

Welfare Conditionality:
Principles, Practice and Perspectives
University of York, Wednesday 27 June 2018

**The great benefit sanctions drive
2010-16
in historical perspective**

David Webster
Urban Studies
University of Glasgow

Outline

- The great sanctions drive 2010-16
- Immediate explanations
- How does it compare with historical experience?
- Underlying reasons for transformation of social insurance into a penal system since 1986
- Why did the three major conditionality drives (later 1920s, 1980s/90s, 2010s) occur when they did?
- The outlook – renewed sanctions drive under Universal Credit

Severity of conditionality regime

Must consider:

- Scope of sanctions (groups affected)
- Conditionality requirements
- Duration of sanctions
- Degree of stigma
- Nature of safety net (what happens when sanctioned)
- Fairness of process and chances of reversal
- Rates (incidence) of sanctions – main focus of this presentation

Scope of sanctions

- Unemployed claimants alone (1913-2001)
- Lone parents on Income Support (2001 & progressive transfer to JSA since)
- Sick/disabled (2008)
- Carers & other Income Support claimants
- For simplicity this presentation only covers the unemployed - ESA & IS sanctions not considered
- Note that there was an ESA sanctions drive 2010-16 linked to Work Programme but less marked than for JSA

‘Active’ and ‘passive’ conditionality

- ‘Active’ or ‘behavioural’ conditions require the claimant to do particular things during their claim
- ‘Passive’ conditions require the claimant to belong to a particular category or to have done particular things in the past
- This analysis is concerned only with active conditions

Active conditions in UK unemployment insurance

- Refusing a suitable job (1913)
- Losing a job by voluntary leaving or misconduct (1913) – *usually not an 'active' condition but may be for the repeatedly unemployed (low pay/no pay cycle)*
- Availability for work (1920)
- Training/employment schemes (1920/1930/1986)
- Genuinely seeking work/making reasonable effort/actively seeking (1924/1989) – *only partly 'active' in 1920s*
- Written directions (1930)
- Neglect to avail of work opportunity (1934)
- Interview (1986)
- Jobseeker Agreement/Claimant commitment (1995/2013)
- Workfare (Work Experience/Mandatory Wk Activity) (2011)

Duration of sanctions

Entitlement conditions:

- Until conditions met (1913-2010)
- Additional penalty (2010/2012)

Other conditions:

- 6 weeks (1913-1920)
- Variable, maximum of 6 weeks (1920-1986)
- Variable, maximum of 13 weeks (1986-1988)
- Variable, maximum of 26 weeks (1988)
- Fixed sanctions 2 or 4 weeks, variable max. 26 weeks retained (1996)
- April 2010 shift from disentitlement to sanction for interviews
- All sanctions fixed length; increase to most durations with maximum of 156 weeks (2012)
- ESA introduced 'until compliance'

Degree of stigma

- 2012 Regulations and Coalition discourse made major changes:
 - Disentitlement/sanction distinction all but erased; the terms ‘disentitlement’ or ‘disqualification’ dropped
 - Language changed to penal terminology: ‘failure’, ‘transgression’, ‘offence’
 - Logically incoherent concept of ‘intermediate’ sanction
 - Increased durations for repeats introduced to reinforce the penal model

The safety net

– what happens when sanctioned?

- Poor Law (1913-1934) – highly variable depending on local policies
- Unemployment Assistance (1934-48)
- National Assistance/Supplementary Benefit with fixed (75p) or percentage (40%) reduction (1948-1988)
- ‘Hardship payments’ – discretionary, 40%/20% reduction (1988)
- ‘Hardship payments’ with 2-week wait (1996)

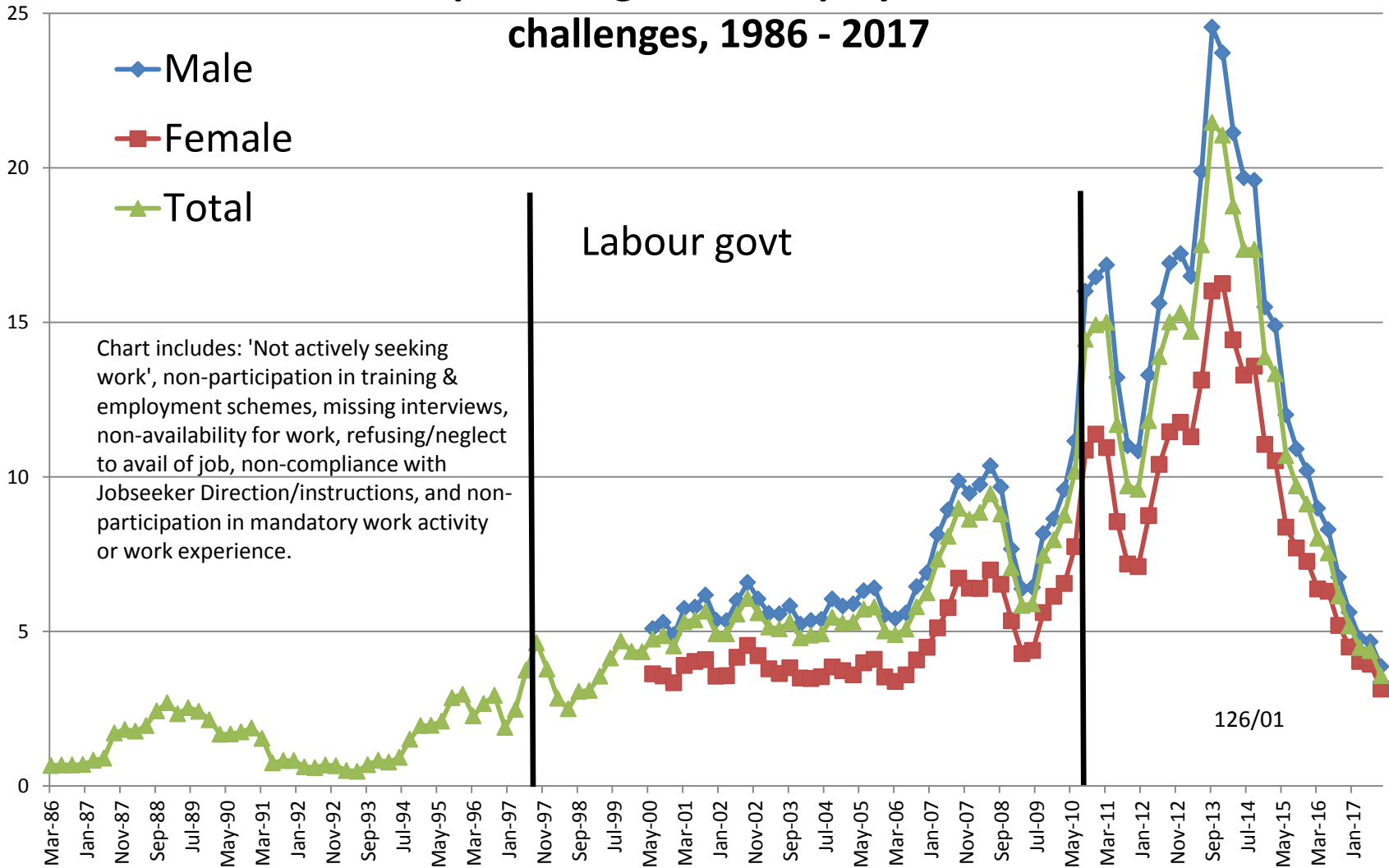
Fairness of process & chances of reversal

- Tripartite hearing (employer, trade union, lawyer chair) before any disqualification, appeal to Umpire (1913-48)
- Decision by independent Adjudication Service without hearing but with appeal to Tribunal (1948-2000)
- Decision by Secretary of State's officials without hearing but with appeal to Tribunal (2000-2013)
- Mandatory Reconsideration introduced as stage before Tribunal (2013)
- Overall success rates of challenge have always been low

