

<p>Title of policy: Access Validating Agency (AVA) merger by acquisition by non-AVA recognised awarding organisation</p>	
<p>Policy statement: This document sets out the procedures that an AVA and a non-AVA recognised awarding organisation that proposes to acquire an AVA must follow, and the actions that the Quality Assurance Agency for Higher Education (QAA) will take, when an AVA decides to merge with another Ofqual-recognised awarding organisation that is not an AVA by means of being acquired.</p>	
<p>Strategic aim of the policy: To safeguard the security of arrangements for the recognition and quality assurance of Access to HE provision and to protect students' interests, in the event that an AVA is acquired by a non-AVA Ofqual-recognised awarding organisation.</p>	
<p>Link to other policies/procedures and guidelines:</p> <ul style="list-style-type: none"> • Access Validating Agency (AVA) licence withdrawal procedures • Access Validating Agency (AVA) licence surrender procedures • Access Validating Agency (AVA) merger by acquisition of one AVA by another • Access Validating Agency (AVA) cessation of trading procedures • AVA licensing: operational description • AVA licensing agreement 	
Owned by	Access Manager
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Procedures when an Access Validating Agency merges by being acquired by a non-AVA recognised awarding organisation

Purpose of the procedures

1 The purpose of these procedures is to ensure that when an AVA decides to merge by being acquired by a non-AVA Ofqual-recognised awarding organisation:

- plans are in place to protect students' interests
- action is taken to ensure a smooth transfer of responsibility for recognised Access to HE provision to another licensed AVA (or AVAs), through a clear and managed process
- course recognition and effective quality assurance is maintained during the period leading to the dissolution of the AVA.

2 For the purposes of these procedures 'recognised awarding organisation' means an organisation recognised by the Office of Qualifications and Examinations Regulation (Ofqual) and listed on the Ofqual Register of Regulated Qualifications.

Circumstances in which these procedures apply

3 These procedures apply when an organisation that holds an AVA licence ('the closing AVA') voluntarily decides to merge by being acquired by another recognised awarding organisation that does not currently hold an AVA licence ('the acquiring organisation'), and the acquiring organisation decides to merge by acquiring the closing AVA.

4 A merger of an AVA by acquisition by another organisation that is not a recognised awarding organisation will not be permitted.

Application of these procedures

5 These procedures may need to be adapted according to the particular circumstances under which they are initiated. Fees will apply to these procedures.

Relationship with regulatory requirements

6 Under the terms of the standard conditions of the AVA licence (condition 7) and licensing criterion 28, AVAs are required to inform QAA of 'proposed changes' in a number of circumstances, including proposed changes to (a) its legal identity; (b) the ownership of the organisation; (c) the name under which it operates. Licensing criteria LC27 also requires AVAs to inform 'QAA at the earliest opportunity of any decision or imminent decision to merge with another organisation or in any other way change its organisational form or ownership'. These requirements oblige AVAs to inform QAA of such changes before changes are made.

7 Under the terms of the standard conditions of the AVA licence (condition 8), AVAs are required to take legal advice before adopting a new legal identity.

8 Under the terms of the standard conditions of the AVA licence, QAA 'may terminate the licence at any time on written notice to the AVA with immediate effect...if a resolution is passed or an order is made for the winding up of the AVA (otherwise than for the purpose of solvent amalgamation or reconstruction)'. 1

9 For the purposes of these procedures it is assumed that the process being followed is 'solvent amalgamation' and that the closing AVA has decided on 'winding up for the purpose of solvent amalgamation'.

10 In cases where an AVA is unable to continue trading as an organisation and is unable to undertake a 'solvent amalgamation' the AVA cessation of trading procedures will instead be followed.

Procedures when an AVA ('the 'closing AVA') decides to merge by being acquired by a non-AVA awarding organisation (the 'acquiring organisation')

Informal stages

11 The stages set out below describe the procedures involved for the closing AVA and the acquiring organisation and for QAA, once two organisations have made a formal decision to take actions to move towards a merger by the acquisition of the closing AVA by the acquiring organisation, and the consequent surrender of the closing AVA's licence. If the two organisations involved wish to take QAA's advice about the process or broader implications of the merger plans for the surrender of the closing AVA's licence, they may request a confidential discussion at an early stage, without commitment. AVAs considering such developments are encouraged to contact QAA as soon as possible in their deliberations – early informal discussions will help to expedite the formal stages.

