

Submission

to the

Panel of Experts

on the

**FIRST QUARTERLY REPORT OF THE SOUTH AFRICAN
SOCIAL SECURITY AGENCY, JUNE 2017**

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A) INTRODUCTION

About the Black Sash Trust

1. The Black Sash Trust (“Black Sash”) is a non-party political and non-profit organisation registered as a trust in terms of the laws of South Africa. Black Sash’s vision is the realisation of human rights and its mission is to work towards a South Africa in which: human rights are recognised in law and respected in practice; the government is accountable to all its people and attends to their basic needs; members of society (individuals and the private sector) also take responsibility for reducing inequality and extreme poverty; the Constitution of the Republic of South Africa, 1996 (“Constitution”) is upheld by all; and social and economic justice is recognised as fundamentally important.
2. Significantly, for the purposes of these submissions, Black Sash seeks to ensure that the poor, vulnerable and marginalised people who are the recipients of social grants are treated with dignity, efficiency, and with due regard to their constitutional and statutory rights. It seeks to achieve this aim, in a variety of ways, which for brevity, are not outlined here.
3. It follows from the above that Black Sash is both committed to the realisation of the right to social assistance as set out in the Constitution and well versed in issues pertaining to social assistance including the social grants system.

Rationale for this submission

4. In furtherance of its objectives, in February 2017, Black Sash launched a direct application with the Constitutional Court wherein it sought, in simplified terms, assurance that the South African Social Security Agency (“SASSA”) had a plan to ensure the payment of social grants after the completion of its contract with Cash Paymaster Services (Pty) Ltd (“CPS”) on 31 March 2017. The Constitutional Court, in *Black Sash and Others v CEO, SASSA and Others* (“*Black Sash Judgment*”), ordered that the contract between CPS and SASSA be extended for a period of 12 months.¹ Saliiently, for the purposes of this submission, the Court ordered that SASSA and the Minister of Social Development (“Minister”) report to it on a quarterly basis on—

“how they plan to ensure the payment of social grants after the expiry of the 12-month period, what steps they have taken in that regard,

¹*Black Sash and Another v CEO, SASSA and Others* (CCT 48/17), 17 March 2017, [2017] ZACC 8 available at <http://www.saflii.org/za/cases/ZACC/2017/8.html> (hereinafter “*Black Sash Judgment*”), para 76.6.

what further steps they will take, and when they will take each future step”.²

5. The Court also created the collective of the Auditor General and legal and technical experts (“Panel of Experts”) who are to evaluate the reports submitted by SASSA and the Minister and report, to the Court, on their evaluation and recommendations. It is as a result of these orders of the Court that the Black Sash makes this submission.
6. Black Sash addresses this submission to the Panel of Experts in the hopes that it will inform the latter’s evaluation of SASSA and the Minister’s first quarterly report (“First SASSA Report”) to the Court.³ Black Sash, together with its attorneys, the Centre for Applied Legal Studies (“CALs”), have reflected on the First SASSA Report, attended the SASSA-focused meeting hosted by SCOPA on 15 August 2017 and engaged with a number of experts. These activities were performed by Black Sash and CALs to fully grasp both SASSA and the Minister’s ambitions and plans for the payment of social grants after 31 March 2018 and interrogate the shortfalls or oversights of those ambitions and plans. It is hoped that these observations will assist the Panel of Experts in their evaluation and reporting on the First SASSA Report.

Submissions in Brief

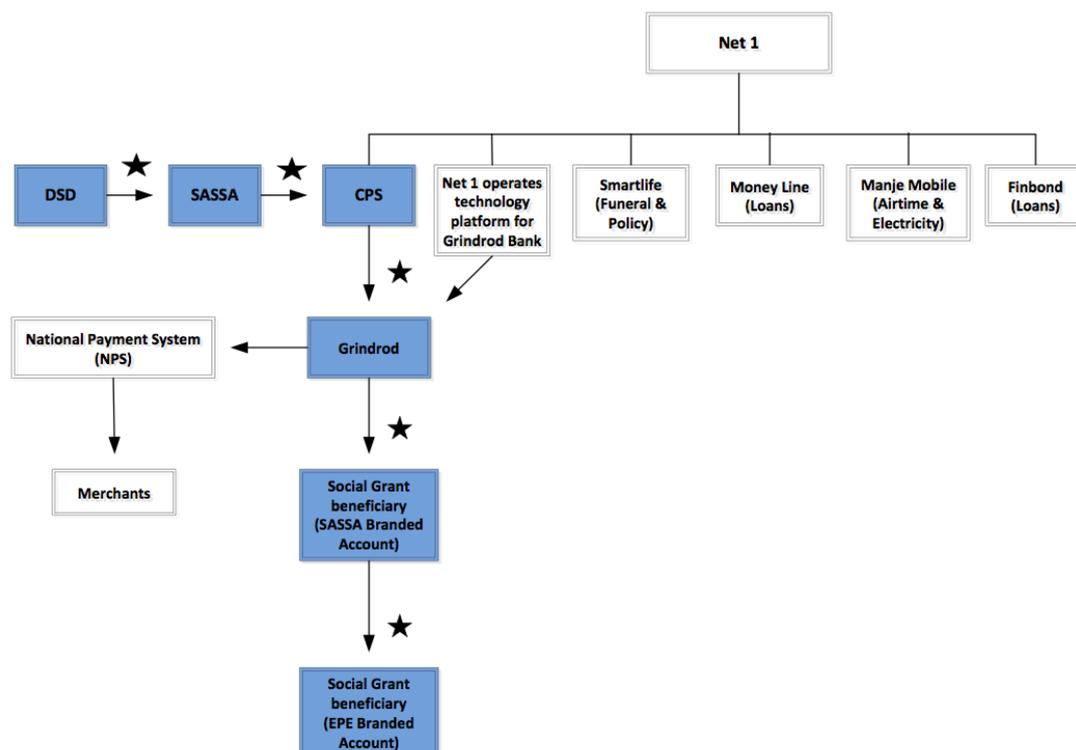
7. Black Sash submits that the First SASSA Report does not relay obvious concerns related to the payment of social grants after March 2018 for a number of reasons. It therefore submits that the Panel of Experts evaluating and reporting to the Court should note following:
 - 7.1. Arrangements made for the confidentiality of social grant beneficiaries’ (“beneficiaries”)’s data do not adequately address concerns related to the sharing and use of personal data;
 - 7.2. Inadequate arrangements have been made by SASSA to prevent and address unwanted deductions;
 - 7.3. SASSA’s plan to insource the distribution of social grants is not fully cognisant of the legislative requirements of registering as a bank;
 - 7.4. The possible duplication of roles between the Inter-Ministerial Committee on Comprehensive Social Security (“IMC”) and the Panel of Experts;
 - 7.5. Missed initial deadlines for SASSA’s plan to insource direct deductions; and
 - 7.6. Time wastage and timeframes set by SASSA leave little scope for remediation.

