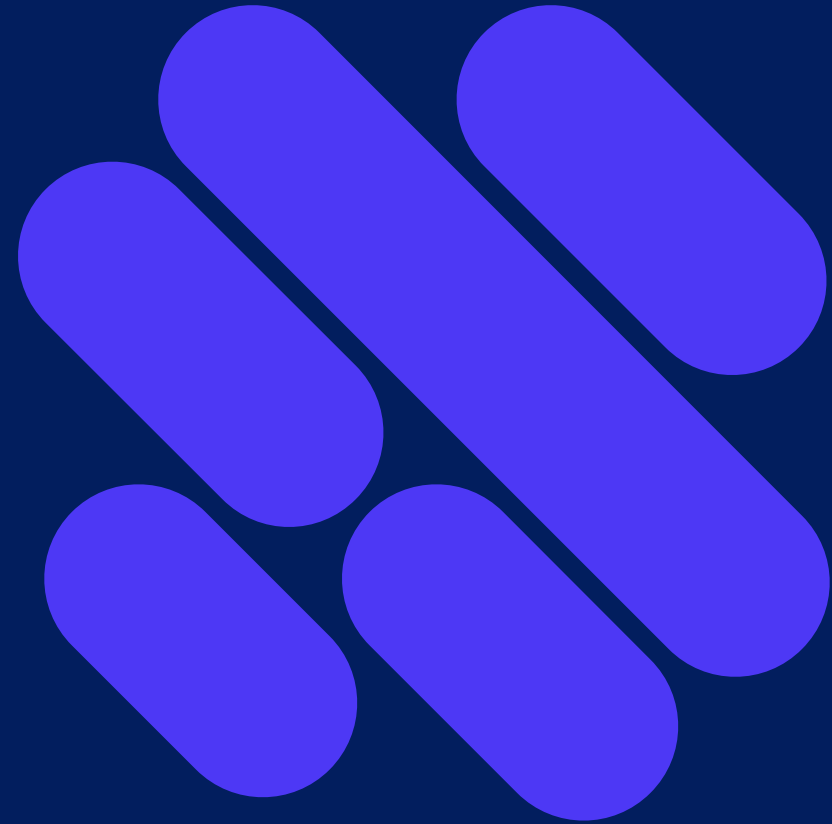




Introducing new *Change of
Tenancy* rules to the non-
domestic energy market



Introductions

Welcome and *housekeeping*



Suchitra Hammond
Senior Strategy Manager



#2787865

We'll be using Slido during this event to get your feedback. You can also submit questions here.



Your camera and microphone will automatically be switched off and muted.



Please raise any questions using the Microsoft Teams chat function or via Slido.



This meeting is being recorded and will be made available on our website.

Your *speakers*



Paul Redmayne

*Senior Policy Advisor,
Ofgem*



Tim Hipperson

*Managing Director,
Hipperson Consulting*



Stephen Livens

*Policy Manager, British
Beer & Pub Association*

The word 'Agenda' in a large, white, sans-serif font, positioned on the right side of the blue-tinted background image of a modern building lobby.

01 RECCo Introductions

02 Aims and objectives

03 Ofgem Update –
Paul Redmayne

04 British Brewery &
Pub Association –
Steve Livens

05 Risks and Issues

06 Draft Remedies

07 Feedback & Next
Steps

Who are the *Retail Energy Code Company*?

We're a not-for-profit organisation that owns and manages the **Retail Energy Code** – the key rules that energy suppliers must follow when selling to UK consumers.

Through the code, the services we manage and the programmes we run, we're dedicated to building a more effective and efficient energy market for the future.



Our mission

We will facilitate the **efficient** and **effective** running of the retail energy market, including its systems and processes. We'll do this through promoting **innovation, competition** and delivering **positive consumer outcomes**.

Why are we leading this *event*?

RECCo want to develop the Retail Energy Code in a manner that reflects the structure of the retail energy market **and ensure that consumer interests are protected** regardless of which market participant they may deal with.

RECCo committed to looking at issues in the TPI market and following stakeholder engagement has developed a Code of Practice which will be launched today.

We will be developing an accreditation and assurance scheme to formalise requirements. There will be further stakeholder engagement on this as we develop our approach.

Our focus today is on the issues and risks around the Change of Tenancy process.



Read our Strategy & Forward Work Plan

This document sets out our vision and key priorities for the coming years. You can read the document on our website and watch an explanatory webinar recording.

<http://bit.ly/RECCoStrategy>

What do we want to achieve in this *session*?

Risks & Issues

Present the Identified Risks and Issues - Ensure we have captured all them all.

Remedies

Present the Proposed Remedies - Ensure they are workable solutions.

RECCo Stakeholder Event

Ofgem's Non-domestic retail market review



Paul Redmayne
October 2023

Non-Domestic Review – A Timeline

Call for Input

February – March
2023

Findings and Policy
consultation

July – September
2023

Interim Update

October 2023*

Statutory
Consultation

Autumn 2023*

Stakeholder feedback was clear: our goals for the non-domestic market are not being met

