



Taking the Stand

A guide for unmarried parents resolving disputes
regarding care of their children

October 2006

 **treoir**

Treoir is the national federation of services working with unmarried parents and their children.

Treoir's main aim is to promote the rights and welfare of parents who are not married to each other and the rights and welfare of their children.

Treoir is a non-governmental organisation supported by Government, Health Service Executive and other grants.

Treoir operates a free, confidential **National Information Centre** for parents who are not married to each other and for those involved with them.

Treoir has many publications which are listed inside the back cover.

Treoir promotes policy change, commissions research projects and holds conferences and workshops on a regular basis.

Treoir also provides information and support through its **National Resource Centre for those Working with Young Parents** and the **National Co-ordination of the Teen Parents Support Programme**.

**National Information Centre
for parents who are not married to each other**

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The amounts printed are correct at time of printing.

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**A guide for unmarried parents
resolving disputes regarding care of their children**

3rd Edition



Treoir, 14 Gandon House, Custom House Square, IFSC, Dublin 1.
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unmarried parents and their children**

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(The Four Courts)

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(Dublin 7)

TAKING THE STAND

Over many years I have been advocating assistance of some kind for those couples who separate in anger and confusion. Many of them having spent years in emotional confrontations suffering additional distress due to a lack of knowledge of what steps are available to them to gain access to their child/children, seek maintenance, get protection from an abusive partner.

In recent years Treoir have promulgated some excellent literature to enable us understand the complexities of our legal, administrative system.

“Taking the Stand” is going to be of enormous help to separating parents on overcoming their fear of the unknown. I cannot imagine anything more helpful as a guide to the parents about to embark on a family law matter than this booklet. It is erudite yet expressed in simple unambiguous language. It is what we have been waiting for. Congratulations to Treoir and everyone connected with its publication.



Judge James J. O'Sullivan

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Foreword

This publication arose in response to an increasing number of parents contacting the National Information Centre of Treoir who were having difficulty coming to arrangements regarding co-parenting their children where they were living apart. There is very little material available to parents on resolving difficulties regarding co-parenting.

The aim of the booklet is to outline the options where difficulties and disputes arise in co-parenting. It complements Treoir's publication **Family Links - steps and stages**.

The booklet, first published in 2000, was the brainchild of Richard Beck, Margaret Dromey and Margot Doherty, staff of Treoir. Without their passion, enthusiasm and determination this booklet would never have been published. We are indebted to Richard Beck who undertook the initial research and was the main contributor to the publication. I would also like to acknowledge the support and encouragement of the Council of Treoir for the project.

Margaret Dromey is responsible for compiling this revised edition and thanks are due to the staff of Treoir who read and commented on this report

We dedicate "Taking the Stand" to all parents who are making efforts to co-parent their children while living separately. We hope this publication may in some way contribute to a less fractious outcome in sorting out what is in the best interest of their children.

Eilis Walsh,
Chairwoman,
Treoir.
September 2006

Introduction

In recent years, the number of unmarried parents in Ireland has increased. In excess of 44% of first births in Ireland are to parents who are not married to each other. Many parents share parenting successfully but for some parents, disputes arise concerning the care of their children and these disputes need resolution.

This booklet provides

- a) **a summary of the legal rights of unmarried parents and their children;**
- b) **some material/options for resolving disputes between parents, including mediation, negotiation and going to court; and**
- c) **information to help prepare unmarried parents if they decide to represent themselves in court.**

**It is not intended to be legal advice for any particular case.
It is intended as a general information aid only.
It does not purport to be an interpretation of legislation in this area.**



If you are in doubt about any legal issue you should seek legal advice.

A note on terminology and jargon:

We have tried to keep the legal terminology to a minimum. There are some terms, however, with which you should be familiar if you represent yourself in a family law dispute. These terms are printed in the booklet in bold and underlined and are explained in the glossary on page 32.

Legal Rights of Unmarried Families in Ireland



The Status of Children Act, 1987 abolished the main legal discriminations which existed between children whose parents were or were not married to each other. A number of subsequent Acts have further improved the situation.

- All children now have equal rights to maintenance and succession from their parents.
- A mother of a child born outside of marriage is automatically a guardian and automatically has custody of her child
- An unmarried father does not have *automatic* rights to **guardianship**, **custody**, or **access** to his child even if he is registered in the Register of Births, however
 - if the mother is in agreement the father can become a joint guardian with her by both parents signing a Statutory Instrument S.I. No 5 of 1998 in the presence of a Peace Commissioner or Commissioner for Oaths. (See Appendix i), or
 - if the parents cannot agree the father has a right to apply to court for these rights whether or not his name is entered in the Register of Births.
- It is required by law that fathers are consulted regarding the adoption of their children, whether they are guardians or not.
- Children born outside marriage have no automatic right to have their paternity established. (Children of married parents are presumed to be the children of the mother's husband).
- Both parents have an obligation to maintain their children.

See Treoir Information Leaflets:

Guardianship in Appendix ii

Custody and Access in Appendix iii

Maintenance of Children in Appendix iv

Paternity

Presumption of paternity

For parents who are not married to each other a presumption of paternity arises through having the father's name entered in the Register of Births.

Establishment of paternity

Paternity can be established by:

- Acquiring a Declaration of Parentage from the Circuit Court, or
- Acquiring any court order e.g. access, maintenance, guardianship which names the father

Where paternity is contested in court, the court can direct that blood samples be given by any party to the proceedings for the purposes of carrying out blood/DNA tests to establish paternity. Where a person refuses to give a blood sample, the court can draw whatever inferences it thinks proper in the circumstances of the case.

If you wish to undertake paternity testing contact one of the specialist agencies in Ireland who will organise paternity testing for you. See Treoir Information Leaflet on Establishing Paternity in Appendix v. The test results, even if conclusive, are not sufficient evidence to have the father's name entered in the Register of Births. A court order is required.



No rights flow to a father on the presumption or establishment of paternity.



Co-parenting

Many parents reach agreement about co-parenting even where they are living separately but for some parents reaching agreement can be a very difficult task, particularly if either parent is hurt by the breakdown of the relationship or if there is a new partner on the scene. It is important to remember that while the relationship between the parents may be finished they will always remain parents to their child and the child's rights in relation to both parents must be respected.

Communication

If possible talk to the other parent about guardianship, custody, access and maintenance. Discuss what times would be suitable for access visits and how much is a reasonable amount of maintenance. Parents should prepare for some compromise and might be required to “give a little” in order to reach an agreement.

If the relationship has become so acrimonious that it is not possible to talk to the other parent it might be worth considering writing a letter stating what you would like him/her to do. Often it helps to put things in writing rather than ‘having it out’ each time you meet. It may help your child's other parent see your point of view if he or she can see how your situation looks ‘on paper’.

We Don't Agree, What Can I Do?

Remember that you are **not** the first parent ever to be in a situation that you feel cannot be resolved. A number of options are available to parents who cannot agree about guardianship, custody, access and maintenance : You can

- **negotiate** an agreement, or
- attend **mediation**, or
- initiate **court proceedings**.

When you are in the actual process of resolving your dispute keep in mind that no matter which option you choose, mediation, negotiation, or going to court, your child's interests should be foremost in your mind.

Negotiation

In negotiation, each party can hire a solicitor to negotiate an agreement on his/her behalf. Negotiating an agreement can be less stressful than going to court. Through negotiation it may be possible to draw up a voluntary agreement which can later be made a **rule of court**. An agreement that is made a rule of the court is enforceable in exactly the same way as a court order.

The Legal Aid Board has introduced an initiative that seeks to resolve family law matters by negotiation rather than have solutions imposed by the courts. The Board recognises that this approach will not suit all persons and is also piloting a structure whereby parties do not necessarily have to meet face to face but their solicitors can negotiate on their behalf. This seeks to allow parents to resolve their differences in a way that allows them to communicate and relate to one another in the future.



You should avoid negotiation where you alone meet with the child's other parent and his or her solicitor.

Mediation

Mediation is a voluntary process where you, your child's other parent and a mediator meet to try and resolve the differences that you and your child's other parent are having with regard to issues affecting your child. A number of sessions is usually necessary. The mediator can help you understand the other parent's point of view and encourages co-operation between parents. In mediation there are no winners or losers. Parties try to reach an agreement which is acceptable to both. One parent cannot compel the other to attend mediation and both need to be prepared to co-operate and compromise.

Mediation is not counselling or legal advice and is confidential.

The advantages of mediation are:

- It is less divisive than a court hearing
- Arrangements and details are mutually agreed and therefore more likely to be honoured
- Mediation encourages parents to co-operate with each other in working out arrangements concerning the children
- Mediation allows parents to be in charge of their own decisions
- Both parents must be willing to enter the discussions and allow for a bit of give and take
- Mediation promotes good communication and co-operation between parents
- Parents are helped to remain as partners in child-rearing by developing parenting plans that are personal to each family

If parents reach an agreement through mediation then this agreement can be made a rule of court and thus have the weight of a court order. See page 37 for addresses of mediation agencies.

