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House of Commons Work and Pensions Committee

**Inquiry into the Role of Jobcentre Plus in the reformed welfare system**

**JSA SANCTIONS AND DISALLOWANCES**

Evidence submitted by

Dr David Webster

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22 May 2013

**Revised and corrected 8 August 2013**

**(significant corrections relate to the Summary, para.15 & Figure 8)**

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmworpen/479/479vw.pdf>,  
pp. Ev w90-w101

**SUMMARY**

This submission presents key findings to date from a critical examination of unemployment benefit sanctions and disallowances based primarily on statistical analysis. It shows that the severity of the regime has increased drastically under the Coalition and is increasing further. One fifth of JSA claimants have been sanctioned/disallowed, 4.2% per month of all claimants and 8% per month of those aged 18-24. Disallowances for 'voluntary leaving' and 'losing a job through misconduct' were previously a major component but have almost disappeared in the recession, with disallowances for (not) 'actively seeking work' showing a very big increase, and big increases also for non-participation in training (including the Work Programme) and non-compliance with a Jobseeker's Direction. Severity is greater at times when it is least productive. A gap has been emerging in the treatment of white and minority ethnic groups, and disabled people are over-represented among repeat sanctions/disallowances. The reasons for these differences should be investigated. Although sanctions increase job search and exit from benefits, they cannot be justified when all their effects are considered. These include worse matches of people to jobs, lower productivity, wastefully large numbers of job applications, damage to health, families and relationships, homelessness, destitution as reflected in the rise of Food Banks, increased crime, diversion of Jobcentre resources from their proper role, and creation of a climate of fear and hostility which undermines the whole system. Sanctions, which are financial penalties intended to affect behaviour, should be abolished. Entitlement conditions have to be retained, but should be accompanied by a proper safety net for those disallowed, and an approach to influencing claimants, where justified, which is properly based on behavioural psychology, as pioneered by the Prime Minister's 'nudge unit'.



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1. This submission addresses the second of the issues identified by the Committee:

‘JCP’s role in relation to the rights and responsibilities of benefit claimants, including: the effectiveness of benefit conditionality, particularly job-seeking conditionality and the mandatory “work-focused interview”; and the level and appropriateness of JCP’s use of benefit sanctions, including differences of approach between JCP Districts.’

2. I have been researching unemployment for 20 years and my PhD by published work is available at <http://theses.gla.ac.uk/1720>. I am currently carrying out a critical examination of unemployment benefit sanctions and disallowances in Great Britain, based primarily on a statistical analysis going back as far as records will allow. The work is not complete, but I am keen for the Committee to have the benefit of key findings to date.

**Disallowances and Sanctions**

3. Much current discussion is losing sight of the distinction between ‘disallowances’ and ‘sanctions’. For instance, the Opposition spokesman Liam Byrne stated on 19 March (col. 834) that ‘the general legal power of the DWP to issue sanctions.....is a broad *sui generis* power that has been in place since 1911’. This is a misconception.

4. Although few JSA claimants (11.9%) currently have a contribution-based entitlement, the system remains an insurance scheme. As for any such scheme, various conditions have applied to unemployment benefit since its introduction in 1911; these were strictly defined in the original Act and in no way constituted a ‘general legal power’ (Tillyard 1949). Disallowance because a condition is not met is different from a ‘sanction’. In relation to unemployment benefits, ‘sanctions’ on any scale date only from the 1980s and stem from the belief that unemployed people should be ‘activated’.<sup>1</sup> ‘Sanctions’ are penalties intended to make claimants do particular things, such as apply for specified numbers of jobs per week. They are about ‘changing behaviour’, not entitlement.

5. Loss of this distinction confuses the issues and is unnecessarily stigmatising to unemployed people. For instance, to give up a job is not any kind of offence. We do not have serfdom in the UK. However, there is a potential ‘moral hazard’ if unemployment benefit can

be claimed immediately. Therefore, a disallowance to unemployment benefit has always applied to 'voluntary leaving', of up to 6 weeks from 1911 to 1986, and now 13 weeks on the first occasion. Yet we find the Explanatory Memorandum to the Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012 talking of 'categories of *sanctionable failure*' and 'three categories of *sanction*.....The first situation is when claimants fail to *comply with the most important jobseeking requirements*, these (include).....without good reason - voluntarily leaving employment'. Similar confusions are contained in the new Regulations themselves.

### **The level of JSA Sanctions and Disallowances**

6. There is a common misconception that sanctions and disallowances affect only a small minority of claimants.<sup>2</sup> In fact one fifth (19%) of all JSA claimants over the five years April 2007 to March 2012 were subject to sanctions or disallowances. That is 1,483,760 people.<sup>3</sup> Referrals are around double the number of adverse decisions, so some 3 million people will have been threatened. There were 778,000 sanctions or disallowances in the year to October 2012. Under the Coalition, the *monthly* rate of sanctions has been 4.2% of all JSA claimants. For JSA claimants aged 18-24 the rate is 8% *per month*; this is 1 in 200 of the entire 18-24 population age group *each month*.

7. **Figure 1** shows total referrals and adverse decisions from April 2000 to October 2012, while **Figure 2** plots adverse decisions against the claimant unemployment rate.<sup>4</sup> All the charts in this submission show figures as a percentage of JSA claimants since in order to see the severity of the regime it is necessary to take out the effect of changing volumes of unemployment.

8. The low point was 2005; thereafter there was a rise when John Hutton was secretary of state, and then some fluctuations before a further rise under the Coalition. Some recent fluctuations have been due to the handover in summer 2011 to private contractors of responsibility for initiating Work Programme sanctions, and to the 'stockpiling' of some sanctions following the Reilly-Wilson judgment in August 2012; otherwise, the Coalition's figures would be higher.

9. The above figures do not include any sanctions under the new, more severe, Regulations applying from 22 October 2012. The DWP promised to publish figures for 22 October 2012 to 31 January 2013 on 15 May 2013. This publication did not take place, because of 'significant doubts around the quality of the statistics'.<sup>5</sup> However, the DWP 'score card' (*Guardian*, 28 March) implied a big further rise in sanctions/disallowances in December and January, to over 7% per month. This is shown in **Figures 1 and 2**.

### **Reasons for sanction/disallowance**

10. **Figure 3** shows the main reasons for sanction/disallowance in 2004 and in the year to October 2012. Failure to attend an advisory interview is the most frequently occurring reason, though its relative importance has fallen a little. By contrast there has been a huge fall in the numbers of people disentitled for leaving a job voluntarily or losing it through misconduct. **Figure 4** shows that this is due to the current recession. People hold on to a job more carefully when it is harder to get another; the same phenomenon was observed in previous decades.<sup>6</sup> Since voluntary leaving/misconduct accounted for over a quarter of all

sanctions/disallowances in 2004, the increases in the other categories have been correspondingly greater.

11. **Figure 5** shows that ‘Actively seeking work’ accounts for much the biggest share of the increase in sanctions/disentitlements since 2004. This entitlement condition relates to the definition of unemployment: to be unemployed you must be looking for work. It was introduced in May 1919 and its administration produced major controversy in the later 1920s, leading to its abolition in March 1930 following a Labour Party backbench revolt.<sup>7</sup> It was reintroduced in 1989 but had little impact until the introduction of JSA in 1996. It then died away until John Hutton, under whom the proportion of referrals resulting in disentanglement rose from around 60% to around 80% (**Figure 6**). Under the Coalition it has had a spectacular further increase.<sup>8</sup>

12. Also seeing a big rise since 2004 are sanctions for non-participation in training and employment programmes (other than S.17A Back to Work schemes but including the Work Programme) (**Figure 7**). Sanctions for refusing a Jobseeker’s Direction have tripled in the latest year, from a low base.

13. Passing of the retrospective Jobseekers (Back to Work Schemes) Act in March 2013 will have rapidly increased the number of S.17A sanctions, but these do not yet show in the figures.

### **Variation of sanctions/disallowances in relation to unemployment over time and by geography**

14. It is clear that any effect of sanctions/disallowances on the level of unemployment over time is very minor (**Figure 2**). The big changes in unemployment are due to macro-economic factors. It is also striking that sanctions/disallowances have increased so much when unemployment is high. Rational policy would dictate the opposite. There is no point putting more pressure on claimants when there are fewer jobs. Unemployment was 2.52 million in January-March 2013, while the ONS vacancy survey estimated an average 0.503m unfilled vacancies February-April 2013.<sup>9</sup> Moreover, there are now twice as many JSA claimants as there were in 2004. The extra claimants (barring the additional 140,000 lone parents and some transferred from IB/ESA, who have their own issues) are people who would not normally be out of work and by no stretch of the imagination should need sanctioning.

