

# The Extra Factor:

## Supporting Artists - Liability and Best Practice

Report Summary, Industry Engagement and Business  
Delivery Plan  
prepared by  
Creative Screen Associates

For

**MADDOG 2020**

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## Foreword

I very much welcome this report. It is the first time a comprehensive study has been undertaken into the production and professional practices relating to supporting artists<sup>1</sup>.

In my long career as a film producer, I could not have achieved the feeling of authenticity in films such as *Chariots of Fire*, *The Mission* or *The Killing Fields* without the services of thousands of supporting artists. They are in many ways, the unsung heroes of production - a committed group of individuals who devote long hours to a production's needs. For the most part, they receive little credit or remuneration. Even with the advances in technology such as computer-generated imagery (CGI), to create crowd background shots - without these dedicated and in many cases experienced people, *Dunkirk*, and *Fantastic Beasts and Where to Find Them*, would never have been able to create such credible on-screen worlds, and achieve major international success.

Commissioned by Mad Dog Casting and produced by Creative Screen Associates, the report, *The Extra Factor: Supporting Artists - Liability and Best Practice*, clearly defines the issues facing the sector in the film, television and commercials production industry. It shines a much needed light on the practices, risks and threats that this small, but important aspect of the production process involves. It proposes a number of straightforward, practical steps that all three parts of the value chain – agencies, production and the extras themselves - can undertake to improve the conditions of all those working within it.

The UK film industry has grown by 72.4%<sup>2</sup> since the start of 2014. Its direct contribution to Gross Domestic Product (GDP) in 2015<sup>3</sup> was £5.2 billion - generating a balance of trade surplus of £1.2 billion. It is essential that the UK industry must not become complacent, it must continue to raise professional standards wherever it can if it is to maintain its world leading reputation as the best country in which to produce film, television and, increasingly, many other forms of audio-visual product.

I look forward to seeing how the industry responds to this timely report into an under-regarded aspect of an ever-more important sector of the economy.

**Lord Puttnam of Queensgate**

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<sup>1</sup> This term also includes those also known as background artists and extras

<sup>2</sup> Office for National Statistics

<sup>3</sup> BFI Statistical Yearbook 2017

## 1. The Project Brief

Mad Dog Casting 2020 commissioned Creative Screen Associations (CSA) to research and consult with the production industry:

- to assess the current and potential future legal and financial liabilities facing the agencies for supporting artists, the supporting artists themselves, and the production industry for film, TV and commercials
- and to recommend best practice

The final draft of Extra Factor Supporting Artist Liability and Best Practice Report was delivered in November 2017.

## 2. Summary of Key Findings and Recommendations

### 2.1 Key Findings

- Supporting artists agencies (SAAs) are a convenient, one-stop-shop for productions. They take the pain out of sourcing and selecting significant numbers, and different types of supporting artists (SAs) for production. Their core service generally includes:
  - sourcing and supplying SAs, including through ‘street’<sup>4</sup> and/or ‘open casting’<sup>5</sup> as required
  - managing the logistics of SAs’ availability, booking, release and transportation needs
  - processing SAs’ payments
  - when required, providing the legal and tax records for each supporting artist and reporting to HMRC on behalf of the production
- Industry directory, *The Knowledge*, records fifty-four agencies representing extras and walk-ons across the UK. CSA believes the number to be higher due to the frequency of ‘pop up’ agencies
- The estimated value of UK film production for the supporting artists sector in 2014, 2015 and 2016 is around £36 million, £34 million and £38 million respectively
- Supporting Artists Agencies are employment agencies that are regulated under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319) Amendment 2010 (CEA03/10)
- There are multiple agreements governing the contracting of supporting artists across the film, broadcast and commercials industries. Some are out of step with current production industry business models and practice. They do not have standardised terms. They offer different levels of contractual protection and use different job titles for SAs. The agreements include:
  - Pact<sup>6</sup> and Film Artists Association (FAA) Agreement for the Employment of Background Artistes, Stand-Ins and Doubles
  - Pact and Equity Walk On Agreement
  - BBC/Equity Contributor Contract Television Agreement
  - ITV/Equity Television Agreement
- The Agreements are not mandatory – there are no obligations on producers to use them
- SAAs and productions have distinct responsibilities in relation to contracting supporting artistes – and are required to comply with all relevant UK government legislation. However there is often a lack of common understanding on *who* is responsible for implementing the specific legal and employment obligations
- Service level agreements - determining the responsibilities of both parties - are seldom issued between productions and agencies
- The agency business model relies on fees and commission being charged to Supporting Artists. CEA03/10 Regulation 26 offers Supporting Artists Agencies the option to charge fees to supporting artists **or** to the production - but they may not legally charge both parties
- Examples have come to light of productions and agencies operating on the margins of legality - ignoring the national minimum wage (which is factored into the minimum pay rates detailed within the SA agreements) and agreeing ‘deals’ as low as 50% of the FAA/Pact and Pact/Equity SAs rates of pay
- Agency services are provided before payments from the production are received, creating financial risk for the agency and supporting artist
- There are no barriers to entry for establishing a supporting artists agency
- Although in breach of Regulation 26 within the CEA03/10 regulations, some agencies charge up-front fees to SAs without guaranteeing work