²*Black Sash Judgment*, para 76.7.

³Black Sash also provided the Standing Committee on Public Accounts (“SCOPA”) with soft and hard copies of this submission in the hope that it will assist SCOPA in its engagement and oversight of SASSA.

Brief explanation of the current social grant payment system

8. In order to fully grasp the concerns set out by Black Sash in this submission it is essential for the reader to be fully knowledgeable of all the actors. Although the contract for the payment of social grants is between CPS and SASSA, there are other entities involved in the social grant system through their relationship with CPS, for instance:
- 8.1. Grindrod Bank is the bank which holds SASSA-branded bank accounts into which social grants are paid;
 - 8.2. Net1 is the parent company of CPS registered on the Johannesburg and NASDAQ Stock Exchange; and
 - 8.3. Smartlife, MoneyLine, Manje Mobile and Finbond are other companies within the Net1 group structures which offer financial services to beneficiaries and send the payment instruction to Grindrod Bank.
9. The graph that appears below does two things. First, it attempts to illustrate (broadly) the various players in the social grant payment system and their relationship with each other. Secondly, it attempts to illustrate the flow of money from the Department of Social Development (“DSD”) to beneficiaries’ banks accounts. The stars (★) indicate the flow of money and entities shaded blue indicate those which do not form part of the Net1 corporate structure.



B) BENEFICIARIES' CONFIDENTIAL DATA

Court's treatment of beneficiaries' confidential data

10. The Court noted that SASSA and CPS were in agreement that beneficiaries' confidential data should be kept confidential.⁴ It therefore ordered that the SASSA and CPS conclude a contract that contains:

“adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of section 20(3) and (4) of the Social Assistance Act 13 of 2004”.⁵

11. It further held that SASSA was under the obligation to ensure that adequate safeguards are put in place and that they are not used for anything other than the payment of social grants.⁶

SASSA's activities to-date to protect beneficiaries' confidential data

12. Following the decision by the Court, SASSA reports that it engaged with CPS to ensure that the Court's orders relating to the sharing of beneficiaries' confidential data are complied with. CALS did the same thing on behalf of Black Sash. SASSA received a written averment from Grindrod Bank that there is no sharing of beneficiaries' confidential data.
13. In addition, on request, CALS received confirmation from SASSA's attorneys that an addendum had been signed to the SASSA-CPS agreement which incorporated the terms of the Court order on beneficiaries' confidential data.
14. It should be noted however that Grindrod Bank has expressed, in its correspondence that it does—

“not currently invite and will not in future in the course of providing services ... invite beneficiaries of social grants to 'opt-in' to the sharing ... of beneficiaries' information with third parties, for the marketing of goods or services, when opening SASSA Card linked bank accounts for such beneficiaries.”

15. This was stated by Grindrod Bank despite the fact that the terms and conditions of the SASSA-branded bank account include the following clauses:

⁴*Black Sash Judgment*, para 53.

⁵*Black Sash Judgment*, para 76.6.1(a).

⁶*Black Sash Judgment*, para 76.10.1.

