

### **The following factors will be considered when setting the fine levels**

- The seriousness of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- The punishment of the offender for the offence
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit obtained from committing the offence

The approach is based on the Magistrates' Court Sentencing Guidelines issued by the Sentencing Council. Accordingly, an assessment of culpability and harm will be carried out in order to determine the appropriate level of penalty in each case.

### **Harm**

Harm will be assessed as either high, medium or low.

In determining the level of harm the Local Housing Authority will have regard to:

- The individual/s affected, i.e. damage to health, psychological distress
- The current condition of the property
- The number of residents affected by the breach
- The vulnerability of the resident

### **Culpability**

In determining culpability, the Local Housing Authority will have regard to four levels of culpability.

Where the offender:

- Has the **intention** to breach the requirement
- Is **reckless** as to whether harm is caused by the breach
- Has **knowledge** of the legislation and does not intend to take action
- Is guilty of **negligence**

In light of the above, culpability will be assessed as either very high, high, medium or low.

### **Determining the Amount of the Financial Penalty**

The table below sets out the interrelation between harm and culpability as a determinant of the financial penalty, banding the fine amount is a percentage of the total cap of fine as detailed in paragraphs 5.4 and 5.6 of this report.

| Harm   | Culpability |      |        |     |
|--------|-------------|------|--------|-----|
|        | Very high   | High | Medium | Low |
| High   | 100%        | 80%  | 60%    | 40% |
| Medium | 80%         | 60%  | 40%    | 20% |
| Low    | 70%         | 50%  | 30%    | 10% |

### **Aggravating / Mitigating Factors**

The penalty may be increased or decreased from the centre starting point within the band to the maximum or minimum level in the band. Considerations affecting this decision are detailed in the table below:

|   |                              |
|---|------------------------------|
| Full co-operation following identification of offence   | Reduce from starting         |
| Minimal further input required by the Council to achieve compliance   | No adjustment                |
| Significant involvement by the Council required to achieve compliance   | Increment increase           |
| A significant lack of co-operation and/or obstruction leading to significant further enforcement activity (e.g. works in default) | Further incremental increase |

In cases where more than one penalty has been imposed, the Local Housing Authority will apply the 'Totality Principle' in order to ensure that the penalty or penalties imposed are a proper reflection of all of the offending behaviour and are just and proportionate in all the circumstances.