

## Ombudsman's Determination

Applicant	Mr K
Scheme	Pfizer Group Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustees of the Pfizer Group Pension Scheme ( <b>the Trustees</b> ) Capita

## Outcome

1. I do not uphold Mr K's complaint, and no further action is required by the Trustees or Capita.

## Complaint summary

2. Mr K's complaint is that he was misinformed that late retirement factors (**LRFs**) would be applied to his pension if he deferred taking his pension after he turned 60.
3. Mr K believes that he has been discriminated against, due to his age, and that he should be treated in the same way as anyone else in the Scheme who retires after their normal retirement date (**NRD**), that is, by receiving an LRF uplift.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
5. Mr K is a member of the Scheme, a defined benefit occupational arrangement, by virtue of his previous employment with Warner Lambert UK (**the Company**).
6. The Scheme is administered in accordance with the Warner Lambert (UK) Pension and Life Assurance Scheme - consolidated definitive Trust Deed and Rules 2002 (**the Rules**). See Appendix 1 for relevant extracts of the Rules.
7. On 30 June 2003, Mr K was made redundant and ceased active membership of the Scheme.
8. On 17 July 2003, Capita, the administrator of the Scheme, sent Mr K a deferred benefit statement which outlined the options available to him as a deferred member of

the Scheme. These included: leaving the pension deferred until the age of 65, which was his NRD; or transferring the benefits to another pension provider.

9. In 2016, Mr K says that he contacted Capita to query whether, if he deferred taking his pension until after the age of 60, LRFs would be applied to uplift the pension. In response, he says that Capita informed him that if he deferred taking benefits, LRFs would be applied for each year and month. Consequently, Mr K says that he decided to continue working and not claim his pension until a later date. Capita has said that it has no record of this call.
10. On 21 June 2017, Capita sent Mr K an estimated retirement pack (**ERP**) to take his pension as at July 2017. If he wished to claim his pension, he needed to contact Capita to request a full retirement pack (**FRP**). The ERP said that his unreduced annual pension from July 2017 was £13,954.22. Alternatively, he could claim a pension commencement lump sum (**PCLS**) of £66,793.09, with a reduced annual pension of £10,018.96. I understand that this ERP was over-inflated, as it included a LRF, although the letter itself did not mention an LRF being applied.
11. Later, on 14 January 2021, Capita wrote to Mr K and said that it was awaiting the Trustees' decision on how to process calculations for members over the age of 60, who left pensionable service due to redundancy.
12. On 28 June 2021, Capita issued an ERP, calculated as at July 2021, quoting a full annual pension of £14,391.89. Alternatively, he could claim a PCLS of £72,337.48 and a reduced annual pension of £10,850.62.
13. On 5 July 2021, Mr K called Capita and queried why his pension had only increased by £400 in four years.
14. On 28 July 2021, Capita explained to Mr K that there was an error in the calculation of the 21 June 2017 ERP. It had since queried the application of LRFs for members over the age of 60, who left via redundancy. The Trustees' legal advisers clarified that, as he left by way of redundancy, he was only entitled to an LRF uplift from age 65 (the NRD in the Scheme) and not age 60. The ERP, as at July 2021, was calculated correctly without any LRF.
15. On 25 August 2021, Mr K telephoned Capita to ask for more information regarding the LRF uplift letter of 28 July 2021. He said that he was not made aware of these changes and queried why he was potentially losing between £50,000 and £60,000 worth of uplift on his benefits.
16. On 1 September 2021, Capita responded to Mr K and reiterated the information contained in its letter of 28 July 2021.
17. On 13 September 2021, Mr K telephoned Capita to ask why his pension had not received a LRF uplift from age 60. He requested a breakdown of how his pension was calculated as he was unsure why it had not increased each year after he turned 60.