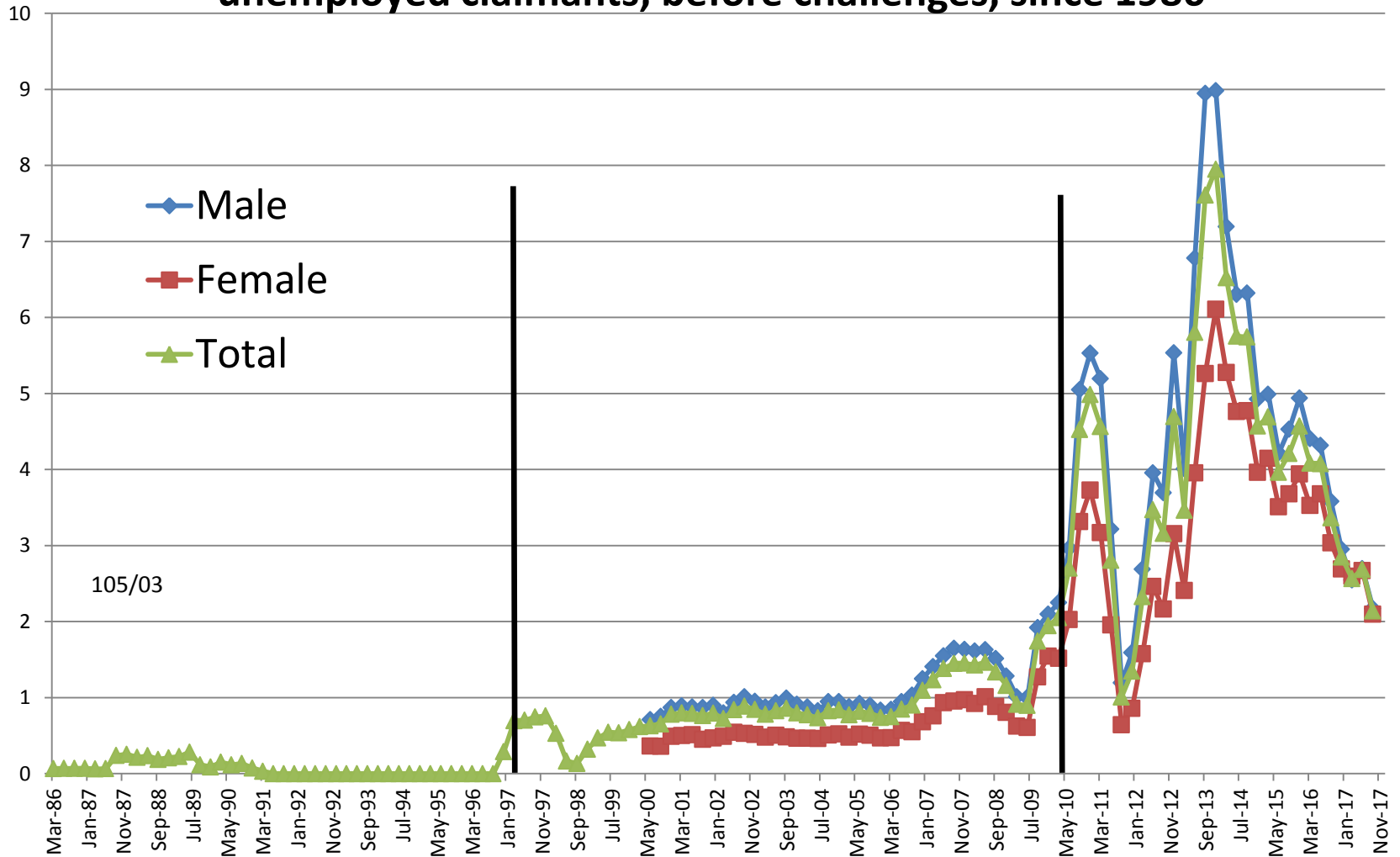
Sanctions rate on unemployed 1986-2017

- Series put together by combining Stat-Xplore data from Apr 2000 with the paper series of Adjudication Officers' decisions 1986 -2002
- Data quarterly and before challenges – Stat-Xplore data converted to AO basis
- The quarterly series has no absolute meaning but is valid for comparisons
- Universal Credit is excluded hence the last two years' data exaggerate the decline in sanctions

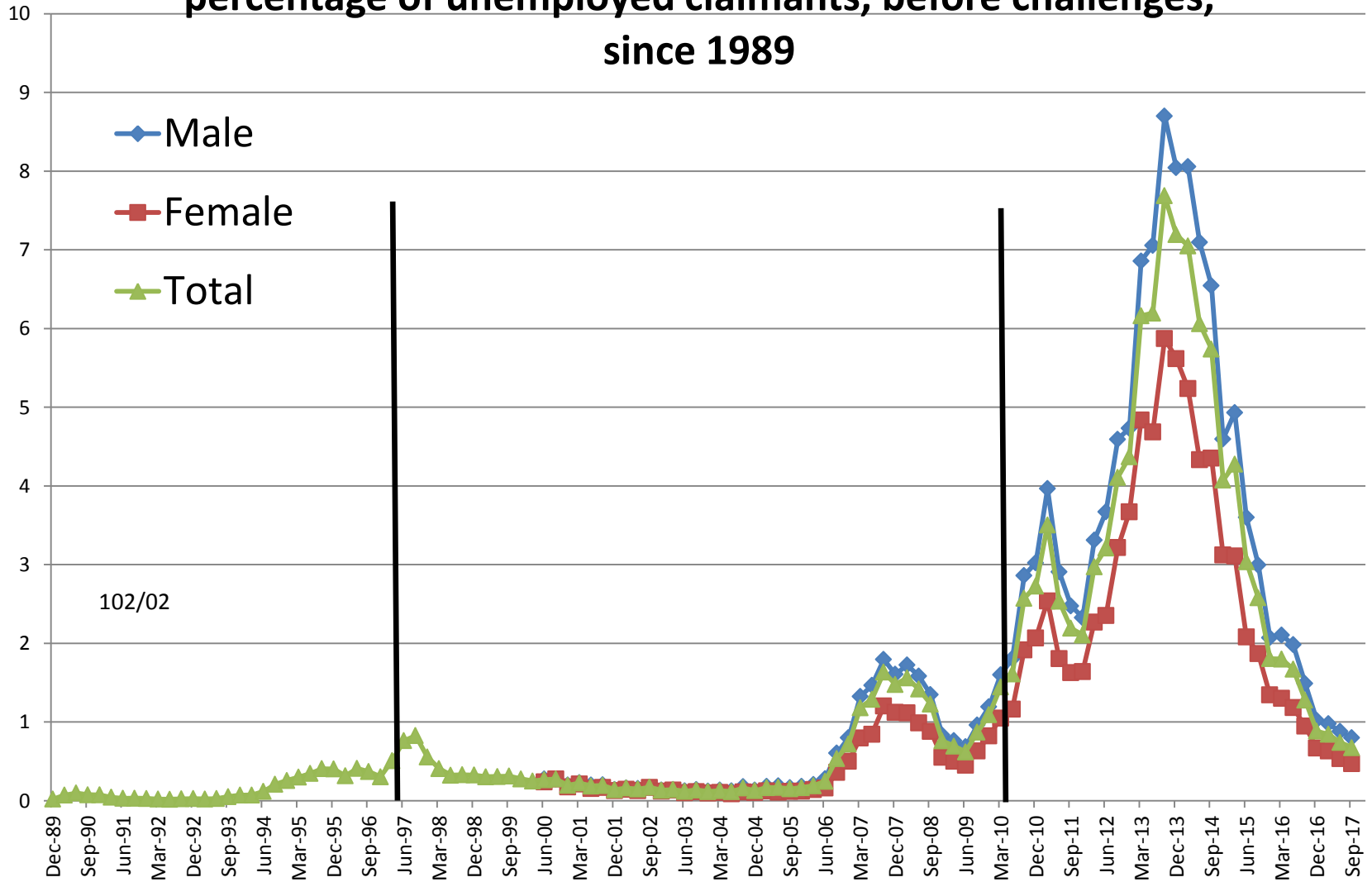
Quarterly disallowances/sanctions for breach of 'active' conditions as a percentage of unemployed claimants, before challenges, 1986 - 2017



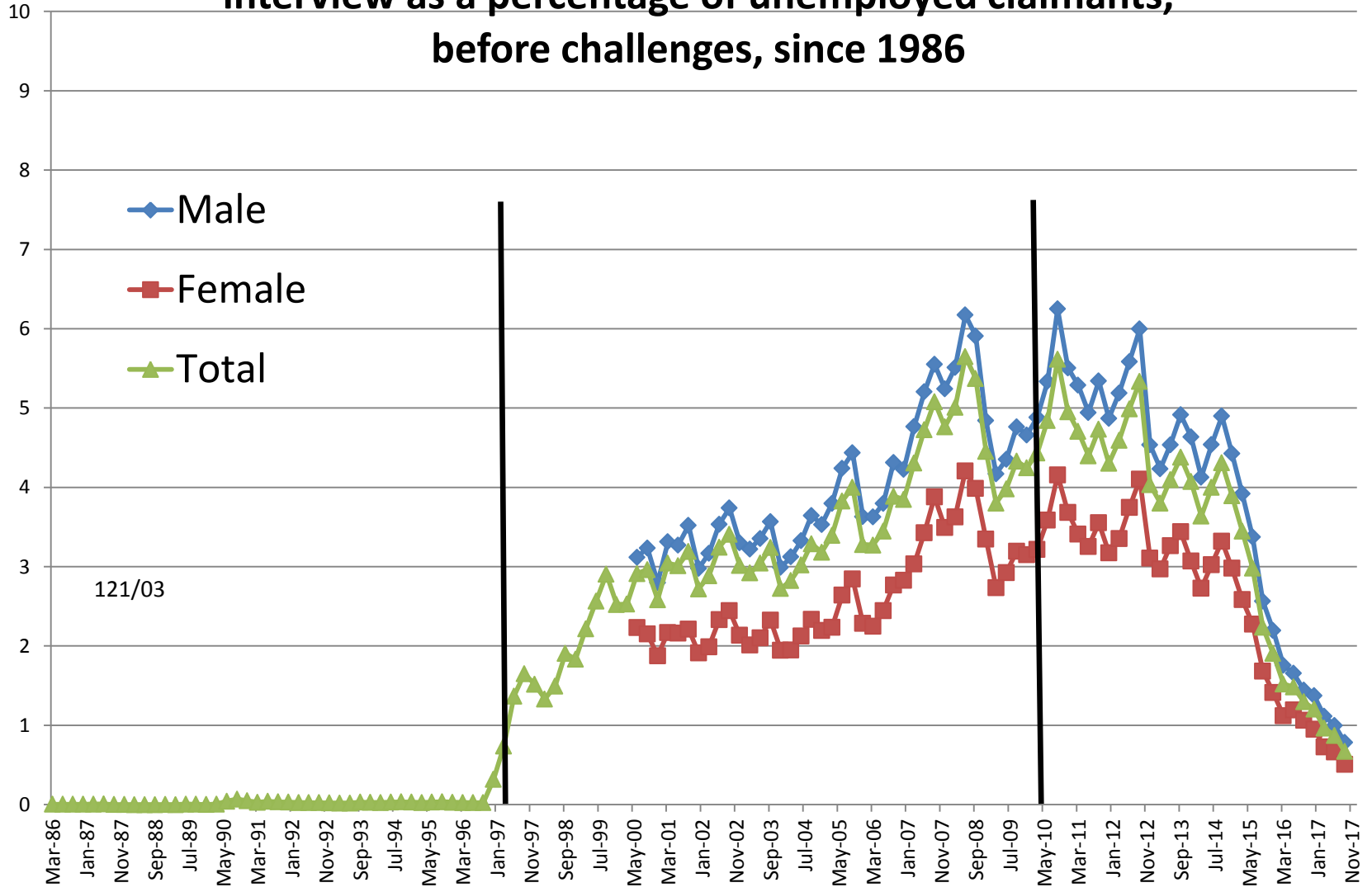
Quarterly disqualifications/sanctions for non-participation in training or employment schemes as a percentage of unemployed claimants, before challenges, since 1986