“6.1. You consent to us –

6.1.1. carrying out identity and fraud prevention checks on you, and, in this regard to collect information about you from third parties;

6.1.2. *using your personal information*, as defined in the Protection of Personal Information Act 3 of 2014, to render the banking services set out in these Terms and Conditions, *and to send marketing material from us and our affiliates to you*, if you elected to receive same during enrolment;

6.1.3 *providing your personal information to third-party service providers, subsidiaries and affiliates* for the express purpose of providing you with the banking services referred to in these Terms and Conditions, and in this regard you also consent to CPS as well as the aforementioned parties storing and processing your personal information.” (*Emphasis added.*)

16. KPMG, having been requested to investigate the transfer of beneficiaries’ confidential information by Net1 found that—

“users assigned to any of the user roles on Status are not able to *bulk-export* personal information. The system only allows for a search of one beneficiary per session and only if the ID number is known.” (*Emphasis added.*)

Continued concerns with the sharing of beneficiaries’ personal data

17. While the assurances of Grindrod Bank and KPMG appear, at face value, to comply with the Court’s order, they do not adequately protect the confidential data of beneficiaries in two seminal ways. Firstly, as the KPMG report found, there are individuals who have access to information at the individual level.⁷ As such, sales persons, with authority, would be able to access and use beneficiaries’ confidential data to market services to beneficiaries and in so doing act in contravention of the spirit of the Court’s order.

18. Secondly, unlike traditional commercial banking systems where information is stored online and can only be accessed online the system used by CPS — the Universal Electronic Payment System (“UEPS”) — stores beneficiary information

⁷KPMG, *Net1 Applied Technology Solutions (Pty) Ltd: Factual Findings Report on Agreed Upon Procedures*, available at http://media.corporate-ir.net/media_files/IROL/73/73876/press/2.%20KPMG%20report%20April%202017.pdf, p4.

on the smart card used by beneficiaries. CPS Tender Proposal for instance states that:

“Before a smart card is issued, the following fingerprint recordation process occurs:

. . . .

- The fingerprint templates are signed by an ‘issuing U.E.P.S smart card’ and stored on the card holder’s smart card.”⁸

19. Therefore, Grindrod Bank and KPMG are correct when they say that there is no “bulk-export” sharing of personal information. There is simply the loading of beneficiaries’ personal information (which encompasses more than just beneficiaries’ fingerprints and includes names, identity numbers, and bank account details) onto the chips of the smart cards and the sharing, by all entities within the Net1 group, of the capabilities to be able to read that data from the chip when the smart card is inserted into a point of sale (“POS”) device (this is a card swipe device used by retailers). A useful analogy would be that of a locked box and key. Beneficiaries’ confidential data is stored in the bank card chip, which in this analogy is a locked box, that box is in the beneficiaries’ possession but cannot be opened by them, or anyone else (including SASSA), without a key. The only persons who possess the key with which to open the box are Net1 and its affiliate companies. They have the software and hardware necessary to interpret beneficiaries’ confidential data which is stored on the bank card chip. They unlock this box, or chip, by putting the card in the POS device and using the proprietary Net1 software to interpret the data from the card. Therefore, while they do not have bulk access to shared information, they do exclusively possess the means by which to interpret and use beneficiaries’ confidential information.
20. SASSA indicates that it is “still in a process to procure a system to manipulate and interrogate beneficiary data.”⁹ Similarly it has stated that “[a]lthough SASSA owns the biometric data there is no automated mechanism for SASSA to receive the data and use it”.¹⁰ It is not clear from either the First SASSA Report or from the SCOPA report how, or if, SASSA plans to address this particular means by which beneficiaries’ confidential information is made available to companies within the Net1 structure or indeed how it plans to procure the system by which to interpret beneficiary data, or at what cost, and with what legal conditions.
21. This is a matter of grave concern, even if the beneficiaries’ confidential data were to be returned to SASSA at the expiry of the contract, without the transfer of

⁸Cash Paymaster Services, *Bid for Provision of Payment Service for Social Grants* (hereinafter “CPS Tender Proposal”), p70.

⁹South African Social Security Agency, *Constitutional Court Report 15 June 2017* (hereinafter “First SASSA Report”), p 11, para 3.2.3(a).

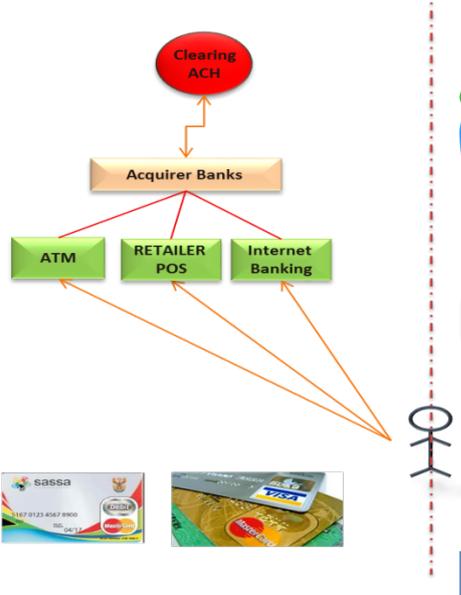
¹⁰First SASSA Report, p 19 para 4.4.1(d).

UEPS to SASSA with exclusivity (i.e. a prohibition from Net1 and its affiliates using or continuing to hold that information) the transfer would be rendered moot.

22. In its engagement with the SASSA, the South African Post Office (“SAPO”) confirmed its readiness and capabilities to, among other things, offer SASSA’s enrolment including biometric management.¹¹ Again, it is unclear given the location of beneficiaries’ confidential data and the means by which it is interpreted, how meaningful the transfer from CPS to SAPO, of this information will be. In our view a re-enrolment and re-registration of beneficiaries and the introduction of new bank accounts would be the most useful solution. That it is the method that will be undertaken by SAPO and SASSA, however, is uncertain. If it is assumed that other service providers could participate to provide payment distribution services to SASSA, this is the preferred method of enabling such competition. And, if it were the method to be undertaken, realistic timeframes must be identified for a process of re-registering and issuing of new cards to approximately 11 million recipients.