Formal stages

12 If the closing AVA makes a decision to take actions that reflect an intention to merge by being acquired by the other organisation, and the acquiring organisation makes a decision to take actions that reflect an intention to acquire the closing AVA, the closing AVA and the acquiring organisation must go through the following stages.

Stage 1

13 Inform QAA of the decisions of both the closing AVA and the acquiring organisation, indicating the immediate actions planned and the broad rationale for their intentions. Both organisations must inform QAA of their intention before they take action which assumes a definite acquisition date and before they make the information public.

14 Unless QAA is satisfied that there has been adequate discussion at the informal stage, QAA will invite both organisations to discuss their plans and will provide information about the process to be followed, including any constraints that may influence the date¹ at which the merger may occur and the licence can be surrendered. QAA will provide information on the conditions under which the closing AVA's licence may be temporarily transferred to the acquiring organisation, and the time limits which will be imposed. The outcome of these discussions will inform Stage 2. QAA may also offer advice to the organisations on their intended merger.

15 The conditions under which the closing AVA's licence may be temporarily transferred (the 'temporary licence') to the acquiring organisation are as follows.

¹ The most convenient effective date for the merger and the surrender of the licence is the end of an academic year, but this may not always be possible. Where the effective date is other than at the end of an academic year, the closing AVA will be liable for making a financial contribution in proportion to the period of the year for which it holds a licence (calculated on a quarterly basis for any part of the quarter for which the licence is retained).

- a temporary licence will be granted by QAA in the name of the acquiring organisation, and this will be deemed by QAA to be a temporary transfer of the closing AVA's licence
- QAA must therefore be satisfied that, at least during the period of the temporary licence, key features² of the closing AVA have been transferred to the acquiring organisation. These key features will be specified by QAA and may vary according to the nature of the acquiring organisation, but will as a minimum be required to be sufficient to meet most of the AVA licensing criteria
- QAA will specify the maximum duration of the temporary licence, at the end of which the licence will terminate
- the acquiring organisation must commit to making a full licence application in accordance with the requirements of the *AVA licensing: Operational description*, in sufficient time for it to be considered and determined by QAA before the termination of the temporary licence (see Stage 7)
- the granting by QAA of a temporary licence to the acquiring organisation confers no presumption that it will grant a full licence
- in the event that a full licence is not granted, the temporary licence will terminate on the date specified by QAA (see Stage 7).

16 If the organisations then decide not to pursue their plans, they may do so without penalty. In these circumstances, the organisations should inform QAA immediately of their decision.

Stage 2

17 Once both organisations have made a formal decision³ (as approved by their respective governing bodies) that the closing AVA will be acquired by the acquiring organisation and for the temporary transfer of the closing AVA's licence, the two organisations must take the following actions.

18 The closing AVA must notify QAA of its decision to merge by acquisition by the other organisation and consequently the temporary transfer of its AVA licence, followed by its subsequent termination. The notification must be made in writing, and must be signed by the Chair of the AVA's governing body and the chief officer and be dated. It should indicate the date of the meeting at which the AVA's governing body confirmed the decision and the intended date for the acquisition. The name of the acquiring organisation must also be confirmed.

19 The acquiring organisation must notify QAA of its decision to acquire the closing AVA, to accept the temporary transfer of its AVA licence, confirm its acceptance of any conditions set by QAA for the temporary AVA licence, including its termination at the end of the temporary licence period, and confirm its intention to apply for a full AVA licence. The notification must be made in writing, and must be signed by the Chair of the AVA's governing body and the chief officer and be dated. It should indicate the date of the meeting at which the AVA's governing body confirmed the decision and the intended date for the acquisition. The name of the closing AVA to be acquired must also be confirmed.

² As noted under 'Other Considerations' it is the responsibility of the acquiring organisation to ensure it meets any legal requirements for the acquisition, including those relating to employees of the closing AVA.

³ Depending on the precise terms of the closing AVA's constitutional documents and legal advice obtained, the decisions on the merger for the closing AVA may require formal approval by its members, in which case such final approval will need to be incorporated into the joint merger plan in Stage 3 – see point b.