Fair prices

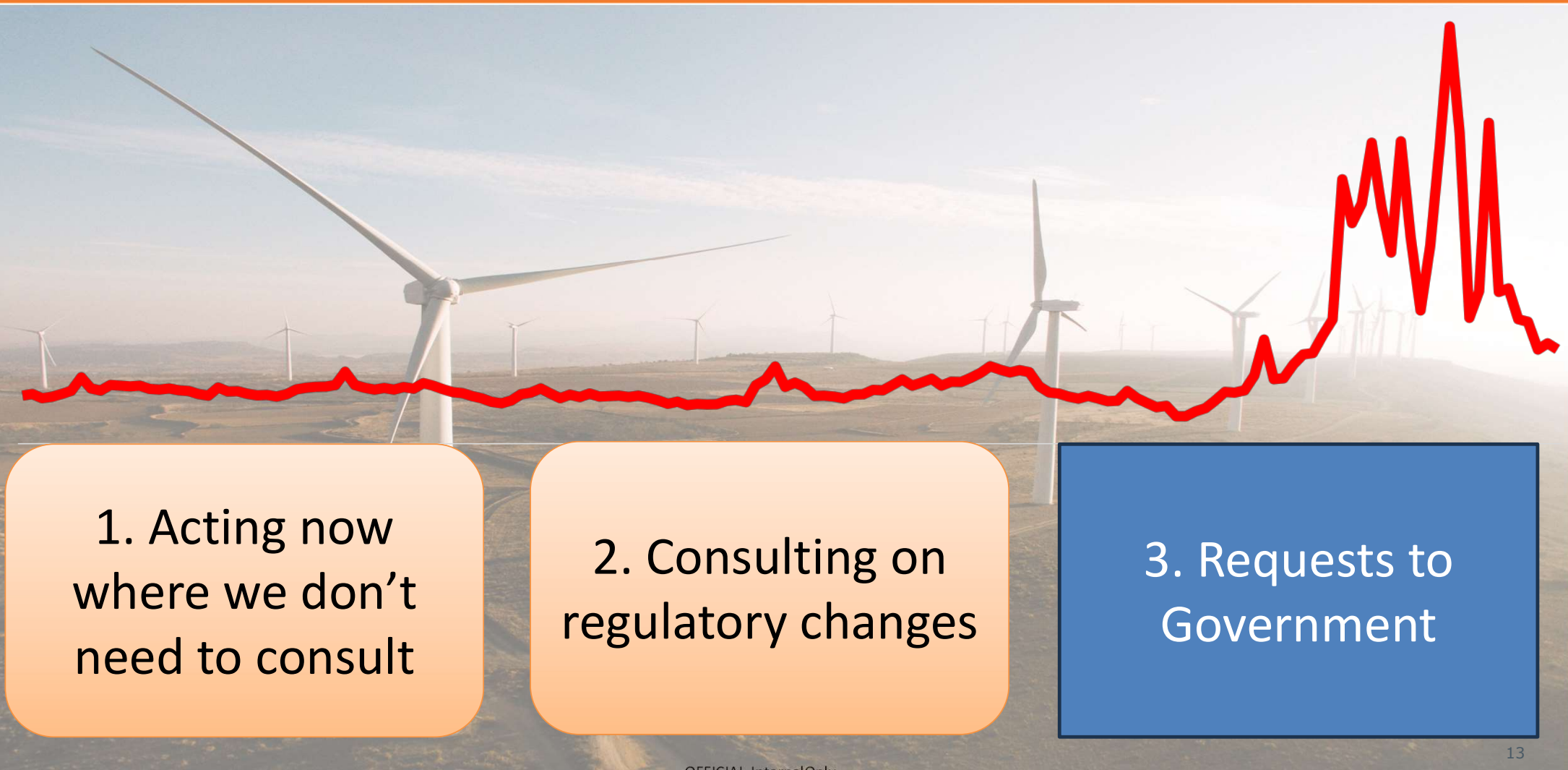
Standards

Low-cost
transition

Resilience



Some issues were a function of the wider economic issues – but some areas need regulatory change



1. Acting now
where we don't
need to consult

2. Consulting on
regulatory changes

3. Requests to
Government

Broadly supportive feedback to our proposed changes: but key issues to consider

Key changes we have consulted on:

- Deemed rates guidance
- Signposting Citizens Advice
- Expanding rules that only apply to Micro Business Customers:
 - Complaints handling rules
 - Standards of Conduct
 - TPI commission transparency
 - TPI Redress scheme membership

Determining the right threshold is a key factor

Change of Tenancy

- **Broad agreement from consumers and suppliers that there are issues.**
 - **Risk of fraud and bad debt**
 - **No consistency in demands**
 - **Process around a customer switching sites in Retail Energy Code**
 - **RECCo to take forward discussions to agree a core set of documents**
 - **Documents agreed by end 2023**
 - **In place end of f/y 2023/24**
 - **Increased monitoring**

We value your input into these and other Ofgem developments





Energy Challenges of the Pub Sector

24.10.23



British Beer & Pub Association

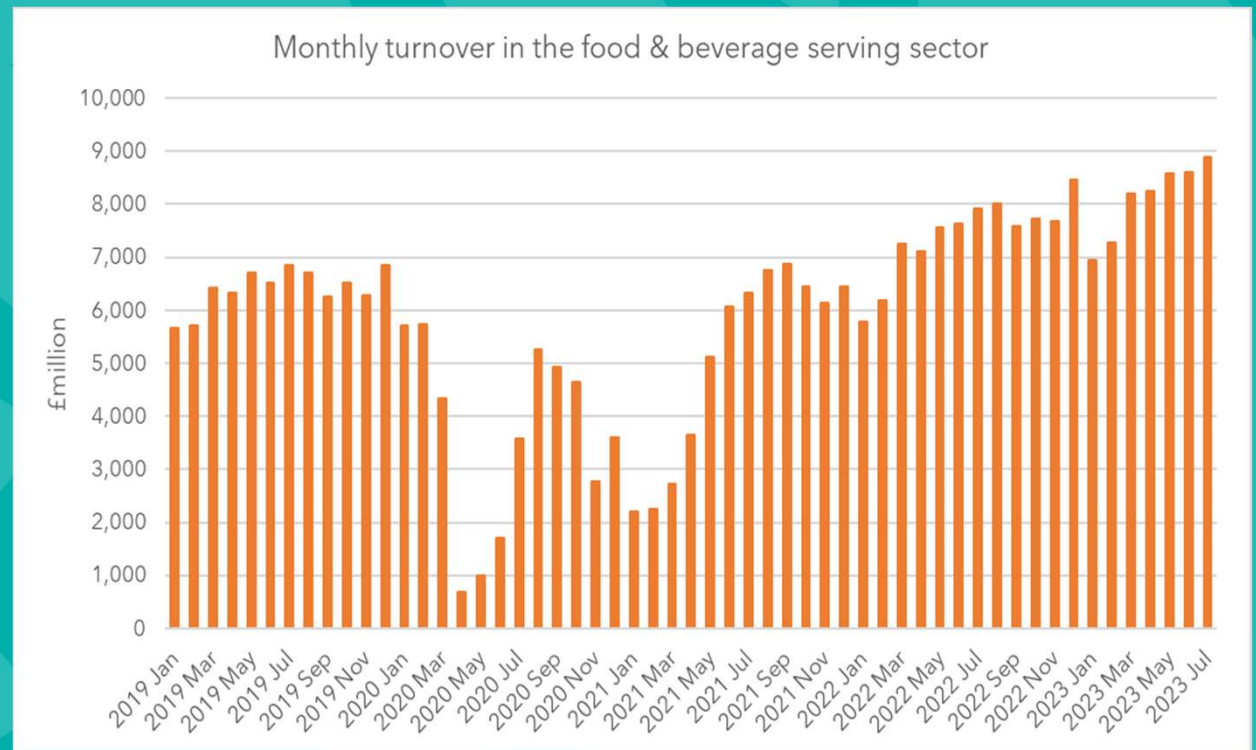
Formed in 1904, the BBPA is the leading trade body for brewers and pubs, representing companies across the UK, which between them own around 20,000 pubs and brew over 90% of beer sold in the UK.

Member companies have many different ownership structures, including UK PLCs, privately-owned companies, independent family-owned brewers and UK divisions of international brewers.

The brewing and pub industry in the UK makes a major contribution to the local and national economy. The sector generates £23 billion of economic value and supports 900,000 jobs. 85% of pubs in the UK are run as SMEs.

The impact of the COVID pandemic

- Closures and restricted trading reduced pub trade by 50% in 2020 and 30% in 2021- over £17 billion of lost trade
- On average, pubs invested £9,000 expanding their outdoor spaces and took on £25,000+ of Covid-related debt
- Debt plus the support secured from Government and from pub landlords meant that “only” 800 pubs closed their doors for good during the pandemic.
- Whilst showing signs of stabilisation, the on-trade has still not returned to pre-pandemic sales volumes.



Who pays the bill?

