

# Orphaning and the foster child grant: A return to the 'care or cash' debate

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**South Africa has the largest social grant system in Southern Africa, with child grants alone reaching nearly 11 million children in 2011. In the context of high HIV prevalence and rising numbers of orphans, the use and function of the various child grants needs to be reconsidered.**

The child support grant (CSG) was introduced in 1998 as a poverty alleviation grant. In contrast, the foster child grant (FCG) was introduced much earlier as part of the child protection system. The FCG was to be given after court-ordered foster care placements in cases where the government had removed children from their family environment due to abuse or neglect. The CSG is therefore part of the government's poverty alleviation response, while the FCG is part of the child protection system. However, the purpose of these two grants has become conflated over time.

This Children Count brief explores the following questions: Should the FCG continue to be part of the child protection system, or should it be a poverty alleviation grant for orphans, or should it be some combination of the two?

To answer these questions we need to consider a number of related issues:

- What is practically possible for social workers and the courts?
- What are the potential numbers if the FCG were to be extended to all orphans?
- What is the rationale for a separate (higher) grant for orphans, and is this justified?
- What is the intention of the law?
- What is the impact of recent court cases?

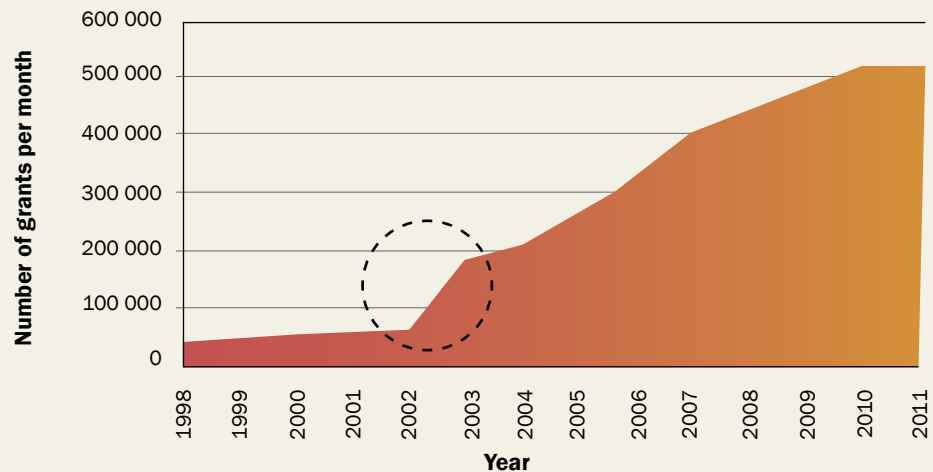
## Child support grant v foster child grant: Key features

	CSG	FCG
Purpose	Poverty alleviation (applicant must pass a means test to show poverty)	Child protection / alternative care (no means test; applicant does not have to be poor)
Responsible institution/s	SASSA (South African Social Security Agency)	SASSA, Department of Social Development & Department of Justice & Constitutional Development
Administration	Once-off application, processed by administrative staff. Application is meant to be processed in three working days	Initial social worker investigation, report and court inquiry followed by an application to SASSA; court-ordered extension is required after every subsequent two years, requiring further social worker reports
Beneficiary	'primary care-giver' (not necessarily biological parent)	'primary care-giver' (definitely not biological parent)
Grant amount in 2011	R270 per month	R740 per month

## Growth of the FCG

The FCG is the oldest child grant in South Africa. For decades it assisted the small numbers of children who had been placed in foster care by the courts, and the number remained below 40 000 for many years. Ten years ago, when HIV-related orphaning rates started rising rapidly, the use of the FCG changed.

**Fig.1 Number of foster child grants paid per month (as at April of each year)**



**2002:** Then-Minister of Social Development Zola Skweyiya said that the FCG would be made available to relatives who cared for orphaned children (Skweyiya 2002). Previously, very large numbers of relatives had cared for orphans, who were seen as part of their family, without any assistance from government. After 1998, these relatives could also apply for a CSG for the children in their care. Following the Minister’s announcement and similar statements from other officials, the number of FCGs grew rapidly.