Stage 3

20 The two organisations will then develop a joint merger plan and, in accordance with the timeline that QAA has provided, they must submit the joint merger plan. Implementation of this plan is the joint responsibility of both organisations. The plan must:

- a confirm the date of the merger and temporary licence transfer
- b where final formal approval by the closing AVA's members of the decision to merge is required, state the date(s) on which such an approval decision will be taken
- c state the stakeholder notification date, when the closing AVA plans to inform its providers and others of the plans (including points detailed under Stage 4)
- d specify the main stages and proposed timeline for the processes associated with the completion of the closing AVA responsibilities
- e include a full list of the closing AVA's Access to HE providers that will be affected and the names of the Access to HE Diplomas that each provider is approved to deliver
- f confirm that the awards and certification processes will be completed for students of the closing AVA who complete the study requirements of their Diplomas before the date of the merger and temporary licence transfer
- g explain how the interests of students of the closing AVA will be protected, with particular reference to plans and arrangements for:
 - students who may be registered with the closing AVA but who have not completed the study requirements for achieving the Access to HE Diploma by the date of the merger
 - students who may be registered with the closing AVA who have completed all the study requirements for a Diploma but for whom exceptional extensions have been given for a date beyond the date of the merger.

Where students who were registered with the closing AVA achieve the Access to HE Diploma with the acquiring organisation after the date of the merger, the award certificates for such students (but only such students) may, with the formal approval of QAA, include the logos of the closing AVA as well as the acquiring organisation.

- h explain how the responsibility for making the annual data returns (grading data, registration and achievement data) to QAA of the work of the closing AVA, for the year in which the merger takes place, will be fulfilled
- i responsibility for AVA monitoring process will become the responsibility of the acquiring organisation which must make arrangements for the cycle of submissions to be made as published without interruption

21 The acquiring organisation must additionally submit a temporary licence plan. Implementation of this plan is the sole responsibility of the acquiring organisation, but QAA will require evidence that the closing AVA has been involved in its formulation. The purpose of this plan is to demonstrate how the acquiring organisation will meet its QAA licence obligations for the period of the temporary licence as previously determined by QAA. The plan will cover among other things:

- governance structures

- resources, including human resources
- management processes
- Diploma development, validation and approval
- centre approval
- moderation and standardisation
- certification (other than matters covered in point g of the joint merger plan)
- proposed schedule of progress reports to QAA
- proposed timescale for submitting a full AVA licence application.

22 QAA will consider the two organisations' joint merger plan and the acquiring organisation's temporary licence plan, and confirm either that they meet requirements, or identify amendments that are required. In particular QAA will confirm

- the stakeholder notification date (see QAA actions, Stage 4)
- approval of the joint merger plan (with or without required amendments)
- approval of the temporary licence plan (with or without required amendments).

23 Any proposed change to the stakeholder notification date, or to any aspect of the joint merger plan or the temporary licence plan, must be discussed with and confirmed by QAA.

Stage 4

24 On the date identified as the stakeholder notification date', the closing AVA must inform its respective providers and other stakeholders of its plans, including:

- a the date at which the closing AVA will cease to act as an AVA and key dates leading to this point
- b the arrangements made to protect the closing AVA's students' interests (see above)
- c a clear statement of the actions that the closing AVA's providers need to take (including the option of choosing a different AVA from the acquiring organisation to which to transfer its provision/business⁴) and deadlines for those actions
- d the process for the transfer of the closing AVA's provision, and the actions providers will need to take, including any deadlines for those actions
- e any variations to the closing AVA's normal procedures that stakeholders can expect during the period up to the date of the merger and licence surrender
- f further communications that stakeholders of either organisation can expect to receive from the organisations before the date of the merger and licence surrender.

25 QAA will inform all other AVAs (on the stakeholder notification date) that the closing AVA has decided to merge with the acquiring organisation and to transfer its AVA licence temporarily, and the effective dates for the transfer and termination of the temporary licence. QAA will remind AVAs of the requirements that apply to the transfer of provision.

⁴ The AVAs must not attempt to influence the closing AVA's providers' choices about the AVA to which they should transfer their provision. Providers can be directed to the contact details for all AVAs on QAA's Access to HE website: www.accesstohe.ac.uk/HowCourses/AVA-profiles/Pages/Default.aspx.