15. The *Guardian* on 18 April 2011 published an analysis showing that areas with higher unemployment tend to have higher rates of fixed length sanctions. Further analysis of my own contained in a supplementary submission to the Committee dated 8 August 2013 confirms that claimants in areas of higher unemployment are more likely to be penalised for non-attendance or lateness at interviews, and for non-participation in training or employment schemes. By contrast, penalties for voluntary leaving, misconduct, ‘neglect to avail’ of an opportunity and refusal of a job are less frequent in areas of high unemployment. **Figure 8** shows the relationship for advisory interviews across regions.<sup>10</sup>

### **Ethnic and disability monitoring**

16. Peters & Joyce (2006) using data for 2004 reported that there was no difference in treatment of different ethnic groups. However, a considerable gap has been emerging since 2005 in the treatment of white and minority ethnic claimants (**Figures 9 to 11**).<sup>11</sup> This is not

necessarily due to discrimination. It could be due to an emerging difference in the occurrence of some characteristic which is positively correlated with sanction/disallowance. It is not due to the changing age or sex composition of the different ethnic groups. These have been such as to imply fewer sanctions/disallowances for the minorities. DWP should be asked to explain the emerging difference and to state whether it can be justified.

17. Potential discrimination against the disabled cannot currently be monitored and DWP should be requested to add the necessary data to the Tabtool. But there is a higher proportion of disabled people among those subject to repeat sanctions (**Figure 12**). This is of particular concern because of the new 3-year sanctions for repeated non-compliance.

### **Reconsiderations and Appeals**

18. The appeals system does not appear effective. In April 2000 to April 2012 inclusive, only 17% of those subject to sanction/disallowance asked for reconsideration, of whom 53% were successful. Only 2% appealed to a tribunal, of whom 17% were successful. Given claimants' high success rate at reconsideration, it appears that not nearly enough ask for this. Peters & Joyce (2006) found that claimants saw the process as long and futile, feared a lack of support, or could not afford phone calls/stamps/fares. Tribunals play scarcely any role, and with the removal of legal aid from April 2013 are likely to play even less.

### **Can sanctions be justified?**

19. There is plenty of evidence that sanctions increase job search and exit from unemployment benefit (e.g. Abbring et al. 2005<sup>12</sup>). However a policy has to be justified in terms of its overall effects.

20. Much of the belief in the use of sanctions to support 'activation' arises from 'supply-side' economic theories of the labour market which have been shown to be ill-informed and mistaken (Turok & Webster 1998, Webster 2000, 2005).

21. So far as I can establish, none of the economists who have shown that sanctions increase unemployment exit have examined whether this actually raises aggregate employment, or whether their findings apply both in and out of recessions. The Rayner Review (DE/DHSS 1981, para. 4.65 (1)), writing in the depths of an earlier recession, commented 'a job filled by one unemployed person will usually result in there being one fewer job for another unemployed person'. This is equally true now. Moreover, forced matches between applicant and job will be worse, reducing economic efficiency. Petrongolo (2009) and Arni et al. (2012) both found that sanctions push people into worse jobs, with lasting ill-effects. This fits with Chetty's (2008) finding that people with resources take longer to find a job, indicating that choosiness pays off. If it pays off for the individual, so it will for the economy – and Acemoglu & Shimer (1999, 2000) accordingly find that unemployment insurance increases output and productivity.

22. Additional job search and applications have costs, for both claimants and employers. Patacchini & Zenou (2006) found that left to themselves, people search more when labour demand and incomes are higher. This makes sense, as the returns to search will then be greater. In current conditions, sanctions induce greater than optimal job search, for both claimants and employers. Far too many applications are being made. Employers are receiving 45 applications for each low-skilled job, but only half of the applicants are suitable.<sup>13</sup>

23. Sanctions have many other damaging effects. They damage health, and family and friends suffer hardship and damaged relationships (Peters & Joyce 2006, Vincent 1998, Saunders et al. 2001, Dorsett et al. 2011); they contribute to homelessness.<sup>14</sup> Their financial impact is very variable, depending on the claimant's family circumstances and other resources. However, they account for a quarter of users of Food Banks in Scotland.<sup>15</sup> Not surprisingly therefore, Machin and Marie (2006) showed (for the UK) that sanctions increase crime.<sup>16</sup>

24. Much evidence has reached the media recently of increasing numbers of unfair sanctions/disallowances and of pressure on Jobcentre staff to increase them against their better judgment.<sup>17</sup> Even when the regime was at its mildest in 2004, two-fifths of those with a sanction/disallowance thought it unfair, while 23% thought it could not have been avoided and another 21% were unsure how it could have been (Peters & Joyce 2006).<sup>18</sup> Nor is this new; Bryson & Jacobs (1992) quoted many examples of claimants unfairly or dishonestly sanctioned/disallowed.<sup>19</sup> Such sanctioning activity involves a big diversion of Jobcentre staff effort away from their primary tasks of nurturing the labour force and improving the efficiency of the labour market. The resulting climate of fear and hostility undermines support work; makes claimants reluctant to complain about malpractice by officials, contractors or employers; and undermines the usefulness and acceptability of national insurance for everyone.<sup>20</sup>

### **Sanctions should be abolished**

25. The evidence strongly suggests that sanctions (as opposed to disallowances) should be abolished, with a return to the regime of insurance conditions originally envisaged in 1911, supplemented by a proper safety net for those who do not meet them. In so far as it is desirable to attempt to influence claimants' behaviour – and given the record of frequently wrong-headed pressure such attempts need to be carefully justified – then this should be done through a scientific approach.

26. It appears that as the desire within government to 'activate' unemployed people grew, no one actually considered what might be the best way to do it; by a simple process of inertia, the loss of benefits logically entailed by the quite different issue of entitlement was uncritically transferred across to sanctions. In this connection the Prime Minister's 'nudge' unit<sup>21</sup> is to be congratulated on persuading the DWP to co-operate in experiments in two areas, Essex and the North East, to use behavioural psychology in a constructive way to develop claimants' confidence.<sup>22</sup> The claimants in the Essex trial were about 17.5% more likely to be off benefits after 13 weeks. It is most regrettable that the Opposition spokesman, Liam Byrne, dismissed both these trials, the latter as 'mumbo-jumbo'. On the contrary, use of behavioural psychology to inform attempts to influence behaviour is extremely valuable and should have been done long before.

27. Supporting this approach, Lalive et al. (2005) found that warnings without sanctions, and simple monitoring of job search, were effective in influencing exit from unemployment. McVicar (2010) found the same for monitoring. Ironically, one of the ministers promoting the current intensification of sanctions, David Freud, has himself previously supported this view (2007, p.95): 'Perhaps a formal process which kicks off with a written warning, followed by a formal interview, would have more impact than any actual financial repercussions'.



## GLOSSARY

Adverse decision = A decision on a referral which is adverse to the claimant and results in a sanction or disallowance being imposed

BtW = 'Back to Work' scheme

FTA = 'Failure to attend'

MWA = Mandatory Work Activity

NOMIS = The National Online Manpower Information System, <http://www.nomisweb.co.uk/>

NTA = 'Neglect to avail' of an opportunity of employment or training

Referral = Referral of a JSA claim by DWP staff to a Decision Maker to decide whether a sanction or disallowance should be imposed

## NOTE ON THE STATISTICS

Data on sanctions and disallowances in the Figures are either from the DWP web Tabtool (April 2000 onwards) or from the volumes of Adjudication Officers' Decisions previously published by the Employment Service or its predecessors. My work on the latter source is not yet complete as it has been very difficult to assemble a complete series.

In both sets of statistics, nothing is recorded on a referral until there is a decision. The Tabtool attributes each decision to the month of original referral, and shows the latest status of each referral. Figures from the earlier sources attribute each case to the month of the original decision, and do not show any subsequent revision. The Adjudication Officer series does give revisions, but not in such a way that they can be attributed to any particular previous decision.

The 'year to October 2012' is actually a little less than a year because figures for October run only to the 21<sup>st</sup> of the month. This gives a slight downward bias to the sanctions/disallowance figures.

Data on numbers of and characteristics of JSA claimants are either from the DWP Tabtool or from NOMIS. Population data are from NOMIS. The claimant unemployment rate shown in Figures 2 and 8 is the number of JSA claimants as a percentage of the resident working age population (this yields quite low figures). Other unemployment rates use the official ILO definition; these are sometimes shown divided or multiplied by 10 simply in order to fit them conveniently to the chart.

