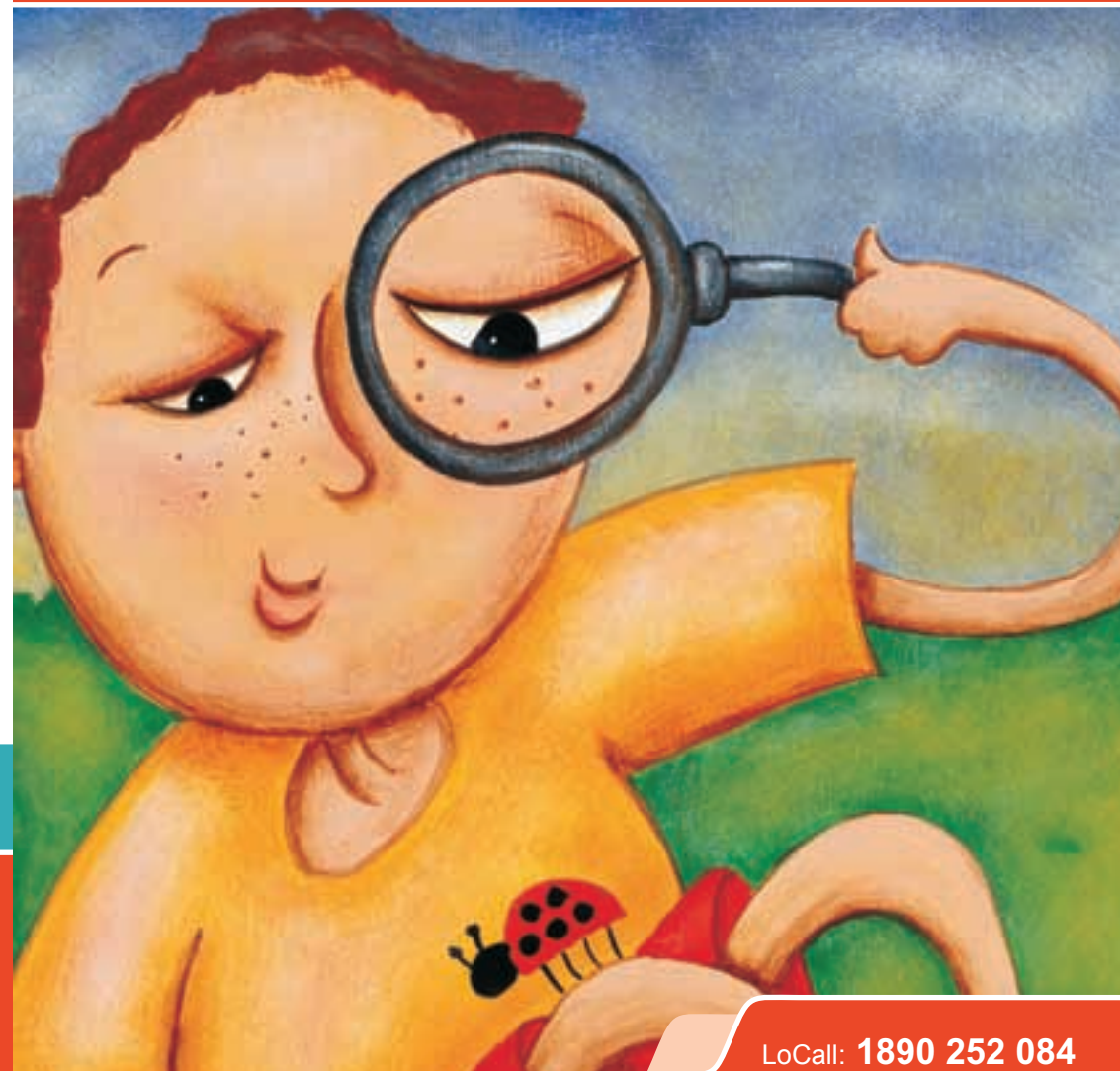


- 3 Where a court order becomes difficult to implement either parent can go back to court at any time to look for changes to the court order.
- 4 Family law court hearings are not open to the general public - only those directly involved are allowed in.
- 5 Many parents represent themselves in the district court. Get a copy of *Taking the Stand* - a guide for unmarried parents resolving disputes regarding care of their children - from Treoir: **LoCall 1890 252 084, treoir.ie**
- 6 Some parents may qualify for legal aid. Contact the **Legal Aid Board: LoCall 1890 615 200, www.legalaid.ie**