Concerns regarding the conflation of authentication and proof of life verification

23. The current social grant payment system conflates the use of fingerprints (i.e. biometrics) for transactional authentication and proof of life verification. CPS uses both fingerprint and pin authentication for transactions (via ATMs, POS devices or internet banking) on SASSA-branded accounts. This means, as indicated in the diagram below that beneficiaries can confirm purchases or withdrawals using both pin codes and their fingerprints.



¹¹First SASSA Report, p 12, para 3.3.1.2.

24. A standard for biometric authentication standard has been developed and designed by the payment industry.¹² Unlike the social grant system, this standard does not appear to include proof of life verification. Black Sash is of the view that this binary process should be adopted by SASSA going forward in the social grant payment system. Hence, Black Sash is of the view that SASSA should engage with the custodian of the population, the Department of Home Affairs, when it seeks to verify life and not use the biometric authentication for that purpose.

C) DEDUCTIONS FROM BENEFICIARIES ACCOUNTS

Concerns with the ‘Universal Electronic Payment System’

25. The crux of Black Sash’s concerns with CPS’ non-negotiable ‘opting-in’ methodology is the fact that the social grants received by beneficiaries are being reduced by deductions which beneficiaries do not give informed consent to, or do not know about. This is enabled by UEPS. CPS elaborated on UEPS in its bid document as follows:

“The [Net1/CPS] system is based on the world-renowned UEPS (Universal Electronic Payment System) smart card transaction and settlement switching system that uses the patented FTS (Funds Transfer System).

The FTS patent describes a method by which funds can be transferred from one smart card to another in a secure and offline manner. The term ‘offline’ refers to transactions that are effected *without the need to contact or communicate with the issuer when the transactions occur, as the smart cards themselves perform the authorisations required.* The FTS patent also describes how smart cards can be loaded or re-loaded with funds and how these can be redeemed for value in either banking or non-banking environments.”¹³ (*Emphasis added.*)

26. Further elaboration of this point is the following quotation from CPS’ bid document:

“A fundamental element of the UEPS is that all payment and money transfer transactions take place between two UEPS smart cards - the smart card to be debited and the smart card to be credited. During the

¹²South African Reserve Bank, *Annual Oversight Report National Payment System Department 2015/16*, available at [https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Documents/Oversight/Annual%20oversight%20Report%202015-2016.pdf](https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Documents/Oversight/Annual%20oversight%20Report%202015-2016.pdf), p 8, para 13.

¹³CPS Tender Proposal, p 60.

transfer of value between the two smart cards, the transaction is written to a dedicated history file on each of the smart cards.”¹⁴

And:

“We created the automatic debit feature to allow a smart card *to reduce the balance in any of its active wallets* on a specific date and for a predetermined amount. This function can take place in an offline environment at any POS device. The automatic debit feature reduces the risks associated with collection of insurance premiums and other regularly scheduled payments by *ensuring that any funds loaded to the smart card are first used to service the automatic debit before being transferred for the card holder’s general use.*

The participants in an automatic debit transaction are the automatic debit initiator, the merchant and the smart card holder. The automatic debit initiator is the issuer which will create an automatic debit instruction for a particular wallet of a specific smart card holder. The *merchant is any retailer which is a participant in the system* and has a [UEPS] POS device for a card holder to activate automatic debit instructions. The card holder is the person who must pay the premium or other payment.”¹⁵ (*Emphasis added.*)

Existing Universal Electronic Payment System-type accounts

27. Black Sash is aware of two types of UEPS-type accounts. The first are SASSA-branded bank accounts and the second are EasyPay Everywhere (“EPE”) accounts. SASSA-branded bank accounts are the most common means by which social grants are paid to beneficiaries. In 2012, after the award of the tender to CPS, beneficiaries were registered with CPS and became SASSA-branded bank account holders. Only beneficiaries have SASSA-branded bank accounts. In June 2015, CPS, created EPE accounts which may be opened by both beneficiaries (as an ‘ordinary commercial bank account’) or by non-social grant recipients. In Black Sash’s experience a number of beneficiaries are being misled into opening EPE accounts.
28. SASSA put out a new tender in terms of the *AllPay II* court order.¹⁶ The request for proposals issued in April 2015 had three distinct elements from the call put out in 2011. These were that the service provider must:
 - 28.1. ensure the protection of the confidential data of grant beneficiaries;

¹⁴CPS Tender Proposal, p65.

¹⁵CPS Tender Proposal, p76.

¹⁶*Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency* 2014 (4) SA 179 (CC) (hereinafter “*AllPay II*”).

