

<p>Title of policy: Access Validating Agency (AVA) merger by acquisition of one AVA by another</p>	
<p>Policy statement: This document sets out the procedures that AVAs must follow, and the actions that the Quality Assurance Agency for Higher Education (QAA) will take, when two AVAs decide to merge by means of one AVA being acquired by another AVA.</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 merges by being acquired by another AVA.</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) cessation of trading procedures • AVA licensing agreement 	
Owned by	Access Manager
Approved by Access Recognition and Licensing Committee	Date: July 2017
Next review due	Date: July 2020
For further information contact	Access Manager

Procedures when two Access Validating Agencies (AVAs) decide to merge by means of one AVA being acquired by the other AVA

Purpose of the procedures

1 The purpose of these procedures is to ensure that when two AVAs decide to merge through a process of one being acquired by the other:

- 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, through a clear and managed process
- course, Diploma and provider recognition and effective quality assurance is maintained during the period leading to the dissolution of the closing AVA.

Circumstances in which these procedures apply

2 These procedures apply when an organisation that holds an AVA licence ('the closing AVA') voluntarily decides to merge by being acquired by another such organisation that also holds an AVA licence ('the acquiring AVA'), and the acquiring AVA decides to merge by acquiring the closing AVA.

Application of these procedures

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

Relationship with regulatory requirements

4 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' before those changes are made, 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'.

5 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.

6 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)'.

7 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'.

8 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 two AVAs decide to merge by means of one AVA ('the closing AVA') being acquired by the other AVA ('the acquiring AVA')

Informal stages

9 The stages set out below describe the procedures involved for AVAs and for QAA, once two AVAs have made a formal decision to take actions to move towards a merger by the acquisition of the closing AVA by the acquiring AVA, and the consequent surrender of the closing AVA's licence. If the two AVAs 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 should request a confidential discussion at an early stage, without commitment. AVAs considering such changes are encouraged to contact QAA as soon as possible in their deliberations – early informal discussions will help to expedite the formal stages.

Formal stages

10 If the closing AVA makes a decision to merge by being acquired by another AVA, and the acquiring AVA makes a decision to acquire the closing AVA, the closing AVA and the acquiring AVA must go through the following stages.

Stage 1

11 Both AVAs must inform QAA of their intention to merge through acquisition, indicating the immediate actions planned and the broad rationale for their intentions. They must do this before they take action which assumes a definite acquisition date and before they make the information public.

12 Following the informal discussion, QAA will invite both AVAs to a formal discussion of their plans and will provide information about the process to be followed, including any constraints that may influence the date at which the merger may occur and the licence can be surrendered¹. The outcome of these discussions will inform Stage 2.

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

Stage 2

14 Once both AVAs have made a formal decision² (as approved by their respective governing bodies) to take actions that will involve the closing AVA being acquired by the acquiring AVA and the surrender of the closing AVA's licence, the AVAs must take the following actions.

15 The closing AVA must notify QAA of its decision to merge by acquisition by the acquiring AVA and consequently surrender the 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 and consequent licence surrender. The name of the acquiring AVA should also be confirmed.

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 not be entitled to any refund on its financial contribution.

² Depending on the precise terms of each of the AVA's constitutional documents and legal advice obtained, the decisions on the merger for either 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

16 The acquiring AVA must notify QAA of its decision to acquire the closing AVA. 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 should also be confirmed.

17 The notifications can be sent to QAA by post, or by email as a PDF attachment, and should be addressed to QAA's Access Manager.

18 QAA will acknowledge receipt of the notifications and will confirm the requirements for the licence surrender process, including an outline schedule for Stages 3 to 6. QAA will also confirm the expected licence surrender date, by when all stages will have been completed and all the closing AVA's responsibilities will cease.

19 Once the closing AVA has formally notified QAA of its intention to surrender its licence, this is regarded as a formal commitment to complete the process. It can only be reversed by application to QAA's Access Recognition and Licensing Committee (ARLC). The ARLC will consider each case on its merits.

Stage 3

20 The AVAs develop and submit a joint merger plan in accordance with the timeline provided by QAA.

21 Implementation of this plan is the joint responsibility of both AVAs. The plan must:

- a confirm the merger and licence surrender date
- b where final formal approval by the organisation's members of the decision to merge is required by either or both AVAs, state the date(s) on which such an approval decision will be taken
- c state the common stakeholder notification date, when each of the AVAs plans to inform their respective 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's responsibilities
- e include a full list of the closing AVA's Access to HE providers 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 licence surrender
- 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 and licence surrender
 - 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 and licence surrender.

Where students who were registered with the closing AVA achieve the Access to HE Diploma with the acquiring AVA 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 as well as the acquiring AVA.

- h explain how the responsibility for making and formally approving 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

22 The acquiring AVA must additionally submit a post-merger integration plan. Implementation of this plan is the sole responsibility of the acquiring AVA, but QAA will require evidence that the closing AVA has been consulted. The purpose of this plan is to demonstrate how the acquiring AVA will integrate the provision of the closing AVA into its existing provision, so that it continues to meet its QAA licence obligations after the merger. 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.

Where changes or adaptations of the AVA's processes and procedures are planned to accommodate the integration of the closing AVA's provision, the timing of such changes should be included.

23 QAA will consider the AVAs' joint plan and the acquiring AVA's post-merger integration plan, and confirm either that they meet requirements, or identify amendments that are required. In particular, QAA will confirm:

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

24 Any proposed change to the stakeholder notification date, or to any aspect of the joint merger plan or the post-merger integration plan, must be confirmed by QAA.

Stage 4

25 On the date identified as the 'common stakeholder notification date', the AVAs must inform their respective providers and other stakeholders of their 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 AVA 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 AVA can expect to receive from the AVAs before the date of the merger and licence surrender.

26 QAA will inform all other AVAs (on the stakeholder notification date) that the closing AVA has decided to merge with the acquiring AVA and to surrender its AVA licence and the effective date for this. QAA will remind AVAs of the requirements that apply to the transfer of provision.

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

Stage 5

28 Throughout the period leading to merger and surrender 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 maintaining and updating the Access courses database as necessary, marking records as not running and requesting records be discontinued records on the database once transfers to other AVAs have been completed
- d cooperating with AVA(s) to which providers are transferring provision³ (if not staying with the acquiring AVA) 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 appropriate AVA licensing criteria.

³ 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

29 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

30 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.

31 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.

32 QAA will write to the acquiring AVA immediately after the merger date to confirm that the licence of the closing AVA has been withdrawn.

Stage 7

33 QAA will arrange a special review visit to the acquiring AVA at an appropriate date to review completion of the post-merger integration plan and any future plans consequent upon the merger. Any concerns raised by this special review that the AVA is not compliant with the AVA licensing criteria could lead to a full review and a reconsideration of the AVA's risk rating.

Other considerations

Organisational closure: closing AVA

34 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 AVA

35 It is the acquiring AVA'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 AVA

36 QAA may require the acquiring AVA 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 AVA should therefore consult QAA about this requirement before finalising its next AVA monitoring submission after the completion of Stage 1 of the formal stages of these procedures.

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