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Benefit Sanctions: Britain's secret penal system

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Outline

- What are sanctions?
- The great sanctions drive 2010-16
- The dubious history of the two main types of sanction in 2010-16:
 - ‘Not actively seeking work’
 - ‘Failure to participate in the Work Programme’
- Universal Credit sanctions
- What is wrong with the system
- Elements of reform

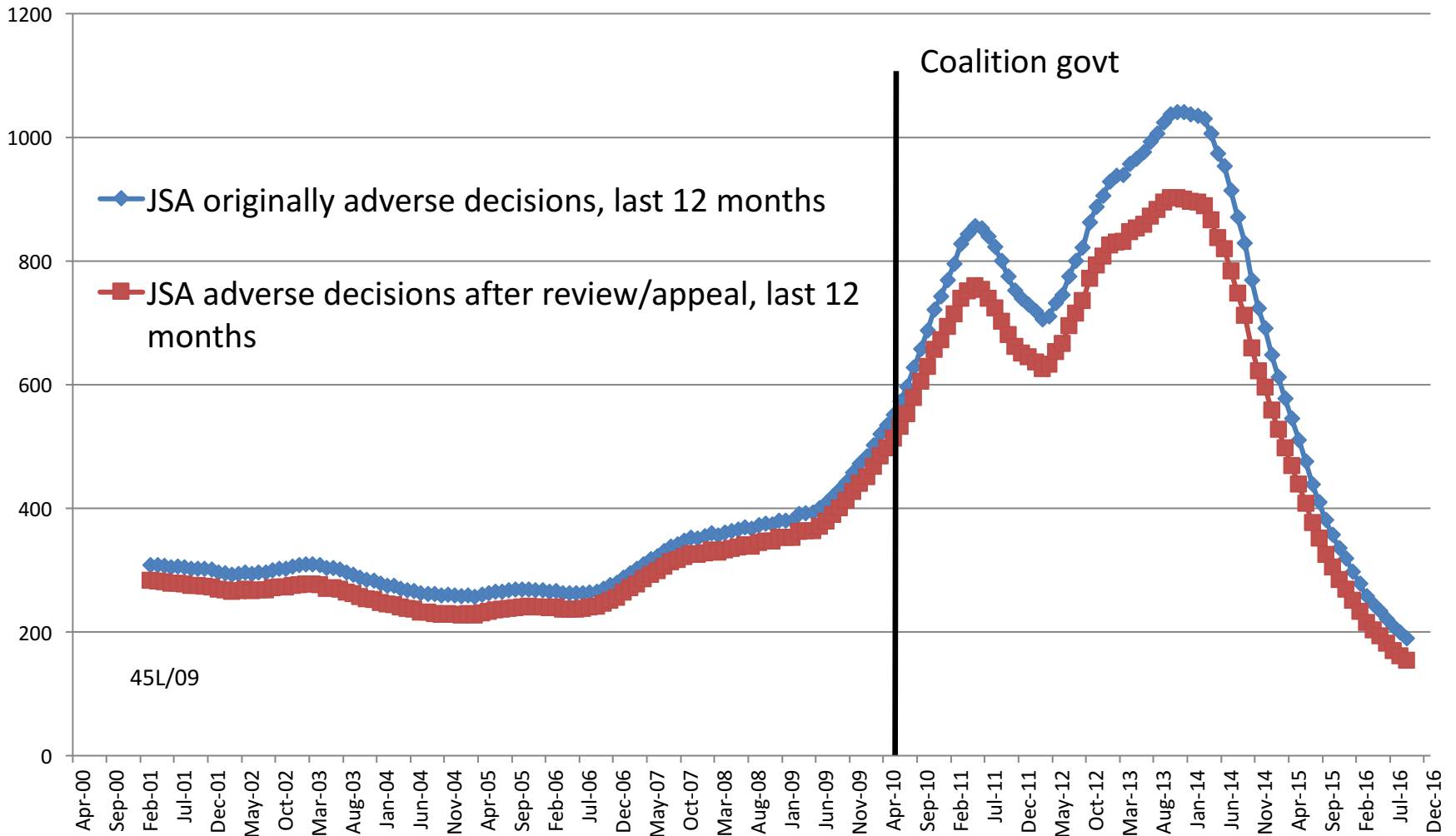
What are sanctions?

- Any insurance scheme has to have conditions
- The UK National Insurance system introduced 1911 has always had 'disqualifications'
- However almost all **disqualifications** were about whether people had made themselves unemployed and in any case limited to 6 weeks (1911-1986)
- **Sanctions** are a punishment for not doing something which the State thinks might help you get a job
- National Insurance has evolved into a secret penal system, without the safeguards of the mainstream judicial system
- Administrative procedures designed to determine entitlements have been bent into judicial instruments
- This evolution has taken place in stages since 1986

