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To: Adult Social Care and Health Cabinet Committee 10 July 2015

Subject: **ADULT SOCIAL CARE ANNUAL COMPLAINTS REPORT (2014-2015)**

Classification: Unrestricted

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Summary: This report provides Members with information about the operation of the Adult Social Care complaints and representations procedure between 1 April 2014 and 31 March 2015.

Recommendation Members are asked to NOTE and COMMENT on the contents of this report.

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## **Introduction**

1 (1) Local Authorities have a statutory duty to have in place a complaints and representations procedure for Adult Social Care services. Furthermore, each local authority that has a responsibility to provide social services is required to publish an annual report relating to the operation of its complaints and representations procedure.

(2) This report provides an overview of the operation of the complaints procedure for Adult Social Care services. It includes summary data on complaints and enquiries received during the year. It also provides Members with examples of the lessons learned from complaints which are used to inform and improve future service delivery.

## **Policy Context and Procedures.**

2 (1) The NHS and Community Care Act 1990 placed statutory requirements on local authority social service departments to have a complaints procedure in place. The legislation and associated statutory guidance was prescriptive about how the procedures should operate in practice.

(2) For Adult Social Care there was a significant change to the complaints procedure in 2009 with the introduction of Regulations with the objective of delivering a consistent approach to complaints handling for both Health and Social Care.

(3) The key principles of the procedure are **Listening** – establishing the facts and the required outcome; **Responding** – investigate and make a reasoned decision based on the facts/information and **Improving** – using complaints data to improve services and influence/inform the commissioning and business planning process.

(4) Wherever possible complaints that involve health and social care are dealt with via a single co-ordinated response. To facilitate this, a joint protocol was developed by the Complaints Managers in Kent and Medway.

(5) For Adult Social Care the complaint response needs to be proportionate to the issues raised. The only timescale in the process relates to the acknowledgment of the complaint which is within three days from receipt. Thereafter the response time is agreed with the complainant and reflects the circumstances and complexity of the complaint. When appropriate an independent investigator will complete an investigation into the complaint.

### **Total Representations received by Adult Social Care.**

3 (1) Appendix one contains information about the number and type of complaints received.

(2) The figures show an increase in the number of complaints and enquiries received in 2014/15 compared with previous years (538 complaints in 2014/15 compared with 399 in 2013/14 and 407 enquiries in 2014/15 compared with 340 the previous year). This reflects the increased demand and pressures on services during a time of transformation and change and a time of financial constraint.

(3) The number of statutory complaints received 538, is relatively small when put in the context that there were 28,617 open adult social care cases at the start of 2014-15 and a further 23,426 referrals were received during the course of the year.

(4) In 2014/15, 760 compliments (or merits) were logged. The compliments provide useful feedback where people have had written to Adult Social Care with positive comments about their experience of using the service.

### **Performance against timeframes**

4 (1) The average response time for statutory complaints set within a complaint plan timeframe of 20 working days is 19 working days. Complex cases that require either an off-line/external investigation or a joint response with health colleagues are identified at the commencement of the complaint and a longer timeframe is negotiated.

(2) 67% of complaints were responded to within the 20 day timescale agreed with the complainant and 86% of complaints were acknowledged within the statutory timescale of three working days.

## **Themes identified arising from complaints.**

5 (1) It has been a challenging year in terms of the number of complaints and enquiries received. The Transformation agenda, budgetary pressures and significant organisational change have led to pressures on services. However, the increase in complaints is a general increase rather than attributable to any one factor. Changes such as the tender for home care services and the introduction of promoting independence reviews have taken place and have led to some complaints but not as many as might have been expected.

(2) Communication is a theme that crops up in many complaints. This can take many forms such as problems being able to make telephone contact with a member of staff or people not being kept informed or not happy with the way information was communicated. One example was where a person was being discharged from a unit but the case manager was on leave and other staff were not aware that the change in circumstances was taking place. Another example is where a safeguarding investigation was completed but the family felt they hadn't been informed of the outcome.

(3) Complaints are also received as a result of disputed decisions. Examples include where people consider they require more support than has been agreed or where the support has been decreased following a review of needs or where someone is unhappy about the level of charging.

(4) Delay was a factor in approximately 98 complaints. Examples include delays in adaptations being completed and delays in services being arranged.

## **The Outcome of Complaints**

6 (1) The Local Authority is required to report on the number of complaints received that are considered to be "well-founded", in Kent these are logged as "upheld complaints". This is not always clear as the nature and contents of complaints can vary considerably and many responses provide an explanation where there might be a misunderstanding or a lack of clarity. Nevertheless, 206 complaints were upheld; 133 were partially upheld and 170 were not upheld.