Agreements

A voluntary agreement may be the end result of either communication, mediation, or negotiation. A voluntary maintenance agreement, for example, will state that parents agree to a fixed amount of maintenance to be payable either weekly or monthly. Similarly, a voluntary custody or access agreement will state that parents agree to share custody of the child, or that the non-resident parent will spend a set amount of time with the child. If a written voluntary agreement is made a rule of court, it is legally binding and is enforceable in exactly the same way as a court order.

There are two samples of voluntary agreements in the appendices - access appendix vi and maintenance appendix vii.

Maintenance agreements

Voluntary maintenance agreements can work to the benefit of both parents and child. Take the following steps before agreeing to an amount and signing the agreement.

Step 1: Estimate the **cost** of raising your child. There are no set guidelines in Ireland for maintenance payments but remember that the district court cannot make an order for more than €150 per child per week. This limit also applies to voluntary agreements which are made rules of the court. This limit does not apply in higher courts. See glossary for the **jurisdictional amounts**.

Step 2: Determine the financial resources of both parents. This includes actual earnings, earning capacity, and assets which both parents have.

Step 3: Determine the financial obligations of the **maintenance debtor**. If the maintenance debtor has children from another relationship to whom maintenance payments are made, then this must be taken into consideration.

Step 4: Agree on an amount. Sign the Voluntary Maintenance Agreement. See Appendix vi for a sample maintenance agreement. The agreement may include, or consist only of, a property transfer or a lump sum payment. The agreement cannot rule out the possibility of applying for a maintenance order for regular payments at some time in the future.

Step 5: If you wish to give legal force to this agreement, either parent can apply to the court to have the agreement made a rule of court. See Appendix iv maintenance of children

Note : Where parents are not married to each other the maintenance debtor has a legal obligation to maintain the child/rend but not the other parent.

Custody / Access agreements

Think about the following before making an agreement for custody or access and try to be sensitive to each other and your child/rend:

1. The mother has automatic custody of her child - would it be beneficial that the custody be shared?
2. Have both parents appropriate facilities for the child?
3. Check the implications for social welfare payments to either parent
4. If one parent has custody and the other parent is seeking access what is an appropriate amount of access and where can it take place? Consider the child's age and activities and how his/her life will be affected by travel between both parents
5. Consider the benefits to the child of having contact with extended families - grandparents etc. and what the child will miss by not having contact.
6. Make appropriate arrangements in relation to collecting and returning children for access visits.
7. Discuss access to school/medical reports by both parents.

See Appendix vii for a sample access agreement.

As with all agreements, an agreement in writing relating to custody or access can be made a rule of court. If the agreement is breached the same sanctions apply as if it was a court order.

*(For guidance on arranging access visits see
Useful Reading 'Family Links-Steps and Stages' page 35)*

Guardianship by agreement

It is possible for a father who is not married to the mother of his child to acquire guardianship rights by agreement with the mother without going to court.

A Statutory Instrument, S.I. No 5 of 1998, (see Appendix i) must be completed by both parents in the presence of a peace commissioner, commissioner for oaths or notary public. This service is available for a nominal fee.

The Statutory Instrument contains declarations that

- **the parents are the parents of the child,**
- **they have not married each other,**
- **they agree to the appointment of the father as a joint guardian and**
- **they have entered into arrangements regarding the custody of (and access to) the child. These arrangements do not need to be specified or written down.**
(It may be advisable to do so).

When the Statutory Instrument has been completed and duly witnessed, it is essential to keep the document in a safe place as it is the only record of the acquisition of guardianship rights by the father. There is no central register for joint guardianship agreements.

Statutory Instrument form, S.I. No 5 of 1998, can be obtained from Government Publications at a cost of approx. €2, from Treoir or Treoir's website www.treoir.ie

Going to Court

Only you can decide whether or not to bring a case to court. Remember that you are asking the Court to make a decision in respect of your child and you may or may not be happy with that decision.

The best thing you can do for your child when you bring a case to court is to keep his/her interests first and foremost in your mind. The judge has to ensure that the child's best interests are served. Spend some time thinking about how a court ruling in your favour may or may not help your child. You should also consider the possibility that you may be unsuccessful in court. How will this affect your relationship with your child and with your child's other parent?

It might be useful to inform your child's other parent of your plans to take legal action.

Issues to think about before an access, custody, maintenance or guardianship case

If you are applying for access/custody (you are the **applicant**) then you should consider where you will be taking the child during access and what you will be doing. There is little point in seeking a judgment granting overnight access if you are unable to provide a suitable home for your child.

If you are the **respondent** (the one being summoned to court) in an access or custody case, then ask yourself whether or not you are withholding access/custody for good reasons e.g. is it provoked by jealousy because the other parent has a new relationship? Is it because he is not paying maintenance? Maybe you have legitimate concerns about the applicant's abilities as a parent. Is there any way you can assist your child's other parent with parenting?

If you are the applicant in a maintenance case, you should think carefully about how much maintenance to seek or if you are the respondent, you should consider how much you can afford to pay. Will a large amount of maintenance result in major hardship to the respondent? Will it prevent that parent from travelling to see their child? (See Appendix iv on Maintenance of Children).

Consider if it will be necessary to seek an **Attachment of Earnings** summons when applying for maintenance. This means that maintenance payments will be deducted by the respondent's employer at source and forwarded to the applicant. This is only necessary if it is likely that the respondent will not pay. An attachment of earnings summons can be taken at the start of proceedings or later if the maintenance order is being breached.

If a father is seeking guardianship he should ask himself is he genuinely going to keep in touch, be part of the child's life and be available to sign legal documents e.g. passport applications etc. Consider the advantages to the child of having both parents as guardians - both taking full responsibility for the child. When a child has two guardians those guardians must be able to agree on major issues affecting the child's life, otherwise it will be necessary to revert to court to have disputes resolved.

Hiring a Solicitor

Private solicitor

A solicitor is a professional with expertise in legal matters. Like all professionals you deal with, they are people who are paid to act on your behalf. The cost of hiring a solicitor depends on the type of case, whether or not the case goes to court, the amount of legal research required, the number of hours the staff at the solicitor's office will need to work on your case. If your case goes to the Circuit Court then the cost of hiring a barrister may be an issue.

Don't be afraid to talk to your solicitor about the cost involved. You should be very clear on how much you will have to pay before the case begins.

In guardianship, custody and access proceedings the solicitor must discuss the possibility of the parties engaging in counselling or mediation in order that they might reach an agreement without having to go to court.

Solicitors are required to give their clients the names and addresses of counsellors and mediators.

If hiring a solicitor make sure he/she is an expert in family law. Remember you are engaging the solicitor and you must be satisfied that he/she is acting in your best interest and is also involving you in the decision making. Keep in regular contact with your solicitor and if there is anything you do not understand feel free to ask your solicitor to explain it to you. If you are not satisfied with the service consider changing solicitor. Complaints regarding the service provided by a solicitor may be sent in writing to: **The Law Society, Blackhall Place, Dublin 7.**

Civil Legal Aid

The Legal Aid Board is a statutory body with a function to provide legal aid and legal advice in civil cases to people of moderate means. The Board operates 25 full-time Law Centres and 13 part time Law Centres throughout the country. See page 36 for a list of addresses). Civil legal aid is not free legal aid. The service is means tested and there is a scale of charges according to the means of the client. Generally, if a person's sole or main income is from social welfare, s/he is eligible for civil legal aid. However, a small contribution for the service is required. As well as having disposable income of less than €18,000, you must also have disposable capital of less than €320,000. A person must also have a case which merits the provision of legal advice and aid.

If the Board refuses to grant legal aid, this decision may be appealed.

The Law Centres of the Legal Aid Board may provide legal advice and/or legal aid. Civil legal aid means representation by a solicitor or barrister if necessary in civil proceedings in the District, Circuit, High and Supreme Court. Legal advice is oral or written advice given by a solicitor and/or barrister relating to Irish law.

The Private Practitioner's Service

The Legal Aid Law Centre may pay for a private solicitor service in the District Courts for applicants for family law remedies such as maintenance, custody, access, guardianship and paternity matters as well as barring, safety or protection orders. The general Legal Aid Board means test applies for this service and a contribution is payable by the client. An applicant is then provided with a list of solicitors on the Board's District Court panel so they may choose a solicitor to represent them. A court date must have been secured before applying for this service.

If you live in Dublin, you can contact the private practitioner centre directly. An applicant is assessed and where found eligible is granted a legal aid certificate.

If you live outside of Dublin, you can contact your nearest law centre. The managing solicitor of a law centre will determine whether the case can be dealt with by the law centre or by a private practitioner.

Representing Yourself in Court

It is not a requirement to have a solicitor to represent you in the district court. Many parents represent themselves. If there is a dispute about paternity it may be advisable to have legal representation in order to deal with complex issues of evidence. If a case is straightforward e.g. paternity is not an issue - father's name is on the birth certificate - and maintenance is being sought perhaps representing oneself in this situation is feasible.

Getting a case started in the District Court

A person wishing to bring a case should go to the local district court (check local telephone directory - in Dublin it is at the Family Law Office in Dolphin House, East Essex Street, Dublin 2.) and inform the court clerk that he/she wishes to bring a case.

