



LAWYERING SKILLS @ KENT LAW SCHOOL

STUDENT OUTDOOR CLERK SCHEME

**Student Outdoor
Clerk Scheme**
supported by  Thomson
Reuters™

Kent
Law School



Thomson
Reuters™



University of
Kent

INTRODUCTION

Providing a Service to Criminal Law Practitioners

Owing to decades of cuts to the Criminal Justice System, criminal practitioners are increasingly under pressure. There is also a fall in entry to the criminal justice system with the average age of a 'duty solicitor' increasing. In March 2021, an academic paper entitled, '*Vulnerability, the future of the criminal defence profession, and the implications for teaching and learning*' was published. In essence, it poses the question what can universities do to encourage the next generation to enter the criminal defence profession but also what can they do to help criminal defence firms now.

At Kent Law School, we have been giving that a lot of thought and one of the initiatives we have discussed with members of the profession and Kent Law Society is our proposal for a 'Student Outdoor Court Clerk Scheme (SOCS)'.

Long gone are the days when legal aid was available for firms to send an outdoor clerk to sit behind the trial advocate. It is a role which we have been told is sadly missed by solicitors at law firms. Although the trial advocate will provide a summary of what has happened, without an outdoor clerk, whose role is to listen and take notes, the firm sometimes fails to get the full picture of what happened at court.

An Outdoor Clerk is invaluable to the advocate for the following reasons:

1. They can take a full note of all the evidence – especially the cross examination. There used to be so many occasions when the clerk caught something that the advocate asking the questions missed – because they were busy on their feet.
2. They are a second pair of ears when the client has to be given certain advice and can make sure a proper note is taken when that advice is given.
3. They can provide a 'sounding board' for the advocate and provide a 'lay perspective' of how the jury might be assessing the trial
4. They can help to provide space for the advocate away from the client so that the advocate can focus on the case whilst the outdoor clerk diverts the lay client.

THE SCHEME



Darren Weir
Director of Lawyering Skills

'The Outdoor Clerk role has a real place in my heart. As a 16 year old student I walked into a High Street firm looking for work experience. After getting that, they went on to use me for (paid!) outdoor clerking. I went on to do that through University and Bar School. Once on my feet as a barrister they became a regular instructing solicitor. If it had not been for the outdoor clerking, I would not have got the thirst to do criminal work (or an instructing solicitor before pupillage)'. Our scheme has been running since November 2021 and our clerks have attended scores of clients in that time. It has been nothing but beneficial to all.

The Scheme

The Student Outdoor Clerking Scheme (SOCS) has been running now since November 2021. Since the scheme started we have covered over 80 cases, involved over 120 law students and serviced over 230 court days. Richard Atkinson, Vice President of the Law Society and partner at Tuckers says, *'My firm has used SOCS since November 2021 and we have been really impressed by the scheme. It not only assists us in being able to support advocates more fully at court but it also acts as a great introduction to students interested in a career in criminal law. I see great potential in it being rolled out nationally, and I look forward to helping that happen'.*

We are often able to send clerks out at short notice and our students are particularly handy when dealing with vulnerable clients and the advocate needs a second pair of ears and eyes and a good note of the advice given.

We have trained a band of students in what they need to know to be effective outdoor clerk agents for your firm. They will do all those things mentioned in our introduction. All you need to do is contact our administrator (by filling in the [Online booking form](#)) to book your case in, give us the information we need and we will then appoint a Student Outdoor Clerk/ clerks to your trial. They will then sit behind counsel (or your in-house advocate) and take notes, provide an attendance note etc.

YOU get an Outdoor Clerk for FREE

The STUDENT gets experience and a taste of work in a criminal practice

The LAW SCHOOL achieves elements of its Civic Mission.

WE ALL BENEFIT

THE FAQs

Some Questions you might have

What about client confidentiality?

