Periodic Payment Orders – Indexation Rate

Report of Inter Departmental Working Group
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Chapter 1 – Introduction

1.1 Introduction

In late 2021, the Minister for Justice approved an approach to reform the use of Periodic Payment Orders (PPOs). This followed consideration of a High Court Ruling which has resulted in the use of PPOs as a method of paying compensation in catastrophic injury cases no longer being pursued by claimants. The approach involved amending existing legislation to allow for the setting of a new periodic payments index by way of regulation, and the establishment of a Working group to advise the Minister on what an appropriate index should be. This report and the recommendations it contains are the output of the Working Group.

1.2 What are Periodic Payment Orders?

Periodic Payment Orders are an alternative to lump sum awards as a method of paying compensation to catastrophically injured people. Instead of receiving compensation in one tranche a payment is made annually on an agreed date. The annual payment amount is calculated to meet the cost of permanent and long-term care and treatment. An indexation rate is applied to the annual payment amount to ensure that the amount keeps pace with inflation. The perceived benefits of PPOs are that inadequate compensation is avoided as payments are tied to actual costs of care and treatment, and to actual duration of life rather than life expectancy. It is considered that it is less likely that a claimant will run out of money for their care and treatment if compensation is paid on an annual basis.

1.3 Previous Legislation

The Civil Liability (Amendment) Act 2017 inserted a new Part (Part IVB) into the Civil Liability Act 1961. The primary purpose of the Act is to empower the courts to make awards of damages in cases of catastrophic injury by way of periodic payment orders (PPOs). The Act addressed the concerns raised repeatedly by the courts about the absence of legislation to enable PPOs in appropriate cases.

Section 51L of the 1961 Act (as inserted by Part 2 of the 2017 Act) provided that a periodic payments order (PPO) shall be adjusted annually by reference to the
Harmonised Index of Consumer Prices (HICP) or such other index as may be specified in the section. In the euro area, the HICP is used to measure consumer price inflation. That means the change over time in the prices of consumer goods and services purchased by euro area households. It is “harmonised” because all the countries in the European Union follow the same methodology.

Section 51L also provided that the Minister, not less than 5 years after commencement of the section (1 October 2018), shall carry out a review of the application of the HICP and that subsequent reviews shall be carried out every 5 years.

1.4 High Court hearing
In November 2019, at a Directions Hearing in the High Court, Ms Justice Murphy said there was overwhelming evidence that a PPO linked to the HICP would result in under-compensation – the expert evidence indicated that the annual amount needed to be linked to a wage based index to ensure full compensation for future care needs.

In addition, the High Court decided that the principle outlined in the case of Russell vs. HSE – that the Court must provide for 100% compensation regardless of the burden placed on the State or insurance providers – was not adhered to in specifying that the HICP should be the indexation rate for PPOs.

The effect of this direction is that, despite PPOs being an optimal solution for claimants, PPOs are not being pursued by claimants in court actions. Claimants are, instead, opting for receiving lump sum awards.

1.5 Actions taken to address High Court decision
To address the impact of the High Court case the Minister for Justice put in place the following actions, as outlined in paragraph 1.1 above. She introduced new legislation which provided that the existing section 51L was replaced by a new section which essentially provides that the indexation rate for PPOs will be set by
regulations made by the Minister for Justice with the consent of the Minister for Finance. These amendments formed part of the Courts and Civil Law (Miscellaneous Provisions) Act 2023. In addition, she established this Working Group to advise her on an appropriate indexation rate for use in PPOs.

1.6 Terms of Reference and Membership of the Working Group

The Working Group’s Terms of Reference were as follows:

1. Consider an index or indices to be applied to annual adjustments of periodic payment orders (PPOs), taking account of High Court rulings on the relevance of the Harmonised Index of Consumer Prices (HICP) to PPOs.

2. Submit a recommended position in relation to the indexation rate to be used in annual adjustments of periodic payment orders to the Minister for Justice.

Membership of the Group comprised representatives from the Departments of Justice, Finance, Health, Enterprise, Trade and Employment, and Public Expenditure, NDP Delivery and Reform. In addition, the State Claims Agency and the Office of the Attorney General were members of the Group.

The Central Statistics Office provided technical advice to the Group. The IGEES service in the Department of Justice Research and Data Analytics (RDA) Unit also played an important role in developing analysis for the Group.

It is important to note that this work commenced in 2022, at a time when inflation was increasing compared to previous years. As the work of the Group progressed, inflation rates continued to rise, and as its work concluded they appeared to be returning to levels seen in mid-2021. This is important context to be considered in reviewing this report and the material it contains.
1.7 Report Outline

Following this introductory chapter, the Report proceeds to briefly outline important contextual information for the work of the Working Group:

- Chapter 2 presents information on the indexation options considered by a previous working group in 2014;

- Chapter 3 provides more detail on the Court’s 2019 consideration and ruling on the then index applied to PPOs;

- Chapter 4 sets out the work undertaken by the Group including information on the Group’s engagement with the CSO and the SCA and the papers prepared by the Research and Data Analytics Unit and the Civil Policy unit of the Department of Justice;

- Chapter 5 gives more information on the options considered by the Group;

- Chapter 6 provides detail on the deliberations entered into by the Group with a view to reaching a conclusion on the indexation rate to be recommended to the Minister;

- The final chapter (Chapter 7) presents the Group’s conclusions and recommendations.
Chapter 2 – Previous consideration of Indexation Rate

2.1 Working Group on Legislation on Periodic Payment Orders – 2014

A previous working group – the Working Group on Legislation on Periodic Payment Orders – was established in 2014 to make recommendations to the Government in respect of the legislative changes required to introduce periodic payment orders as an alternative to lump sum awards in catastrophic injury cases. The Group considered a number of different aspects of periodic payment orders including the necessity for such orders to be indexed so as to provide that payments to the injured party would not be reduced due to inflation.

Separately, the State Claims Agency, which was part of the Working Group, commissioned a feasibility study on the introduction of PPOs from Towers Watson. Included in the study was a section on the indexation of PPOs. The Report concluded that, due to the relatively small number of cases in Ireland, a wage inflation only index, similar to that which existed in the UK, could prove to be volatile and create uncertainty for claimants and insurers. It recommended that an index based on the HICP plus a small uplift of 0.5 to 1.0% to take account of wage inflation should be introduced.

2.2 Options Considered – Indexation

Following on from the Towers Watson Report, the Working Group considered¹ four options on indexation for the proposed legislation:

- Irish Consumer Price Index (CPI).
  
  As the Working Group noted, the Consumer Price Index (CPI) is designed to measure in index form the change in the average level of prices paid for consumer goods and services by all private and institutional consumers. It measures changes in prices across 12 categories:

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1. Food and non-alcoholic beverages;
2. Alcoholic beverages and tobacco;
3. Clothing and footwear;
4. Housing, water, electricity, gas and other fuels;
5. Furnishings;
6. Health;
7. Transport;
8. Communications;
9. Recreation and culture;
10. Education;
11. Restaurants and hotels;
12. Miscellaneous good and services.

The Group considered that, while the CPI measures a broad range of goods and services, it does not specifically measure increases in care-worker earnings, leading to the risk that the value of claimants’ payments may not keep pace with the costs of care. In addition, the CPI is more volatile than the Harmonised Index of Consumer Prices (HICP) (see below) because of its inclusion of interest rates and its resulting sensitivity to changes in them.

- **Irish Harmonised Index of Consumer Prices (HICP).**

In the euro area, the HICP is used to measure consumer price inflation. That means the change over time in the prices of consumer goods and services purchased by euro area households. The Irish HICP is a subset of the CPI and is measured in accordance with harmonised statistical methods set down by Eurostat. The HICP, like the CPI, measures a broad-based basket of goods and services, but excludes certain items which are included in the CPI, including mortgage interest, motor tax, some categories of insurance, local property tax and union subscriptions. Like the CPI, however, the HICP does not specifically measure increases in care-worker earnings, leading to the risk that the value of claimants’ payments may not keep pace with the costs of care or of medical supports. The Group also considered that the narrower basket of goods that comprises the HICP may not be as representative of cost increases across the economy.
• **CPI / HICP + a fixed rate.**

This was the approach suggested by Towers Watson in its research on the issue. Essentially the relevant index (either CPI or HICP) would be used together with a built-in increase of 0.5% to cover wage inflation. Using this method would help to ensure that the claimant’s payment could keep pace with possible increases in the costs of care. However, it was noted that the option could prove more expensive for the State and for the insurance industry than the CPI or the HICP alone.

• **Hybrid index of CPI + costs of care.**

Essentially this would involve using the CPI index plus an additional index consistent with increases in the costs of care. The index would combine the CPI with an index measuring changes in care costs. Using such an index would mean that the value of a claimant’s payment would keep pace with possible increases in care costs. However, it was considered that, given the small size of the sample in Ireland, the index could fluctuate more widely than the other options and be unrepresentative of general increases in inflation.

### 2.3 Recommendation

In making its recommendation to use the HICP option in legislation, the 2014 Working Group was conscious of the need for certainty in the matter. It also took on board the views expressed by the Department of Finance regarding the uncertainty, at that time, over the relationship between wage inflation and consumer prices. Accordingly, the Working Group recommended that the most appropriate indexation measure for inclusion in the legislation was the Irish HICP, with the question of providing for an additional uplift for additional wage growth and of determining the percentage of such uplift to be reviewed at 5 yearly intervals. This recommendation was incorporated into the subsequent legislation.
Chapter 3 – Court Consideration of Indexation Rate

3.1 Murphy Judgment in Hegarty v HSE
In 2019, the President of the High Court directed that a trial before a judge of the High Court be held to address four issues of which two were specific to PPOs and the indexation of PPOS. These were:

- whether the court is precluded by the 2017 Act from fixing an increase other than the amount specified in the HICP; and
- whether and to what extent the court retains a jurisdiction to identify a means by which indexation of the recurring payment can be achieved that would avoid the risks of the recurring compensation falling behind having regard to wage and medical inflation?

In response to the first question Justice Murphy concluded that the courts are precluded from applying an index other than the HICP as this is provided for in the 2017 Act. In relation to the second question, the judge considered that while the courts may not apply a different index they are not precluded from making a lump sum award if justice demands it.

3.2 Concerns raised by claimant’s solicitors
In the course of the trial, the claimant’s solicitors raised the following concerns:

- the lack of a provision in the legislation allowing claimants to return before the court to seek an amendment of a PPO; and
- the adequacy, or otherwise, of the index contained in the legislation and the risk that applying this index would leave the plaintiff undercompensated over their lifetime.
3.3 Findings of Justice Murphy

Justice Murphy, in her judgment, found that:

- The expert evidence presented showed that, at present, wage and cost inflation outstripped the HICP by 1-1.5% per annum. Therefore, the use of the HICP as the index for PPOs will leave a claimant undercompensated over their lifetime.

- The policy position – put forward in the Working Group Report – that an index must address the potential volatility for insurance companies has been rejected by the courts in the Russell case as the court must provide for 100% compensation regardless of the burden this places on the State or Insurance Providers.

In brief, Justice Murphy accepted the concerns of the claimant’s solicitors as supported by expert evidence that the HICP index would render any PPO unable to meet the lifetime needs of a catastrophically injured person and over the lifetime of the award, it could result in there being a shortfall of up to 52%.

The overall effect of the Murphy judgment is that periodic payment order solutions in catastrophic injury cases are not being pursued by claimants.
Chapter 4 – Work undertaken by Group

4.1 Meetings

The Working Group met on six occasions between January 2022 and November 2023. The Group accepted the principles set out in the High Court decision on the Hegarty case i.e. that any indexation rate should ensure 100% compensation to claimants and that an appropriate indexation rate should therefore contain an element dealing with wage inflation. The Office of the Attorney General provided valuable direction in relation to this matter.

Full Group meetings were supplemented by bi-lateral meetings held between the Department of Justice and each of the State Claims Agency, the Central Statistics Office, and the Department of Finance.

4.2 Engagement with CSO

Following the establishment of the Working Group on the Indexation Rate of Periodic Payment Orders, D/Justice met with the CSO to discuss the material available at present from their statistics. The CSO had shared a short working note (see Appendix A) in advance of the meeting which formed the basis of discussions.

The material provided by the CSO gives details of two indexes that could be of benefit to the Working Group. The first is the Earnings and Labour Costs (ELC) quarterly and annual statistics and the second is the Earnings Analysis using Administrative Data Sources (EAADS), which is an annual publication.

The ELC statistics are based on the Earnings, Hours and Employment Costs Survey (EHECS). EHECS is a sample survey and data is collected from enterprises with at least three employees. Data is not collected in relation to self-employed persons.

The EAADS represents earnings statistics of employees compiled based on administrative data sources. The primary data source is the Revenue Commissioner’s employee tax data. This is linked to the Central Statistics Office
(CSO) Business Register and other data to provide economic and demographic breakdowns of employee earnings in Ireland.

Further detail in relation to the two indexes is contained in the appendices. Both had strengths and weaknesses and the CSO indicated that the statistics contained in the indexes might not accurately capture data for individuals who may be availing of PPOs.

The idea of trying to build some flexibility into the legislation to address the concerns of the trial judge was floated such as adding a floor for the percentage increase applied where the PPO would either have the floor or an index – the idea being that the better of the two possibilities would ensure that an individual would not be under-compensated. The example of D/Housing and the rent cap/freeze legislation was put forward as a precedent.

The question of a bespoke index for the purpose of PPOs was discussed briefly. The CSO advised that such an index could prove difficult to establish and could prove time consuming in terms of the benefits that would accrue.

The CSO noted that a new method for calculating wage inflation – the Structure of Earnings Survey (SES) – was available for 2022 and would be conducted annually from 2026 onwards. They considered that the SES would be a better metric for calculating wage inflation than EHECS as it provides the median hourly wage, something which is not available from EHECS. It would be the closest option available to the UK ASHE survey. The Group agreed that, as a measure of wage inflation, the SES would be more accurate than the EHECS. However, it noted that SES was not yet available annually and that presented a difficulty in determining an annual percentage uplift for a PPO payment.

4.3 Engagement with the State Claims Agency (SCA)
The Department also engaged in lengthy bi-lateral discussions with the SCA in order to obtain anonymised data in relation to case settlements to inform the work of the Group. The data made available by the SCA formed the basis of extensive analysis of the way in which settlements in such cases are determined.
The SCA provided settlement information in relation to 78 catastrophic injury cases – comprising a mixture of lump sum and interim settlements – on a confidential basis. The Group noted that settlements were broken down into various heads of damage including the cost of accommodation and the cost of future care and treatment. It noted that loss of earnings is not included as a future cost of care in the calculations. As outlined by the SCA, loss of earnings is considered to be akin to General Damages as it is compensation for something that has been lost (that is, the ability to earn) rather than something that has to be provided in the future. In 90% of cases, loss of earnings is paid with the General Damages in the initial lump sum settlement of Interim Agreements.

4.4 Work undertaken by Research and Data Analytics (RDA) Unit

The Group also requested the IGEES service in Department of Justice’s Research and Data Analytics Unit to examine options for including an estimate of the wage inflation uplift as part of the PPO indexation rate.

The RDA Unit undertook a project to examine options for including an estimate of the wage inflation uplift as part of the PPO indexation rate. The work was designed to help inform the work of the Working Group established to advise the Minister for Justice on an appropriate indexation rate.

The key objective of the paper was to develop options for consideration around the wage uplift as part of the indexation of the PPO and provide a sound evidence base to contribute to future decision making around wage uplift in the short term. The reason for this was that a High Court ruling considered that wage inflation should be a factor in any indexation of PPOs.

Following a Group meeting to discuss the paper, and assistance from the CSO in relation to certain figures, the paper was refined further by the RDA. The paper examined four possible options for consideration by the Group. At the request of the Group, the RDA also outlined the PPO indexation rate for each of the options in the period 2016 to mid-2023 against the annual rate of change in both the HICP
and nominal health wage inflation. Details of the options are outlined in Chapter 8 below.