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Figure 1

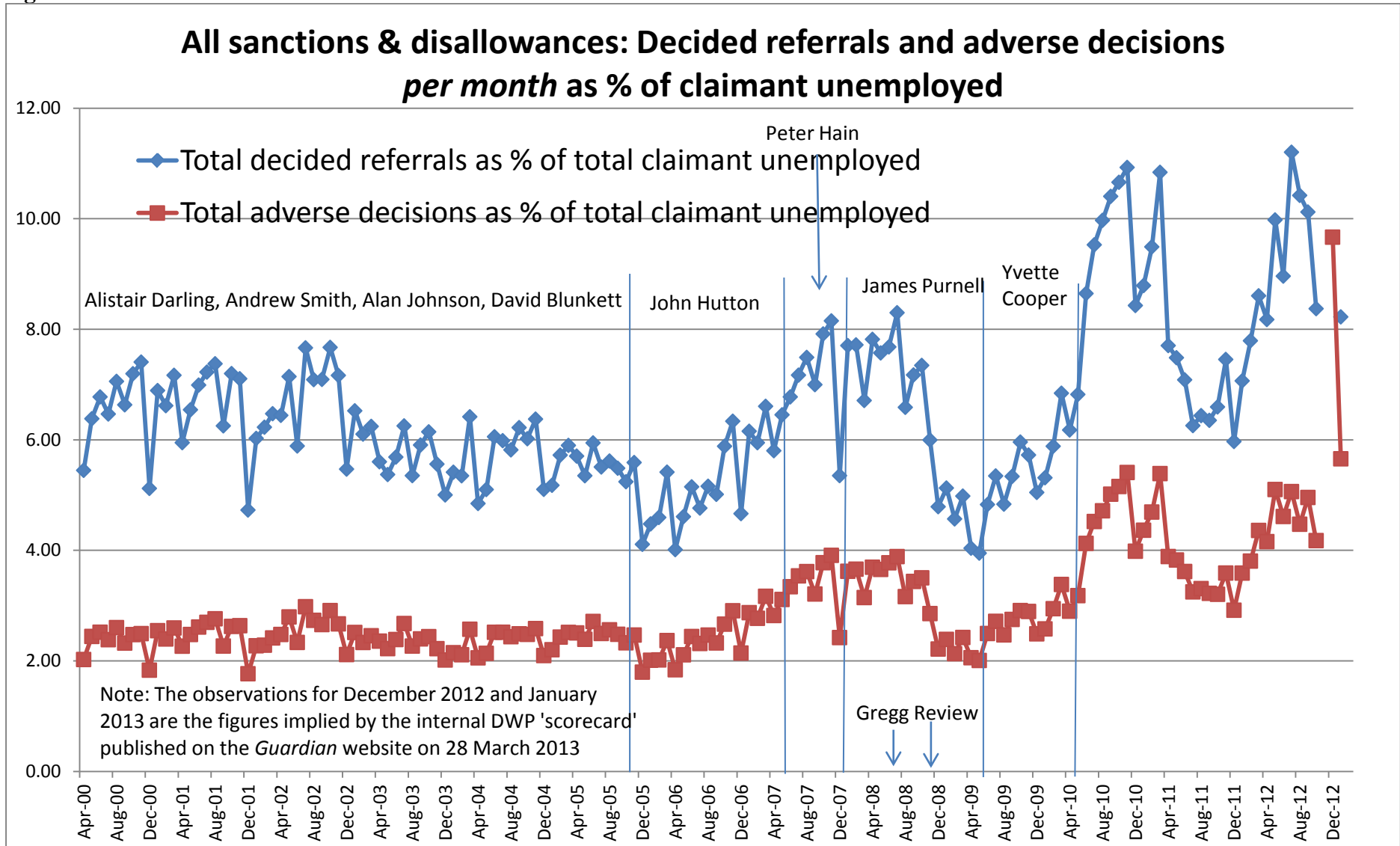


Figure 2

