



Jonathan Brearley  
Chief Executive  
Office of Gas and Electricity Markets (Ofgem)  
Via email: [consumeraffairs@ofgem.gov.uk](mailto:consumeraffairs@ofgem.gov.uk)

22 August 2022

Dear Mr Brearley

The office of the Children and Young People's Commissioner Scotland is established under the Commissioner for Children and Young People (Scotland) Act 2003. Section 4 of the Act charges the Commissioner with the general function of promoting and safeguarding the rights of children and young people. In particular (inter alia) keeping under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice and promoting best practice by service providers.

Throughout my term of office, I have consistently heard from children and young people that poverty is the most significant human rights issue facing children in Scotland. Experiencing poverty can severely affect a child's development and have a negative impact on their rights to mental and physical health, education, family relationships, standard of living, aspirations and life chances - both in childhood and adult life.

Children have told us that they feel poverty robs them of their childhood, but this is not inevitable. Poverty is a political choice; a consequence of decisions made by the UK and Scottish Governments. Regulators and others who hold economic levers can choose to either mitigate or contribute to poverty.

I note the Good Law Project's pre-action letter of 12 August 2022 and its reference to prior correspondence directed to Ofgem. I am concerned that it appears Ofgem has not

responded to questions about its apparent failure to comply with its duties to conduct impact assessments, or consider the needs of vulnerable groups when making decisions about the energy price cap and its other regulatory functions.

I note that Ofgem is required to give special consideration to four identified vulnerable groups; individuals who are disabled or chronically sick, individuals on low incomes, individuals residing in rural areas; and those of pensionable age. This duty is clearly framed and understood by Ofgem so as to ensure consideration of issues beyond simply the effective operation of the energy market. It requires Ofgem to consider and respond to broader social concerns which result from energy price rises. It is clear that many children and young people will fall directly within the first three of those categories and that a significant number of individuals in all four categories will have child dependents.

In 2018 (the last time Ofgem conducted an equalities assessment) my office facilitated the visit to Scotland of the UN Special Rapporteur on Extreme Poverty. His report noted that one fifth of the UK population lived in poverty and that women, racial and ethnic minorities, children, single parents, persons with disabilities and members of other historically marginalized groups face disproportionately higher risks of poverty.

Four years on, and the landscape has changed for the worse. Amidst the ongoing impact of the Covid pandemic, and with the cost of living soaring, more and more families are struggling to make ends meet. You will be aware of recent research by the University of York which predicts that in Scotland 72.8% of households will fall into fuel poverty in January 2023, while The Joseph Rowntree Foundation estimates that destitution has doubled in the UK since the beginning of the pandemic. Scottish Government data confirms that children are more likely to experience poverty across all measures than adults. It is also the case that Scotland has a disproportionate number of households without access to mains gas, particularly in rural and island areas, whose costs are not fully protected by the price cap. In some cases, the increased costs they

face are well in excess of the price cap, particularly those on all electric heating systems.

It is beyond dispute that unfettered and unmitigated energy price rises risk pushing more children into poverty, and those children already in poverty into destitution. The short and long-term consequences to individuals and to society will be devastating.

I am particularly concerned for families with disabled children. A recent report from Contact noted that families with disabled children reliant on life-saving electrical equipment were paying £600 a year more for their energy even before the April price cap increase. The report warned that:

- From April 2022, families with disabled children expect their annual energy bills to be more than £3,000 per year – almost double that of an average UK household.
- During the last winter, 42% went without heating and 10% went without vital electric-powered disability equipment because they were unaffordable to run.

Decisions made by Ofgem on the energy cap therefore clearly engage a wide range of children's rights; including but not limited to:

- The right to non-discrimination (Art 14 ECHR and Art 2 UNCRC);
- The right to protection from inhuman or degrading treatment (Art 3 ECHR and Art 37 UNCRC);
- The right to have their best interests prioritised in all decisions affecting them (Art 3 UNCRC);
- The right to respect for private and family life (Art 8 ECHR and Art 16 UNCRC);
- The right to express their views on matters affecting them, and to have those views given due weight (Art 12 UNCRC);
- The right of disabled children to enjoy a full and decent life (Art 23 UNCRC);
- The right to the highest attainable standard of health (Art 24 UNCRC);
- The right to benefit from social security (Art 26 UNCRC);
- The rights to an adequate standard of living (Art 27 UNCRC)

- The right to education (Arts 28 and 29 UNCRC);

In extreme cases, the decision may engage the right to life, particularly of disabled children and young people (Art 2 ECHR and Art 6 UNCRC).

In light of these matters, I note my interest in the potential legal proceedings. I would welcome a detailed response from you setting out if and how Ofgem has considered:

- The impact that raising the price cap will have, particularly on vulnerable groups of children and young people (including those who are disabled and those who live in houses without a mains gas connection)
- Whether and how Ofgem might use its powers to protect children and young people from that impact.

Yours sincerely



**Bruce Adamson**

**Children and Young People's Commissioner Scotland**