The staff of the court will ask for details necessary to start the case, e.g. your name and address and the name and address of the Respondent and details of the child. A summons will be sent via registered post to the Respondent. This will direct him or her to appear in court for the court hearing on a certain day.

See appendix viii for a sample form used by the district court when an application is made initiating proceedings for access, custody, guardianship and maintenance.

Keep in mind that while staff of the family law courts are often very helpful, they are unable to provide you with legal advice. You should also be aware that while the judge usually understands that you are representing yourself and will be accommodating he/she will generally not give legal advice in the courtroom.

Preparing for court

(a) General principles in dealing with others in legal matters.

Your case will be strengthened if you:

- **Make decisions in the "best interests of the child."**

This means putting your child first and ensuring that whichever action you are taking is in your child's best interest.

- **Be honest.**

Being dishonest in court or “economical with the truth”, is illegal. Stick to the facts. You may be angry if you feel the child's other parent is being dishonest in court, but that is not a good enough reason for you to stop telling the truth. Your case may be damaged if you appear to make inconsistent statements in court. You may end up telling additional mis-truths in court to cover up one you told earlier. A solicitor or judge may pick up on this and the results can damage your case. Being truthful is your best way to be consistent in court. It is important to remember that it is perjury to lie under oath.

(b) Gathering documents as evidence

If you are going to court you may wish to bring documents which will help your case. The documents will vary depending on the type of case. Below is a list of documents which might be useful.

Type of case:

Relevant documents:

All Cases :

The child's birth certificate

Maintenance

Pay slips/evidence of earnings (A number of pay slips covering an extended period of time will be better than a single payslip);
Bank statements of all your accounts
Statement of income and expenditure

Guardianship

**Evidence of a relationship with the child;
Evidence of maintenance payments;
Pictures of you and your child, if available;
If relevant, evidence of having been in a
position where you have made important
decisions about the child's life.**

Access/Custody

**Evidence of relationship with the child;
Pictures of you and the child together;
*See above on guardianship.***

Although not required by law, you should bring three copies of each document with you to court. When you are presenting the documents in court, give one copy to the judge and one to the opposing side (or the opposing side's solicitor). It will be easier for the court to understand the contents of the document if each side has a copy. It also shows your commitment to the proceedings.

(c) Witnesses

You also have to decide whether or not you will bring witnesses to court. If you believe that a witness will testify to facts which will help your case, then you should consider bringing this person to court. You do not need to have a witness(es) to be successful. If your witnesses have expenses then you will have to pay these. Unwilling witnesses may be summoned to court. Talk to the clerk of the court about this procedure.

Before going to court, you should discuss with your witness the questions you intend to ask him/her in court. This is perfectly acceptable to do before the court date, but remember that a witness may not read previously prepared answers. Read the section on questioning witnesses.

(d) Final preparations

You should bring a notepad and pens to make notes during the hearing. You may wish to take notes while the other party (or their witness) is testifying. You can refer to these notes if you have any questions for that person. Make a list of the points that you will be making in court in advance and bring it with you on the day. They will help you when you testify and will also help you pick up from where you left off if you are interrupted.

Get a good night's sleep!

What it is going to be like on the day

The code of practice for solicitors in family law requires solicitors to take particular care when dealing with persons who are not represented by a solicitor. They are required to take special care to communicate clearly and avoid language which is overly technical.

There may be conference rooms in the court building where parties can reach an agreement before the case is heard. Here you may be approached by the other party's solicitor. You may accept whatever offers are made, although you are not obliged to do so. If you are uncomfortable talking in this manner explain that you are not willing to discuss the matter outside of court. Be polite but firm. You do **not** have to talk to the other parent's solicitor at this stage if you do not wish to.

Family law cases are not held in public. They are held "in camera". You will see the words "in camera" written on the door of the courtroom. Although the name suggests it, this does not mean that there are cameras in the courtroom. In fact it means that there are no persons present other than the parties (Applicant and Respondent), their legal representatives, the clerk of the court, and the judge. New rules allow for certain other people to be present but only with the written permission of the court. Witnesses are brought in only for the duration of their testimony.

On the day of your case the first thing that will happen is that all parties who have cases on that day will appear in court together. This is known as a callover. The purpose of the callover is to determine which parties are present and which cases have been settled earlier. Following the callover the court will be cleared and the cases will be heard individually and "in camera".

You should dress neatly and appropriately. Proceedings in court are formal and should be treated as such.

The Court setting

The courtroom will have two desks where the parties and their legal representatives sit. The judge sits at the bench which faces the parties. The only other person in the district court is the clerk of the court who handles the administrative side of the case. There is no court stenographer taking notes and the cases are not recorded.

If you are the applicant then you will be asked to go to the witness box first. You will be asked to swear an oath that what you are telling is the truth. The judge may ask you to state your name, your relationship to the child (ie. father or mother), what you are applying for and why you have come to court.

At this time it is important to get the facts of the case across. Judges hear many cases each day and although no two cases are the same, you should make sure that the judge knows the facts of your case. For example, the following facts may be useful to mention if they are relevant in your case.

- i. **the age of the child;**
- ii. **the relationship which exists between you and your child**
- iii. **the reasons for any lack of a relationship between you and your child**
- iv. **whether access to the child has been denied by the other parent**
- v. **whether maintenance is currently being provided for the child**
- vi. **whether there is a history of abuse or neglect of this child by either the Applicant, the Respondent, or some other person**
- vii. **whether there is history of alcohol or substance abuse by either parent**
- viii. **whether there has been domestic violence**
- ix. **what the long term plan is for the child, where the child will go to school, religious and cultural aspects of the child's life**
- x. **whether you can provide the child with a home and provide for the financial and emotional needs of the child**

In short any information which will help the judge to arrive at a decision in your child's best interest.

Read the sections that follow, on testifying in court. Try to remain calm and relaxed. You may refer to the judge as "judge" or "your honour." If you are very nervous tell the judge. Remember that at any stage during the proceedings the judge may interrupt with questions of his/her own.



Do not testify to things which are not true, even if you think they may help your case. They won't and it is perjury.

Tips for testifying in court.

These rules apply whether or not you are testifying or being cross examined by the other party's solicitor.

- (1) **Tell the truth when answering questions.**
- (2) **Speak clearly and loud enough for everyone to hear you.**
- (3) **Keep eye contact with the judge when answering questions or testifying.**
- (4) **Answer questions verbally, don't use nods or noises like "uh-huh" or "yeh." Say "YES" or "NO" instead.**
- (5) **Appear confident and avoid distracting habits such as chewing gum or playing with your pen. Focus on the questions you are being asked.**
- (6) **If you are being questioned by a solicitor or barrister, stay calm, even if she/he is not; look at the Judge when answering.**
- (7) **Don't get angry or lose your temper with anyone in court, it may affect your credibility.**
- (8) **Know your facts well but do not memorise your evidence.**
- (9) **Be direct if you can, don't use phrases like "I believe," or "in my opinion".**

Hearsay statements

In most court situations judges will not allow statements to be made in court if they constitute **hearsay**. Think of hearsay as statements which are made by persons who are not in court and offered to prove the truth of what is said.

Questioning witnesses (your own and others)

Witnesses are not always necessary.

Witnesses are there to testify on the **applicant's** behalf or for the **respondent**. Both parties may question the other side's witnesses at the appropriate time, if witnesses are called.

(a) Presenting your own witness.

In many family law cases there is no need to call witnesses but sometimes a witness may help strengthen your case. He/she may testify to anything they have knowledge of and you feel is relevant. You should structure the questions you have for your own witness in such a way as to allow that witness to provide the court with evidence which supports your case. You may wish to introduce your witness to the judge. For example, "your honour, this is Orla. She is here to testify on my behalf. Orla, can you tell the judge what happened on the 23rd of June."

When questioning your own witness you should use Open Questions. These are questions which require an answer other than a "yes" or a "no" answer. The trick, if there is one, is to avoid asking questions which make it sound as though the person asking the questions - that's you! - is testifying.

✓ *Orla, can you tell the court what you saw on the afternoon of June 23rd?"*

✗ *Orla, can you tell the court about the time you saw Wayne give Mary money and about Mary shouting at Wayne?"*

Remember that the other party's solicitor may object either to your question or to what your witness says. You may wish to rephrase your question at this time.

(b) Questioning the other party's witness.

Following the testimony of the other side's witness, the judge may ask you if you have any questions for that witness. You do not have to question every witness. When questioning the other side's witness in court you will need to phrase your questions in a manner that is different from the way you questioned your own witnesses. Instead of Open Questions you will use Direct Questions. Direct questioning involves asking questions that can be answered with either a "yes" or a "no." This process of asking direct questions is known as "cross examination".



"Mr. W. have you been employed by ABC Ltd.?"

YES

"On 23rd June did you receive a paycheck from work?"

"Was that paycheck for the amount of €300?"

YES

"Did you pay maintenance that week?"

eh, **NO**



Mr. W., how much maintenance did you pay for the week ending June 23rd?"