- 28.2. make provision for a protection or ring-fencing of beneficiaries' bank accounts that would not allow for debit and stop order deductions
- 28.3. provide this service at a price below that which CPS provides it (i.e. the price dropped by R2 from R16 to R14).
29. Net1 in its media communication was explicit that it will not submit a bid application as engagement with government, particularly SASSA, was too onerous and risky.¹⁷ It also stated that it would continue:
- “providing a comprehensive suite of transactional products and services, [which] will allow it to service all South Africa’s unbanked and under-banked citizens *including social grant beneficiaries, but independently and without SASSA’s limitations and constraint*. The Company’s business plan includes the continued successful deployment of its EasyPay Everywhere bank account. . . . The Company believes that these activities will ensure a sustainable business model that will, over time, far exceed the benefits that could be realized from being the successful bidder for the SASSA RFP.
- In addition, the execution of the business plan will *no longer be limited by a five[-]year contract* (or potentially shorter if legally challenged) and provides the Company with the *ability to freely determine pricing that is both competitive and profitable and removes any unknown or contingent liabilities* associated with Government contracts.”
(*Emphasis added.*)
30. June 2015 saw the launch of the EPE account and card also referred to by beneficiaries as the ‘green card’. EPE accounts are like SASSA-branded bank accounts in that they make use of the UEPS system.¹⁸ Unlike SASSA-branded bank accounts, EPE accounts are not the means by which social grants are intended to be paid in terms of the Social Assistance Regulations.¹⁹
31. At the end of October 2015 Net1 reported that 350 000 EPE accounts had been opened, and on 4 December 2015 Net1 reported that that number had gone up to 600 000.²⁰ At the end of the 2016 financial year, Net1 reported, in its annual report to shareholders that the holders of EPE accounts had grown by 31% in four months (from April 2016 to August 2016) from 1 087 000 to 1 430 000.²¹

¹⁷Net1, *Net1 Elects to Withdraw from SASSA RFP 18 May 2015*, available at http://media.corporate-ir.net/media_files/IROL/73/73876/Net1%20Elects%20to%20Withdraw%20from%20SASSA%20RFP.pdf.

¹⁸Net1, *Annual Report, 2016*, p 38.

¹⁹Regulation 21(1)(b) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance GN R898 in Government Gazette 31356 of 22 August 2008 (hereinafter “Social Assistance Regulations”).

²⁰See <https://www.sharenet.co.za/v3/press.php?scode=NT1> (last accessed 28 August 2017).

²¹Net1 *Annual Report, 2016*, p 38.

Net1 suggests, in the same annual report that these accounts may be opened by both beneficiaries as well as persons who are not social grant beneficiaries.²² However, in June 2016, in the Net1 matter, Grindrod Bank stated in its answering affidavit to Net1's application that 1.1 million EPE account holders are beneficiaries.²³ Even if one were to accept that of the 1.4 million EPE account holders reported in August 2016 only 1.1 million are beneficiaries (although it is unlikely given the growth rate of EPE account subscribers), it would still mean that 77% of EPE account holders are beneficiaries. The Black Sash is yet to come across non-social grant beneficiaries with EPE accounts.

Concerns for the social grant payment system after March 2018

32. According to the High Court in the *Net1 judgment* (currently being appealed to the Supreme Court of Appeal by the Black Sash, SASSA and DSD) both SASSA-branded bank accounts and EPE accounts are traditional commercial bank accounts and neither are subject to discrete SASSA-based protections from deductions.²⁴ Van der Westhuizen AJ held that:

“In my view, from the foregoing procedure, it is clear that once the grant is transferred into the recipient's account at Grindrod, it operates as any bank account at any Commercial Banking Institution. There is clearly no difference and SASSA equally has no control over such account with Grindrod as it does not have control over any account with a Commercial Bank. For the foregoing, there is no merit in the submission on behalf of [SASSA and the Minister] that the Grindrod Bank accounts are not bank accounts chosen by the beneficiaries, but is ‘a method of payment chosen by [SASSA]’.”²⁵

33. As a result of this decision, there are currently two concerns for the social grant payment system after March 2018. The first is that beneficiaries receiving payment of their social grants to SASSA-branded bank accounts are, following the *Net1 judgment*, considered to be receiving their grants into bank accounts. This means that migration of these beneficiaries to a new system might, in terms of the Social Assistance Regulations, be rendered unnecessary, but not prohibited, as SASSA-branded bank accounts are not a payment method determined by SASSA, therefore not subject to SASSA's relationship with a service provider. The termination of the relationship between SASSA and CPS at the end of March 2018 would not constitute a termination of the relationship between beneficiaries and CPS, although it does not necessarily imply that the

²²Ibid.

²³Grindrod Bank, Answering Affidavit commissioned on 20 July 2016, p10, para18.

²⁴*Net1 Applied Technologies South Africa and Others v Chief Executive Officer, South African Social Security Agency and Others*, 9 May 2017 GDP 43557/16 (hereinafter “*Net1 Judgment*”) available at <http://www.saflii.org/za/cases/ZAGPPHC/2017/150.html> (last accessed 28 August 2017).