- **Managed Pubs** – energy contracts paid by and in the name of the Landlord (brewer or pub company). Licensee has no responsibility for payment of site utilities. Multi-site/high energy contracts generally bought using a flexible buying model. Not suited to fixed contracts. Some larger operators offer group energy deals where the Landlord pays the energy supplier and subsequently bills the licensee.
- **Leased & Tenanted Pubs** – energy contracts paid by and in the name of the licensee who is liable for all site utilities.
- **Free Trade Pubs** – independently owned businesses. As for L&T pubs and unlikely to participate in a group energy scheme.
- COT process impacts on all of the above.



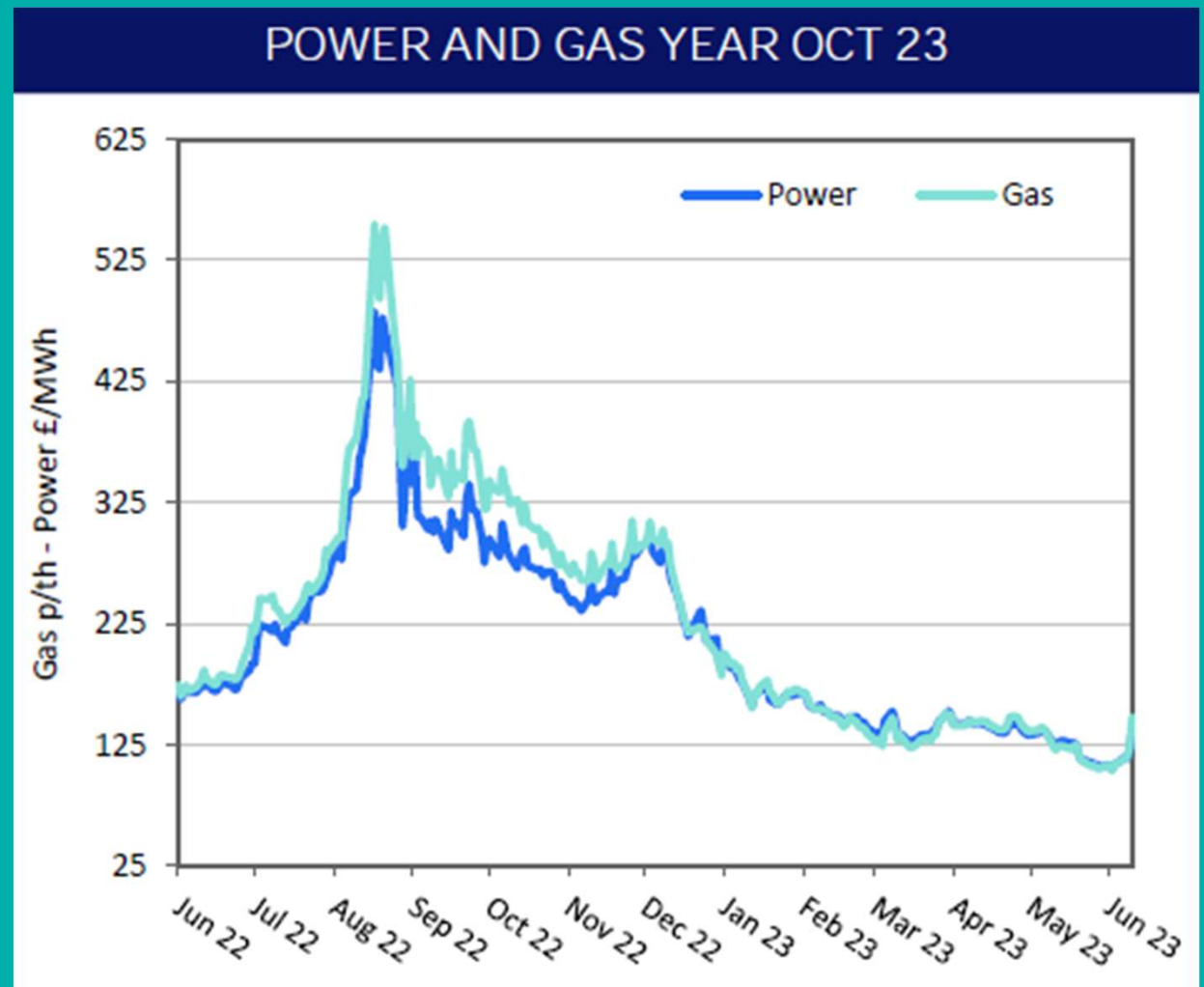
Challenge with energy

- Member reports of concerns over energy supply started in 2020:
 - Substantial up-front security deposits
 - Demands for additional documentation for CoT and extension of timescales to process
 - Increased minimum credit thresholds and/or 'risk premiums'
 - Increased 'out of contract' rates
 - Prolonged exposure to 'deemed rates' during contract negotiation/renegotiation
- 2022 wholesale energy prices increase rapidly, stimulated by the war in Ukraine
- Operational costs driven to unprecedented levels because of supplier behaviours motivated by blanket risk perception applied to the hospitality sector and dwindling numbers of energy companies willing to supply pubs.
- 2022/23 regular BBPA representation to Government and engagement with Ofgem



EBRS & EBDS

- BBPA successfully lobbied for targeted Govt. support for business in the face of increasing energy costs
- EBRS launched from 1st October 2022 provided support to non-domestic energy users:
 - Prior to EBRS pub energy bills increased by 100% - 150%
 - Even with EBRS, high wholesale prices and subsequent increases in non-commodity costs resulted in bills increasing by as much as 200% at the peak of the energy crisis.
- Many licensees signed new, long-term contracts across the latter months of 2022 when wholesale prices at peak.
- EBDS from April 2023 - 95% reduction in support leaving contracted licensees vulnerable against a backdrop of steadily falling wholesale prices vs retail prices.



Experiences of EBRS

- Members have reported mixed experiences of engagement with suppliers:
 - Inconsistencies in the way discounts were applied and communicated to business
 - Disproportionate increase in non-commodity costs i.e. standing charges which continues to this day
 - Lack of transparency over make-up of bills and difference between commodity and non-commodity costs.
 - Although in the minority - delay or failure to apply the discount by some companies
- Broadly, EBRS helpful in relieving cost pressures related to energy – could have gone further?
- Despite the reduction in support under EBDS, blend and extend style contracts remain rare for pub businesses who signed contracts when wholesale prices were at their peak in 2022



Ongoing challenges

- Continue to receive reports of high non-commodity energy costs and a significantly reduced pool of energy suppliers
- Change of Tenancy process remains a significant concern for our members
 - Continued requests for extensive documentation with some examples being difficult to justify
 - Recent feedback indicates that some suppliers have been refusing to accept legal documents - Tenancy at Will and License to Occupy, despite common use across the pub sector
 - An overly lengthy process with COT applications taking a minimum of 2 months to process with some reports of longer - 27 weeks
 - Application process itself is inconsistent and difficulty speaking to suppliers to resolve issues - in some cases only through online portals
 - Lack of clear, consistent methodology in setting out all retail pricing including OOCRs and deemed rates



Ongoing challenges

- Whilst wholesale energy prices have fallen considerably and despite a more positive outlook for winter 2023/34:
 - 15% of hospitality businesses report they remain at risk of failure within the next 12 months.
 - Of these businesses, 96% report that energy prices are a significant contributor to this failure risk.
- Data from the Insolvency Service (whilst insolvencies fell during Covid):
 - There has been a steady increase since Q3 of 2022 due to increasing energy pricing and other cost inflation.
 - For H1 2023 pub insolvencies were at their highest level for over a decade.
- Sector is committed to working collaboratively with Government, Ofgem and suppliers/stakeholders to address challenges and ensure a fair and functional non-domestic energy market.