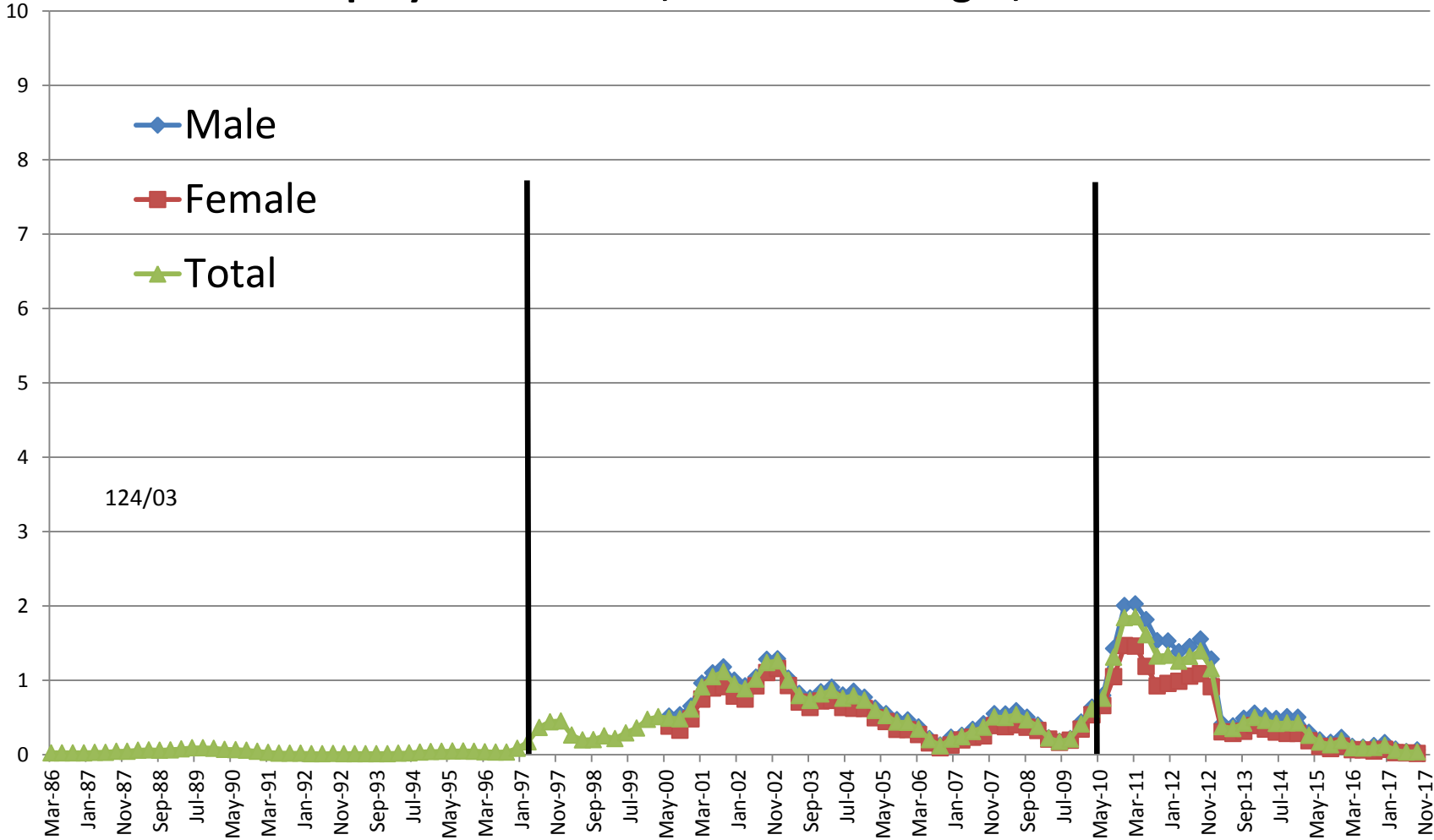
Quarterly disentitlements for 'not actively seeking work' as a percentage of unemployed claimants, before challenges, since 1989



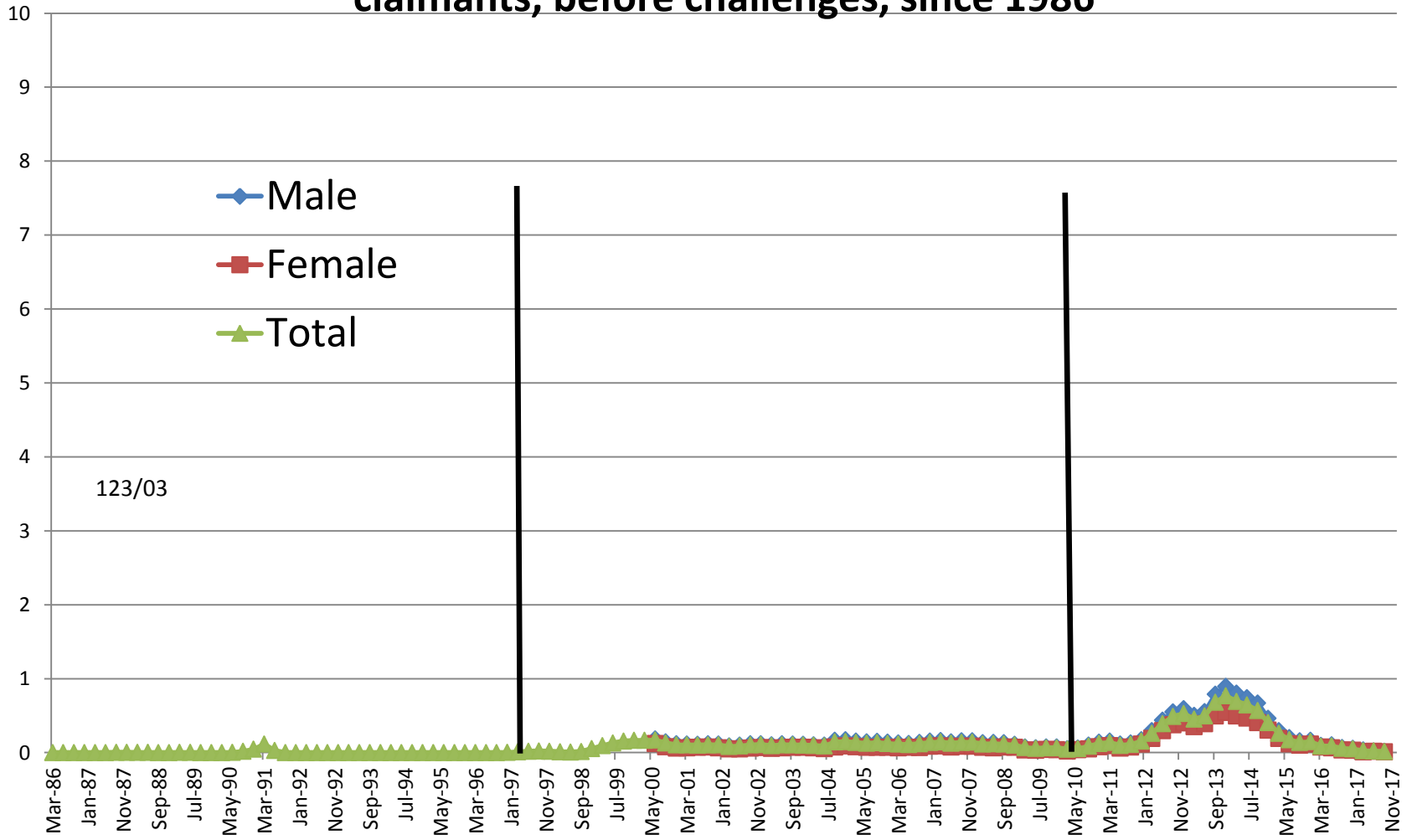
Quarterly disentitlements/sanctions for failure to attend an interview as a percentage of unemployed claimants, before challenges, since 1986