## **Learning the Lessons**

7 (1) Receiving a complaint provides an opportunity to resolve an issue where the service might not have been to the standard required or expected. In addition complaints, along with other customer feedback provides valuable insights that can be used to improve service performance.

(2) Reports on complaint management issues are produced for the Divisional Management Teams. Also, the Quality and Good Practice Group provides a forum to reflect on issues arising from complaints and an opportunity to identify lessons.

Operational teams identify a representative for the group who then take a lead role within their teams for good practice and sharing lessons.

(3) Some of the lessons/issues arising in 2014/15 and discussed at the Quality and Practice Group included:

- The production of a booklet entitled “Your Care Bill Explained”. This was produced as a consequence of a number of complaints and enquiries received from the public about the difficulty in understanding the information contained in the invoices people received about their charges.
- It was evident from some complaints that relatives/family members sometimes felt they were not communicated with regarding decisions or changes in circumstances. (Although the client’s right to confidentiality also has to be recognised). There were a number of complaints relating to safeguarding where families did not feel they were kept sufficiently informed. The Making Safeguarding Personal initiative has helped to address this.
- One complaint highlighted the need to ensure that all assessed eligible care needs should be taken into account when reviewing a person’s needs so that the care package is not reduced and needs are not left unmet.
- Any delays in the provision of support should be addressed where a need has been identified and the Support Plan is agreed. This includes where a Direct Payment has been agreed but there is a delay in the support being arranged.
- Complaints provided a reminder that good record keeping should be maintained, particularly where decisions are made or a significant change takes place for the service user.

(4) Lessons are also learned from the investigation of complaints. Following independent or “off line” investigations, there are adjudication meetings where actions are agreed and the outcomes and any lessons from the complaints are shared more widely as appropriate.

(5) The outcomes from complaints can also lead to training or specific actions both for individuals or teams.

### **Off-line and external investigations**

8 (1) There were seven off line investigations carried out during the year. The responses to complaints need to be proportionate and an external investigator is

usually appointed when the complaint issues are particularly complex or where communication has broken down or confidence in the organisation has been lost. In these cases, the complainant has felt their complaints have been taken seriously and an independent view has been offered.

## **Financial**

9 (1) A total of £104,367 has been paid out to complainants (compared to £98,966 in 2013/14); this figure includes financial adjustments and settlements. A financial adjustment is made when an error has occurred with the charging process and it is then resolved as part of the complaint remedy. A financial settlement is when an amount of money is offered to provide redress or as a gesture of goodwill to recognise the anxiety and time and trouble to pursue a complaint.

## **Complaints via the Local Government Ombudsman (LGO)**

10 (1) There were a total of 38 new referrals about KCC Adult Social Care made to the LGO during the year. Additional cases were carried forward from the previous year and settled during the reporting year (these are not included in the figures). This is a slight increase from the previous year when 32 new referrals were made.

(2) Of those complaints, where a final decision was received the outcome was:-

- 4 cases where the LGO closed the case after initial enquires and there was no further action.
- 2 cases closed after initial enquiries and the complaint was outside the LGO's jurisdiction.
- 7 cases that were not upheld.
- 8 cases where the complaint was considered premature.
- 2 cases where there was maladministration but no injustice
- 6 cases where there was maladministration and injustice.
- 9 cases which are currently with the LGO

(3) A summary of the cases where the Local Government Ombudsman found fault with injustice, is provided in the appendices.

## **Complaints operations**

11 (1) The regulations require the complaints procedures to be publicised. The, "Have your Say" complaints leaflet is made available in hard copy and information is provided on the KCC website. An easy-read version of the complaints booklet is also available.

(2) In 2014, changes were made to the Directorate's "Respond" complaints database to ensure compatibility to other software used in KCC. The system continues

to provide an invaluable resource to log complaints and enquiries, to manage the workflow and to produce management reports.

(3) The complaints team has delivered training events for managers. The training has covered the complaints processes, investigating complaints and learning the lessons from complaints.

(4) The complaints team continues to work closely with the Patient Experience Team in the Kent and Medway Partnership Trust which handles complaints about mental health services. Also the Adult Social Care team is proactive in working with health partners to facilitate joint working and joint responses to complaints that have a health and social care element.

(5) During 2014 the complaints process was reviewed to benchmark it against the LGO Good Practice Standards and to ensure the processes are streamlined. The review also included a questionnaire of a sample of 40 complainants. The feedback was relatively positive given that the sample group were people who had expressed dissatisfaction with the wider service.