The RDA Unit noted that there are two main assumptions made in its paper:

1. As stated by the ECB in 2021 and reiterated in January 2024, the medium to long term inflation target of the European Central Banks (ECB) remains at 2%. The European Commission forecasts Ireland’s annual HICP percentage change to decrease from 8.1% in 2022 to 4.6% in 2023 and 2.6% in 2024. The Central Bank of Ireland (CBI) forecasts HICP inflation to average 5.3% in 2023, 3.4% in 2024 and 2.5% in 2025.

2. As the options give PPO indexation values for a specific point in time and are subject to rounding errors, the figures should only be used to give the magnitude of the potential cost of each of the options. The rate of inflation (HICP) is subject to change and is difficult to forecast accurately. As such the value inputs (HICP, nominal hourly earnings and real hourly earnings) in all options should be revised periodically, particularly in times of significant changes in headline inflation.

The full text of the RDA paper is provided at Appendix F.

4.5 Work undertaken by Civil Policy Unit

4.5.1 Paper analysing weighting between labour and non-labour costs

The Civil Policy unit prepared a paper which sought to determine a suitable weighting – between labour and non-labour costs – to apply to any proposed indexation rate to be used for future Periodic Payment Orders. The rationale for this work is that account needed to be taken of the different elements that make up a settlement for a catastrophically injured individual and the emphasis placed in the High Court ruling on wage inflation being a necessary factor.

Settlements typically combine compensation for both previous and future elements and thus, understandably, not all of these elements need to be accounted for into the future. Additionally, of the items which do need to be
accounted for into the future, there are elements which primarily comprise labour costs and others which comprise an element of both labour and non-labour costs. Currently, each of these elements attract a different rate of inflation.

The Department worked closely with the State Claims Agency on this issue. The SCA provided settlement information in relation to 78 cases – comprising both lump sum and interim settlements – and the analysis was based on those settlement figures. Lump Sum Settlements are settlements that can be considered full and final. The amount paid out is the entire settlement of the case. Interim Settlements are settlements that are made for a shorter period of time such as 2, 5, 7, or in some cases up to 15 years. The purpose of the interim settlement is to provide for expenditure to date, possible accommodation needs and care for the intervening period. The intent being that after sufficient time has passed it will then be possible to assess more accurately their future need requirements.

The purpose of the analysis was to try to determine an appropriate weighting between the labour and non-labour costs of future care requirements – including the cost of nursing, various therapies (physiotherapy, speech and language therapy etc.), aids and appliances, assisted technology – of the plaintiff. To that end, the calculations are based on four possible scenarios.

- Scenario 1 - A 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total settlement;

- Scenario 2 – A 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total assumed care costs;

- Scenario 3 – A 100% apportionment of labour/non labour costs considered as a percentage of the total settlement;

- Scenario 4 – A 100% apportionment of labour/non-labour costs considered as a percentage of the total assumed care costs.
It should be noted that the figure for total assumed care costs strips out any past payments and any future payments that do not directly concern the future care requirements of the plaintiff.

Loss of earnings is not included as a future cost of care in the calculations. The SCA informed the Group that loss of earnings is considered to be akin to General Damages as it is compensation for something that has been lost (that is, the ability to earn) rather than something that has to be provided in the future. In 90% of cases, loss of earnings is paid with the General Damages in the initial lump sum settlement of Interim Agreements.

Table 1 provides an overview of the analysis. Scenarios 1 and 3 show that labour costs as a percentage of total settlement costs averaged 55%. A weighting carried out on that basis would lean slightly toward labour costs being the dominant element of an interim indexation rate – perhaps a 60/40 split labour (average earnings)/non-labour (HICP).

Scenarios 2 and 4 show Labour costs as a percentage of assumed final costs is in the region of 90%. Any weighting on that basis will heavily favour the use of average hourly/weekly earnings – by as much as 9 to 1. As such, a 90/10 or 80/20 split labour (average earnings)/non-labour (HICP) could be considered.

4.5.2 Options Paper – Civil Policy
Notwithstanding the variance in the analysis regarding labour costs in the sample of SCA cases for which data was provided and the scenarios, it was clear that labour costs did comprise over half of the settlement, and in many cases up to 90% of it. Resulting from this, Civil Policy Unit prepared a paper in which four options were
presented for consideration as possible indexation rates for PPOs which would seek to take account of the need to address the wage element:

- **Option 1** – Estimated by using 100% HICP plus 100% of the average annual percentage wage uplift in the health sector;

- **Option 2** – Estimated by using 100% HICP plus a proportion of the average annual percentage wage uplift in the health sector;

- **Option 3** – Estimated by using a proportion of HICP plus a proportion of the average annual percentage wage uplift in the health sector;

- **Option 4** – Estimated using Inflation Indices from the Department of Public Expenditure, NDP Delivery and Reform

In relation to option 4, the Department of Public Expenditure, NDP Delivery and Reform (DPENDPD) provides guidance on appropriate Public Sector Benchmarks (PSBs) or equivalent budgets inflation indices and rates:

- for services with a labour component below 50%, the Harmonised Index of Consumer Prices ("HICP") should be applied. The applicable medium to long-term HICP rate is 2%;

- for services with a labour component in excess of 50%, HICP + 1% is to be applied.

For construction and construction-related services, the relevant technical advisor will advise on the inflation rates to be used, on a project-specific basis.

The above assumptions were developed over 10 years ago in consultation with the Economic and Social Research Institute (ERSI) based on the European Central Banks (ECB) medium to long term inflation target of 2% p.a. This target inflation rate of 2% over the medium to long term is still the goal of the ECB as reiterated by the ECB’s Governing Council in January 2024.
Chapter 5 – Options for consideration

5.1 Introduction

It is clear that any index that does not take into account the judgment given by Justice Murphy will not pass muster if the index is further challenged in court. Any index recommended by the Working Group must, therefore, contain an element covering wage inflation. As noted earlier, the RDA Unit was requested to examine options for including an estimate of the wage inflation uplift as part of the PPO indexation rate. This chapter presents the key findings of that paper. Again, there are a number of assumptions made, similar that those presented in the previous chapter:

- Firstly, as reiterated by the ECB’s Governing Council in January 2024, the medium to long term inflation target of the European Central Banks (ECB) remains at 2%. The European Commission forecasts Ireland’s annual HICP percentage change to decrease from 8.1% in 2022 to 4.6% in 2023 and 2.6% in 2024. The Central Bank of Ireland (CBI) forecasts HICP inflation to average 5.3% in 2023, 3.4% in 2024 and 2.5% in 2025.

- Secondly, loss of earnings is not included as a future cost of care in the calculations. The SCA notes that loss of earnings is considered to be akin to General Damages as it is compensation for something that has been lost (that is, the ability to earn) rather than something that has to be provided in the future. In 90% of cases, loss of earnings is paid with the General Damages in the initial lump sum settlement of Interim Agreements.

- Thirdly, as the options give PPO indexation values for a specific point in time and are subject to rounding errors, the figures below should only be used to give the magnitude of the potential cost of each of the options. The rate of inflation (HICP) is subject to change and is difficult to forecast accurately. As such the value inputs (HICP, nominal hourly earnings and real hourly earnings) in all options should be revised periodically, particularly in times of significant changes in headline inflation.
5.2 RDA Paper

The RDA paper examined four options for consideration in determining an interim indexation rate for periodic payment orders. The first option estimated the wage uplift using HICP and the annual rate of change of nominal wages and earnings from the CSO. Options 2 and 3 are variations on an estimation of a rate applying a proportion of the annual percentage change in HICP and a proportion of the annual percentage change in nominal hourly earnings. Option 4 is derived from DPENDR inflation indices guidance.

In examining the impact of the various options, the RDA used statistics available from the CSO. They looked particularly at four metrics:

- The annual rate of change in CPI & HICP 2008 to Q1 2023 (Figure 1 below);
- the Nominal Hourly Earnings (2008 to 2023) for all sectors and for the health sector (Figure 2 below);
- the Annual Rate of Change in HICP and Nominal Hourly Earnings 2009 Q1 – 2023 Q2 (Figure 3 below); and
- the Annual Rate of Change in quarterly HICP values 2022 – 2023 (Figure 4 below)

![Figure 1: Annual rate of change in CPI & HICP 2008 to Q1 2023](image-url)
Report of the Inter Departmental Working Group on Identifying an Indexation Rate for Periodic Payment Orders

Figure 2: Nominal Hourly Earnings for all sectors and the health sector

Figure 3: Annual Rate of Change in HICP and Nominal Hourly Earnings 2009Q1-2023Q2
5.3 Options Considered

An Options Paper prepared for the Group by the Civil Policy Unit essentially summarised the findings in the RDA paper and outlined the advantages and disadvantages of each of the options.

It is extremely difficult to say with any certainty what the potential advantages / disadvantages of each of the options under consideration in the paper will be. The two primary reasons for this are as follows;

- the strength of the interaction between price and wage inflation and at what level can both price and wage inflation be said to be either high or low and,
- what is classified as an under or over payment.

There is not universal agreement on the strength of the relationship between price inflation and wage inflation, with some studies indicating a stronger relationship between the two than others. In addition, the interaction between price and wage inflation is dynamic, meaning that the interaction between the two is time varying and depends on the state of the economy and on the shocks hitting the economy. As the analysis in the paper was carried was out at a certain point in time, it is more than likely that the relationship between the two will have changed over time.
In regards to the question of what is classified as an under or over payment, this comes down to each individuals “willingness to accept” a certain level of compensation. In reality this will differ in each individual instance but economic theory tells us that individuals will be more likely to accept the situation of an over payment rather than that of under payment as losses are valued more heavily than gains.

As can be seen from above there are several different variables which interact differently at a given time period under a given a certain set of circumstances. This means that it is extremely difficult to say with any certainty what the potential advantages / disadvantages of each option under consideration in the paper will be.

5.3.1 Option 1 - Estimated by using 100% HICP plus 100% of the average annual percentage wage uplift in the health sector

Option 1 calculates the total PPO indexation rate by adding a wage uplift to HICP. The wage uplift element is calculated using the nominal wages/earnings from the CSO’s Earnings, Hours and Employment Costs Survey. This dataset records average weekly earnings along with average hourly earnings by quarter. For the analysis, the average hourly earnings were used because, if the average number of weekly hours worked in the economy is increasing or decreasing, this will not be relevant in calculating wage uplift. While nominal hourly wages have risen, to date they have not kept up with inflation, leading to a drop in real wages in almost all OECD countries.

In this Option, the PPO indexation rate is calculated using the formula:

\[ \text{PPO Indexation Rate} = \text{HICP} + \text{Wage Uplift} \]

Table 2 shows the estimated annual rate of change calculated for the period 2021-2022 and Q1-Q2 2023. Additionally, it presents the total wage uplift using the 1 year average annual rate of change in earnings plus HICP for the same period (2021-2022) and the q1-q2 2023 average plus HICP for the same period.
### Table 2: Application of Option 1

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Average annual percentage wage uplift – nominal wages – Health Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021 - 2022</td>
<td>5.21</td>
</tr>
<tr>
<td>2023 Q1 – Q2 Average</td>
<td>7.33</td>
</tr>
<tr>
<td>Total Wage Uplift using 1 year Average (2022) - HICP 8.10%</td>
<td>13.31</td>
</tr>
<tr>
<td>Total Wage Uplift using 2023 Q1-Q2 Averages -HICP 6.52%</td>
<td>13.85</td>
</tr>
</tbody>
</table>

For the period 2021-2022 the average annual rate of change in nominal wages is 5.21% and for the period 2023 Q1-Q2 is 7.33%. HICP for the same periods is reported to be 8.10% (2021-2022) and 7.33% (2023 Q1-Q2) Using these values the estimated wage uplift for the two periods would be 13.31% and 13.85% respectively.

**Impact over Time**

Figure 5 below shows the Option 1 PPO Indexation rate, HICP and the Annual rate of change in nominal hourly earnings in the health sector for each year 2016 – Q2 2023. Of the eight time-periods in question, Option 1 PPO Indexation Rate using nominal health earnings was higher than HICP in all instances and higher than health wage inflation in six out of eight instances. The excess is most notable in 2022 and 2023 where Option 1 would have exceeded the annual rate of change in nominal health earnings by up to 8%.
Advantages and Disadvantages

Bearing in mind the difficulties in determining advantages and disadvantages outlined at 5.3 above, the Options Paper presented by the Civil Policy Unit to the Group noted that using Option 1 could have the following advantages:

- the option gives an overview of the annual percentage change in nominal wages over relevant time periods;
- the option meets the main criticism of the High Court judgment in that it takes account of wage inflation;
- the periodic payment index (as defined in the Courts and Civil Law (Miscellaneous Provisions) Act 2023) can be readily calculated using existing CSO figures.

However, a number of disadvantages may also apply to Option 1:

- by using this option, there is the potential to overestimate the wage uplift, as the wage uplift will be made up of full wage inflation (ARC in Nominal Health Earnings) in addition to price inflation (HICP);
- a historical analysis shows that the overestimation could exceed 5% per annum measured against the HICP or nominal health earnings;
as the option includes both price and wage inflation there is a possibility of double counting of price inflation (which may feed into wage inflation).

5.3.2 Option 2 — Estimated by using 100% HICP plus a proportion of the average annual percentage wage uplift in the health sector

Option 2 looks at applying a proportional breakdown of HICP and wage uplift to the PPO. Option 2 applies 100% HICP and a percentage of the nominal wage uplift for the health sector. The percentage applied to the nominal wage uplift is based on the possible labour component. The following formula is then used to calculate the total PPO Indexation Rate.

\[
PPO \text{ Indexation Rate} = 100\% \text{ of the annual percentage change in HICP} + \text{Proportion of the annual percentage change in nominal hourly earnings}
\]

Table 3 shows an estimation of the Indexation rate based on full HICP plus a proportion (ranging from 60% to 90%) of Nominal Hourly Earnings in the Health Sector.

<table>
<thead>
<tr>
<th>Period</th>
<th>Average %age increase in HICP</th>
<th>Average %age increase nominal earnings</th>
<th>100% HICP plus 60% of APC</th>
<th>100% HICP plus 70% of APC in nominal earnings</th>
<th>100% HICP plus 80% of APC in nominal earnings</th>
<th>100% HICP plus 90% of APC in nominal earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021 - 2022</td>
<td>8.10</td>
<td>5.21</td>
<td>11.23</td>
<td>11.75</td>
<td>12.27</td>
<td>12.79</td>
</tr>
<tr>
<td>2023 Q1 - Q2</td>
<td>6.52</td>
<td>7.33</td>
<td>10.92</td>
<td>11.65</td>
<td>12.38</td>
<td>13.12</td>
</tr>
<tr>
<td>Average</td>
<td>6.52</td>
<td>7.33</td>
<td>10.92</td>
<td>11.65</td>
<td>12.38</td>
<td>13.12</td>
</tr>
</tbody>
</table>

As can be seen from the table the time period and the magnitude of the nominal wages uplift chosen are absolutely crucial to determining the total value of the PPO Indexation Rate. For example, the annual rate of change in HICP from 2021 – 2022 was 8.10%, the average annual rate of change in nominal health sector hourly earnings was 5.21% in the same period. Using a rate of 100% HICP + 60% Annual rate of change of nominal hourly health earnings (Wage uplift) the total value of the PPO Indexation Rate would be 11.23% for this time period. Using 2023 averages would result in the total value of the PPO Indexation Rate being at
10.92%. If the total value of the PPO Indexation is comprised of a rate of 100% HICP + 90% of annual average rate of change in nominal health sector wages (Wage uplift) is chosen for the previously mentioned time frames the total value of the PPO Indexation rate would be 12.79% and 13.12% respectively.

**Impact over Time**

Figure 6 below shows the Option 2 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. For example if we use a breakdown of 100% HICP + 60% annual rate of change of nominal hourly health earnings the PPO Indexation rate value would result in over compensation in every year when compared with HICP and in four years when compared with nominal health wage inflation. Again, the excess was most notable in 2022 where the excess was over 6% and in 2023 where Option 2 would have exceeded the annual rate of change in nominal health earnings by 3.5%.
Advantages and Disadvantages

Bearing in mind the difficulties in determining advantages and disadvantages outlined at 5.3 above, the Options Paper presented by the Civil Policy Unit to the Group noted that using Option 2 could have the following advantages:

- the option meets the main criticism of the High Court judgment in that it takes account of wage inflation;
- the periodic payment index (as defined in the Courts and Civil Law (Miscellaneous Provisions) Act 2023) can be readily calculated using existing CSO figures.

