3: Are there further steps that could be taken to ensure that tenants who purchase under Right to Buy know about and understand the implications of home ownership, including their obligations on becoming a leaseholder?

Q4: We would welcome evidenced assessments of the impact on rural affordable housing of the proposed changes to Right to Buy discount.

For local authorities:

Q5: Communities & Local Government would welcome your views on the proposals that a part of the Right to Buy receipts should be used to pay down the housing debt supportable from the lost income from these additional sales

Q6: What proportion of Right to Buy applications are subsequently withdrawn in your area?

Q7: What costs are incurred in managing aborted applications?

Q8: What sources of funding have you used for improvement works in your area?

Q9: We would welcome views on the proposed approach to projected receipts.

Q10: We would welcome any information councils can provide on the use of Buyback properties. We would also welcome views on this proposal.

Q12: We would welcome views on the calculation of allowable deductions

Q13: Which model for delivery of replacement housing do you consider the most appropriate, and why?

Q14: How can housing associations and councils be further encouraged to use receipts from Preserved Right to Buy sales to support provision of replacement homes?

Local Government Association Response

The Local Government Association has long put the case for change to the housing finance system so that councils could manage their housing for the benefit of local residents in a transparent, accountable and cost effective way. At the heart of the Local Government Association thinking throughout has been a strong message that local is best; that councils are best placed to make decisions about how they spend money they raise locally.

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The Local Government Association considers that self-financing will, for the first time, give councils the freedom they need to be innovative and ambitious in how they manage, maintain and improve the existing stock, and to invest in new homes.

The Local Government Association considers that these principles should apply to the selling of council housing under Right to Buy. Local authorities, as bodies accountable to tenants and local people are much better placed than central government to understand the needs of their tenants, those waiting for a council home and their local housing market.

As such the Local Government Association considers that the Right to Buy policy should:

- Ensure that councils are able to set the discount at an appropriate level dependant on local market conditions, build costs and demand for Right to Buy properties
- Keep 100% of receipts from Right to Buy sales locally to be retained and reinvested in housing locally.

By doing this the Local Government Association believe that councils would also be able to develop local partnership arrangements with Housing Associations to make the most of local assets, expertise and resources.

The Local Government Association considers that the consultation paper makes it clear that one for one replacement cannot be delivered by the receipts from Right to Buy alone and would require the input of significant additional resources. In addition the Local Government Association considers that it would be important to understand what is meant by the government's commitment to "one for one" replacement. If the proportion of receipt available to support the provision of available homes is determined centrally then pooled and redistributed through a national bidding pot, there could be no way of ensuring that homes are replaced in the area in that they are sold.

Moreover, as the proposal assumes that all new homes would be for Affordable Rent, they would not be let on the same basis as those sold under Right to Buy.

The Local Government Association says that their submission does not address every question in the consultation but addresses the relevant and most important questions

Local Government Association representations On Consultation Questions;

Q1: Communities & Local Government would welcome views on the proposals for caps, discount rates and eligibility;

The Local Government Association believes that discounts should be determined locally to take account of local housing markets, build costs and demand for right to buy properties.

A single national discount rate the Local Government Association believes would not result in the optimum level of receipts that could be used to support new provision - that would require local discretion over the discount. By enabling councils to set the discount it would have most impact locally in terms of stimulating demand for Right to Buy as well as providing enough receipts for one for one replacement and housing stock improvements.

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The consultation's Impact Assessment offers a number of different models. Through consultation with councils the Local Government Association has concluded that it is clear that different models would produce optimal levels of demand for right to buy and receipts for re-supply in different areas. This reinforces the argument that councils are best placed to set the discount locally. The Local Government Association would be willing to discuss with government options for providing local discretion and assurance to government that their policy objectives would still be met under this approach.

Q2: Do you agree that information currently provided to prospective Right to Buy purchasers is sufficient? If not, what else should be included?

The consultation suggested that the issue of rogue lenders is confined to London. However from discussions with their members the Local Government Association understands that this is a wider issue and that they know that many councils are already working to highlight these risks to tenants. However, the guidance to tenants should also highlight this issue, particularly in the current financial climate when tenants could be attracted to such offers.