Oh, eh, I can't remember, I think I was sick that day, eh....

"Why didn't you pay?"

**Oh I don't think I worked that week,
the car needed a new exhaust pipe"**

Making an objection in Court

There are certain times when it is acceptable to interrupt the other side. This is called raising an objection. If you object, you are objecting to a statement that the other party, or their witness, makes in court. You cannot object to something merely because you disagree with what is said. You may object to a statement if that statement is "**inadmissible**" in court. Some of the most common inadmissible statements are statements which are not relevant to the case, and statements which are inadmissible because they are "**hearsay**."

Usually the judge will pick up on any "inadmissible evidence" and will disregard it.

The Judge's Decision

The judge has to decide what the facts of the case are and to apply the law to the facts of the case.

The judge will listen to all the facts in the case before making a decision. Any decision which the judge makes will be based on what he or she believes to be in the child's best interests. The judge may adjourn a case for access, custody or guardianship and order a Section 20 report to be carried out by the Health Service Executive to ascertain if what is being sought is in the child's best interest. The report will assist the judge in arriving at a decision. The judge may also order the parents to seek mediation.

The terms of the court order will usually come into effect immediately.

Be prepared for success or failure. Preparing for the judge's decision is an important part of preparing for the overall experience of going to court. If you win, will all your problems be over? If you lose, is it really the end of the world? If you have been awarded joint guardianship then both parents will now have to co-operate in co-parenting. Similarly, arrangements will have to be made for access visits and/or maintenance payments. Just because the judge rules in your favour does not necessarily mean that all your problems are solved.

Appeals

Appeals to orders made in the district court must be made to the circuit court within 14 days. The terms of the order will be given effect while the appeal is pending unless a court directs otherwise. If you believe that the order will not be in the child's best interests you may, while you are in the district court, request a **stay of execution**. If this is granted then the terms of the order will not come into effect until the circuit court hears the appeal and makes its decision.

Going Back to Court

Keep in mind that where there is any change in circumstances, you may go to court again to seek any change in the order, for example, a maintenance order can be varied upwards or downwards if the circumstances change.

You may also go to court at any time to ask the court's help on any question affecting the child's welfare. Be reasonable and avoid running to court every time there is some minor change in the arrangements.

Remember your child's best interests and happiness are most important and this should underline all your actions.

Frequently asked Questions

The following are some questions which are frequently raised at the National Information Centre of Treoir. The brief replies may help clarify some of your questions.

What are my rights to my child? I am the father of a child and my name is on the birth certificate.

You have no automatic rights in respect of your child and having your name on the birth certificate does not in itself entitle you to any rights to your child. You can acquire rights by agreement with the mother or by going to court. However, having your name on the birth certificate establishes paternity. This is very important for your child particularly in relation to identity and succession issues.

Is there a time limit on bringing my child's other parent to court for maintenance?

maintenance proceedings can be brought:

- at any time before the child's 18th birthday;
- at any time before the child's 23rd birthday if the child is in full time education, or would be, if maintenance was being paid.
- at any time if the child has a mental or physical disability, **and** it is not reasonably possible for the child to maintain her/himself.

My child's father does not work at the moment, should I wait until he gets a job before I go court to seek maintenance?

Not necessarily. Where an application for maintenance is dismissed because of the financial circumstances of either/both parents, it is possible to request the judge to make an order for a nominal sum (even €5 per week). In this way if the financial circumstances change in the future, it would be simpler to apply for a **variation order** to increase the amount. It may also be useful to have a court order naming the father for birth registration purposes.

My child's father was ordered to pay maintenance three years ago but I feel that the amount is not enough now. My childcare costs have doubled since then. What can I do?

Where a maintenance order has been made, either parent can go back to court at any time to have the amount of maintenance increased or decreased should circumstances change. This is called a variation order

Does paying maintenance automatically give me guardianship rights or a right to see my child?

No. The payment of maintenance does not give a father rights in relation to his child. Guardianship rights are acquired through both parents signing a Statutory Declaration S.I.No 5 of 1998 in the presence of a peace commissioner or commissioner for oaths, or if parents are **not** in agreement a father may apply to court for guardianship, custody and access rights.

Who can apply for access to my child?

Non-resident parents can apply for access to their children. Also any person related to the child or who has acted in loco parentis, may apply to the local district court for “leave to apply” for access. The court will consider the applicant’s connection with the child, the risk of the application disrupting the child’s life to the extent that the child would be harmed by it, the wishes of the child’s guardian(s) etc. before deciding whether or not to grant permission to apply for access.

The other parent is refusing to allow me to put my name on the Birth Certificate. What can I do?

The Registrar General is empowered to enter a father’s name in the Register of Births, without the consent of the other parent, on production of a court order naming a man as the father of the child e.g. an access or maintenance order or a court declaration of parentage. The results of paternity tests or other such evidence will not be sufficient for the Registrar General - a court order is necessary.

The father of my child often calls to my house and hassles me, I am afraid of him what can I do ?

Under the Non-Fatal Offences against the Person Act 1997 it is an offence for a person to harass another person by persistently following, watching, pestering, communicating etc. with that person. If convicted a person may be ordered not to communicate by any means with the other person or approach within such distance as the court shall specify or may be fined or imprisoned. Keep a note of incidences as evidence.

I took my ex-partner to court for maintenance of our child, he has failed to pay. What can I do?

If a parent falls behind with maintenance payments it is possible to apply to the court for an **Attachment of Earnings Summons**. This means that maintenance payments will be deducted by the employer of the other parent and sent to the court. It is also possible to get this Attachment at the same time the maintenance order is made. If the parent is self-employed an **Enforcement Summons** can be applied for. Six months **arrears** is the most that can be claimed through any one summons at any one time.

Do I still have to pay maintenance if my child's mother marries someone else?

If the mother **marries** a man who is not the father of the child then the father is still obliged to maintain the child. If the child is **adopted** the maintenance obligation of the father ceases.

The judge in my case has ordered supervised access. Who supervises the access?

There is no statutory service to oversee supervision. However a very limited number of organisations offer the service informally on a voluntary basis.

I don't believe the judge made the correct decision in my case. Can I appeal it?

A decision of the district court may be appealed to the circuit court within 14 days. There will be another hearing of the evidence. If you plan to take your case to the circuit court you should talk to a solicitor. The proceedings are very expensive and you may need a solicitor and barrister.

The mother of my child has asked me to pay maintenance for my child. How much am I expected to pay?

There are no guidelines on what constitutes adequate maintenance. However if a maintenance order in respect of the child is sought in the district court, €150 per week is the maximum amount which can be awarded. There is no limit set down in the circuit court.

My child's father lives abroad - can I get maintenance?

If the father lives in the UK you can apply for maintenance to the local district court in Ireland. You must have an address for the father in order that a summons can be served. The court clerk will take you through the process. If the father lives in any other country contact the Central Authority for Maintenance Recovery, Bishop Square, Redmonds Hill, Dublin 2. LoCall: 1890 55 55 09. If the father is in one of the many countries who have signed up to the UN Convention on the Recovery Abroad of Maintenance Payments, in the USA or an EU member state, then you will be asked to complete an application form which the Central Authority for Maintenance Recovery will transmit to the relevant authority in the country in which the father resides. The Central Authority will assist in applying for a maintenance order, enforcing a maintenance order that already exists or will seek an increase in payments under an existing maintenance order. Then the process of seeking maintenance will begin and it is likely to be a lengthy process. Uncontested maintenance orders can be directly enforced in another EU member state without having to go through another court process there. Generally there is no cost involved.

Can the other parent of my child take my child out of the country?

Parents, guardians, custodians of a child cannot take or keep a child under 16 years out of the State without the consent of the other parent/guardian/custodian or in defiance of a court order. A person guilty of this offence may be fined or imprisoned, or both (maximum penalty of 7 years imprisonment). The Central Authority for Child Abduction, Department of Justice, Equality and Law Reform, Bishop Sq., Redmonds Hill, Dublin 2. Tel LoCall: 1890 55 55 09 is the agency charged with responsibility for seeking the return of abducted children.

I am afraid that the father of my child will not return my child after access visits. What can I do?

If the father of your child removes the child from your care or detains your child without your consent or in defiance of a court order, you can apply to court for a breach of access summons. It is open to you to contact the Gardai to seek the return of the child.

Glossary of Terms

Access: Access is having the right to see your child if your child is not living with you.

Acts: The laws in Ireland are found in various Acts (also known as "statutes"). Knowing under which Act you are making an application may help you locate the correct form. You will see the section and the Act mentioned at the top of the form. See appendix vii for chart on some (though not all) of the statutes and forms which affect unmarried parents.

Applicant: The person who is applying for either maintenance, guardianship, access, or custody. The applicant is sometimes referred to as the plaintiff.

Attachment of Earnings: On application the judge will make an order for earnings to be attached. The employer gets a copy of the court order with instructions to send the maintenance awarded either to the court or the parent and also a demand to notify the Family Law Office or the local District Court if the parent leaves employment. The Family Law Office will pursue the parent for maintenance. The maintenance debtor is also obliged to notify the court of his/her leaving or changing employment.

