

10th TURI Conference

Changes in British strike law and their impact on industrial disputes

Berlin

17 May 2018

Lionel Fulton

Labour Research Department



Labour Research Department

Contents of presentation

- Context of British strike law
- Changes introduced by Conservative government in 2016
- Impact of these changes

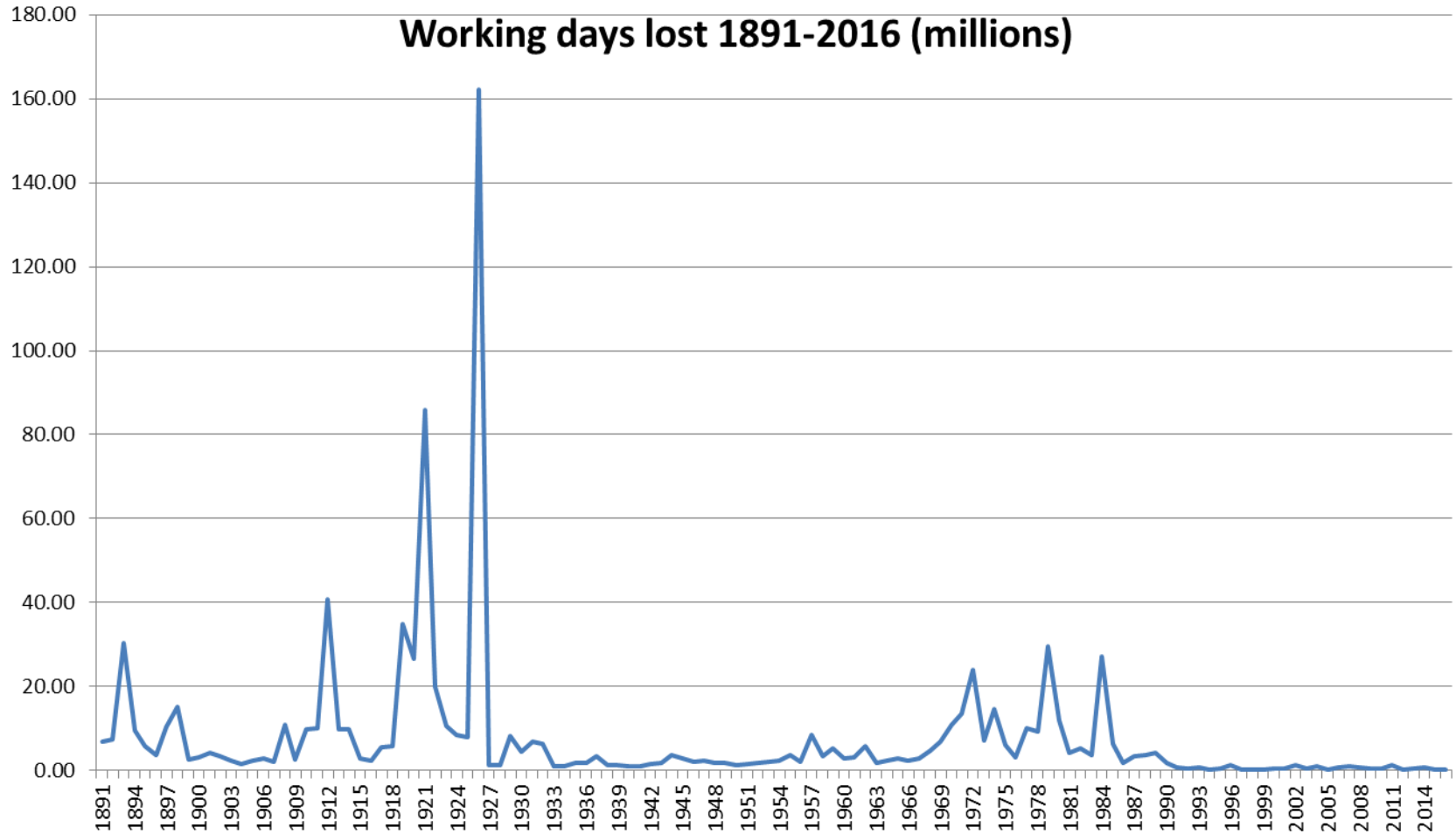


The basis of British strike law

- British workers have never had a right to strike
 - Striking is a breach of contract
 - Taff Vale Judgment (1901) made unions liable for loss of profits caused by strike
 - Reversed by Trade Disputes Act (1906)
- This gave workers and unions “immunity” from dismissal and civil claims where action is
 - “in contemplation or furtherance of a trade dispute”



Despite this still have strikes



Changes introduced by Thatcher 1

- Step-by-step limitations on ability to strike
- Immunities were removed from
 - Action to enforce union membership (closed shop)
 - Action in protest at dismissal following earlier unofficial action
 - Secondary action (sympathy strikes)
 - Action to force an employer to impose a recognition agreement (agreement to negotiate with the unions) on suppliers or customers



Changes introduced by Thatcher 2

- Immunities were removed from otherwise legal strike action unless **all** of the following conditions were met covering
 - Balloting which
 - must be postal – sent to the home address
 - must state that “if you take part in a strike ... you may be in breach of your contract of employment”
 - must only be sent to those being asked to take part in action
 - must have an independent scrutineer
 - Time limits
 - Action must begin within four weeks of the ballot
 - Employers must be given at least 7 days notice of the ballot and at least 7 days notice of the action, indicating the type of workers to be called out



Changes introduced by Thatcher 3

- If workers take action without union approval it is “unofficial” action
 - Union faces threat of civil damages unless it “repudiates” action
- Main mechanism used by employers against “unlawful strikes” is injunction
 - to stop the strike