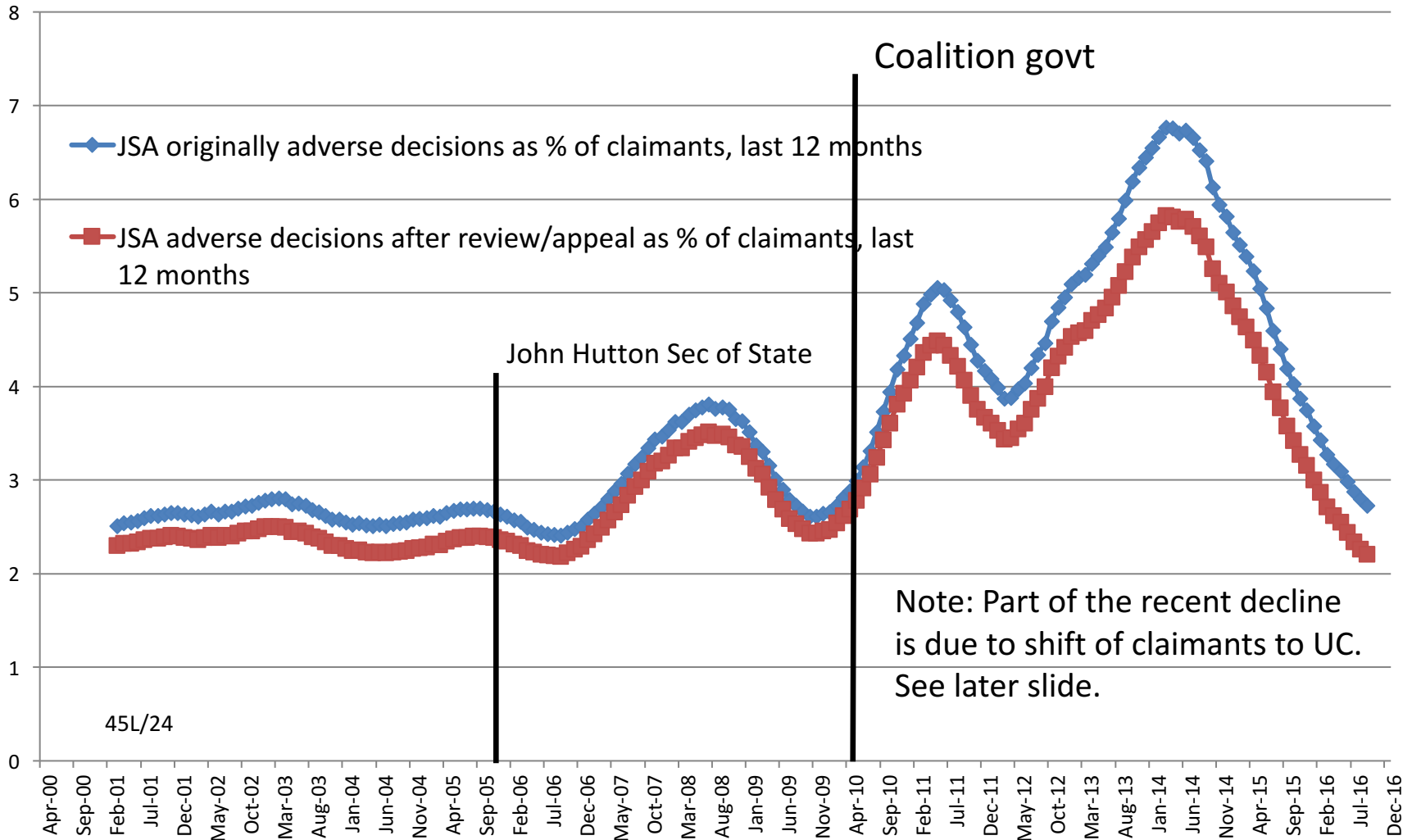
The JSA sanctions campaign 2010-16

- Completely unprecedented level of pressure on claimants
- JSA sanctions/disqualifications doubled after 2010
- Peak 1,041,000 in 2013
- 24% of all people who claimed JSA between 2010 and 2015 were sanctioned, before challenges – NAO (2016)
- Now back to pre-2010 level; about 339,000 (inc. UC) in 2016
- Referrals are up to double actual sanctions, so wider threat
- Loss of all benefit, must apply for 60%/80% ‘hardship payments’ – designed to clean claimant out of resources, plus 2-week wait
- All the commonest JSA sanctions lengthened from 22 Oct 2012 – min. now 4 weeks, harsh penalties for repeats with max. 3 years
- Language changed to penal terminology e.g. ‘transgression’; the terms ‘disentitlement’ or ‘disqualification’ dropped

Number of JSA sanctions before and after review/reconsideration or appeal, last 12 months (thou.) 2000 to 2016



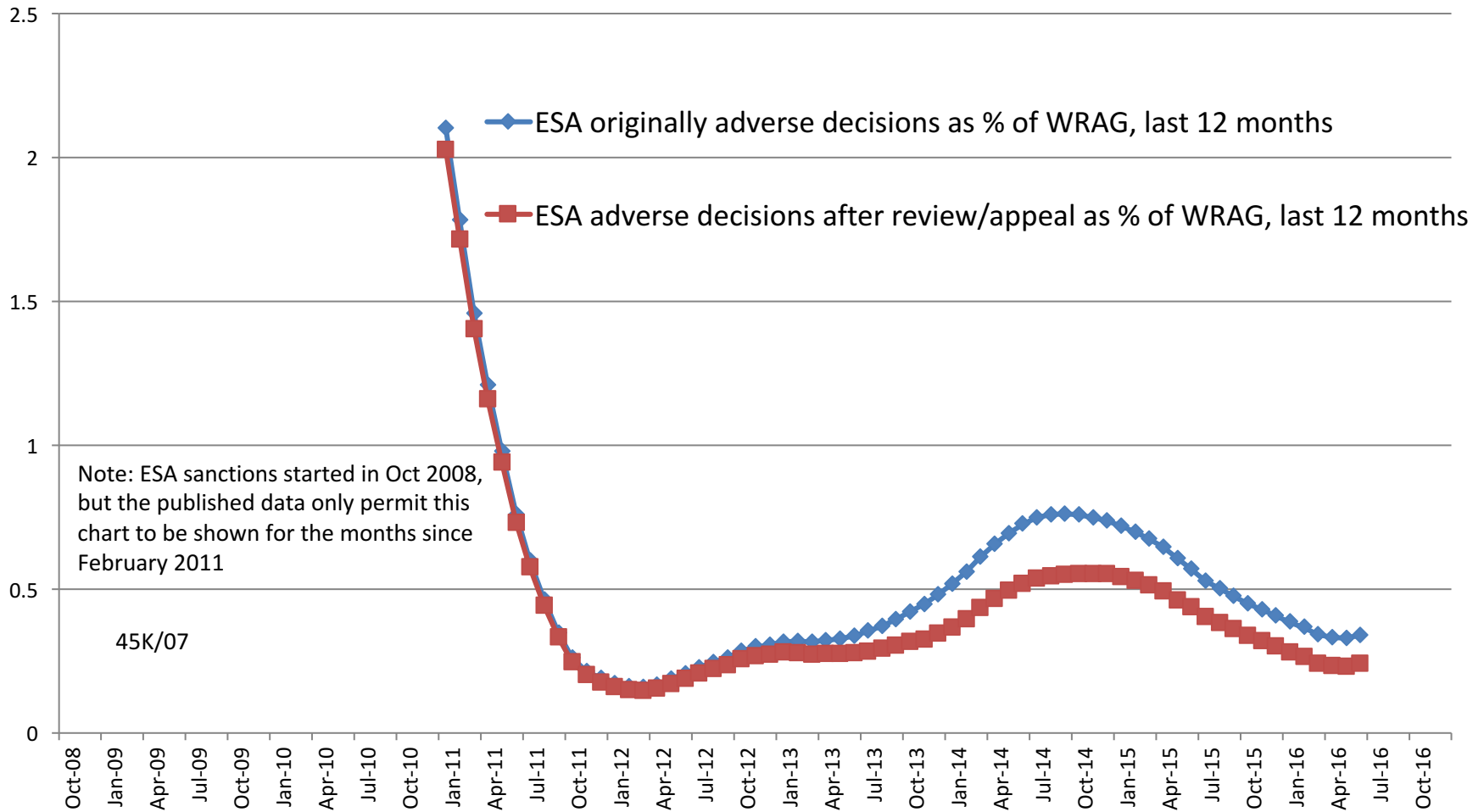
JSA sanctions per month as % of claimants, before and after review/reconsideration or appeal, last 12 months



ESA sanctions

- Sanctions on sick/disabled claimants were unheard of before the Welfare Reform Act 2007
- Initial high rate of sanctions entirely related to interviews
- Escalated ESA (Work Related Activity Group) sanctions since 2012 – 2.9% of all claimants in 2014/15
- All of this increase related to ‘work related activity’
- More repeat sanctions than for JSA
- Peak 49,400 in 2013/14, 20,200 in 2015/16
- ESA sanctions also much harsher from 3 Dec 2012 – now lose all of personal allowance £73.10 p.w. plus fixed penalty 1, 2 or 4 weeks (previously only WRAG component £29.05 p.w., half for first 4 weeks then all)
- Abolition of WRA component Apr 2017 means sanctioned ESA claimants now get NO money

ESA sanctions per month as % of claimants, before and after review/reconsideration or appeal, last 12 months



Why did sanctions go up so much?

JSA

- Unannounced ministerial instruction May 2010 to drive up referrals for sanction, esp. 'not actively seeking work'
- Reinforced by unannounced DWP change of legal interpretation in January 2012 re requirements for 'not actively seeking work'
- Increase from 60% to 80% in proportion of referrals resulting in sanction (from 85% to 98% for 'not actively seeking work')