Best interests of the child: This is the legal standard which must be used by a court when dealing with cases affecting children. An applicant needs to establish that the order s/he is seeking is in the best interest of the child.

Callover: Is where the judge at the beginning of a session brings together the representatives of the cases listed for that day to ascertain which cases have been settled, which parties have not turned up and what cases have to be heard.

Co-parenting: Is a term used to describe parents who are living apart from each other but sharing the responsibility for parenting their children.

Custody: Custody is providing the day-to-day care of a child

Domestic Violence: Is where people are physically, emotionally, sexually and psychologically abused in domestic relationships.

Enforcement Summons: A summons to pay arrears of maintenance. This applies when the maintenance debtor is self employed. Six months arrears is the maximum arrears which can be applied for.

Guardianship: Is the collection of rights and duties which a parent has in respect of her/his child. It encompasses the duty to maintain and properly care for the child and the right to make decisions about the child's religious and secular education, health requirements and other matters affecting the welfare of the child. (See appendix ii for further details). The right to custody is one of the rights that arises under the guardianship relationship. Even where one parental guardian has custody the other parental guardian is generally entitled to be consulted in relation to matters affecting the welfare of the child.

Hearsay: Evidence of which a witness does not have direct knowledge from his own sense but which is based on what others have said.

Inadmissible: Evidence disregarded by a judge because it is not relevant to the case. This would include hearsay statements.

"In Camera": Cases held "in camera" are cases which are not open to the public. Only the parties to the case, their legal representatives, the clerk of the court and the judge are present.

Jurisdictional Amount/Jurisdictional Limit: This is the maximum amount that can be awarded to an applicant in the district court.

The maximum that can be awarded is as follows:

- Weekly sum €150 per week per child
- Lump sum €4,000
- Expenses associated with the birth of the child €2,000
- Funeral expenses for the child if the child dies €2,000

Maintenance debtor: The person paying maintenance for a child.

Open Questions: are questions which require an answer other than a yes or no answer.

Perjury: A deliberate lie under oath or in a sworn affidavit.

Respondent: This is the person who is "responding" to the claim by the applicant. If you are being taken to court by your child's other parent for access, guardianship, custody or maintenance then you are the respondent.

Rule of Court: Where parents enter into an agreement in writing which includes arrangements for custody, access or maintenance of a child(ren), either parent may make an application to court for an order making the agreement a rule of court. The court may make such an order if it is satisfied that the agreement is a fair and reasonable one which in all the circumstances adequately protects the interests of the parents and the child. The agreement then has the same standing as a court order.

Statutes: See Acts

Stay of Execution: A delay in the coming into effect of a court order. If one is unhappy with a court judgment he or she can apply for a Stay of Execution until the appeal is heard.

Variation Order: A maintenance or access order may be varied at any time on the application of either party, if new circumstances exist or upon the production of evidence not available to the party applying when the order was made or last varied. An increase in a party's earnings or a decrease in the value of the original maintenance order as a result of inflation could be a sufficient change in circumstances to justify the variation of a previous order.

Useful Reading

Doherty Margot, Family Links, steps and stages. Treoir, Dublin. 2003.
Positive pointers for lone parents who are helping their children to understand their family situation

Family Mediation Service: Help for separating couples. A series of leaflets including: What is the Family Mediation Service? The End of a Marriage - A Time of Grieving and Loss; How children react to separation and divorce; We are separating, what do we tell the children? What is a parenting plan and managing the stress of separation or divorce.

Legal Aid Board: Civil Legal Aid leaflets 1-13, Civil legal aid, family law, separation, divorce, nullity, maintenance, domestic violence, children and family law, wills and inheritance. Dublin. 2000.

McHugh, Damian, Going to Court A consumer's guide. First Law Limited Dublin. 2002.

Shannon, Geoffrey, Child Law. Thomson Round Hall, Dublin. 2005.

Shatter, Alan J., Shatter's Family Law. Butterworths, Dublin. 1997.

Treoir, Legal Information for Unmarried Migrant Parents, available in Arabic, Chinese, English, French, Polish, Romanian and Russian.
Available at www.treoir.ie

Treoir publishes a range of useful publications which are listed inside the back cover.

Walls, M and Bergin, David - Editors - Irish Family Legislation Handbook. Family Law, UK. 1999.

Useful Addresses

DISTRICT COURTS

Consult your local telephone directory for the address of your local district court or www.courts.ie In Dublin contact:

FAMILY LAW OFFICE,

Dolphin House, East Essex Street, Dublin 2
Tel: (01) 872 5555

THE LEGAL AID BOARD

(Head Office)
Quay Street, Cahirciveen, Co. Kerry
Tel: 066-947 1000

FULL-TIME LEGAL AID CENTRES

10.00 - 12.30 pm and 2.00 - 4.00 pm

CAVAN

Newcourt Shopping Centre, Church Street
Tel: 049-433 1110

CLARE

Unit 6A, Merchant's Square, Ennis
Tel: 065-682 1929

CORK

2nd Floor, North Quay House, Popes Quay
Tel: 021-455 1686

Fifth Floor, Irish Life Building,
1A South Mall
Tel: 021-275 998

Refugee Legal Service, Little Island
Tel: 021 451 0000

DONEGAL

Houston House, Main Street, Letterkenny
Tel: 074-26177

DUBLIN

45 Lr Gardiner Street, Dublin 1
Tel: 01-874 5440

9 Lr Ormond Quay, Dublin 1
Tel: 01-872 4133

48/49 Nth. Brunswick St./Georges Lane,
Dublin 7
Tel: 01-646 9700 / 646 9600

Village Green Tallaght, Dublin 24
Tel: 01-451 1519

Unit 6-8, Business Centre Clonsilla Road,
Blanchardstown, Dublin 15
Tel: 01-820 0455

Tower Shopping Centre,
Clondalkin Village, Dublin 22
Tel: 01-457 6011

44/49 Main Street, Finglas, Dublin 11
Tel: 01-864 0314

GALWAY

9 Francis Street
Tel: 091-561 650

KERRY

1 Day Place, Tralee
Tel: 066-712 6900

KILDARE

Canning Place, Newbridge
Tel: 045-435777

KILKENNY

86 Maudlin Street, Kilkenny
Tel: 056-61611

LAOIS

Unit 6A, Bridge Street, Portlaoise
Tel: 0502-61366

LIMERICK

Unit F, Brian Merriman Place, Lock Quay
Tel: 061-314599

LONGFORD

Credit Union Court Yard, 50A Main Street
Tel: 043-47590

LOUTH

2nd Floor, Condil House, Roden Place,
Dundalk
Tel: 042-933 0448

MAYO

Humbert Mall, Main Street, Castlebar
Tel: 094-902 4334

MEATH

Kennedy Road, Navan
Tel: 046-72515

MONAGHAN

Alma House, The Diamond
Tel: 047-84888

OFFALY

Harbour Street, Tullamore
Tel: 0506-51177

SLIGO

Bridgewater House, Rockwood Parade,
Thomas Street
Tel: 071-61670

TIPPERARY

Friar's Court, Nenagh
Tel: 067-34181

WATERFORD

Canada House, Canada Street
Tel: 051-855 814

WESTMEATH

Paynes Lane, Irishtown, Athlone
Tel: 090-647 4694

WEXFORD

Unit 8, Redmond Square
Tel: 053-22622

WICKLOW

Bridge Street,
Tel: 0404-66166

PRIVATE PRACTITIONER CENTRE,

Dolphin House, East Essex St., Dublin 2
Tel: 01-888 6007

Useful addresses contd...

PART-TIME CENTRES

For information on Legal Aid Board centres open on a part-time basis only in other parts of the country contact the Legal Aid Board Head Office (address above).

Private Solicitors - see Golden Pages.

MEDIATION SERVICES

Family Mediation Service
Floor 1
St. Stephen's Green House
Earlsfort Terrace, Dublin 2
Tel: (01) 634 4320

Hibernian House,
80A South Mall, Cork
Tel: (021) 425 2200

1st Floor Mill House,
Henry Street, Limerick
Tel: (061) 214 310

1st Floor,
Ross House,
Merchant's Road, Galway
Tel: (091) 509 730

(For information on part-time centres contact the Dublin Office)

For information on private mediators contact:

Mediators Institute of Ireland,
Montana House, Whitechurch, Dublin 16.
Tel (01) 201 7526
www.mediationireland.com

Appendix i

STATUTORY INSTRUMENTS

S.I. No 5 of 1998

**Guardianship of Children (Statutory Declaration)
Regulations, 1998**

SCHEDULE

Statutory Declaration of Father and Mother in Relation to Joint Guardianship of Child/Children.

MAKING THIS DECLARATION WILL SERIOUSLY AFFECT THE LEGAL POSITION OF BOTH PARENTS. IT IS ADVISABLE TO OBTAIN LEGAL ADVICE BEFORE MAKING THIS DECLARATION.

THIS DECLARATION IS AN IMPORTANT DOCUMENT AND ON COMPLETION SHOULD BE KEPT IN A SAFE PLACE.

