

# Director given suspended prison sentence and firms fined after worker dies

A director has been given a suspended prison sentence and two firms have been fined after a worker was killed when glass panes fell on top of him while unloading a shipping container from a lorry.

Tawanda Chamwandayita, from Edgbaston, Birmingham suffered fatal crush injuries when units of glass fell on top of him while unloading materials from a shipping container.

The glass fell against his leg, knocking him off the rear of the lorry where he fell to the ground in an incident on Walsall Road, Birmingham on 26 October 2017. Mr Chamwandayita, 37, was killed when approximately 17 glass panes fell on top of him from the lorry.



A joint investigation by the Health and Safety Executive (HSE) and West Midlands Police found the unloading was not properly planned, supervised or carried out safely. The defendants failed to assess the risk of workers falling from the lorry and the risk from large and unsecured items falling from the lorry onto workers while unloading.

Inexperienced and vulnerable workers, some of them just 17-years-old, were

working in dangerous conditions with no supervision, inadequate equipment and without any planning or risk assessment in place.

Evergreen Construction (UK) Limited was appointed as the principal contractor but failed to take action to ensure the safety of the workers. The client, Leyton Homes (Perry Barr) Limited (previously known as Hilux Developments Birmingham Ltd and Fast Item Residential Limited) had engaged their own contractor to arrange the delivery and unloading of the container full of large and heavy items, including the glass. The principal contractor was on site but failed to do anything to ensure that the unloading operation was properly planned, appropriately supervised or carried out safely.

Jalal Rana, managing director of Leyton Homes (Perry Barr) Limited, watched the glass be unloaded from the lorry but did nothing to ensure systems were in place to protect the workers. There was no consideration of the competence of the contractors being used or the safety of the work.

Leyton Homes (Perry Barr) Limited, of Walsall Road, Birmingham was found guilty of breaching Section 3 (1) of the Health and Safety at Work etc. Act 1974 and Regulation 4 (1) of the Work at Height Regulations 2005. They were fined £100,000 and ordered to pay £55,084.67 in costs at Birmingham Crown Court on 20 January 2023.

Evergreen Construction (UK) Limited, of Fowler Road, Essex was found guilty of breaching Section 3 (1) of the Health and Safety at Work etc. Act 1974 and Regulation 4 (1) of the Work at Height Regulations. They were fined £115,000 and ordered to pay £52,561.96 in costs at Birmingham Crown Court on 20 January 2023.

Jalal Rana, of Walsall Road, Birmingham was found guilty of breaching Section 37 (1) of the Health and Safety at Work etc. Act 1974. He was sentenced to nine months imprisonment, suspended for two years, and ordered to pay £57,171.95 in costs at Birmingham Crown Court on 20 January 2023.

HSE inspector Edward Fryer said: "This case highlights the importance of engaging competent contractors and making sure that roles and responsibilities are clearly defined. Management arrangements need to be clear between clients, contractors and principal contractors so that health and safety arrangements can be properly planned, coordinated and implemented.

"All parties are required to ensure that safety arrangements are in place and followed. This was a wholly preventable incident which led to the death of Tawanda Chamwandayita in tragic circumstances."

#### **Notes to Editors:**

1. The Health and Safety Executive (HSE) is Britain's national regulator for workplace health and safety. We prevent work-related death, injury and ill health through regulatory actions that range from influencing behaviours across whole industry sectors through to targeted interventions on individual businesses. These activities are supported by globally recognised scientific expertise.

[https://www.hse.gov.uk/?utm\\_source=press.hse.gov.uk&utm\\_medium=referral&utm\\_campaign=notes-to-editors](https://www.hse.gov.uk/?utm_source=press.hse.gov.uk&utm_medium=referral&utm_campaign=notes-to-editors)

2. The Construction (Design and Management) Regulations 2015 Requires that the Principal Contractor is appointed by the Client in writing. In the case of Evergreen Construction (UK) Limited the Court considered what constituted an “appointment in writing” and agreed with the HSE stance: CDM 2015 does not define the format or form of words for the appointment of a Principal Designer (PD) or Principal Contractor (PC), merely that it must be recorded in writing. Therefore, the Regulations do not require a specific “letter of appointment” or similar contractual document. The Regulations and associated HSE/industry derived supporting guidance do not go into details or set out any specific form that an appointment in writing should take.
3. More about the legislation referred to in this case can be found at: [https://www.legislation.gov.uk/?utm\\_source=press.hse.gov.uk&utm\\_medium=referral&utm\\_campaign=notes-to-editors](https://www.legislation.gov.uk/?utm_source=press.hse.gov.uk&utm_medium=referral&utm_campaign=notes-to-editors)
4. HSE news releases are available at [https://press.hse.gov.uk/?utm\\_source=press.hse.gov.uk&utm\\_medium=referral&utm\\_campaign=notes-to-editors](https://press.hse.gov.uk/?utm_source=press.hse.gov.uk&utm_medium=referral&utm_campaign=notes-to-editors)
5. Further information about safety in construction can be found at: [https://www.hse.gov.uk/construction/?utm\\_source=press-release&utm\\_medium=social&utm\\_campaign=prosecution-push](https://www.hse.gov.uk/construction/?utm_source=press-release&utm_medium=social&utm_campaign=prosecution-push)