Our Student Outdoor Clerks (SOCs) are trained in the importance of client confidentiality. They sign a confidentiality agreement with us, but also for your own piece of mind and internal policy requirements, they will be happy to sign any confidentiality agreement with your firm.

What about access to case papers?

The days of collecting the old paper file has long gone. SOCs do not require access to any of your systems to carry out their task. After all they are note takers! However, it would probably be helpful to them (so that they are better informed) for them to have access to at least some of the main statements in the case, perhaps any relevant correspondence or defence case statement. They would definitely need access to defence witness statements if you have defence witnesses attending and you want the witnesses to be provided with copies of their statements. So as to ensure confidentiality, for document exchange between your firm and the SOC, you will be given free access to CASECENTER (the private version of the CMS used by the Courts and CPS). You will then be able to upload what you want the SOC to have at Court. They will upload their notes and attendance notes to that system too. There is no risk therefore that papers can be intercepted over emails or printed as the system is password protected.

Do SOCs give legal advice?

Absolutely not. They are trained and told that they are not permitted to give advice or an opinion. If the lay client asks them a legal question or a question about the case when the advocate is not present, then they will tell the client that they need to repeat that to the advocate and facilitate that happening. Indeed, you may want to mention that a student outdoor clerk will be attending to your lay client in advance (some firms may want to get the client's agreement), and that the SOC will not be able to give an advice or opinion.

Do we have to pay the student's travel costs?

No, you do not need to pay their travel costs. This is not expected, though if you wish, then it would be welcomed as the students will be using their own resources to attend court. Unfortunately, the law school does not have the budget to pay. If you do wish to contribute please tell the administrator at the time of booking. We also have a charity fund for students with limited means to help with their charity. If you wish to make a financial donation, please let us know.

Who is responsible for the actions of the SOC?

Just as in the days of the old solicitor's clerk, **they are acting as your agent and so ultimately are the firm's responsibility.** We though ensure through the training that they are aware of the limits of their role and the responsibility they have in representing your firm. We will also ensure the well-being of our students.

Am I guaranteed to get a SOC if I ask for one?

The more notice you can give the better. We will accept calls the day before the trial starts for warned list cases. You may also have a number of different SOCs attend the same case due to their class commitments. We must remember they are students and so sometimes their lessons and assessments may mean that we cannot get a SOC for you. We will though try our best.

CONTACTS & FINE PRINT

Contacts

For more information

Email Darren Weir – d.weir@kent.ac.uk or call 07957436685

To book a Student Outdoor Clerk

Simply fill in the [online form](#). If you need to email any questions email: outdoorclerks@kent.ac.uk. This email addressed is monitored daily but less often during holiday times. If matter is urgent please call the phone number above.