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<sup>4</sup> identifying and engaging SAs by going to specific areas or locations and approaching people who fit the casting brief

<sup>5</sup> organising ‘open casting’ auditions where anyone can come forward to audition

<sup>6</sup> Producers Association For Film and Television

- At times, agencies are known to charge disproportionately high fees and commission rates, with SAs often unaware that they are entitled to seek to amend the rates before signing the contract.
- Supporting artists are self-employed<sup>7</sup> for tax purposes but are also classed as ‘workers’ for employment law purposes. This means they are entitled to the national minimum wage, holiday pay, auto-enrolment pensions and certain other protections arising from their ‘worker’ status
- Provisional bookings and late cancellations by productions and agencies are a frequent source of frustration for supporting artists
- The Disclosure and Barring Service (DBS) policy is inconsistent - it does not apply to all those working on productions commissioned by the public service broadcasters and Sky, which employ children and young people

## 2.2 Key Recommendations for Best Practice

- Agencies and productions should
  - use the existing Supporting Artists Agreements of the FAA/Pact, Pact/Equity, BBC/Equity and ITV/Equity. If producers use other agreements, they need to make sure that they reflect the minimum terms detailed within the established model agreements, to safeguard themselves in complying with UK employment law
  - Ensure that a service level agreement - or terms and conditions of service - detailing the responsibilities of the production and the supporting artists agency, is in place prior to the start of principal photography
- Professionalise the sector - to improve its reputation - by industry parties collaborating with each other to:
  - set - and adhere to - fair commission rates and fees
  - create simple Best Practice Guidelines - and a check list for producers
  - standardise and agree those elements that comprise the core services supplied by SAAs (Supporting Artists Agencies)
  - encourage the adoption of software systems to simplify, secure contracting processes and document sharing
  - encourage start-up agencies to meet with the Employment Agencies Standards Inspectorate (EAS), and encourage established agencies to meet with the EAS every two years to review their systems of operation
  - invest in staff and management training
  - create and implement within existing production courses ‘working with supporting artists’ training modules for assistant directors, producers, supporting artists and agency staff
  - work with trade bodies, trade unions and the EAS to devise a system for recognising and alerting the public and productions about agencies which are not bona-fide
- The unions and FAA need to review and update their Supporting Artist Agreements, if necessary, to make them fit for contemporary production and business practice - by working in consultation with the supporting artists agencies, Pact, the ADA<sup>8</sup>, IPA<sup>9</sup>, PGGB<sup>10</sup>, BBC, ITV, Amazon, Netflix, the US Studios, the Employment Agencies Standards Inspectorate, the national and regional screen agencies and the British Film Commission
- Include a clause - within the terms of the public production funding, the public service broadcasters commissioning agreements and UK tax credit - that productions should:
  - use the FAA/Pact, Pact/Equity or BBC/ITV/Equity agreements (as appropriate)
  - comply with all relevant government legislation including employment, health and safety, data protection
- Explore creating a supporting artists agency sub-group within the Recruitment and Employment Confederation (REC) to identify and represent its common interests – and to facilitate access to quality staff training, professional practice assessments, and to have a voice with government
- Bring together the SAAs, national screen agencies, trade bodies, unions and government - to review and if agreed - simplify and standardise the process of DBS checks for production to ensure they apply to all those who work with children/young people on productions

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<sup>7</sup> Background Artists (Supporting Artists) are listed within the self-employed grades accepted by HMRC Film Industry Guidance

<sup>8</sup> Assistant Directors Association

<sup>9</sup> Institute of Practitioners in Advertising

<sup>10</sup> Production Guild of Great Britain

### **3. Post Report Industry Wide Engagement**

The report was distributed to key industry companies, organisations and professionals for feedback. The positive response led to two industry-wide meetings taking place. The first, chaired by Kevin Trehy, Senior Vice President Physical Production, Warners Brothers UK, prioritised the recommendations, and the second - held after the three sub-group meetings - determined the best way to deliver the three key recommendations.