Q3: Are there further steps that could be taken to ensure that tenants who purchase under Right to Buy know about and understand the implications of home ownership, including their obligations on becoming a leaseholder?

In light of the current financial climate the Local Government Association recommends that tenants should be made aware of what can occur if they lose their jobs or have fluctuating income that could affect mortgage repayment.

It is extremely important that tenants understand the implications of home ownership and are given good advice about what it would mean to purchase their home. Councils have an important role to play in getting these messages across and helping people exercise their right to buy.

Q4: We would welcome evidenced assessments of the impact on rural affordable housing of the proposed changes to Right to Buy discounts.

Responses from rural councils suggest that in rural areas a high proportion of homes have already been sold through Right to Buy and in many areas market prices are so high that an increased discount would not generate more sales. This further supports a local model of local discretion over setting the discounts so that rural areas can set their discount accordingly.

Q5: Communities & Local Government would welcome your views on the proposals that a part of the Right to Buy receipts should be used to pay down the housing debt supportable from the lost income from these additional sales

The Local Government Association believes that if the local model of retention of receipts were adopted then this would no longer be an issue as councils would make the decision as to whether to use receipts to pay down the debt or manage their debt in other ways and use the full value of the receipt to provide replacement homes as needed in their area.

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Local debt repayment strategies would also impact on the way councils manage the debt with longer and shorter term repayment plans affecting the level of debt to be repaid with receipts. If councils retained the full value of the receipts they could decide how to manage the debt most appropriately for their local circumstances.

If a national pooling model were adopted then costs must be covered by the Right to Buy receipt so that councils would be, at a minimum, able to maintain standards for tenants and that debt levels would not become unsustainable.

However this should not be as an average but rather be based on the type of property sold (used to generate the debt settlement), that would reflect the fact that in most cases it would be larger or 'better' properties that would be sold through right to buy first.

Q10: Communities & Local Government would welcome any information councils can provide on the use of Buyback properties.

The Local Government Association welcomed the proposal that Buyback properties purchased by a council could contribute to the one for one replacement. However if properties were bought through Buyback for demolition to create a number of new properties these should also contribute to the one for one replacement.

In rural areas, the Local Government Association states that their feedback suggests that councils are limited in their ability to Buy back as property prices are too high and prohibit many rural councils making use of this strategy. The rural issue should be taken into account in any revision of the Buyback policy.

Q11: Do you have any comments on the proposal to not amend section 131 of the Housing Act 1995

The Local Government Association considers that the cost floor needs to be extended to at least 25 years to ensure that the cash value invested in a property is fully recovered on sale. If this does not happen, councils would need to consider their current investment plans very carefully.

Q12: Communities & Local Government would welcome views on the calculation of allowable deductions.

Councils may face early redemption penalties on their debt. Since the proposal is only to release that part of the debt supported by the property, rather than the future rental income - upon that the debt is in practice secured - local authorities may face a financial shortfall.

This is a risk that councils would be mindful of and should be considered under allowable deductions.

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Q13: Which model for delivery of replacement housing do you consider the most appropriate, and why?

There are three 'local' models proposed by the consultation. The Local Government Association believes that councils should be free to make use of receipts as needed by their tenants and local community and that the 'Local Model' is therefore the most appropriate. The Local Government Association believe it would give local control over receipts and enable councils to make use of pockets of land for development that would otherwise go undeveloped.

The Local Government Association would challenge the assertion in paragraph 79 of the consultation paper that assumes that councils would not be willing to bring their own resources to the table to build new homes. If councils had full control of receipts it would enable them to make creative use of their assets and not waste time and money in a national bidding process.

Councils would also be able to develop local partnership arrangements with Housing Associations to make the most of local assets, expertise and resources. A local model does not necessarily mean that only councils would build with the proceeds. Councils have demonstrated their ability to lead locally to meet the housing needs of their communities and to make best use of local assets.

The Chartered Institute of Public Finance & Accountancy Response

In terms of general principles, the Chartered Institute of Public Finance & Accountancy believe in promoting proper accounting practices, good financial administration and local discretion in decision making. Therefore the Chartered Institute of Public Finance & Accountancy say they have strongly supported and long worked towards the reform of the housing finance system that has led to the introduction of Self-Financing.