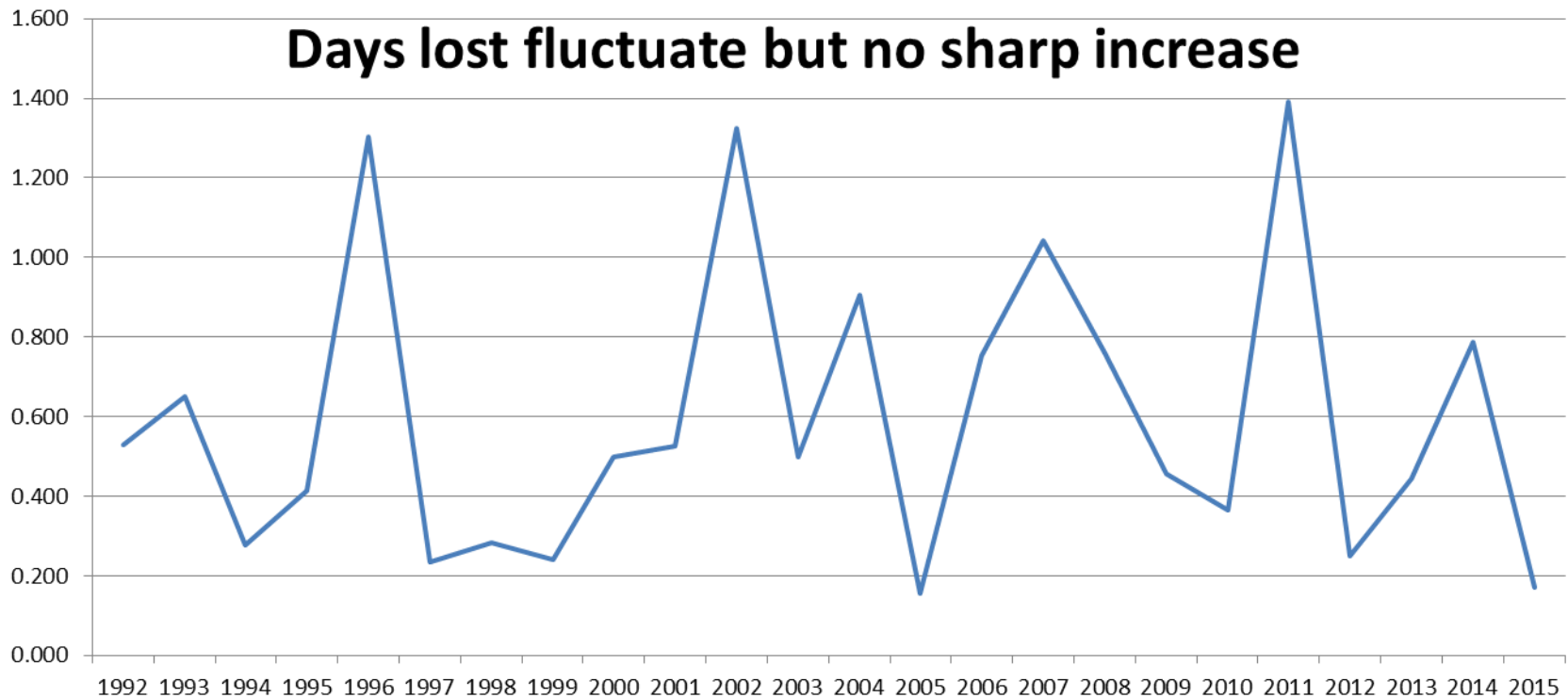


Continuing protections

- In a lawful dispute (where all conditions have been met) the employer cannot
 - Dismiss strikers during the first 12 weeks of a strike
 - After this they can be dismissed but all must be dismissed (employer cannot pick and choose)
 - Use of agency workers to replace strikers
- But where the strike is unofficial employer can choose which employees to dismiss



All changes in place by 1992 then no change for 24 years



But Conservative pressure for change

- During period of Conservative-Liberal Democrat coalition government (2010-15) increasing calls for more restrictions
 - Boris Johnson (then Mayor of London) and facing strikes on underground called on government to:
 - “consider a law insisting on a minimum 50% participation in a strike ballot“ (2010)
 - “What we need is legislation so that when there is a ballot for strike action... the number of people participating in the ballot, of the relevant workforce, has to exceed 50% of that relevant workforce before you can have a strike“ (2014)
- New law on strikes included in Conservative manifesto



Trade Union Act 2016

key changes

- At least 50% of those entitled to vote must participate in ballot and a majority of those must vote in favour
- In “important public services” at least 50% of those entitled to vote must participate and at least 40% of those entitled to vote, and a majority of those voting, must vote in favour
- Ballot valid only for 6 months (previously no limit)
- Unions must give 14 days notice (previously 7)
- Union must appoint a named “picket supervisor”
 - Individuals picketing where there is no “picket supervisor” lose protection and can be dismissed
- Unions must report annually on union action to Certification Officer



Important public services where 40% threshold applies

- Health services
 - Hospitals and ambulances
- Education of under-17s
- Transport services
 - Bus, rail, underground, air traffic control and ports
- Border security
 - Customs, immigration
- Strikes already forbidden for:
 - Members of armed forces, police, prison officers