However, a number of disadvantages could also apply to Option 2:

- as the option includes both price and wage inflation there is a possibility of double counting of price inflation (which may feed into wage inflation).
- based on historical figures, Option 2 has the potential to overcompensate plaintiffs more often than not;
- the level of overcompensation could be quite dramatic dependent on economic circumstances.

5.3.3 Option 3 – Estimated by using a proportion of HICP plus a proportion of the average annual percentage wage uplift in the health sector

Option 3 applies a percentage of HICP and a percentage of the nominal wage uplift rate based on the proportion of the PPO which is non labour and labour cost – the total of the two proportions is 100%. Option 3 differs from Option 2 in that it is estimated on the basis of the application of a proportion of the percentage change in HICP plus a proportion of the increase in annual percentage change of nominal hourly earnings is applied. As with Option 2, the percentage applied to the nominal wage uplift is based on the possible labour component of PPO’s using the following formula:
PPO Indexation Rate = Proportion of the annual percentage change in HICP + Proportion of the annual percentage change in nominal hourly earnings

Table 4: Application of Option 3

<table>
<thead>
<tr>
<th>Period</th>
<th>Average annual %age increase in HICP</th>
<th>Average annual %age increase in nominal hourly health earnings</th>
<th>40% HICP plus 60% of APC in nominal hourly health earnings</th>
<th>30% HICP plus 70% of APC in nominal hourly health earnings</th>
<th>20% HICP plus 80% of APC in nominal hourly health earnings</th>
<th>10% HICP plus 90% of APC in nominal hourly health earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021 - 2022</td>
<td>8.10</td>
<td>5.21</td>
<td>6.37</td>
<td>6.08</td>
<td>5.79</td>
<td>5.50</td>
</tr>
<tr>
<td>2023 Q1 - Q2</td>
<td>6.52</td>
<td>7.33</td>
<td>7.01</td>
<td>7.09</td>
<td>7.17</td>
<td>7.25</td>
</tr>
</tbody>
</table>

As with Option 2, the time period and the magnitude of the nominal wages uplift chosen are absolutely crucial to determining the value of the total PPO indexation rate under this option. For example, the average annual rate of change in HICP from 2021-2022 was 8.10%, while the average annual rate of change in nominal health sector hourly earnings for the same period was 5.21%. Therefore, using a rate of 40% HICP + 60% of average annual rate of change in nominal health sector wages the increase would be 6.37% for this time period. Using 2023 averages would result in an increase of 7.01%. If the total value of the PPO index rate is comprised of 10% HICP + 90% of average annual rate of change in nominal health sector hourly earnings is chosen this would result in respective rates of 5.5% and 7.25%.

Impact over Time

Figure 7 below shows the Option 3 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. For example, if we use a breakdown of 20% HICP plus 80% annual rate of change of nominal hourly health earnings, then the PPO indexation rate would over compensate in six out of eight years when compared with HICP and in two years when compared with annual rate of change of nominal hourly health earnings. In the other six years, the indexation rate is slightly below the annual rate of change of nominal hourly health earnings.
Advantages and Disadvantages

Bearing in mind the difficulties in determining advantages and disadvantages outlined at 5.3 above, the Options Paper presented by the Civil Policy Unit to the Group noted that using Option 3 could have the following advantages:

- it takes account of wage inflation;
- the option gives a higher weighting to wage inflation than the other options which is in line with the analysis undertaken by the Civil Policy Unit which concluded that in all scenarios the labour cost element of future case costs was over 50%;
- the periodic payment index (as defined in the Courts and Civil Law (Miscellaneous Provisions) Act 2023) can be readily calculated using existing CSO figures.
However, a number of disadvantages could also apply to Option 3:

- a decision would have to be made on the appropriate time period to be used to estimate the wage uplift;
- a further decision would have to be made on the level of the wage uplift to be added to the HICP figure;
- In 2022 this option would deliver an indexation figure less than the HICP at that time although, as noted, the majority of costs faced relate to labour costs rather than general goods.

5.3.4 Option 4 – Estimated using Inflation Indices from DPENDPDR

As noted earlier in the report, the Department of Public Expenditure, NDP Delivery and Reform (DPENDPDR) provides guidance on appropriate Public Sector Benchmarks (PSBs) or equivalent budgets inflation indices and rates:

- for services with a labour component below 50%, the Harmonised Index of Consumer Prices (“HICP”) should be applied. The applicable medium to long-term HICP rate is 2%;
- for services with a labour component in excess of 50%, HICP + 1% is to be applied.

For construction and construction-related services, the relevant technical advisor will advise on the inflation rates to be used, on a project-specific basis.

The above assumptions were developed over 10 years ago in consultation with the Economic and Social Research Institute (ERSI) based on the European Central Banks (ECB) medium to long term inflation target of 2% p.a. This target inflation rate of 2% over the medium to long term is still the goal of the ECB as reiterated by the ECB’s Governing Council in January 2024. The European Commission forecasts Ireland’s annual HICP percentage change to decrease from 8.1% in 2022 to 2.6% in 2024. The Central Bank of Ireland (CBI) forecasts HICP inflation to average 3.4% in 2024 and 2.5% in 2025.
Given that:

- the ECB has as stated target of 2% increase in the HICP over the medium to long term;
- the medium term forecast of a decrease in HICP to near this 2% target by the European Commission and CBI, and
- the labour component of PPOs will be in excess of 50% on average,

this option envisages that the guidance of HICP +1% for services with a labour component in excess of 50% would be applied to PPO payments.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Average percentage change in HICP</th>
<th>PPO Indexation Rate (based on HICP + 1%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>9.10</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>7.52</td>
</tr>
</tbody>
</table>

As can be seen, applying the DPENDR indices to the HICP from 2021-2022 (8.10%), would yield a PPO Index rate of 9.10% for this time period. Using the 2023 averages would result in a PPO index rate of 7.52%.

Impact over Time

Figure 8 below shows the Option 4 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. Of the eight time periods in question, Option 4 PPO Indexation Rate was higher than HICP in all instances and higher than health wage inflation in five out of eight instances.
Advantages and Disadvantages

Bearing in mind the difficulties in determining advantages and disadvantages outlined at 5.3 above, the Options Paper presented by the Civil Policy Unit to the Group noted that using Option 4 could have the following advantages:

- the option meets the main criticism of the High Court judgment in that it takes account of wage inflation;
- the option follows an established guidance document approved by the Department of Public Expenditure, NDP Delivery and Reform (DPENDR) in relation to appropriate Public Sector Benchmarks (PSBs).

The paper noted however that a number of disadvantages attach to Option 4:

- the guidance on appropriate Public Sector Benchmarks (PSBs) were developed over 10 years ago;
- it could be argued that an uplift of 1% to cover wage inflation is too low to cover wage inflation where wage inflation is higher than 1% when compared to HICP.
Chapter 6 – Deliberations of Working Group

6.1 Principles governing Group’s discussions

The Group accepted, at the beginning of its work, that:

- any proposal for a revised indexation rate, must address the criticisms contained in the Hegarty determination;

- in particular, the new indexation rate should contain a relationship with wage inflation;

- damages awarded must provide for 100% compensation for plaintiffs regardless of the burden this places on the State or on insurance providers;

6.2 International Perspectives

The Department of Justice informed the Group that it was difficult to provide direct comparisons between the system operating in Ireland with other international jurisdictions.

The Department cited the Towers Watson report carried out in 2014 which had looked at the situation in 16 jurisdictions (including Ireland) and had concluded that the closest system was that operated in the UK. The Department also noted that while no similar examination of different systems had been available to the Group, two more recent reports had come to light.

The first is a study by Gen Re (an American reinsurance company) which compared the systems of compensation for non-fatal injuries in five jurisdictions — Spain, Italy, France, England and Wales, and Germany\(^2\). The study goes into some detail in relation to the manner in which claims are dealt with in those jurisdictions.

\(^2\) Gen Re | Claims Focus, June 2022
The report noted that, in general terms the Italian, French and Spanish systems of compensation are all based on tariff tables with one main difference: Italy and France do not have a mandatory law and the whole system has been created and developed by local courts, while in Spain the Baremo legislation provides compensation tables. In Germany and England and Wales the compensation amounts result from case law precedents rather than a tariff system.

The Baremo system operating in Spain has a legal tariff for different kinds of injury and compensation is paid by way of lump sum payment. The Italian system operates on a non-statutory tariff system based on a tariff table issued by the Court of Milan. Payments in Italy are generally paid by way of lump sums. In France, the compensation system has not been codified into civil law. The system relies on a list of all recoverable damages drawn up in 2006. A range of different compensation amounts relative to the level of suffering and other damages is available to the courts in determining compensation. The presiding judge has the discretion to award compensation by way of either lump sum or periodic payment.

Germany relies on section 253 of the German Civil Code (BGB). When assessing compensation, the court must therefore take into account the severity of the injury, the age of the victim, the intensity of the pain and all other factors that influence total damages. For such evaluations, judges and the insurance industry are “supported” by the collective case law, which is specifically prepared by private institutions and used to set benchmarks – although these do not have any legal weight or represent a binding precedent. Compensation may be paid in either lump sum or by way of annuities.

England and Wales do not have tariff tables for personal injury compensation but, as in Ireland, damages are estimated by the courts based on precedent and the merits of the case itself. Most catastrophic injury claims are paid by way of periodic payments. The payments are index linked to the ASHE – a wage inflation metric – index.

It has been noted that, since a reduction in the discount rate in the UK was announced in 2019, the number of cases settled by way of PPOs has diminished. This reduction has been attributed to the adjustment to the discount rate made by the Lord Chancellor in 2017 in which the rate was reduced from 2.5% to minus
0.75% in England and Wales. Following the introduction of the Civil Liability Act 2018, a public consultation was carried out and the rate was amended to minus 0.25% following advice to the Lord Chancellor by an expert group. The rate is to be reviewed further later this year.

In addition, a presentation by the PPO Working Party to the Institute and Faculty of Actuaries in November 2022 reported that prior to 2015 the ASHE rate remained suppressed below CPI for a number of years following the 2008 financial crisis. During the period 2015-2019, ASHE exceeded CPI by approximately 2% p.a. on average. The figures for 2020 and 2021 were impacted by the furlough scheme brought in by the UK Government during the Covid pandemic and are not therefore comparable to other years. However, the report notes that in 2022, ASHE was below CPI again.

Conclusion regarding international experience
The Group noted that the information available made it difficult to compare the situation in Ireland with that in other jurisdictions. The Group acknowledged that the closest comparable system operates in the UK and noted that the UK index links PPO payments to the ASHE (the annual survey of hours and earnings) index. This is a pure earnings related index and does not take into account general inflation. The Group also noted that there was not, at present, an equivalent index to ASHE available in Ireland but that the SES would provide better statistical information on wage inflation in the health sector in due course.

6.3 Initial options considered by Group

6.3.1 – Introduction of a “floor” for the percentage increase to be applied

The idea of trying to build some flexibility into the legislation to address the concerns of the trial judge was floated. It was suggested that adding a floor for the percentage increase applied could be introduced wherein the PPO would be adjusted with reference to the chosen indexation rate but where that rate was less than the “floor” rate, the floor rate would be applied. The idea being that the
better of the two possibilities would ensure that an individual would not be under-compensated. The example of D/Housing and the rent cap/freeze legislation was put forward as a precedent.

The Group did not favour this approach as it would not always meet the stricture in the Hegarty judgment that the indexation rate should include reference to wage inflation. It would also create uncertainty for both plaintiffs and insurers with respect to the indexation rate.

6.3.2 – Introduction of a bespoke index

The possibility of introducing a bespoke index for the purpose of PPOs was discussed briefly by the Group. Although the Group considered that a bespoke index could be a possible solution to the difficulties raised in the Hegarty case, the CSO advised that such an index could prove difficult to establish and could prove time consuming in terms of the benefits that would accrue.

6.4 Calculation of annual amount under PPOs

Concern was expressed within the Group about the possible compounding of annual amounts. The SCA provided details regarding current arrangements, in which the amount of the periodic payment for each year is calculated in the December prior to that year by the National Treasury Management Agency (State Claims Agency) in accordance with the following formula:

\[ PP = \frac{A \times B}{C} \]

Where

PP = the amount of a yearly periodic payment payable;
A = the annual amount agreed in the PPO
B = the index value applicable for October in the year in which the calculation is being carried out
C = the index value applicable for January 2019
For example, under current arrangements, if the annual amount payable under a PPO is €500,000 then the calculation would be made as follows:

\[
\text{Annual Amount} = \frac{500,000 \times B}{100}
\]

Where 100 is the HICP value applicable for 2019 and B is the HICP value applicable for October in the year in which the calculation is carried out.

On a notional amount of €500,000 and applying the published HICP for each year the calculation gives the following results:

<table>
<thead>
<tr>
<th>Year</th>
<th>HICP at October</th>
<th>Annual Amount for following year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>101.8</td>
<td>509,000</td>
</tr>
<tr>
<td>2020</td>
<td>100.3</td>
<td>501,500</td>
</tr>
<tr>
<td>2021</td>
<td>105.4</td>
<td>527,000</td>
</tr>
<tr>
<td>2022</td>
<td>115.3</td>
<td>576,500</td>
</tr>
<tr>
<td>2023</td>
<td>119.5</td>
<td>597,000</td>
</tr>
</tbody>
</table>

The SCA has stated that any new indexation rate could be substituted into the formula instead of the HICP. In addition, the method of calculation ensured that the annual amounts would not be subject of compound interest.

### 6.5 Consideration of Options

The Group gave due consideration to each of the options outlined in the RDA paper and the subsequent Options paper. In examining the options, the Group looked principally at the calculations involving wage uplifts for the health sector.

#### 6.5.1 Option 1 – Estimated by using 100% HICP plus 100% of the average annual percentage wage uplift in the health sector
As outlined in Chapter 5, Option 1 relates to the wage uplift by reference to nominal wages/earnings only. It involves a simple calculation where the HICP is added to the average annual percentage wage uplift for the health sector.

Members of the Group were concerned that, while the Option meets the main criticism in the High Court – the lack of an estimation of wage inflation – it could lead to an overestimation of the wage uplift. Taking account of full wage inflation ignores the fact that wage inflation contributes to price inflation thus opening up the possibility of double counting in terms of the calculation of the index.

The Group noted that the RDA paper had indicated that had this option been used to estimate the PPO index rate in the period 2016 to 2023 then the overestimation could have exceeded the HICP by over 5% in some years.

The Group considered that, while a PPO should be calculated to provide to provide for 100% compensation for catastrophically injured, the indexation rate should not have an inbuilt propensity for overcompensation. Accordingly, the Group would not recommend this Option.

**Option 2 – Estimated by using 100% HICP plus a proportion of the average annual percentage wage uplift in the health sector**

Option 2 measured the PPO indexation rates as 100% of HICP plus a proportion of the nominal wage uplift for the health sector. The RDA paper measured the indexation rate using nominal wage uplifts ranging from 60% to 90% of the total annual uplift.

The Group noted that the RDA paper showed that this option was more likely than not to lead to over-compensation of claimants. Measured against health wage inflation, Option 2 would have exceeded the rate in four of the eight time-periods examined. The excess was most notable in 2022 where the excess was over 6% and 2023 where Option 2 would have exceeded the annual rate of change in nominal health earnings by 3.5%.

The Group also considered that, while Option 2 addressed the main criticism of the High Court in relation to wage inflation, it could prove volatile dependent on
prevailing economic circumstances. The Option could lead to over-compensation of claimants depending on the level of HICP and the level of wage inflation.

The Group concluded that because of the volatility of the calculation and the possibility of overestimation of annual amount it would not recommend this Option.