**2003:** Researchers warned that the foster care system was becoming over-burdened, and that the extension of foster care to orphans reduced the ability of the child protection system to cater for the abused and neglected children for whom foster care was designed. It also risked excluding orphans because social workers could not cope with the demand (Meintjes et al 2003).

**2005:** The Children’s Bill was under debate. Organisations working with children affected by HIV recommended that parliament strengthen the foster care system to address the situation of children needing protection from abuse and neglect, and discontinue its use for poverty alleviation. The CSG was available for poverty alleviation. The organisations said that this was the only way for the child protection system to be sustainable, and for all orphaned to be reached with a grant (Meintjes & van Niekerk 2005).

Over 110,000 FCGs have lapsed in the past two years because the system could not keep up with the large numbers of new applications, and the two yearly extension requirement for the existing large numbers of foster care court orders.

## What does the law say about who should get the FCG?

The law is not clear who should receive the FCG, and government has not issued any formal guidelines. The Children’s Act, which came into force in April 2010, has conflicting provisions about the purpose of the FCG. This has resulted in different interpretations from magistrates. Some have awarded foster care status to orphans who were already in the care of relatives. Some have refused, saying that the child is not without “visible means of support” as required by s150(1)(a) of the Children’s Act.

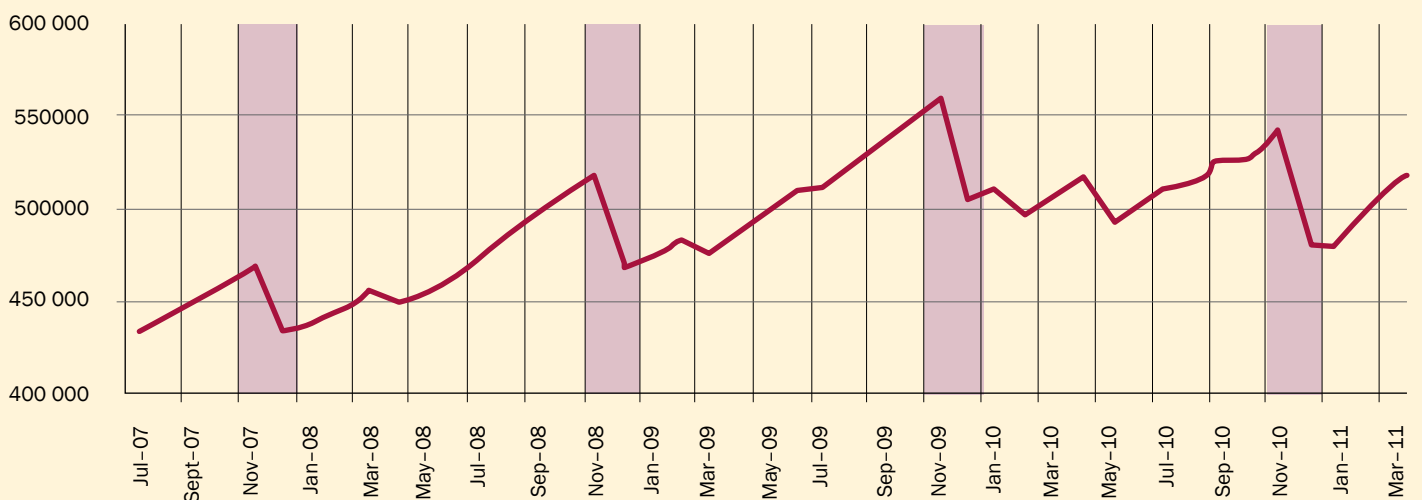
### **The Act defines children who are eligible for foster care as follows:**

“A child is in need of care and protection if the child... has been abandoned or orphaned and is without visible means of support.” The regulations do not provide any guidance on the meaning of the words “visible means of support”.

## Lapsing grants: what are the numbers and reasons?

In the past, the number of FCGs increased every year, despite a drop-off at the end of each year when grants are terminated for children who turned 18 during the year. This pattern changed during 2010, with an overall decline in FCGs due to the increased number of grants that lapsed during the year.