The Chartered Institute of Public Finance & Accountancy believe that these principles should also underpin the reinvigoration of Right to Buy policies and should not impact adversely on the viability of authorities' Housing Revenue Accounts.

The context of Self-Financing is particularly important in considering the issues around Right to Buy. Local authorities have prepared their thirty year business plans for Self-Financing and it would be vital that changes to Right to Buy policies did not jeopardise the viability of their Housing Revenue Accounts. The consultation paper rightly recognises the need to balance offering generous discounts against having enough receipts to fund the building of replacement homes.

As The Chartered Institute of Public Finance & Accountancy are a professional accountancy body, their detailed response is focused mainly on those questions around finance and accountability.

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Consultation Question 1 – Communities & Local Government would welcome views on the proposals for caps, discount rates and eligibility

Ideally, caps, discounts and eligibility should be determined at local level. That would enable the local housing markets, building costs and Right to Buy demand to be taken into account. However, within the options proposed by the consultation document and impact assessment, The Chartered Institute of Public Finance & Accountancy would suggest that raising the average discount to 40% should provide sufficient stimulation while still allowing useful sums in terms of receipts. The percentage approach allows the discount to rise when/if house prices rise.

Consultation Question 3 – Are there further steps that could be taken to ensure that tenants who purchase under Right to Buy know about and understand the implications of home ownership, including their obligations on becoming a leaseholder?

Given the current situation and outlook for the economy and employment in particular, it is important that tenants are made fully aware of the implications of adverse movements in their income for their mortgage repayments.

The Chartered Institute of Public Finance & Accountancy agree that there is a need, as set out in paragraph 30 to amend *The Right to Buy your Home* booklet to highlight all the issues that a tenant should take into account when deciding whether to exercise their Right to Buy, particularly with regard to family members.

Consultation – Question 5 Communities & Local Government would welcome your views on the proposals for calculating the amount of housing debt that should be cleared.

In line with the general principle of support for local discretion, the Chartered Institute of Public Finance & Accountancy considers on balance that the Local Model of retention of receipts should be adopted, allowing local authorities to decide whether to use receipts to pay down the debt or to manage their debt in other ways and use the full value of the receipt to provide replacement homes if needed.

If, however, the Government were to adopt the National pooling model, then the Chartered Institute of Public Finance & Accountancy would suggest that costs should be covered by the Right to Buy receipt if local authorities are to be able to maintain standards for tenants - and that total debt levels do not rise to unsustainable levels.

Consultation – Question 11: Do you have any comments on the proposal to not amend section 131 of the Housing Act 1995

Section 131 of the Housing Act 1985 (the cost floor) limits the Right to Buy discount to ensure that the purchase price of the property does not fall below what has been spent on building, buying, repairing or maintaining it over a certain period of time (relevant expenditure). This is to ensure that the public sector can generally recoup significant expenditure on upgrading homes. The Chartered Institute of Public Finance & Accountancy do not suggest making any changes here.

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Consultation – Question 13 Which model for delivery of replacement housing do you consider the most appropriate, and why? Do you think that a limit should be placed on the amount of discount a local authority can offer on vacant land? If yes, what should it be?

The Chartered Institute of Public Finance & Accountancy consider the Local Model to be the most appropriate one. Similarly, The Chartered Institute of Public Finance & Accountancy welcome the proposal for local replacement delivery models. The Chartered Institute of Public Finance & Accountancy believe a national model of redistribution is likely to be more costly to administer and unlikely to be able to respond as quickly and effectively to local supply and demand effects than local authorities themselves could.

Consultation – Question 14 How can housing associations and councils be further encouraged to use receipts from Preserved Right to Buy sales to support provision of replacement homes?

From April 2012 the Government is implementing Self-Financing, under that council housing is to be a business over a thirty year period. In keeping with this new system of housing finance and local control, the Chartered Institute of Public Finance & Accountancy considers that local authorities should also be able to retain 100% of Right to Buy receipts and make their own decisions, appropriate to local circumstances.

Ken Lee (Chair of the Chartered Institute of Public Finance & Accountancy Local Authority Housing Panel and Director of Resources at Wigan and Leigh Housing Company) said:

"Right to Buy has never gone away since its introduction in 1980. It has changed over the years, with Tory governments trying to stimulate it and Labour governments – never having the courage of their convictions to repeal it for fear of loosing votes – doing everything they could to make it unattractive, particularly in London.