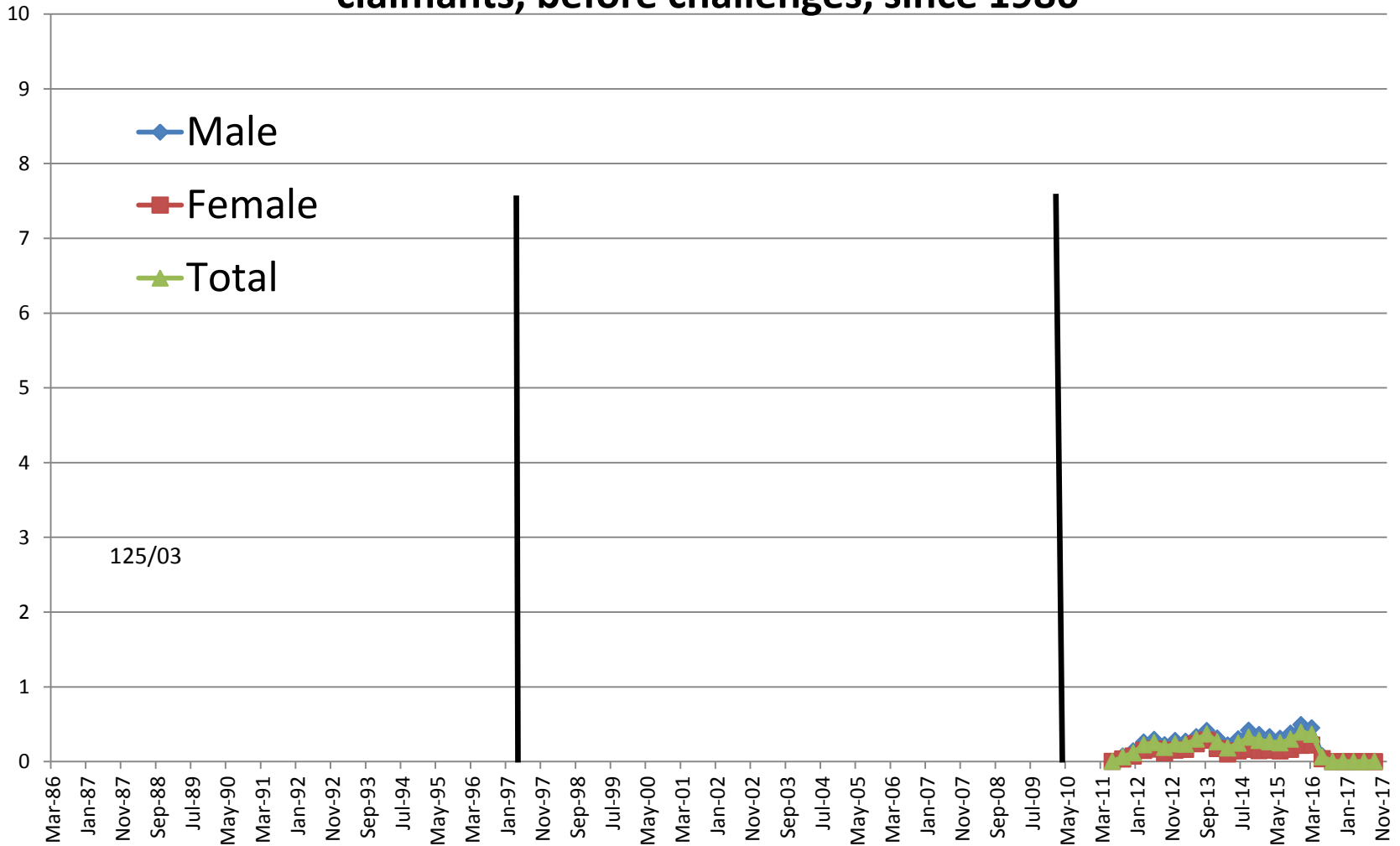
Quarterly disqualifications/sanctions for refusal of job or neglect to avail of a job opportunity as a percentage of unemployed claimants, before challenges, since 1986



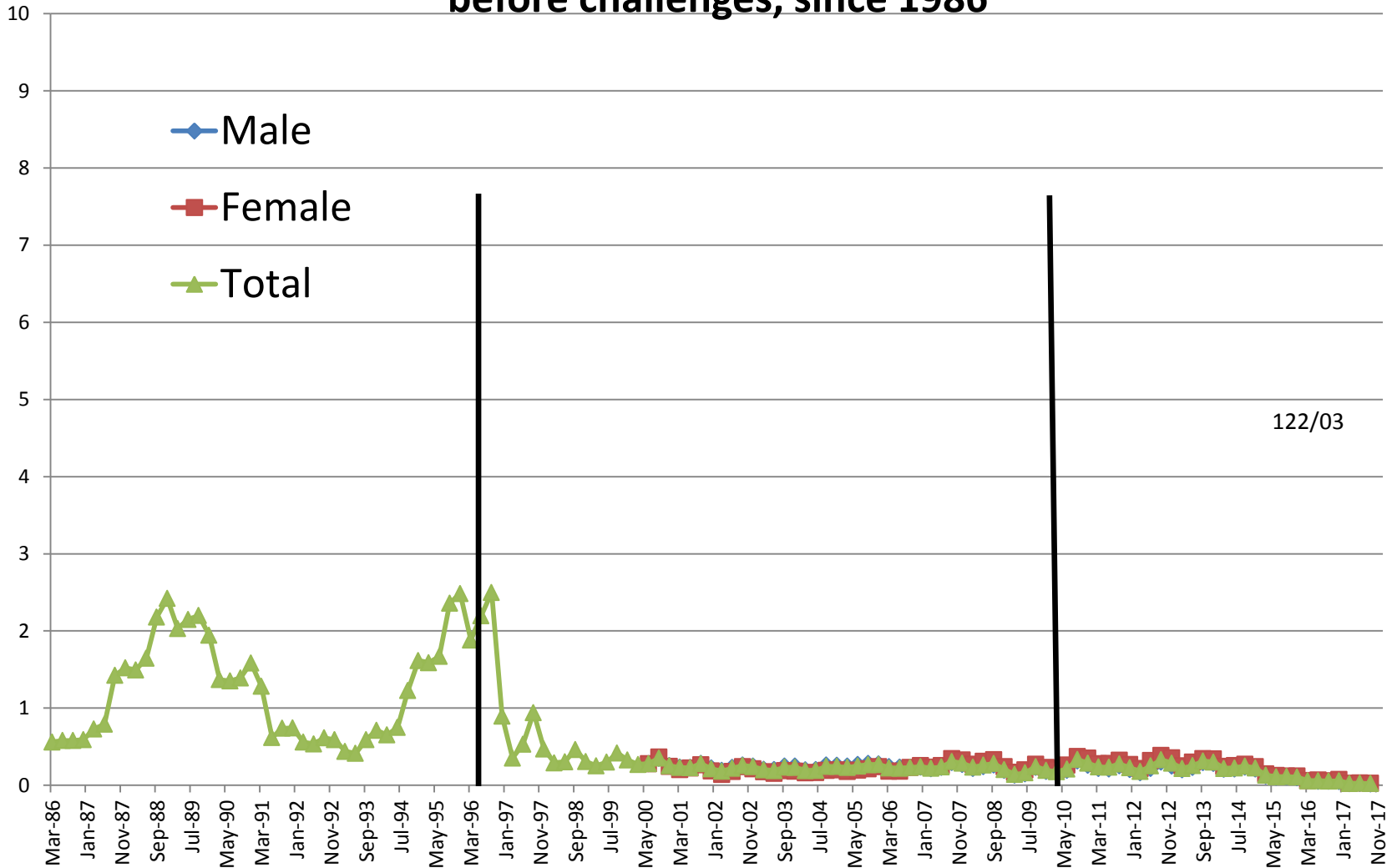
Quarterly disqualifications/sanctions for failure to comply with a jobseeker direction as a percentage of unemployed claimants, before challenges, since 1986



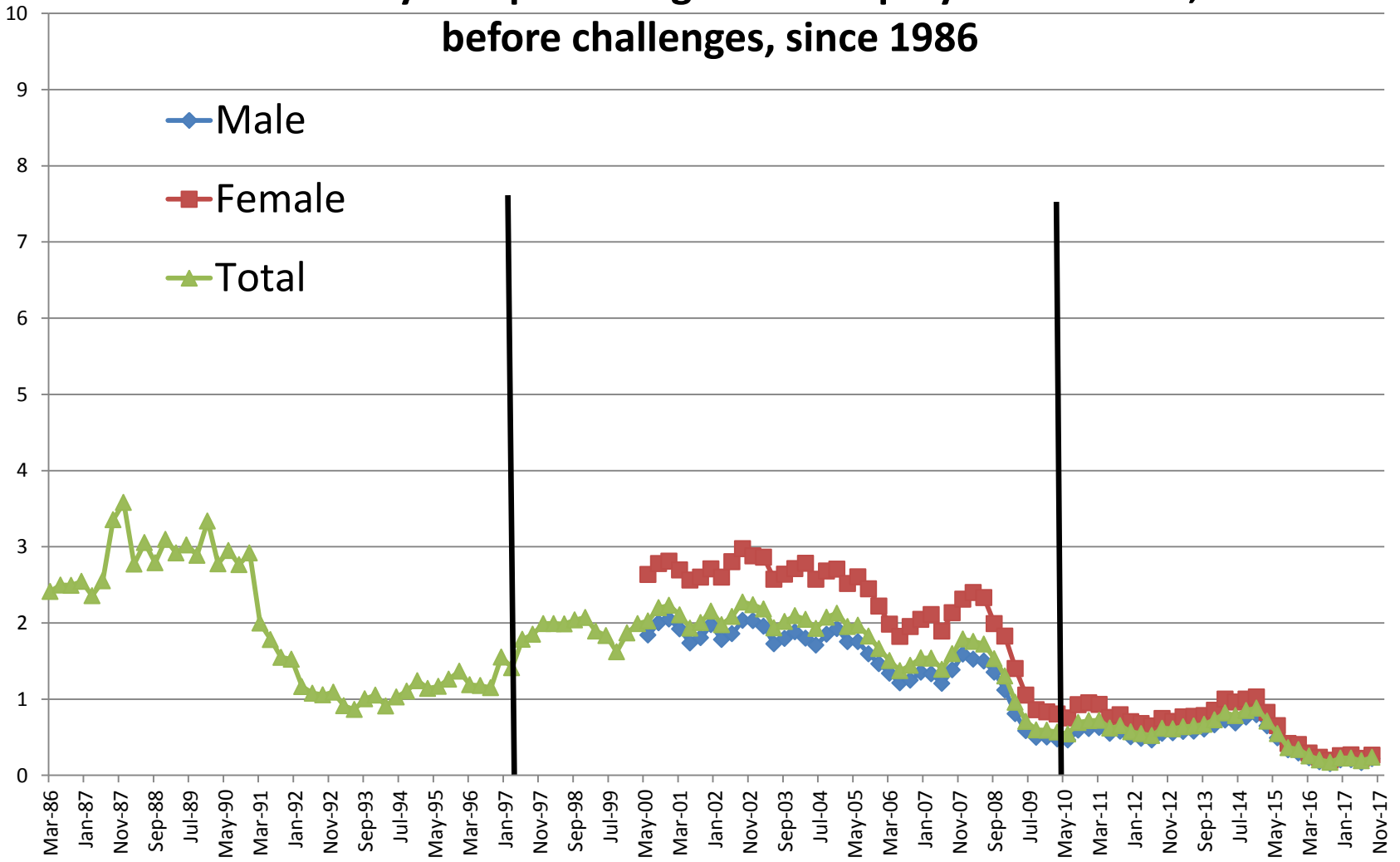
Quarterly sanctions for non-participation in Work Experience or Mandatory Work Activity as a percentage of unemployed claimants, before challenges, since 1986



