It is the view of the Durham Free School trust that the process by which the Notice to Terminate the Funding Agreement was reached was influenced by irrelevant factors and that the actions of the EFA, of Ofsted and the Secretary of State are not reasonable, nor in the public interest.

Firstly, the ‘serious allegations’ referred to in the statement to press by the Secretary of State were made by the former headteacher of the school, as a defensive action to avoid being removed from the school by the governors under the claim that he was protected by ‘whistleblowing’ legislation. His solicitors have since notified the trust that he did make these allegations.

Furthermore, the Ofsted inspection, which took place only shortly after the former headteacher effectively left the school, clearly reveals that he was incompetent to carry out his role. As such, the trust contends that the reliability of these allegations is seriously questionable. Nevertheless, the allegations appear to have shaped the process which led to the notice of the intention to terminate in a number of unreasonable ways which have prejudiced the entire process. The trust has never been informed what these allegations are nor been given the right of reply. It can therefore only guess as to the nature of the allegations from the events as they have unfolded. The allegations appear to have been very skillfully and tactically written to play on the sensitivities and priorities within the DfE in the wake of the ‘Trojan Horse’ affair in Birmingham.

On November 4, the trust was officially notified of the investigation to take place the following week by the EFA.

Two teams of investigators were present, one considering finance and governance, the other appearing to be focussed on the school’s delivery of British Values. A prominent member of this second team was an investigator who had previously led DfE monitoring visits to the school as recently as June 2014, the reports from which were very positive. The trust therefore questions the description of this as a ‘team of experts’ in the statement made by the Secretary of State on January 19, given that the monitoring visits did not uncover the serious weaknesses in the performance of the headteacher and contributed to his unsuccessful attempt to ‘pull the wool over the eyes’ of the governing body.

This second team refused to give any advance notice of the nature of the allegations or of the areas they wished to examine to enable the school to collate documents or give any detailed evidence. Their questioning was aggressive and intimidatory, making it difficult for respondents to give complete and balanced answers, especially when frequently interrupted. At the end of the day, this team was again asked if the school could know the allegations made and could have the right of reply but no commitment was given.

On November 24, the trust received a Financial Notice to Improve. Some of the statements were rather opaque and it was not clear how they related to the actual situation at the school. To assist in writing an action plan, the trust requested a copy of the report on which the notice was based, only to be told that there was no report. Again, judgements were being withheld from the trust in a process which lacked transparency and, in not giving the right of reply, this inevitably resulted in the original and highly questionable allegations being given undue weight.

This was further and markedly in evidence in the ensuing no-notice Ofsted inspection. This was carried out on November 26 under Section 8, a type of inspection that is only carried out in response to concerns raised about a school. Therefore it again was based upon the allegations made and the clear impression when the inspectors arrived was that they were expecting to find evidence of religious extremism, for example, asking what the school was doing to educate students about female genital mutilation which, whilst important in some contexts, was not a priority for 11 and 12-year-olds in the context of the characteristics of the communities served by the school. The trust believes that there is clear evidence that the inspectors were prejudiced by the allegations.

Pupils were embarrassed by some questions from inspectors, including some that they recollect being asked by the "tall bald man" who asked them questions after the two Ofsted inspectors had left - it was our understanding that this gentlemen was not part of the inspection, but was there just to supervise its administration. Some of the questions they remembered were:

*"What would you do if a Muslim came to this school?"*

*"Do you know anybody in the school who is gay?"*

*"What would you do if someone gay came to this school?"*

*"Have you ever met anybody who is gay/bisexual?"*

*"Have you had 'The Talk'?"*

*"How have you learned how to make a baby?"*

When they were asked about bullying, pupils reported to the inspectors: "There is no serious bullying in this school." They told the inspectors that sometimes pupils were involved in unkind name-calling.

A number of parents note that their children’s academic progress has been transformed by attending the school, and this is supported by the school’s assessments which have been externally moderated by an academy with a good Ofsted rating. The trust understands that the Ofsted judgement that academic progress at the school is weak is based upon looking at work in exercise books. Whilst acknowledging the imperative that this needs to improve, the trust does not believe that achievement in regular tests carried out under exam conditions gives no valid information about pupil progress, particularly as assessments have been externally verified. It also notes that the DfE monitoring visits carried out in December 2013 and June 2014 included extensive book monitoring and the reports of this were provided for the governing body which differ significantly from the judgement of Ofsted.