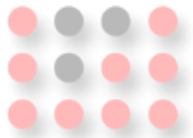
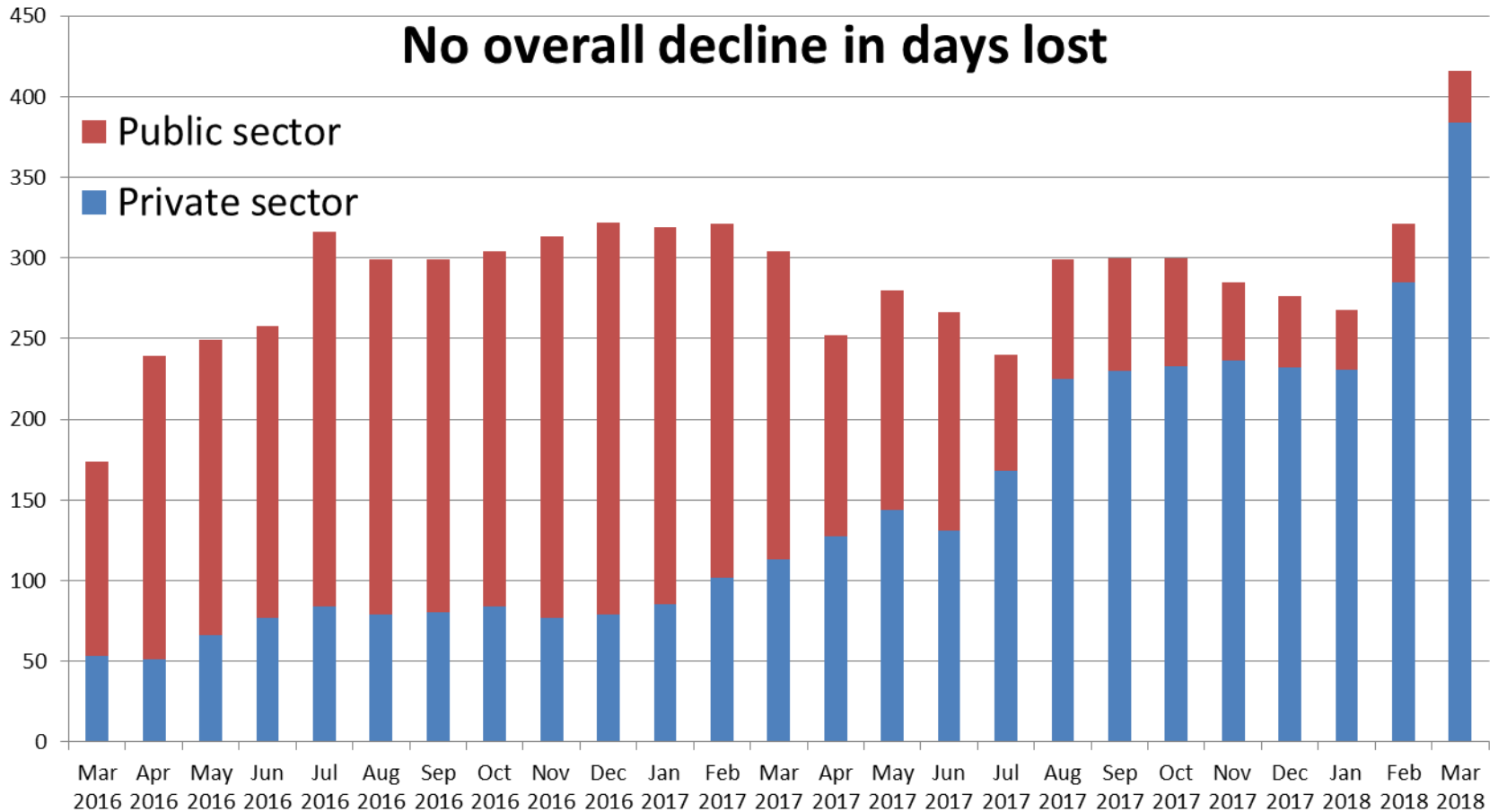


Expected implications: by government

- New balloting rules will make it harder to get majorities for strikes and there will be fewer strikes
 - especially in important public services
- Six month limit on validity of ballot will limit union action
- Individuals will be less willing to picket



Experience since March 2017



Specific examples

- Universities dispute on pensions March – April 2018
 - 68 workplaces were separately balloted
 - 61 had a turnout above 50% (average was 58.3%)
 - All voted in favour of action (average was 88.1%)
 - Led to 14 days of strikes and an improved offer
- Railways Virgin West Coast (RMT) November 2017
 - 1,793 balloted
 - Turnout 81.6%
 - Voting in favour 91.2%



Final thoughts

- Still too early to judge overall impact of legislation
- BUT
 - Clear that unions are able to win votes if they put in effort
 - Likely that 6 month limit on ballot validity means action is concentrated at start of period
 - Not clear what impact of new rules on picketing will be
 - UK still has restrictive strike laws AND interference in union affairs