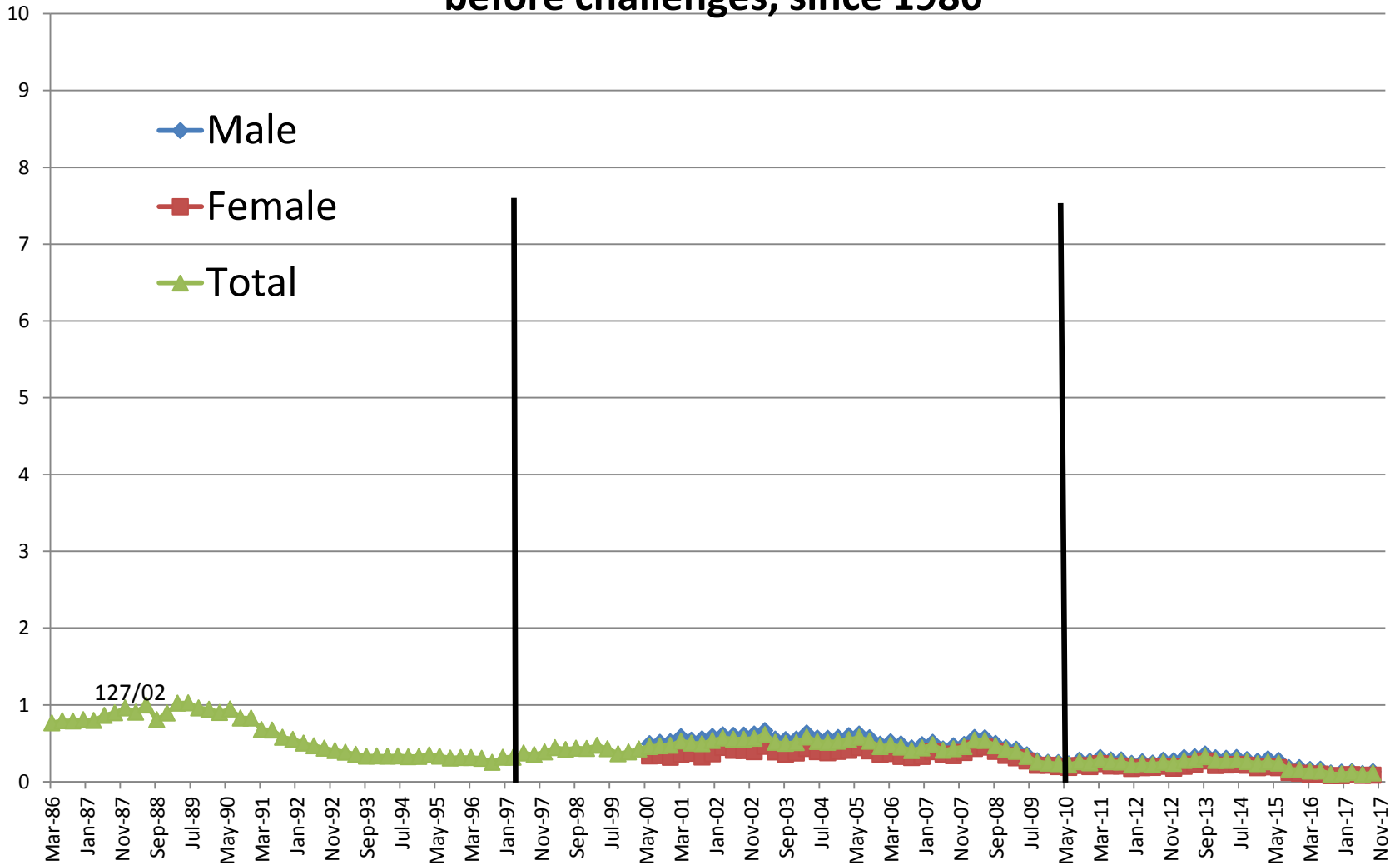
Quarterly disentitlements/sanctions for not being available for work as a percentage of unemployed claimants, before challenges, since 1986



Quarterly disqualifications/sanctions for leaving a job voluntarily as a percentage of unemployed claimants, before challenges, since 1986



Quarterly disqualifications/sanctions for losing a job through misconduct as a percentage of unemployed claimants, before challenges, since 1986



1986-2016: Conclusions

- The 2010-16 drive involved every active condition, showing it was deliberate – NB All stages of process now under control of Secretary of State
- The main elements were the Work Programme and ‘actively seeking work’, also increase in proportion of referrals resulting in sanction from 60% to 80% (from 85% to 98% for ASW)
- Work Programme sanctions driven up by:
 - increased referrals
 - DWP ruling that contractors must refer any breach
- ASW sanctions driven up by:
 - DWP change in legal interpretation Jan 2012 from ‘at least 3 steps’ to ‘all reasonable steps’ (in practice *unreasonable* steps)
- Lack of increase in interview sanctions may be deceptive – interviews transferred to WP contractors
- Note dependence of vol. leaving/misconduct on state of labour market

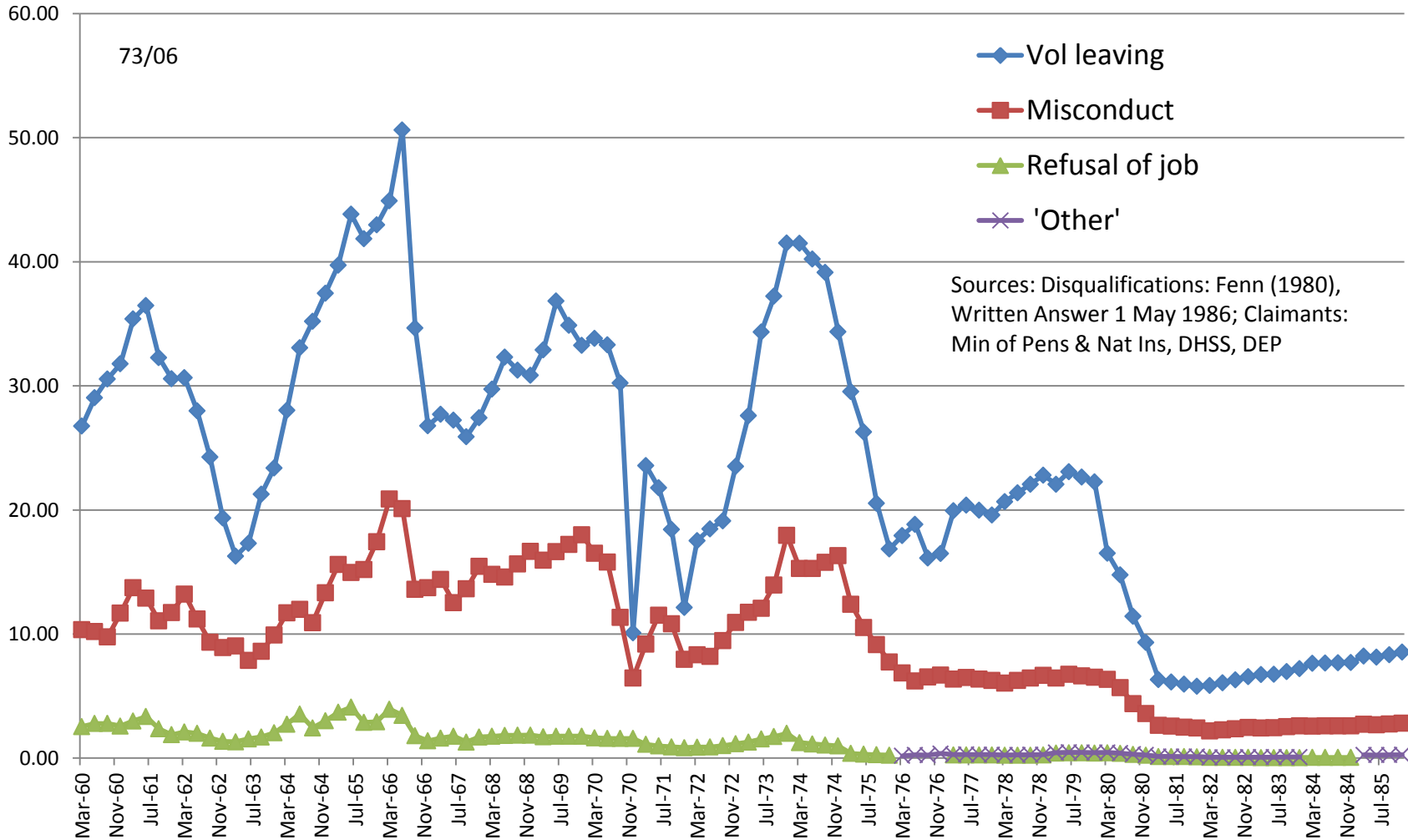
1986-2016: Conclusions (cont.)