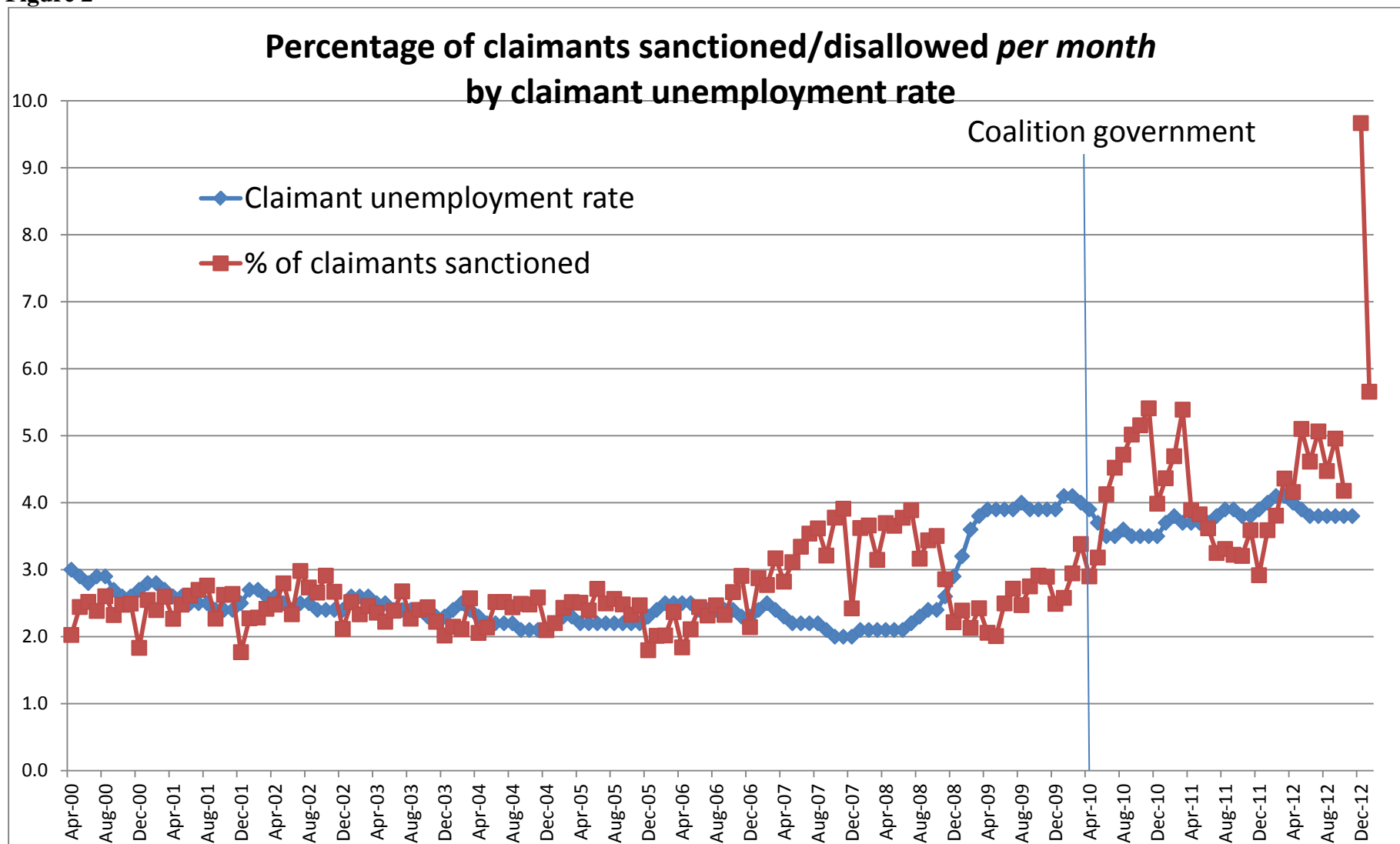


Figure 3

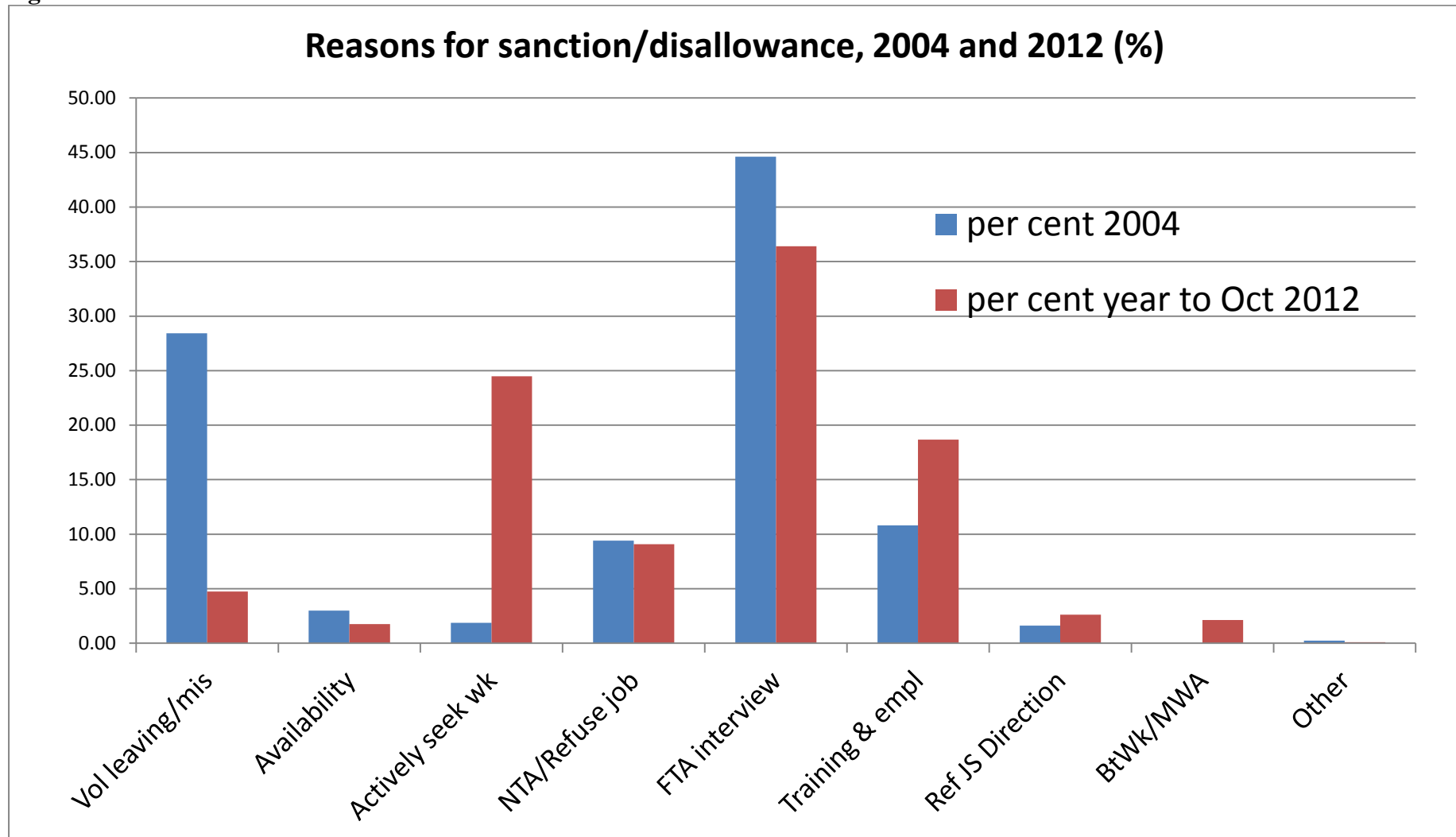


Figure 4

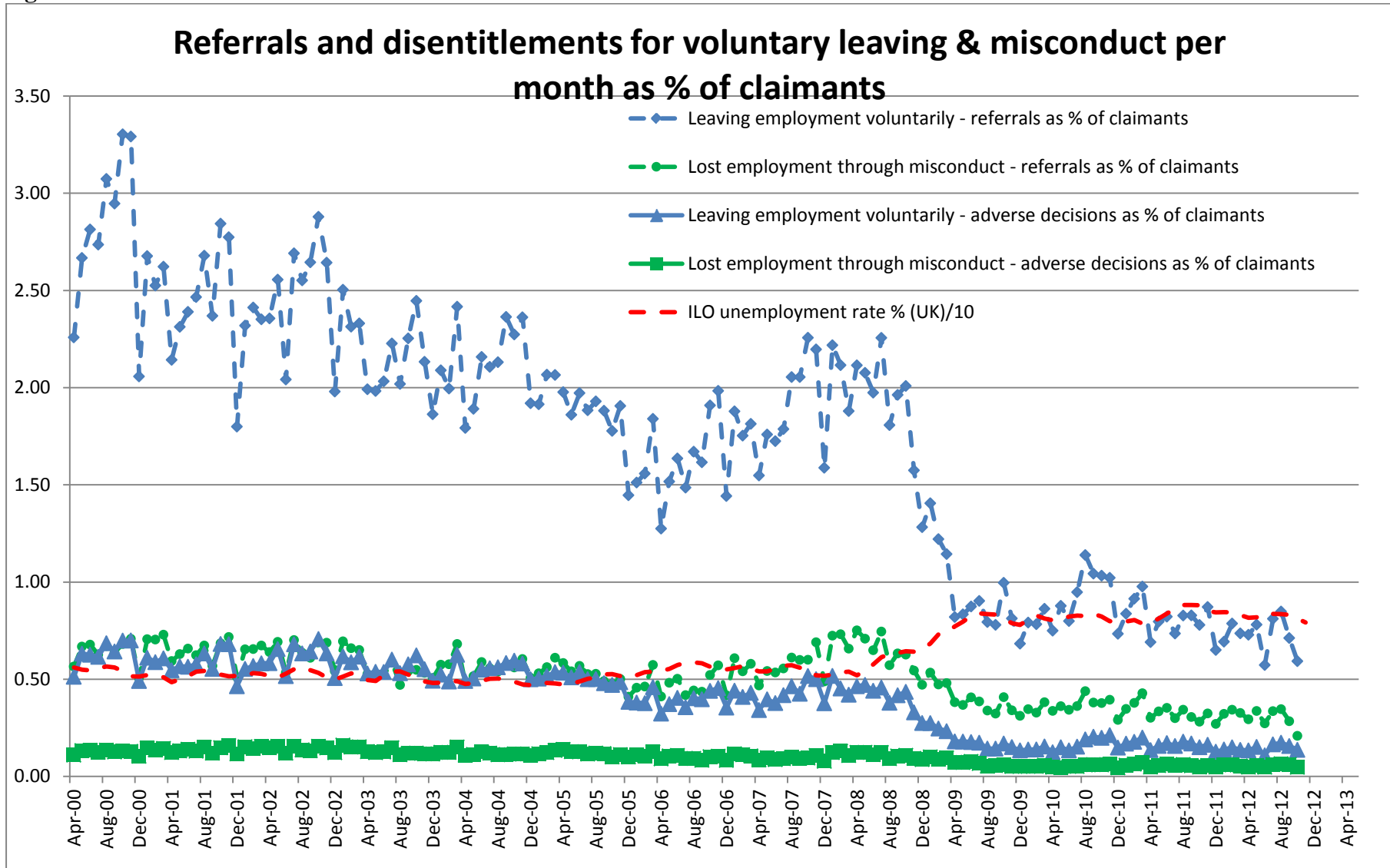


Figure 5