#### **Care Act 2014**

12 (1) The Department of Health has conducted a consultation regarding a proposal for an Appeals Process as part of the Care Act. If the proposal is accepted it would be for implementation in April 2016. There are some reservations about the proposals. At this stage it is not clear how it would sit alongside the existing statutory complaints procedure and how it would fit with inter-agency complaints that are cross-cutting. The proposed appeals process seems more bureaucratic and potentially more costly to the public purse than the current arrangements (albeit that the investigator costs would be met by the DH).

(2) As part of the April 2015 Care Act changes, there is an emphasis on advocacy and the right for individuals who cannot take up issues themselves, to make a formal representation through an advocate.

#### **Special Educational Needs and Disability Tribunals.**

13 (1) The Children and Families Act 2014 introduced reforms to Special Educational Needs and Disability Services (SEND). One of the reforms was to introduce Education, Health and Care Assessments and Plans to replace SEN statements. In March 2015 the Department for Education produced Regulations to enable pilot areas to have Tribunals which take a wider view to include the health and social care elements of the plans. Kent is one of the pilot areas for the Tribunals

(2) The SEND reforms cover the children and young people with special educational needs and disability in the 0 to 25 age group. Potentially therefore the Tribunals could consider the care element of someone's Education, Health and Care Plan. Adult Social Care is working with colleagues in SEN and Children's Services on the plans for the Tribunals and the protocols for joint working in cases going to Tribunal.

## Report Conclusion

14 (1) In 2014/15, the Directorate continued to operate a robust and effective complaint's procedure to meet its obligations under the statutory regulations. The complaints team has logged, administered and responded to complaints, enquiries and compliments.

(2) The emphasis in complaints management is on bringing about a resolution and putting things right for the individual if the service has not been to the standard required. It is also about learning the lessons from complaints to prevent similar complaints from arising again. Complaints are taken seriously by the management team who receive regular reports as well as taking an active role in complaints resolution.

(3) Significant changes are taking place in adult social care including the transformation programme, greater integration with health, the realignment of services and the tendering for home care and residential services. There are also significant budget pressures on services. There has been an increase in the number of complaints and enquiries received, nevertheless, managers continue to focus on delivering a high standard of service and dealing effectively with complaints is part of this.

(4) It is expected that there will be changes to the adult social care complaints process as a consequence of the Care Act (although the introduction of an appeal process may not occur until 2016). Planning is taking place to ensure conformity and compliance with the regulations when these are issued.

## Recommendations

15. (1) Members are asked to NOTE and COMMENT on the contents of this report.

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*Background documents:* None

## Appendix One

### Complaints and Enquiries received 1/4/14-31/3/15

Number received	
Statutory Complaint	538
Enquiry	407
Compliments	760
Safeguarding	36
Total	1741

Comparison with previous years					
	2010-11	2011-12	2012-13	2013-14	2014-15
Complaints	459	425	417	399	538
Enquiries	266	295	296	340	407
Compliments	598	575	744	816	760
Total	1323	1295	1457	1555	1705

Time scales for responding to complaints and enquiries				
	Total done	Average Time	Done within Standard	Percentage done within standard.
3 Day Acknowledgement	538	1	464	86.2%
20 Day resolution	468	19	314	67.09%
3 Day Enquiry acknowledgement	407	1	372	91.4%
Enquiry Response	394	16	255	64.7%



<b>Complaints Outcomes</b>		
Meeting offered	5	0.9%
Not upheld	170	31.9%
Partially upheld	133	24.9%
Upheld	206	38.5%
Withdrawn	17	3.2%
Other agency	3	0.6%
Total	534	

<b>Subject of Complaint.</b>		
Subject	Complaints	Enquiry
Behaviour	113	34
Care Act	0	1
Change of service	22	20
Charging dispute	45	9
Claim for compensation	9	0
Closure	1	8
Communication	202	65
Data Protection	0	0
Delay	98	61
Disputed Decision	185	75
Eligibility Not Met	7	2
Equality Issue	2	0
Funding (Organisations)	0	3
Information request	24	90
Lack of cover for absence	12	4
Quality of Care	69	31
Request for service	34	85
Safeguarding process	4	2
Service not meeting needs	10	14
Service reduced	18	5
Total	855	509