The trust also believes that the assertion in the report that governors place too much emphasis on religious credentials when recruiting is not true. The trust asserts that when recruiting senior staff who need to understand the Christian ethos of the school and who will need to lead Christian collective acts of worship in the school, it is a genuine occupational requirement that the staff member is a Christian. However, even if this is set aside, the trust believes there is no evidence of governors ever appointing a Christian ahead of a non-Christian who better fulfilled the requirements of the role. Indeed, there are both Christian and non-Christian staff at the school. Some Christian staff may have been appointed ahead of non-Christians but the converse is equally true. The fact that the school recruited a headteacher whose performance was poor in no way proves that the governors made this decision on the basis of the former headteacher’s expressed faith position. The trust notes that if no candidate had been appointed at that point, the school may have had to postpone opening by a year, letting down many parents.

Despite concerns, the governors were not minded to contest the Ofsted inspection, recognising that although it was unbalanced, there were indeed weaknesses particularly arising from the work of the former headteacher (who was also the RE teacher throughout the first year of the school). The governors also recognised that the inspection occurred at a moment in time when the school was vulnerable with the Acting Head having just taken up position a few weeks earlier. The governors welcomed the opportunity to work with Her Majesty’s Inspectors to rapidly improve the school further. The final report states:

* “*The acting headteacher and deputy headteacher stepped up during the headteacher’s absence and they are developing a clearer vision for the school’s future.*”
* “*The acting headteacher and deputy headteacher are beginning to develop a better approach, for example by reviewing the religious studies curriculum, but this is very recent and there is little demonstrable impact*.”
* “*Analysis of students’ work and the school’s tracking data shows that, until recently, leaders were inaccurate in their assessment of students’ learning and progress. They have too readily accepted low standards and poor progress. The acting headteacher and deputy headteacher are starting to improve this but there is still a long way to go.*”
* “*Behaviour management has, until very recently, had too much focus on sanction rather than reward.*"

Furthermore, the Ofsted inspectors informally commented to the Acting Head that they “did not think it would take long to turn this school round” and discussions with the Acting Head and some governors during summing-up at the end of the inspection covered the way in which Her Majesty’s Inspectors would work with the school over the following months to help secure the required improvement. Given that governors of the school had already secured a change in the leadership, that the Ofsted report notes the embryonic improvements already in evidence after four weeks of term-time and that Ofsted inspectors in person commented that the school would be easily turned around, the trust believes that the statement made by the Secretary of State that “*I have considered if it is possible for this to be turned around quickly and investigated the possibility of injecting new leadership*” is seriously flawed. The investigation of this possibility must have been shallow indeed not to recognise that the governors had already brought about a change in leadership. The statement that “*there is no imminent prospect of improvement*” fails to recognise the results of the Ofsted inspection, flawed as it was. The decision to move to terminate the funding agreement was predicated upon the weakness in leadership and the lack of prospect of improvement. The trust believes therefore that the decision is not based upon reasonable grounds.

Governors have confidence in the new and developing leadership of the school; a number of improvements have either been made, or are currently in progress, in relation to all the items referred to in the Ofsted report.

The trust believes that it is not in the public interest that the school should close. It is fulfilling a gap in provision for communities which are otherwise disadvantaged in local provision in comparison to more affluent areas. Over time, it has the potential to move beyond the transformation of students’ individual lives and life chances already evidenced by many parental comments to having significant impacts on the communities the students are from. Close to 50% of pupils receive pupil premium funding which is made available to support the teaching of the most disadvantaged pupils in the education system. This is double the national average. Furthermore, the school has had a positive impact on other secondary schools in the area by providing competition. For example, there has been an increase in the provision of activities for primary pupils held at secondary schools. The proposer group proved the public interest case for the school in the pre-opening phase, and everything in those proposals remains the case today.

In summary, this school has already achieved much in extremely difficult circumstances, where it has been poorly supported by the DfE. The governors recognised the weaknesses in the school leadership and have acted decisively. The school is improving under its new leadership and in the eyes of parents is achieving great things. The governors are determined to push for further improvement. For the DfE to pull out now in the second year would be a highly flawed decision, further letting down and disempowering families and communities for whom the Free School Policy was established.