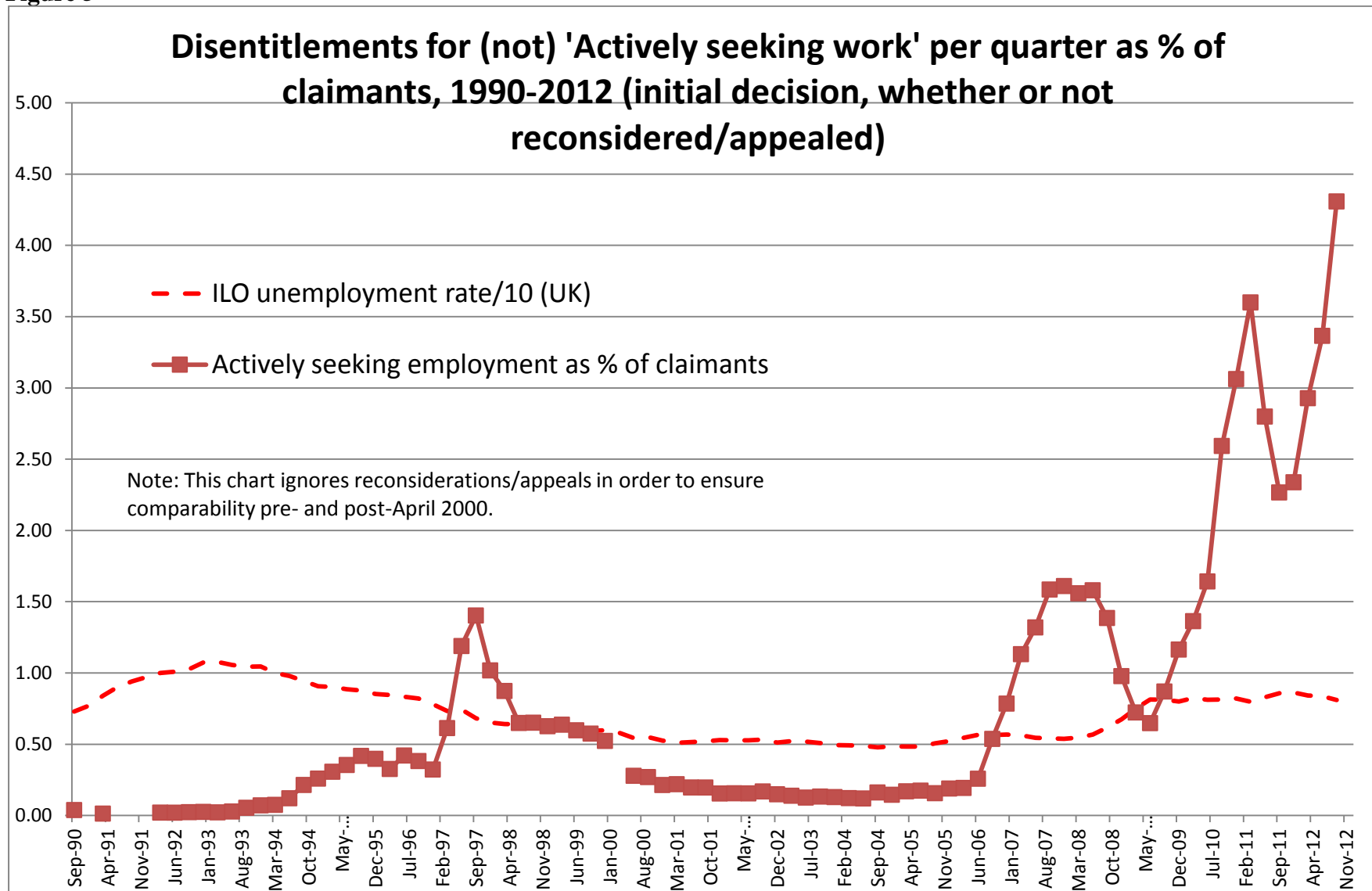




Figure 6

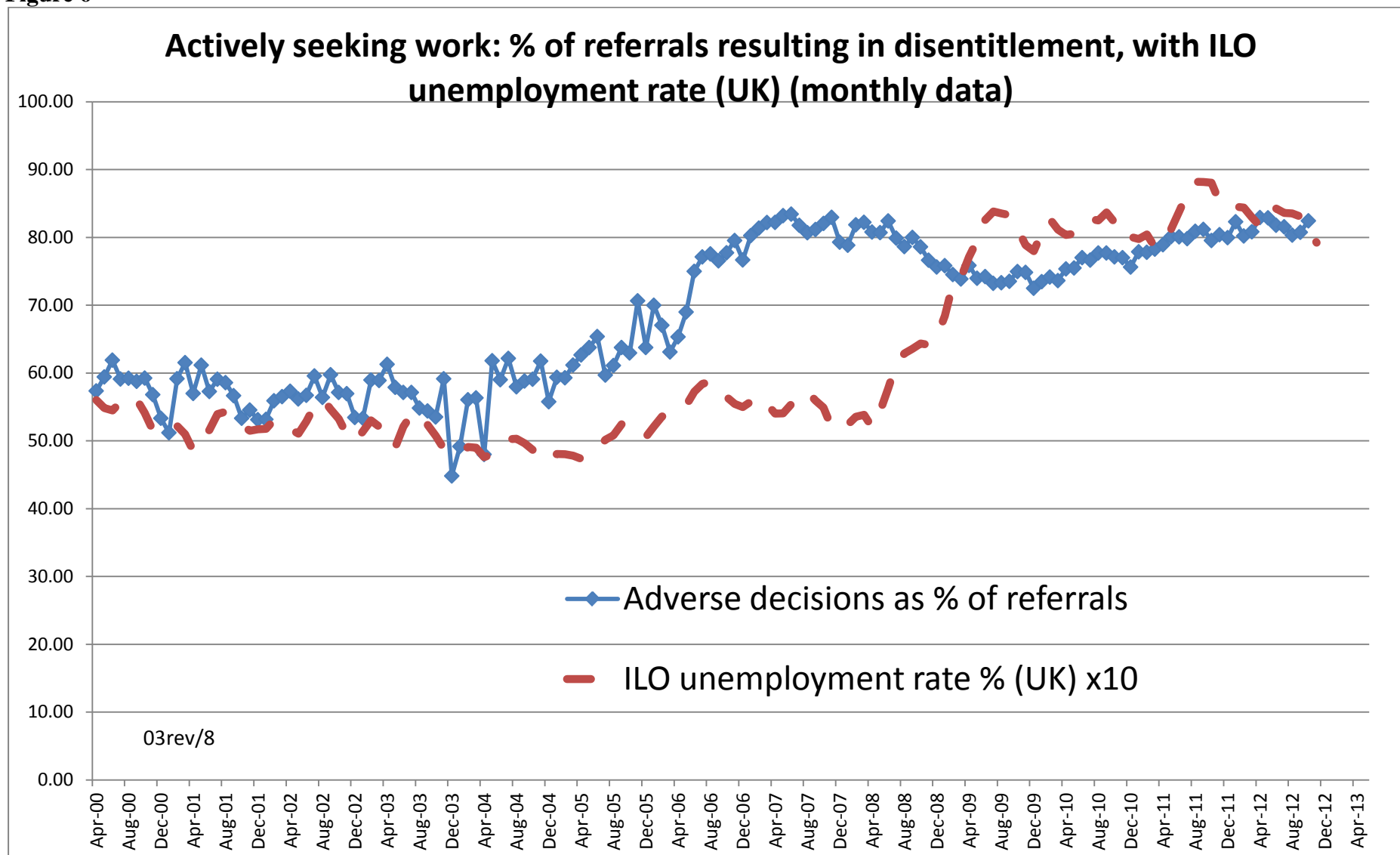


Figure 7

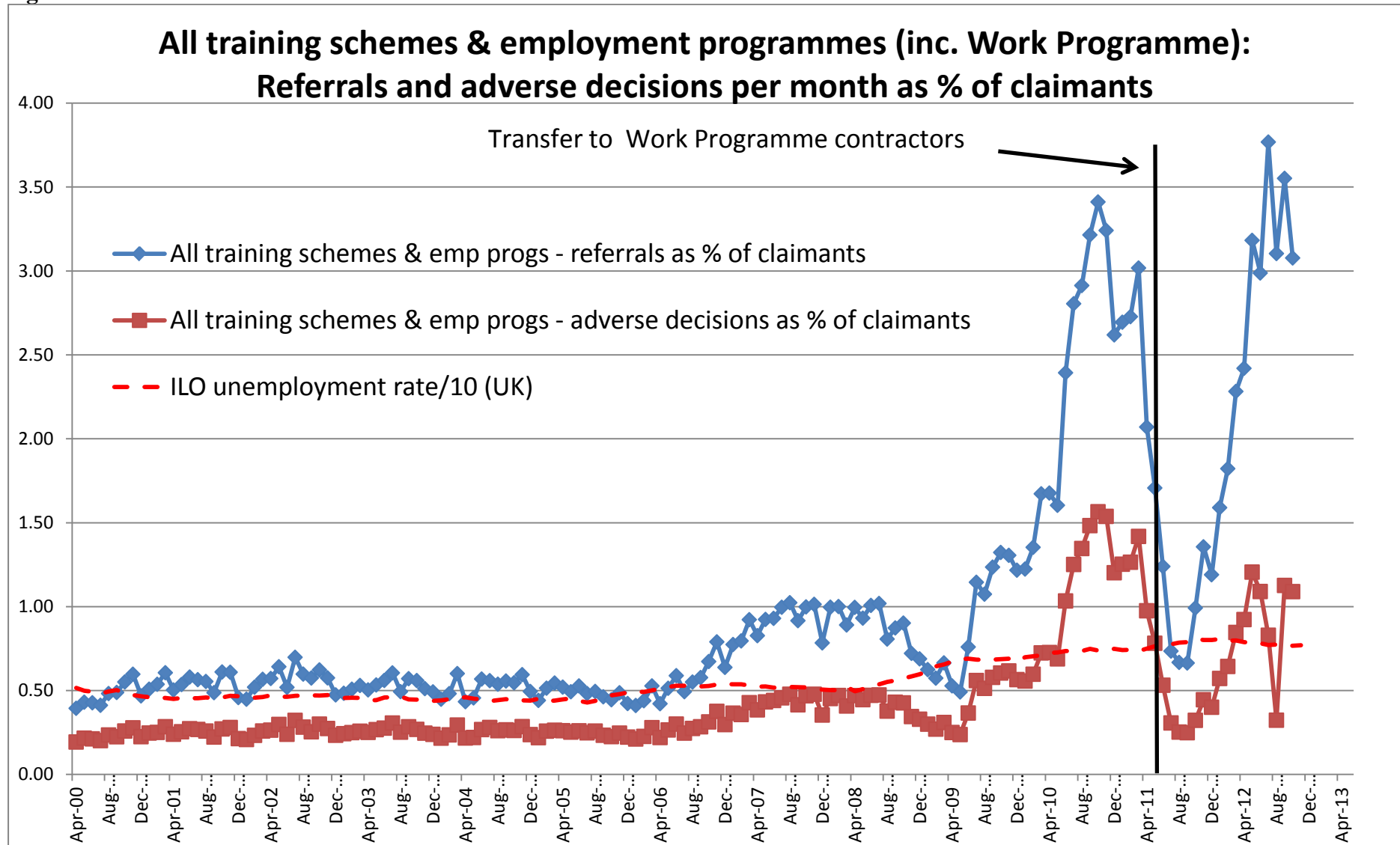