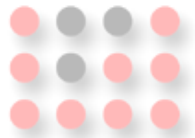
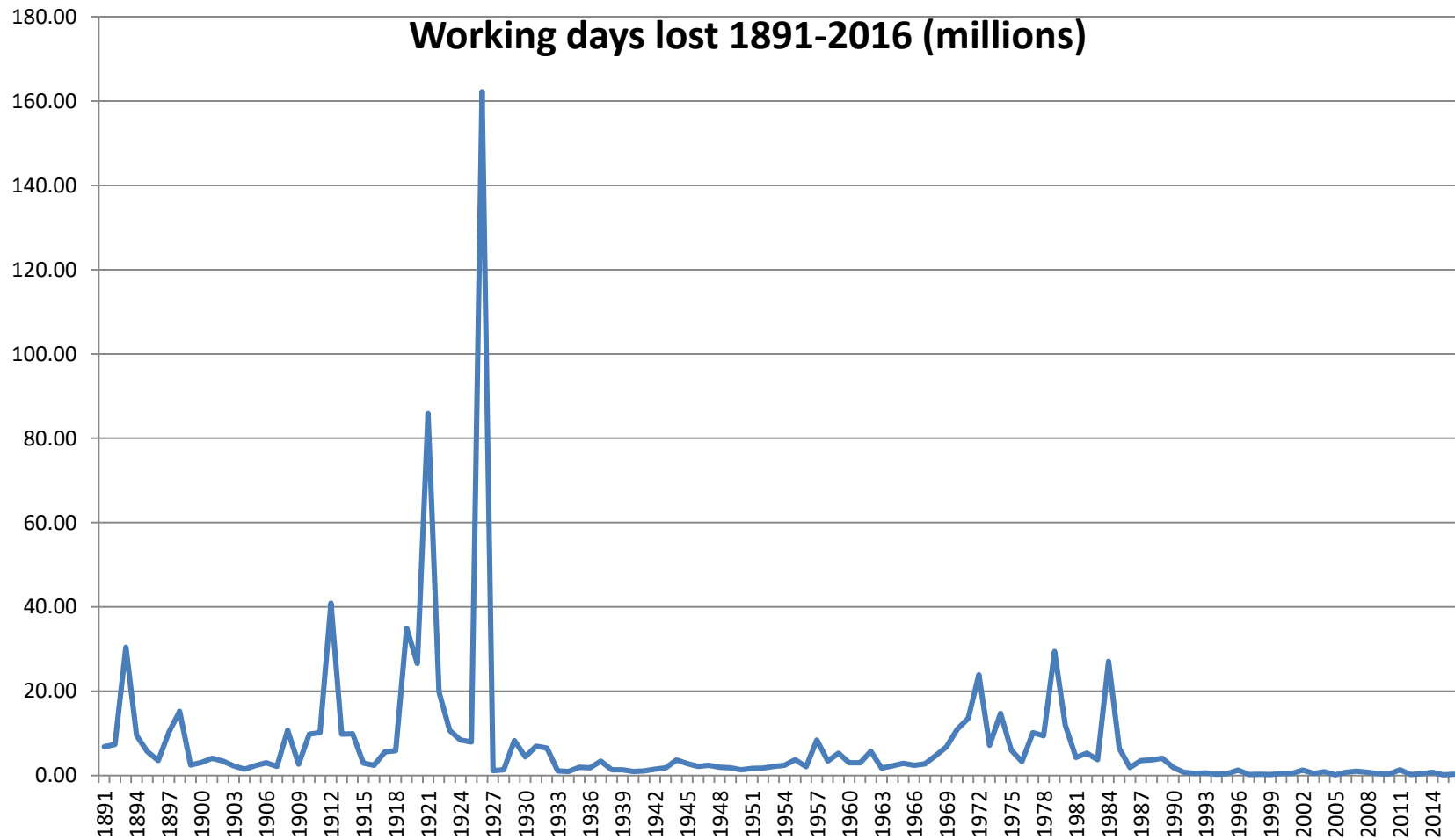
Thank you for your attention!