BPA

THANK YOU

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Risks & Concerns

Market risks – CoT process

1.

CoT process being exploited to exit business consumers from live contracts.

2.

Losing Supplier objecting to the CoT transfer with objections that are not aligned to regulatory requirements.

3.

Gaining Supplier acceptance of CoT without relevant evidence/retaining evidence .

4.

Reported unacceptable lengths of time to complete CoT process.

5.

Reported increase in transfers being blocked on grounds of debt.

Concerns – CoT process

1.

Lack of a clear definition of a CoT - leading to inconsistencies.

2.

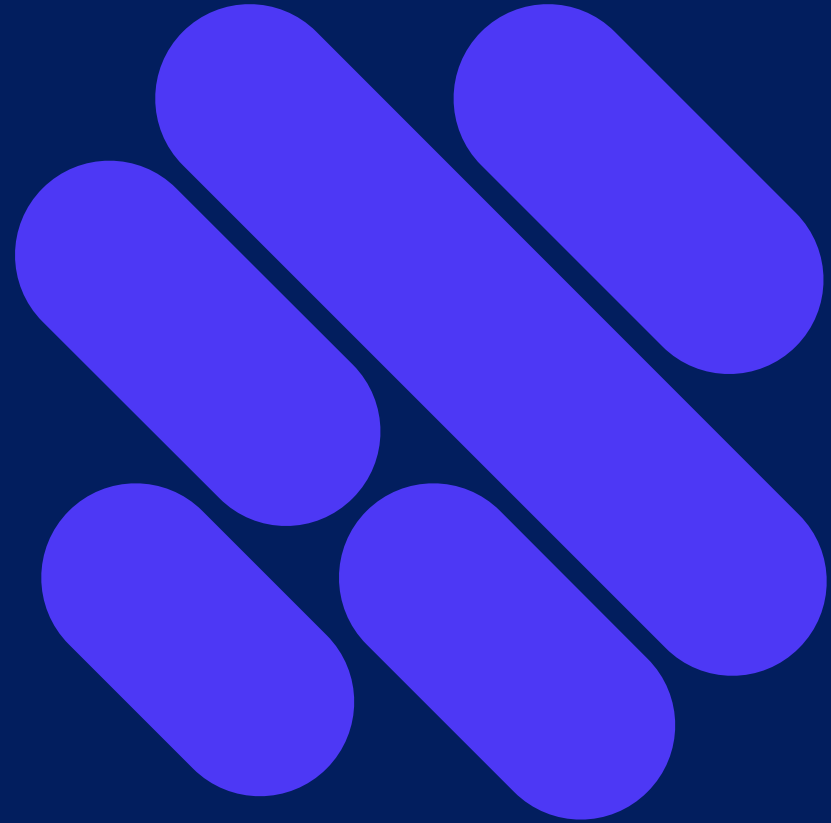
Lack of clear definition describing the evidence types required to validate a CoT - leading to unreasonable requests and inconsistencies.

3.

Lack of clear definition of the reasons why/when a CoT can be objected to - leading to inconsistent use of objection.

4.

Lack of mandatory requirement to set CoT flag to 'True' in the non-domestic market - leading to lack of quality data for performance assurance.



Remedies

How do we address the *risks and issues?*

- 1:** Develop clear definitions of CoT.
- 2:** Develop clear definitions of the acceptable evidence requirements for a CoT.
- 3:** Establish clear SLAs for transfer timescales.
- 4:** Clarity on Losing Supplier Objection options.

Remedy *expectations*



No ambiguity about CoT definition



No ambiguity about evidence requirements



No ambiguity over objection logic



Faster CoT completion



Simplified Process



Better consumer outcomes



Reduce transaction costs



Definitions

COT – *Suggestion definition inputs*

New Occupier	<p>A business that is a tenant or lessee under a new lease at the property where the meter point is situated, and that did not previously have a legal relationship with the Losing Supplier for the same meter point.</p>	Change of Legal Status	<p>A business that has changed its legal status from a sole trader to a Limited Company and where the sole trader transfers the lease and other assets of the business into the company, of which the sole trader becomes one of the directors.</p>
New Owner	<p>A business that is the legal owner of the property where the meter point is situated, and that did not previously have a legal relationship with the Losing Supplier for the same meter point.</p>	Change of Registered Bill Payer	<p>A business who has taken ownership of paying the utilities contract at the property where the meter point is situated - only a valid CoT where the previous bill payer (that had a legal relationship with the Losing Supplier) is no longer situated the premises or ceased trading.</p>
Return to Landlord	<p>Tenant leaves and premises returns to the landlord for management. Often this will be under empty occupancy.</p>	OTHER	<p>We are aware of other examples of CoTs that are not as clear as those noted here. For example, Rights to Occupy and Sub-Lease arrangements. We will explore these in more detail as we progress through our review.</p>

COT – *Example of non-COT transfers*

A Change in Registered Bill Payer occurs but the previous bill payer is still operating out of the address and shares the same Directorship as the New Owner/Occupier.

A Sole trader changes their business name

A partnership takes on another partner

A Sole trader forms a partnership

A limited company changes Director(s)

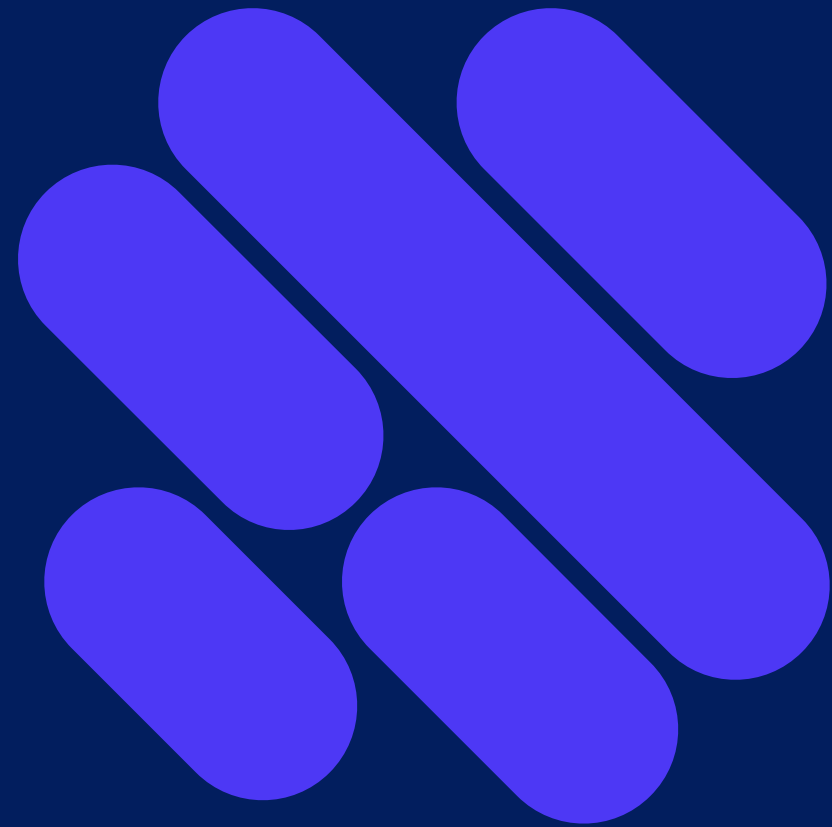
A partnership breaks up and one of the partners continues running the business as a sole trader

Question: Do you wish to see a list of situations that *do not* meet the threshold of a valid CoT included as part of the guidance?