Figure 8

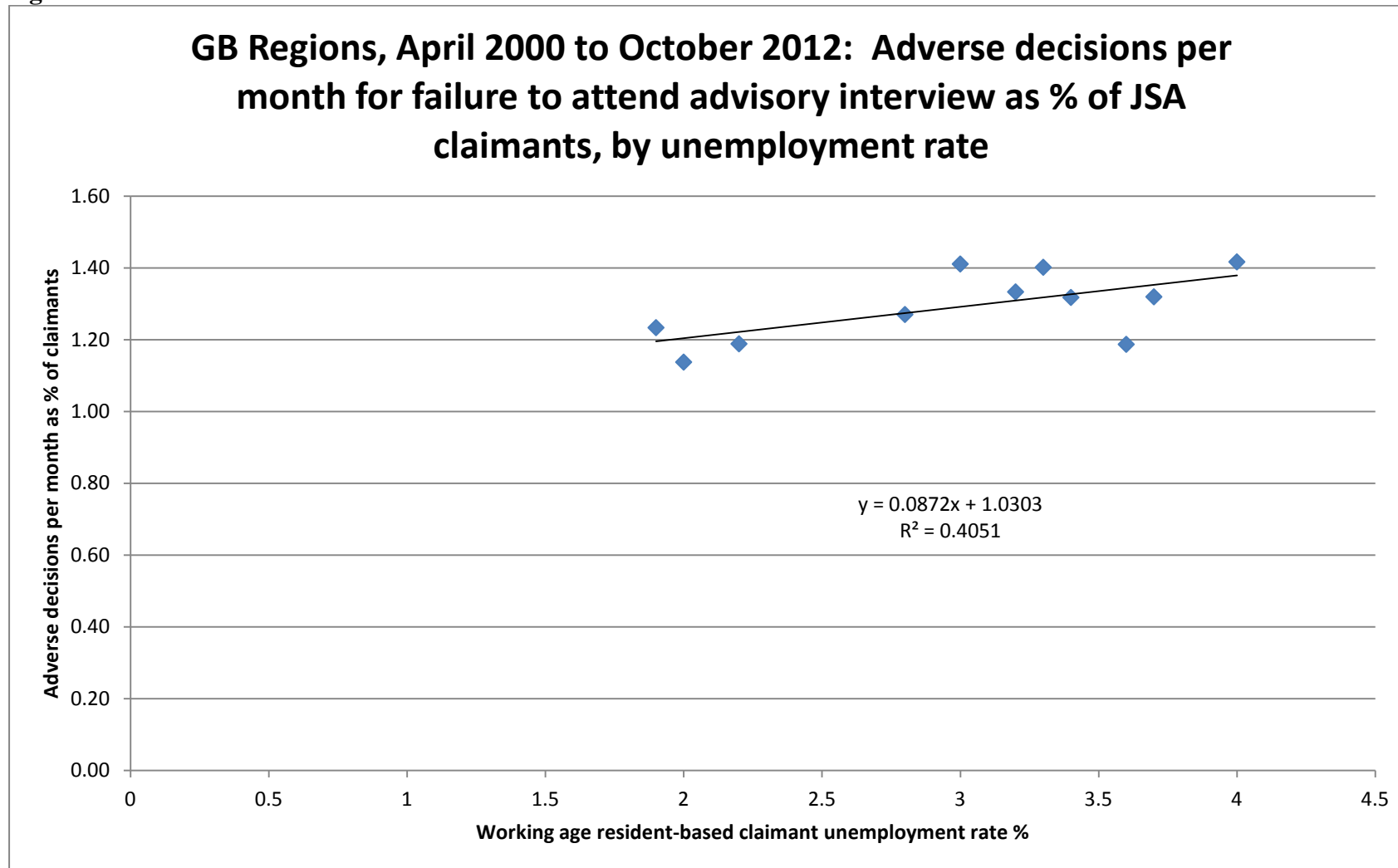


Figure 9

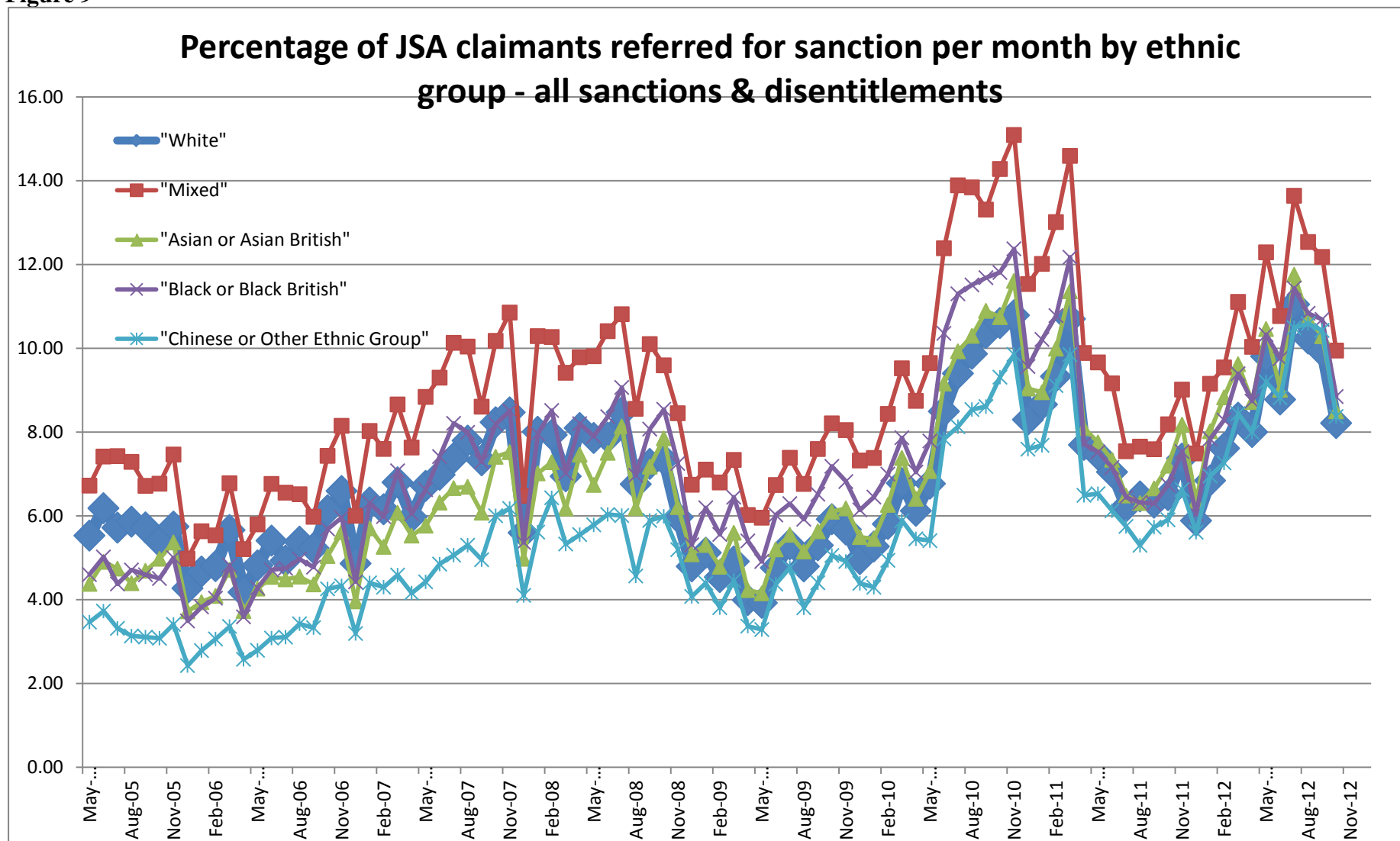


Figure 10

