Relevant guidance:

* [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

Relevant excerpts:

* *“Any decision of a headteacher, including suspension or permanent exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to suspensions and permanent exclusions and a school’s wider legal duties); reasonable; fair; and proportionate.”*

Paragraph 2: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

* *“Public law principles underpin good decision making. All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to suspensions and permanent exclusions and the legal principles that apply. Headteachers and governing board members of panels are likely to have first hand experience of the education context that may be relevant to considerations about whether a decision was reasonable in the circumstances.”*

Paragraph 226: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

Suggested wording:

*(This suggested wording is a guide. You might need to make amendments to fit the individual circumstances of the pupil in question. You can also refer to the above excerpts to strengthen your argument).*

name of school’s governing board was bound by the principles 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 governing board takes must be one that they have the authority to make in law.

The governing board has declined to reinstate young person, instead upholding the permanent exclusion. This is despite the governing board 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”.

Proportionality describes the balancing exercise between the impact of exclusion on the young person and the 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 governing board 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 governing board decided to uphold the exclusion.

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 governing board clearly agree that the processes followed by the headteacher in deciding to exclude were flawed. The governing board should therefore have reinstated young person. Despite this the governing board decided to uphold the exclusion.

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

Firstly, did the school consider factors that it ought not to have considered? Relying on factors or information that are not relevant may cause the decision to be irrational and fail the reasonableness test.

Secondly, did the school fail to consider factors that it ought to have considered? 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 after considering 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 governing board clearly agrees that the exclusion amounted to a decision that was irrational under an administrative legal understanding of reasonableness. Despite this, the governing board decided to uphold the exclusion.