- Questions and comments ...

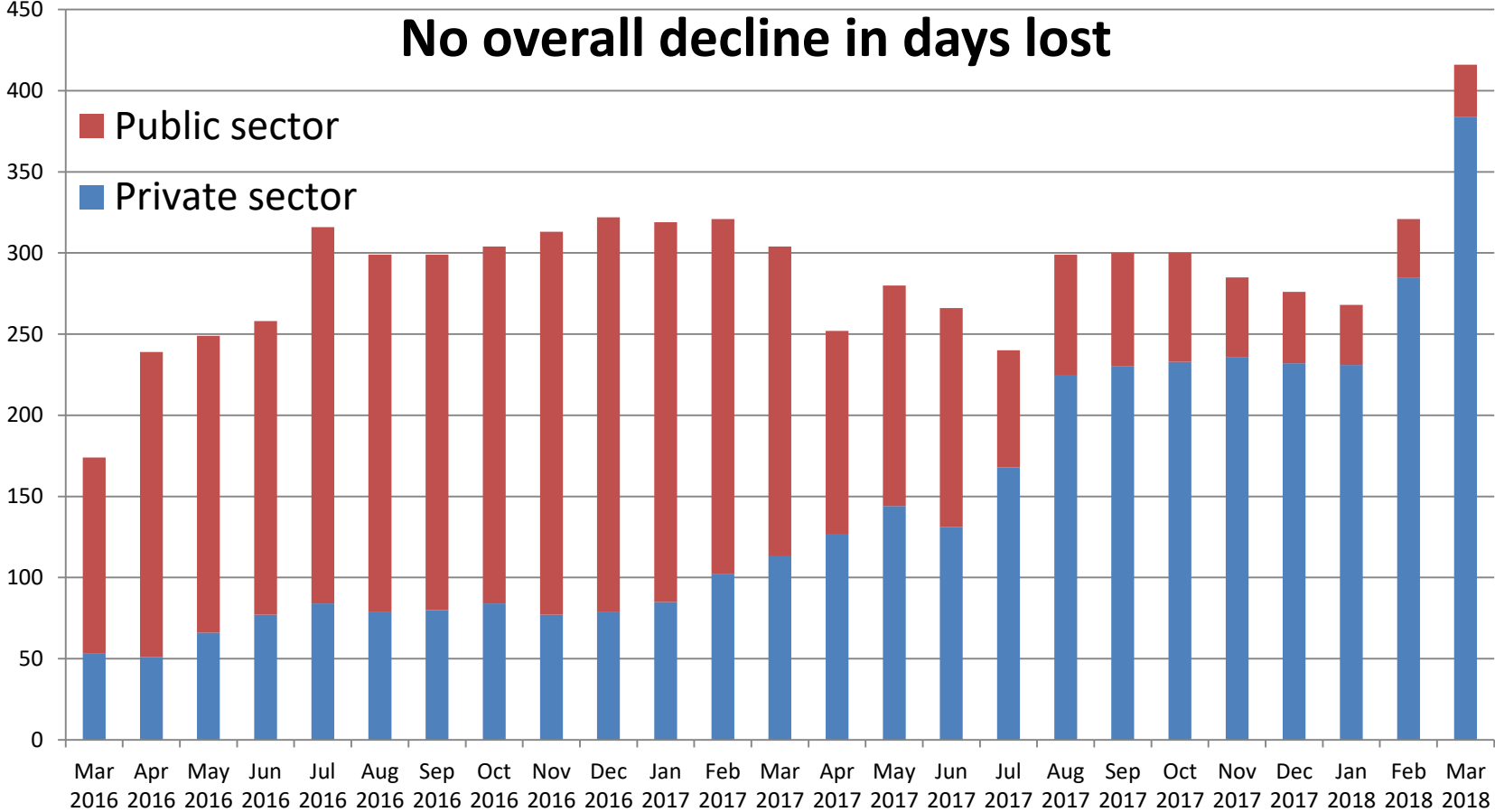


Labour Research Department

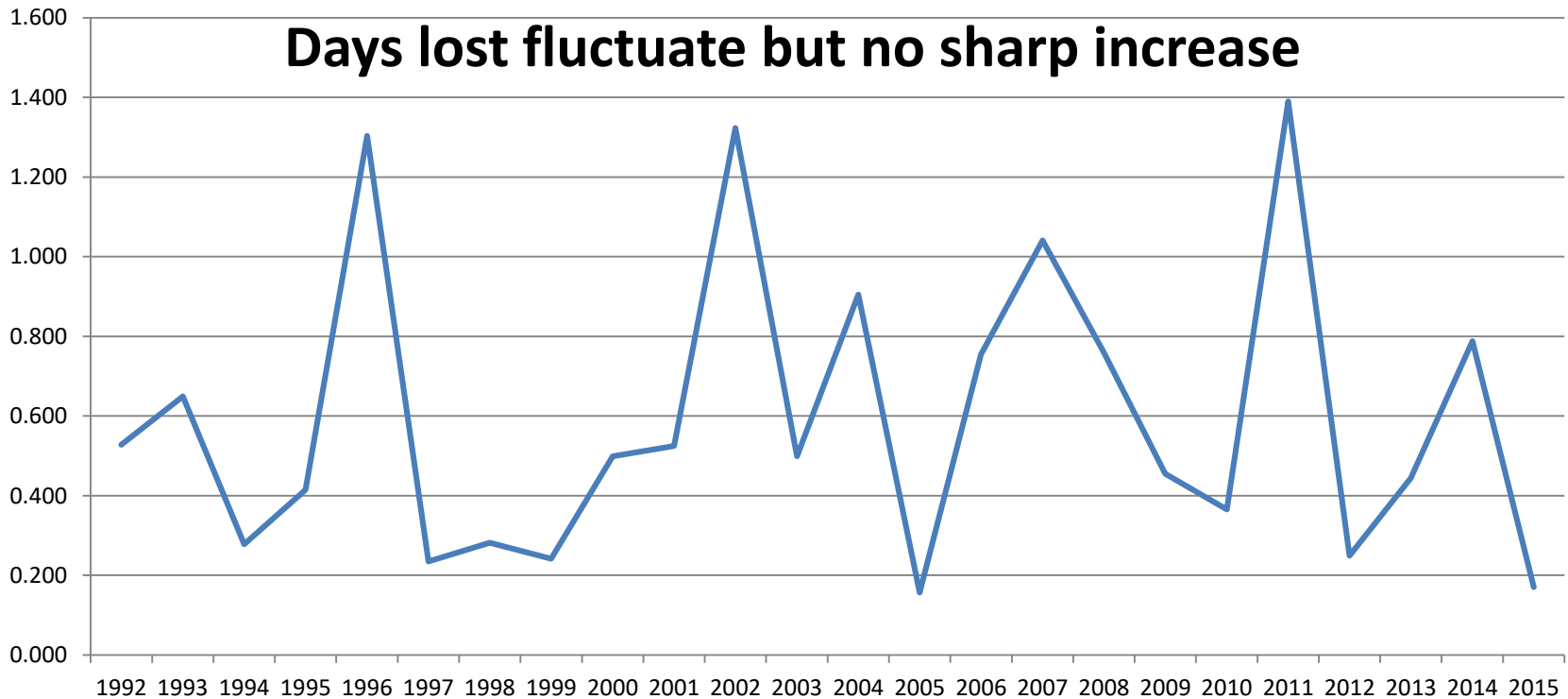
Despite this, strikes have taken place



Experience so far: since March 2017



All changes in place by 1992 then no change for next 24 years



All changes in place by 1992 then no change for next 24 years