JSA and ESA

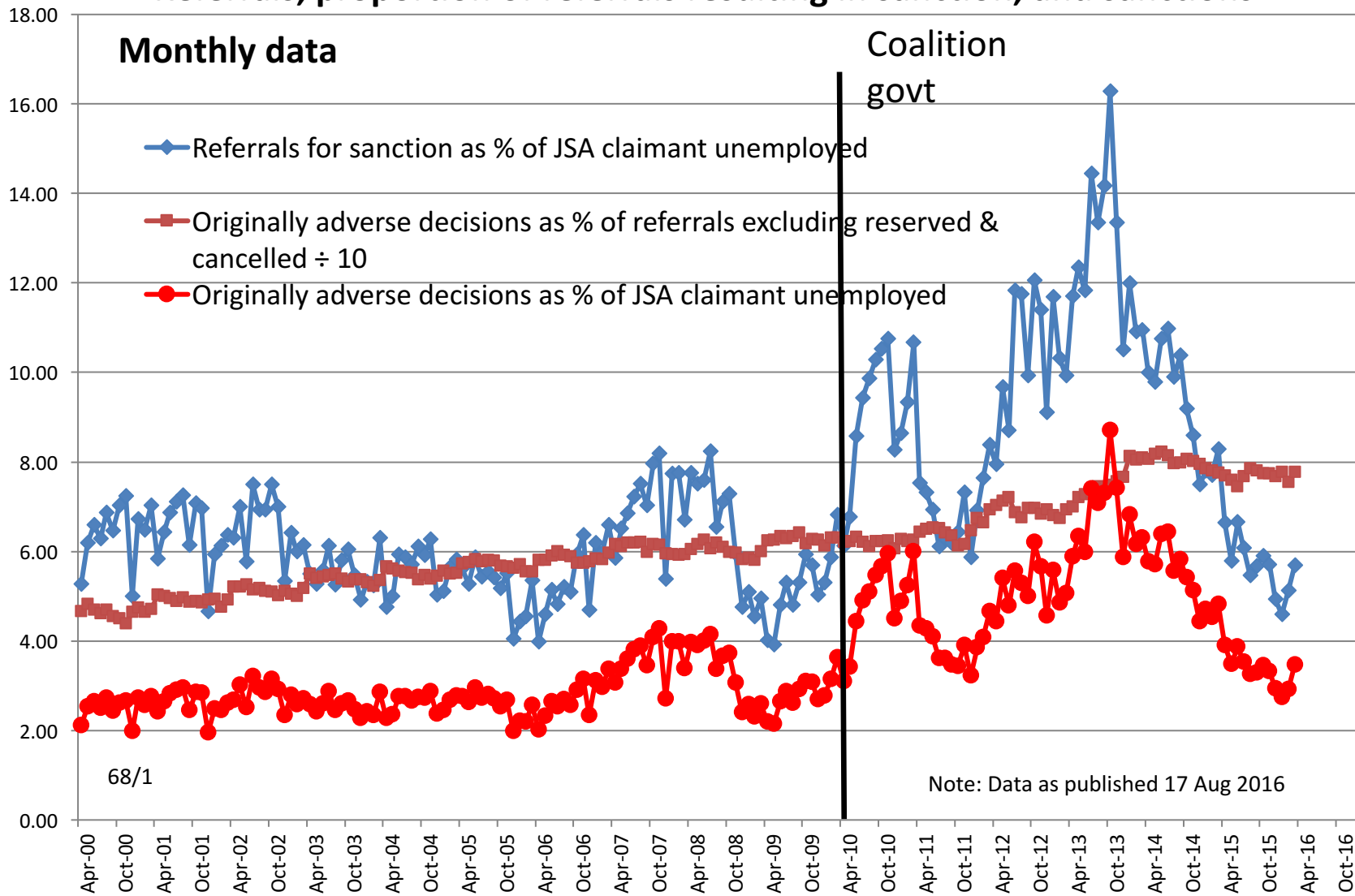
- Increased referrals to programme, combined with DWP ruling that Work Programme contractors must report any 'failure' even where claimant co-operating

Therefore two key types of sanction:

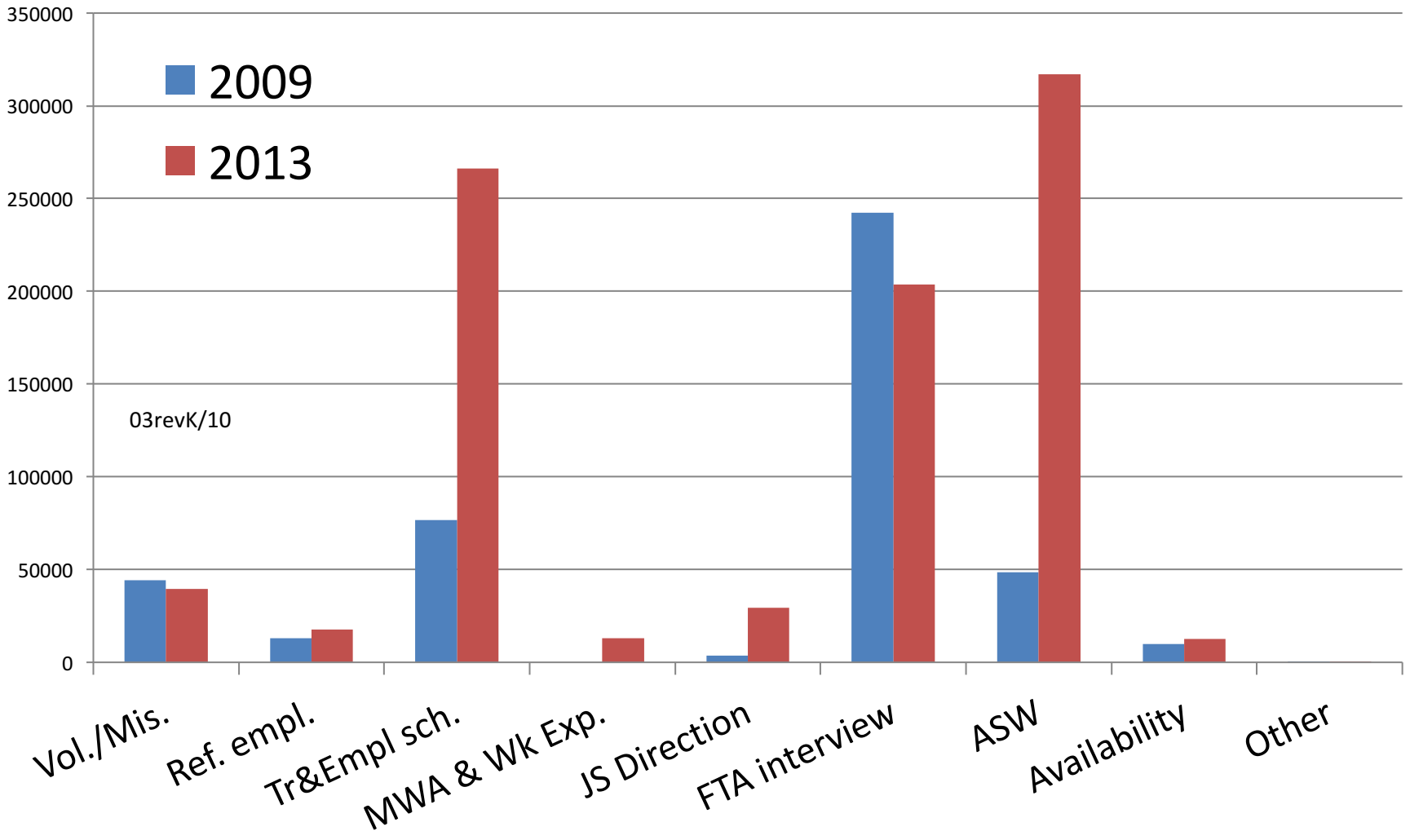
- 'Not actively seeking work'
- 'Failure to participate in the Work Programme'

These reflect the modern obsession with 'activation'

The overall increase in JSA sanctions 2010-16: Referrals, proportion of referrals resulting in sanction, and sanctions



Reasons for JSA sanctions, after challenges, 2009 and 2013 (nos. of sanctions for each reason)



‘Not actively seeking work’

- Agreed international definition of unemployment includes actively seeking work – but ILO defines this as one action in past 4 weeks
- How far is the state entitled to impose its view on *how* and *how much* people should look for work?
- 1920s: Huge controversy over ‘genuinely seeking work’/‘making reasonable effort’ requirements, leading to abolition in 1930
- Reintroduced by Thatcher govt in 1989 – justified on survey evidence that one in eight unemployed had not looked for work in the previous 4 weeks (10 Jan 1989 col.715)
- Disentitlement rather than sanction