6.5.2 Option 3 – Estimated by using a proportion of HICP plus a proportion of the average annual percentage wage uplift in the health sector

Option 3 applies a percentage of HICP and a percentage of the nominal wage uplift rate based on the proportion of the PPO which is non labour and labour cost. Option 3 differs from Option 2 in that it is estimated on the basis of the application of a proportion of the percentage change in HICP plus a proportion of the increase in annual percentage change of nominal hourly earnings is applied (the total of the two proportions equals 100%). As with Option 2, the percentage applied to the nominal wage uplift is based on the possible labour component of PPO’s using the following formula:

\[
PPO \text{ Indexation Rate} = \text{Proportion of the annual percentage change in HICP} + \text{Proportion of the annual percentage change in nominal hourly earnings}
\]

The Group noted that, as with Option 2, the time period and the magnitude of the nominal wages uplift chosen are absolutely crucial to determining the value of any wage uplift under this option. For example, the average annual rate of change in HICP from 2021-2022 was 8.10%, the average annual rate of change in nominal health sector hourly earnings for the same period was 5.21% therefore using proportions of 40% HICP + 60% of annual average rate of change in nominal health sector earnings the total PPO index rate would be 6.37% for this time period. Using 2023 averages would result in an increase of 7.01%. If a breakdown of 20% HICP + 80% of annual average rate of change in nominal health sector earnings is chosen the respective PPO index rates would be 5.8% and 7.17%.

The Group considered that this Option had a good deal of merit in that it takes account of wage inflation, gave an appropriate weighting to wage inflation and as it uses existing figures from the CSO would be easily calculated.
The Group discussed the balance between the wage uplift and general inflation elements of this Option. It noted that the RDA paper had supplied a range of options in this area. The Civil Policy paper analysing the weighting between labour and non-labour costs also provided statistics in this area. That paper showed that, taking into account only the costs of the future care requirements of the plaintiff, labour costs account for between 80% and 90% of those costs.

The Group was concerned that using a 90%/10% (labour/non-labour) split could tip the balance too far in regards to wage inflation. The position in the UK, where the purely wage related ASHE index is used, had shown that using wage inflation only had led to possible under-compensation for plaintiffs in most years since the index had been introduced.

6.5.4 Option 4 – Estimated using DPENDPR Inflation Indices

This option is based on existing Government guidance on appropriate Public Sector Benchmarks. Essentially, the guidelines provide that, where the labour component of a service or project are in excess of 50% of the total costs, the rate should be fixed at the HICP plus an extra 1% to cater for wage inflation.

In adding a set uplift of 1% to cater for wage inflation the Option would address the main concerns of the High Court over wage inflation. However, adopting the option means that the calculation of the PPO amount would have lead to over-compensation every year, if only by 1%. The Group noted that the RDA paper had estimated the values of this option for the period 2021 – 2022 at 9.1% and for the first two quarters of 2023 at 7.52% as against the HICP figures of 8.1% and 6.52% in the same periods.

The Group that while there was merit to the option it was aware that the current guidance on Public Sector Benchmarks had been developed over 10 years ago on the basis of medium to long-term inflation targets. An argument could be made that the guidelines were not appropriate for use in current circumstances where general inflation has exceeded the annual inflation targets quite substantially. Additionally, the Group considered that, if the option was adopted an argument could be made that an uplift of 1% to cover wage inflation is too low in current
circumstances where wage inflation has increased substantially more than 1% and is likely to be above 1% in the coming years.

6.6 Comparison of Options

Table 7 below summarises the figures in the RDA paper with regard to the four options. As can be seen, Options 1 and 2 give figures far in excess of HICP. For the period 2021 – 2022, Option 3 is lower than HICP but was higher in the first two quarters of 2023. Option 4, of its nature will always be higher than HICP by 1%.

<table>
<thead>
<tr>
<th>Period</th>
<th>HICP</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(100% HICP + 100% ARC Health Earnings)</td>
<td>(100% HICP + 80% ARC Health Earnings)</td>
<td>(20% HICP + 80% ARC Health Earnings)</td>
<td>(100% HICP + 1%)</td>
</tr>
<tr>
<td>2021 – 2022</td>
<td>8.1</td>
<td>13.31</td>
<td>12.27</td>
<td>5.79</td>
<td>9.10</td>
</tr>
<tr>
<td>2023 Average</td>
<td>6.52</td>
<td>13.85</td>
<td>12.38</td>
<td>7.17</td>
<td>7.52</td>
</tr>
<tr>
<td>Q1 – Q2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6.7 Conclusions

On balance, the Group concluded that, if Option 3 was carried forward, the split should be 80% of the wage uplifts for the health sector added to 20% of general inflation costs as provided for in the HICP. In reaching this conclusion, the Group is aware that the impact of this is dependent on economic circumstances. However, based on the composition of costs typically faced and in current conditions, with relatively high (albeit declining) inflation figures and increased wage inflation, the Group concluded that Option 3 – with a split of 80% of wage uplift in the health sector added to 20% of the HICP – is the most appropriate option for use in PPOs.
Chapter 7 – Conclusions and Recommendations

7.1 General Comments

As noted in Chapter 5, the Interdepartmental Group was tasked with examining, taking into account the High Court ruling in the Hegarty case, options for an index or indices to be applied to annual adjustments to periodic payment orders and to recommend an appropriate indexation rate in this regard.

In carrying out its task, the Group has been bound Justice Murphy’s ruling in the Hegarty case that any appropriate indexation rate for PPOs must have regard for wage inflation in the health care sector and must adhere to the important principle that plaintiffs be 100% compensated for their loss without consideration for the cost to the State. The Group also notes that in seeking to provide a sound basis for any recommendation in this area, it is constrained to some extent by the data available to it and is arriving at a recommendation informed by data which, while highly relevant, is not complete.

The Group notes that the nature of litigation in catastrophic injury cases makes access to data problematic. The Group is grateful to the SCA and the IGEES/RDA in the Department of Justice for access to its data and its analysis capabilities respectively. It is also grateful to the Central Statistics Office for its expert input on indexation and inflation.

Notwithstanding these inputs and support, the Group is aware that the task given to it involves an element of forecasting which further complicates the task at hand. The impact of geo-political events over the past two years in Europe has resulted in significant increases in inflation which has provided existing PPO recipients with annual rates of return at levels higher than wage inflation. While inflation has lessened in the past year and over the medium term is expected to moderate further, these events and their impact do point to the relative limits of looking back to project forward, and the potential of future shocks to create uncertainty in regard to indexation.
The Group, in considering its recommendations in this Report, was conscious that relying solely on consumer price-linked inflation would not address the issue raised by Judge Murphy. Accordingly, the Group looked at four possible options for use as the PPO indexation rate in the short term. Based on its examination and consideration of these options, it has arrived at the following conclusions and recommendations.

### 7.2 Conclusions
Following extensive discussions, the Group concluded that, Option 3 should be carried forward and that the split should be 80% of the wage uplifts for the health sector added to 20% of general inflation costs as provided for in the HICP. In reaching this conclusion, the Group is aware that the impact of this is dependent on economic circumstances. However, based on the composition of costs typically faced and in current conditions, with relatively high (albeit declining) inflation figures and increased wage inflation, the Group concluded that Option 3 – with a split of 80% of wage uplift in the health sector added to 20% of the HICP – is the most appropriate option for use in PPO.

### 7.3 Recommendations
Based on the best evidence available, and on the understanding that the legislation provides the flexibility for PPO indexation to be amended when events require it, the Interdepartmental Group makes the following recommendations:

- In the short term, the PPO indexation rate should be based on a combination of HICP and Annual Rate of Change (ARC) in nominal hourly health earnings.

- In the short term, the amount of a yearly periodic payment payable should be based on a PPO indexation rate comprising 80% of average Annual Rate of Change in nominal hourly health earnings added to 20% of the HICP.

- That the wage inflation figures for the health sector arising from the Structure of Earnings Survey (SES) conducted by the Central Statistics Office should be substituted for the annual rate of change in nominal health earnings in the calculation of the PPO indexation rate once regular reporting on the SES, which is expected to commence regularly from 2026 onwards.
Appendix A – Terms of Reference of the Working Group

1. Consider an index or indices to be applied to annual adjustments of periodic payment orders (PPOs), taking account of High Court rulings on the relevance of the Harmonised Index of Consumer Prices (HICP) to PPOs.

2. Submit a recommended position in relation to the indexation rate to be used in annual adjustments of periodic payment orders to the Minister for Justice.
Appendix B – Membership of the Working Group

Andrew Munro, Department of Justice (Chair)
Liam Coen, Department of Justice
Michael Holohan, Department of Justice
Micheál Corry, Attorney General’s Office – Sinead Bell (alternate)
Stephen Brophy, Department of Health – replaced by Brenda Lynch
Catherine Tarrant, State Claims Agency
Brendan O’Leary, D/Finance
John Maher, D/ETE – replace by Deborah Dignam
Daniel O’Callaghan, D/PER
Philip Fagan, State Claims Agency

Secretariat
Michael Holohan, Department of Justice (Secretary)
David Nolan, Department of Justice

Technical Expertise provided to the Group
Edel Flannery, Central Statistics Office
Tara Davis, Central Statistics Office
Declan Costello, Sean Kiely and Katerina Peppou (RDA, Department of Justice)
Appendix C - Legislative Amendments carried in Courts and Civil Law (Miscellaneous Provisions) Act 2023

As noted in main body of the report, in order to address the outcome of the High Court decision, one of the measures the Minister adopted was to amend the legislation.

To this end, the Minister ensured that a number of amendments to the legislation on periodic payment orders were included in the Courts and Civil Law (Miscellaneous Provisions) Act 2023, which was enacted in July 2023. The legislation came into operation on 31 July 2023.

The legislative amendment addressed the concerns raised by the High Court with regard to the indexation rate to be used in PPO. Under the new provisions, the existing legislation was amended by:

(a) deleting the reference to HICP in the legislation; and

(b) substituting an alternative, and more flexible, mechanism for determining the PPO indexation rate.

4.2 Details of Legislative Amendment

The amendments provide that the existing section 51L will be replaced by a new section which essentially provides that the indexation rate for PPOs will be set by regulations made by the Minister for Justice with the consent of the Minister for Finance.

The new section firstly sets out the general rule that a periodic payments order will be adjusted, on an annual basis, by reference to an index specified under the section. This index is termed a “periodic payments index”. The section also provides that the indexation rate shall be set out in regulations made by the Minister for Justice with the consent of the Minister for Finance. These regulations may make provision for a number of matters, including:
• where required to ensure adequate compensation, the use of more than one index in respect of different goods and services;

• where appropriate, the inclusion of a fixed percentage increase to ensure that the amounts awarded reflect both the rate of general inflation and of wage inflation in the State;

• such other incidental or supplementary provisions as appear necessary for the purposes of the regulation.

The section sets out in detail the issues that the Minister for Justice must consider in determining the appropriate indexation rate for use in PPOs. These issues include:

• the cost of care and medical expenses;

• the reliability of the index over time;

• the body calculating the index; and

• the accessibility of the index at the same time or times every year.

The provision sets out the conditions for an initial review of the periodic payment index. It provides that this must carried out within 5 years of the making of the regulations setting the rate. However, the provision is drafted to provide flexibility in the determination of the index by ensuring that a periodic payment index is capable of being reviewed at any time in the event of significant changes in economic circumstances.

The section makes clear that the new index applies to the annual adjustment made to PPOs after the commencement of the section. In effect, the provision means that the new indexation rate will apply not only to PPOs made after the commencement of the section but also to annual adjustments to PPOs made under the old legislation.
Appendix D – Note from the CSO

Extract from Chapter 5 of ‘Report of the Working Group on Legislation on periodic Payment Orders’

The recommendations of the Working Group on Medical Negligence and Periodic Payments (WGMNPP) included a recommendation on indexation of periodic payment orders. That recommendation was that the CSO should produce, on an annual basis, indices comprising the average hourly rate of pay for certain persons, including nurses, physiotherapists and care assistants, the average costs of medical procedures for the treatment of persons injured and the estimated average costs for medical aids and appliances.

Note: A persons pay may not reflect what is charged for a service.

Suitability of the Earnings and Labour Costs data to meet this requirement.

The Earnings and Labour Costs (ELC) quarterly and annual statistics are based on the Earnings, Hours and Employment Costs Survey (EHECS). EHECS is a sample survey and data is collected from enterprises with at least three employees. No data is collected in relation to self-employed persons.

ELC data is available from Q1 2008 to date (Q3 2021 preliminary estimates and Q2 2021 final estimates were published on 01 December 2021). In each quarter, preliminary estimates for the last quarter together with final estimates for two quarters previous are published.

EHECS collects aggregated data from enterprises including total earnings and total hours worked. EHECS also collects the occupational category of employees for enterprises with at least 100 employees. As a sample survey, the occupational data is not considered the most robust and very limited statistics are published with an occupational breakdown. There are three occupational categories:

- managers, professionals & associated professionals
• clerical, sales & service employees
• production, transport, craft & other employees

Statistics published include:

➤ at economic sector (NACE Rev 2), including NACE Q, at both preliminary and final stage
  • average weekly earnings
  • average hourly earnings
  • average hourly earnings excluding irregular (bonus) earnings

➤ at aggregated economic sector, including NACE O-Q, at final stage only
  • estimates of average weekly earnings by occupational category

➤ at NACE 2-digit level, including NACE 86, 87, 88, at final stage only
  • average weekly earnings
  • average hourly earnings

Data on the professions referred to in the report (nurses, physiotherapists, care assistants) is not separately collected by EHECS. Average hourly earnings by NACE sector 86, 87 and 88 are published. These average hourly earnings relate to all categories of employees working in enterprises deemed to be primarily involved in the economic activities of the sector e.g. average hourly earnings for sector 86, Human health activities, reflects the hourly earnings of all employees working in this sector including nurses, physiotherapists, care assistants, consultants, cleaning staff, administrative staff etc.

With increasing use of administrative data, survey methodology may be subject to change. This could result in a break in the EHECS series or future revisions at some point in the future.

Summary Pros v Cons

Pros
• Data available quarterly and annually
• An established series is available from Q1 2008
• Hourly earnings available at sector level

Cons
• Data is not available at the level of disaggregation/detail requested, i.e., information on specified occupation is not available.
• No hourly earnings by occupation available
• Data is for employees only and does not include self-employed
• Data may be subject to revisions or break in series

Suitability of the Earnings Analysis Using Administrative data sources to meet this requirement.

The Earnings Analysis using Administrative Data Sources (EAADS) is an annual publication that presents earnings statistics of employees compiled based on administrative data sources. The primary data source is the Revenue Commissioner’s employee tax data. This is linked to the Central Statistics Office (CSO) Business Register and other data to provide economic and demographic breakdowns of employee earnings in Ireland.

Pros V cons

Pros
The EAADS is currently available for reference years 2011 to 2020. The EAADS presents detailed analysis of earnings based on the economic and demographic characteristics, including economic sector, gender, age, nationality and region. The statistics included are mean and median weekly and annual earnings.

The EAADS does provide breakdown by economic sector (NACE Rev 2). Analysis is published at broad sectoral level, including Q HUMAN HEALTH AND SOCIAL WORK ACTIVITIES, while we also typically provide more detailed analysis (NACE 2-digit) on request

Within NACE Q the 2-digit categories are:
• 86 Human health activities
• 87 Residential care activities
• 88 Social work activities without accommodation

Cons

The EAADS does not provide information on:

• hourly pay
• earnings of self-employed persons
• earnings by occupation

While the EAADS provides annual data, it has not been published on an annual basis. There have been three iterations to date, which were published in 2014, 2019 and 2021. Results published are subject to revision.

CSO Inflation Statistics

While the overall HICP has been ruled out as an indicator for the indexation of PPOs, some alternative sub-indices are outlined below.