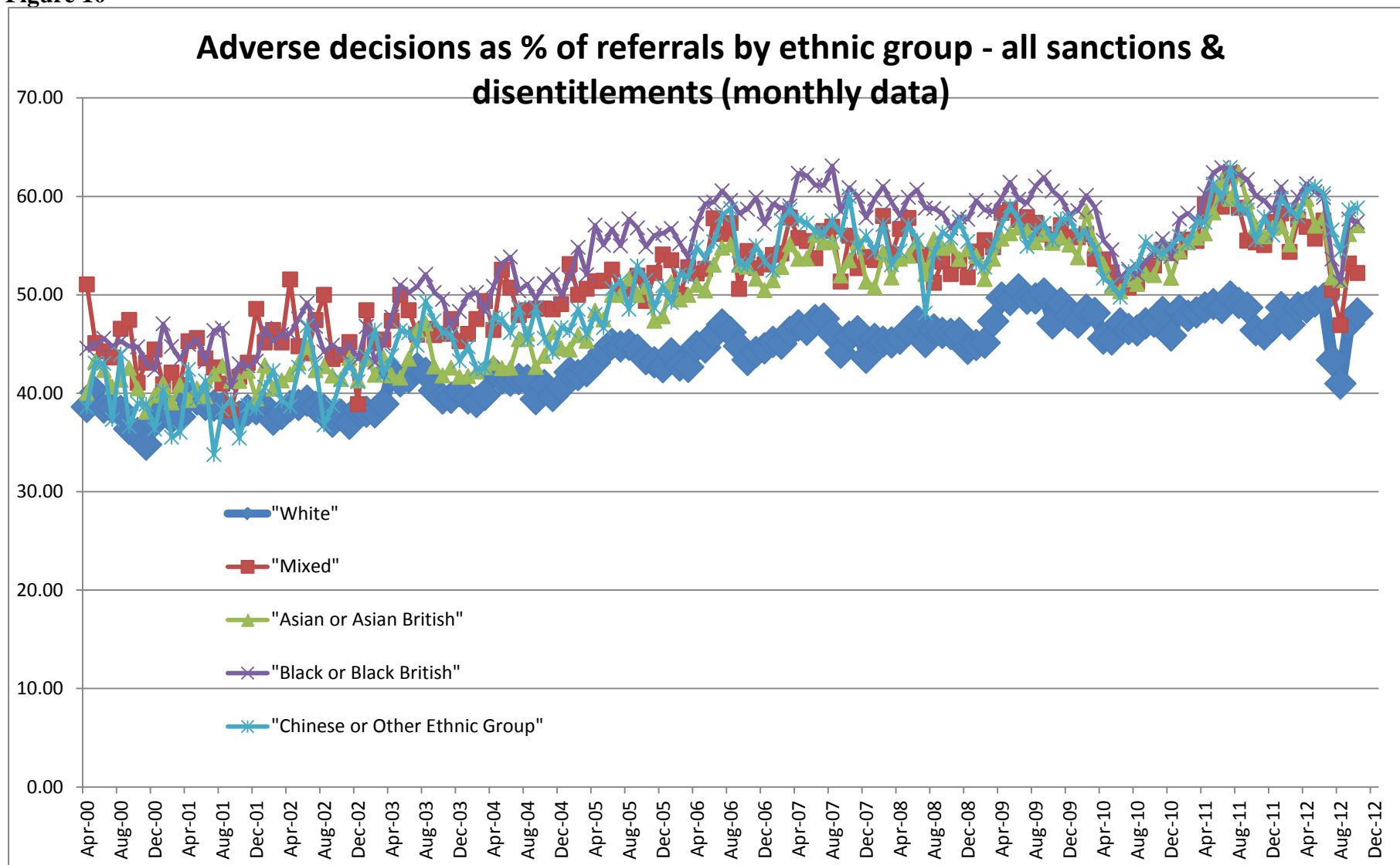


Figure 11

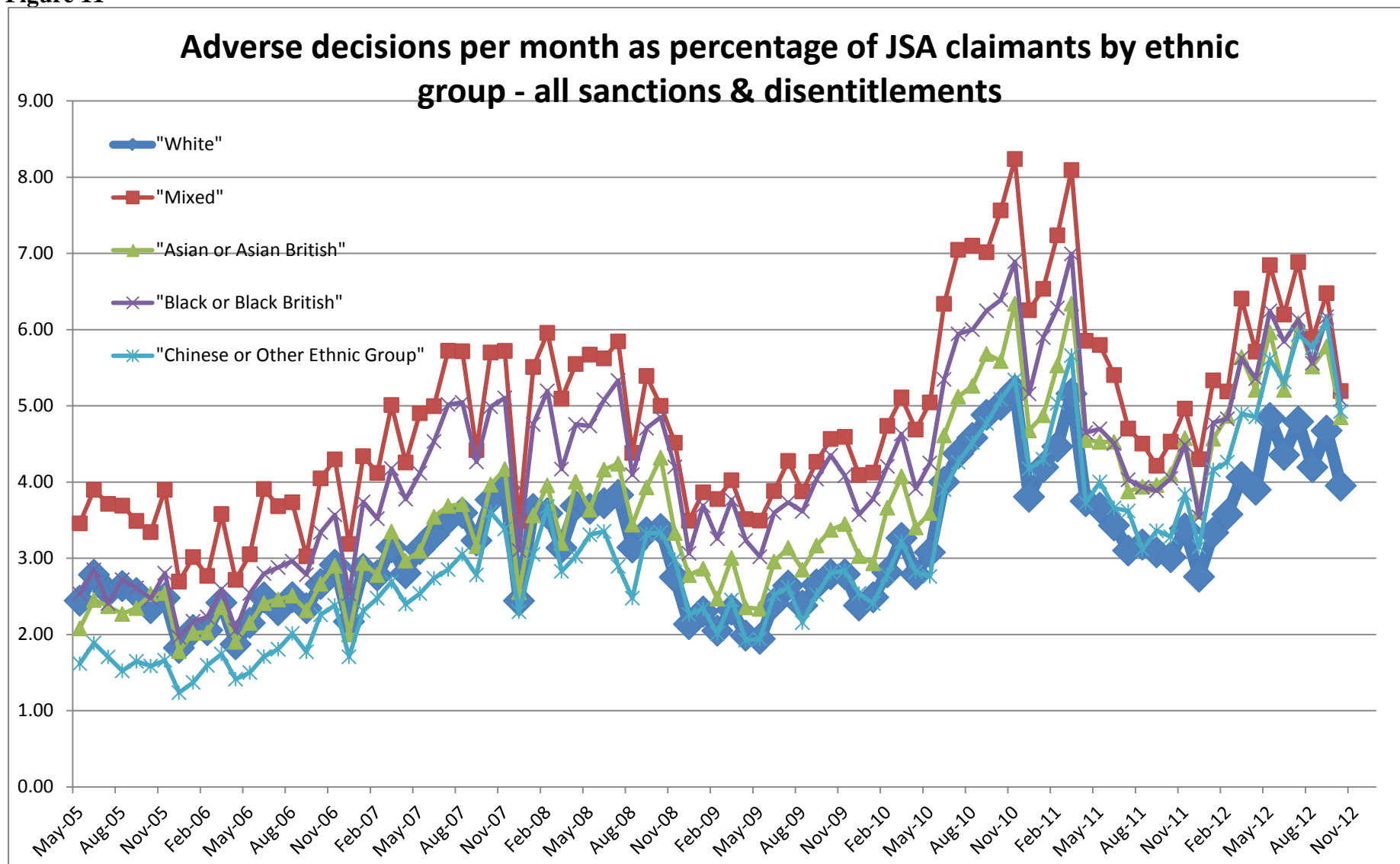
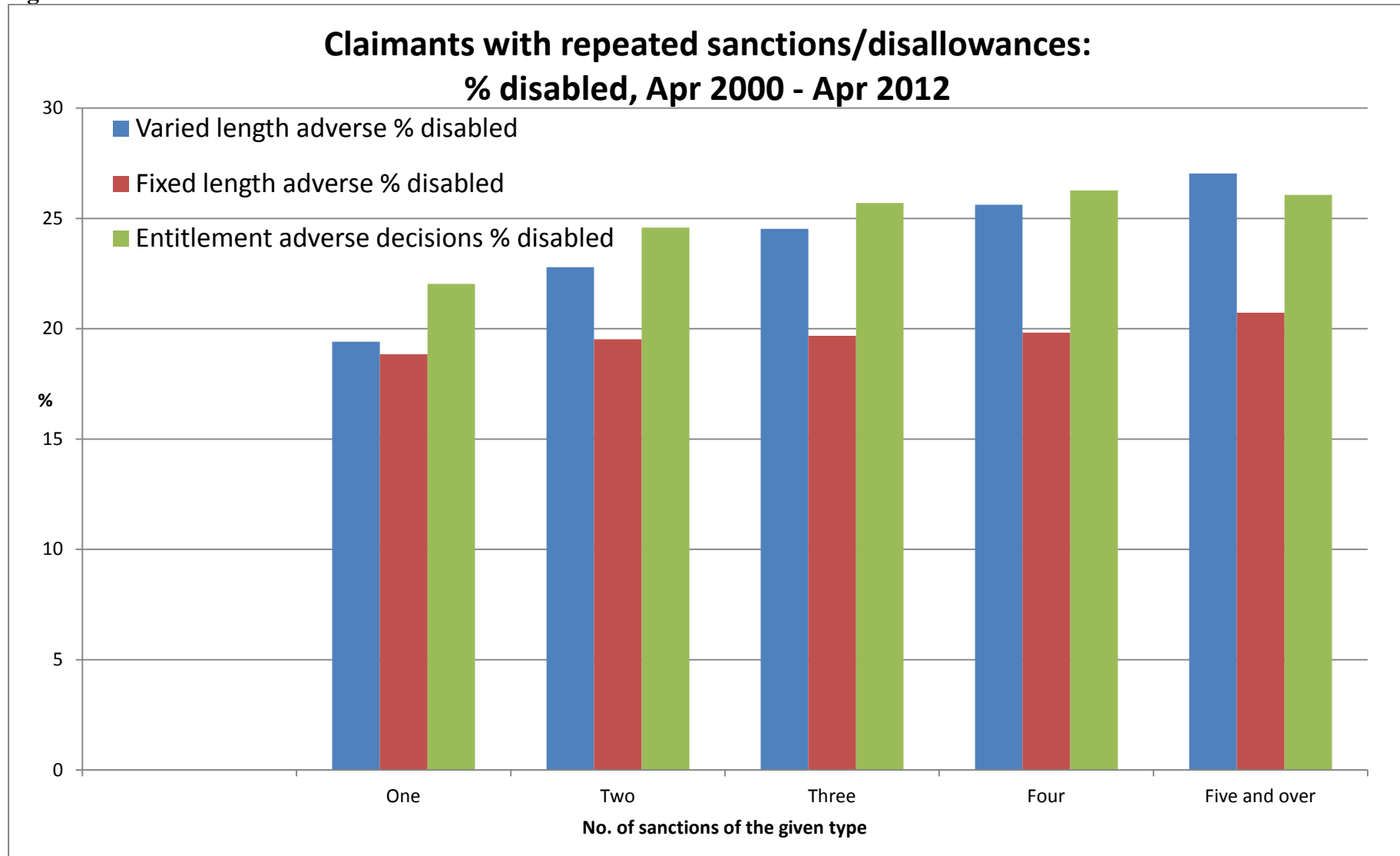