18. On 5 November 2021, Capita explained that LRFs should only be applied from his NRD of 65, and not from age 60, the earlier age at which his pensions benefits can be paid unreduced. It also confirmed that the calculations used for previous ERPs, prior to 28 July 2021, were incorrect.
19. On 14 April 2022, Mr K telephoned Capita and requested the necessary forms to claim his Scheme benefits.
20. On 27 May 2022, Capita sent Mr K an FRP, to take his pension from 18 June 2022. He was entitled to an annual pension of £15,479.98, or a PCLS of £77,383.44 with a reduced annual pension of £11,607.52.
21. On 23 June 2022, Mr K returned his completed retirement options forms to claim his Scheme benefits.
22. On 12 August 2022, Capita finalised the payment of Mr K's retirement benefits, backdated to 18 June 2022.
23. On 14 January 2023, Mr K asked for his complaint to be investigated under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that he believed that he had been discriminated against, as he was made redundant, as opposed to individuals who were not made redundant, or remained employed. He was prevented from claiming his pension while Capita sought advice from the Trustees on the application of LRFs for those over 60 and who were made redundant.
24. In March 2023, Capita provided a response to Mr K's stage one IDRP complaint and said, in summary, that: -
  - The Scheme's NRD was 65, however he was entitled to claim his pension from age 60, unreduced.
  - If Mr K had continued in employment, and his benefits were later deferred, the pension he accrued between 17 May 1990 and 1 June 1992 could be taken unreduced from age 60. However, the remainder of his benefits would be reduced if taken before NRD.
  - The deferred benefit statement, issued on 17 July 2003, confirmed that his NRD was 65 and that "in some circumstances" his benefits could be taken unreduced at 60. There was no mention of a LRF being applied after age 60 within this letter.
  - The ERP that was sent to him on 1 July 2017 contained the following statement:

"Please note that nothing in this estimate confers any entitlement to benefits under the Scheme, the figures in this estimate are not guaranteed and are provided for illustration purposes to help you plan for your retirement. Although we have made every effort to ensure that the figures provided to you are accurate based on current practice, your actual benefits will be calculated and confirmed to you shortly before they are due to be paid and will be subject to, amongst other things, the

Scheme rules, legislation governing pension benefits, the factors used by the Trustee time to time to determine the amount of your pension and changes in external factors such as interest and inflation rates. This means that your actual benefits may be higher or lower than the figures shown here".

- In advance of his NRD, it wrote to him in January 2021 to confirm that it held his correct address. Upon his reply, it informed him that it was "... currently awaiting decision, with regards to the calculation of members benefits who are passed age 60, who left via redundancy". This was a point of clarification, not an amendment to the Scheme rules.
  - On 14 April 2022, Mr K requested an FRP calculated as at 18 June 2022. There was a delay in issuing the retirement forms, which were not sent until 30 May 2022. His completed forms were received on 23 June 2022; however, there was a further delay in processing his benefits which were not put into payment until 12 August 2022.
  - It apologised for the incorrect value quoted in the ERP issued on 21 June 2017, and for the delay in putting his pension benefits into payment.
  - It offered Mr K £500 as a gesture of goodwill to account for the errors that occurred.
25. In response, Mr K asked Capita to consider his complaint under stage two of the IDR.
26. On 23 February 2024, the Trustees' provided the stage two IDR response to Mr K's complaint. It did not uphold the complaint and explained that: -
- He left the Scheme via redundancy in 2003, thereafter his deferred pension increased in line with the Scheme Rules from his date of leaving until his NRD of 65.
  - If a member claimed their pension before their NRD, the deferred pension was increased from the date of leaving until to the date of retirement. However, generally, the pension benefits would then be actuarially reduced to account for the days, months and years the pension was taken before the members NRD.
  - If a member delayed taking their pension until after their NRD, an LRF is applied to the benefit.
  - However, as part of a redundancy agreement between his former employer and the Trustees, more favourable early retirement terms were agreed. As he was made redundant this meant that he could claim his pension, unreduced, from age 60, though his NRD was still 65.
  - The ERP that was sent to him in July 2017 incorrectly applied LRF on his benefits from age 60 up until age 65. This was incorrect as, while he was eligible to claim

his pension unreduced from age 60, he was not entitled to an LRF uplift until after reaching age 65.