CPI - COICOP Division 06 Health

06 Health

06.1 Medical products, appliances & equipment

06.1.1 Pharmaceutical products

(1) Prescribed drugs (oral)
(2) Prescribed drugs (non-oral)
(3) Vitamins & other supplements
(4) Pain reliever
(5) Antacid
(6) Cough mixture
(7) Cold/flu drinks powder
06.1.2 Other medical products
(1) Condoms
(2) Pregnancy test kit
(3) Adhesive dressing
(4) Other Medical Products

06.1.3 Therapeutic appliances & equipment
(1) Spectacles & contact lenses
(2) Hearing aids
(3) Dentures
(4) Other therapeutic appliances & equipment

06.2 Out-patient services

06.2.1/3 Medical & paramedical services
(1) General practitioners fees
(2) Specialist fees
(3) Opticians fees
(4) Alternative & complementary medicine
(5) Physiotherapists fees
(6) Services of medical analysis labs & x-ray centres

06.2.2 Dental services
(1) Dentists fees

06.3 Hospital services
(1) Hospital charges
Appendix E - Annual Survey of Hours and Earnings (ASHE) – UK

The Annual Survey of Hours and Earnings (ASHE) is produced by the Office of National Statistics (ONS) in the UK. The index used to inflate PPO claim regular payments was originally automatically linked to the Retail Prices Index (“RPI”). However, in 2006, a court case was brought in the form of Thompstone vs Tameside and Glossop Acute Services NHS Trust which questioned this assumption and suggested that the payments for future cost of care would be better linked to wage inflation. The court agreed and the annual inflation increase was linked to the Annual Survey of Hours and Earnings (“ASHE”). The case was appealed and a number of other cases were put on hold pending the outcome. In 2008, the Court of Appeal upheld the ruling that an index other than RPI can be chosen if thought more appropriate. Since then, however, the majority of PPO claims have had inflation linked to ASHE 6115.

The original classification for this was ASHE 6115 based on SOC2000 but this has evolved over the years and now the ONS produces Table 26 specifically for care worker wages which includes combined annual estimates for care workers, home carers and senior care workers as defined in the Standard Occupational Classification. The classification code for these as per SOC2010 are 6145 (Care workers and home carers) and 6146 (Senior care workers).

ASHE 6115, which is the index that was initially used for PPOs in the UK, is a result of combining the above SOC codes by the ONS to produce an equivalent to the historic ASHE 6115 survey results. The ONS survey does not include self-employed individuals or individuals who weren’t paid at the time of the survey. The data is presented from the 10th to 90th percentile of earners.

Within a particular job category, the ASHE earnings inflation measures are further split into percentiles. A PPO claim will have the annual inflation linked to a specific percentile, for example to those whose earnings are in the top 10% of earners in the category (i.e. the 90th percentile).

In November 2022 the Periodic Payment Orders Working Party of the Institute and Faculty of Actuaries reported that prior to 2015 the ASHE rate remained suppressed below CPI for a number of years following the 2008 financial crisis. During the period 2015-2019, ASHE exceeded CPI by approximately 2% p.a. on average. The figures for 2020 and 2021 were impacted by the furlough scheme brought in by the UK Government during the Covid pandemic and are not therefore comparable to other years. However, the report notes that in 2022, ASHE was below CPI again.

The PPO Working Party has previously noted that there are potential distortions which can impact ASHE, for example a reduction in a certain percentile (showing as negative ASHE inflation in a
given year) could be driven by a large influx of cheap labour, as opposed to a reduction in actual wages.

DAC Beachcroft – an international law firm specialising in insurance issues – have reported that figures from the 70th to 90th percentile are generally used in PPO cases with 80th percentile being the most common.

### 2021 Gross Pay for All Employees (FT & PT)

<table>
<thead>
<tr>
<th>Description</th>
<th>70th</th>
<th>80th</th>
<th>90th</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care workers, home carers and senior care workers</td>
<td>11.63</td>
<td>12.79</td>
<td>14.83</td>
</tr>
</tbody>
</table>

It should be noted that ASHE 6115 only accounts for the earnings when applied to a PPO and does not account for any medical equipment or supplies that may be required.
Appendix F - Paper from the Research and Data Analytics Unit, Department of Justice

Periodic Payment Orders
Indexation

PAPER FROM THE RESEARCH AND DATA ANALYTICS UNIT, DEPARTMENT OF JUSTICE
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Abbreviations

**ARC**: Annual Rate of Change

**CBI**: Central Bank of Ireland

**COICOP**: Classification of Individual Consumption by Purpose Adapted to the Needs of Harmonised Indices of Consumer Prices (2000)

**CPI**: Consumer Price Index

**CSO**: Central Statistics Office

**DoJ**: Department of Justice

**DPENDR**: Department of Public Expenditure, Nation Development Plan Delivery and Reform

**ECB**: European Central Bank

**EHECS**: Earnings Hours and Employment Costs Survey

**ESRI**: Economic and Social Research Institute

**HICP**: Harmonised Index of Consumer Prices

**LFS**: Labour Force Survey

**NACE**: Statistical Classification of Economic Activities in the European Community

**PPO**: Periodic Payment Order

**RDA**: Research and Data Analytics Unit

**SCA**: State Claims Agency
Definitions

**Consumer Price Index (CPI):** The CPI Index measures the change in prices of goods and services within the geographical area it is calculated in. The items included in the price collection are also referred to as basket of goods and services and are determined by the Household Budget Survey (HSB). This basket represents the average household in Ireland. The index also includes the expenditure of tourists on holiday in Ireland and that of the institutional households since January 2002 and January 2013 respectively.

The Classification of individual consumption by purpose (COICOP): is a classification developed by the United Nations Statistics Division to classify and analyse individual consumption expenditures incurred by households, non-profit institutions serving households and general government according to their purpose. It includes categories such as clothing and footwear, housing, water, electricity, and gas and other fuels. Prior to the introduction of the December 2001 based series in January 2002 the CPI used a national classification while the EU Harmonised Indices of Consumer Prices (HICP) used COICOP. To ensure greater comparability CPI and the HICP have both used the COICOP since December 2001.

**Harmonised Index of Consumer Prices (HICP):** In the euro area, the Harmonised Index of Consumer Prices (HICP) is used to measure consumer price inflation. That means the change over time in the prices of consumer goods and services purchased by euro area households. Index (2015=100).

**Average Weekly Earnings:** Weekly earnings are calculated by dividing the gross annual earnings by the number of weeks worked as declared on the P35L file.4

**Average Hourly Earnings:** Hourly earnings are calculated using the sum of all regular earnings, irregular earnings and overtime earnings for the reporting quarter and divided by the total paid hours reported for that quarter.

**Seasonally Adjusted Earnings:** Earnings that have been adjusted for typical seasonal patterns using the X-13-ARIMA model. Each individual series has been adjusted independently for each sector using the direct approach.

**X-13-ARIMA model:** This method of seasonal adjustment uses the X-11 moving averages process upon which it build by proving option for pre-treating the series using a regARIMA (regression model with ARIMA time series errors) approach for prior adjustment and series extension. In sum, this approach estimates seasonal factors while accounting for calendar effects (e.g, timing of Easter), outliers, temporary changes and level shifts.

**NACE Rev2:** The economic sector classification (NACE) is aligned to the CSO’s Earnings Hours and Employment Costs Survey (EHECS). The economic sector classification used for the EHECS is based on the Statistical Classification of Economic Activities in the European Community (NACE Rev.2) which can be accessed on the Eurostat website. The NACE code of each enterprise included in the survey was determined from the predominant activity of the enterprise, based on information provided to the CSO.

---

P35L file: The P35 is an annual return that is completed by all registered employers after the tax year end, including 2018. This return gives details for everyone you employed at any time during the tax year\(^5\).

Nominal Wages: The nominal wage is the wage measured in money terms.

Annual rate of change: Is the annual rate of change calculated between two time periods in percentage terms. For this analysis the annual rate of change is calculated on a quarterly and annual basis. Meaning that the annual change is calculated for example between the 1\(^{st}\) quarter of 2022 and the 1\(^{st}\) quarter of 2021 or between the annual values at 2022 and 2021.

Average annual rate of change: Is the average value of the annual rate of change for the reporting period. It is calculated by summing the values over a specific time frame and divided by their count.

Wage uplift Option 1: Wage uplift in Option 1 is the average annual rate change in nominal hourly earnings for the time period in question.

Wage uplift Option 2: This option applies 100% of the average annual rate change in HICP + a proportion of the average annual rate of change in nominal hourly earnings.

Wage uplift Option 3: This Option applies a proportion of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings. For example, of 40% of the average annual rate of change in HICP + 60% of the average annual rate of change in nominal hourly earnings.

DPENDR Indices Option 4: Option 4 takes the guidance of inflation indices developed by DPENDR for Public Sector Benchmarks (PSBs) or equivalent budgets. For services with a labour component below 50%, HICP +2% is to be applied. For services with a labour component in excess of 50%, HICP +1% is to be applied. Following an analysis of settlements the labour component was found not to be less than 50%.

Foreword

As the options in this paper give PPO indexation values for a specific point in time and are subject to rounding errors, the figures below should only be used to give the magnitude of the potential cost of each of the options. The rate of inflation\(^6\) (HICP) is subject to change and is difficult to forecast accurately. As such the value inputs (HICP and nominal hourly earnings) in all options should be revised periodically, particularly in times of significant changes in headline inflation.

\(^{6}\) When referring to inflation, this paper is referring to HICP rather than CPI as indexation rates calculated in this paper use HICP. See P.18 for further information.
Executive Summary

Purpose and Objectives

The purpose of this paper is to examine options for including an estimate of the wage inflation uplift as part of the Periodic Payment Orders (PPO) indexation rate. The work was carried out by the Research & Data Analytics (RDA) unit from the Department of Justice (DoJ) and is designed to help inform the work of the Working Group established to advise the Minister for Justice on an appropriate indexation rate. The calculations used for options 1 - 3 are based mainly on publically available data from the Central Statistics Office (CSO). Where option 4 is directly derived from Department of Public Expenditure, Nation Development Plan Delivery and Reform (DPENDR) inflation indices guidelines. The key objective of the paper is to:

- To develop options for consideration around the wage uplift as part of the indexation of the PPO and provide a sound evidence base to contribute to future decision making around wage uplift in the short term. The reason for this was that a High Court ruling considered that wage inflation should be a factor in any indexation of PPOs.

Existing Legislation

Section 51L of the 1961 Act (as inserted by Part 2 of the 2017 Act) provides that a periodic payments order (PPO) shall be adjusted annually by reference to the Harmonised Index of Consumer Prices (HICP). An Interdepartmental Working Group, established in 2014 to advise on the technical aspects of the proposed legislation on periodic payment orders, gave consideration to designating the indexation rate by reference to care worker earnings. However, the Working Group came to the conclusion that a tightly focused indexation of this type could produce unacceptable volatility given the small sample size of workers in Ireland. In addition, the Working Group considered the possibility of including, in the indexation rate, an element to cover increases in wages but since, at the time, wage inflation was static, the Working Group did not recommend the inclusion of a wage uplift in the rate.

A subsequent High Court hearing sought evidence from a number of experts in relation to the PPO indexation rate. The evidence presented to the court was that there was overwhelming evidence that a PPO linked to the HICP would not provide the plaintiff with 100% compensation in respect of their future care and medical treatment needs. Accordingly, the Court considered that wage inflation should be a factor in any indexation of PPO and that the current indexation rate (HICP) was not appropriate for use in PPOs.

Policy Decisions

To address the criticisms of the indexation rate in the High Court, the Minister for Justice has decided to approach the matter in two ways. Firstly, the existing legislation will be amended to delete the reference to the HICP and to substitute an alternative, and more flexible, mechanism for determining the PPO indexation rate. Secondly, she has
established a Working Group to advise her on the most apposite rate in the current circumstances.

**Options Considered in this Paper**

Four options are developed in this paper for discussion, where the second and third options are similar in their approach while option 1 and option 4 are different. Option 2 and 3 use a proportion of the annual rate of change in HICP and a proportion of the annual rate of change in nominal hourly earnings. Option 1 is derived using the average annual rate of change in nominal hourly earnings and HICP and Option 4 is derived from DPENDR inflation indices guidance.

In determining the indexation rate for option 1, this paper uses the following model:

\[
PPO \text{ Indexation Rate} = \text{HICP} + \text{Wage Uplift}
\]

**Wage Uplift Option 1** - Wage uplift in Option 1 is the average annual rate change in nominal hourly earnings for the time period in question, (see the calculation below). The average annual rate of change wage uplift for All Sectors and the Health Sector were estimated. All Sectors was used because this provides a larger, and therefore less volatile, base. In addition a number of different sectors may be linked to a PPO such as education, construction, and health etc. The Health Sector has then been separated out in each of the four options below as it is acknowledged that to date a substantial proportion of the heads of damages identified in settlements are linked to the health care sector such as nursing/care costs, physiotherapists, speech and language therapists etc.

It should be noted that the calculations in option 1 shown above are for wage uplift only. In order to calculate the PPO Indexation Rate, HICP will need to be added to any of the wage uplift numbers. For example if HICP is 9% and taking the average annual wage uplift for (All Sectors) using nominal wages for the time period 2020 to 2023 of 3.47%, then the PPO Indexation = 9% + 3.47%, giving a total of 12.47%.

**Option 2** - This option applies 100% of the average annual rate of change in HICP + a proportion of the average annual rate change in nominal hourly earnings.

**Option 3** – This option applies a proportion of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings. For example, applying 40% of the average annual rate of change in HICP + 60% of the average annual rate of change in nominal hourly earnings.

In determining the indexation rate for options 2 & 3, this paper uses the following model:

\[
PPO \text{ Indexation Rate} = \text{Proportion of the average annual rate of change in HICP} + \text{Proportion of the average annual rate of change in nominal hourly earnings}
\]
DPENDR Indices Option 4\(^7\): Option 4 takes the guidance of inflation indices developed by DPENDR for Public Sector Benchmarks (PSBs) or equivalent budgets. For services with a labour component below 50%, HICP +2% is to be applied. For services with a labour component in excess of 50%, HICP +1% is to be applied. Following an analysis of settlements the labour component was found not to be less than 50%.

The key findings are as follows:
For option 1 the wage uplift using nominal wages for all sectors ranged from 3.81% (2018-2022) to 3.64% for 2021-2022. Looking specifically at the health sector this is 2.82% (2018-2022) to 5.21% for 2021-2022 depending on the time frame used. For the period of Q1-Q2 2023 the average annual rate of change in nominal wages for all sectors is estimated to be 4.63% and for the health sector 7.33%. The total wage uplift would be 11.74% using all sectors nominal wages for the period 2021-2023 and 11.15% for the period Q1-Q2 2023.

**Option 1: Average Annual Rate of Change Wage Uplift for All Sectors / Health Sector, Nominal Hourly Earnings**

<table>
<thead>
<tr>
<th></th>
<th>Average Annual Rate of Wage Uplift – Nominal Wages - All Sectors</th>
<th>Average Annual Rate of Change Wage Uplift – Nominal Wages - Health Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>3.81</td>
<td>2.82</td>
</tr>
<tr>
<td>2020-2022</td>
<td>4.23</td>
<td>3.22</td>
</tr>
<tr>
<td>2021-2022</td>
<td>3.64</td>
<td>5.21</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>4.63</td>
<td>7.33</td>
</tr>
<tr>
<td>Total Wage Uplift using 1 year Averages -HICP 8.10%*</td>
<td>11.74</td>
<td>13.31</td>
</tr>
<tr>
<td>Total Wage Uplift using 2023 Q1-Q2 Averages -HICP 6.52%</td>
<td>11.15</td>
<td>13.85</td>
</tr>
</tbody>
</table>

*Note Total Wage Uplift using 1 year average annual rate of change in HICP 8.1% is for the year 2022 and for the year 2023 the average rate of change Q1-Q2 is 6.52%.
Source: IGees, DoJ, 2023, based on CSO and Eurostat data

For Option 2 the full rate of the annual rate of change in HICP is applied to the PPO plus a proportion of the annual rate of change in nominal hourly earnings. For example, the average annual rate of change in HICP from 2021 to 2022 was 8.10%, the average annual rate of change in nominal hourly earnings was 3.64% therefore using a rate of 100% HICP + 60% of nominal earnings increase would be 10.28% for this time period. Using 2023 averages the PPO indexation rate would be 9.29%

\(^7\) [gov.ie - Project Evaluation/Appraisal: Applicable Rates](www.gov.ie)
Option 2: Full HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (All Sectors)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC N. Hourly Earnings</th>
<th>100% ARC HICP + 60% ARC N. Hourly Earnings</th>
<th>100% ARC HICP + 70% ARC N. Hourly Earnings</th>
<th>100% ARC HICP + 80% ARC N. Hourly Earnings</th>
<th>100% ARC HICP + 90% ARC N. Hourly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>3.81</td>
<td>4.61</td>
<td>4.99</td>
<td>5.37</td>
<td>5.75</td>
</tr>
<tr>
<td>2020-2022</td>
<td>3.33</td>
<td>4.23</td>
<td>5.87</td>
<td>6.29</td>
<td>6.72</td>
<td>7.14</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>3.64</td>
<td>10.28</td>
<td>10.65</td>
<td>11.01</td>
<td>11.38</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>4.63</td>
<td>9.29</td>
<td>9.76</td>
<td>10.22</td>
<td>10.68</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

The table below follows the same methodology as for the one above for option 2 except only health sector earnings are accounted for. For example, the annual rate of change in HICP from 2021 – 2022 was 8.10%, the average annual rate of change in nominal health sector hourly earnings was 5.21% therefore the using a rate of 100% HICP + 60% of nominal earnings increase would be 11.23% for this time period. Using 2023 averages would result in an increase of 10.92%.