CONTACTS & FINE PRINT

Terms of Engagement

1. On completion of this Referral Form, it is the intention of the firm of solicitors ('the firm') to use a student outdoor clerk ('SOC') who is a student of The University of Kent (UKC), Kent Law School or Clinic ('KLS') for the purposes of acting as their agent at a Crown Court Trial (or hearing at which evidence is to be heard – eg a Newton Hearing or Proceeds of Crime Hearing) to assist and sit behind counsel, to take notes of meetings with the client, to assist counsel generally and to report back to 'the firm' as required by way of copy notes and a daily attendance note. The 'SOC' shall not give legal advice or opinion at any time in front of the lay client and shall only express views to counsel if invited by counsel to do so.
2. 'KLS' cannot guarantee that it will be able to allocate a 'SOC' to the case. This is especially so for warned list cases when 'KLS' are only contacted the day before the case comes into the list. 'KLS' will use its best endeavours to allocate a SOC to the case in all circumstances. All parties should be aware that these are students and so their studies or assessments may mean that one cannot be obtained for a case at certain times of the year.
3. The 'SOC' shall be appointed at no cost to 'the firm'. Through this free service, 'KLS' allocates 'the firm' with a 'SOC' to represent 'the firm' as their agent at court. As the 'SOC' is the agent of 'the firm', it means that 'the firm' is responsible for the 'SOC' during the time of their engagement at court. 'KLS's role is limited to allocating a 'SOC' to a case and acting as an intermediary between 'the firm' and the 'SOC'.
4. Neither the 'SOC' nor 'KLS', the University of Kent or its staff, employees or agents, shall be liable to any Party or Legal Representative for any act or omission howsoever arising in connection with any attendance at court by the 'SOC'.
5. 'KLS' will only appoint 'SOC's who have undertaken an intensive outdoor clerk training course provided by 'KLS'. This course provides SOC's with an overview of the criminal justice system, defence trial preparation, file structure and the importance of client care and confidentiality.
6. Save for the 'case referral form' which will initially be sent by the 'KLS' administrator to 'the firm' by email, all other document exchange shall take place via CASECENTER which is a password secure system (the private version of the Criminal DMS). Access to this platform is provided to 'the firm' free of charge.
7. Should 'the firm' wish a 'SOC' to sign or agree to any of their own confidentiality policies, they should ensure that these policies are uploaded onto CASECENTER as soon as the case is created on the system.
8. Although 'the firm' may request a particular 'SOC' for a case, the provision of that 'SOC' cannot be guaranteed and 'the firm' should in good faith accept any 'SOC' appointed to the case by 'KLS'.
9. 'the firm' or 'KLS' can remove a 'SOC' off of a case at any stage following their first attendance at court on the case.
10. A 'SOC' can also refuse to attend on a case at any stage following their first attendance at court on the case.
11. The action outlined in paragraphs 9 and 10 should be regarded as an exceptional course and the reason for the removal of a 'SOC' should be reasonable and can include, for example, an educational need of the 'SOC', a health and safety concern, a conduct issue raised by counsel or 'the firm' or for any other reasonable cause.
12. It is advisable to put a paragraph in Counsel's instructions that it is the firm's intention to send an outdoor clerk and outline the parameters of their attendance (namely that attendance is limited to note taking) and should counsel need anything specifically done (eg witnesses be contacted etc) that they should contact instructing solicitors in the normal way. KLS will provide firms with a leaflet to send to counsel outlining the role of the SOC.
13. 'the firm' shall indemnify the University of Kent (UKC) from and against all and any liability, loss, damage, costs and expenses incurred or suffered by UKC arising from the firm's breach of its obligations under this agreement including but **not limited** to any claim by or on behalf of any employee of the firm, client of the firm or the SOC instructed by the firm against UKC, any unauthorised act, omission, or any negligence, wilful default or breach of any kind by the firm or SOC and, any claims by a third party in relation to the services provided by the UKC, its servants, employees or students under the student outdoor clerking scheme.
14. 'the firm' shall be deemed as accepting these terms whenever they ask for the services of an Outdoor Clerk on the scheme.
15. 'the firm' is regarded as the 'Data Controller' for the purposes of Data Protection Laws and the students who run the scheme and attend court are 'persons acting under the authority of the controller' in accordance with Article 29 of the UK GDPR. The 'firm' authorises its allocated student outdoor clerk/SOC to process client personal data ('Firm Personal Data') as is reasonably necessary to provide the outdoor clerking services provided. The University is the 'Data Controller' for the training of student clerks and the administration of the scheme. The University acts as a 'Data processor' for the limited hosting processing activity involved in the secure storage of documents which the firm decides to upload for the student clerk to view to facilitate the student clerk's note taking and to facilitate the secure upload of the student clerk's notes for the firm to download following the end of the trial. The case file uploaded by the firm is deleted within 14 days of the end of the trial. The firm agrees that it will provide a link to the University's SOCS privacy notice within its own privacy notice or provide it to the relevant Client through similarly appropriate means.
16. 'the firm' agrees to be bound by the Personal Data processing clauses contained in the Annex to these terms.