- When Capita was calculating his FRP it queried the redundancy terms agreed between his former employer and the Trustees. It was at this point that the error in calculating his 2017 ERP was noted.
- Capita was required to administer the Scheme in accordance with the applicable Scheme Rules. This was to make sure that it was paying out a member's correct entitlement.
- The Trustees were satisfied that before any payments were made, Mr K was notified that there was an error in the 21 June 2017 ERP and that all quotes issued thereafter were correctly calculated.

### **Mr K's position**

27. Mr K believes that he was misled into thinking that LRF's would be applied to his pension after the age of 60 based on a conversation with Capita. He believes that he suffered a loss of up to £60,000 for not claiming his pension from age 60.
28. Mr K believes that if Capita gave him the correct information about his entitlement to LRFs, he would have claimed his benefits from age 60, as there was very little growth in the pension after age 60.
29. He did not request the payment of his pension until he reached age 66, when he found out that his pension was not receiving a LRF uplift between age 60 and 65. His perceived loss was based on the five to six years of missed annual pension payments he could have received between age 60 and 66. This amounted to an estimated financial loss of between £50,000 to £60,000.
30. He was discriminated against as he had not received the LRF uplift like other members due to being made redundant. He wished to receive the missed pension payments that he would have received if he started to take his pension from the age of 60.

### **Adjudicator's Opinion**

31. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees or Capita. The Adjudicator's findings are summarised below: -
  - All parties confirmed that misinformation was provided to Mr K which amounted to maladministration. However, Capita and the Trustees are only permitted to pay benefits in accordance with the Scheme Rules and current legislation. Rule 6.5 of the Scheme Rules states that if a member was made redundant after April 1993, they were entitled to claim an unreduced pension between ages 60 and 65. This was on the basis that at the time of redundancy, they were under the age of 50.

There was no mention in the Rules of LRFs being applied to any benefits prior to the Schemes' NRD.

- The provision of incorrect information amounted to maladministration. As maladministration had occurred, the normal course of action would be, as far as possible, to put Mr K back in the position he would have been in had the error not occurred. This did not, however, mean that Capita should pay a LRF on his benefits from age 60, nor did it mean that Mr K was eligible to receive his pension back dated to age 60 due to the provision of incorrect information. For the case to succeed it needed to be reasonable for Mr K to have relied on the misinformation and having done so, to have suffered financial detriment as a result.
- It would appear that Mr K was provided with incorrect information regarding the application of a LRF after he turned 60. Based on the information provided to Mr K, the Adjudicator's view was that it was reasonable for Mr K to rely on the accuracy of Capita's comment that a LRF was attributable to his benefits from age 60. In spite of this, there is no evidence that Mr K has suffered an actual financial loss.
- Mr K did not provide any evidence of any decisions he made on the basis of the misinformation that his benefits would attract a LRF from age 60. In the Adjudicator's opinion, Mr K had suffered a loss of expectation as his benefits did not increase in the way that he hoped they would between age 60 and when he eventually claimed them in 2022. A loss of expectation was not equal to an actual financial loss.
- Mr K said that he decided to continue to work to build up his NI contributions to receive a full state pension. The Adjudicator took the view that Mr K would not have chosen to take his pension from age 60 due to wanting to qualify for the full state pension. Consequently, Mr K could not claim a loss of pension payments from age 60. This was because he would not likely have elected to retire if he was aware of the correct position regarding LRFs in any event.
- The Adjudicator agreed that Capita caused delays in the set up and payment of Mr K's pension and that the £500 offered to Mr K was sufficient for the delays and misinformation provided. Capita sought advice from the Trustees and once they were aware of the correct application of LRF's to members made redundant, they rectified and calculated Mr K's pension entitlement correctly.
- Mr K stated he was discriminated against as he did not receive the LRF after age 60. The Adjudicator disagreed because in her view Mr K was treated the same as all other members who were eligible for LRF's from the age of 65 as per the Scheme rules.
- In the Adjudicator's view, it was unclear on what basis Mr K believed he had been discriminated against. As he was made redundant, he was provided with the option to claim his pension from age 60, without a reduction. This option was not

open to those who were not made redundant. Mr K was entitled to a LRF from his NRD of 65, the same as any other member in the Scheme. In her view, Mr K did not have a valid argument for discrimination.

32. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided his further comments which do not change the outcome. I, in the most part, agree with the Adjudicator's Opinion, albeit with slightly different reasoning (set out below) and note the additional points raised by Mr K which, in summary, are: -
- Mr K states that the redundancy letter was ambiguous and allowed for the information to be construed differently than intended.
  - It was incorrect to assume that he would not have claimed his pension at the age of 60, if he was aware of the correct position. If he was informed LRF's were only applicable from age 65, he would have claimed his pension alongside his salary at no detriment to himself. This would have allowed him to continue to enhance his other pension entitlements, and state pension, throughout the remainder of his employment.
33. The financial loss he suffered was equal to the five years of pension payments he would have received if he claimed his pension at age 60. He estimates his loss to be £50,000.

## **Ombudsman's decision**

34. Mr K has said that if not for the provision of incorrect information he would have taken his pension from age 60. He claims to have suffered an estimated financial loss of £50,000.

### ***Entitlement to an LRF?***

35. In the formal response to Mr K's complaint, the Trustees have said that as he was "*... made redundant in 2003 ... he was eligible to retire from age 60 with an unreduced pension*". Similarly, in the IDRPs response, Mr K was told that "*you would have been able to take your benefits unreduced from age 60*". However, the Scheme's NRD generally remained at 65. He did not take his pension at 60, and claims that an LRF uplift should have applied from 60, as he was told it would.
36. In the absence of any entitlement to an uplift contained in the Rules of the Scheme (beyond the usual revaluation principles applied to a deferred pension), the first question to answer is whether there was any other reason to apply an LRF to Mr K's pension after age 60 – which necessitates a brief examination of the 'preservation requirements' found in Chapter I of Part 4 of the Pension Schemes Act 1993 (**PSA 1993**).
37. Mr K was a deferred member of the Scheme and therefore had a right to 'short service benefits' for the purposes of the preservation requirements. The preservation

requirements, found in PSA 1993 and in the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (the **Preservation Regulations**), look to offer some protection to members with short service benefits.

38. In particular, where an alternative to a short service benefit comes into payment after a member's 'Normal Pension Age' (**NPA** – a definition I return to in paragraph 39 below), trustees must be reasonably satisfied that the total value of the benefits is at least equal to the amount described in regulation 11 of the Preservation Regulations<sup>1</sup>. In lay terms, it is an attempt to provide the member with fair value when compared to the pension that would have come into payment at NPA. This is usually achieved by way of a late retirement uplift (i.e. an LRF).
39. This value test makes use of the definition of NPA found in Section 180 PSA 1993 – which is often, but not always, the same as a scheme's own NRD:

(1) In this Act “**normal pension age**”, in relation to a scheme and a member's pensionable service under it, means:

(a) [not relevant]

(b) in any other case, the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded

40. So, in short, the 'need'<sup>2</sup> to apply an LRF to Mr K's deferred pension depends on when his NPA is for the purposes of Section 180. Is it 60, or 65 (the NRD under the Rules)?
41. It is a test applied to each individual member, rather than on a scheme wide basis. I am generally of the view that the words “*the earliest age at which the member is entitled to receive benefits (other than a guaranteed minimum pension) on his retirement from such employment*” equate to the earliest date that a member can receive his pension unreduced and without the consent of another party (i.e. an unqualified right)<sup>3</sup>.
42. On the face of it, that could mean that Mr K's NPA is 60 – as the Trustees have said that as Mr K was “... *made redundant in 2003 ... he was eligible to retire from age 60*”

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<sup>1</sup> See Regulation 8 of the Preservation Regulations.

<sup>2</sup> Noting that the preservation requirements do not override a scheme's rules – see section 129 PSA 93. However, where those rules do not comply with the preservation requirements, section 132 requires the trustee or manager to take such steps as are open to them to bring the rules into conformity with the preservation requirements.

<sup>3</sup> I recognise that there is a different interpretation, in which it is immaterial whether the pension is reduced or not. However, for the purposes of this complaint it is not a point I am required to reach a definitive view on.



*with an unreduced pension*" (see paragraph 35 above). This is notwithstanding that his NRD remains 65.