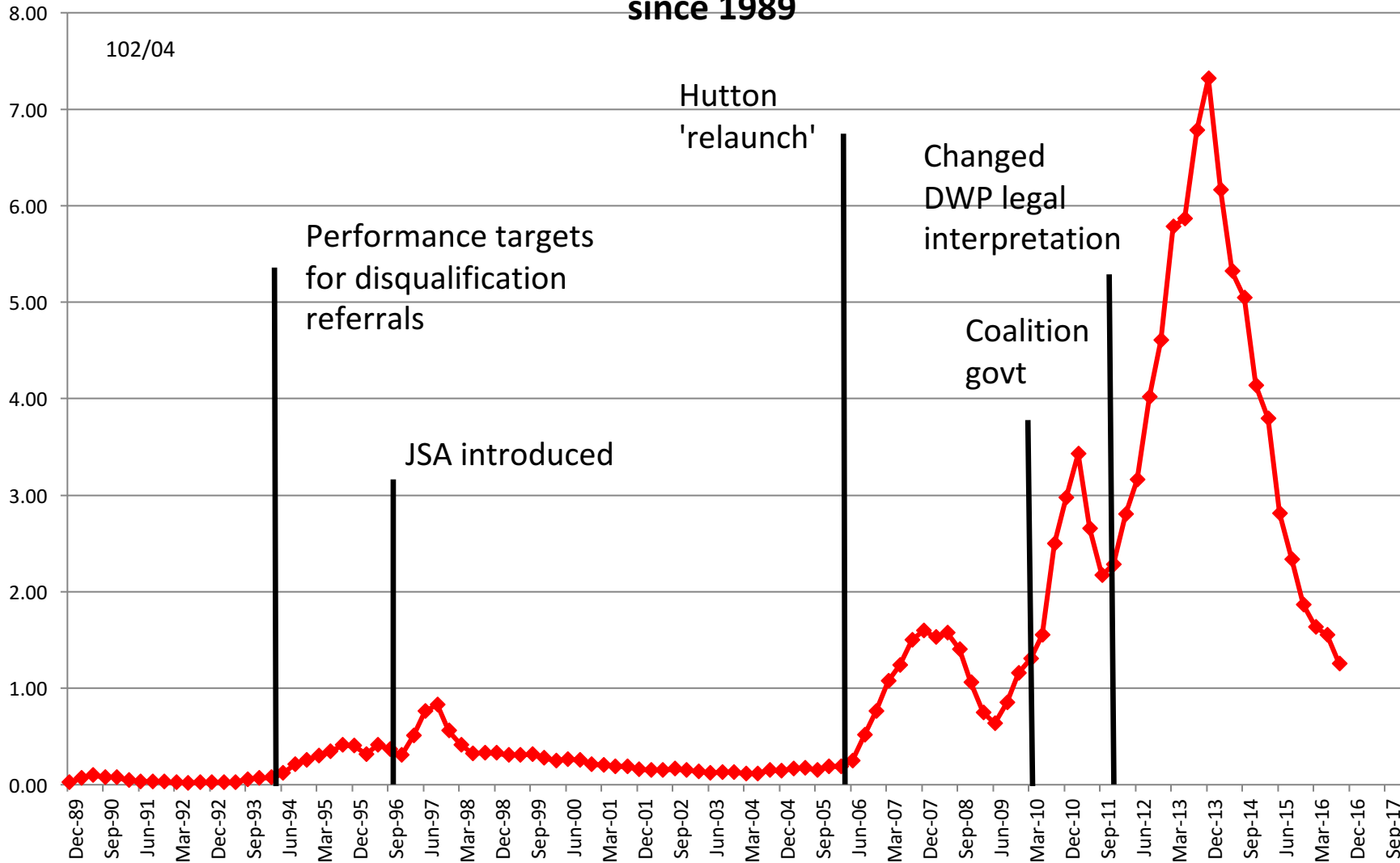
'Not actively seeking work'

- Ambiguous definition in original legislation (Social Security (Unemployment, Sickness and Invalidity Benefit) Amendment No. 2 Regulations 1989):
 - *'the steps which a person is required to take if he is to be regarded as actively seeking employment shall be such of the steps which are reasonable in his case as offer him his best prospects of receiving offers of employment the taking of one step on a single occasion during a week shall not be sufficient unless taking that step on that occasion is all that it is reasonable for the person in question to do in that week'*
- Worthless guarantees given by ministers in 1989:
 - *'Only in the rare cases where a claimant states clearly that he has no intention of taking any steps to find employment will any question arise about his entitlement to benefit'*
- Essentially the same 1989 wording incorporated in Jobseekers Act 1995
- Practical interpretation became that if claimants took at least two steps they could not be disentitled
- In 2004, Labour govt increased the one step to two (JSA (Amendment) Regulations 2004) , meaning that claimants had to take at least three steps
- At this point everyone understood that the claimant couldn't be disentitled if they took the stated no. of steps: *'Regulation 2(2) amends regulation 18(1) to increase the minimum number of steps that a jobseeker must take to be actively seeking employment from at least two to at least three in a week, unless taking one or two steps is all that it is reasonable to do in that week.'* (Ex. Memo, 2004 Regs)
- Social Security Advisory Committee criticised even this increase

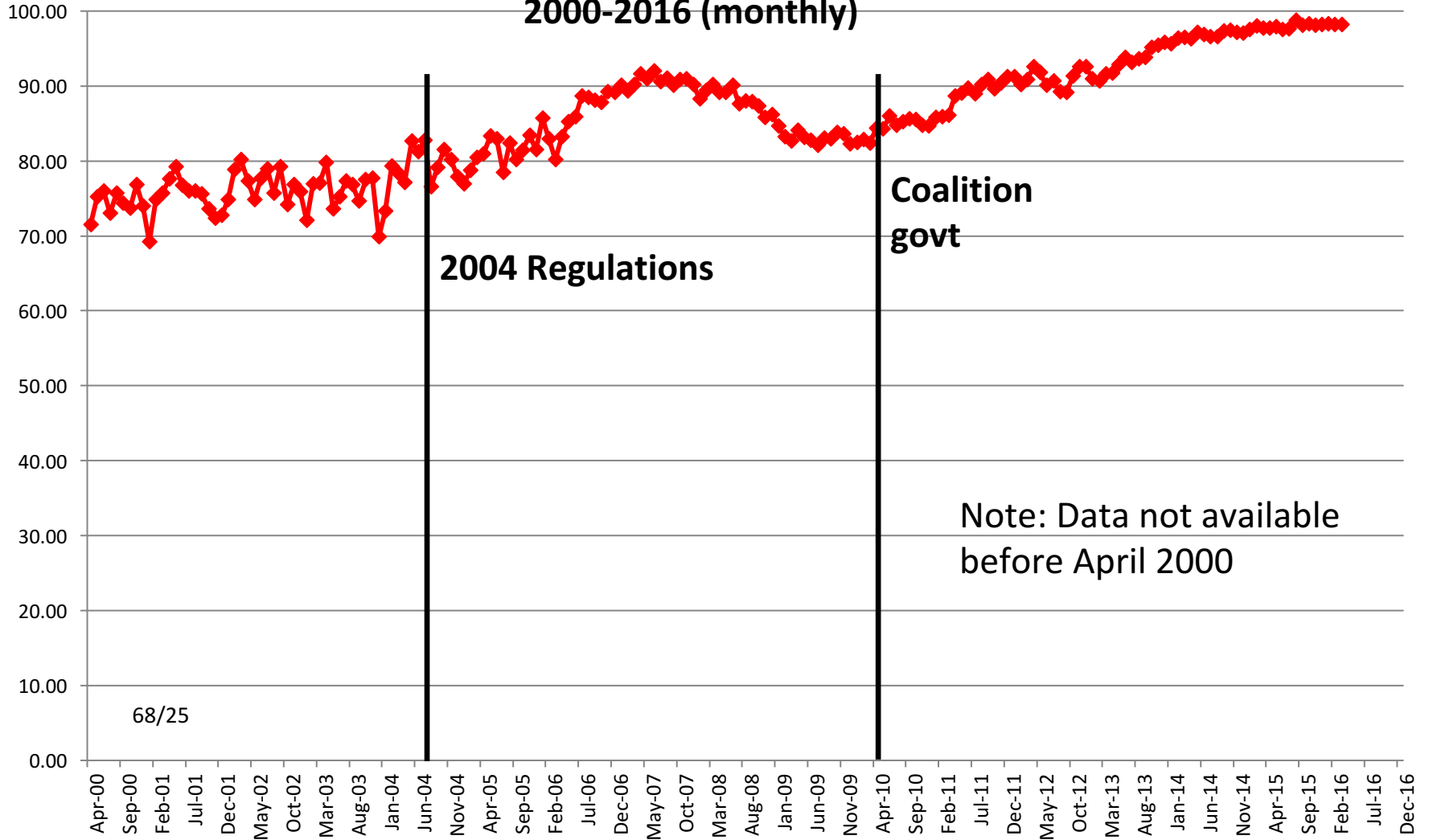
'Not actively seeking work' (2)

