



**St John's
Buildings**

R v MORGAN [2026] EWCA Crim 886

Case Summary

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The case of *Morgan* is the first case where the Court of Appeal (Criminal Division) has been required to interpret the new provisions of the Sentencing Act 2026. *Morgan* concerned an appeal against sentence; the ground of appeal being that the learned judge erred in not imposing a suspended sentence order in circumstances where the presumption now applied (Sentencing Act 2020, s.277A).

PROCEDURAL BACKGROUND

The defendant (aged 21 on the date of conviction) pleaded guilty to an offence of dangerous driving on 6 May 2026. He was committed for sentence by the magistrates' court to the Crown Court. The defendant was of previous good character and was described as "extremely immature" in the pre-sentence report.

In the Crown Court, categorisation was agreed: this was an A1 offence with a starting point of 18 months imprisonment. Aggravating factors resulted in an uplift to 21 months imprisonment. Mitigating factors then reduced the sentence to 12 months imprisonment. Credit for guilty plea further reduced this sentence to eight months. The appellant was, therefore, sentenced (by Mr Recorder Bull KC) to eight months.

The Recorder considered that the offence was so serious that punishment could only be achieved by immediate imprisonment. The appellant was therefore sentenced to eight months imprisonment, to be served immediately.

On appeal, counsel for the appellant submitted that the Recorder had erred in failing to consider s.277A. In response, counsel for the respondent submitted that, even if the learned judge had considered s.277A, the circumstances of the offending were sufficiently exceptional to move away from the presumption.

DISCUSSION

The Vice President of the Court of Appeal (Criminal Division), Edis LJ, took the opportunity to summarise the law (at [9]). The Vice President adopted a logical approach to the issue:

1. First, the Court should consider whether any of the exemptions in s.277A(3) applied (i.e. the circumstances where the presumption does not exist).
2. If none of those exemptions applied, the Court should then determine the appropriate length of sentence to impose.
3. If that sentence was under 12 months, the Court was then "obliged" to determine whether there were "exceptional circumstances" which justified disapplying the presumption (s.277A(2)).

At [48], Edis LJ stated:

"It seems to us, applying the new statutory provision as best we can, that it is *unlikely* that the seriousness of the offence, on its own, could amount to an exceptional circumstance such that an immediate custodial sentence could properly be imposed."

The Vice President would justify this on the basis that in cases where the presumption applied (i.e. sentences not more than 12 months), the offences in question cannot be at the upper end of seriousness.

At [52], the Vice President would emphasise the “strong word” chosen by Parliament: “Exceptional”. His Lordship would go on to explain that this means that “Whatever such circumstances might be in any given case, they are obviously *not* circumstances... which are *commonly encountered*.” (emphasis added).

JUDGMENT

The appeal against sentence was allowed. Whilst the learned judge has considered whether this was a sentence that was appropriate to suspend, he did not turn his mind specifically to the provisions of s.277A. In short, he did not consider the presumption in favour of suspended sentence orders.

The Court considered whether there were exceptional circumstances justifying a departure from the presumption. At [53], the Court stated that there was “nothing exceptional about this case. This kind of uncontrolled aggression on the streets by men who have grown angry with a partner is not unusual.”

The Court replaced the eight-month term of immediate imprisonment, with eight months imprisonment, suspended for two years. As the appellant had spent two weeks in custody, the Court imposed no punitive element as part of community requirements.

OBITER

The Court remarked that the new Sentencing Council Guidelines on the Imposition of Community and Custodial Sentences are not as clear as they could be. The Vice President remarks that the current *Imposition* Guideline lists “exceptional circumstances” as one of the exemptions. This, the Court felt, would tend to “conceal its fundamental importance in all cases to which section 277A applies” (at [41]).

The Court observed in the previous paragraph that if a court makes a finding of “exceptional circumstances” (to displace the presumption), “the court will almost invariably impose an immediate sentence” (at [40]). By that notion, it was “not obvious” whether the Court still had to go on to consider whether it was “appropriate” to suspend the sentence (using the pre-2026 parlance).

To cement this point, Edis LJ at [40] stated:

“The table and a consideration of appropriateness remains highly relevant in circumstances where suspension is a matter of unfettered discretion. It is hard to see why it is relevant in circumstances where that discretion is fettered in the way Parliament has provided in section 277A(1) and (2).

COMMENTARY

I consider the value of *Morgan* can be summarised as such:

1. The Court was quick to note that neither the prosecution nor the defence had alerted the sentencing judge to the provisions in s.277A. That should be a lesson to all: Always check the date when someone was convicted (on or after 22 March 2026).
2. It provides a framework for advocates and judges in using s.277A. The Court should consider: (1) Is there an exemption to the presumption? (2) If not, is the appropriate sentence less than 12 months? (3) If so, are there exceptional circumstances which justify not applying the presumption? Following these three questions in order will ensure that all parties are assisting the Court as far as possible with its new legal duty pursuant to s.277A.
3. The Court clarified that the seriousness of the offence itself was unlikely to be a sufficient reason (bar any other reason) for disapplying the presumption. Given that the presumption only applies to sentences less than 12 months, no offence in this category would be exceptionally serious.
4. The Court emphasised that “exceptional” is a high threshold, meaning that it does not include circumstances (relating to the offence or the offender) that are “commonly encountered”.

POSTSCRIPT

Interestingly, *Morgan* is not actually the first case from the Court of Appeal to deal with the new provisions of the Sentencing Act 2026. In the case of *Khan v North of England Coachworks Ltd* [2026] EWCA Civ 656 (21 May 2026), the Court of Appeal (Civil Division) dealt with an appeal against sentence for a civil contempt of court (for knowingly breached a freezing order).

On appeal, the Court of Appeal concluded (*inter alia*) that the statutory presumption under the Sentencing Act 2020 s.277A, in favour of suspension for those convicted after 22 March 2026, did not apply to a non-criminal case. At [53], Coulson LJ expressed a rather interesting view:

“even if the presumption was in some way applicable, the fact that only immediate custody was appropriate in the exceptional circumstances of this case provides a complete rebuttal of the presumption in any event.”

The fact that only immediate custody is “appropriate” is not an exemption in s.277A(3), and following *Morgan*, the seriousness of the case alone may not be sufficient to disapply the presumption. However, in *Morgan*, the Court was careful in its words. The Vice President intentionally chose the word “unlikely” so as to not tie the hands of any subsequent courts.

[The decision is available on BAILII.](#)

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