The three sub-groups focused on the following key areas:

- Union Agreements, chaired by Claire Hood, TV Organisor, Equity
- Training, chaired by Andrew Reid, Head of Production, Northern Ireland Screen
- Regulation, chaired by Tom Hadley, Director of Policy and Professional Services, Recruitment and Employment Confederation

Appendix 1 details all those supporting and/or involved with the industry-wide meetings and sub-groups.

Those at the meetings considered that the issues identified in the report dovetailed well with the work being rolled out by the major studios and TV companies. This includes implementing new directives and inductions relating to anti-harassment, bullying and associated compliance issues. It is important to extend responsibility beyond Heads Of Departments towards collective responsibility so that all the crew on a production know what is unacceptable, can help identify problems, and understand the mechanism and chain of command for reporting wrongdoing.

#### **3.1 Agreements**

The meetings discussed the historical and practical reasons behind the four union agreements, and identified where gaps exist, and which contractual terms are out of date or need to be reviewed – including:

- lack of an agreement for features shot outside the M25
- disparity of terms, conditions and pay in the regions
- repeat fees and upgrades - options/desirability for reducing repeat fees and increasing daily rates
- the need for agreements for extras contracted directly, as well as through agencies
- lack of duty of care clauses to cover issues such as harassment and bullying

They concluded that the complexity of multiple agreements makes it difficult for production personnel to have a detailed understanding of their contractual terms. Not using the existing agreements or cherry-picking specific elements can result in non-compliance with legislation and regulation. The recently negotiated Bectu/Pact Film Crew Agreement suggests it could be possible to achieve a uniform agreement for SAs/extras.

Equity, BECTU, FAA and Pact agreed to work together to identify who will take responsibility for each of the areas covered by the different agreements, to assess the potential for simplification and moving towards a single agreement. Pact will also liaise with ITV and the BBC to encourage them to join the initiative.

The industry participants agreed that one effect of union agreements is to drive regulation since they detail the terms to which production companies will commit and adhere. Ensuring the agreements are fit for purpose is very important. The broadcasters will be powerful influencers to implement a single supporting artists screen agreement if they come on board.

#### **3.2 Training**

There was unanimous agreement that the lack of formal training for production personnel and SAs on employment rights and protections, on-set behaviour, accountability and HR is a real market failure. The reality of production often results in runners looking after extras – creating a situation where those with least experience on set are responsible for those who often have more experience. Current industry sensitivities around harassment has highlighted the need to prioritise education and training in good working practice. Clear processes must be in place to handle harrasments and complaints. Production personnel need to be aware that irrespective of whether extras come through an agency or are a direct hire, they are the responsibility of the production which has a duty of care for them.

The meetings focused on how to improve productions' and their personnel's understanding of responsibilities and best-practice across various roles and departments such as location and production managers, ADs, runners, chaperones, the extras themselves, the costume department, hair and make-up. All agreed that it is crucial to improve :

- understanding of the production's responsibilities for extras/supporting artists
- the skills and knowledge of production personnel working with extras in areas such as employment rights and protections, on-set behaviour, accountability and HR.

Participants identified a need to develop regulated training modules with consensus on standardised course content – for inclusion in existing production degrees, diplomas and short courses.

It was acknowledged that developing training modules will take time, so quick and simple solutions need to be implemented to increase awareness and understanding of the productions' and their crew's responsibilities for extras and best working practice. It was agreed that video/s demonstrating best practice would be an effective short-term tool. Productions could ensure it was viewed by all their crew working with extras (the Production Office, Costume, Make Up, 2<sup>nd</sup> and 3<sup>rd</sup> ADs and runners) by:

- making it a contractual obligations
- providing a unique log-in so that an electronic record is generated once individuals have viewed it
- making it available on ipads/tablets for crew/runners to watch when they arrive on the production.

The video/s content should cover legal responsibilities, health and safety and the practicalities of working with SA's/extras on production.

Extras also need to be familiar with what is required of them when working on a production and what they should expect from the production. It was agreed that a video produced for them would also be an effective way to communicate this.

The meetings confirmed that the Best Practice Check Lists developed for productions, agencies and extras should be distributed to the relevant trade bodies to share with their members and to publish on their websites.

FAA/BECTU are encouraging their committee members to undertake the union representative course to ensure they have a detailed understanding of the FAA agreement and can represent their members on site.

