



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Yates

**Respondent:** Umbrella-Company Limited

**Heard at:** Reading (by CVP) **On:** 14 May 2025

**Before:** Employment Judge Anstis

## **Representation**

Claimant: In person  
London Borough of Hounslow: Mr T Lester (counsel)

**JUDGMENT** (on reconsideration) having been sent to the parties on 21 May 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

## **REASONS**

1. I am now considering the claimant's application for reconsideration of my decision to strike out her claims against the London Borough of Hounslow.
2. It is agreed between the parties that this decision was based on the claimant not having undertaken early conciliation with the London Borough of Hounslow (although that was not the only argument put forward by the London Borough of Hounslow at the hearing). It is also agreed that the claimant had, in fact, undertaken early conciliation with the London Borough of Hounslow. Shortly after the hearing at which I gave the relevant judgment the claimant produced an early conciliation certificate whose authenticity is accepted by the London Borough of Hounslow.
3. There are some complications. The early conciliation certificate was only obtained after the claimant had submitted her claim. Her claim form was submitted on 17 March 2022 in respect of a dismissal said to have occurred on 10 March 2022. Her early conciliation certificate shows her start and end dates of early conciliation as being 8 May and 10 May 2022. Despite some suggestions from her that her original ET1 was accompanied by an early conciliation certificate in respect of the London Borough of Hounslow, her claim form as originally submitted says that she does not have an early conciliation

certificate and apparently proceeds on the basis that she does not need one because her claim included a claim for interim relief.

4. What ought to have happened on the original submission of her claim is that the claimant's claim against the London Borough of Hounslow ought to have been rejected by the tribunal on the basis that she had not provided an early conciliation certificate number and to the extent that she relied on the exemption for a claim of unfair dismissal involving interim relief that could not apply as there was more than a claim of unfair dismissal against the London Borough of Hounslow (see EJ Eeley's order of 1 February 2023 for a description of the claims the claimant originally sought to bring against the London Borough of Hounslow). That did not happen, and instead the claim proceeded directly to an (unsuccessful) interim relief hearing.
5. We are thus in the territory contemplated in Sainsbury's Supermarkets v Clarke [2023] EWCA Civ 386, in which Bean LJ held at para 42 of the judgment that:

*"If no such [initial] rejection occurs it is not in my view open to a respondent to argue at a later stage that the claim should have been rejected. The respondent's remedy is to raise any points about non compliance with the Rules in their form ET3, or in appropriate cases at a later stage, and to seek dismissal of the claim ... or apply for it to be struck out."*
6. That is, of course, exactly what the London Borough of Hounslow did, and their application succeeded. It is the judgment on that successful application that I am now asked to reconsider.
7. (I note that Bean LJ goes on to speak of the possibility of waiver under rule 6, while also endorsing the decision of the EAT in Cranwell v Cullen UKEATPAS/0046/14 to the effect that the tribunal was correct in striking out a claim where there had been no early conciliation ahead of the claim being lodged and no exemption applied).
8. That brings us to the point of the original judgment. The claimant's claim against the London Borough of Hounslow was struck out or dismissed on the basis that she had not undergone early conciliation against the London Borough of Hounslow and no exemption from early conciliation applied.
9. The claimant's application for reconsideration is based on her having shortly after the hearing found and produced an early conciliation certificate against the London Borough of Hounslow which post-dates the submission of her claim.
10. The claimant had known since March 2023 of the application from the London Borough of Hounslow and that it relied at least in part on her not having undertaking early conciliation in respect of them. It seems to me that even given the difficulties I have heard of from the claimant the obvious point at that stage for her to address was to look for and produce the early conciliation certificate at the point she knew the respondent was saying there was no early conciliation certificate, or by the hearing at the latest. She did not do so. She only looked

for and found the early conciliation certificate after I had given my judgment. She was able to find it two or three days after I gave my judgment.

11. The early conciliation certificate produced after the hearing is new evidence and thus would be subject to the test in Ladd v Marshall [1954] 1 WLR 1489 – that is, for it to be considered the claimant would have to show that it could not have been obtained with reasonable diligence for use at the original hearing, was relevant and would probably have had an important influence on the hearing and was apparently credible.
12. The latter two factors are less of a problem for the claimant than the first: whether it could have been obtained with reasonable diligence for use at the original hearing. I have already alluded to that earlier in these reasons. The claimant has always emphasised (and I accept) the personal difficulties she has been subject to during these proceedings, but she had four months' notice that the lack of an early conciliation certificate was a matter that the London Borough of Hounslow were relying on in its application to strike out her claim. She did not produce it prior to the hearing but was able to find it within a few days of my judgment. That suggests to me that it could have been found with reasonable diligence prior to the hearing, and on that basis her new evidence does not meet the Ladd test and is not to be considered in this reconsideration decision. Accordingly, I refuse the claimant's application for reconsideration of my decision.

Approved by Employment Judge Anstis  
11 June 2025

REASONS SENT TO THE PARTIES ON

18 June 2025

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FOR THE TRIBUNAL OFFICE