In the matter of a declaration under paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964.

We

(father's name)

of

(father's address)

and

(mother's name)

of

(mother's address)

do solemnly and sincerely declare and say as follows:

1. We have not married each other.

2. We are the father and mother of _____
(*child's name*)

who was born on the _____ day of _____ 19 _____

3. We agree to the appointment of _____
(*father's name*)

as a guardian of _____ (*child's name*)

4. We have entered into arrangements regarding the custody of (and access to)* _____ (*child's name*)

* Strike out as necessary

We make this solemn declaration conscientiously believing the same to be true by virtue of the Statutory Declarations Act, 1938, and pursuant to paragraph (e) of section 2(4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964

Signed _____ (*father*)

Signed _____ (*mother*)

Declared before me by

_____ and _____ who
are personally known to me

or who are identified to me by _____ who is personally known to me)
at _____

_____ this _____ day of _____ 20 _____

(Signature of practicing solicitor/Peace Commissioner/Commissioner for Oaths/
Notary Public)

EXPLANATORY NOTE

(This note is not part of the statutory declaration and does not purport to be a legal interpretation)

1. These regulations prescribe the form of the joint statutory declaration to be made by the mother and father of a non-marital child who wish the father to become a guardian of the child jointly with the mother and in accordance with section 2 (4) (inserted by the Children Act, 1997) of the Guardianship of Infants Act, 1964
2. If there is more than one child a separate statutory declaration should be made in respect of each child.
3. In the absence of agreement between the parents of the child concerned in respect of the appointment of the father as a joint guardian of the child, the father has a right to apply to the Court under section 6A of the Guardianship of Infants Act, 1964 to be made a joint guardian.
4. A father who is appointed guardian by virtue of a joint statutory declaration made under section 2 (4) of the Guardianship of Infants Act, 1964 can only be removed as guardian by court order.
5. A child ceases to be subject to guardianship when he or she reaches the age of 18 years or upon the date of his or her marriage.
6. Guardianship is the collection of rights and duties which a parent has in respect of his or her child. It encompasses the duty to maintain and properly care for the child and the right to make decisions about a child's religious and secular education, health requirements and other matters affecting the welfare of the child. The exercise of guardianship rights may be agreed between parents. In the event of a dispute arising concerning the exercise of guardianship rights the court may determine the matter on the application of either parental guardian. The right to custody is one of the rights that arises under a guardianship relationship. Custody is the physical day to day care and control of the child. Even where one parental guardian has custody of a child the other parental guardian is generally entitled to be consulted in relation to matters affecting the welfare of the child.

Note: A father's duty to maintain his child and his right to apply to the court for custody of or access to his child is not contingent on his being made a guardian.

7. The appointment of a natural father as guardian will affect the adoption process.

The information contained in this explanation is not comprehensive.

PUBLISHED BY THE STATIONARY OFFICE, DUBLIN 2

GUARDIANSHIP of CHILDREN



*whose parents are not
married to each other*

May 2006
Information Leaflet
No. 3

The national federation of services for
unmarried parents and their children

 **Treoir**

Guardianship

A guardian of a child has a duty to maintain and properly care for the child and has the right to make decisions on all the major matters affecting the upbringing of the child, e.g. choice of school, medical treatment, adoption, religious matters, decisions about leaving the country etc. Where a child's parents have not married each other, only the mother is automatically a guardian of her child.

The father's name in the Register of Births does not give him any guardianship rights in respect of his child.

How can a father become a joint guardian of his child?

Where both parents are in agreement about the father becoming a joint guardian then both parents can complete a statutory declaration to this effect in the presence of a peace commissioner, commissioner for oaths or notary public. The **Statutory Instrument S.I. No 5 of 1998** is available from Government Publications (€2.03) or the National Information Centre of **TREOIR**. The S.I. No 5 can also be downloaded from the treoir website at www.treoir.ie/help/leaflets.html. Currently there is nowhere to register this form so it is important to keep it in a safe place and perhaps make an extra copy.

Where the mother is not in agreement with the father becoming a joint guardian then the father can apply to the district court to become a joint guardian with the mother of his child, whether or not his name is entered in the Register of Births.

While the mother's views are taken into account by the court in making a decision, the fact that she may not consent does not automatically mean that the court will refuse the order sought by the father. The decision of the court will be made with the interest of the child being the first and paramount consideration.

Where a father has been appointed a joint guardian then his consent is required for passport applications and for the adoption of the child (by the mother and her husband or by another couple). Guardianship should not be confused with custody, which involves the day to day care of the child.

Where joint guardians cannot reach an agreement on an issue concerning the child then an application can be made to the court and the court will make a decision in the child's best interest.

Removal of guardianship rights

A father who has been appointed joint guardian by a court or by statutory declaration may be removed from his position as joint guardian if the court is satisfied that this is in the best interest of the child. The only way a mother can give up her guardianship rights is by placing her child for adoption.

Marriage following the birth

Should the parents of a child marry each other following the birth of their child, then the father automatically becomes a joint guardian with the mother as long as the child has not been adopted. There is therefore no need to apply to the court for joint guardianship rights nor is there any need to adopt the child.

Where a father is a joint guardian and the mother marries another man, the father remains a joint guardian of the child. Should the mother and her husband wish to adopt the child and the father is a joint guardian, his consent to the adoption is required. Where a father is not a joint guardian he has a right to be consulted. If a father consents to the adoption of his child he relinquishes all legal rights in relation to his child.

Guardians and Wills

All parents who are guardians but especially mothers who are sole guardians, should make a will appointing a guardian to act on their behalf in the event of their death. It is advisable to talk it over with someone who could and would like to act as guardian and get his/her consent to be named in the will as a testamentary guardian. The surviving guardian (if there is one) then acts jointly with the testamentary guardian.

Child Abduction

Under the **Non-Fatal Offences against the Person Act, 1997** it is an offence for a parent, guardian or person to whom custody of the child has been granted, to take or send a child under 16 years out of the State without the consent of the other parent/guardian/custodian, or in defiance of a court order. The Central Authority for Child Abduction at the Dept. of Justice, Equality and Law Reform is the agency charged with responsibility for seeking the return of abducted children (see below for details).

It is an offence for a parent who is not a guardian or custodian of the child to detain or remove a child under 16 years from the lawful control of any person who has lawful control of the child. Contact your local Garda Station.

Appeals

Appeals to orders made under the Guardianship of Infants Act 1964 (that is any order in relation to guardianship, access or custody) must be made within 14 days. The terms of the order will be given effect while the appeal is pending unless a court directs otherwise.

The Central Authority for Child Abduction

LoCall 1890 221 227, ☎ 01 - 4790290 / 4790287



National Information Centre for parents who are not married to each other
14 Gordon House, Custom House Square, IFSC, Dublin 1. LoCall: 1890 252 084
Telephone: 01 6700 120, e-mail: info@treoit.ie, www.treoit.ie

ACCESS *and* CUSTODY OF CHILDREN



*whose parents are not
married to each other*

Access

Where one parent has full custody of a child the question of access by the other parent may arise. Access is about spending time with your child.

In some situations it may be possible 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 even where the parent is not a joint guardian

If you are having difficulty in making an arrangement regarding access that is satisfactory to both of you, it may be worth trying mediation. The idea of mediation is that with the help of a third party you may then be able reach agreement. See back of leaflet for information on how to contact a mediator.

Where agreement cannot be reached an application may be made to the district court for an access order (See Treoir publication 'Taking the Stand'). Should the court decide that access by the non-resident parent is in the child's best interest, the court may set the time, place and duration of access.

Access may be applied for whether or not the father's name is in the Register of Births, whether or not he is a joint guardian and even where an application for joint guardianship has been turned down.

Again, as with cases involving children, any decision made by the court will be made in the best interest of the child. A father would very rarely be denied access.

Where both guardianship and access are being applied for, then separate applications must be made though both applications will be heard at the same hearing.

Access for Grandparents

Where a grandparent is being denied access, and negotiation and mediation have failed, under the Children Act 1997 s/he can apply for access through the local District Court. This is a two tiered process. The first application is applying for **leave to apply** for access which is basically 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 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 access, and the wishes of the child's guardian(s).

Access for Others

Under the Children Act 1997 any person related to a child by blood or adoption or who has acted *in loco parentis* may apply to the court for **leave to apply** for access to the child. In arriving at its decision the court will use the same criteria as for a grandparent (see above).

Custody

The mother of a child born outside marriage has sole custody of her child. This means that the mother is responsible for the child's day to day care.

The father of a child born outside marriage may apply to the court for sole or joint custody of his child regardless of whether or not he has applied to become or was appointed joint guardian. As with any court application involving a child, the child's welfare will be the first and paramount consideration in deciding whether to grant custody to the father. Where both parents agree it is possible for them to share custody of a child on an informal basis.