Full HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (Health Sector)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC N. Hourly Health Earnings</th>
<th>100% ARC HICP + 60% ARC N. Hourly Health Earnings</th>
<th>100% ARC HICP + 70% ARC N. Hourly Health Earnings</th>
<th>100% ARC HICP + 80% ARC N. Hourly Health Earnings</th>
<th>100% ARC HICP + 90% ARC N. Hourly Health Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>2.82</td>
<td>4.01</td>
<td>4.30</td>
<td>4.58</td>
<td>4.86</td>
</tr>
<tr>
<td>2020-2022</td>
<td>3.33</td>
<td>3.22</td>
<td>5.27</td>
<td>5.59</td>
<td>5.91</td>
<td>6.24</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>5.21</td>
<td>11.23</td>
<td>11.75</td>
<td>12.27</td>
<td>12.79</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>7.33</td>
<td>10.92</td>
<td>11.65</td>
<td>12.38</td>
<td>13.12</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

For Option 3 a proportion of the average annual rate of change in HICP plus a proportion of the average annual rate of change of nominal hourly earnings is applied. For example, the annual rate of change in HICP from 2021-2022 was 8.10%, the annual rate of change in nominal hourly earnings for the same period was 3.64% therefore using a rate of 40% HICP + 60% of nominal earnings increase would be 5.42% for this time period. Using 2023 averages would result in an increase of 5.38%.
Option 3: Proportion of Average Annual Rate of Change in HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (All Sectors)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC N. Hourly Earnings</th>
<th>40% ARC HICP + 60% ARC N. Hourly Earnings</th>
<th>30% ARC HICP + 70% ARC N. Hourly Earnings</th>
<th>20% ARC HICP + 80% ARC N. Hourly Earnings</th>
<th>10% ARC HICP + 90% ARC N. Hourly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>3.81</td>
<td>3.21</td>
<td>3.36</td>
<td>3.51</td>
<td>3.66</td>
</tr>
<tr>
<td>2020-2022</td>
<td>3.33</td>
<td>4.23</td>
<td>3.87</td>
<td>3.96</td>
<td>4.05</td>
<td>4.14</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>3.64</td>
<td>5.42</td>
<td>4.98</td>
<td>4.53</td>
<td>4.09</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>4.63</td>
<td>5.38</td>
<td>5.20</td>
<td>5.01</td>
<td>4.82</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

The table below follows the same methodology as for the one above for option 3 except only health sector earnings are accounted for. For example, the average annual rate of change in HICP from 2021-2022 was 8.10%, the average annual rate of change in nominal health sector hourly earnings for the same period was 5.21% therefore using a rate of 40% HICP + 60% of nominal health sector earnings increase would be 6.37% for this time period. Using 2023 averages would result in an increase of 7.01%

Proportion of Annual Rate of Change in HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (Health Sector)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC N. Hourly Health Earnings</th>
<th>40% ARC HICP + 60% ARC N. Hourly Health Earnings</th>
<th>30% ARC HICP + 70% ARC N. Hourly Health Earnings</th>
<th>20% ARC HICP + 80% ARC N. Hourly Health Earnings</th>
<th>10% ARC HICP + 90% ARC N. Hourly Health Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>2.82</td>
<td>2.62</td>
<td>2.67</td>
<td>2.72</td>
<td>2.77</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>5.21</td>
<td>6.37</td>
<td>6.08</td>
<td>5.79</td>
<td>5.50</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>7.33</td>
<td>7.01</td>
<td>7.09</td>
<td>7.17</td>
<td>7.25</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

For Option 4 the applicable rate is based off DPENR inflation indices guidance is as follows:
1: For services with a labour component below 50%, the Harmonised Index of Consumer Prices (“HICP”) should be applied. The applicable medium to long-term HICP rate is 2%.

2: For services with a labour component in excess of 50%, HICP + 1% is to be applied. For construction and construction-related services, the relevant technical advisor will advise on the inflation rates to be used, on a project-specific basis.

As the medium to long term forecasts for inflation by both the European Central Bank (ECB) and Central Bank of Ireland (CBI) is for inflation to return to the 2% p.a. target set by the ECB and the majority of Interim payments analysed under four cost component scenarios showed an average labour component in excess of 50% the above guidance is deemed applicable. For example, the average rate of change in HICP from 2021-2022 was 8.10%, applying the DPENDR indices above would yield a rate of 9.10% for this time period. Using the 2023 averages would result in an increase of 7.52%.

Option 4: DPENDR Indices HICP + 1%

<table>
<thead>
<tr>
<th></th>
<th>Average Rate of Change in HICP</th>
<th>PPO Indexation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>3.32</td>
</tr>
<tr>
<td>2020-2022</td>
<td>3.33</td>
<td>4.33</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>9.10</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>6.52</td>
<td>7.52</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on DPENDR inflation indices and Eurostat Data

Figure 1 below compares the PPO indexation rate provided in each option using 2022 values and Q1-Q2 2023 averages. Using 2022 data, the PPO indexation rate is larger than HICP in all options except for option 3 using all sector and health sector earnings. Using Q1 and Q2 2023 data, the PPO indexation rate is larger than HICP in all options with the exception of option 3 using all sector earnings only.

---

**Figure 1: Total PPO Indexation Rate Comparison**

*Note: 1 year averages HICP 8.1% is for the year 2022 and 6.52% average for 2023 using Q1 and Q2 data. Source: IGEES Unit DoJ (2023) using CSO and Eurostat data*

**Error! Reference source not found.** below shows the PPO indexation rate per option vs ARC HICP and ARC nominal health wage inflation for the time period 2016- Q2 2023. A breakdown of **Error! Reference source not found.** by option is available in the Appendix. In general terms, the figure shows that using either Option 1 or Option 2 as the PPO indexation rate would result in over compensation in every year when compared to HICP and in most years when compared to nominal health wage inflation. Using Option 3 (20% + 80%) as the PPO indexation rate would lead to overcompensation in six out of eight years when compared with HICP and in two years when compared with nominal health wage inflation. In the other six years this indexation rate is slightly below nominal health wage inflation. Using Option 4 as the PPO Indexation rate would result in over compensation in every year compared with HICP and in five years when compared with nominal health wage inflation.
Figure 2: PPO Indexation Rate, HICP, Nominal Health Wage Inflation 2016 - Q2 2023

Source: IGees Unit DoJ (2023) using CSO and Eurostat data

See Appendix for breakdown of PPO Indexation Rate by Option and year 2016 - Q2 2023
1. Introduction

Section 51L of the Civil Liability Act 1961 Act (as inserted by Part 2 of the Civil Liability (Amendment) Act 2017) provides that a periodic payment order (PPO) shall be adjusted annually by reference to the Harmonised Index of Consumer Prices (HICP) or such other index as may be specified in the section.

In 2019, a High Court Determination criticised the adequacy of the HICP as the appropriate index for PPOs. In particular, it noted that HICP did not adequately reflect health care wage inflation (the provision of allied health professional care usually forms a significant part of settlements). Having considered the determination, the Minister for Justice decided that the legislation would be amended to allow the Minister, with the consent of the Minister of Finance, to set the indexation rate by way of Regulations. The legislation was amended in the Courts and Civil Law (Miscellaneous Provisions) Act 2023. In addition, the Minister established a Working Group to advise the Minister as to the most appropriate indexation rate for use in periodic payment orders.

The Working Group on Periodic Payment Orders has been considering a number of options regarding the indexation rate. As part of this consideration, the Working Group has asked the Department (in particular the Civil Policy and Research and Data Analytics units) to attempt to determine a suitable weighting – between labour and non-labour costs – to apply to any proposed indexation rate to be used for future Periodic Payment Orders.

This paper provides an estimate of the wage inflation uplift as part of the indexation for the Periodic Payment Orders (PPO). The purpose of the paper is to help inform the work of the Working Group established to advise the Minister on an appropriate indexation rate. The Research & Data Analytics unit (RDA) have developed options for the consideration of the Working Group based primarily on publically available data from the Central Statistics Office (CSO).

The key objective of the paper is:

- To develop options for consideration around the wage uplift as part of the indexation of the PPO and provide a sound evidence base to contribute to future decision making around wage uplift in the short term. The reason for this was that a High Court ruling considered that wage inflation should be a factor in any indexation of PPOs.

In order to try and estimate the wage uplift, four options were developed, with all options being different to each other apart from option 2 and 3. Option 1 is developed using the average annual rate of change in nominal hourly earnings. Options 2 and 3 are calculated using a proportion of the average annual rate of change in HICP and a proportion of the average annual rate of change in nominal hourly earnings to the PPO. The proportion of

10 Hegarty & anor v HSE. [2019] IEHC 788
each average annual rate of change in option 2 & 3 is based on how much of the settlements would be labour cost and how much would be capital expenditure. Option 4 does not calculate the wage uplift but rather recommends applying the guidance developed by DPENDR in relation to inflation indices:

**Wage uplift Option 1** - Wage uplift in Option 1 is the average annual rate of change in nominal wages for the time period in question.

**Wage uplift Option 2**: Option 2 applies a proportion of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings. This option applies 100% of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings.

**Wage uplift Option 3**: Similar to option 2, this option applies a proportion of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings. Option 3 however, applies a proportion of the average annual rate of change in HICP + a proportion of the average annual rate of change in nominal hourly earnings. For example, applying 40% of the average annual rate of change in HICP + 60% of the average annual rate of change in nominal hourly earnings.

**DPENDR Indices Option 4**: Option 4 takes the guidance of inflation indices developed by DPENDR for Public Sector Benchmarks (PSBs) or equivalent budgets. For services with a labour component below 50%, HICP +2% is to be applied. For services with a labour component in excess of 50%, HICP +1% is to be applied. Following an analysis of settlements the labour component was found not to be less than 50%.

As outlined previously, for options 1, 2 and 3 it is important to understand the shortcomings of this process mainly due to data constraints, for example the different time measurements used such as annual, quarterly, monthly, different base year’s being used etc. While every effort has been made to accurately reflect the level of wage uplift caution is required when using the estimated uplifts. Option 1 uses nominal wages which are payments to workers in money form and do not take account of inflation rates and any other market conditions. Adding this to the HICP will therefore result in some overlap in terms of the impact of inflation.

**Given the current economic situation, it is advisable that the PPO indexation should be re-examined on a regular basis.**
2. Methodology and Sources

This chapter outlines the methodology and assumptions used in the paper, explains the research approach, the data collected and the techniques used in analysing the data. It is important to note, there does not appear to be a defined methodology for how this analysis should be undertaken. As such, it is important to set out the approach that was taken. In order to carry out the analysis, data was collected from the CSO Earnings and Labour Costs and the CSO’s EU Harmonised Index of Consumer Prices (HICP). Various other international sources were examined such as Eurostat, which is based on a mix of several national data sources.

It should be noted that the model used is made up of two parts. Part one is price inflation, calculated using the HICP which is derived from the Consumer Price Index (CPI) and part two wage inflation. The methodology used for both are outlined below.

An international comparison piece was not conducted as part of this paper as it was found in previous research that every liability scheme is different with the liability scheme in the U.K being the most similar to the Irish context. Due to the difficulty in comparing the Irish context with international peers, an international piece was considered to be of limited use. Similarly, a historical cost implication analysis of each option is not included in this paper as the objective of this paper is to ensure the principle that the injured party is fully compensated. Any option/indexation rate chosen based on the cost implications for the State will run the risk of being challenged in court and parties choosing to use lump sum awards rather than PPOs.

Sampling
The Department has worked closely with the State Claims Agency (SCA) on the issue of the cost composition of payments. The SCA provided settlement information in relation to 78 catastrophic cases on a confidential basis. These 78 cases comprise a mixture of lump sum settlements and interim settlements:

**Lump Sum Settlements** are settlements that can be considered full and final. The amount paid out is the entire settlement as these cases are ones in which there is general agreement regarding the estimated future needs of the plaintiff (in so far as such needs can be as accurately as possible estimated). These will often be the largest settlements the State will pay out.

**Interim Settlements** are settlements that are made for a shorter period of time such as 2, 5, 7, or in some cases up to 15 years. This is often due to the young age of a plaintiff and there being a difficulty in assessing what their future needs will be. The purpose of the interim settlement is to provide for expenditure to date, possible accommodation needs and care for the intervening period. The intent being that after sufficient time has passed it will then be possible to assess more accurately their future need requirements and agree a full PPO.
These 78 cases were broken down into the four scenarios listed below. This was done to try and determine the proportion of payments which are labour costs and which are non-labour cost used in option 4. The scenarios are as follows:

**Scenario 1: A 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total settlement**

A 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total settlement – The rationale for the 70/30 apportionment is based on an assumption that a number of items, while primarily capital in nature – such as aids & appliances or assistive technology – may also have an element of labour as part of their ongoing cost. In these calculations, the labour element of such heads of damage is set at 30%. The labour-related total is represented as a percentage of the total settlement figure (including past payments).

**Scenario 2: A 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total assumed care costs**

The rationale remains the same as in scenario 1 but, rather than using a calculation based on the total settlement figure, the calculation is based on the total assumed care costs. The figure for total assumed care costs strips out any past payments and any future payments that do not directly concern the future care requirements of the plaintiff. The labour-related total is represented as a percentage of the total assumed care costs.

**Scenario 3: A 100% apportionment of labour/non labour costs considered as a percentage of the total settlement**

The rationale for a 100% apportionment is based on the assumption that either something was labour related such as care or it was non-labour related such as aids & appliances and that no overlap between labour and non-labour costs existed. The assumption is that any potential labour element for the operation of these aids would be provided for within the future care amount and that, consequently, there is potential for overstating the possible cost of the labour element of the settlement. The labour related total is represented as a percentage of the total settlement figure (including past payments).

**Scenario 4: A 100% apportionment of labour/non-labour costs considered as a percentage of the total assumed care costs**

The rationale remained the same as above but instead the cost of the labour and non-labour elements was represented as a percentage of only the assumed care costs. The figure for total assumed care costs strips out any past payments and any future payments that do not directly concern the future care requirements of the plaintiff. The labour related total is represented as a percentage of the total assumed care costs.

