During the pandemic DWP adopted Trust and Protect to enable it to process the overwhelming number of benefit claims that were received. This was at a time when the department had to cope with the challenges of remote working and staff absences caused by the pandemic, so in order to prevent delays in paying benefit the department introduced Trust and Protect.

When awards were made under Trust and Protect easements, claimants were told

that their awards would be revisited and further evidence required at a later date.

However, we draw your attention to regulation 38(2) of the UC, PIP, JSA and ESA

(Claims and Payments) Regulations 2013/380 (the “C&P Regs”) under which it is

open to the department to request information from claimants in connection with

an award, regardless of whether claimants have or not previously been told that

they may be asked to provide information in the future.

Under regulation 45 of the D&A Regs, the department may suspend an award of

benefit where a claimant fails to provide evidence within 14 days. It is for the claimant to request further time in which to provide evidence where they cannot do so within 14 days. If payment is suspended then the claimant is given a further month to respond or their claim will be closed. And it is at this point that the decision is revised.

Turning to revision, the department has wide powers when it comes to revising a UC decision. It could be a revision on any grounds under regulation 5 of the UC, PIP, JSA and ESA (Decisions and Appeals) Regulations 2013/381 (the “D&A Regs”) where this process is commenced within one month of that decision. Under regulation 9 it could be official error or, where the decision was more advantageous than it would otherwise have been, mistake or ignorance as to a material fact.

It is accepted that it may be helpful if the grounds for changing a decision were identified. However where this is not done the decision is still valid and it stands. On this we draw your attention to R(IB) 2/04:

*“192. On an appeal against a decision which (if valid) changes the effect of a*

*previous decision but which the appeal tribunal finds to contain defects (for*

*example, failure to use the terms “revise” or “supersede”, failure to indicate that a*

*previous decision is being revised or superseded, failure to identify the previous*

*decision being revised or superseded, failure to specify the ground for revision or*

*supersession, or reliance on the wrong ground for revision or supersession):*

*(1) if the tribunal finds that the decision was made under section 9 or 10 it has*

*jurisdiction to make the decision which it considers that the Secretary of State*

*should have made (thereby remedying any such defects in the decision, whether*

*properly regarded as defects of form or substance), and therefore should not*

*simply set such a decision aside as invalid (or “inept”) (paragraphs 73, 74 and 77*

*to 80):*

*(2) whilst there may be some such decisions which have so little coherence or*

*connection to legal powers that they do not amount to decisions under section 9 or*

*section 10 at all (paragraph 72)*

*(a) a decision should generally be regarded as having been made under section 9*

*if (however defectively expressed) it alters the original decision as from the*

*effective date of that original decision, and*

(*b) a decision should generally be regarded as having been made under section*

*10 if (however defectively expressed) it alters the original decision as from some*

*date later than the effective date of that original decision (paragraphs 75 to 76):*

*(3) the tribunal will not err in law if in its decision notice it does not set aside and*

*reformulate the decision under appeal unless either (i) the decision as expressed*

*is actually wrong in some material respect or (ii) there would be some benefit to*

*the claimant or to the adjudication process in reformulating the decision*

*(paragraphs 81 to 82).”*

At paragraph 74, the Commissioners state that a failure to state what is the ground

for supersession would not make a supersession decision invalid; we say the same must apply to revision decisions.

Accordingly where, when making decisions under “Repair”, the claim is closed and entitlement removed from the start of the claim, then it has to be the case that a revision decision has been made.

Of course, no such decision can be made unless the Secretary of State has in law first identified a ground. In the repair cases these will be on the basis that when UC was awarded a mistake had been made as to a material fact, or there was ignorance of a material fact. In relation to a claimant’s identity this would come down to the decision maker not believing that the claimant is the person who they said they were when they made the initial claim. As the decision made was more advantageous than it would otherwise have been, the decision would be revised under regulation 9(b) of the D&A Regs.

Of course, ahead of making that revision decision, the claimant must be given the opportunity to verify their identity. It is only a failure to engage with the department in that process that would result in a claim being closed. As explained above, the process itself involves payment being suspended – after 14 days or longer, with closure or termination following one month later. In other words claimants will have a minimum of six weeks in which to supply the evidence that would ensure that their award continues.

Of course, at each stage of the process it is incumbent on the department to notify the claimant of its actions, what it expects in return and what the consequences will be for a failure to comply. And ultimately if a claim is closed then a decision must be notified with MR and appeal rights; and the same must apply to any subsequent overpayment decision. In UC this would be done through the claimant’s journal. A failure to notify appeal rights is unlawful - although they can of course be issued at any time with the right still extant.

In view of the above, the department does not accept that its process to retrospectively verify awards amounts to an unlawful policy. Each award that is reviewed is considered on its own merits, and if there are grounds to revise or supersede a decision then the appropriate decision is taken.