CONTACTS & FINE PRINT

Annex – Personal Data Processing Clauses

DEFINITIONS

Applicable Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the University is subject.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the University is subject, which relates to the protection of personal data.

Firm Personal Data: any personal data which the University processes in connection with this agreement, in the capacity of a processor on behalf of the Firm.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Purpose: the purposes for which the Firm Personal Data is processed, as set out in clause 1.8(a).

University Personal Data: any personal data which the University processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

1. DATA PROTECTION

- 1.1 For the purposes of this clause 1, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.

- 1.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

- 1.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

- (a) the University shall act as controller in respect of the personal data and processing activities set out in Part 1 of Schedule 1;
- (b) the University shall process the personal data set out in Part 2 of Schedule 1, as a processor on behalf of the Firm in respect of the processing activities set out in Part 2 of Schedule 1; and

- (c) Not used the University and the Firm shall act as joint controllers in respect of the personal data and processing activities set out in Part 3 of Schedule 1.

- 1.4 Should the determination in clause 1.3 change, then each party shall work together in good faith to make any changes which are necessary to this clause 1 or the related schedules.

- 1.5 By entering into this agreement, the Firm consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the University in connection with the processing of University Personal Data, provided these are in compliance with the then-current version of the University's privacy policy available on our main Privacy Notices page (Privacy Policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.

- 1.6 Without prejudice to the generality of clause 1.2, the Firm will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the University Personal Data and Firm Personal Data to the University and lawful collection of the same by the University for the duration and purposes of this agreement.

- 1.7 In relation to the Firm Personal Data, Schedule 2 sets out the scope, nature and purpose of processing by the University, the duration of the processing and the types of personal data and categories of data subject.

- 1.8 Without prejudice to the generality of clause 1.2 the University shall, in relation to Firm Personal Data:

- (a) process that Firm Personal Data only on the documented instructions of the Firm which shall be to process the Firm Personal Data for the purposes set out in Schedule 2, unless the University is required by Applicable Laws to otherwise process that Firm Personal Data. Where the University is relying on Applicable Laws as the basis for processing Firm Processor Data, the University shall notify the Firm of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Firm on important grounds of public interest. The University shall inform the Firm if, in the opinion of the University, the instructions of the Firm infringe Applicable Data Protection Laws;

- (b) implement the technical and organisational measures set out in Schedule 3 to protect against unauthorised or unlawful processing of Firm Personal Data and against accidental loss or destruction of, or damage to, Firm Personal Data, which the Firm has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by the University to process Firm Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

- (d) assist the Firm insofar as this is possible (taking into account the nature of the processing and the information available to the University), and at the Firm's cost and written request, in responding to any request from a data subject and in ensuring the Firm's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Firm without undue delay on becoming aware of a personal data breach involving the Firm Personal Data;

- (f) at the written direction of the Firm, delete or return Firm Personal Data and copies thereof to the Firm on termination of the agreement unless the University is required by Applicable Law to continue to process that Firm Personal Data. For the purposes of this clause 1.8(f) Firm Personal Data shall be considered deleted where it is put beyond further use by the University; and

- (g) maintain records to demonstrate its compliance with this clause 1 and allow for reasonable audits by the Firm or the Firm's designated auditor, for this purpose, on reasonable written notice.

- 1.9 The Firm hereby provides its prior, general authorisation for the University to:

- (a) appoint processors to process the Firm Personal Data, provided that the University:

- (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the University in this clause 1;

- (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the University; and

- (iii) shall inform the Firm of any intended changes concerning the addition or replacement of the processors, thereby giving the Firm the opportunity to object to such changes provided that if the Firm objects to the changes and cannot demonstrate, to the University's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Firm shall indemnify the University for any losses, damages, costs (including legal fees) and expenses suffered by the University in accommodating the objection.

- (b) transfer Firm Personal Data outside of the UK as required for the Purpose, provided that the University shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Firm shall promptly comply with any reasonable request of the University, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

- 1.10 Either party may, at any time on not less than 30 days' notice, revise this clause 1 with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.