- Coalition began increasing ASW sanctions as soon as it took office in May 2010
- AND in January 2012 DWP changed its interpretation: *'prior to 2012 we were running a system that basically looked for what we might call minimum standards. Indeed, in the regulations, it said that people needed to do two steps to look for work..... The (JSA 1995) says that claimants should do "all that is reasonable", which is self-evidently not two steps. Progressively, from January 2012 onwards, we have been looking for people to do all that is reasonable. That is a constant, but it was an increasing position.'* – Robert Devereux, DWP Permanent Secretary, PAC 12 Dec 2016 Q.44)
- Addition to Decision Makers' Guide (Feb 2013): *'There is no "magic number" of steps which would insulate a claimant from an argument that they are not ASE. The overriding test is whether the claimant, in the week in question, took such steps as could be reasonably be expected to be taken in order to have the best prospects of securing employment. A claimant can be held to have failed that test even if they took three steps in any given week.'*
- BUT the evidence is that demands made on claimants were **UNreasonable**, esp. in terms of nos. & types of actions, and use of computers where skills/access lacking
- From 22 Oct 2012, penalty changed from simple disqualification (allowing early reapplication c. 3 days) to a full 4 weeks loss of benefit (13 for a further 'failure')
- From 2010, proportion of ASW referrals resulting in sanction rose from 85% to 98%
- Peak sanctions rate exceeded that of the 1920s even on a generous interpretation
- At no stage was there any judicial involvement
- Note that prior to Social Security Act 1998, the Chief Adjudication Officer would have been responsible for any change in legal interpretation

Quarterly percentage of unemployed claimants disqualified for 'not actively seeking work', before challenges, since 1989



JSA sanctions for 'not actively seeking work': Originally adverse decisions as % of referrals excluding reserved & cancelled, 2000-2016 (monthly)



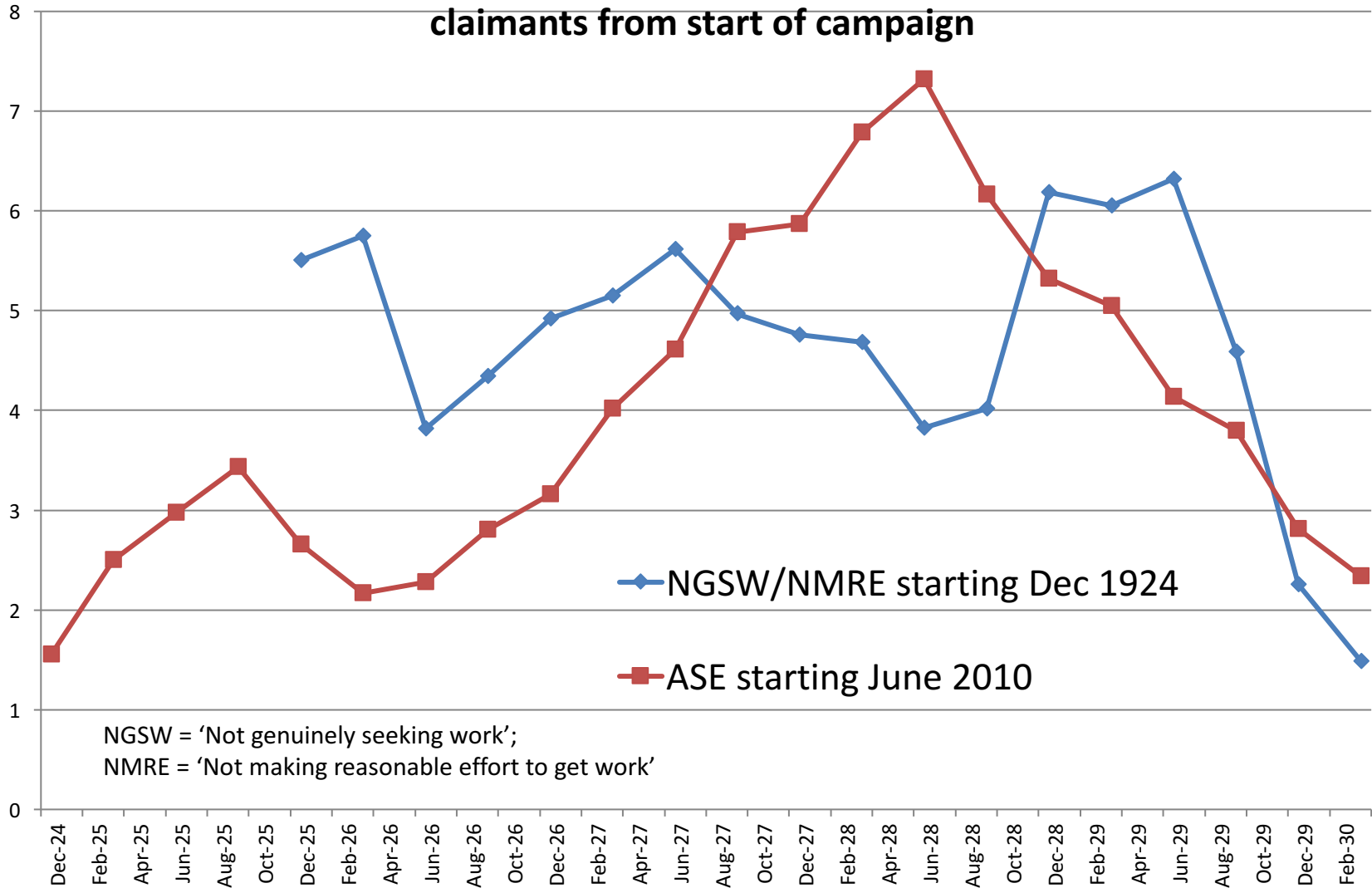
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Coalition govt

2004 Regulations

Note: Data not available before April 2000

Disallowance campaigns of the 1920s and 2010s compared: disallowances per quarter as % of insured unemployed/unemployed claimants from start of campaign



NGSW = 'Not genuinely seeking work';
NMRE = 'Not making reasonable effort to get work'

‘Not actively seeking work’ – further complications

- Disentitlement generates two severe admin problems:
 - Benefit stopped immediately and without warning due to conventions on public disbursements (ASW cases excluded from Scottish ‘early warning’ trial 2016-17)
 - Housing Benefit frequently wrongly cut off due to local authority being told entitlement has ended
- These problems attracted little attention while numbers low but generated major controversy during the great sanctions campaign 2010-16
- Disentitlement is fundamentally the wrong concept in relation to ‘activation’

