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Criminal Briefing

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Criminal Briefing

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R v Morgan [2026] EWCA Crim 886 – To suspend or not suspend?

Introduction

Most practitioners will be aware that due to our overflowing prisons, Parliament stepped in to extend the availability of suspended sentence orders. For all cases where an offender was convicted after 22nd March 2026 there were two crucial developments, namely:

- i. A statutory presumption in favour of suspending any custodial sentence of less than 12 months (section 277A Sentencing Act 2020).
- ii. Custodial sentences of up to 3 years can now be suspended (section 277 Sentencing Act 2020).

The Court of Appeal have recently provided guidance in relation to the term “exceptional circumstances” which can rebut the statutory presumption in favour of suspension of sentences below 12 months.

Suspended sentences

It is important that practitioners consult the revised guideline on the imposition of community and custodial sentences. It provides a useful guide in relation to suspended sentences and the factors a court will have to consider.

Sentences under 12 months must be suspended unless:

- i. The offender is in custody (serving another sentence/remanded in custody or detained under a hospital order).
- ii. The offender is being re-sentenced for breaching a community or suspended sentence order.
- iii. The offence was committed while subject to a community or suspended sentence order.
- iv. The offence that was committed was in breach of a court order or was closely connected to a breach (whether or not this breach was a criminal offence).
- v. Significant risk of physical or psychological harm to an individual.
- vi. Exceptional circumstances relating to the offence or the offender which justify not suspending the sentence (Section 277A (2) and (3) Sentencing Act 2020).



Sentences of over 12 months but under 3 years can also be suspended, however, the court enjoys a much wider discretion. This is subject to the usual balancing exercise that courts have had to apply for many years. The court is required to balance the prospects of rehabilitation, risk, strong personal mitigation and the potential impact on others with the seriousness of the offence and previous compliance with court orders.

Exceptional circumstances – R v Morgan [2026] EWCA Crim 886

The Court of Appeal was required to consider the statutory presumption in favour of suspending custodial sentences in *R v Morgan*. This was a committal for sentence for an offence of dangerous driving. The defendant was of previous good character. He was sentenced to 8 months imprisonment. Crucially, he was sentenced after 22nd March 2026. The court did not consider section 277A of the Sentencing Act 2020. This was a defendant to whom the presumption in favour of suspension applied.

The only factor that potentially rebutted the suspension of this custodial sentence was a finding of “exceptional circumstances” applying sections 277A (2) and (3). None of the other criteria applied. The court declined to define or list what might amount to exceptional circumstances. The court did, however, emphasise that Parliament has chosen a very strong word and there will be circumstances that are not commonly encountered. In circumstances where that presumption can be rebutted, the court is still required to perform the usual balancing exercise.

The court declined to re-visit the issue of whether the circumstances in this case were exceptional. It was a serious case of dangerous driving. It was committed in the context of an argument with a previous partner. The appellant threatened to “ram” her and chased her in his vehicle while under the influence of alcohol and other controlled substances. He damaged a parked car and rammed his ex-partner’s vehicle from behind. The court, however, observed that there was nothing exceptional about this case and in any event, it was for the sentencing judge to address this issue. They allowed the appeal and imposed a suspended sentence.

Conclusion

If an offender is to be sentenced to a custodial sentence below 12 months and they do not fall within the exceptions in section 277A (3) of the Sentencing Act 2020, then the only real discretion the court has is if the circumstances of the case are exceptional.

The Court of Appeal in *R v Morgan*, whilst declining to offer a list of factors that would amount to exceptional circumstances, was clear that this will be a very high bar indeed. Exceptional means exactly that. There will, it seems, be very few cases that could be described as exceptional. It is also important that if a sentencing judge finds exceptional circumstances, they are required to clearly identify the basis for that decision.