ACAS Early Conciliation - Worth the paper it's written on?

The EAT has once again demonstrated that it is no fan of technical defences based on alleged defects in the ACAS early conciliation process. In the latest case *De Mota v. (1) ADR Network 7 (2) The Co-op Group Ltd UK* http://bit.ly/2w4th1m HHJ Richardson allowed an appeal against a Judge's finding that the Tribunal had no jurisdiction to hear a claim becauses two Respondents were named on one conciliation certificate. The Claimant had applied for early conciliation naming two separate entities in one application. ACAS could have, but did not, rejected the form. HHJ Richardson found that a Tribunal was not entitled to look behind the certificate at the process that led to it being issued. In doing so he echoed his colleagues' reminder that the purpose of early conciliation is not to encourage satellite litigation but
to *'simply build in a structured opportunity for conciliation to be considered'*. It might be argued that 'structured opportunity' rather over states the reality of what happens in the majority of cases. ACAS has always been available to the parties when a claim is issued and perhaps the real effect of early conciliation is to keep lawyers on their toes over the question of time limts.

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Section 18A(8) focuses upon the existence of a certificate; the prohibition on presenting relevant proceedings applies only if the prospective claimant does not have a certificate under subsection (4). It is to my mind clear that Parliament does not intend that the process leading up to the certificate should be subject to criticism and examination by the parties or the Employment Tribunal.

http://www.bailii.org/uk/cases/UKEAT/2017/0305_16_130