- There were sanctions drives in the late 1980s and in 1994-97 but despite contemporary controversy they do not begin to compare with the 2010-16 drive
- 24% of all people who claimed JSA between 2010 and 2015 were sanctioned, before challenges – NAO (2016)
- The Tory drives of the 1980s/90s were exceeded numerically by the New Labour government in 2006-08 as well as by the Coalition
- The Labour govt also made major extensions to scope and conditions and an extension to duration (JSA interviews)
- Except for availability & voluntary leaving, male sanction rates always exceeded female in 2000-2016
- This suggests continuing lack of consideration for women's constraints

1948-1986

- Unemployment low until late in period
- Term 'sanction' not used – 'disqualification'
- No regular statistics published and no gender breakdown available
- Almost all UB disqualifications were for voluntary leaving/misconduct – these were *extremely* frequent but impact was limited by short duration and availability of NA/SB
- NAB/SBC had severe discretionary powers but these were genuinely used only as a last resort
- 'Four week rule' (1968-1974) a major scandal but affected only about 137,000 men over 4½ years
- Usual NA/SB penalty was a fixed or percentage reduction (75p/40%)
- Nothing in this period compares in scale with the sanctions drive 2010-2016

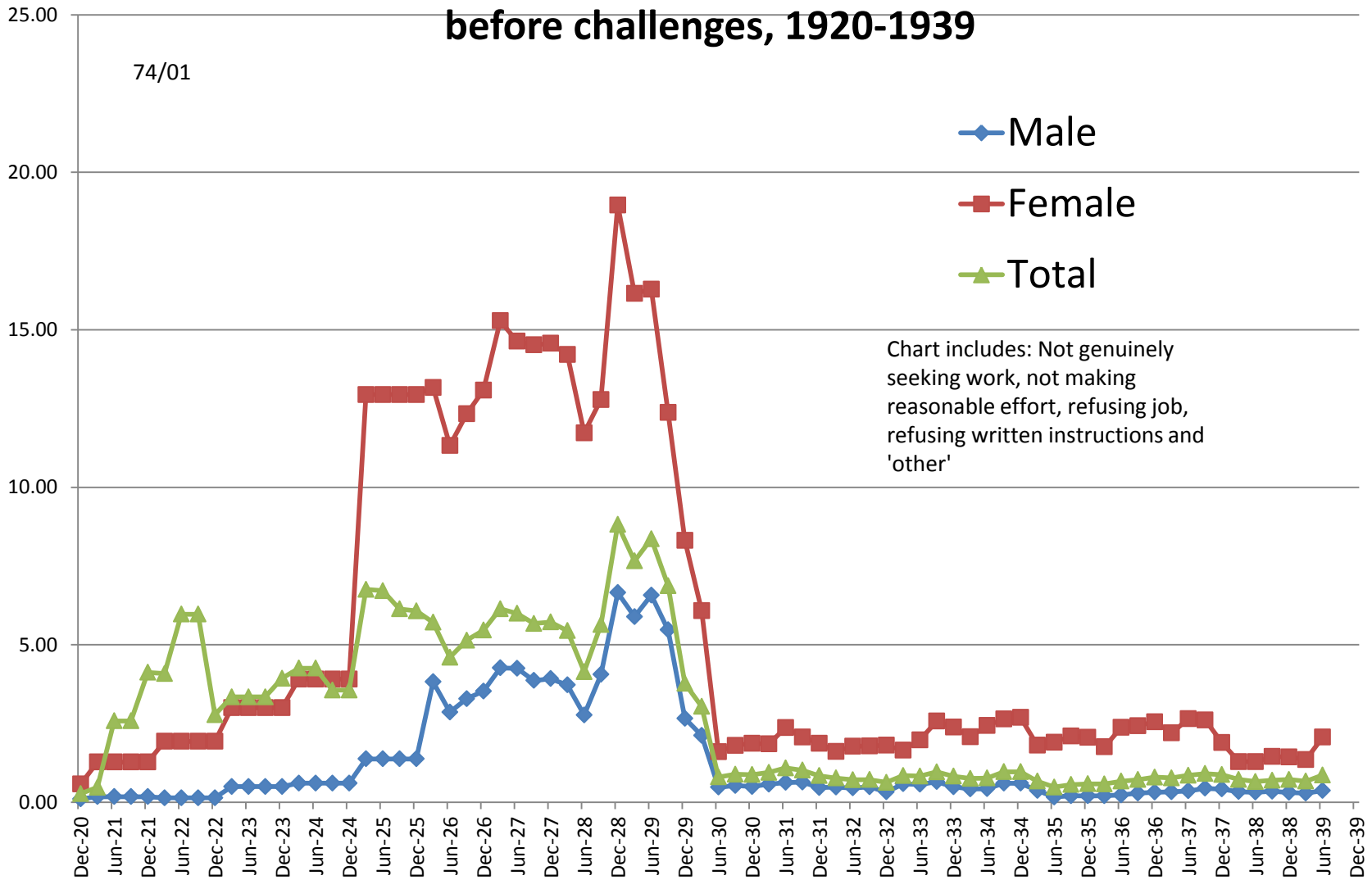
Unemployment Benefit: Disqualifications as % of claimants, before challenges, 1960-1985 (quarterly)



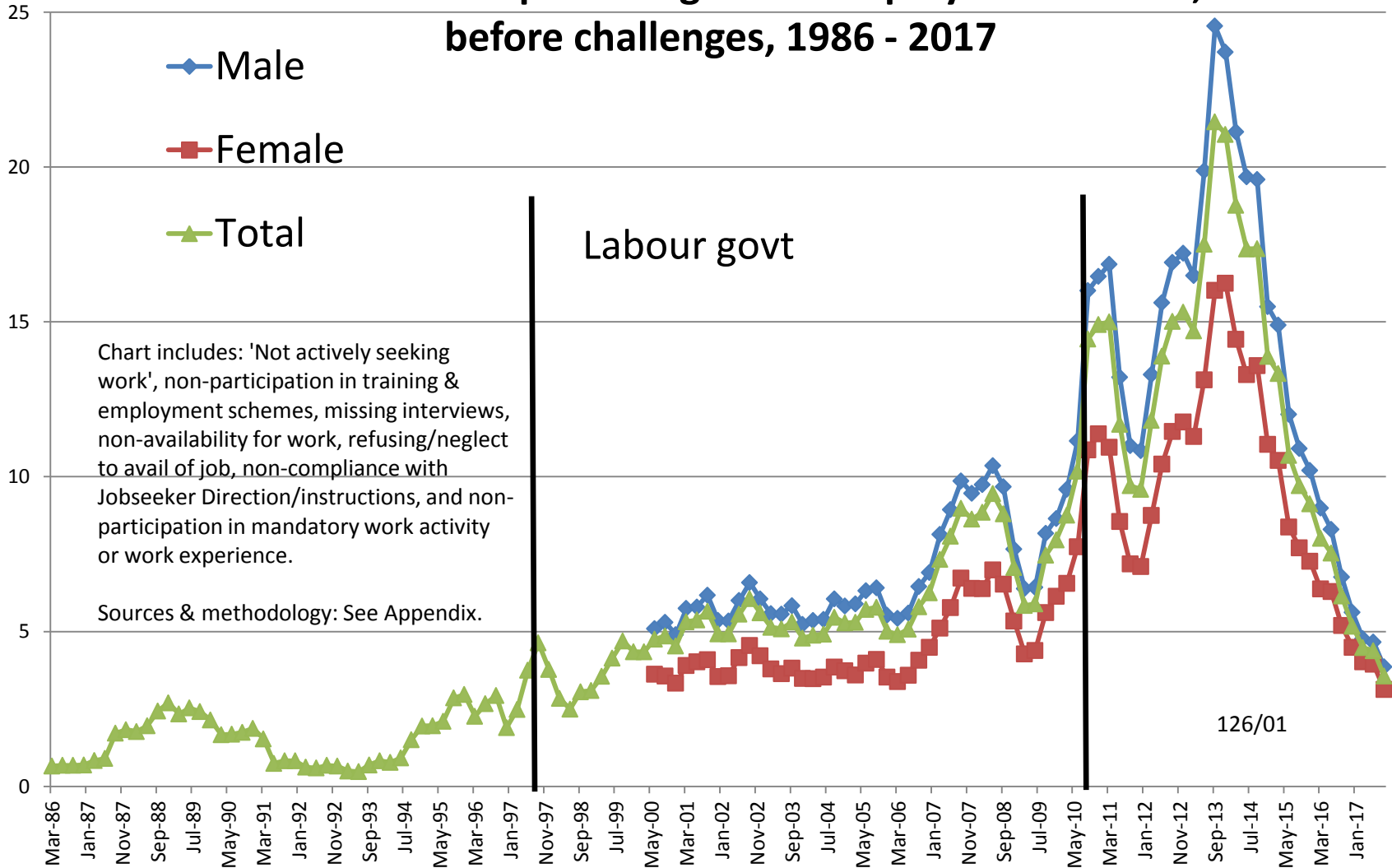
1920-1939

- Most unemployed not covered by insurance until 1920
- Statistics very patchy until mid-1920s
- Policy dominated by:
 - huge fluctuations in unemployment
 - desire not to drive people back to Poor Law
 - cost and viability of National Insurance scheme
- Major upheaval in 1930 due to Labour Party backbench revolt (led by ILP) against 'not genuinely seeking work'
- 1934 Act finally replaced Poor Law for unemployed with a national Unemployment Assistance scheme
- Previous study of 'not genuinely seeking work' episode 1924-1930 by Deacon (1976)

