

## Men could be convicted of rape 'even if the woman agrees to have sex'

- **Guilty if man does something woman asked him not**
- **Test case was between husband and wife**
- **Wife became pregnant - she did not want another child**

By Jill Reilly

A man could be convicted of rape even if the woman agreed to have sex, judges ruled yesterday.

A court headed by the Lord Chief Justice, Lord Judge, ruled in a sign-post decision that a man would still be guilty if he did something she asked him not to.

The High Court ordered the Director of Public Prosecutions to think again over a decision not to prosecute a man accused of raping his wife.

The woman had consented to sex, but only on condition that her husband withdrew as she did not want to become pregnant.

However, at the last minute he told her he was not withdrawing and told her 'because you are my wife and I'll do it if I want'.

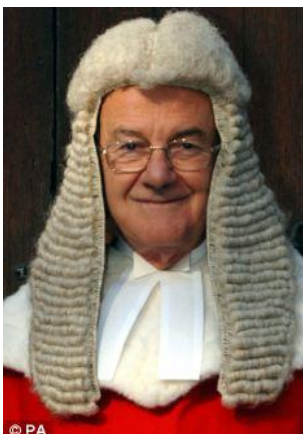
The woman who did not want another child become pregnant after the incident in February 2010.

In his landmark decision Lord Judge ruled that because the man, the woman's husband under Sharia law, did not stick to his part of the pre-sex deal he could, in the eyes of the law, be held guilty of rape.



Decision: A court headed by the Lord Chief Justice, Lord Judge, ruled in a sign-post decision that a man would still be guilty if he did something she asked him not to

The judges said she 'was deprived of choice relating to the crucial feature on which her original consent to sexual intercourse was based'.



Landmark decision: Lord Chief Justice, Lord Judge

Granting a judicial review of the decision not to prosecute, the Lord Judge said that the woman's consent was 'negated' by the man's failure to withdraw.

He said that the woman's essential evidence was that after her Islamic marriage to the man in November 2009 their relationship was marred by his abusive dominance.

Lord Judge said that men who tried in vain to withdraw in time should not be pursued for rape, adding: 'These things happen – they always have and they always will.

'No offence is committed when they do. They underline why withdrawal is not a safe method of contraception.' In May 2010 she rang a rape phone line and made a formal complaint to the police about rape and sexual assault, but the DPP took the decision not to prosecute.

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[Sex-obsessed police officer, 37, jailed for using his job to seduce and sexually assault victims of crime](#)