*About this resource:*

This is a Suggested Wording. It is a set of paragraphs you can use to argue to the independent review panel that the governor’s decision was unlawful because they found that the exclusion was found to be in breach of the general principals of public law but upheld it anyway.

To understand when you might want to use this resource, read the [Step by Step Guide: Preparing Written Arguments for the Independent Review Panel](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/after-governors-meeting-appeal-and-3/deciding-whether-appeal-and-making-request-irp/step-step-guide-creating-written-submissions-irp).

If you want to understand more about the relevant law, read the [Quick-Guide: the Independent Review Panel](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/after-governors-meeting-appeal-and-3/attending-irp-advocacy-and-supporting-family/quick-guide-independent-review-panels).

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 Independent Review Panel](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/after-governors-meeting-appeal-and-3/deciding-whether-appeal-and-making-request-irp/step-step-guide-creating-written-submissions-irp)*.*

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

name of school’s governing body were bound by the principals of public law when considering young person’s permanent exclusion, including that the decision must be lawful.

In public law, “lawfulness” describes the requirement that any decision the governors take must be one which they had the authority to make in law.

The governors have declined to reinstate young person, instead upholding the permanent exclusion. This is in spite of the governors acknowledging in the letter confirming their decision/the minutes of their deliberations that the headteacher’s decision to exclude was not in accordance with the general principles of public law. This can be seen in their decision that “finding of the governors that shows their agreement that the exclusion was unlawful”. This means that the exclusion amounted to specify the principle that has not been adhered to decision making.

There are now three sections for you to choose from; a yellow one, a blue one and a green one. Choose the section that is most appropriate and complete it with the missing text, then remove the highlighting and delete the unused sections.

The yellow paragraph is most appropriate if you are arguing that the governors’ decision was unlawful because they found the exclusion to be disproportionate.

The blue paragraph is most appropriate if you are arguing that the governors’ decision was unlawful because they found the exclusion to be procedurally unfair.

The green paragraph is most appropriate if you are arguing that the governors’ decision was unlawful because they found the exclusion to be irrational.

Proportionality describes the balancing exercise between the impact of exclusion on the young person, and benefit gained by the school for having excluded them.

This exercise should be considered in two ways.

Firstly, does the punishment fit the behavioural infraction? If the impact of exclusion on the young person outweighs the seriousness of the misbehaviour, then the exclusion would be disproportionate.

Secondly, does the benefit to the school community at large justify the personal cost to the young person? If the school is excluding the young person in the interests of other members of the school community, but the benefit to that community will be small whereas the impact of the exclusion will be significant, then the exclusion may be disproportionate.

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was disproportionate”, the governors clearly agree that the exclusion amounted to a significant impact on the young person that is disproportionate to the objective being pursued. Despite this the governors decided to uphold the exclusion anyway.

Fairness in public law describes the procedural steps taken to come to a decision. If those steps do not follow mandatory procedure or are biased, erroneous or otherwise unfair then the resulting decision should be considered flawed.

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was not procedurally fair”, the governors clearly agree that the processes followed by the headteacher in deciding to exclude were flawed. The governors should therefore have reinstated young person. Despite this the governors decided to uphold the exclusion anyway.

Reasonableness requires that the conclusions that are drawn in deciding to exclude are of a good enough quality. It is sometimes referred to as the requirement that decisions are “rational”. There are three elements.

Firstly, did the school take into account factors which it ought not to have taken into account? Relying on factors or information that are not relevant may cause the decision to exclude to be irrational and fail the reasonableness test.

Secondly, did the school fail to take into account factors which it ought to have taken into account? If there are relevant factors that the headteacher has not considered before deciding to exclude then the decision may be irrational and therefore the exclusion may be unreasonable.

Thirdly, was the decision to exclude so unreasonable that no reasonable headteacher would have made it? If the decision of the headteacher was made having considered the right information, but plainly does not follow logically from the information available then it may be considered unreasonable.

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unreasonable”, the governors clearly agree that the exclusion amounted to a decision that was irrational under an administrative legal understanding of reasonableness. Despite this the governors decided to uphold the exclusion.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers and the IRP are asked to quash the decision and direct them to reconsider.