²⁵*Net1 Judgment*, p 11, para 22.

funds have to be deposited into the existing accounts. Any migration is however complicated by this situation. SASSA acknowledged this in the First SASSA Report when it stated that:

“SASSA would therefore be constrained in any attempt to migrate these beneficiaries onto any new payment system, which is being developed.”²⁶

34. The second concern relates to the ongoing migration of beneficiaries from the SASSA-branded account to the EPE accounts. EPE accounts fall entirely outside of the SASSA system as they are not the means by which social grants are intended to be paid. Therefore, the migration of beneficiaries to the EPE system will place them outside of the protections of the social grant system (such as they are) and render their migration into a new social grant payment system difficult. The deregistration of SASSA-branded bank accounts and EPE accounts thus bears heavily on SASSA’s transition plans. If the accounts can still be used to receive social grants, it will be more difficult for SASSA to migrate beneficiaries to the new system with new accounts. Any migration would have to take place with the beneficiaries’ consent and would require the deregistration of all SASSA-branded bank accounts and EPE accounts on an individual basis. Failing which, all SASSA would need to do is transfer social grants into these accounts which would continue to exist after March 2018. This would be catastrophic because it would allow the continuance of deductions, without the informed consent of beneficiaries, with lacking recourse mechanism from Grindrod Bank or CPS and limited, if any, capacity by SASSA to address them.
35. With regards to the transfer of social grant funds to other banks accounts (of which there are 40 000) the beneficiary is required to provide SASSA with a mandate to effect this transfer. This is not the case with migration to the EPE account it is held with Grindrod Bank therefore the migration is immediate, automatic and excludes SASSA.
36. In addition to the concerns set out above, Black Sash is also concerned that no meaningful measures are set out by SASSA in the First SASSA Report or the report to SCOPA to address the need or manner of deregistration of SASSA-branded bank accounts or EPE accounts. Other than the appeal of the *Net1Judgment*, which will not be heard by the SCA if it grants leave, before March 2018, SASSA simply states that it will “in collaboration with the Portfolio Committee [on Social Development] introduce amendments to the legislation to address this”.²⁷ SASSA does not indicate when it will do this; as at the end of August 2017 neither SASSA nor DSD has tabled a bill amending the Social

²⁶First SASSA Report, p 7, para 2.3.1.5.

²⁷First SASSA Report, p 7, para 2.3.1.6.

Assistance Act²⁸ or published draft amendments to the -Social Assistance Regulations.

37. The need for a protected ring-fence social grant recipients' accounts is not addressed directly. It is paramount, in the interest of the recipients, that it is agreed between SASSA and any payment service provider (e.g. SAPO), what the features and characteristics of the social grant bank account will be. Such an agreement must be explicit in terms of the cost to recipients (and balancing this with the income derived from the flow-through of the funds), what transactions and specifically what payment types and what thresholds will be allowed on such an account. In addition, it should be agreed what other products and/or services can be offered to beneficiaries, if any, and under what circumstances. Given the on-going abuse of the debit order system, the unscrupulous behaviour of certain service providers and the financial vulnerability of the beneficiaries, such agreements are the most likely instruments in ensuring the welfare of the recipients.
38. Based on its experience, Black Sash recommends the following features for any future social grant bank account:
 - 38.1. No penalty for using other ATMs;
 - 38.2. A number of free (to the recipient) transactions including cash withdrawals and POS transactions;
 - 38.3. Free ATM balance enquiries;
 - 38.4. Free account statement (30-day history);
 - 38.5. restriction on automated deductions. with no debit orders (i.e. no direct debits) and perhaps only credit-push transactions (i.e. under the control of the recipient) could be allowed;
 - 38.6. No advertising and no unsolicited offers of other products; and
 - 38.7. Comprehensive explanation of the features and benefits of the account.
39. In addition, Black Sash recommends that beneficiaries are encouraged to save and this could take the form of interest on retained balances, depending on the cost negotiations with the service providers.

D) SASSA'S CAPABILITY TO TAKE OVER THE PAYMENT SYSTEM

SASSA's misinterpretation of the ConCourt decision

40. In the First SASSA Report, SASSA states that the Court ordered it to "find an alternative to CPS or alternatively take the payment function over from CPS when the period of extension expires".²⁹ This is a misinterpretation of the *Black Sash*

²⁸Act of 13 of 2004.

²⁹First SASSA Report, p 3, para 1.2.2(a).

Judgment that is explained by a description of the history preceding the urgent application which ultimately resulted in the decision.

41. Following the award of the tender for the distribution of social grants to CPS in 2012, AllPay (one of the entities that was not successful in the tender process) lodged a review application in the High Court,³⁰ appealed that decision to the SCA³¹ and then to the Constitutional Court.³² The decision for SASSA to take over the grant payment system was never that of the Court's, it was always that of SASSA as can be garnered from the following excerpt from *AllPay II*:

“SASSA pointed out that its contract with Cash Paymaster was intended to be the last time that it outsourced its obligation to pay social grants, since it intends to take over the system by April 2017.”³³

42. In *AllPay II* the court made the following illustrative order:

“This declaration [of constitutional invalidity of the contract between CPS and SASSA] is suspended pending the decision of SASSA to award a new tender after completion of the tender process”.³⁴

43. SASSA was in fact ordered to engage in a new tender process for the payment of social grants; it elected not to award a social grant in October 2015³⁵ and advised the Court that it would be taking over the payment of social grants in November 2015.³⁶ It is on this basis that the Court discharged its supervisory authority.^{37,38} In its most recent decision of March 2017, the Court ordered that:

³⁰*Allpay Consolidated Investment Holdings (Pty) Ltd v the Chief Executive Officer of the South African Social Security Agency* 2012 JDR 1443 (GNP).

³¹*Allpay Consolidated Investment Holdings (Pty) Ltd v the Chief Executive Officer of the South African Social Security Agency* 2013 (4) SA 557 (SCA).

³²*Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency* 2014 (1) SA 604 (CC) (hereinafter “*AllPay I*”).