Answer using Slido! Scan the QR code or go to www.slido.com and enter the blue code.

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Evidence requirements

Evidence requirements – *Suggested approach*

Proposed approach sets out a two-tiered list of evidence:

- Primary list should be preferred evidence –referred to as Level one
- Where it is not possible to produce evidence from the primary list, a minimum of two alternatives from the secondary list will be required – referred to as Level two

The requirement for a defined evidence list against proof of occupancy is an established process. Examples include

- Council Tax
- Business Rates
- Bank Accounts
- Water Supply Contracts ('Landlord Tap')

Evidence requirements – *Suggested approach*

Change of Tenancy			
Type of CoT	Description	Level 1 Evidence Requirement	Level 2 Evidence Requirement
New Occupier	A business that is a tenant or lessee under a new lease at the property where the meter point is situated, and that did not previously have a legal relationship with the Losing Supplier for the same meter point.	<p>Any one of the following:</p> <ul style="list-style-type: none"> • Copy of signed Lease Agreement, • Copy of signed Tenancy Agreement, • Confirmation from the landlord of a change of tenancy on headed paper 	<p>Any one of the following:</p> <ul style="list-style-type: none"> • Confirmation from the estate agent handling the move on headed paper • Confirmation of Business Rates registered in business name at the address. • Copy Utility Bill in business name at the address. • Copy confirmation of business bank address change. • Copy of building, Public Liability Employers liability Insurance in business name at the address
New Owner	A business that is the legal owner of the property where the meter point is situated, and that did not previously have a legal relationship with the Losing Supplier for the same meter point.	<p>Any one of the following</p> <ul style="list-style-type: none"> • Copy of Title Deed with new Owners Name present, • Copy of mortgage completion certificate • Confirmation from the Solicitor handling the move on headed paper 	<p>Any one of the following:</p> <ul style="list-style-type: none"> • Confirmation from the estate agent handling the move on headed paper • Confirmation of Business Rates registered in business name at the address. • Copy Utility Bill in business name at the address. • Copy confirmation of business bank address change. • Copy of building, Public Liability or Employers liability Insurance in business name at the address

Evidence requirements – *Suggested approach*

Change of Tenancy			
Type of CoT	Description	Level 1 Evidence Requirement	Level 2 Evidence Requirement
Change of Legal Status	A business that has changed its legal status from a sole trader to a Limited Company and where the sole trader transfers the lease and other assets of the business into the company, of which the sole trader becomes one of the directors.	Any one of the following: • copy of certificate of incorporation	
Change of Registered Bill Payer	A business who has taken ownership of paying the utilities contract at the property where the meter point is situated - only a valid CoT where the previous bill payer (that had a legal relationship with the Losing Supplier) is no longer situated the premises or ceased trading.	Any one of the following: If previous bill payer has gone into administration • Letter from the Administrator is required. If the previous bill payer has closed down • Copy proof of application to Companies House for company strike-off • Copy of proof from Companies House that they have ceased trading • Copy of proof that the company appears on the gov.uk insolvency register	Any one of the following: • Confirmation of Business Rates registered in business name at the address. • Copy Utility Bill in business name at the address. • Copy confirmation of business bank address change • Copy of building, Public Liability or Employers liability Insurance in business name at the address

Evidence requirements – *Suggested approach*

Change of Tenancy			
Type of CoT	Description	Level 1 Evidence Requirement	Level 2 Evidence Requirement
Revert to Landlord	Tenant leaves and premises returns to the landlord for management. Often this will be under empty occupancy.	Any one of the following <ul style="list-style-type: none"> • Copy of Title Deed with Landlords Name present, • Copy of mortgage details with Landlords Name present 	Any one of the following: <ul style="list-style-type: none"> • Copy Utility Bill in business name at the address. • Copy of building, Public Liability or Employers liability Insurance in business name at the address • Copy of Lease Surrender document



