

Down's husband barred from sex with wife wins £10,000 damages

Jack Malvern

A man with Down's syndrome whose wife was ordered by their local council to stop having sex with him has received £10,000 in damages for a breach of his human rights.

The man, 38, who cannot be named for legal reasons, was considered unable to consent to sex, even with his partner, to whom he has been married for five years.

His wife was ordered to end their sexual relationship and threatened with criminal prosecution if she refused. She moved out of their shared bedroom and withdrew physical affection that might be interpreted as leading him on.

The council said that it would approve a resumption of their sexual relationship only once the man had been

on a sex education course to ensure that he understood the nature of consent. However, the course was delayed for a year.

Sir Mark Hedley, a judge at the Court of Protection in London, said that the damages for breach of human rights were for the husband's "deprivation for at least 12 months of normal conjugal relations with his wife".

He said: "The impact at the time must have been profound, not only for the loss of sexual relations, but for two other matters peculiar to him. First, he would have been unable to understand why what was happening should be so. And secondly, in order as she put it 'not to lead him on', the wife understandably and foreseeably withdrew to another bedroom and withheld much physical affection."

The couple received the letter from

the council in March 2015 but the local authority failed to arrange the sex education that the psychologist had ordered. The course only began in June last year after the man's sister took his case to the Court of Protection.

After the course he was still denied sex because he was considered to have made sufficient progress in all areas except understanding the risks of sexually transmitted infections.

He passed a second course earlier this year.

The judge noted that the couple had since resumed a "normal conjugal relationship".

Sir Mark said that the case was unusual, if not unique, in that it involved a "settled, monogamous and exclusive married relationship".

Most cases involving capacity to consent to sex are about restraining "sexual

disinhibition" to protect vulnerable people from abuse.

However, he declared that the council's decision had been lawful. "Many would think that no couple should have had to undergo this highly intrusive move upon their personal privacy yet such a move was in its essentials entirely lawful and properly motivated," he said.

"As I have said, perhaps it is part of the inevitable price that must be paid to have a regime of effective safeguarding."

The judge approved an offer by the local authority to settle the case with an apology and a payment of £10,000 damages. The council will also reimburse the legal costs of the man's case. The judge made his ruling at the end of July but publication was delayed until yesterday.