

# Children and Same Sex Families A Legal Handbook

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## PREFACE

In many ways, this book feels as if it should have been written years ago and yet the simple truth is that it could not have been. Before the Human Rights Act 1998, the Adoption and Children Act 2002 and the Civil Partnership Act 2004 there would, for a start, have been a great deal less to say. Had the book been written earlier, it would, I suspect, have been a very different one, probably more agenda-driven and possibly with an authorial tone that is rather more polemical than this. That is a book that I am relieved we did not have to write, this is a book that I feel proud and privileged to have been able to have contributed to.

A society that respects diversity, values equality and promotes fairness is a healthier one for children to grow up in and a better one for us all. As I have researched my own contribution for this book and read the erudite analysis of my co-authors, what strikes me time and again is how those judges, politicians, lawyers, clergymen and others who keep these fundamental rights and liberties securely in focus are often able to move the law and social attitudes forward at a pace and with a high degree of consensus. An intuitive sense of these rights and freedoms in the past has not always found expression in the most sensitive language. It is a strange sensation in 2012 to read judgments of only a couple of decades ago that talk of homosexuals as 'abnormal' or 'unfortunate' whilst at the same time, in difficult cases involving the welfare of children, crafting analysis which is sensitive, child focused and full of integrity and fairness to a wide variety of minority groups.

Though we may sometimes be frivolous about it, in a way which is, I think, often healthy, we are nonetheless these days far more careful, considerate and thoughtful about our use of language and how it impacts upon the autonomy of others. This development, coupled with the raft of equality legislation, provides a framework for a much fairer society in the future and one in which the options for children are expanded, keeping them at the centre of the legal process. Our responsibility, be it as lawyers, parents or judges is to ensure that these opportunities for whom many fought and some died, are harnessed effectively by those charged with the responsibility to do so. This book aims to assist all of us who are engaged in that process and who want better to understand the ever-evolving concept of both parent and family.

Anthony Hayden QC  
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### **Elina Nhinda-Latvio**

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*Children and Same Sex Families: A Legal Handbook*

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Concerns regarding same-sex marriage and the family are at the forefront of the controversies over legalization of same-sex marriage. In the United States, an estimated 1 million to 9 million children have at least one lesbian, gay, bi, trans, intersex, or queer parent. Concern for these children and others to come are the basis for both opposition to and support for marriage for LGBT couples. Ball Carlos A. (EN). *Same-Sex Marriage and Children* is the first book to bring together historical, social science, and legal considerations to comprehensively respond to the objections to same-sex marriage that are based on the need to promote so-called responsible procreation and child welfare. Carlos A. Ball places the current marriage debates within a broader historical context by exploring how the procreative and child welfare claims used to try to deny same-sex couples the opportunity to marry are similar to earlier arguments used to defend interracial marriage bans, laws prohibiting dis Although children from same-sex parent families do in general perform well on many psychosocial measures recent research is beginning to consider some small but significant differences when these children are compared with children from other family backgrounds. In particular studies suggest that there is an association between the stigma that same-sex parent families experience and child wellbeing. Research to date lacks a holistic view with the complete physical, mental and social wellbeing of children not yet addressed. In addition, most studies have focused only on families with lesbian pa