Process

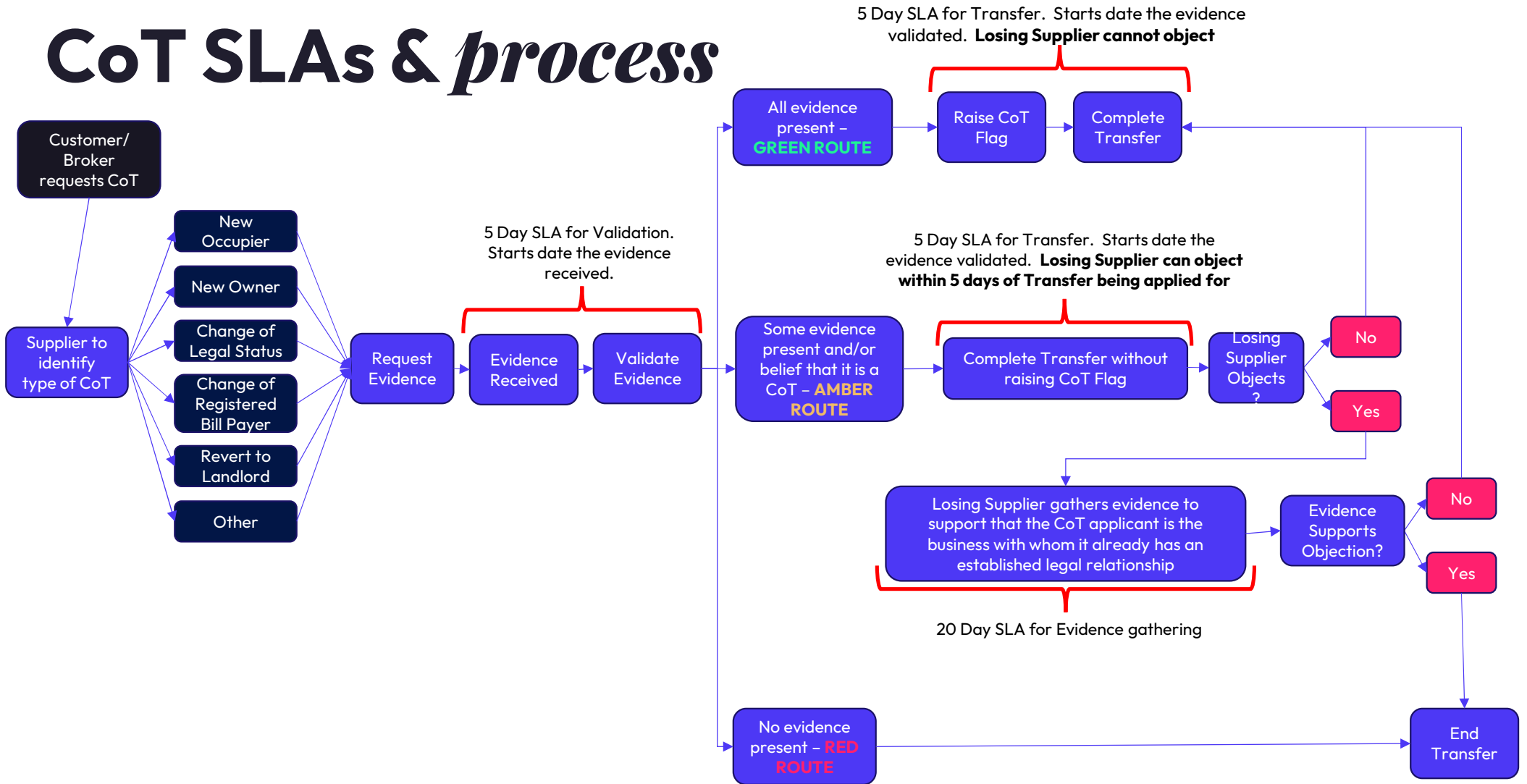
Process

- Draft process follows a RAG rating of CoT
- RAG rating based on evidence provision and protects Gaining Supplier, Losing Supplier and Consumer.
- Introduction of SLAs ensures clarity on expected timeline for delivery of CoT transfer and minimises exposure to Deemed Contract Rates.

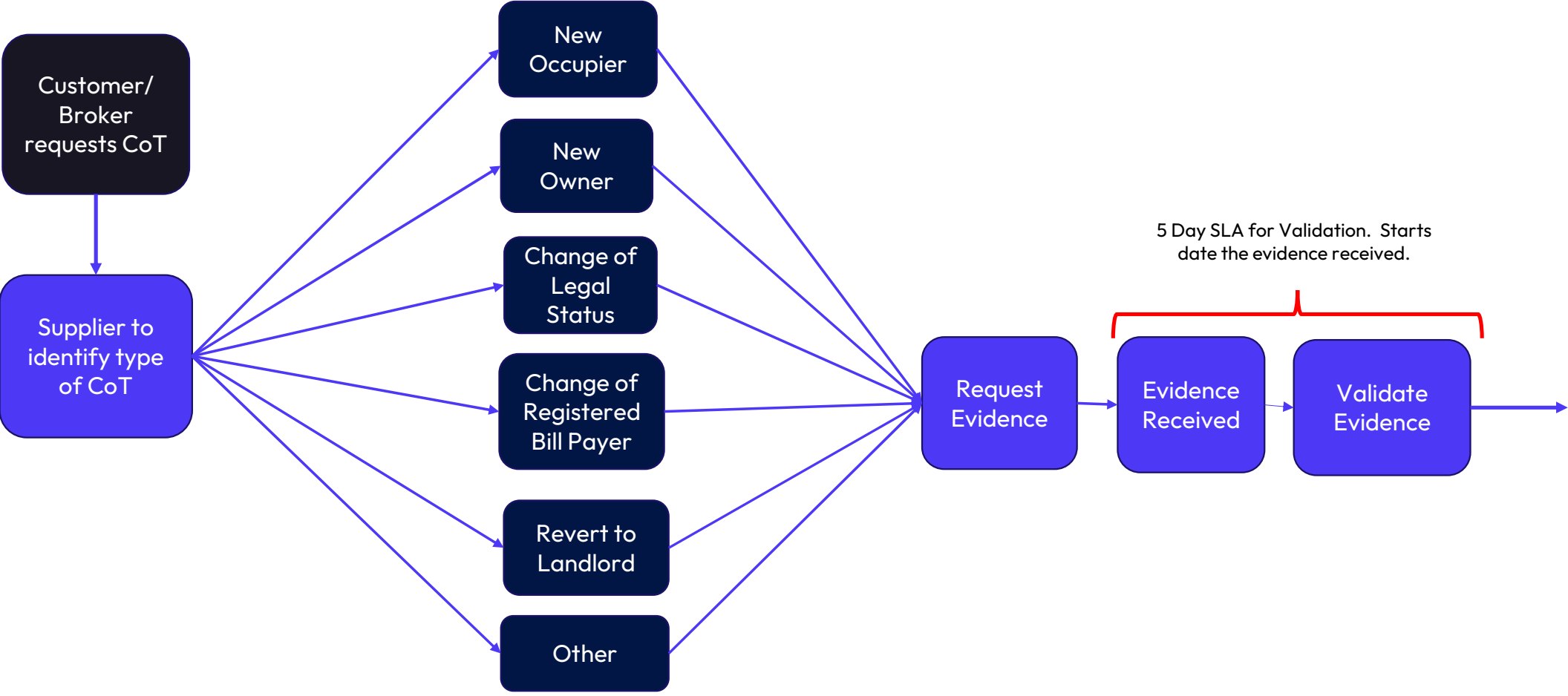
RAG rating for CoT *process*

GREEN Route	<p>The gaining Supplier requests the required evidence to support the CoT and the customer provides all if it. Supplier raises the CoT flag and makes the transfer request.</p> <p>When CoT flag is raised, the losing Supplier CANNOT OBJECT to the Transfer.</p>
AMBER Route	<p>The gaining Supplier requests the required evidence to support the CoT and the customer can only provide part of it, or they cannot supply any of it, but the Supplier has strong reason to believe it is a genuine CoT. The Supplier can make a meter transfer request, but NOT raise the CoT flag.</p> <p>Losing Supplier can OBJECT.</p>
RED Route	<p>The gaining Supplier requests the required evidence to support the CoT and the customer cannot provide it. The Gaining Supplier believes transfer is not a CoT and cancels the meter transfer request.</p>