## Access and Custody of Children

whose parents are not married to each other





# Access and Custody of Children whose parents are not married to each other

## Access for parents

Access is the right of a child and a parent who do not live together to spend time together.

In some situations it may be possible for parents to come to an informal arrangement whereby the non-resident parent may have access to his/her child on a regular basis without having to go to court. If parents are having difficulty in making arrangements regarding access they could attend mediation or collaborative law.

## Mediation

Mediation is where a third party helps parents reach an agreement. It encourages parents to co-operate with each other in working out arrangements concerning their children. Any written agreement made can be made a rule of court.

**The Family Mediation Service: 01-6344320, [www.fsa.ie](http://www.fsa.ie)**

**Mediators Institute of Ireland: 01-2847121, [www.themii.ie](http://www.themii.ie)**

## Collaborative Law

Collaborative law is where parents work with specially trained lawyers, receive legal advice and guidance, and together with the lawyers, discuss and resolve issues through face-to-face meetings. All decisions are made by the parents. Any written agreement made can be made a rule of court.

**Association of Collaborative Practitioners: [www.acp.ie](http://www.acp.ie)**

**Legal Aid Board: LoCall 1890 615 200, [www.legalaid.ie](http://www.legalaid.ie)**

## Access through the court

Where the parents cannot reach an agreement the non-resident parent may apply to the local district court for an access order. The court may set the time, place and duration of access. As with all cases involving children, any decision made by the court will be made in the best interest of the child. A non-resident parent will usually get access.

## Access for others, including grandparents

A grandparent or any person related to a child including by adoption, or who has acted as a parent, may apply to the local district court for access to the child. There are two parts to this process:

The first application is applying for **leave to apply** for access which is asking for the court's permission to apply for access. The court, in arriving at a decision at this stage, must always have regard to



- the applicant's connection with the child
- the risk, if any, of the application disrupting the child's life to the extent that the child would be harmed by the access, and
- the wishes of the child's guardian(s).

If the first stage is successful then the person can **apply** for access.

## Custody

Custody is having the responsibility for the day-to-day care of a child. The mother of a child born outside marriage has sole custody of her child, that is, she is the only custodian. Where both parents agree, it is possible for them to share custody of a child on an informal basis. If parents are having difficulty agreeing joint custody they could attend mediation or collaborative law.

Where the parents cannot agree on joint custody the father can apply to the local district court for joint or sole custody. As with all cases involving children, any decision made by the court will be made in the best interest of the child.

It is possible for a child's father to apply for sole custody of his child. However, there would have to be compelling reasons for removing a child from the custody of her/his mother.

## Appeals

An appeal to an access or custody court order must be made within 14 days. The terms of the order will come into force while waiting for the appeal unless a court directs differently.

## What is a Rule of Court?

Where parents enter into an agreement in writing for custody and/or access (including written agreements made during mediation), either parent may make an application to court for an order to make the agreement a rule of court. The court may make an order if it is satisfied that the agreement is fair and reasonable and adequately protects the interests of the child. The agreement then has the same standing as a court order. If a rule of court is broken it has the same penalties as if it was a court order.

## Notes:

- 1 Access and custody may be applied for whether or not the father's name is on the birth cert or whether or not he is a joint guardian.
- 2 Where access, custody and/or guardianship are being applied for then separate applications for each must be made to the court and all applications will be heard at the same hearing.

Continued Overleaf