Child Abduction

Under the **Non-Fatal Offences against the Person Act, 1997** it is an offence for a parent, guardian or person to whom custody of the child has been granted, to take or send a child under 16 years out of the State without the consent of the other parent/guardian/custodian, or in defiance of a court order. **The Central Authority for Child Abduction** at the Dept. of Justice, Equality and Law Reform, LoCall: 1890 221 227, Tel: 01 - 4790290 / 4790287, is the agency charged with responsibility for seeking the return of abducted children.

It is an offence for a parent who is not a guardian or custodian of the child to detain or remove a child under 16 years from the lawful control of any person who has lawful control of the child. Contact your local Garda Station.

Appeals

Appeals to orders made under the Guardianship of Infants Act 1964 (that is any order in relation to guardianship, access or custody) must be made within 14 days. The terms of the order will be given effect while the appeal is pending unless a court directs otherwise.

Rules of Court

Any agreement in writing between parents relating to custody, access or maintenance can be made a rule of court and if the agreement is breached the same sanctions apply as if it was a court order.

Mediation Services

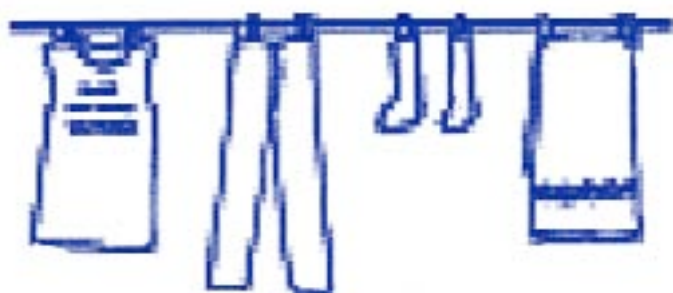
The Family Mediation Service is a free, professional, confidential service which enables couples who have decided to separate to negotiate their own terms of agreement. For further information and to get contact details for your local office ☎ 01-6344320 or see www.welfare.ie/fol/fammedsar.html

Mediators Institute of Ireland provide a list of accredited mediators nationally. For further information ☎ 01-2017526, or see www.mediationireland.com



National Information Centre for parents who are not married to each other
14 Gordon House, Custom House Square, IFSC, Dublin 1. LoCall: 1890 252 084
Telephone: 01 6700 120, e-mail: info@treoir.ie, www.treoir.ie

MAINTENANCE OF CHILDREN



*whose parents are not
married to each other*

All parents have a duty to maintain their children and rearing a child is expensive. It is a good idea to talk over how both parents can share in providing financially for their child - either through a voluntary maintenance agreement or through court proceedings. Paying maintenance does not in itself give a parent any access or guardianship rights. It can be useful to record the payment of maintenance.

Voluntary maintenance

Parents can make informal arrangements regarding maintenance and this can work well where parents are reasonable and fair. It can be difficult to assess how much maintenance should be paid. It might be useful to write down the actual expenses of the child. *Treeor* has an Expenses Sheet which may help you with this. If you find it difficult to come to an arrangement which satisfies both of you mediation may help. See 'useful contacts' on the back of this leaflet.

Alternatively each parent can engage their own solicitor who can act as a negotiator of an agreement. A solicitor will not act for both parents in such a situation as there could be a conflict of interest.

An agreement can include, or consist only of, a property transfer or a lump sum payment, but it cannot rule out the possibility of applying for a maintenance order at some time in the future.

Voluntary agreements in writing can be made a rule of court in the local district court which means the written agreement has the same standing as a maintenance order obtained through the courts.

Through the courts

Maintenance proceedings are always held in private. Either parent may apply to the court for a maintenance order against the other parent at any time in respect of a dependent child (see below). When the court is satisfied with regard to parentage, it may order the parent to pay a regular amount based on income. The maximum that the district court can order from either parent is €150 per week for each child. There is no limit in the circuit/high courts. The maximum lump sum the district court can award is €4,000.

Where an application for maintenance is dismissed because of the financial circumstances of either/both parents, it is possible to request the judge to make an order for a nominal sum (even €5 per week). In this way if financial circumstances change in the future, it would be more simple and less expensive to apply for a variation order (see below) than to re-apply for maintenance. *(It also seems that there is a court order naming the man as father which could be important for birth registration or other purposes).*

Maintenance is payable from the date the application for a court order is made.

Appeals

If you wish to appeal the decision of the court you can do so within 14 days or apply for extension of time to appeal.

Having the amount varied

Where a maintenance order has been made either parent can go back to court at any time to have the amount of maintenance increased or decreased should circumstances change. This is called a variation order.

Other expenses

A mother may seek a contribution from the father for expenses associated with the birth of the child, or for funeral expenses if the child dies (maximum €2,000 under each heading). This can be done through the local district court.

Dependent child

Maintenance proceedings can be brought at any time up to the child's 18th birthday or up to the 23rd birthday if the child is in full time education, or would be if maintenance was being paid.

If the child has a mental or physical disability to such an extent that it is not reasonably possible for the child to maintain her/himself fully then there is no age limit for seeking maintenance for her/his support.

Attachment of Earnings

If you are worried that the other parent will not pay the maintenance it is possible to get an Attachment of Earnings. This means that the maintenance payments are deducted by the employer at source or by the Dept. of Social and Family Affairs if in receipt of a Social Welfare Payment. If the parent is self-employed an Enforcement Summons can be applied for.

It is possible to get this Attachment at the time the initial maintenance order is made if there is a fear of default or if a parent falls behind with the payments.

Arrears

If a parent falls behind with payments where there is a maintenance order in place then it is possible to apply to the court for arrears. Six months arrears is the most that can be claimed through a summons at any one time.

Civil Legal Aid

If you are a person of moderate means you may be eligible for legal aid provided by the State. See overleaf for contact details.

If the father lives abroad:

If the father lives in the UK and you have his address you can apply for maintenance to the local district court in Ireland. The court clerk will take you through the process. If the father lives in any other country and you have his address contact the Central Authority for Maintenance Recovery and they will assist with applying for, enforcing or seeking an increase in a maintenance order (see address below). The process of seeking maintenance is likely to be a lengthy one. Generally there is no cost involved.

How Maintenance affects Social Welfare Payments

If you are receiving One-Parent Family Payment (OPF) you will be required to seek maintenance from the other parent and OPF will be reduced by about half the amount of maintenance being paid.

If you are paying rent and not getting Rent Supplement, up to €95.23 of your maintenance will be ignored in calculating your OPF.

However, if you are in receipt of Rent Supplement the first €95.23 of maintenance is fully assessed and any maintenance above this amount is assessed differently.

Maintenance and income tax

Maintenance payments are not taxed.

Maintenance, marriage and adoption

If you marry a man other than the father of the child, and you and your husband do not adopt the child, then the father may still be obliged to maintain the child. If the child is adopted by the couple and your husband becomes your child's guardian, then the father is no longer required to pay maintenance.

Useful Contacts

Central Authority for Maintenance Recovery

LoCall: 1890 555 509

Tel: 01 - 4790290 / 0287

Family Mediation Service

01-6344320

For location of you nearest law centre

LoCall: 1890 615 200



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ESTABLISHING PATERNITY



*information for parent who
are not married to each other*

Where parents are married to each other there is a presumption in law that the husband is the father of the child unless the contrary is proved. If parents are not married to each other, unless the father's name is on the Birth Certificate, there is no presumption in law as to who is the father of the child.

Paternity may be established by the courts in two ways:

1. As a part of court proceedings.

It may be necessary to establish paternity, where paternity is in doubt, for example in any maintenance, access, guardianship or inheritance proceedings. The majority of these cases are heard in the Family Law Court in the District Court but can also be heard in the Circuit Court. The court hearing these proceedings may order that the parties to the case undergo paternity testing before an order can be made.

If the Court orders that testing be carried out, the Court may also direct who is to pay the cost of the service; this may be the mother, the alleged father or shared cost.

Where a person refuses to undergo testing, the court can draw whatever inferences it thinks proper in the circumstances of the particular case. For instance, if an alleged father refuses to undergo testing, the court might take the view that he was afraid the test would show that he was in fact the father.

The Status of Children Act 1987 states that where there is a question of parentage the court may order that blood testing be carried out. However, it would appear that currently the Irish Courts are also accepting the results from swab (inside mouth) testing from approved laboratories.

2. Special Procedure for a Declaration of Parentage.

There is a special procedure available in the Circuit Court called a Declaration of Parentage which can be used only by the person whose parentage is in question (or by a person acting on her/his behalf). For example, where a parent has died and the child is making a claim on the estate, this procedure can be used to establish parenthood. It is not available to adopted children.

Although legal fees can be costly it is quite common for individuals to represent themselves in the District Court.

Testing Procedure

The testing procedure is carried out on either blood samples or mouth swab (inside of mouth) taken from the relevant parties. In general the consent of the mother is required before a child will be tested; where consent of the mother is not obtained the legality of testing could be in question.

Testers would prefer that testing be carried out on all parties at the same time. If this is not possible they will arrange for the testing to be carried out on all parties within a short period of time of each other on the same day. Photo ID is always required to ensure identities. Some laboratories can arrange to have a testing kit sent to your nominated GP. Check that the GP you choose will provide this service or alternatively your chosen laboratory may have a list of GP's that will provide the service. In the case of some laboratories a nurse may be available to visit a named location to carry out the testing procedure. In most cases, where a nurse or a GP is involved in the testing procedure there will be an additional fee.