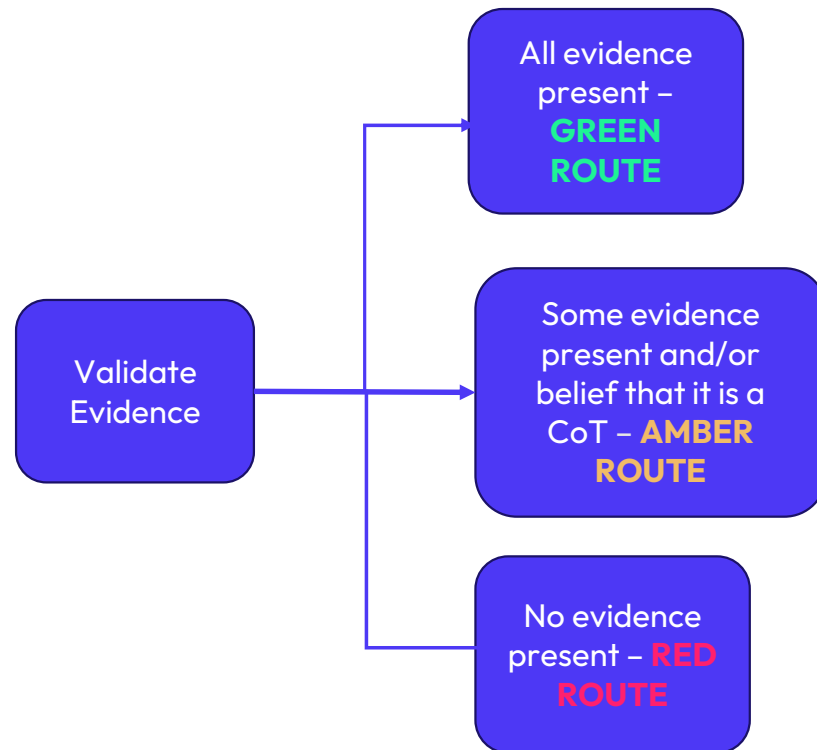
CoT SLAs & process



CoT SLAs & *process*

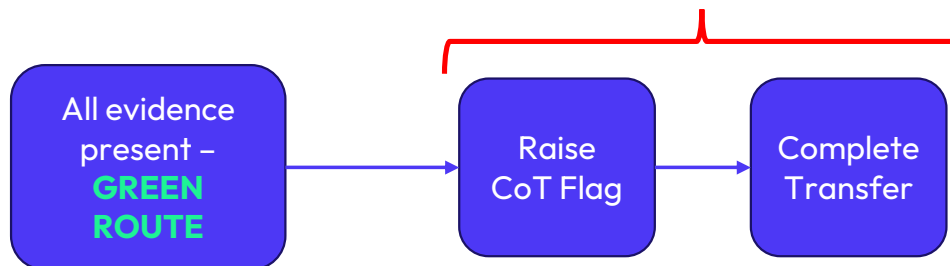


CoT SLAs & *process*



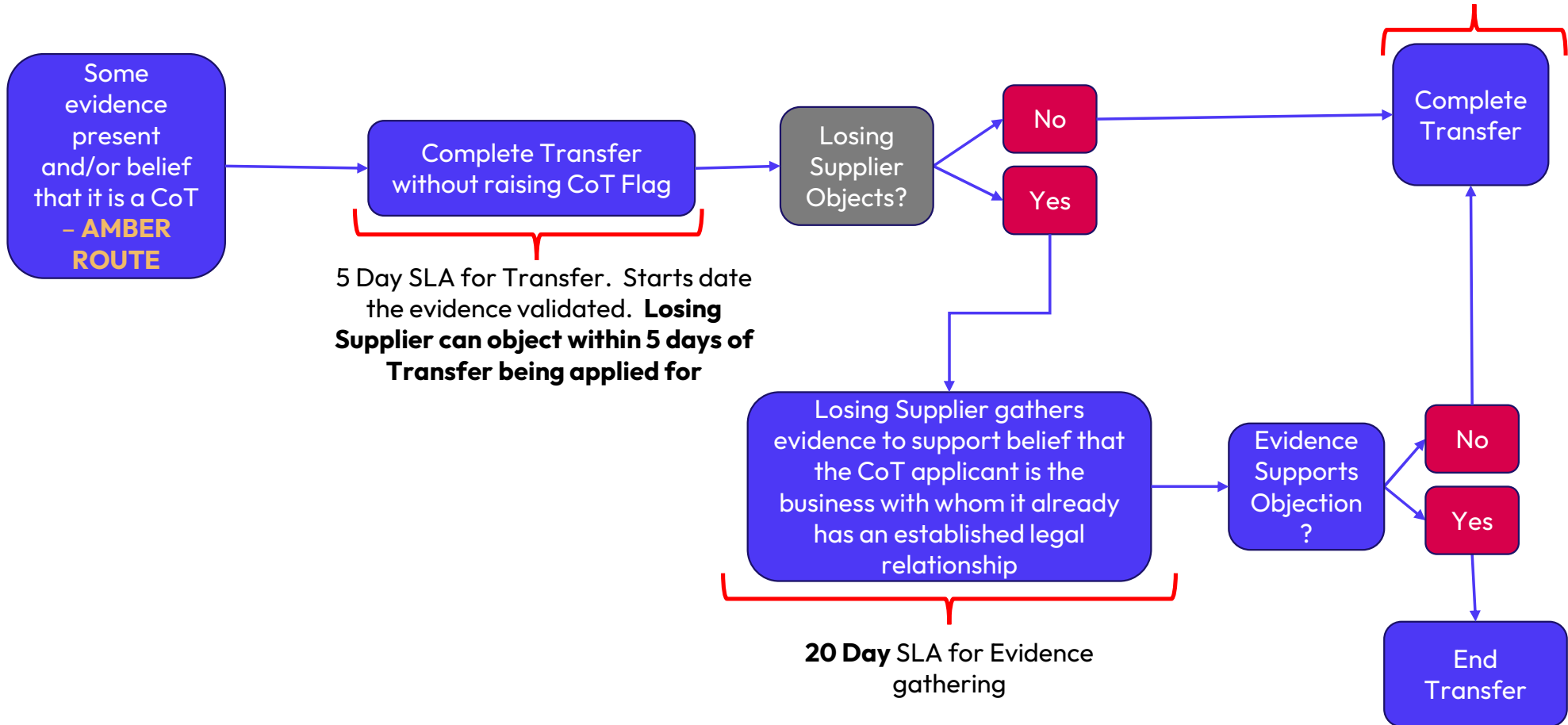
CoT SLAs & *process*

5 Day SLA for Transfer. Starts date the evidence validated. **Losing Supplier cannot object**

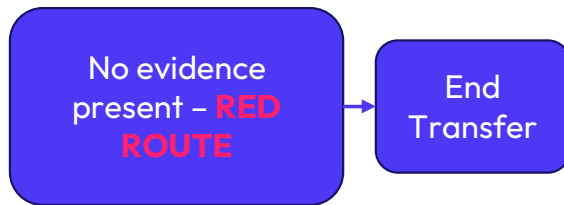


CoT SLAs & process

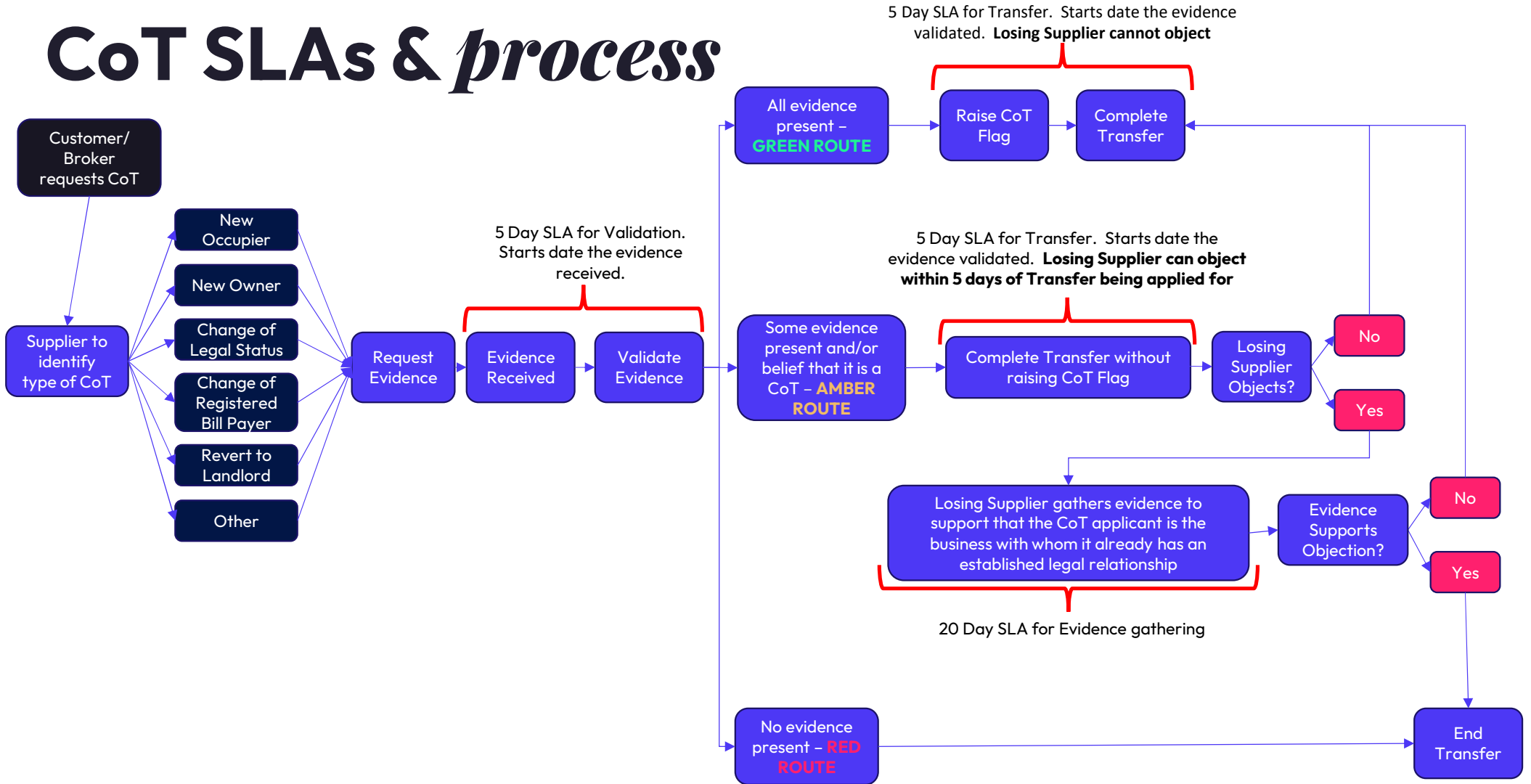
5 Day SLA for Transfer. Starts date the evidence validated.



CoT SLAs & *process*



CoT SLAs & process



CoT *objections*

Transfer
Objection

Amber
route

When a meter switch occurs via the CoT Amber Route the losing Supplier can object.

The losing Supplier confirms whether the customer meets one of the CoT definitions. If they believe they do not, they are required to gather evidence that supports this.

In order to object to the switch the losing Supplier must believe that the new owner or occupier is the business with whom it already has an established legal relationship, and that belief;

(i) must be founded on some new evidence available to the Supplier that supersedes the evidence the gaining Supplier has been provided and ,

(ii) which evidence would be likely to lead an impartial third party to the same belief. As per the current REC Schedule, the losing Supplier must keep the evidence they relied on for the objection for 12 months.

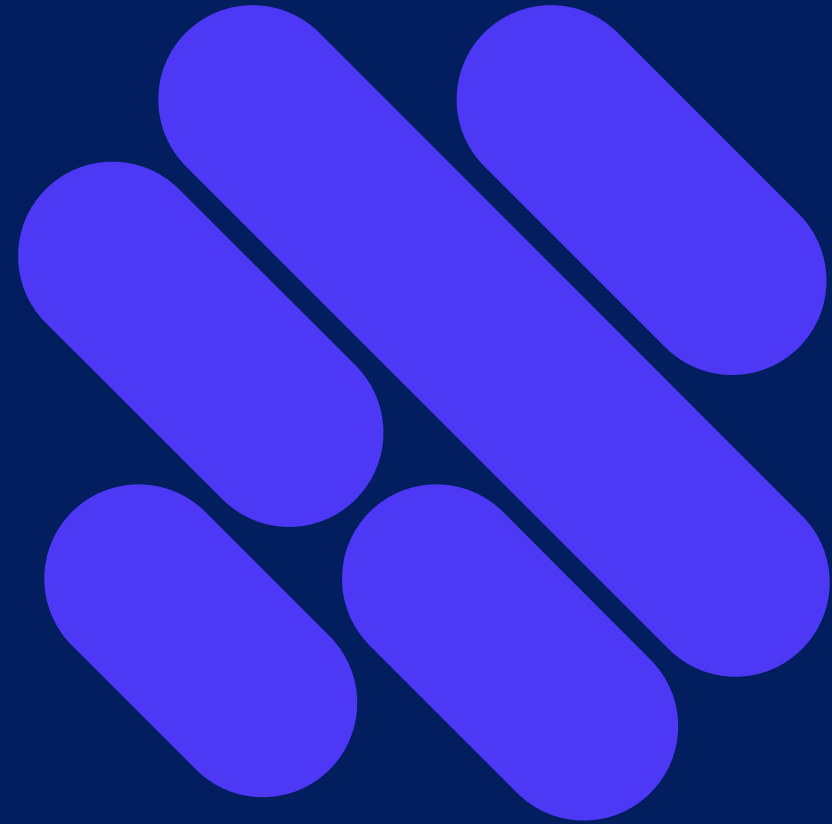
The losing Supplier has 20 working days to establish the validity of the Objection.