³³*AllPay II*, para 13.

³⁴*AllPay II*, para 78.2.

³⁵South African Social Security Agency, *Progress Report in Respect of the Recommendations of the Bid Evaluation and Adjudication Committees; and the Decision of the Chief Executive Officer, October 2015*, para 6.

³⁶South African Social Security Agency, *Progress Report in terms of Paragraph 4.1 of the Order Made by the Constitutional Court on 17 April 2014, November 2015*, para 13; see also para 17.

³⁷*Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency* CCT 48/13, Order dated 25 November 2015 read as follows:

“The Constitutional Court has considered the Progress Report filed in terms of paragraph 4.1 of this Court's order dated 17 April 2014. It has concluded that the Progress Report is compliant with this Court's order and that the supervisory jurisdiction should be discharged.
Order:

1. The Constitutional Court's supervisory jurisdiction is discharged.”

³⁸*Black Sash Judgment*, paras 4 and 18.

“It is declared that the [SASSA] and [CPS] are under a constitutional obligation to ensure payment of social grants to grant beneficiaries from 1 April 2017 *until an entity other than CPS is able to do so* and that a failure to do so will infringe upon grant beneficiaries’ rights of access to social assistance under section 27(1)(c) of the Constitution.”
(*Emphasis added.*)

44. The Court therefore did not order SASSA to take over social grant payment. It is concerning firstly, that SASSA has misinterpreted the Court order to mean that the Court had instructed it to take over social grant payment. More importantly, however, it is concerning to Black Sash that SASSA has indicated that it plans to take over the payment of social grants in the following three years.

Concerns over SASSA’s ability to take over social grant payment

45. As has been made clear above, five years before the contract with CPS was meant to end, in 2012 when SASSA contracted with CPS, it had the intention of taking over the payment system at the end of the contract term i.e. by 2017. At that point it had a period of five years to prepare itself to insource the payment of social grants.
46. By 2015 when it lodged a report to the Constitutional Court to the effect that it would take over the payment of social grants, SASSA should have been doubly and undoubtedly aware that it would be taking over in 18 months. However, it failed to put in place the necessary measures to do so. In order to fully insource the payment of social grants and to maintain and electronic payment system, SASSA would have to become a bank. It would have to, among other things, be or directly own:
- 46.1. a public company;³⁹
 - 46.2. this company must register as a bank in terms of the Banks Act, the Mutual Banks Act or the Co-operative Banks Act;⁴⁰
 - 46.3. must be able to participate in the the national payment system;⁴¹ and
 - 46.4. must be able to issue payment instruments, e.g. issue payment cards.⁴²
47. Black Sash is concerned that there does not appear to be any cognisance (or accurate and realistic description by SASSA in its reporting) of the enormity of that task or the chances that it may not be granted a licence to operate as a bank at all.

³⁹Section 11(a) of the Banks Act, 94 of 1990.

⁴⁰Section 2 of the Banks Act. Black Sash does not recommend a co-operative bank as this kind of entity is owned by its members and thus in a social grant system would be ungovernable.

⁴¹Section 6(1)(b) of the National Payment System Act, 78 of 1998.

⁴²Ibid.

48. It is, in Black Sash' view, unlikely that SASSA will be in a position to be a bank or own a bank by 2021.⁴³

E) CREATION OF THE INTER-MINISTERIAL COMMITTEE

Constitutional Court's concern with the creation of Work Streams

49. On 15 June 2017, the Constitutional Court handed down a judgment dealing with, to a limited degree, the Minister's establishment of work streams which reported directly to her.⁴⁴ In affidavits, former SASSA and DSD officials alleged that the Minister had, in creating the work streams, created parallel reporting mechanisms.⁴⁵ Consequently, the Court ordered the creation of an enquiry to examine the factual averments under Judge Bernard Ngoepe.⁴⁶
50. It seems that SASSA is still duplicating the parallel reporting that raised concerns in relation to the work streams. SASSA mentions firstly, that there is an IMC which supported SASSA and DSD's plan, and secondly that it obtained guidance from the IMC.⁴⁷

Concerns over the duplication of oversight

51. At no point does SASSA explain what the IMC is or what it is intended to do. It appears to be an internal mechanism to assist SASSA in the development of a plan, however, without full and clear disclosure one cannot be certain. Black Sash is concerned that as was the case with the work streams, the IMC will, at best result in a duplication of work and reporting to the Panel of Experts. At worst, it may cynically be obfuscating the true nature and point of decision making power of its plans.

F) DIRECT DEDUCTIONS

SASSA's plan to insource direct deductions

52. In its report to the Constitutional Court, SASSA indicated that it is insourcing the direct deductions mechanism.⁴⁸ It stated that it would be implementing this project in August 2017 and that it managed its first payment file in September

⁴³South African Social Security Agency, *Presentation to SCOPA, 15 August 2017* (hereinafter "SASSA SCOPA Report"), p 32.

⁴⁴*Black Sash and Another v Minister of Social Development and Others* (CCT 48/17), 17 March 2017, [2017] ZACC 20 available at <http://www.saflii.org/za/cases/ZACC/2017/20.html> (hereinafter "*Black Sash Judgment I*").

⁴⁵*Black Sash Judgment II*, para 2; see also section 38 of the Superior Courts Act, 10 of 2013.

