

# CHESHIRE EAST COUNCIL

## Joint Extra Care Housing Management Board

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**Date of Meeting:** 28 September 2011  
**Report of:** Jayne McLaughlin (Legal) & Dominic Oakeshott (Finance)  
**Subject/Title:** Transfer of 10% Subordinate Debt by Gleeson and Nationwide to MBIA

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### 1.0 Report Summary

1.1 This report details the proposed transfer of the PFI subordinate debt currently held by Gleeson and Nationwide to MBIA and explains the limited due diligence carried out by Council officers.

### 2.0 Recommendation

2.1 That Members confirm the due diligence exercise.

### 3.0 Reasons for Recommendations

3.1 Gleeson and Nationwide wish to transfer their share of the subordinate debt to MBIA as soon as possible.

3.2 The Authorities can only prevent the transfer on the grounds stated in the report identifying an Unsuitable Third Party. Officers have carried out due diligence and believe that MBIA is not an Unsuitable Third Party.

3.3 Avantage is actively supporting this transfer.

### 4.0 Wards Affected

4.1 Cheshire East  
Crewe St Barnabas, Handforth, Middlewich

4.2 Cheshire West & Chester Council  
Rossmore, Winsford Over & Verdin

### 5.0 Local Ward Members

5.1 Cheshire East  
Crewe St Barnabas – Councillor Roy Cartlidge  
Handforth – Councillors Barry Burkhill and Dennis Mahon  
Middlewich – Councillors Paul Edwards, Simon McGrory and Michael Parsons

5.2 Cheshire West & Chester Council  
Rossmore – Councillor Pat Merrick  
Winsford Over & Verdin – Councillors Don Beckett, Tom Blackmore  
and Lynda Jones

## **6.0 Policy Implications including – Carbon Reduction - Health**

6.1 None.

## **7.0 Financial Implications**

7.1 None.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 The Council does not have right to veto the transfer. There will be no contractual amendments required following the transfer nor should there be any effect on delivery of services under the contract.

8.2 Nationwide remains the senior debt provider with in the region of £80 million investment at stake. Nationwide has confirmed to the Council that it has completed due diligence on MBIA and concluded that it is a suitable third party.

## **9.0 Risk Management**

9.1 None.

## **10.0 Background and Options**

10.1 The Authorities have been notified that Gleeson and Nationwide intend to sell their shares in the Special Projects Vehicle (SPV) to MBIA UK (Insurance) Limited. This amounts to two-thirds of the subordinate debt with a value of approximately £3M. The senior debt of approximately £80M remains with Nationwide.

10.2 The Project Agreement provides at Clause 69.2 that the Contractor may transfer shares to a Suitable Third Party and is obliged to provide the Authority with prior written notice of its intention to do so.

A “Suitable” Third party is defined as a party which is not Unsuitable. An Unsuitable Third Party is defined as;

“(a) *any person who has a material interest in the production, distribution or sale of tobacco products and / or alcoholic drinks*

“(b) *any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of having Services by the Authority or*

*(c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security”*

- 10.3 Based on a limited due diligence exercise, which included obtaining background information on the structure of the MBIA Group, officers were able to discount (c) and decided that neither (a) nor (b) applied to the MBIA Group.
- 10.4 This opinion was supported by a letter from Nationwide – who hold the senior debt of approximately £80M – giving consent to the transfer.
- 10.5 Standard financial checks have been carried out on MBIA and its holding company. These show that even though the company to which the shares will be transferred has limited capital, its holding company is very sound and has substantial capital and reserves.
- 10.6 Avantage has concluded its own due diligence is comfortable with their suitability as a shareholder in the SPV. The partners in the SPV have had an ongoing relationship with MBIA for a number of years and confirm their position as a major player in the global insurance market and their experience in the UK PFI market.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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