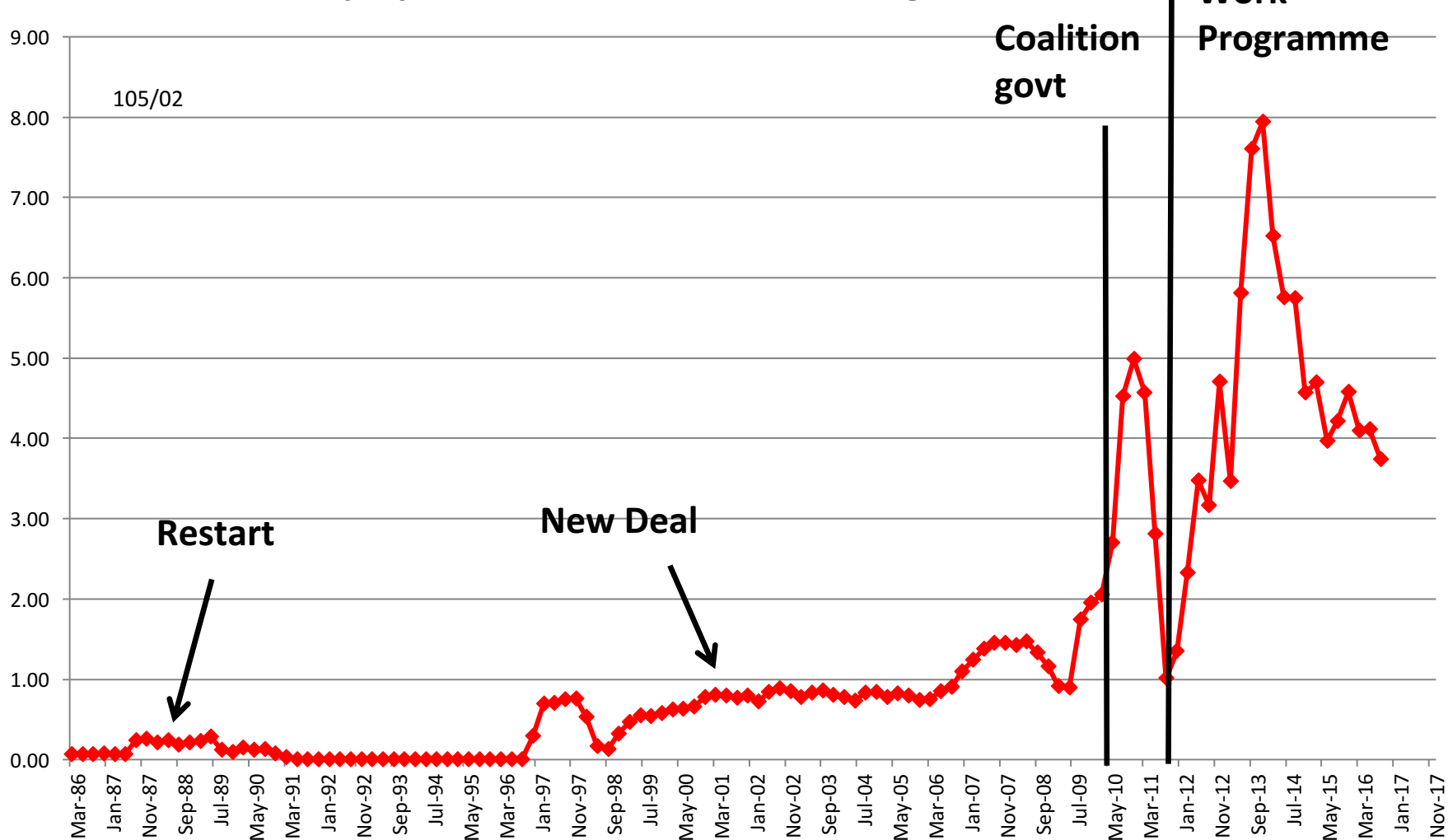
Work Programme sanctions

- 1911 Act allowed payment for training from Nat Ins Fund, but no compulsion
- Disqualification for failure to attend training first entered the legislation in 1920
- But not introduced for adults until 1930 and abandoned after 2 years with tiny numbers of disqualifications
- National Assistance regime from 1935 provided for compulsory training in extreme cases ('cases of special difficulty')
- Wider compulsory training introduced with Restart in 1986
- Greatly expanded with the Labour 'New Deal' 1998 onwards – generally higher quality training but sanctions most prevalent for the worst 'options'
- Work Programme (from June 2011) generally low quality, emphasis on jobfinding not working skills – 'black box'

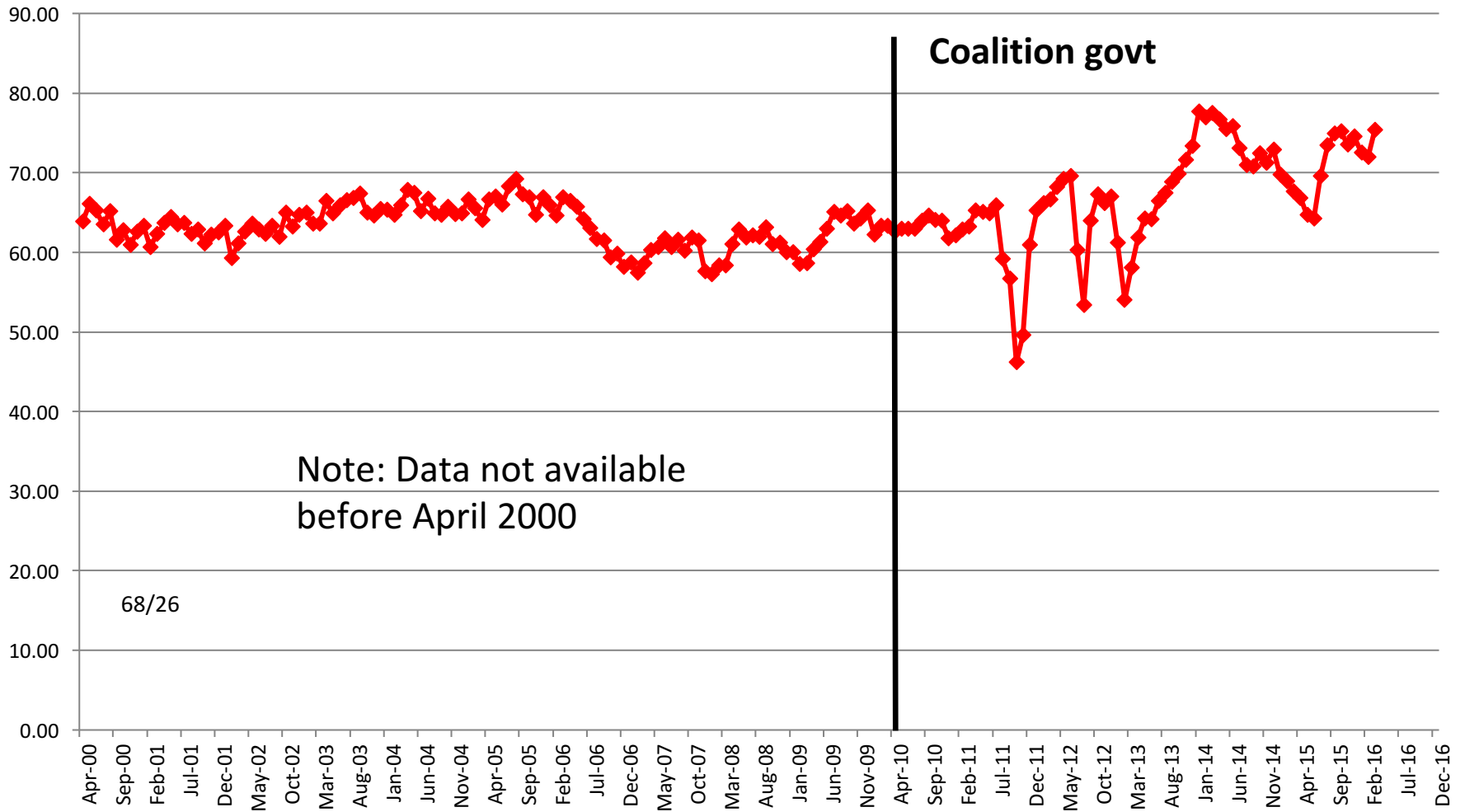
Work Programme sanctions (2)

- DWP ruling that WP contractors must report any 'failure' for sanction without regard to reasonableness
- However the relevant legislation says 'without good reason fails to attend *a scheme or programme*' (JSA 1995 S.19A(2)(f)) – this does not refer to a single session
- DWP claim that the issue is about who decides 'good reason' is beside the point
- Once the sanctions process is triggered, the claimant is likely to be sanctioned whatever they do or have done
- NAO (Nov 2016) found no difference in % of adverse decisions whether referral was from high or low referring contractor – it's just a rubber stamp
- Under Coalition, proportion of referrals resulting in sanction rose by around 10 percentage points
- Result: Coalition's Work Programme sanctions hugely exceeded any previous rate of sanctions for training & employment schemes
- Work Programme results to March 2016:
 - **JSA**: 843,000 sanctions and 483,827 job outcomes
 - **ESA**: 175,000 sanctions and c.36,986 job outcomes

Quarterly percentage of unemployed claimants disqualified/sanctioned for non-participation in training & employment schemes, before challenges, since 1986



JSA sanctions for non-participation in training/employment schemes: Originally adverse decisions as % of referrals excluding reserved & cancelled, 2000-2016 (monthly)