Figure 12



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<sup>1</sup> There were some small-scale uses of what would now be called ‘sanctions’, i.e. financial penalties aimed at making claimants do a particular thing, from 1930, although they were called ‘disqualifications’. The term ‘sanction’ was not used until much later.

<sup>2</sup> For instance, the Minister of State said on 19 March (col. 828) that ‘While the vast majority of jobseekers live up to their part of the contract, there are a *small minority* (emphasis added) who are reluctant to do everything they can reasonably be expected to do to get back into work.’

<sup>3</sup> DWP FoI Response 2012-4383, 21 December 2012

<sup>4</sup> The claimant unemployment rate is used in this chart simply because it fits better. The claimant rate, while much lower than the true ILO unemployment rate, is very highly correlated with it.

<sup>5</sup> [http://statistics.dwp.gov.uk/asd/news\\_and\\_announcements/2013/jsa\\_sanctions.pdf](http://statistics.dwp.gov.uk/asd/news_and_announcements/2013/jsa_sanctions.pdf)

<sup>6</sup> The percentage of male claimants refused UB because of voluntary leaving or misconduct fell from 6.1 in November 1974 to 0.3 in February 1982 (Department of Health & Social Security, *Unemployment Benefit Summary Statistics*, November 1983, p.3). Fenn (1980, p.251) concluded from his study of unemployment benefit disqualifications covering Great Britain in 1960 to 1976 that ‘employees appear to quit more often in periods of high demand for labour’. Also, the Ministry of Labour’s Annual Reports showed the number of disqualifications by Courts of Referees for voluntary leaving or misconduct more than doubling during the recovery from the Great Depression from a low of 99,053 in 1932 to 203,298 in 1938.

<sup>7</sup> Deacon (1976)

<sup>8</sup> Although ‘Actively seeking work’ is an entitlement condition, it has in effect been turned into a sanction issue because claimants are made to make and document arbitrarily large numbers of job applications. To be unemployed on the ILO definition it is necessary only to have taken *an* action to look for work in the last 4 weeks.

<sup>9</sup> DWP Press Release, 15 May 2013

<sup>10</sup> At the time of writing the *Guardian* spreadsheet was still available at <https://docs.google.com/spreadsheet/ccc?key=0AonYZs4MzIzbdGNkUEg4czNtdUlsWkJuWWtteGJqZmc&hl=en#gid=0>

<sup>11</sup> The DWP Tabtool gives ethnic group and disability status for those sanctioned/disallowed, but not for all JSA claimants. This information can be obtained for ethnic group from May 2005 onwards from NOMIS, but not for disability.

<sup>12</sup> Observers do not appear to have noticed that the Netherlands sanctions regime described by Abbring et al. (2005) was much milder than the UK regime, even before the changes of October 2012. Yet it was apparently ‘effective’ in the terms defined by those authors.

<sup>13</sup> Chartered Institute of Personnel and Development-Success Factors, *Labour Market Outlook*, Spring 2013, p.2. Bryson & Jacobs (1992) commented as follows (p.158): ‘It is sometimes regarded as self-evident that claimants’ requirement to seek out vacancies benefits employers in filling vacancies. This view was not supported by employers.....There was some irritation expressed at the number of jobcentre applications received from unsuitable candidates, one or two saying that they felt like they were running their own jobcentre’ and (p.199) ‘there were concerns that benefit penalties compounded employers’ difficulties in weeding out unsuitable candidates’. I have not found any more recent research on this point.

<sup>14</sup> Citizens Advice Bureau, *Conditionality and sanctions in the Welfare Reform Bill*, n.d., pp. 2-3 (on web, accessed 22/5/2013)

<sup>15</sup> Citizens Advice Bureau survey, reported in the *Glasgow Herald*, 25 March 2013. See also Citizens Advice Scotland (2012b)

<sup>16</sup> See also the case history in Saunders et al. (2001, p.38)

<sup>17</sup> This evidence has appeared particularly in the *Guardian* (search Google on ‘Guardian sanctions’) but also for instance in the *Glasgow Herald*, Stephen Naysmith, ‘Scots jobless “targeted with benefit penalties”, 29 March 2013, and very widely on the web in postings which are too numerous to list. See also Citizens Advice Scotland (2012a), p.3, (2012c) *passim* and (2013) p.6. I have also had many personal accounts given to me, usually at reliable second hand.

<sup>18</sup> Vincent (1998) found that ‘nearly all’ those sanctioned or disallowed thought it unfair.

<sup>19</sup> Bryson & Jacobs (1992), particularly pp. 81-87, 91, 104, 110-12.



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<sup>20</sup> Neil Couling, the DWP's Work Services Director, has recently drawn attention to the hostility created by sanctions (Couling 2013, para. 3.14): 'One unintended consequence of the publicity about these issues (i.e. sanctions 'league tables' etc.) has been to raise some additional health and safety questions in jobcentres. The applications of sanctions and conditionality already generates a significant number of incidents and there is a strong likelihood that this media attention and comment in Parliament will serve to exacerbate these risks'.

<sup>21</sup> The 'nudge unit' is officially known as the Behavioural Insights Team, overseen by the Cabinet Office.

<sup>22</sup> <http://blogs.cabinetoffice.gov.uk/behavioural-insights-team/2012/12/14/new-bit-trial-results-helping-people-back-into-work/>; <http://blogs.cabinetoffice.gov.uk/behavioural-insights-team/2013/04/08/bit-back-to-work-trial-covered-by-bbc-pm/> For Essex see Daniel Boffey, 'Writing exercises help jobseekers find work, claims government's nudge unit', *Observer*, 29 December 2012, <http://www.guardian.co.uk/politics/2012/dec/30/jobseekers-dole-nudge-unit-psychology>; Oliver Wright, 'Job seekers get a nudge in planning to find work', *Independent*, 8 March 2013, <http://www.independent.co.uk/news/uk/politics/job-seekers-get-a-nudge-in-planning-to-find-work-8527271.html>; Hannah Kuchler, 'Jobcentres try 'nudging' the workless', *Financial Times*, 20 March 2013, <http://www.ft.com/cms/s/0/4a5dbfee-8806-11e2-8e3c-00144feabdc0.html#axzz2TyE2P5I9>. For the North East see 'Mumbo-jumbo' personality tests for jobseekers criticised by Labour', BBC News, 30 April 2013, <http://www.bbc.co.uk/news/uk-politics-22356754>.