Dear Sir,

Following discussion among colleagues, we have recently reread the advice on ill-health retirement published in August 2005 [1]. Much of the advice is helpful, although the authors may have strayed outside their area of competence by including a dissertation on employment law which may well lead physicians astray. It is, however, regrettable that the authors did not fully inform themselves before laying down their opinions on the interpretation of the Local Government Pension Scheme Regulations.

Specifically, they make the statement: ‘The Regulations are ambiguous in this situation, but it is our belief that if a comparable job is likely to be available before the employee’s normal retirement age, then the occupational physician should not support early retirement due to ill-health’. The regulations may be ambiguous, but UKSC Circular No. 73 [2] is not. Paragraph six states: ‘The comparable job must exist with the employing authority and must be one which the employee can in practice be offered at the time the retirement is under consideration. (e.g. it must be an existing post with the current employer that is vacant or about to become vacant). The “comparable” test is not theoretical: it is practical’. This interpretation of the regulations is reiterated in LGPC Circular No. 113 [3], which states ‘for the purposes of regulation 27, no account need be taken of whether a person can do any job available at another employer or any job not currently available with the present employer’.

The authors also go on to state ‘The terms efficient, ill-health, infirmity of body or mind have not been defined’. These points, too, are covered in LGPS Circular No. 113.

If any of the authors has refused to issue a certificate of permanent incapacity solely on the basis that he believes a comparable job is likely to be available before the employee’s normal retirement age, then he has failed to comply with the requirements of the pension scheme. In this circumstance, it is conceivable that ex-employees have wrongly been denied early pension benefits, risking allegation of professional incompetence against the certifying medical practitioner.

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References