"The consultation on its revamp introduces a twist with a desire to see a new dwelling for every one sold. Why? Firstly, to stem the reduction in social housing – so there is some learning that, like it or loathe it, there is a need shown by the millions on waiting lists. Secondly, there is a desire to stimulate house building – exhibiting a belief that we can build our way out of current financial difficulties.

"So do the proposals past muster? Well, in the North of England properties might sell at around £80,000 (or less) and now produce receipts of around £50,000. These proposals would see this reduce to around £30,000, so lenders might well – even under Basel constraints – take a punt on the improved loan-to-value ratio while they will not touch something that is nearly twice that at the present time.

"But, in London, with prices ranging from £100,000 up to £1million, the £50,000 cap on discounts to tenants means that lenders will nearly always be faced with larger loan-to-value ratios – so borrowing might be more limited.'

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"Lucky northern authorities that might be selling their properties are going to be finding it extremely hard to have enough funding from the sales to replace on a one-for-one basis. Perhaps the odd mobile home might be produced. Whereas down 'south' if they do sell, then re-provision is less of problem. In fact, one might look at a three-for-one ratio.'

Mr Lee goes on to tell us that there is an answer to this issue and that:

"*It might actually lie buried in the Impact Assessment that was issued along with the consultation. One of the options was for the discount level to be set at a maximum of 40% with no cash cap.*

"It would stimulate sales around the country as the loan-to-value ratio is reduced for all and it would leave most authorities with a fighting chance of either building a replacement or working with a housing association to achieve this as they often have more funds available."

Mr Lee also raised the question:

"C*an politicians understand that a reduction in the discount level accompanied by a removal of the caps is actually is the way to breathe new life into Right to Buy, or will they be fixated on discount percentages that were originally 50% and then increased to 60%?....*

"The information from the Department for Communities and Local Government suggests that the actual discounts currently given work out in practice at about 25%, so this proposal to go to 40% is a significant hike and one that might just produce national sales and replacement rented homes, thus avoiding yet another divide.

"So, if there is a North/South divide, this could be made worse in social housing by the current proposals either by design or by accident. There is an alternative that seems less decisive, but is it politically acceptable?"

Conclusions

'Right to Buy' was originally introduced by the Conservative government in 1980 following a commitment made during the 1979 election. It achieved its stated intention of allowing council tenants to become owner-occupiers and led to an increase in owner-occupation and a reduction in the social housing stock. This reduction in the social housing stock subsequently caused concern leading to the New Labour government restricting the 'Right to Buy'.

The current coalition government's proposals on extending the 'right to buy' are widely seen as an attempt to build on the policy started by the previous Conservative government and to extend owner-occupation at a time when market forces are making it difficult for first time buyers to enter the market. However, the government states that its policy will not lead to further reductions in the social housing stock as it will use the right to buy receipts to fund new build social housing on a one-for-one replacement basis.

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Sceptics have questioned whether the policy will actually generate more right to buy sales in view of market conditions and in view of the fact that more prosperous tenants have already bought the most desirable homes. They have also questioned whether, given increased discounts, the proceeds of any increased sales would be sufficient to finance the building of an equivalent number of new social homes.

This consultation paper sets out the financial mechanisms that the government is proposing. It is suggested that the first call on receipts will be to meet administration costs, then to repay a proportion of the Council's debt and then to provide the Treasury with the receipts that it assumed as part of the 2010 Comprehensive Spending Review. Any capital receipt remaining would then be used to support new affordable housing. However, the consultation paper puts forward options for achieving this including an option of retaining receipts locally and an option of pooling receipts nationally and distributing them on the basis of need. Most respondents in the sector favour the localist approach.

The government is expected to respond to the consultation responses soon.

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About 'AWICS'

'AWICS' provides a full range of management consultancy and training services.

Our mission statement is 'Independence, Integrity, Value'. We therefore provide support to clients from an independent standpoint that is designed to help the client to achieve their objectives. We are passionate about working with the utmost integrity. We believe that we offer the best value for money that is available today!

For more information about us and our services please visit our website at www.awics.co.uk or contact Adrian Waite at Adrian.waite@awics.co.uk .

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