

What is a Rule of Court?

Where an agreement for custody and/or access is entered into and made in writing (including written agreements made during mediation), an application can then be made to court for an order to make that 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 best interests of the child. The agreement then has the same standing as a court order. A written agreement that is not made a Rule of Court is **NOT** legally binding.

Enforcement Orders

Where there is a court order in place for either access or custody and the access or custody is either unreasonably denied or not taken up, a parent/guardian of the child may apply to the court for an enforcement order. Before making an enforcement order the court will consider the views of the child where possible given his/her age and understanding.

The enforcement order may provide for one or more of the following:

- that a parent and/or guardian be granted additional access to the child
- that a parent and/or guardian be reimbursed for any expenses they may have had as a result of the refusal to either take up or allow the access
- that either or both parties do one or more of the following: receive information about the availability of mediation, attend a parenting programme, attend family counselling.

Variation Orders

If a court order becomes difficult to implement it is possible to go back to the court at any time to look for a variation order in order to make changes to the original court order. An application can also be made to terminate an order.

Applying for Access if your child is not living in Ireland

Depending on the country where your child is residing, you may be able to make an application under the 1980 Hague Convention on the Civil Aspects of International Child Abduction to establish access arrangements. For further information visit www.justice.ie or call the Central Authority in Ireland on 01 479 0200. You can also email your query to the Central Authority at internationalchildabduction@justice.ie

If you would like to talk through your individual situation, call Treoir on

our confidential helpline at:

01 670 0120

see www.treoir.ie for more

May 2019

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.

information

Keep informed.
Follow us on:



@treoir

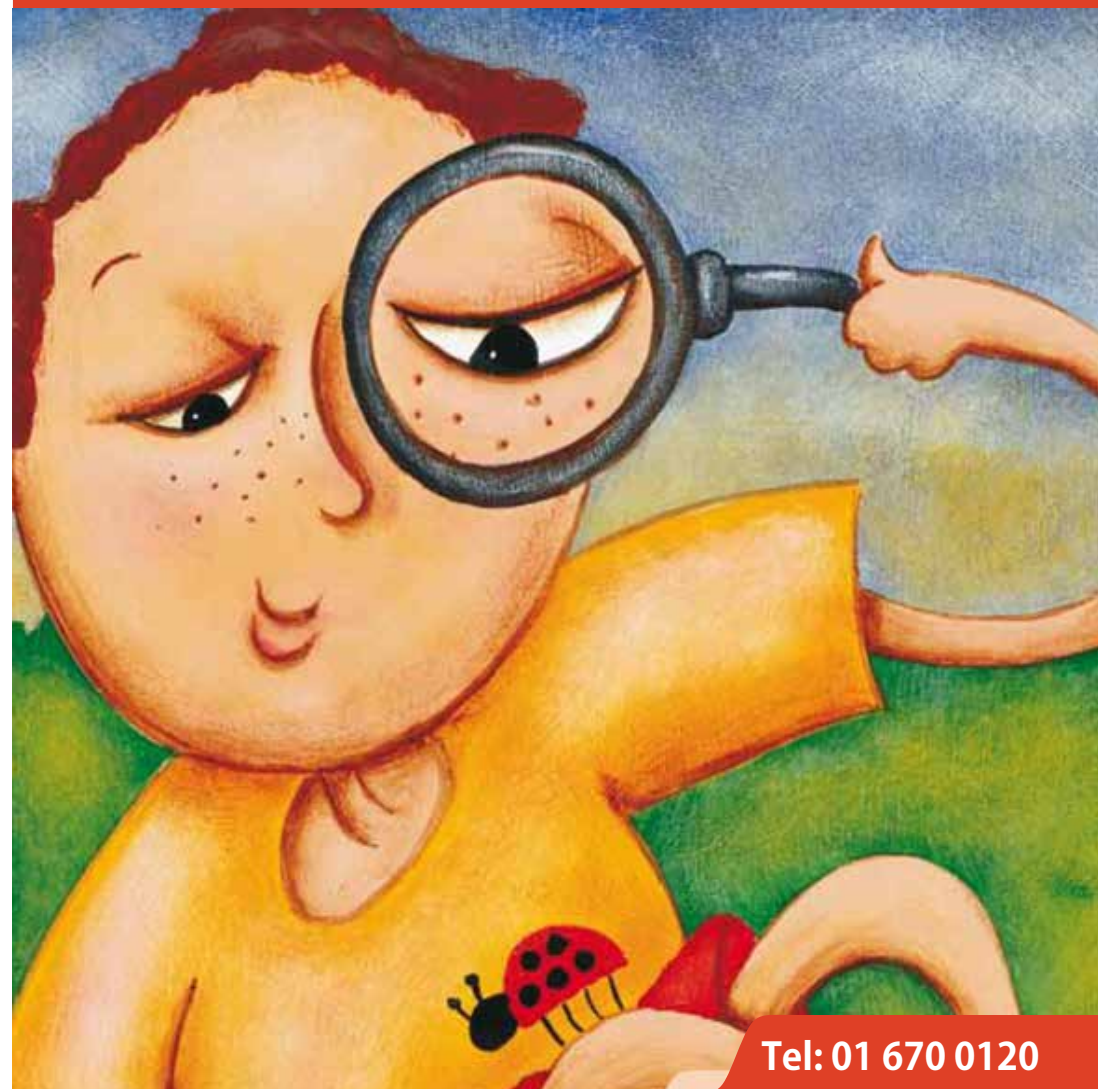
facebook.com/treoir

@treoir2019

28 North Great Georges Street,
Dublin 1 D01 HY46
01-6700120
info@treoir.ie; www.treoir.ie
@treoir
facebook.com/treoir
CHY: 8877
RCN: 20022211

Access and Custody of Children

whose parents are not married to each other



Tel: 01 670 0120

Access

Access is the right of a child and a parent and/or guardian who do not live together to spend time together. This right can also be granted to certain relatives and others.

For parents

Where parents (including adoptive parents) are not living together 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. If parents are having difficulty in making arrangements regarding access they

could consider **Mediation** or **Collaborative Law** (see below). Where the parents cannot reach an agreement informally, 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 interests of the child and the court will consider the views of the child where possible given his/her age and understanding. A non-resident parent is usually granted access. Access can also be applied for where a child is in the care of TUSLA, the Child and Family Agency.

For relatives and certain other persons

If it is not possible to agree arrangements, certain persons who are related to the child, (grandparents, brothers, sisters, uncles or aunts), including by adoption, or any person with whom the child resides or has resided may apply to the local District Court for an access order in relation to the child.

Access can also be applied for where a child is in the care of TUSLA, the Child and Family Agency. Any decision made by the court will be made in the best interests of the child. The court will consider the views of the child where possible given his/her age and understanding. The court will also consider:

- 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
- the wishes of the child's guardians
- whether or not an access order is necessary.

Custody/Joint Custody

Custody is having the responsibility for the day-to-day care of a child.

For Parents

The mother of a child born outside marriage has automatic sole custody of her child. Where both parents agree, it is possible for them to share custody (joint custody) of the child on an informal basis. If parents are having difficulty agreeing joint custody they could consider Mediation or Collaborative Law (see below).

Where the parents cannot agree, the father can apply to the local District Court for joint or sole custody. The other parent and any other guardian will be informed of the application and any decision made by the court will be made in the best interests of the child. The court will consider the views of the child where possible given his/her age and understanding.

For relatives and certain other persons

The court may make an order for custody on application by:

- a person who is a certain relative of a child (grandparents, brothers, sisters, uncles or aunts), or
- a person with whom the child resides if that person is or was married to, or in a civil partnership with, or has cohabited with the parent of the child for a period of at least 3 years and has shared the day-to-day care of the child for at least 2 years, or
- a person with whom the child resides and who has had the day-to-day care of the child for a continuous period of not less than 12 months and the child has no parent or guardian who is willing or able to exercise the rights and responsibilities of guardianship in respect of the child.

Before making an order for custody the court will require the consent of all guardians. However, the court may dispense with the need for consent if it is satisfied that it is in the best interests of the child to do so. Any decision made by the court will be made in the best interests of the child and the court will consider the views of the child where possible given his/her age and understanding.

The court can also make an order for **joint custody**. Where the child is not living with one of his/her parents, for any period, the court can specify what access arrangements, if any, are to be put in place.

Mediation and Collaborative Law

If you are having difficulty in agreeing parenting issues you might think about mediation. **Mediation** is where a third party, the mediator, helps parents/guardians/family members reach agreement. Mediation encourages all parties to co-operate with each other in working out arrangements concerning their children. Any written agreement can be made a **Rule of Court** (see below).

NOTE: a free mediation service is currently available through local district courts located in Dublin (Dolphin House), Naas, Nenagh, Clonmel, Limerick City, Cork City, Carlow, Ennis and Tralee. Check with your local district court for availability.

The Family Mediation Service: 01-874 7446, www.legalaid.ie
Mediators' Institute of Ireland: 01-609 9190, www.themii.ie

Collaborative law is where parents/guardians/family members work with specially trained lawyers, receive legal advice and guidance, and together with the lawyers, discuss and attempt to resolve issues through face-to-face meetings. Decisions are made by the parties involved. A written agreement can be made a Rule of Court (see below).

Association of Collaborative Practitioners: www.acp.ie
Legal Aid Board: LoCall 1890 615 200, www.legalaid.ie

Appeals

If you are not happy with a decision made by the court you have 14 days in which to appeal. The terms of the order will come into force while waiting for the appeal unless a court directs differently.