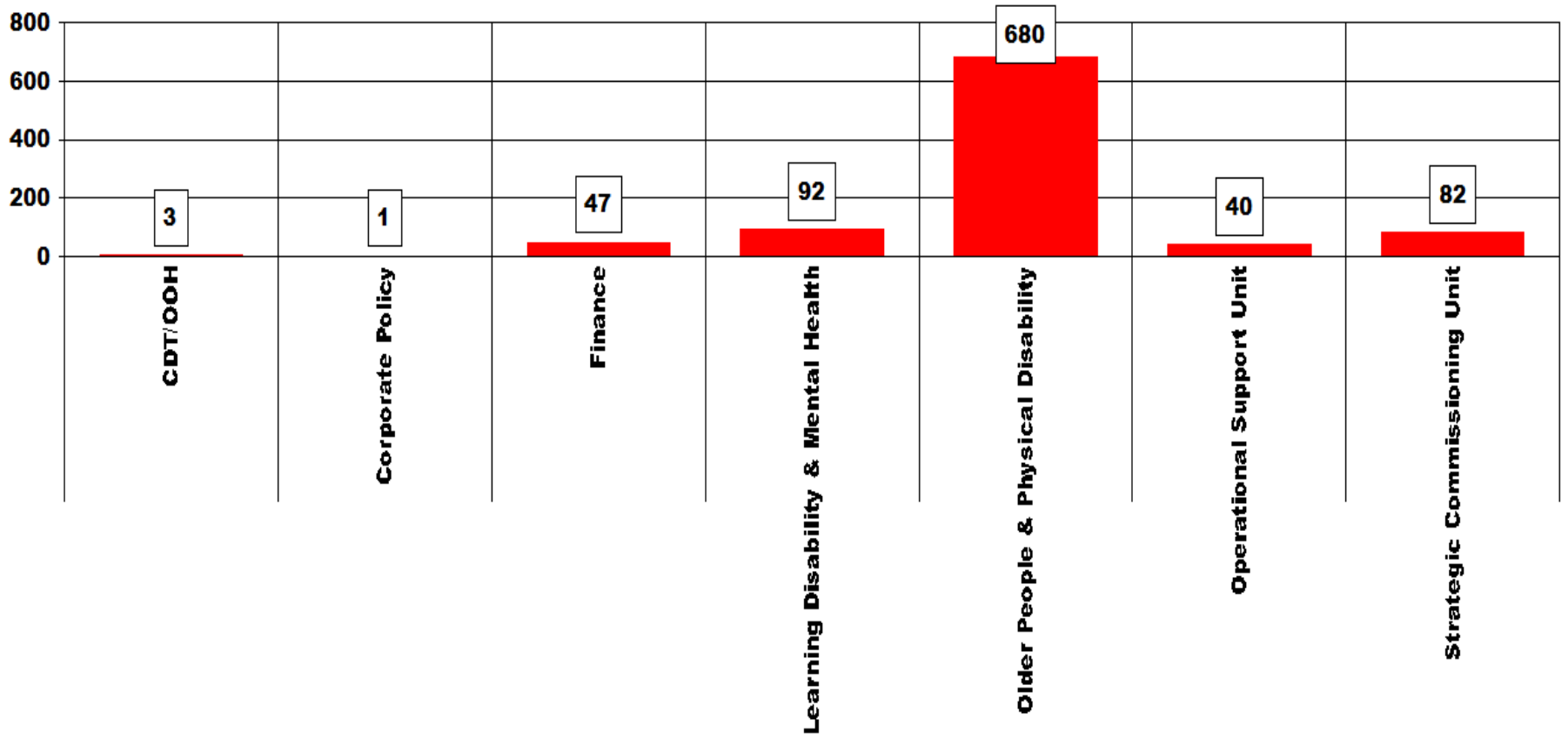
(Complaints and enquiries can include one or more subjects).