**Fig.2 Number of FCGs by month, and reasons for lapsing**



	Apr '09–Mar '10	Apr '10–Mar '11
Number of FCGs that lapsed (payment stopped during the year)	129 500	164 900
<b>Reason for lapsing</b>		
Age threshold (FCGs lapse at end of year when child turns 18)	65 200 (50%)	69 500 (42%)
Beneficiary deceased (caregiver or child)	11 500 (9%)	10 900 (7%)
Beneficiary requested / child not with beneficiary	7 800 (6%)	7 400 (5%)
Other / no reason recorded	5 700 (4%)	2 300 (1%)
Expired court order / failed to review	39 200 (30%)	74 200 (45%)

Source: South African Social Security Agency SOCPEN (social grants) database – special requests, analysed by K Hall.

- Notes:
1. Numbers have been rounded to the nearest hundred and may not add up to exactly 100%.
  2. SOCPEN contains numerous reasons codes for lapsed grants. These have been aggregated for ease of reading.
  3. Grants recorded as 'lapsed' in SOCPEN were not being paid at the time the data were extracted, but may have subsequently been reinstated.

The number of lapsed FCGs increased from 129 500 in the year 2009/10 to 164 900 in 2010/11. This increase is entirely due to a rise in the number of FCGs that lapsed as a result of expired court orders. These grants lapse because the system cannot keep pace with the need to extend court orders. The regulations to the Social Assistance Act say that a foster child grant must be reviewed on expiry of the court order, and the maximum duration of a court order is two years. If the review process reveals that the court order has expired, the grant may be suspended (s.27 of the Social Assistance Act).

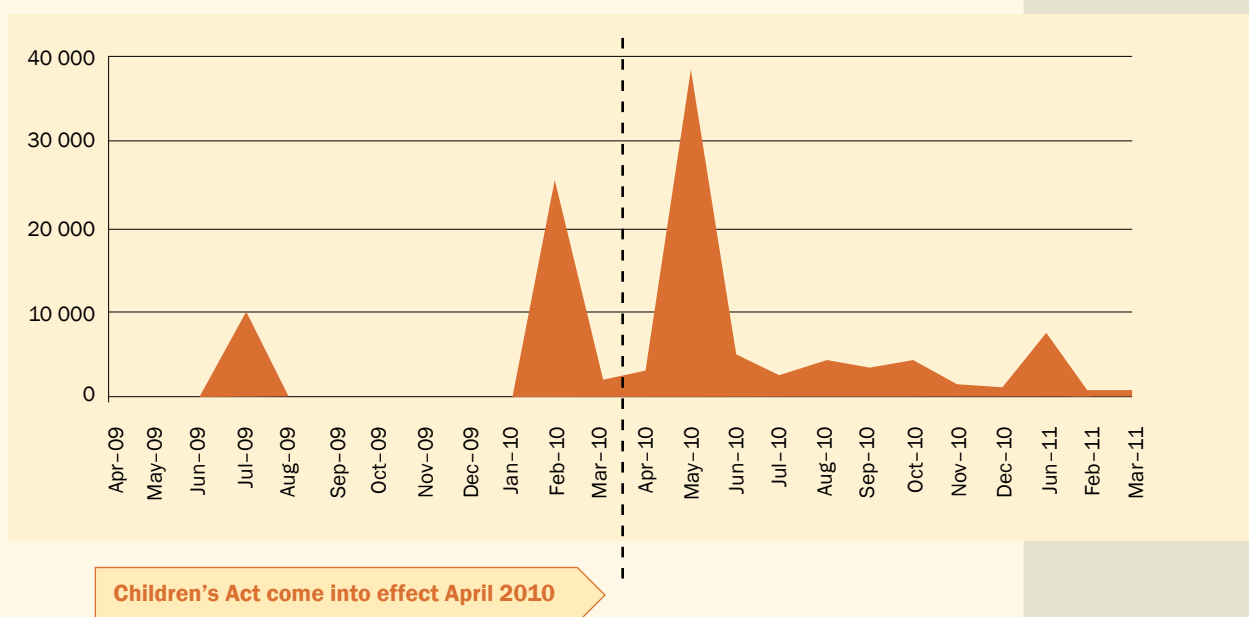
There are only 13 773 registered social workers in the country (Dawes 2011), and a large amount of their time is spent on paperwork for grant administration, rather than providing the other support services for which they are trained. Yet social workers cannot process applications and extensions fast enough. The already over-burdened courts are also struggling. Currently, FCGs are estimated to make up 70% of the caseload in Children's Courts. As seen above, this 70% is far from what is needed for all the foster placements that need to be extended.