**Error! Reference source not found.** below shows the results of the analysis of the 78 payments under each of the four scenarios laid out above. Under each of the cost component scenarios the average labour cost component in each scenario was in excess of 50%.
Table 8: Labour cost component scenarios results

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Average labor costs (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario 1 – 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total value of the settlement.</td>
<td>56%</td>
</tr>
<tr>
<td>Scenario 2 – 70%/30% apportionment based on non-labour/labour costs considered as a percentage of the total assumed care costs contained in the settlement.</td>
<td>91.2%</td>
</tr>
<tr>
<td>Scenario 3 – 100% apportionment of labour/non labour costs considered as a percentage of the total settlement.</td>
<td>53.7%</td>
</tr>
<tr>
<td>Scenario 4 – 100% apportionment of labour/non-labour costs considered as a percentage of the total assumed care costs contained in the settlement.</td>
<td>88.4%</td>
</tr>
</tbody>
</table>

Source: DoJ, Civil Policy (2023)

Price Inflation
CPI is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. The classification used in the CPI is based on a version of the Classification of Individual Consumption by Purpose Adapted to the Needs of Harmonised Indices of Consumer Prices (2000) (COICOP)\(^ {11}\). This replaced the former national classification which was used up to December 2001. The COICOP classification breaks consumer expenditure into twelve different divisions covering a comprehensive range of consumer goods and services\(^ {12}\). Both the CPI and the HICP are designed to measure, in index form, the change in the average level of prices paid for consumer goods and services by all private and institutional households in the country\(^ {13}\). Both the CPI and the HICP are used to measure consumer or price inflation.

At a European level inflation is measured using the European Union-Harmonised Indices of Consumer Prices (EU-HICP). This is calculated in each Member State of the EU. The purpose of this index is to allow the comparison of consumer price trends in the different Member States. As stated previously the HICP uses the Classification of individual consumption by purpose (COICOP) to classify and analyse individual consumption expenditures incurred by households, non-profit institutions serving households and general government according to their purpose. It includes categories such as clothing and footwear, housing, water, electricity, and gas and other fuels\(^ {14}\). For a full list of the COICOP classification, refer to the Appendix at the end of the report.

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\(^ {11}\) https://www.cso.ie/en/methods/surveybackgroundnotes/consumerpriceindex/

\(^ {12}\) ibid


The methodology adopted by the CSO for the construction of the CPI is identical to that for the HICP. The two indices only differ in respect of the coverage of certain goods and services and the treatment of insurance.

The following items, constituting approximately 6.2% of the CPI expenditure weighting, are excluded from the HICP:
- mortgage interest
- building materials
- motor car tax
- motor cycle tax
- motor car insurance (non-service)
- contents insurance (non-service)
- dwelling insurance
- union subscriptions
- local property tax

The HICP follows a harmonised methodology that allows for cross-country comparisons to serve specific needs in the context of the economic and monetary union. The HICP is designed to assess price stability and is not intended to be a cost of living index\(^\text{15}\). For the purpose of this paper the HICP Index data was used. The data was accessed via the CSO. The data is recorded monthly by different COICOP grouping and is measured in index form. Refer to Table 9 below for a full list of COICOP Codes. For this report, COICOP Codes 00 (All Items) and 06 (Health) were used in order to estimate the wage up lift. It should be noted that 06 (Health) in August 2023 contributed 0.09% to the Overall CPI Annual Percentage Change\(^\text{16}\).

<table>
<thead>
<tr>
<th>COICOP Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>COICOP 00</td>
<td>All-items HICP</td>
</tr>
<tr>
<td>COICOP 01</td>
<td>Food and non-alcoholic beverages</td>
</tr>
<tr>
<td>COICOP 02</td>
<td>Alcoholic beverages, tobacco and narcotics</td>
</tr>
<tr>
<td>COICOP 03</td>
<td>Clothing and footwear</td>
</tr>
<tr>
<td>COICOP 04</td>
<td>Housing, water, electricity, gas and other fuels</td>
</tr>
<tr>
<td>COICOP 05</td>
<td>Furnishings, household equipment and routine household maintenance</td>
</tr>
<tr>
<td>COICOP 06 *</td>
<td>Health</td>
</tr>
<tr>
<td>COICOP 07</td>
<td>Transport</td>
</tr>
<tr>
<td>COICOP 08</td>
<td>Communications</td>
</tr>
</tbody>
</table>

\(^{15}\) https://ec.europa.eu/eurostat/web/hicp/faq

\(^{16}\) Consumer Price Index August 2023 - CSO - Central Statistics Office
HICP uses 2015 as its base year, base year refers to the year in which an index number series begins to be calculated. This will invariably have a starting value of 100 thus 2015 = 100. This allows the annual rate of change in HICP (%) to be calculated.

Nominal Wages
In order to calculate the wage uplift in both options nominal wages were used. The CSO produces the Average Earnings, Hours Worked, Employment and Labour Cost data set. This quarterly release publishes statistics on average weekly and hourly earnings along with labour costs by collecting and analysing the data collected in the quarterly Earnings, Hours and Employment Costs Survey (EHECS). These average earnings figures are mean earnings. For example, average weekly earnings are calculated by summing the earnings of all employees in a sector (see Table 10 below for a list of sectors) and dividing by the sum of all the employees in that sector whereas average hourly earnings are calculated by summing the earnings of all employees in a sector and dividing by the sum of all hours worked by employees in the sector.\(^\text{17}\)

As is typical in earnings distributions, a relatively small number of high earners result in a positively skewed earnings distribution of employees. In a positively skewed earnings distribution, mean earnings are greater than median earnings as the mean is increased by those higher earners. In such cases median earnings (the middle earner in the economy or sector) may be a more reflective figure of the average earnings of employees in the economy or sector.\(^\text{18}\).

The Earnings and Labour Costs is based upon firm level earnings data which is used to produce mean earnings statistics and thus cannot produce median earnings statistics. It is important to note that the Earnings and Labour Costs release does not break down earnings data by specific occupations.\(^\text{19}\)

Table 10 below lists the CSO’s NACE Codes. The NACE code is the common basis for statistical classifications of economic activities within Ireland.

<table>
<thead>
<tr>
<th>NACE Code Description</th>
</tr>
</thead>
</table>


\(^{19}\) ibid
## Data Table

<table>
<thead>
<tr>
<th>Category</th>
<th>Sector Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>All Sectors</td>
</tr>
<tr>
<td>B-E</td>
<td>Industry</td>
</tr>
<tr>
<td>F</td>
<td>Construction</td>
</tr>
<tr>
<td>G</td>
<td>Wholesale and retail trade; repair of motor vehicles and motorcycles</td>
</tr>
<tr>
<td>H</td>
<td>Transportation and storage</td>
</tr>
<tr>
<td>I</td>
<td>Accommodation and food service activities</td>
</tr>
<tr>
<td>J</td>
<td>Information and communication</td>
</tr>
<tr>
<td>K-L</td>
<td>Financial, insurance and real estate activities</td>
</tr>
<tr>
<td>M</td>
<td>Professional, scientific and technical activities</td>
</tr>
<tr>
<td>N</td>
<td>Administrative and support service activities</td>
</tr>
<tr>
<td>O</td>
<td>Public Administration and defense; compulsory social security</td>
</tr>
<tr>
<td>P</td>
<td>Education</td>
</tr>
<tr>
<td>Q</td>
<td>Human health and social work activities</td>
</tr>
<tr>
<td>R-S</td>
<td>Arts, entertainment, recreation and other service activities</td>
</tr>
</tbody>
</table>

Source: CSO

It is important to note that the earnings sourced from the CSO are known as **nominal wages/earnings**. Nominal or money wages are the payments to workers in money form and do not take account of inflation rates and any other market conditions. This dataset records average weekly earnings along with average hourly earnings by quarter for All NACE Codes as described in Table 10. For the analysis average hourly earnings were used instead of weekly earnings because, if the average number of weekly hours worked in the economy is increasing or decreasing, it won’t be relevant in calculating wage uplift. Additionally average hourly annual earnings were used, these values are created from the same dataset that the quarterly data set is derived from. Given the limitation of the annual data set that has been compiled only up to 2022 as the year 2023 has not yet concluded, for 2023 figures the average of the rate of change in nominal hourly earnings were used.

For PPO recipients the average number of hours of care needed may be different in each case or changing due to the nature of injuries, but this is outside the scope of this paper.

The nominal earnings used in the analysis are **seasonally adjusted**\(^{20}\) by the CSO using the X-13-ARIMA model\(^{21}\), independently in each NACE sector. The use of seasonally adjusted earnings allows us to distinguish changes in earnings that occurred outside of seasonal phenomena. For example, such phenomena may include the rise of earnings in the tourism sector during the summer period due to the rise in economic activity within that sector. This occurrence is seasonal and is reported every year. Thus, it is necessary to distinguish changes in earnings due to general changes in the labour market from seasonal ones.

The data set used consists of quarterly hourly wage earnings (nominal) for NACE codes (All Sectors) since the first quarter of 2008 to the end of the first quarter of 2023. Quarterly

---

\(^{20}\) Seasonal adjustment is the estimation and removal of seasonal effects from a time series to reveal certain non-seasonal features

\(^{21}\) X-13-ARIMA is a set of statistical methods for seasonal adjustment and other descriptive analysis of time series (monthly, yearly etc.) data
hourly earnings (nominal) for only the health sector (NACE code Q) from the first quarter of 2008 to the end of the first quarter of 2023 were also used.

**Note on earnings:** All earnings series are updated quarterly by the CSO with the entire seasonally adjusted series from the first quarter of 2008 as part of the concurrent approach that the CSO uses. A comprehensive review of the seasonal adjustment specification is carried annually where revisions to the entire series are made. Revisions to the series are typically very minor in scale.

The HICP Index values used for the calculation of the options were taken from the Eurostat and CSO website. The annual rate of change in monthly values was taken from the CSO website while the annual average rate of change in annual values was taken from the Eurostat website. The monthly annual rates of change in the HICP Index, are calculated as the rate of change between a month in year A, and the same month in the previous year B.

This is shown in the formula below:

\[
\text{Annual Rate of Change (ARC) in HICP} = \frac{(HICP_{December\ 2021} - HICP_{December\ 2020})}{HICP_{December\ 2020}} \times 100
\]

Given that the data available on the CSO’s website consists of monthly values, the index points as well as the annual rate of change were adjusted using the average of a three month period to represent the four quarters. The first quarter being represented by values recorded in January, February and March and the fourth quarter consisting of October, November and December data points. This is shown in the formulas below:

\[
\text{Quarterly Annual \% Rate of Change in HICP} = \frac{\sum(APCR_{January\ 2021}, APCR_{February\ 2021}, APCR_{March\ 2021})}{3}
\]

\[
\text{Quarterly HICP} = \frac{\sum(HICP_{January\ 2021}, HICP_{February\ 2021}, HICP_{March\ 2021})}{3}
\]
3. PPO Indexation

Overview
Previous research was carried out by Towers Watson for the State Claims Agency in 2014. This report conducted a feasibility study on the introduction of PPOs in Ireland. The Towers Watson study examined four possible indexation rates for inclusion in PPO legislation:

- Irish Consumer Price Index (CPI)
- Irish Harmonised Index of Consumer Prices (HICP)
- CPI / HICP + a fixed rate to address wage inflation
- A stand-alone index for PPOs

An Interdepartmental Working Group, established in 2014 to advice on the technical aspects of the proposed legislation on PPO’s, gave consideration to the options examined by Towers Watson including designating the indexation rate by reference to care worker earnings. However, the Working Group came to the conclusion that a tightly focused indexation based on care worker earnings could produce unacceptable volatility given the small sample size of workers in Ireland. In addition, the Working Group considered the possibility of including, in the indexation rate, an element to cover increases in wages but since, at the time, wage inflation was static, the Working Group did not recommend the inclusion of a wage uplift in the rate.

Accordingly, Section 51L of the 1961 Act (as inserted by Part 2 of the 2017 Act) provided that a periodic payments order (PPO) shall be adjusted annually by reference to the Harmonised Index of Consumer Prices (HICP).

A subsequent High Court hearing sought evidence from a number of experts in relation to the indexation rate for PPOs. The evidence presented to the court was that there was overwhelming evidence that a PPO linked to the HICP would not provide the plaintiff with 100% compensation in respect of his future care and medical treatment needs. Accordingly, the Court considered that wage inflation should be a factor in any indexation of PPO and that the current indexation rate (HICP) was not appropriate for use in PPOs.

In determining the indexation rate for options 1, this paper uses the following model:

\[
\text{PPO Indexation Rate} = \text{HICP} + \text{Wage Uplift}
\]

In determining the indexation rate for options 2 & 3, this paper uses the following model:
1. PPO Indexation Rate = Proportion of the annual rate of change in HICP + Proportion of the annual rate of change in nominal hourly earnings

**Figure** Figure 3 below shows the annual rate of change for all items using CPI and HICP from January 2008 to January 2023. The fall of the inflation rate into negative values starting July 2008 follows the onset of the recession in Ireland due to the financial crisis. As can be seen, inflation has been under 2% from the middle of 2010 up to early 2020 which coincided with the start of the Covid-19 pandemic. During this time Ireland’s inflation dropped below zero but in May 2021 it started to rise sharply. HICP and CPI reached their highest in October 2022 where CPI was at 9.2% and HICP in June and July 2022 where it stood at 9.6%. In the last recorded month of October 2023 HICP stands at 3.6% and CPI at 5.1% according to the latest figures released by CSO.22

**Figure 3: Annual rate of change in CPI & HICP 2008 to Q1 2023**

Source: IGEES, DoJ, 2023, based on CSO data

**Option 1 - the wage uplift was estimated using nominal wages / earnings taken from the CSO.**

Option 1 examines the wage uplift using nominal wages/earnings only. As stated previously, nominal wages/earnings was taken from the CSO’s Earnings, Hours and Employment Costs Survey. This dataset records average weekly earnings along with average hourly earnings by quarter for All NACE Codes as described in Table 10 above. For the analysis average hourly earnings were used because, if the average number of weekly hours worked in the economy is increasing or decreasing, this will not be relevant in calculating wage uplift. While nominal hourly wages have risen, to date they have not kept up with inflation, leading to a drop in real wages in almost all OECD countries.23

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22 Consumer Price Index - CSO - Central Statistics Office
It is important to note that by using this option, there is the potential to overestimate the wage uplift, as the wage uplift will be made up of full wage inflation which in reality may contribute to price inflation in this case HICP or vice versa.

Figure 4 below shows the nominal average hourly earnings for all NACE sectors and for the health sector specifically. Health sector nominal hourly earnings were higher than all sectors earnings between Q1 2008 and Q3 2015, reaching a degree of parity until Q1 2019 whereby all sector earnings exceeded health sector earnings until Q3 2022. Nominal average hourly earnings in the health sector increased by over 13% (€23.85 to €27.07) from Q2 2008 to Q2 2023. The increase for all sectors was a little over 30% (€21.56 to €28.10) in the same time period.

Figure 4: Nominal Hourly Earnings for NACE code (All Sectors) and NACE code Q (Health Sector)

Source: IGEES, DoJ, 2023, based on CSO data

Figure 5 below shows the annual rate of change in HICP and Nominal wages data series from 2009 Q1 up to 2023 Q2. In this graph we can see an inverse relationship between the annual rate of change in HICP versus the annual rate of change in nominal wages. This is a result of the lag that is usually observed in nominal wages to catch up with changes in inflation.

Source: IGEES, DoJ, 2023, based on CSO data
Figure 59 - Annual Rate of Change in HICP and Nominal Hourly Earnings 2009Q1-2023Q2

Source: IGEES, DoJ, 2023, based on CSO data

Figure 6 below compares the quarterly rate of change in HICP in 2022 and 2023. In 2022 HICP rose from 5.87% in Q1 to a high of 9.07% in Q3 before easing to an 8.87% increase in Q4 2022. In Q1 2023 HICP increased by 7.53% with the increase in HICP dropping in the two subsequent quarters to a 4.83% increase in Q3 2023. The Central Bank of Ireland (CBI) forecasts the annual rate of HICP to average 5.3% in 2023, 3.4% in 2024 and 2.5% in 202524.

Figure 6 - Annual Rate of Change in quarterly HICP values 2022 - 2023

Source: IGEES, DoJ, 2023, based on CSO data

24 https://www.centralbank.ie/news-media/press-releases/quarterly-bulletin-2023-2-economy-operating-at-capacity#:~:text=Core%20HICP%20is%20forecast%20to%20average%204.9%20per%20but%20domestic%20economic%20activity%20is%20projected%20to%20grow.
Table 11 below shows the average rate of change for nominal wages or the wage uplift using differing time periods. The reason for doing this is to highlight any changes that may have occurred over time. The percentage rate of change is calculated using the average hourly earnings over each year in question. The figures below are the wage uplift using nominal wages. For example average annual wage uplift between 2018 and 2022 using all sectors is 3.81%. This is calculated by determining the average of the annual rate of change in the years 2018 up to 2022. Finally the total wage uplift of all the quarters is calculated for the given time period, as shown in Table 11.