⁴⁶Constitutional Court Order dated 2 August 2017.

⁴⁷First SASSA Report, p 9, paras 3.1.5 and 3.4.3.

⁴⁸First SASSA Report, p 10, para 3.2.2.

2017.⁴⁹ However, in its report to SCOPA SASSA indicated that it would only manage direct deductions in October 2017.⁵⁰ It is clear, therefore, that SASSA is already running one month behind its self-imposed deadline. SASSA has not indicated how this will impact the hybrid system it proposes or what it will do to ameliorate any further delay.

Concerns with plan to insource direct deductions

53. What is of concern to Black Sash is SASSA's apparent lack of an operational capability to collect and pay over deductions, e.g. using a corporate account to do so: it states in the First SASSA Report that it will obtain a corporate account.⁵¹ Without a corporate account SASSA lacks the ability to pay funeral policy providers the amounts that have been deducted from beneficiaries' social grants. This could have dire consequences for beneficiaries or their families who could be deprived of the benefit of funeral cover during the transition because of a missed payment.

54. In the event that SASSA continues with the insourcing of direct deductions, Black Sash recommends that it uses this mechanism to ensure that all direct deductions are compliant with the Social Assistance Regulations, i.e. that those deductions are:

54.1. Not made from children's grants or temporary social grants;⁵²

54.2. Not made from any grant in respect of benefits for children, but rather that a state fund be created for this purpose;⁵³

54.3. Not multiple;⁵⁴

54.4. Only for funeral cover;⁵⁵

54.5. Not in excess of 10% of the value of the social grant;⁵⁶

54.6. Held with registered insurer in terms of the Long-Term Insurance Act, 52 of 1998;⁵⁷ and

54.7. Only made where written consent of such deductions is in the possession of SASSA.⁵⁸

⁴⁹First SASSA Report, p 10, para 3.2.2(c).

⁵⁰SASSA SCOPA Report, pp 17 and 21.

⁵¹First SASSA Report, p 9, para 3.1.4.

⁵²Regulation 26A(2) of the Social Assistance Regulations.

⁵³The Black Sash and CALS commissioned a study to establish the value to child support grant beneficiaries of funeral policies in the *Lion of Africa* matter before the Constitutional Court. The actuarial study by Roseanne da Silva, President of the Actuarial Society of South Africa, demonstrates that this funeral insurance offers very limited benefits to children on grants.

⁵⁴Regulation 26A(1) of the Social Assistance Regulations.

⁵⁵Regulation 26A(1) of the Social Assistance Regulations.

⁵⁶Regulation 26A(1) of the Social Assistance Regulations.

⁵⁷Regulation 26A(1) of the Social Assistance Regulations.

⁵⁸Regulation 26A(1)(a) and (b) of the Social Assistance Regulations.

G) TIMEFRAMES

Proposed timeframes for March 2018 deadline

55. SASSA has engaged with SAPO to provide the service of paying beneficiaries when the extension of the CPS contract comes to an end on 31 March 2018 and has requested permission to deviate from procurement processes from the National Treasury.⁵⁹ SASSA's timeline for its procurement processes with SAPO begins in June 2017 and ends in November 2017.⁶⁰

Concerns with SASSA's timeframes

56. Firstly, Black Sash is concerned with SASSA's delay; at a time so vital and ephemeral (the 12 months between April 2017 and March 2018) SASSA appears to have wasted three months. SASSA does not appear to have set any targets for this particular period nor does it appear to have achieved any significant milestones. It is imperative that the remaining seven months are used skillfully and productively by SASSA. The social grant system cannot afford a further wastage of three months.
57. Secondly, Black Sash is concerned that the testing of SAPO's system is scheduled for November 2017;⁶¹ and the testing of services that cannot be provided by SAPO is scheduled for January 2018.⁶² This leaves four and two months respectively within which to address any concerns that may arise. In Black Sash's view this is too short a period and may result, once again, in a situation where only CPS can provide the service of paying social grants.⁶³

H) CONCLUSION

58. In order to ensure the continued payment of social grants in manner that maintains the integrity of the system at the end of the extension of the CPS contract, SASSA should not only develop an achievable plan but should be explicit in its explanation of that plan. Perhaps the most concerning thing with the First SASSA Report and SASSA's report to SCOPA is the obscurity characterising both; this points to a lack of full comprehension, by SASSA, of the enormity of the task that lies before it or poor planning. Neither one of these options is desirable. For this reason, Black Sash recommends that the Panel of Experts note, in its report, the lack of clarity deriving from the First SASSA Report.

⁵⁹First SASSA Report, p 12, para 3.3.1.3; see also SASSA SCOPA Report, p 27.

⁶⁰First SASSA Report, p 15, para 3.4.3; see also SASSA SCOPA Report, p 24.

⁶¹SASSA SCOPA Report, p 24.

⁶²SASSA SCOPA Report, p 25.

⁶³See the first instance at *Black Sash Judgment*, paras 7 and 8.

59. Further, Black Sash recommends that the Panel of Expert report on SASSA's omission on the protection of the confidential data of beneficiaries and unwanted deductions. The Panel of Experts should also question SASSA's full comprehension of the steps it would have to take to become a bank; the role of the IMC; and any possible overlap between this body and itself as well as SASSA missed deadlines and time wastage.