Question: Do you agree that a 20-working day SLA is *sufficient* to investigate the validity of a CoT by the losing Supplier?



Answer using Slido! Scan the QR code or go to www.slido.com and enter the blue code.

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Feedback and next steps

Request for stakeholder *feedback*

Question Number	Stakeholder Questions
1	Is our draft CoT definition list extensive enough? Are we missing any definitions?
2	Are the evidence requirements fair and obtainable by the Consumer?
3	Is the 5-working day SLA for the gaining Supplier to validate CoT evidence and decide the RAG route appropriate? If not, what is an appropriate length of time and why?
4	Is the 20- working day SLA for CoT objection validation by the Losing Supplier appropriate? If not, what is an appropriate length of time and why?
5	Do you believe the draft plans laid out by RECCo will improve the Change of Tenancy process for non-domestic consumers?

Next *steps*

Change of Tenancy	Target date
Workshop and Code of Practice publication	24 th Oct 2023
Deadline for feedback from stakeholders	17 th Nov 2023
Share draft legal text	8 th Dec 2023
Draft Change Proposal	19 th Dec 2023



Thank you for *joining!*

Get in touch

Email us at communications@retailenergycode.co.uk

Provide your feedback

Answer the formal feedback questions by clicking the link in the chat. This link will also be emailed to you.