Note: Data not available
before April 2000

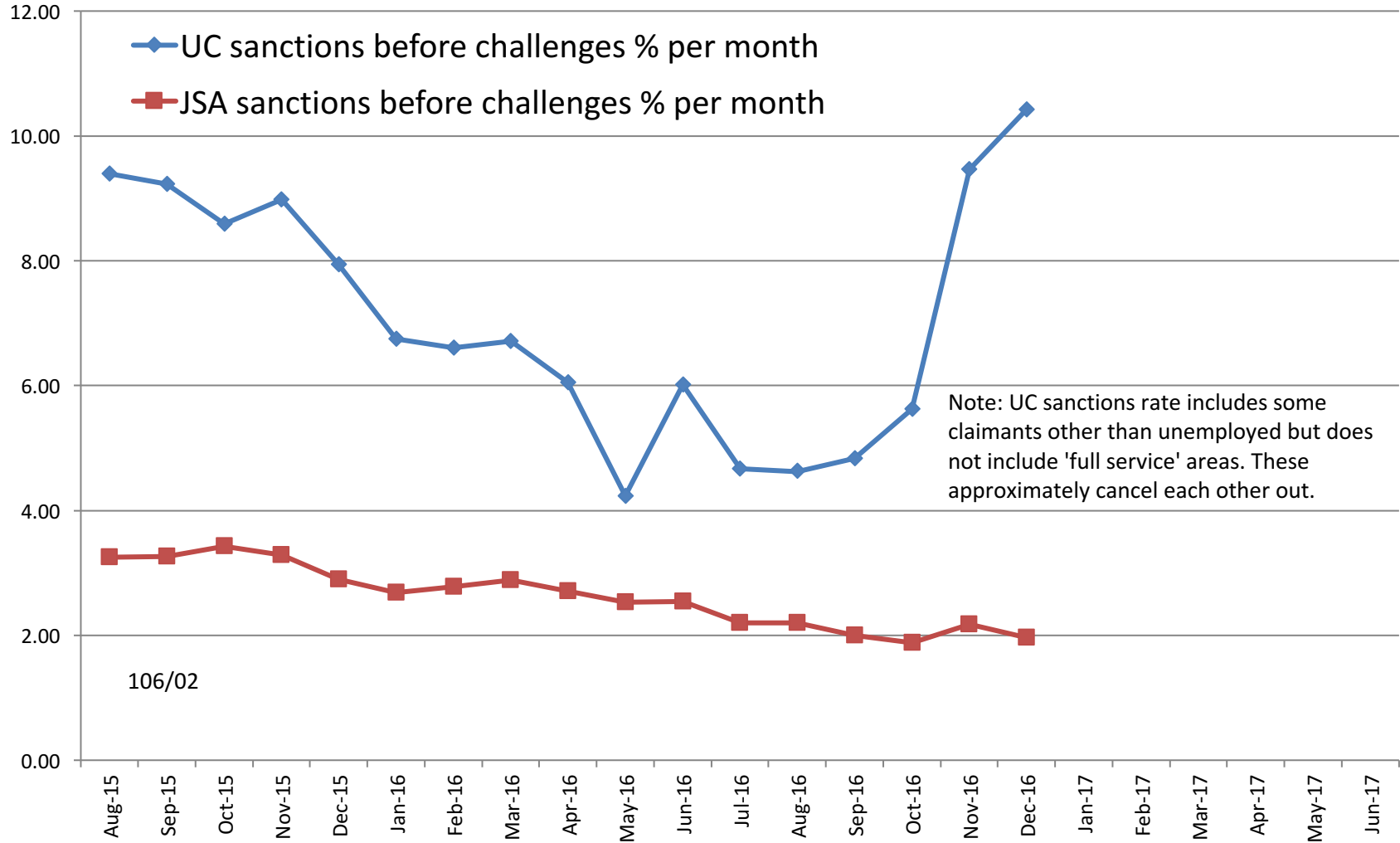
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Coalition govt

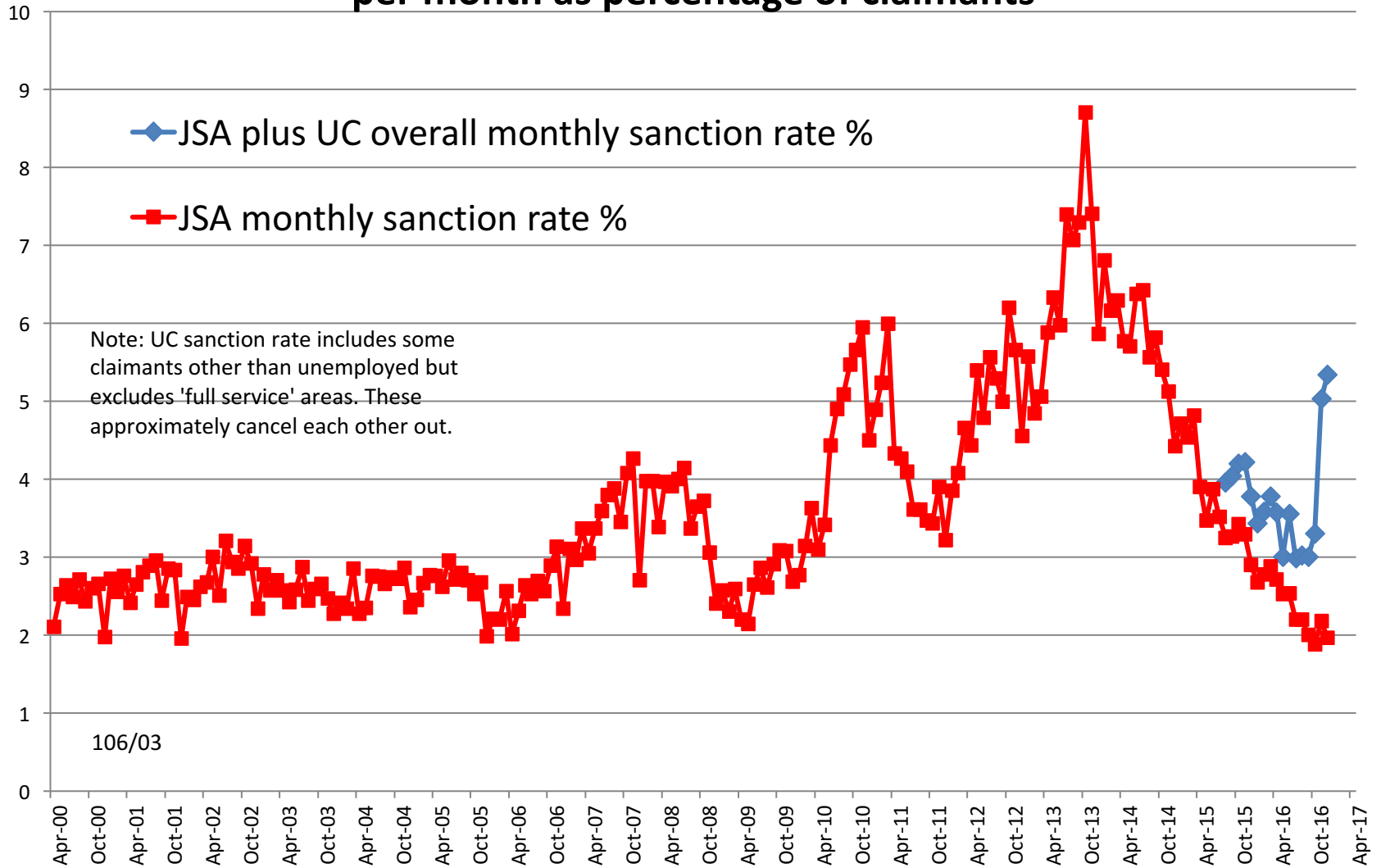
Universal Credit sanctions

- Universal Credit is gradually replacing JSA & other benefits, starting January 2013
- Under Universal Credit sanctions are consecutive, not concurrent; hardship payments become *repayable*, in effect sanctions 2½ times as long; 80% 'hardship' rate abolished; must demonstrate 'compliance' for 7 days before application; must reapply each 4-week period
- But UC does resolve the nonsense of ASW disentanglement
- Sanctions currently apply to 1.2m claimants on JSA/UC/ESA & 0.42m lone parents on Income Support
- Universal Credit will add 1.3m part time workers receiving what has been Working Families Tax Credit
- Currently in-work sanctions apply only to 15,000 claimants in 'In-Work Progression Randomised Control Trial' - interim report 2017, final 2018
- No useful information available about in-work UC sanctions, but usable data on out-of-work UC sanctions published May 2017