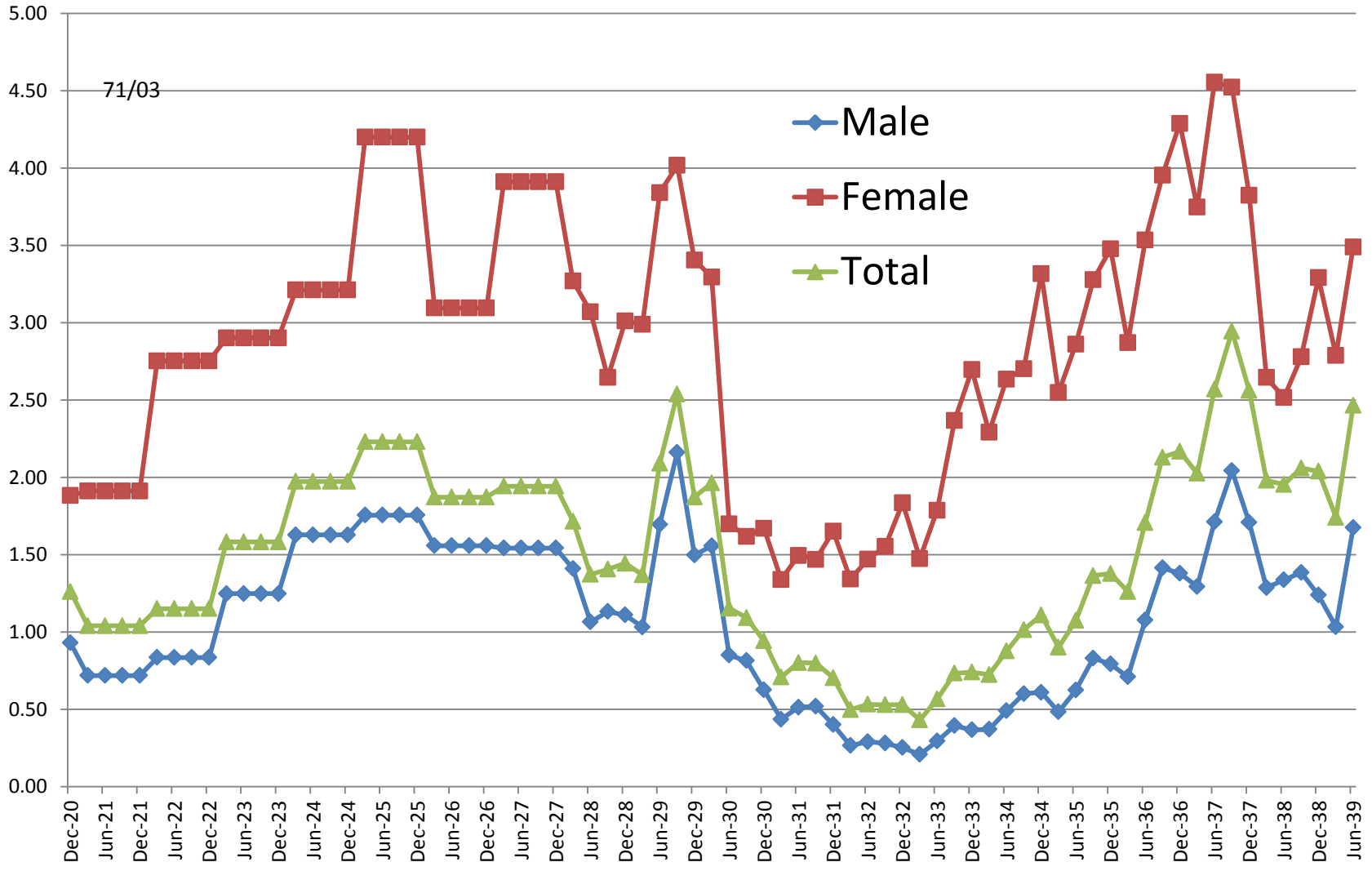
Unemployment Benefit: Total 'active' disqualifications as a percentage of insured unemployed, before challenges, 1920-1939



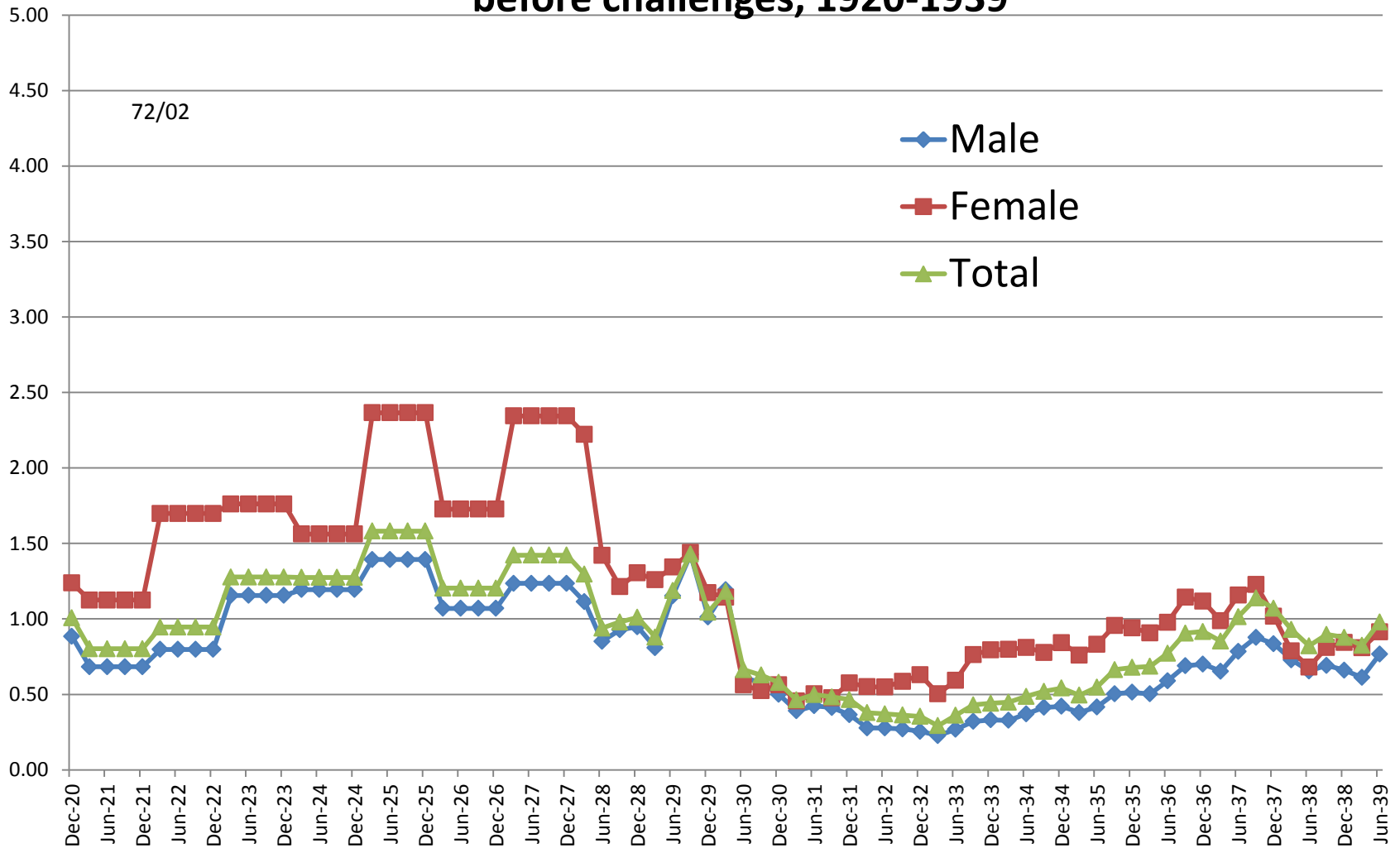
Quarterly disallowances/sanctions for breach of 'active' conditions as a percentage of unemployed claimants, before challenges, 1986 - 2017



Unemployment Benefit: Disqualifications for voluntary leaving as a percentage of insured unemployed, before challenges, 1920-1939



Unemployment Benefit: Disqualifications for losing a job through misconduct as a percentage of insured unemployed, before challenges, 1920-1939



1920-1939: Conclusions

- In spite of its notoriety, overall the 1928-30 disqualification drive does not compare with 2010-16 and was also lower than the New Labour peak in 2008
- Peak only 8% per quarter (2010-16: 22%)
- But for women the 1928 peak was actually higher than the 2013 peak; for men the 1928 peak was only one third of the 2013 peak
- Female disqualification rates were higher than male for every reason throughout 1920-39 – reverse of 2000-16
- This reflects the reality that policy was not to get women into work but just to stop them claiming
- ‘NGSW’ itself was only partly about job search, as Umpire’s ruling indicated (‘applicant’s state of mind’)
- The 1930 Labour Party revolt temporarily affected application of ‘vol. leaving’ and ‘misconduct’, as well as active conditions

Why has social insurance become a penal system?