### **3.3 Regulation**

The industry agreed clear accountability was needed across the value chain. Membership of the Recruitment & Employment Confederation (REC)<sup>11</sup> for Supporting Artists Agencies was seen as a way of better educating and regulating agencies who supply extras to productions. Agency membership of the REC would provide security to productions, providing confidence that they are working with agencies serious about legal and regulatory compliance. The REC is exploring the practicalities of extending their membership to include the entertainment sector. The cost of REC research to fully understand the implementation of the regulations unique to the sector, and to set up the framework and legal agreements for an appropriate membership offer will be in the region of £20,000.

The unions agreed to explore how they can enhance their support for extras/supporting artists. Those attending the meeting agreed in the importance of Extras being encouraged to join Equity or BECTU to ensure they have representation.

## **4. Priorities and Next Steps**

### **4.1 Union Agreements:**

- Equity, Bectu, FAA and Pact will meet to identify the similarities between the existing agreements, the best way to cover supporting artists working on films produced outside the M25, and to assess whether a single agreement is possible. They will work together to produce a schedule to take the work forward
- Pact will meet with ITV and the BBC to begin a dialogue about simplifying and moving towards a single agreement for supporting artists/extras.

### **4.2 Training:**

- Graham Beswick, CEO, Mad Dog Casting 2020 will meet with Creative Skillset and the Production Guild of Great Britain to encourage them to take the lead on training for this sub sector

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<sup>11</sup> The Recruitment & Employment Confederation – represents employment agencies from many different sectors from giant high street names to small operators.

- A sub-group of the industry participants will raise funding to implement the following training initiatives:
  - creation of training modules for inclusion within existing long and short production and crew courses
    - working with training providers to include the modules within their courses and/or creating new short courses for production personnel
  - develop and produce training videos as detailed in 3.2
  - dissemination of the Best Practice Check Lists

#### **4.3 Regulation:**

- The REC will continue to explore expanding its membership to include the Entertainment Industry.
- Subject to agreement and funding of £20,000, the REC will undertake the research and development required to create appropriate codes of practice and model contracts for the sector.

#### **5. Stage 3 Business Delivery Plan and Project Budget**

Much of the work to be done requires time and energy - but some also requires funding. The *Stage 3 Business Delivery Plan and Budget* details the activities and costs. It also shows the cost of the full project, including funding to date and the funding still required to deliver Stage 3.



## Appendix 1: Industry Participants and Consultees

Name	Role	Company/Organisation
Iain Smith OBE	Producer, Line Producer, Chair of the British Film Commission Chair of the Film Industry Training Board	Applecross Productions
Richard Lingard	Programme Co-Ordinator ADA also Course Leader - Assistant Directors and Floor Managers	Assistant Directors Association (ADA) and National Film and Television School
Melanie Briggs	HR Business Partner	BBC
Caroline Hemington	Negotiations Officer	BECTU
Spencer MacDonald	National Secretary	BECTU
Tony Norton	Negotiations Officer	BECTU
Samantha Perahia	Head of Production UK	British Film Commission
Fiona Morham	Film Fund	BFI
Will Evans	Director of Business Affairs and Film Finance	British Film Institute
Tracey Josephs & Nicky Earnshaw	Head of Production & Production Finance Executive respectively	Channel 4
Brodie Pringle	Head of Screen Commission	Creative Scotland
Sarah Lane	Associate	Creative Screen Associates
Sarah McKenzie	Managing Director	Creative Screen Associates
Nicky Ball	Trainee Finder Senior Manager	Creative Skillset
Patrizia Berardi	HETV Trainee Finder Manager	Creative Skillset
Ian Williams	Supporting Artist and FAA Chairman	FAA
Pauline Burt	CEO	Cymru Wales
Elizabeth Mitchel	Head of Policy and Governance	Department for Digital, Culture, Media and Sport (DDCMS)
James Butler	Senior Film Policy Advisor	DDCMS
Dave Warboys	Risk & Intelligence Manager	Employment Agencies Standards Inspectorate (EAS)
John Barclay	Head of Film, TV, Radio and New Media	Equity
Claire Hood	TV Officer	Equity
Laura Messenger	Films and Contracts Enforcement Officer	Equity
Emma Sweeney	Business Manager	The Extras Dept.
Emily Leach	Production Manager	Film 4
Pauline Burt	CEO	Film Cymru
Adan Partridge	Production and Special Projects Manager	Film Cymru
Adrian Wootton	CEO	Film London
Paul Hillier	Senior Film and TV Broker	Integro Entertainment
David Andrews	Partner	Lee and Thompson
Graham Beswick	CEO	Mad Dog Casting 2020
Eric Senat	Chairman	Mad Dog Casting 2020
Christopher Villiers	Founder 2020 Casting	Mad Dog Casting 2020
Richard Moore	Managing Director	Media Insurance Brokers
Jon Wardle	Director	National Film and Television School
Alison Goring	Head of NFTS Scotland	National Film and Television School Scotland
Andrew Reid	Head of Production	Northern Ireland Screen
Max Rumney	Deputy CEO	Pact
Eloise West	Head of Business Affairs	Pact
Alison Small	CEO	Production Guild of Great Britain
Brian Donovan	Line Producer and PG Board Member	Production Guild of Great Britain
Ray Knight	Founder	Ray Knight Casting
Bynne Adefuyi	Members Officer	Recruitment & Employment Confederation (REC)
Clare Flowers	Head of Compliance	REC
Tom Hadley	Director of Policy and Professional	REC