43. However, that view would not be correct.
44. Firstly, a closer examination of Rule 6.5 (reproduced in full in Appendix 1) shows that, at least for the purposes of the Rules, Mr K's ability to retire at 60 is not an unqualified right: "*With effect from 1st April 1993 where a Final Salary Scheme Member leaves Pensionable Service because he has been made redundant by an Employer, **the Trustees may in their discretion** and without the consent of the Principal Employer ... allow him to retire on a pension at any time after attaining the age of 50, and waive any reduction in pension between the ages of 60 and 65 which would otherwise apply under Rule 9.6*" (my emphasis). On the face of it, the ability to retire early in these circumstances is at the discretion of the Trustees and therefore not unqualified.
45. Secondly, even if a separate document or policy in some way interacted with this Rule, and provided that the right was in fact unqualified, I am still of the view that it would not result in Mr K's NPA moving from 65 to 60. This is because Section 180(2) excludes "*any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise*". In my view this 'special provision' exclusion includes a provision that allows a member to retire early as a result of redundancy<sup>4</sup>.
46. In this case, as is set out in Rule 6.5 itself and in the descriptions provided by the Trustees, the ability to retire unreduced at 60 is available to Mr K as a result of his being made redundant. Accordingly, I am of the view that this is a "special provision" for the purposes of Section 180(2), that does not act so as to reduce his NPA to 60.
47. Accordingly, I find that Mr K's NPA was 65, the same as his NRD. Therefore, the Trustees were correct in not applying an LRF in the period after his 60<sup>th</sup> birthday.

### **Misstatement**

48. It is unfortunate that Mr K incorrectly understood that LRFs would be applied to his deferred benefits after he reached the age of 60. However, to find the Respondents liable for his argued losses (essentially that he would have retired at 60 had he known the true position), he must demonstrate that Capita provided an incorrect statement and that it was reasonable for him to rely upon it.
49. There are, potentially, two incorrect statements that have been provided to Mr K. The first is the telephone call, referred to in paragraph 9 above, which Mr K says took place between him and Capita in 2016 (the **Telephone Call**). The second is the

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<sup>4</sup> For example, while not binding, see the Joint Office Memorandum No 78 (May 1992) – Preservation of Occupational Pension Rights, Voluntary Contributions, Revaluation & Transfer Values, which, at paragraph 13 of Part 1 sets out that "*A member's NPA will usually be defined in the scheme's rules. But where another document such as a board resolution, establishes that members will be entitled to retire on an unreduced pension (**other than on special grounds such as ill health or redundancy**) at an age ... earlier than that specified in the rules, NPA for preservation purposes would depend on the terms of that document as well as the rules of the scheme*". (my emphasis)

incorrect 2017 ERP, referred to in paragraph 10 above, which overstated his pension benefits (but importantly did not refer to an LRF being applied) (the **Incorrect ERP**).

50. Mr K recalls that, in the Telephone Call, he was provided with “*a clear precise answer stating that uplifts would be applied if I chose to [retire] later than 60 years of age ... [but] had no reason to log the call or save billing records*”. He has no other contemporaneous record (such as a note or follow up email), but claims that the call caused him to delay claiming his pension.
51. Capita also has no record of the call. I have asked further questions of Capita (via the Trustees) to draw out its standard processes and procedures at the time. I am informed that while calls were not recorded at that time, the standard procedure was to “*include a written summary of the call on the record ... [however] there is no record of the conversation on the member’s record*”.
52. The Pensions Ombudsman is an evidence based ombudsman. In this case, there is a lack of evidence available that would enable me to reasonably conclude that the call, as recollected by Mr K, did indeed happen. For example, the standard process followed by Capita would be to make a file note of the call – which one would expect would, at the very least, include a reference to the Telephone Call having happened (even if it did not go into detail as to the points discussed). A record of that nature does not exist, which suggests that the call did not happen. Similarly, while Mr K recollects the call happening, he cannot provide any corroborating evidence (and he did not seek to confirm his understanding of this point in a follow up email). Even if it did happen, as Mr K suggests, I have no further evidence as to the actual contents of the call.
53. In the absence of clear evidence that Mr K was provided with a false statement in the Telephone Call as to his entitlement to LRFs, I am not persuaded on the balance of probabilities that a claim for negligent misstatement can be successful. Reliance on a single phone call, with no contemporaneous evidence, and of which Capita has no record, is insufficient for this purpose.
54. I now turn to the Incorrect ERP. It is accepted by the Respondents that the Incorrect ERP overstated Mr K’s benefits – but, again, I am not of the view that this allows Mr K to mount a successful claim for negligent misstatement.
55. This is for a number of reasons. Firstly, the Respondents went to some effort to explain the estimated nature of the figures included in the Incorrect ERP and also limit the scope of its responsibility to Mr K through a detailed disclaimer (see paragraph 24 above). For example, it was clearly described as an “*estimate of the retirement benefits available*” to him, with Mr K invited to apply for a full retirement pack if he wished to claim his pension. In light of the significant decisions Mr K claims he made on the basis of these clearly estimated figures, I find it reasonable to allow Capita to rely on the disclaimer and caveated nature of the Incorrect ERP.
56. Secondly, I am not of the view that the Incorrect ERP was the cause of Mr K’s loss. Notably, I am not persuaded that if the Incorrect ERP had contained the correct