After the testing procedure has been completed, the samples will then be sent to a laboratory overseas for analysis. Test results should be available within 2–3 weeks.

Testers should provide a strictly confidential service. If you have any concerns about confidentiality discuss your concerns with the laboratory.

Where results are required for court purposes it should be confirmed with the laboratory that they operate to a court approved standard.

NOTES:

Test results from paternity testing cannot, in themselves, be used to add the father's details to the Birth Certificate

It is worth noting that even where an unmarried father's name is on the Birth Certificate this in itself does not give him any legal rights in respect of his child.

SERVICES

Barringtons Laboratories Barringtons Medical Centre

George's Quay, Limerick

Tel: (091) 400407 Fax: (091) 400806

E-mail: pam.zobert@barringtonshospital.com

Referral: Self Referral / GP / Solicitor

Type of Test: Blood. Heel prick from a baby. Finger prick from an adult. On-site kit can be sent to a nominated GP.

Age of Child: 8 weeks or older or at discretion of GP

Approved: South African National Accreditation Scheme

Cost: €330. €175 for additional alleged fathers to be tested.

Blackrock Clinic

Tel: (01) 2064057

E-mail: mrashyn@blackrock-clinic.com

www.blackrock-clinic.com

Referral: Self Referral / GP / Solicitor

Type of Test: Swab

Age of Child: 2 weeks or older

Approved: UK's Lord Chancellor's Office

Cost: €870. €290 for additional alleged fathers to be tested.

Dr. Stephen Murphy

The Park Clinic

Cabinteely, Dublin 18

Tel: 01-2833889

E-mail: info@paternity.ie

www.paternity.ie

Referral: Self Referral / GP / Solicitor / Courts

Type of Test: Blood or Swab

Age of Child: Any age after birth

Approved: UK's Lord Chancellor's Office

Cost: €800. €180 for additional alleged fathers to be tested.

DNA Testing Limited

St James Medical Centre

178 James Street, Dublin 8

Tel: 01 6770766 Fax: 01 6770857

E-mail: philip@connect@eircom.net

Web site: www.stjamesdnt.com

Referral: Self Referral / GP / Courts / Solicitor / Social workers

Type of test: Blood or swab

Age of child: any age

Approved: UK's Lord Chancellor's Office

Cost: €490. Medical card holders are entitled to a discount of €30 each to a maximum of €90 in total (two adults: 1 child).

Prof. James A. Houghton

Cytogenetics Unit

National University of Ireland, Galway

Tel: (091) 492290 Fax: (091) 494888

E-mail: jim.houghton@nuigalway.ie

www.celmark.ie

Referral: Self Referral / GP / Solicitor

Type of Test: Blood or Swab

Age of Child: Any

Approved: UK's Lord Chancellor's Office

Cost: €600. €200 for additional alleged fathers to be tested.

(The same cost applies whether you attend laboratory or have testing done at another location by nurse provided by laboratory).

DNA Diagnostics Ltd

Alexandra House, The Sweepstakes

Balabridge, Dublin 4

Tel: (01) 6319348 Fax: (01) 6319001

E-mail: info@dnadiagnostics.ie

www.dnadiagnostics.ie

Referral: Self Referral / GP / Solicitor

Type of Test: Swab. Kit can be sent out to a nominated GP or laboratory can in most cases arrange for a nurse to carry out testing at any location.

Age of Child: Any

Approved: ISO and UKAS accredited, that covers DNA testing throughout Europe.

Cost: €540. €120 for additional alleged fathers to be tested.

Chemical Analysis Lab

River 114 Lt, Georges Street

Dun Laoghaire, Co. Dublin

Tel: (01) 2860765 Fax: (01) 2860761

E-mail: elcom@rsl.ie

www.cal.ie

Referral: Self Referral / GP / Solicitor

Type of Test: Blood or Swab. Kit supplied, but samples should be taken by GP

Age of Child: 2 weeks for swab / blood at discretion of GP

Approved: UK's Lord's Chancellor's Office

Cost: €332.75. €905.8 results required for court procedures.

€181.00 for additional alleged fathers.

ALL PRICES QUOTED ARE CORRECT AT TIME OF PUBLICATION

NOTE: Other companies offering to perform DNA tests can be accessed on the Internet but we would strongly advise caution here. Check that the company is approved by an appropriate authority.

While every effort has been made to ensure that the information in this leaflet is accurate, no responsibility can be accepted by Treoir for any error or omission.



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Appendix vi

AGREEMENT TO PAY MAINTENANCE

1. This document is a voluntary agreement between the unmarried parents of _____ (child's name).
2. We _____ (child's mother) and _____ (child's father) agree that the terms set out in this agreement are fair, reasonable and in the best interests of _____ (child's name).
3. _____ (payor parent), residing at _____ (payor's address) will pay, weekly, the sum of €_____ to _____ (payee parent) residing at _____ (payee's address)
4. This payment is made for the care and support of _____ (child's name)
5. This agreement may be modified if:
 - (a) There is any change in the payor's financial circumstances which is substantial;
 - (b) There is any change in the payor's financial circumstances which will materially affect the payor's ability to make maintenance payments;
 - (c) There is any change in the child's circumstances which will lead to an increase in the expenditure for the child;
 - (d) The terms of the agreement are contrary to the best interest of the child.
 - (e) Either party to the agreement dies;
 - (f) The child dies, reaches the age of 18 years, 23 if in full-time education, becomes the subject of an adoption order.or;
 - (g) ____ months have elapsed since the agreement was entered into.

Signature of child's mother: _____

Date: _____

Signature of child's father: _____

Date: _____

Appendix vii

AGREEMENT FOR ACCESS

1. This document is a voluntary agreement between the unmarried parents of _____ (child's name).
2. We _____ (child's mother) and _____ (child's father) agree to the terms set out in this agreement.
3. _____ (residential parent), residing at _____ (residential parent's address) agrees to visitation, as set forth in section 4 below, between _____ (visiting parent) residing at _____ (visiting parent's address) and _____ (child's name).
4. The visitation times will be as follows:

Day:	From:	To:
	_____ am/pm	_____ am/pm
	_____ am/pm	_____ am/pm
Or: _____		
5. This agreement will be in effect each week/alternating weeks/one week per month/other (explain) _____ (delete where applicable).
6. _____ (child's name) will not be removed from the jurisdiction of The Republic of Ireland except by prior consent of both parents.
7. We have/have not (delete where applicable) signed a statutory instrument (S.I. no 5 of 1998) relating to joint guardianship of _____ (child's name).
8. This agreement may be modified or terminated if:
 - (a) the terms of the agreement are contrary to the best interests of the child;
 - (b) there is a change in circumstances which will materially affect the ability of either parent to adhere to the terms of this agreement, in this case parents agree to reach a mutually acceptable alternative agreement;
 - (c) the agreement is against the wishes of the child and the child's interests would be served by terminating the agreement;
 - (d) either party to the agreement dies;
 - (e) if the child dies or reaches the age of 18 years, or;
 - (f) 36 months have elapsed since the agreement was entered into.

Signature - mother: _____ father: _____

Date: _____

Treoir has many **Publications** *available*

"Being there for them" – booklet for grandparents of children whose parents are not married to each other

Bulletin – regular information for parents who are not married to each other and for those involved with them - send your name and address to editor@treoir.ie

Establishing Paternity – information for parents who are not married to each other

Family Links: steps and stages – positive pointers for lone parents who are helping their children to understand their family situation

Information for young parents in education

Information Pack for parents who are not married to each other

Reproductive Health Issues for Migrant Women – a resource for workers in seven languages

Newsletter – for workers with young parents – send your name and address to editor@treoir.ie

Resource Manual for Key Workers with parents who are not married to each other

Taking the Stand – a guide for unmarried parents resolving disputes regarding care of their children

Work it Out! – a guide for parents on One-Parent Family Payment (re)entering the workforce or education

Information Leaflets

1. The Children Act 1997 (guardianship by agreement)
2. The Non-Fatal Offences against the Person Act 1997 (harassment)
3. Guardianship,
4. Access, Custody
5. Shared parenting for parents who are not married to each other
6. Unmarried fathers - rights and responsibilities in respect of their children
7. Maintenance of children whose parents are not married to each other
8. Family adoption (mothers and husbands)
9. Passport applications for children whose parents are not married to each other
10. Ante/post natal accommodation
11. Birth registration for children whose parents are not married to each other
12. Cohabitation
13. Unmarried parents and equality legislation
14. Births outside marriage 1990 - 2003 statistics
15. Birth statistics: women under 20

Web based only publications

Legal information for unmarried migrant parents – available in Arabic, Chinese, English, French, Polish, Romanian and Russian

Pregnant and thinking about adoption

Useful Services Database



National Information Centre for Unmarried Parents
14 Gandon House, Custom House Square, IFSC, Dublin 1
01-6700 120 info@treoir.ie www.treoir.ie