	Services	
Frith Triplady	COO	Tiger Aspect
Amy Mobley	Production Executive	Tiger Aspect
Allison Dowzell	Wales Screen Manager	Wales Screen
Kevin Trehy	SVP Physical Production	Warner Brothers UK
Kate Kininnmont	CEO	Women in Film and TV
Charles Moore	Partner	Wiggins
Seth Roe	Senior Associate, Employment Law, Media Team	Wiggins
Mark Hubbard	Line Producer	
Peter McInerney	Supporting Artist	

## Appendix 2: The Client and The Brief

### The Client

Mad Dog Casting (MDC) is one of the leading supporting artists casting agencies in the UK - with offices in Ealing Studios London, Pinewood Wales and MediaCity, Manchester. Established in 1999, MDC provides extras, background, walk-ons, doubles and featured artists for major and independent feature films, TV shows and commercials. Credits for film and TV include *Dunkirk*, *Trainspotting 2*, *Fantastic Beasts and Where to Find Them*, *Skyfall*, *Philomena*, *Pirates of the Caribbean: On Stranger Tides*, *Sherlock*, *Eastenders*, *Atlantis*, *Holby City* and *Da Vinci's Demons*. The Commercials team works across a range of ongoing campaigns and idents for *O2*, *McDonalds*, *Channel 4* and the *BBC*.

The company holds accreditations from the British Standards Institute for ISO 9001 Quality Management, and for ISO/IEC 27001 Information Security Management.

In 2015, MDC became a partner of BAFTA and BAFTA Cymru, supporting BAFTA to celebrate those contributing to the industry through its nominations and awards, learning events such as Guru Live, and the BAFTA Scholarship scheme, which works with promising students. Mad Dog Casting also plays an active role in the prestigious annual BAFTA Film Awards Gala Dinner.

MDC's CEO, Graham Beswick is a qualified member of the Institute of Chartered Accountants in England & Wales (ICAEW), a Fellow of the Royal Society for the Arts (RSA), and an Academy Circle member of BAFTA. He has considerable business expertise as an entrepreneur with a portfolio of diverse companies including the award winning Feonic sound technology, and the renowned event production company, Fisher Productions.

### The Brief

#### 1.1. The Project Brief

Mad Dog Casting commissioned Creative Screen Associations (CSA) to research, and consult with the production industry:

- to assess current and future potential legal and financial liabilities for the agencies for supporting artists, the supporting artists themselves, and the production industry for film, TV and commercials production
- and to recommend best practice

In particular CSA was asked to look at:

- Current Practice
- Service Expectations
- Contractual Liability
- The Right to Work in the UK
- Failure to Pay
- Data Security
- Insurance

The resulting report is based on desk research and thirty eight consultations with key production organisations, companies and professionals. It presents its findings, provides supporting evidence, identifies market practices and suggests solutions - with the aim of:

- encouraging the professionalisation of the Supporting Artists supply market
- establishing and disseminating standards and best practice to mitigate the legal and financial risks of the agencies for supporting artists, the supporting artists themselves, and the production industry

Different terms are used to describe the same job – from supporting artists to extras, background artists, and walk-ons. Productions, though, have slightly different interpretations of what these terms mean - depending on whether the production is for television, film or commercials. For simplicity, this report uses the term 'supporting artists'.

The full report is available from Creative Screen Associates, and is structured into seven sections with 4 appendices:



Creative Screen Associates  
75 Jessel House  
Judd Street  
London WC1H 9NU  
UK

t: +44 (0)20 7278 9891  
e: [info@creativescreenassociates.com](mailto:info@creativescreenassociates.com)  
[www.creativescreenassociates.com](http://www.creativescreenassociates.com)

Creative Screen Associates Ltd. Registered in England No. 7745741  
Registered Office: 15 Nevill Road, Rottingdean, Brighton BN2 7HH, UK