

- Relevant person whose knowledge to assess is the one '*deputed to carry out the employer's functions under s98*'
 - o **Orr v Milton Keynes**
- Tribunal's look to wider circumstances
 - o 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.
 - o Raise & deal with issues promptly
 - o Establish facts of case
 - o Inform employee of issue & give them opportunity to put their case forward before decision is made
 - *Spence v Department of Agriculture & Rural Development*
 - o Hold a meeting with employee (not unreasonably delayed)
 - o Allow employee to be accompanied to meeting
 - o Decide on appropriate action
 - o Communicate decision to employee
 - o Communicate their right to appeal
 - 6 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.
 - o 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*:
 - o 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 be to yet another body

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