## Lapsing grants: a result of the Children's Act?

The Children's Act introduced changes in the way the foster care orders are extended. Under the old Child Care Act, foster care orders lasted for two years, as they do now, but they could be extended by social workers using an administrative process. Under the Children's Act, all extensions have to be processed by the Children's Court after receipt of a social worker report.

The introduction of the Children's Act has exacerbated the problem of backlogs, resulting in more lapsed grants after its introduction. However, the problem pre-dates the Children's Act. A total of 39 000 FCGs were lapsed before the Act came into effect, as can be seen in Figure 3 below. Therefore, even if the system reverted to the previous method, where social workers could administratively extend the FCG, the underlying problem would not be resolved.

**Fig.3 Number of FCGs lapsing due to expired court order / failure to review  
April 2009 – March 2011**



Children's Act come into effect April 2010

Source: South African Social Security Agency SOCPEN (social grants) database – special requests, analysed by K Hall.

Note: Grants recorded as 'lapsed' in SOCPEN were not being paid at the time the data were extracted, but may have been reinstated subsequently.

### Is it feasible to extend the FCG to all orphans?

- In South Africa, nearly 1.6 million children do not have a living biological mother. These 'maternal orphans' are potentially eligible for the FCG if it is given to all orphans and the term 'orphan' is understood to include all maternal orphans. A narrower definition of orphans is 'double orphans' (both parents deceased). There are nearly 1 million double orphans in South Africa.  
(Stats SA General Household Survey 2009)
- Maternal and double orphaning rates are rising and will continue to rise over the next few years. Orphaning numbers also rise with the age of the child.  
(ASSA2008 & GHS trends)
- There were about 520 00 children receiving FCGs in April 2011. Of all FCGs going to children under 15 years in 2008, 72% went to maternal or double orphans.  
(SOCPEN & National Income Dynamics Study 2008)
- Both the FCG and the CSG are currently being used to provide income support for relatives caring for orphans. But the CSG reaches many more maternal and double orphans than the FCG. Amongst maternal and double orphans under 15 years, 357 000 (34%) received the CSG in 2008, compared with 216 000 (21%) who received the FCG.  
(National Income Dynamics Study 2008)

## What is the cost of extending the FCG to all orphans?

The current annual budget for FCGs is R5.5bn (2011/12). This is only the cost of the grants and excludes SASSA's costs of administering the grant, the department of social development's costs of social worker investigations and reports, and the department of justice's costs of court inquiries. The estimated grant cost for extending the FCG to reach all orphans in the current year is:

**R10.1 billion for double orphans**

**R13.2 billion for maternal and double orphans**

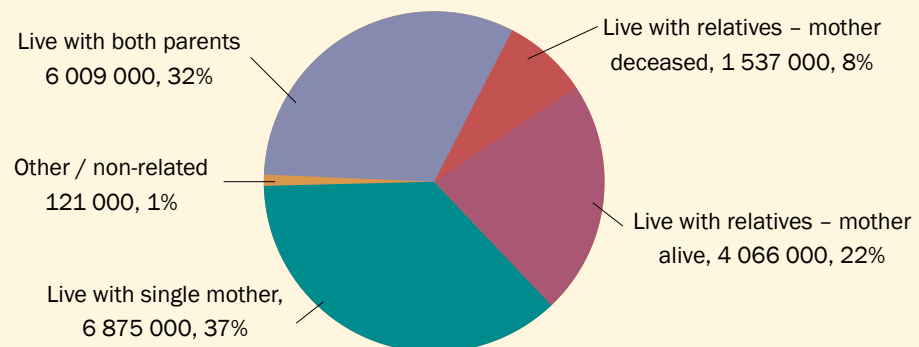
These estimates are for the grant costs only, and take into account savings on CSGs currently received by orphans.