figures he would have elected to take his pension at 60 rather than postponing his retirement (indeed the figures would have been lower). Rather, the Incorrect ERP, while it contained inflated figures, did not say that it included an LRF or suggest in any way that it would continue to benefit from an LRF in the period between ages 60 and 65. Accordingly, I fail to see how Mr K can argue that, “but for” the Incorrect ERP, he would have known that LRFs did not apply to his pension between 60 and 65 and he therefore would have claimed his pension at 60.

57. At no point from age 60 was Mr K prevented from claiming his pension. Furthermore, while Mr K’s pension remained deferred, it had received yearly revaluation increases, and then an LRF uplift applied between age 65 and 66.
58. Finally, Mr K has also alleged that he was discriminated against because he was made redundant. I agree with the Adjudicator that there is no evidence that he was treated differently from any other member of the Scheme in the same position. Indeed, those made redundant were allowed to take the benefit unreduced at age 60, while a ‘normal’ deferred member would have much of his or her pension reduced if they were to retire early. Both groups are only entitled to a LRF on their deferred benefits from age 65 onwards. There is no basis for Mr K’s claim of discrimination.
59. In summary, Mr K does not have a successful claim for negligent misstatement. While he was provided with the Incorrect ERP, it did not state that an LRF would be applied from age 60 onwards. In the absence of any contemporaneous information about the telephone call, I find that Mr K has not satisfied the test for negligent misstatement.
60. I acknowledge that the overstated 2017 estimate (i.e. the Incorrect ERP) has caused Mr K significant distress and inconvenience, but I find that the offer of £500 in respect of that is appropriate. If Mr K now wishes to accept this, he should contact Capita directly.
61. I do not uphold Mr K’s complaint.

**Dominic Harris**

Pensions Ombudsman  
3 December 2025

## **Appendix 1**

### **Extract of the definitive Trust Deed and Rules relevant to Mr K**

#### **“6.5 Early Retirement in other cases**

Any Final Salary Scheme Member who has attained the age of 50 may subject to the consent of the Principal Employer retire and be entitled to an immediate pension and lump sum calculated in accordance with Rule 6.2 and Rule 6.6 by reference to his Pensionable Service up to the termination of his employment.

In such case his pension will be reduced to take account of his age at retirement by 0.25% for each complete month by which actual retirement precedes the age of 60, or in such other manner as the Trustees may decide and as shall be certified as reasonable by the Actuary tendering Actuarial Advice to the Trustees and so that the payment of pension may be postponed completely in order to maintain the Guaranteed Minimum Pension.

With effect from 1st April 1993 where a Final Salary Scheme Member leaves Pensionable Service because he has been made redundant by an Employer, the Trustees may in their discretion and without the consent of the Principal Employer in the case of a Member who had not attained the age of 50 when he was made redundant or was over the age of 50 but did not at the time he was made redundant request early retirement, allow him to retire on a pension at any time after attaining the age of 50, and waive any reduction in pension between the ages of 60 and 65 which would otherwise apply under Rule 9.6.”