- Decline of the insurance principle in social security – prior to 1980s, all the conceptualisation and language was that of an insurance scheme, now ‘welfare’
- Growth of ‘rights and responsibilities’/ communitarian/ ‘workers and shirkers’ rhetoric
- Supply-side economic theories of the labour market
- ‘Active labour market policy’ – does not have to be penal but tends to promote penal thinking
- Inertia: since disqualifications existed in the system, automatic assumption that withdrawal of benefit is the way to incentivise claimants – other options not considered; convenient re-use of pre-existing insurance-based legislation
- Indifference of economists to the real world implications of the programmes they advocate (citizens’ rights/admin difficulties ‘not our business!’)
- Neoliberal/right wing backlash particularly via USA (Murray, Mead & US-funded Policy Exchange)

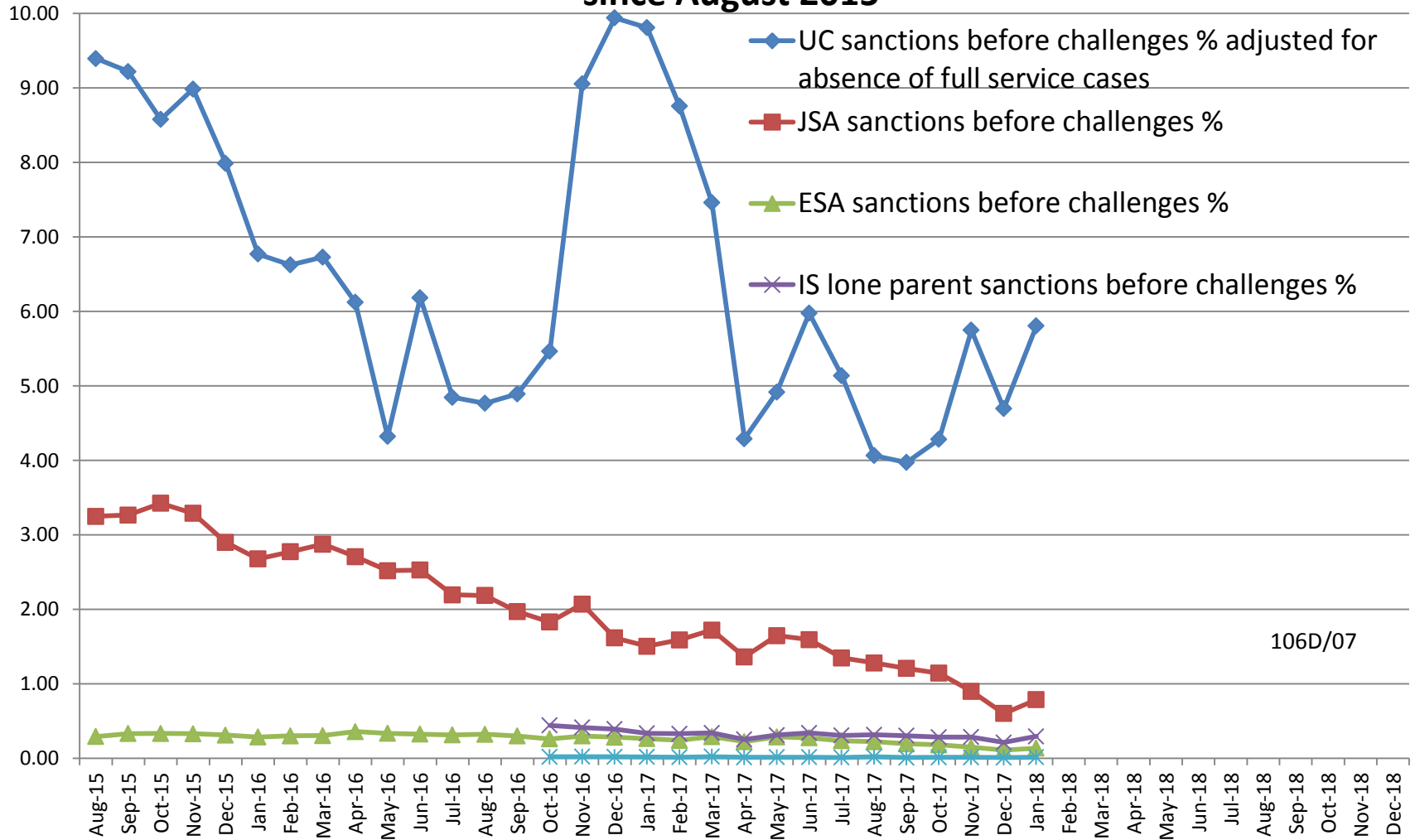
Why did the major conditionality drives occur when they did?

- Major drives were 1928-30, 1986-90, 1994-96, 2006-08 and 2010-16
- Most obvious common factor is that these are periods of recovery from recession – govts get impatient that labour reabsorption seems to take too long (while after a long period of full employment, unemployment declines in salience)
- Cost a related major factor
- Supply-side/ALMP/neoliberal thinking has played a much stronger role since the 1980s

The outlook: Universal Credit

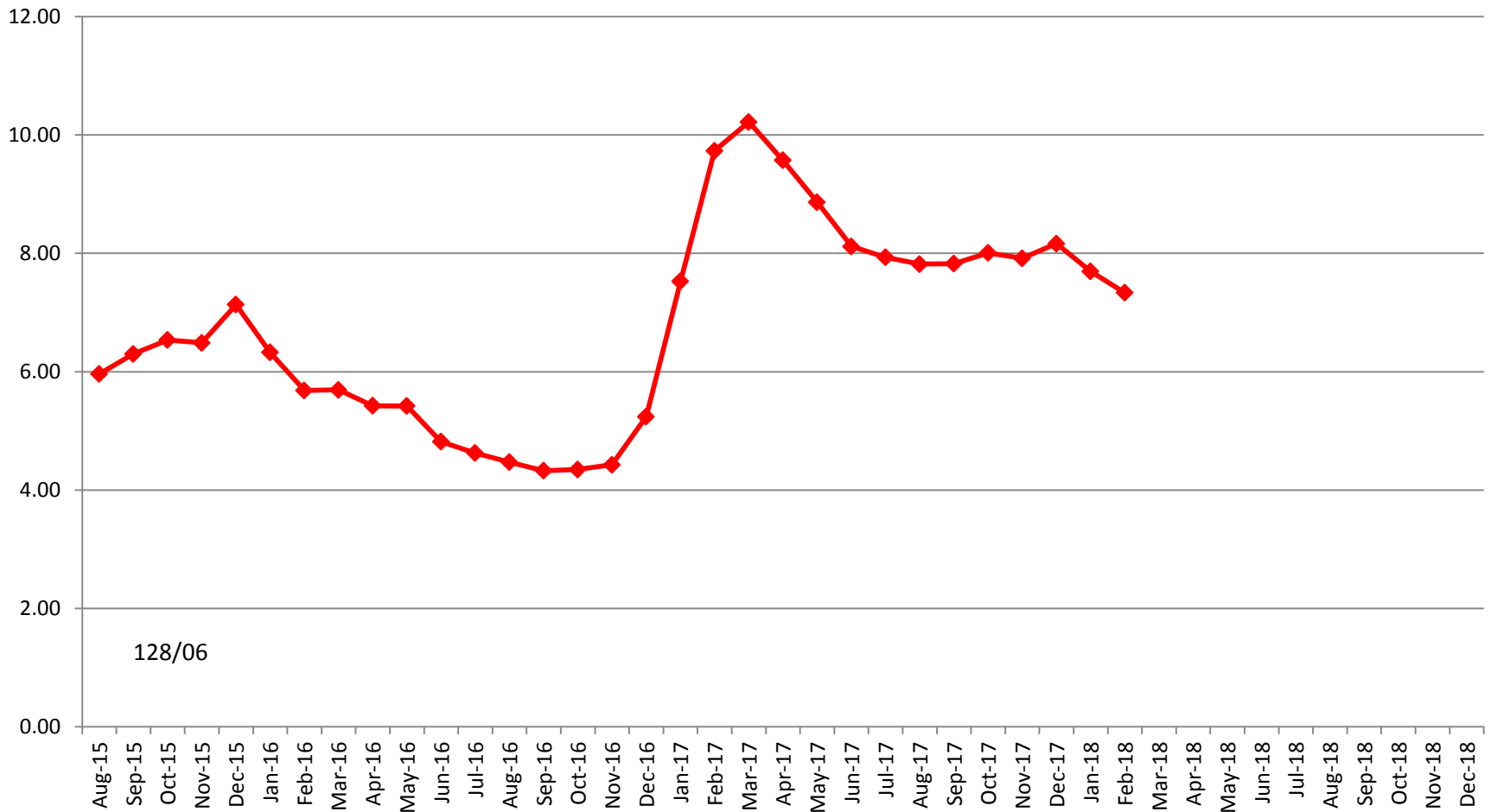
- UC further extends scope and conditionality requirements (low paid/part time & lone parents)
- Sanctions consecutive, not concurrent
- LPs with child 2-5 now sanctioned 100% of standard allowance
- In-work sanctions levied on housing & child care elements if standard allowance not sufficient
- Hardship payments repayable (i.e. length $\times 2\frac{1}{2}$), 20% reduction abolished, reapplication required each month, 7 days' compliance condition replaces 2-week rule
- Informal reconsideration stage abolished
- Challenge and overturn rates particularly low
- Statistics published to date are concealing the scale of UC sanctions
- However available data indicate that UC sanctions rates are very high compared to 'legacy' benefits

Universal Credit, JSA, ESA and IS: sanctions per month before challenges as % of claimants subject to conditionality since August 2015



106D/07

Percentage of unemployed Universal Credit claimants serving a sanction at a point in time (DWP estimates)



Summary

- The sanctions drive 2010-16 was historically unprecedented in scale
- The severity of the current sanctions regime also continues to be unprecedented
- All three major political parties have driven up the scale and severity of sanctions since 1986
- The main underlying reason is loss of the insurance principle
- Drives tend to occur in recovery periods
- However ideology (political and academic) is currently playing an unprecedented role
- Universal Credit appears to be bringing a renewed sanctions drive, of even greater severity