### 38 referrals made to LGO 1/4/14 – 31/3/15

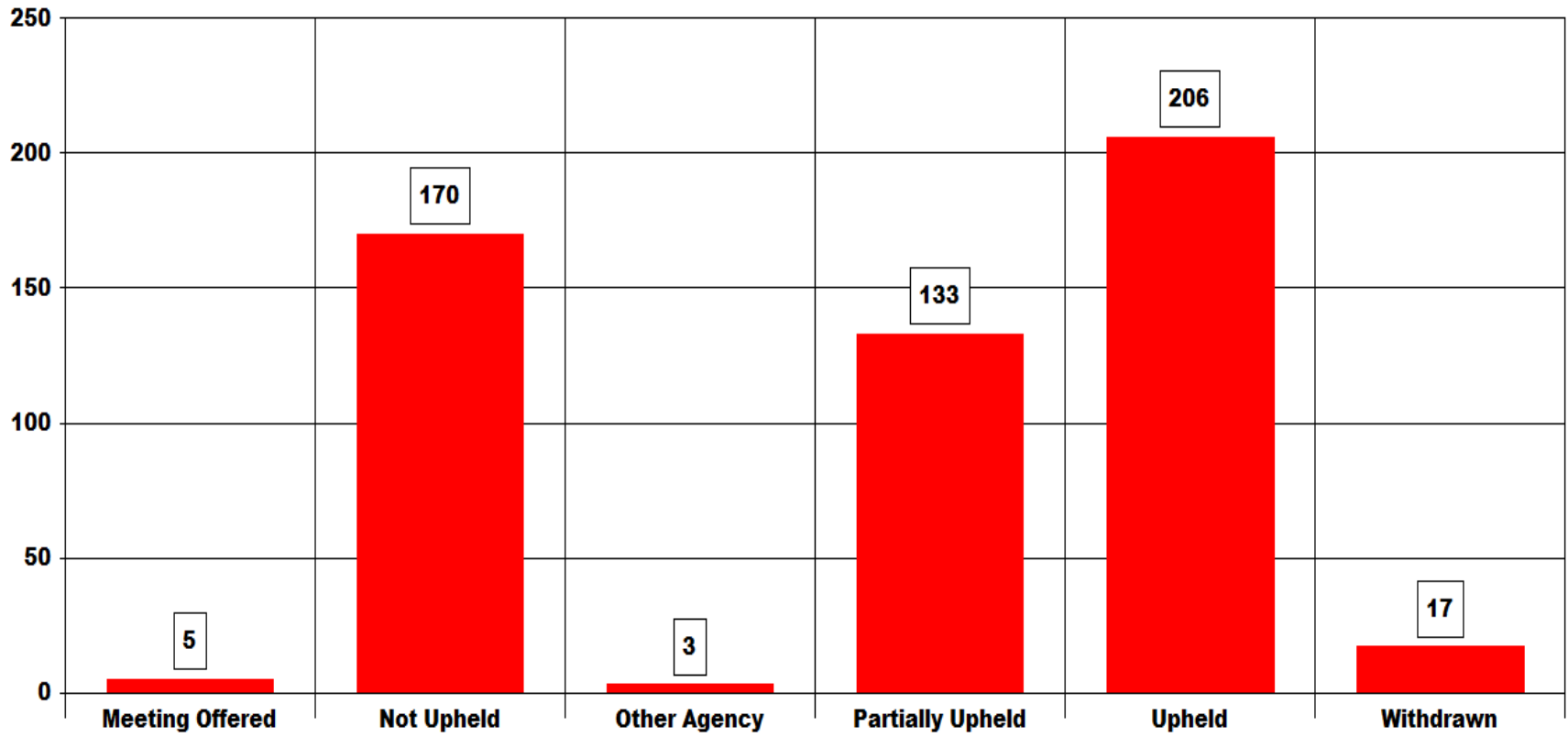
<b>LGO outcomes for Adult Social Care complaints</b>	
Closed after initial enquiries no further action	4
Closed after initial enquiries out of jurisdiction	2
Not upheld – no maladministration	7
Premature Complaint	8
Upheld Maladministration and injustice	6
Upheld Maladministration no injustice	2
Awaiting a decision	9
Total	38

<b>Service</b>	<b>Complaint</b>	<b>Enquiry</b>
Access to services	15	19
ARMS/Central Duty Team	1	10
Assessment	49	43
Autistic Spectrum Condition	2	0
Benefits Team	0	1
Best Interests Assessments/MCA	6	5
Blue Badges	6	15
Carers Assessment	7	2
Case/care management	123	38
CFAO	3	2
Charging	76	18
Continuing Health Care	4	7
Debt Recovery	5	0
Direct Payments	43	12
Eligibility	5	9
Equipment and Adaptations	26	30
External Providers	94	74
Financial Assessment	32	19
Hospital Discharge	11	11
Housing	4	9
In House Day Care	6	7
In House Residential	6	2
Information, Advice ,Guidance	5	22
Integrated Care Centre	14	2
Kent Enablement at Home	9	4
Payments (to providers)	8	4
Policy	2	3
Respite Care	9	9
Review	5	4
Safeguarding	15	12
Central Purchasing Team (DPS)	4	0
Sensory/KAB/Hi Kent	2	0
Supported Living	5	5
Supporting People	0	4
Telecare	4	3
Tendering	34	27
Transition	5	3
Transport	5	0
<b>Total</b>	<b>650</b>	<b>435</b>

