Three recent cases have bought diminution in value further into the spotlight for landlords and tenants negotiating dilapidations settlements in Scotland.

Disputes between landlords and tenants relating to dilapidations cases operate differently in Scotland to the law in England & Wales. The law south of the border has a statutory provision in respect of section 18(1) of the Landlord and Tenant Act 1927 and capping any loss to the landlord by reference to diminution in value is well established. In Scotland there is no such statutory provision and dilapidations are assessed against the contract (the lease) between the parties and common law principles.

Recent Case Law
Mapeley Acquisition Co (3) Limited (In Receivership) v City of Edinburgh Council [2015] is the latest in a number of recent high profile Scottish cases which have dealt with the interpretation of lease clauses in respect of dilapidations and follows Grove Investments Ltd v Cape Building Products Ltd [2014] and @SIPP (Pension Trustees) Ltd v Insight Travel Services Ltd [2014].

The cases demonstrate a willingness of the courts to put what they consider to be a commercially sensible interpretation of the lease before what might seem to be a more natural reading of the actual wording. Whilst each case dealt with the specific wording in the relevant lease, this approach is likely to apply to a wide range of leases with different wording. The most recent case continues a theme of assessing liability against actual loss as opposed to an assessment of the cost of fulfilling a strict interpretation of the tenant's contractual repairing liability.

Comment
Future disputes will continue to be determined on the specific wording and merits of the individual case. However, quantifying actual loss by reference to the diminution in value of the landlord's interest and against their actual intentions to undertake works is likely to increasingly form part of the dilapidations process.

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