26 QAA will monitor the transfer of provision and the licence to ensure that arrangements have been made for the transfer of the closing AVA's responsibility for recognised Access to HE provision.

Stage 5

27 Throughout the period leading to merger and transfer of the licence, the closing AVA must continue to carry out its responsibilities as a licensed AVA until the date of the merger, including:

- a maintaining all quality assurance arrangements
- b meeting all requirements of the AVA licensing agreement and licensing criteria
- c updating the Access to HE courses database as necessary, marking records as not running and requesting records be discontinued on the database once transfers to other AVAs have been completed
- d cooperating with AVA(s) to which providers are transferring provision (if not staying with the acquiring organisation) and providing information to them as required by the licensing criteria relating to the transfer of provision, including:
 - validation dates and documentation for current Access to HE Diplomas
 - copies of the most recent moderators' and providers' reports
 - information about students registered on the course at the transfer point
 - awards records for previous years, for the purpose of meeting the AVA relevant licensing criteria.

28 QAA will amend records on the Access to HE courses database for courses listed for the closing AVA in order that learning aims are not affected.

Stage 6

29 The closing AVA must provide information to QAA, as requested, including a final statement, by a date prior to the merger and agreed with QAA, that all required actions have been completed and that the organisation has destroyed or discontinued its use of all materials (including paper and electronic documents) which display the Access to HE logo in conjunction with the organisation's name, or which make reference to the organisation's recognition by QAA. Alternatively, specified documents (other than award certificates) of the closing AVA may, with the formal approval of QAA, continue to be used by the acquiring organisation for the period of the temporary licence, provided that such documents are appropriately identified as being for temporary use only.

30 The closing AVA will also confirm that:

- the certification process for students who have completed Access to HE Diplomas or achieved partial accreditation on Access to HE courses has been completed and, if it has not, the particulars of any outstanding issues or individual cases
- the AVA's records of awards of Access to HE Diplomas and credits achieved with providers that are transferring their business to the acquiring AVA are also transferred to the acquiring AVA
- arrangements have been made for the formal closure and completion of all other AVA operations and the nature of any such arrangements
- there are no other outstanding matters of which QAA should be aware.

31 QAA will write to the acquiring organisation immediately after the merger date to

confirm that the licence of the closing AVA has been transferred as a temporary licence, the conditions that apply, and the termination date.

Stage 7

32 The acquiring organisation must submit a full AVA licence application which is considered by QAA under the terms of the *AVA licensing: Operational description* no later than the date approved by QAA in the acquiring organisation's temporary licence plan (see Stage 5).

33 If the acquiring organisation fails to make this submission by the approved date, the temporary licence will automatically terminate on the date specified by QAA (see Stage 6) and QAA will immediately initiate Stage 1 of the Access Validating Agency (AVA) Licence withdrawal procedures.

34 The *AVA licensing: Operational description* document specifies three possible outcomes following scrutiny of the licence application:

(a) granting of a provisional AVA licence, subject to standard conditions and any specific required actions.

If this is the outcome, a provisional licence will be granted to the acquiring organisation, effective immediately after the termination of the temporary licence.

(b) referral, with recommendations about matters to be addressed and an invitation to resubmit.

This outcome will not be used for a licence application made under these particular circumstances.

(c) rejection of the application.

If this is the outcome, the temporary licence will terminate on the date specified. In these circumstances QAA will immediately initiate Stage 1 of the AVA licence withdrawal procedures. The temporary licence may be extended to allow the organisation to complete its obligations under the withdrawal procedures.

Other considerations

Organisational closure: closing AVA

35 It is the closing AVA's responsibility to ensure that it follows due process in relation to matters such as compliance with its governing documents, staff employment, the dispersal of assets and notification to other regulators.

Organisational change: acquiring organisation

36 It is the acquiring organisation's responsibility to ensure that it follows due process in relation to matters such as compliance with its governing documents, staff employment, the acquisition of assets and notification to other regulators.

AVA monitoring submissions to QAA: acquiring organisation

37 QAA may require the acquiring organisation to include an evaluation of the merger in its statement of compliance or next AVA monitoring submission to QAA, depending on the timing of the completion of the acquisition. The acquiring organisation should therefore

consult QAA about this requirement before finalising its first AVA monitoring submission.

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