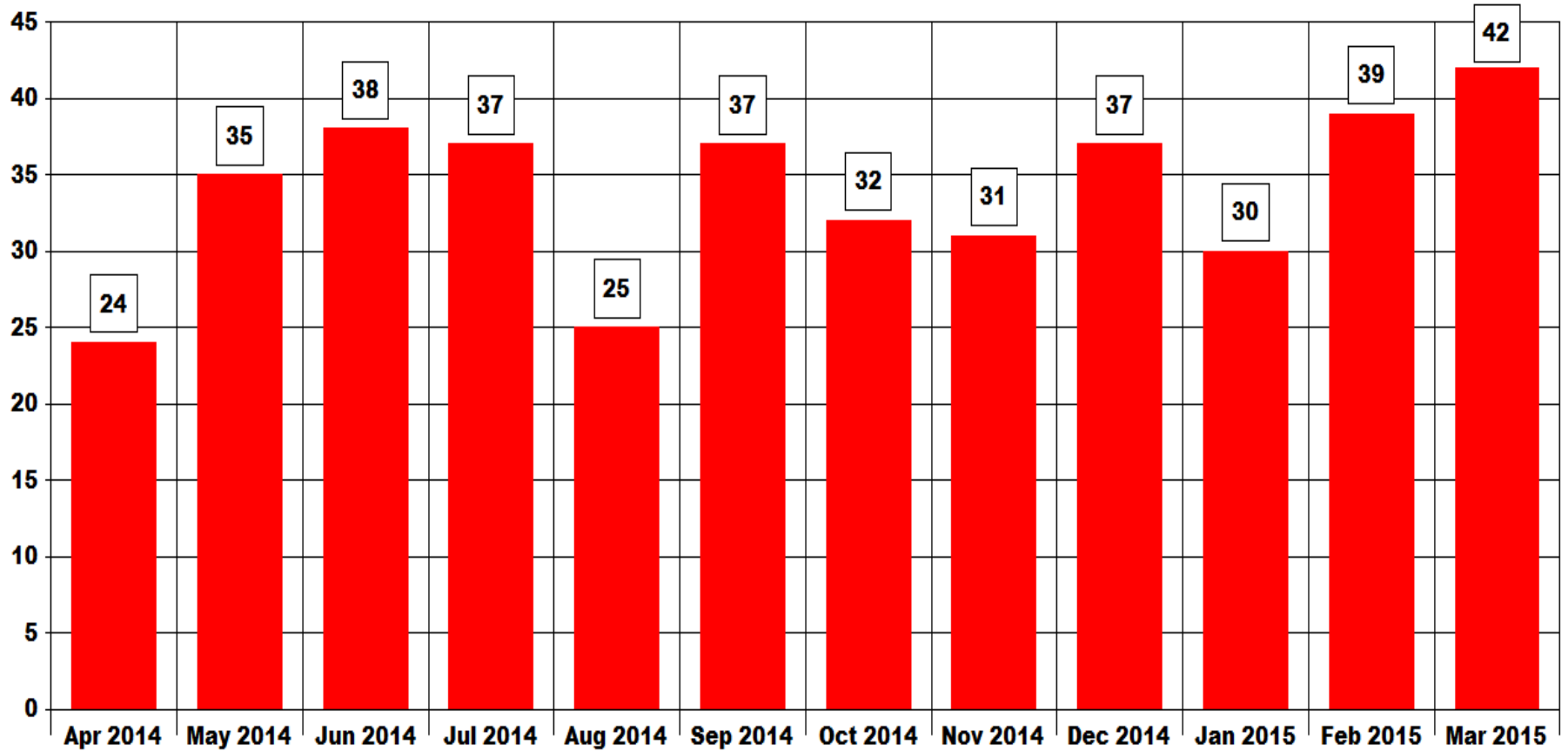
### Complaints and Enquiries by Division 2014-15