Universal Credit and JSA sanctions per month before challenges as % of claimants since Aug 2015



JSA only and JSA plus Universal Credit monthly sanction rates per month as percentage of claimants



What is wrong with the system:

Procedures

- Decision made without a hearing or even any contact between claimant and decision maker
- Payments stopped before any appeal – for ASW, stopped even before decision
- No legal representation prior to decision
- Referrals *and* decisions both controlled by Secretary of State – independent adjudication abolished 1998
 - Referrals controlled by management (overt targets in 1990s, covert in 2010s)
 - Decisions also effectively controlled by management

What is wrong with the system: Procedures (2)

- Ineffective appeal system
- Low rate of challenge by unemployed claimants
 - One quarter of JSA sanctions challenged, 19% overturned (75% success rate)
 - Half of ESA sanctions challenged, 25% overturned (50% success rate)
 - Under 20% of UC sanctions challenged, 6% overturned (33% success rate)
- Mandatory Reconsideration (Oct 2013) has reduced challenges & all but killed off Tribunals
- In practice, no effective judicial oversight – Tribunal decisions not binding, DWP doesn't defend so very few cases get beyond

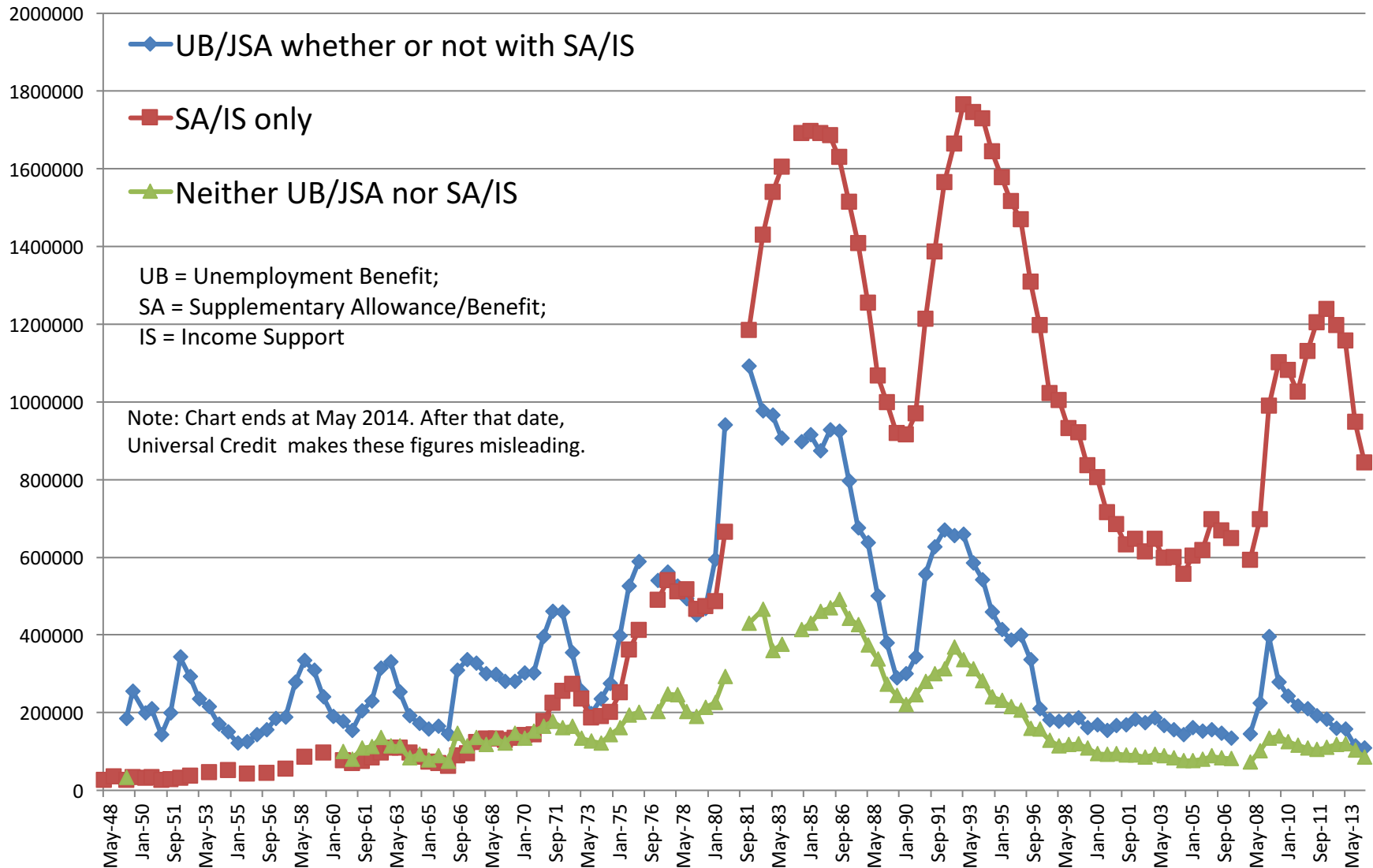
What is wrong with the system: Effects

- Scale of penalties higher than in magistrates or Sheriff courts
- Destitution
 - 2 weeks' wait (JSA)
 - 7 days compliance (UC)
 - 'hardship payment' criteria ensure claimant has no resources left at all
- No duty even to prevent death
- Local welfare schemes often exclude sanctioned claimants

The path to reform: fundamental issues

- Conception of contract:
 - ‘Pay in in good times, draw out in bad’
replaced by
 - ‘We (workers) will pay you (shirkers) only in return for doing what we tell you’
 - Undermining of citizenship rights – effective return to the Poor Law’s ‘pauper’ status
 - Claim mainly by economists (inc. OECD) that ‘active labour market policy’ justifies coercion
- Lack of professionalism in public policy-making & statistics since Thatcher, e.g. Role of ‘Policy Exchange’ in the 2010-16 campaign
- Decline in proportion of unemployed getting contributory benefits and in use of JSA/UC by non-poor

Unemployed claimants by type of benefit in payment, 1949-2016 (nos.)



Key elements of reform

- Abolish punitive sanctions – return to conditions only, with proportionality in length of any disqualifications
- End destitution – need for effective safety net for anyone disqualified
- End control of the system by ministers
- Restore control by the courts
- Reconsider nature of ‘activation’ - ‘Active labour market policy’ should still be available but without coercion except *in extremis*

More information

- **My Child Poverty Action Group webpage** contains most of my statistical analyses <http://www.cpag.org.uk/david-webster>
- **My Sanctions project webpage** describes the project & has a few refs <http://www.gla.ac.uk/schools/socialpolitical/research/urbanstudies/projects/ukbenefitdisallowances/>
- **CPAG webpage with voluntary sector reports on impact of sanctions** <http://www.cpag.org.uk/content/sanctions>
- **Centre for Crime and Justice Studies** <http://www.crimeandjustice.org.uk/resources/benefit-sanctions-britains-secret-penal-system>
- **Poverty Alliance – Challenge Poverty Week** <https://challengepoverty.wordpress.com/2015/10/19/poverty-punishment-overkill-the-deliberate-creation-of-destitution-through-benefit-sanctions/>
- **LSE British Politics and Policy** <http://blogs.lse.ac.uk/politicsandpolicy/benefit-sanctions-have-failed-a-comprehensive-review-is-needed/>
- **Guest blog on the statistical misrepresentations:** ESRC Welfare Conditionality project <http://www.welfareconditionality.ac.uk/2016/04/tackling-britains-misleading-benefit-sanctions-statistics/>
- **Email me** at: david.webster@glasgow.ac.uk – ask to be put on my mailing list