*About this resource:*

This is a Suggested Wording. It is a set of paragraphs to argue to the school’s governors that the headteacher’s investigation prior to the exclusion was not fair or balanced, and therefore their decision making was flawed.

To understand when you might want to use this text, read the [Step by Step Guide: Preparing Written Arguments for the School’s Governors](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-creating-written-submissions)

If you want to understand more about the relevant law, read the [Quick-Guide: the Headteacher’s Power to Exclude](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-creating-written-submissions/quick-guide-headteachers-power)

To use this resource, go through the text and enter the information where prompted to do so. Prompts appear as grey text. Then copy and paste your finished text into the [Template Document: Submissions to the Governors](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-creating-written-submissions/quick-guide-headteachers-power)*.*

This text is a guide. You might need to make amendments to fit your circumstances.

The Exclusion Guidance states at paragraph 4 that:

*Headteachers should also take the pupil’s views into account, considering these in light of their age and understanding, before deciding to exclude, unless it would not be appropriate to do so. They should inform the pupil about how their views have been factored into any decision made. Where relevant, the pupil should be given support to express their view, including through advocates such as parents or, if the pupil has one, a social worker. Whilst an exclusion may still be an appropriate sanction, the headteacher should also take account of any contributing factors identified after an incident of misbehaviour has occurred and consider paragraph 45 of the Behaviour in Schools guidance.*

This reiterates that the headteacher must conduct a fair, balanced and dispassionate assessment of the facts before deciding to exclude a young person. The headteacher is bound by the public law principal of fairness in their decision making. This is made clear in the Exclusions Guidance at paragraph 2.

Fairness includes the right that a person is told of the case against them and given an opportunity to put their side of the story forward. In other words, a person has a right that their defence is fairly heard.

In addition, a public body making any decision about another person must be impartial and be seen to be impartial. This principle was explained in the case of *R v Sussex Justices, ex parte McCarthy* which was heard in 1924 in the King’s Bench division. The Court found that:

*“a long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”.*

Before the headteacher decided to exclude young person, they set out the steps the headteacher took to investigate the incident(s) that led to the exclusion. However, they failed to set out the steps the headteacher should have taken but didn’t.

The headteacher’s failure to investigate the incident/incidents fairly and even-handedly means that young person’s defence has not been fairly heard and, even if the governors do not conclude that there was bias against young person, the mere appearance of bias means that the decision is procedurally flawed.

This is a serious failing by the school. The right to a fair process is fundamental in any decision making but is particularly important in exclusion proceedings where the impact on young person will be so significant.

We therefore submit that the exclusion is procedurally flawed, and young person should be reinstated with immediate effect.