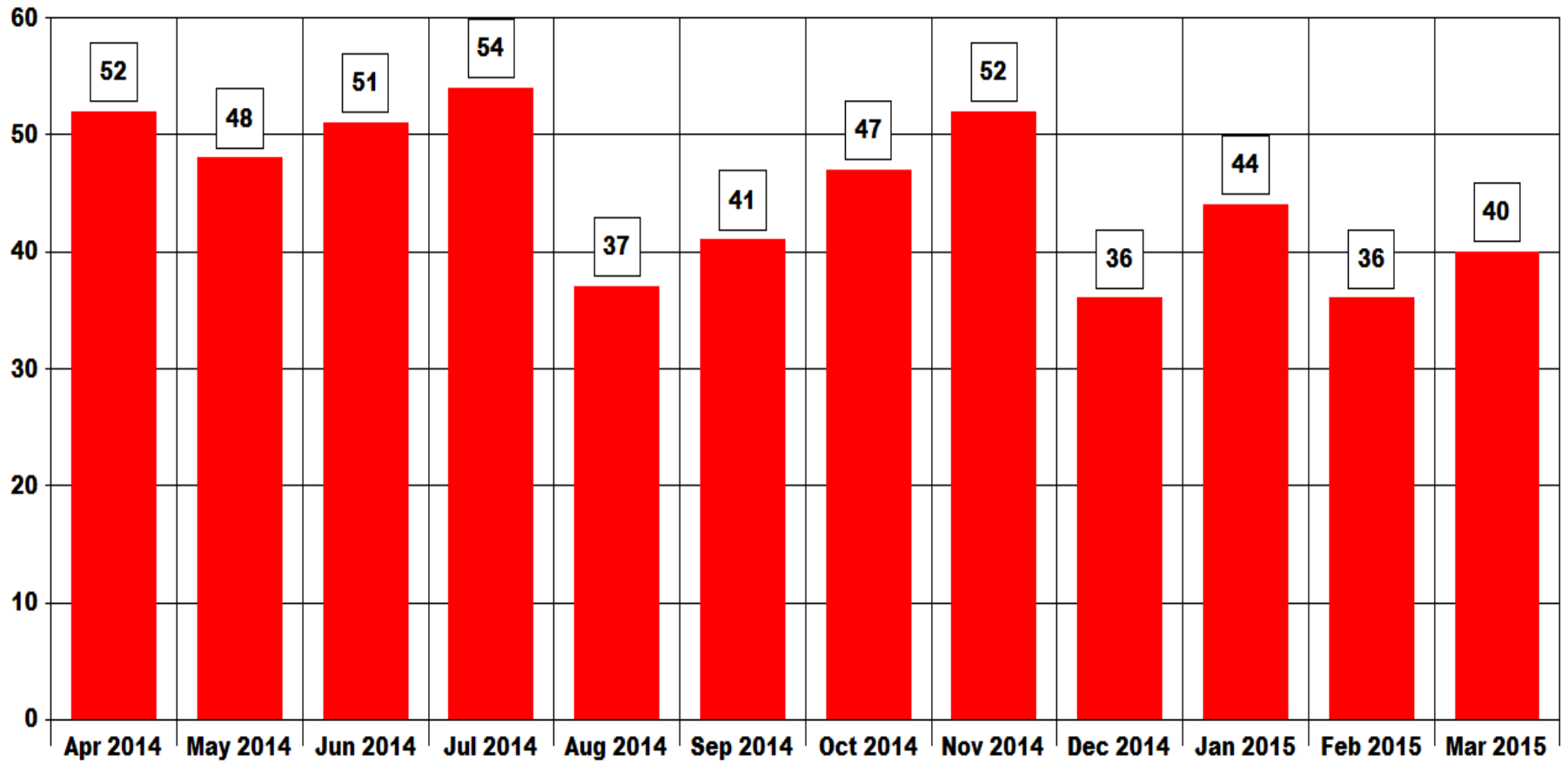
### Complaints final outcome 2014-15



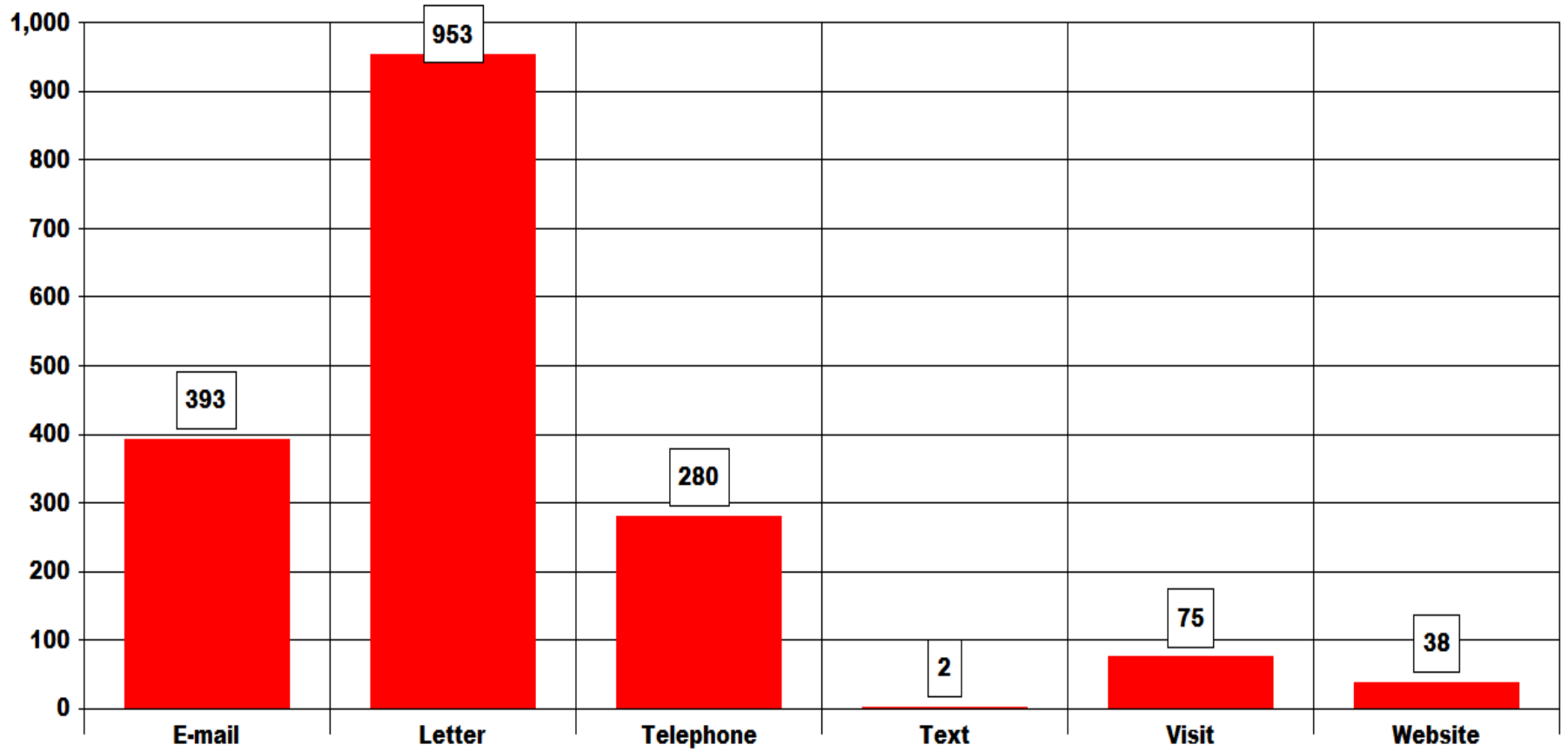
### Enquiry trend 2014-15



### Complaints trend 2014-15



### Contact methods 2014-15





## Appendix Two

Complaints to the Local Government Ombudsman in 2014/15 where the LGO found the Local Authority to be at fault with injustice.

- In one case a service user was in receipt of home care from a private agency. The agency failed to inform the Council when the service user refused personal care. Also the agency did not seek medical help for the client when his health deteriorated.
- A complaint related to a self-funder in a residential care home. The person's daughter contacted the Council to say her mother's needs had changed and requested an assessment. There was considerable delay in responding and the Council was criticised for not addressing the concerns about the person's declining condition.
- In another case a care worker from an agency did not seek advice from a manager, or get medical attention for a service user. In addition to criticising the agency, the LGO was critical of the Local Authority for poor communication with the family in the safeguarding investigation that ensued.
- A complaint was received that the Council failed to address a person's care needs properly. The service user had a number of care needs. A review of her care took place and as a result the level of care and support was reduced. However, in reviewing her care, not all her assessed needs that had previously been identified were taken into account. The level of care and support was subsequently adjusted to reflect all her care needs.
- There was a complaint that the Council had used a person's Personal Expenditure Allowance to reduce the level of debt he owed to the council. The person, who did not have capacity, was resident in a care home and did not spend all their Personal Expenditure Allowance so it accumulated into his capital savings. The Council accessed the savings to pay off some of the debt. The LGO criticised the Council in the way it handled the person's finances and took the view that it was contrary to guidance to use the person's Personal Expenditure Allowance.
- A complaint related to the possessions of someone who moved from one care home to another. The person was a resident in one care home but the Council terminated the contract with the home and the person had to transfer to another care home. There was less space in the care home he moved to and so he could not take all his possessions with him. As a result his possessions were placed in bags and stored for him. However in due course the possessions were lost and the Council reimbursed the service user.