CONTACTS & FINE PRINT

Annex – Personal Data Processing Clauses

Schedule 1 Role of the Parties

Part 1 Where the University acts as a controller

The University acts as a Data Controller in relation to the contract administration of the Student Outdoor Clerking Scheme ('SOCS') and in relation to the training of students who attend Court as student clerks. The University processes names, case details and contact details for this purpose. It may occasionally process special category health data for accessibility or training purposes.

Part 2 Where the University acts as a processor

The University acts as a Data Processor for the limited processing activity of facilitating the secure exchange of trial documents on behalf of firms deciding to use the clerking service. This enables student clerks to upload their notes into the secure service following the trial and for firms to upload relevant trial documents for the student clerk to view and to download the trial notes uploaded by the clerk following the trial. The Firm is the Data Controller of Firm Personal Data.

Schedule 2 Particulars of the processing

1. Particulars of processing

1.1 Scope

2. Student Outdoor Clerks Scheme secure document exchange.

2.1 Nature

3. The University facilitates the use of a secure allocated case track within the case center case management system procured by the University so that Firms can upload the documents that they want the student outdoor clerk to have at Court. The students who have received training as student outdoor clerks will also have access for the purposes of uploading their attendance notes. These can then be downloaded by instructing firms.

3.1 Purpose of processing

4. Facilitating secure document exchange on a case by case basis.

4.1 Duration of the processing

5. From instruction by the Firm of the SOCS service until 14 days of the case concluding.

6. Types of Personal Data

Name, Address date of birth (TBC)

Criminal offence data:

Criminal proceedings documents: allegations and case papers regarding the Defendant's criminal case that the Firm upload into the Case Center. This could include sentencing information.

Special category data (where mentioned within case documents or relevant to the case) e.g. relating to the Defendant or victim's race or ethnicity, sex life or sexual orientation, physical or mental health, political opinions, religious or philosophical beliefs.

Attendance notes taken by the Student Outdoor clerk at trial in open court and (where Firm's request) legally privileged notes taken at case conferences on the day.

7. Categories of Data Subject

Criminal Defendant, Witnesses, Others mentioned within the papers (victims or bystanders), Counsel or Advocate, Court staff, Student Clerk attending, Instructing Solicitor.

Schedule 3 Technical and organisational measures

- SOCS and the University of Kent are committed to ensuring the security of computerised systems.
- In addition to the University of Kent's Data Protection and information security policies which can be found here: <https://www.kent.ac.uk/about/governance/policies-and-procedures> SOCS has implemented the following additional security measures.
Thomson Reuters Case Center
- In order to ensure secure handling of data, the scheme will use Thomson Reuters Case Center. Thomson Reuters Case Center gives users flexible and secure end-to-end case access for complete control. By inviting users to access evidence in one secure location, the system can grant time-restricted, file-restricted, and redacted case access. A complete audit trail of all user actions also reveals who has seen what, and when. Data is protected when stored on any type of media or storage within a service to ensure that it is not accessible by local unauthorized parties. All data is encrypted at rest using AES-256-bit encryption. The Case Center platform is also certified to ISO 27001 standards and has been independently assessed to be compliant with CJIS requirements in the US.
- The system is the same one used as that used by the Crown Courts themselves (Digital Case System).
- **SOCS Organisational Measures**
- Students are not permitted by the system to download the material the solicitor has uploaded, nor can they download notes or attendance notes once they have been uploaded onto TR Case Center.
- Students take notes within a word document using their own computers and then upload the document into Case Center, immediately deleting their own word document from their own system and any associated records.
- By using Thomson Reuters Case Center, we are ensuring that no data is being put anywhere on the University of Kent systems.
- Students sign an agreement to confirm that they will delete the word document from their personal computers immediately after uploading the file into the TR system.