We have already seen that the human resources needed to process and maintain the FCGs are insufficient to cope even with the relatively small number of grants under the current system. Any significant increase in the number of eligible children would exacerbate the problem and lead to further backlogs. The financial cost of extending the FCG to all orphans has not been provided for in the 2011/12 budget or in government's budget projections for 2012/13 and 2013/14.

## Who is in need of care or cash?

Relatives, especially grandmothers, care for large numbers of children: about 5.5 million children are cared for by their relatives. Not all these children are orphans. Most children cared for by relatives have a mother who stays elsewhere.

**Fig.4 Orphaning and care arrangements for children in SA**



Source: StatsSA General Household Survey 2009, K Hall calculations

Orphans are, on average, poorer than non-orphans. But a more detailed comparison shows that some categories of children may be worse off financially than orphans.

	Number of children (<18 years, African only)	Proportion of children (<18 years, African only)	Average monthly income per person (median, African only)
Live with both parents	4.2 million	27%	R530
Live with relatives - mother deceased	1.5 million	9%	R463
Live with relatives - mother alive	3.7 million	23%	R403
Live with single mother	6.3 million	40%	R303

Source: StatsSA General Household Survey 2009, K Hall calculations

Targeting the FCG to orphans means that they will receive a grant worth nearly three times the child support grant. But children with single or absent mothers may have equal need of income support.

## References

- Dawes A (2011) Social Services: Are there enough social workers to ensure adequate care and support? in Giese S (Ed) *The Children's HIV and AIDS Scorecard 2011: Monitoring South Africa's Response to children and HIV and AIDS*. Durban: Children's Rights Centre & Secretariat for Yezingane Network.
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## Recent court cases

### Children's Court Krugersdorp (Jan 2011)

**Facts:** For the first two years of his life Child X lived with his mother and his grandmother in the Eastern Cape. When his grandmother died, his mother took him to Krugersdorp and asked her aunt and uncle to care for him. At the time of the court case, the child was 10 years old. He had been living with his great aunt and uncle for 8 years, during which time they had received the CSG for him. The child was happy and healthy, according to social worker reports. He was close to his relatives and they lived as a loving family. But they were very poor. Following the death of his mother, his aunt and uncle applied for the FCG.

**Legal question:** Are orphaned children who are already in the care of relatives "without visible means of support", and therefore entitled to the FCG?

**Judgment:** No. The magistrate said: "From the evidence it is clear that the main reason for this enquiry is to alleviate the parties' financial position by a foster care order... [but] there is no necessity that it has to be a foster grant... The country's foster care system has become an income maintenance system."

This judgment is being appealed in the High Court and the outcome will be binding on all magistrates' courts. If the High Court upholds the judgment, then orphans living with relatives will no longer be eligible for the FCG. If the High Court over-rules the judgment, then all orphans will clearly be eligible for the FCG.

### Centre for Child Law v Minister of Social Development and Others (May 2011)

**Facts:** Many Foster Child Grants had lapsed due to backlogs in the extension of foster care orders. Without a valid court order (or extension order), SASSA is not legally allowed to pay foster child grants.

**Outcome:** The court-ordered settlement said that a comprehensive legal solution must be found to prevent qualifying families from losing their grants, and that the solution must address the underlying problems. This must be done by the end of 2014. In the meantime the court imposed a moratorium on future lapsing, said that all FCGs that have lapsed since April 2009 must be reinstated, all foster care orders that have lapsed since April 2009 must be deemed not to have lapsed, and that future extensions can be done by social workers without the need for a court inquiry.

### The Children's Act and Social Assistance Act will need to be amended to provide for a comprehensive legal solution. What should this solution be?

What solution will ensure that orphans in need of poverty alleviation receive a grant timeously?

What solution will ensure that other categories of vulnerable children are included?

What solution will ensure that social workers' scarce skills and time are used in the best interests of all children?

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