Table 11: Average Annual Rate of Change in Nominal Wages (All Sectors / Health Sector)

<table>
<thead>
<tr>
<th></th>
<th>Average Annual Rate of Change in Nominal Wages - All Sectors</th>
<th>Average Annual Rate of Change in Nominal Wages - Health Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>3.81</td>
<td>2.82</td>
</tr>
<tr>
<td>2020-2022</td>
<td>4.23</td>
<td>3.22</td>
</tr>
<tr>
<td>2021-2022</td>
<td>3.64</td>
<td>5.21</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
<td>4.63</td>
<td>7.33</td>
</tr>
<tr>
<td>Total Wage Uplift</td>
<td></td>
<td></td>
</tr>
<tr>
<td>using 1 year Averages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-HICP 8.10%*</td>
<td>11.74</td>
<td>13.31</td>
</tr>
<tr>
<td>Total Wage Uplift</td>
<td></td>
<td></td>
</tr>
<tr>
<td>using 2023 Q1-Q2 Averages -HICP 6.52%</td>
<td>11.15</td>
<td>13.85</td>
</tr>
</tbody>
</table>

*Note Total Wage Uplift using 1 year average rate of change HICP 8.1% is for the year 2022 and 6.52% average rate of change for the year 2023 Q1-Q2.

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

It should be remembered that nominal wages do not take into account the impact of price inflation.

Option 2 - the wage uplift proportional breakdown (HICP + labour component) where 100% of the ARC HICP and a proportion of the ARC nominal wage uplift is applied.

Option 2 applies 100% HICP and a percentage of the nominal wage uplift for:
1) All sectors (Table 5)
2) Health sector. (Table 6)

The percentage applied to the nominal wage uplift is based on the possible labour component of PPO’s.
Table 12 - Full HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (All Sectors)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC Nominal Hourly Earnings</th>
<th>100% ARC HICP + 60% ARC Nominal Hourly Earnings</th>
<th>100% ARC HICP + 70% ARC Nominal Hourly Earnings</th>
<th>100% ARC HICP + 80% ARC Nominal Hourly Earnings</th>
<th>100% ARC HICP + 90% ARC Nominal Hourly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2018-2022</strong></td>
<td>2.32</td>
<td>3.81</td>
<td>4.61</td>
<td>4.99</td>
<td>5.37</td>
<td>5.75</td>
</tr>
<tr>
<td><strong>2020-2022</strong></td>
<td>3.33</td>
<td>4.23</td>
<td>5.87</td>
<td>6.29</td>
<td>6.72</td>
<td>7.14</td>
</tr>
<tr>
<td><strong>2021-2022</strong></td>
<td>8.10</td>
<td>3.64</td>
<td>10.28</td>
<td>10.65</td>
<td>11.01</td>
<td>11.38</td>
</tr>
<tr>
<td><strong>2023 Q1 - Q2 Average</strong></td>
<td>6.52</td>
<td>4.63</td>
<td>9.29</td>
<td>9.76</td>
<td>10.22</td>
<td>10.68</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Table 13 - Full HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (Health Sector)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC Nominal Hourly Health Earnings</th>
<th>100% ARC HICP + 60% ARC Nominal Hourly Health Earnings</th>
<th>100% ARC HICP + 70% ARC Nominal Hourly Health Earnings</th>
<th>100% ARC HICP + 80% ARC Nominal Hourly Health Earnings</th>
<th>100% ARC HICP + 90% ARC Nominal Hourly Health Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2018-2022</strong></td>
<td>2.32</td>
<td>2.82</td>
<td>4.01</td>
<td>4.30</td>
<td>4.58</td>
<td>4.86</td>
</tr>
<tr>
<td><strong>2020-2022</strong></td>
<td>3.33</td>
<td>3.22</td>
<td>5.27</td>
<td>5.59</td>
<td>5.91</td>
<td>6.24</td>
</tr>
<tr>
<td><strong>2021-2022</strong></td>
<td>8.10</td>
<td>5.21</td>
<td>11.23</td>
<td>11.75</td>
<td>12.27</td>
<td>12.79</td>
</tr>
<tr>
<td><strong>2023 Q1 - Q2 Average</strong></td>
<td>6.52</td>
<td>7.33</td>
<td>10.92</td>
<td>11.65</td>
<td>12.38</td>
<td>13.12</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Option 3 – the wage uplift proportional breakdown (HICP + labour component) where a proportion of the ARC in HICP and a proportion of the ARC in nominal wage uplift is applied.

Option 3 looks at applying a proportional breakdown of HICP and wage uplift to the PPO. Option 3 applies a percentage of the annual rate of change in HICP and a percentage of the annual rate of change in nominal wage uplift rate based on the proportion of the PPO which is non labour and labour cost. The annual rate of change in nominal wages is for:

1) All sectors (Table 7)

2) Health sector.
Table 14) 
Table 14 - Proportion of HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (All Sectors)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC Nominal Hourly Earnings</th>
<th>40% ARC HICP + 60% ARC Nominal Hourly Earnings</th>
<th>30% ARC HICP + 70% ARC Nominal Hourly Earnings</th>
<th>20% ARC HICP + 80% ARC Nominal Hourly Earnings</th>
<th>10% ARC HICP + 90% ARC Nominal Hourly Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>3.81</td>
<td>3.21</td>
<td>3.36</td>
<td>3.51</td>
<td>3.66</td>
</tr>
<tr>
<td>2020-2022</td>
<td>3.33</td>
<td>4.23</td>
<td>3.87</td>
<td>3.96</td>
<td>4.05</td>
<td>4.14</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>3.64</td>
<td>5.42</td>
<td>4.98</td>
<td>4.53</td>
<td>4.09</td>
</tr>
<tr>
<td>2023 Q1 - Q2</td>
<td>6.52</td>
<td>4.63</td>
<td>5.38</td>
<td>5.20</td>
<td>5.01</td>
<td>4.82</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Table 15 - Proportion of HICP plus a proportion of Average Annual Rate of Change (ARC) in Nominal Hourly Earnings (Health Sector)

<table>
<thead>
<tr>
<th></th>
<th>Average ARC HICP</th>
<th>Average ARC Nominal Hourly Health Earnings</th>
<th>40% ARC HICP + 60% ARC Nominal Hourly Health Earnings</th>
<th>30% ARC HICP + 70% ARC Nominal Hourly Health Earnings</th>
<th>20% ARC HICP + 80% ARC Nominal Hourly Health Earnings</th>
<th>10% ARC HICP + 90% ARC Nominal Hourly Health Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-2022</td>
<td>2.32</td>
<td>2.82</td>
<td>2.62</td>
<td>2.67</td>
<td>2.72</td>
<td>2.77</td>
</tr>
<tr>
<td>2021-2022</td>
<td>8.10</td>
<td>5.21</td>
<td>6.37</td>
<td>6.08</td>
<td>5.79</td>
<td>5.50</td>
</tr>
<tr>
<td>2023 Q1 - Q2</td>
<td>6.52</td>
<td>7.33</td>
<td>7.01</td>
<td>7.09</td>
<td>7.17</td>
<td>7.25</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Option 4 - DPENDR Inflation Indices
The Department of Public Expenditure, NDP Delivery and Reform (DPENDR) provides guidance on appropriate Public Sector Benchmarks (PSBs) or equivalent budgets inflation indices and rates:

1: For services with a labour component below 50%, the Harmonised Index of Consumer Prices ("HICP") should be applied. The applicable medium to long-term HICP rate is 2%.

2: For services with a labour component in excess of 50%, HICP + 1% is to be applied.
For construction and construction-related services, the relevant technical advisor will advise on the inflation rates to be used, on a project-specific basis\(^{25}\).

The above assumptions were developed over 10 years ago in consultation with the Economic and Social Research Institute (ERSI) based on the European Central Banks (ECB) medium to long term inflation target of 2% p.a. This target inflation rate of 2% over the medium to long term is still the goal of the ECB as decided by the ECBs Governing Council after concluding its strategy review in July 2021\(^{26}\). The European Commission forecasts Ireland’s annual HICP rate of change to decrease from 8.1% in 2022 to 4.6% in 2023 and 2.6% in 2024\(^{27}\). The Central Bank of Ireland (CBI) forecasts HICP inflation to average 5.3% in 2023, 3.4% in 2024 and 2.5% in 2025\(^{28}\).

Given the stated target of 2% HICP increase by the ECB, the medium term forecast of a decrease in HICP to near this 2% target by the European Commission and CBI, and the labour component of PPOs in excess of 50% on average\(^{29}\), the above guidance of HICP +1% for services with a labour component in excess of 50% is being applied to PPO payments. Table 9 below shows the adjustment rate for the PPO using DPENDR indices guidance. For example, the average rate of change in HICP from 2021 to 2022 was 8.10%, applying the DPENDR indices above would yield a rate of 9.10% for this time period.

<table>
<thead>
<tr>
<th>Table 16 - DPENDR Indices HICP +1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Rate of Change in HICP</td>
</tr>
<tr>
<td>2018-2022</td>
</tr>
<tr>
<td>2020-2022</td>
</tr>
<tr>
<td>2021-2022</td>
</tr>
<tr>
<td>2023 Q1 - Q2 Average</td>
</tr>
</tbody>
</table>

Source: IGEES, DoJ, 2023, based on DPENDR inflation indices and Eurostat Data

Concluding Remarks

This paper develops four options for consideration regarding the PPO indexation rate in line with the High Court decision in 2019. Option 1 involves adding the wage uplift (annual rate of change in nominal hourly earnings) to the annual rate of change in HICP (depending on the time frame used). Option 2 and 3 assign a proportion of the annual rate of change in HICP and a proportion of the annual rate of change in nominal hourly earnings to the PPO payment (option 2 assigns 100% HICP and a proportion of the rate of change in nominal hourly earnings, option 3 assigns a proportion of the annual rate of change in HICP and a proportion of the annual rate of change in nominal hourly earnings e.g. 40% HICP change+ 60% Hourly earnings change. Option 4 applies DPENDR inflation

\(^{25}\) gov.ie - Project Evaluation/Appraisal: Applicable Rates (www.gov.ie)
\(^{26}\) Two per cent inflation target (europa.eu)
\(^{27}\) Economic forecast for Ireland (europa.eu)
\(^{28}\) Quarterly Bulletin 2023-2 – economy operating at capacity (centralbank.ie)
\(^{29}\) See Error! Reference source not found. results of 4 scenario analysis of sample of payments (n=78), on average payments had a labour component in excess of 50% in each scenario.
indices guidance to the PPO, as analysis carried out by the Department shows an average labour component in excess of 50% the guidance of HICP + 1% is the rate selected for option 4. Each of the four options provides a rate for all sectors of the economy and for the health sector specifically.

It should be noted that the options developed in this paper are not meant to be an exhaustive list of the possibly ways in which an applicable PPO Indexation Rate could be constructed, they provide the best approaches given the information available.
Appendix

Error! Reference source not found. breakdown by Option

Figure below shows the Option 1 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. Of the eight time periods in question, Option 1 PPO Indexation Rate using nominal health earnings was higher than HICP in all instances and higher than health wage inflation in six out of eight instances.

**Figure 7: Option 1 PPO Indexation Rate vs HICP and Nominal Health Wage Inflation 2016 - Q2 2023**

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Figure below shows the Option 2 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. For Option 2 (100% + 60%) the PPO Indexation rate would result in over compensation in every year when compared with HICP and in four years when compared with nominal health wage inflation.

For Option 2 (100% + 70%): PPO Indexation rate would result in over compensation in every year when compared with HICP and in five years when compared with nominal health wage inflation.

For Option 2 (100% + 80%): PPO Indexation rate would result in over compensation in every year when compared with HICP and in five years when compared with nominal health wage inflation.

For Option 2 (100% + 90%): PPO Indexation rate would result in over compensation in every year when compared with HICP and in six years when compared with nominal health wage inflation.
Figure 8: Option 2 PPO Indexation Rate vs HICP and Nominal Health Wage Inflation 2016 - Q2 2023

Source: IGEES, DoJ, 2023, based on CSO and Eurostat data

Error! Reference source not found. below shows the Option 3 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. For Option 3 (20% + 80%) the PPO indexation rate would over compensate in six out of eight years when compared with HICP and in two years when compared with nominal health wage inflation. In the other six years the indexation rate is slightly below nominal health wage inflation.

Figure 9: Option 3 PPO Indexation Rate vs HICP and Nominal Health Wage Inflation 2016 - Q2 2023
Figure 10 below shows the Option 4 PPO Indexation rate, HICP and health wage inflation for each year 2016 – Q2 2023. Of the eight time periods in question, Option 4 PPO Indexation Rate was higher than HICP in all instances and higher than health wage inflation in four out of eight instances.

**Figure 10: Option 4 PPO Indexation Rate vs HICP and Nominal Health Wage Inflation 2016 - Q2 2023**
Source: IGEES, DoJ, 2023, based on CSO and Eurostat data
Classification System

The COICOP classification is based on 12 divisions:

01 Food and Non Alcoholic Beverages

Includes food and non-alcoholic beverages purchased in supermarkets, small shops, speciality shops and petrol station forecourt outlets. It excludes meals out which are covered under 11 Restaurants and Hotels.

02 Alcoholic Beverages and Tobacco

Includes alcoholic beverages purchased in off licences and supermarkets but excludes alcohol consumed on or within licensed premises which is classified under 11 Restaurants and Hotels. It also includes tobacco products.

03 Clothing and Footwear

Men’s, ladies and children’s clothing and footwear, sports and leisurewear and services such as laundry and dry cleaning, shoe repair, dress hire and alteration.

04 Housing, Water, Electricity, Gas and Other Fuels

Covers rents, mortgage interest repayments, refuse collection, goods and services for maintaining, decorating and repairing dwellings and domestic energy products such as electricity, gas, home heating oil and solid fuels. Water supply and sewage collection were added to this division under the item ‘water supply and miscellaneous services relating to the dwelling’ in January 2015.

05 Furnishings, Household Equipment and Routine Household Maintenance

Covers household items such as furniture, carpets and other floor coverings, household textiles and soft furnishings, household appliances and other household items such as utensils, tools, garden equipment and non-durable items for cleaning, washing and other day to day household activity. Also included are services such as electrical repair, cleaning and gardening.

06 Health

Includes medical products, appliances and equipment, hospital charges and out patient services supplied by doctors, dentists, opticians, physiotherapists and practitioners of alternative and complementary medicine.

07 Transport

Includes the purchase of new and second hand vehicles, spare parts, car maintenance, fuels and lubricants, public transport and services such as parking, motor association subscriptions, car wash, toll charges, driving lessons, driving test, driving licence and car hire.
08 Communications
Postal and telecommunications services.

09 Recreation and Culture
Includes items such as audio visual and photographic equipment, computers, music and DVDs, sports and recreation goods, games and toys, items connected with gardening and pets, recreational, sporting and cultural activities and events, newspapers and other reading material, package holidays and other items connected with recreation and culture.

10 Education
Includes pre-primary and primary, secondary, third level fees and other education and training such as night courses and examination fees.

11 Restaurants and Hotels
Includes meals in restaurants and hotels, fast food and takeaways, cafes and canteens; alcohol consumed on or within a licensed premises and accommodation services supplied by hotels, guesthouses and hostels.

12 Miscellaneous Goods and Services
Covers a wide range of items including hairdressing; goods for hygiene, hair and body care; personal goods such as jewellery, handbags and wallets; childcare and other social protection services; insurance, financial services and other services including funerals, weddings, legal and professional services. The household charge was added to this division, in the CPI, under the item 'miscellaneous goods and services' in April 2012. The household charge subsequently became the local property tax in July 2013. The local property tax is not included in the HICP.