- Relevant person whose knowledge to assess is the one ‘deputed to carry out the employer’s functions under s98’
  - Orr v Milton Keynes
- Tribunal’s look to wider circumstances
  - Personal attributes of employee eg. Seniority & work record

**Fair procedure s98(4) (Manner of Dismissal)**

**Polkey v Dayton Services 1987**
- HoL held ‘procedural correctness’ lay at heart of UD.
- Form of natural justice in the legal system.

1. Did employer adopt a *reasonable & fair procedure*?
2. Was decision to dismiss a *reasonable response* by employer to situation?
   - **ACAS Code of Practice on Disciplinary & Grievance Procedures 2009**
   - No longer binding legal force but s207A Trade Union & Labour Relations (Consolidation) Act 1992 (TULRCA) allows Tribunals to adjust awards by 25% for an unreasonable failure to comply with the Code.
     - Raise & deal with issues promptly
     - Establish facts of case
     - Inform employee of issue & give them opportunity to put their case forward before decision is made
       - **Spence v Department of Agriculture & Rural Development**
     - Hold a meeting with employee (not unreasonably delayed)
     - Allow employee to be accompanied to meeting
     - Decide on appropriate action
     - Communicate decision to employee
     - Communicate their right to appeal
     - Workers can be accompanied in disciplinary or grievance hearings.
       - **s10 Employment Relations Act 1999** provides this right & doesn’t require worker’s choice of companion be reasonable.
     - THEN Dismissal
   - Consider available evidence
   - Consider whether actions were consistent with past practice
   - Did employer treat joint offenders equally?
   - Was there a *fair hearing*?
   - Did employer consider alternative solutions to dismissal?
   - **Clark v CAA 1991:**
     - Disciplinary hearings
       - Explain purpose of meeting
       - Identify those present
       - Arrange representation
       - Inform employee of allegations
       - Indicate evidence
       - Allow employee to give evidence & call witnesses
       - Those taking decision are to be independent
       - Any appeal should to be to yet another body