



# Appointing Mills & Reeve Trust Corporation as a professional executor

This note provides information on the appointment of Mills & Reeve Trust Corporation Limited; in particular, it gives an indication of the costs which may be incurred if the relevant person chooses to appoint Mills & Reeve Trust Corporation Limited as an executor in their Will (and if the executors' wish to subsequently appoint Mills & Reeve LLP to carry out the estate administration work).

## Appointment of executors

A person (the '**Testator**') is entitled to appoint any person<sup>1</sup> to be an executor of their Will. After the death of the Testator, those executors as a group (the '**Executors**') will then be free to engage the services of a professional to carry out the work associated with the administration of the estate.

The key stages of the administration of an estate includes:

- the initial work such as securing assets, arranging the funeral and identifying the Will and beneficiaries,
- identifying and valuing the assets and liabilities of the estate and applying for the Grant of Probate,
- realising and transferring assets, confirming and paying taxes, considering any post-death tax planning and constituting any Will trusts;
- finalising estate accounts, and distributing the estate to beneficiaries.

The Testator might choose to appoint a professional executor alone or together with one or more friends or family members. Non-professional executors are often called 'lay' executors.

Testators frequently choose to appoint a professional executor to act with lay executors for the following reasons:-

- To ensure independent and objective decisions are made in relation to administration of the estate.
- To provide a degree of personal distance from family members who may find it difficult to make decisions where there may be a conflict of interest or where they are affected by emotional issues.
- To link the family and the administration of the estate to a chosen and trusted source of professional advice and to ensure legislation and compliance obligations are complied with.

There is no obligation to appoint a professional executor. In many circumstances, lay executors can ensure that all the obligations and duties are complied with, often by instructing appropriate professionals to advise them with one or more of the stages set out above.

## Choice of a professional executor

If appropriate, Mills & Reeve LLP can act as a professional executor. This can be arranged either by appointing the Mills & Reeve Trust Corporation Limited, or by appointing an individual member of the firm as an executor.

Appointing the Trust Corporation, rather than an individual at the firm, provides continuity and ensures that there will always be a professional executor available to act on behalf of your estate. The

<sup>1</sup> An adult (including a beneficiary), with full mental capacity or a company or professional services firm. Firms or companies must comply with certain legal requirements.

appointment of the Trust Corporation is our preferred method for that reason.

The sole purpose of the Trust Corporation is to act as a corporate executor, trustee and attorney, and, at any time, an appropriate number of the partners of the firm act as directors of the Trust Corporation. The Trust Corporation does not undertake any trading or business activities and therefore does not pose any financial risk to the estate.

We also draw your attention to a clause included in the Administrative Provisions (headed "Protection of the Trustees generally" in the Will/s). This clause provides that no executor of your will/trustee of the trusts will be personally liable for any loss to the Trust Fund unless they have acted fraudulently or dishonestly, or in the case of a professional executor/trustee, negligently.

## Instructing professionals to carry out the work

After the death of the Testator, the Executors will then decide which professionals they want to instruct to help them. This is a separate decision.

The Executors would be able to choose to instruct Mills & Reeve LLP to carry out legal and compliance work in relation to an estate, even if the Trust Corporation was one of the Executors. However, alternatively, the Executors may agree to instruct another professional. It is important to note that there is no obligation for the Executors to instruct Mills & Reeve LLP to carry out the underlying work.

There are therefore two types of work to consider:

### 1 Trust Corporation professional executor work

- 1.1 The directors of the Trust Corporation will charge for their time spent in acting as an executor (decision making, instructing professionals, liaising with co-executors and beneficiaries etc). The ability of the Executors to charge in this situation is governed by the terms of the Will and the statutory rules.
- 1.2 This cost will be charged through Mills & Reeve LLP and terms of engagement would be sent out for approval to co-executors and in some cases the beneficiaries of the estate.

## 2 Cost for professional legal and compliance work ('Delegated Work')

- 2.1 The instructed professional will charge for the Delegated Work they undertake on behalf of the Executors.
- 2.2 If this work is carried out by Mills & Reeve LLP it will also be subject to instructions and an agreement as to the scope of the work and the cost.

If the Executors instruct a professional firm other than Mills & Reeve LLP to deal with the Delegated Work, the Trust Corporation, in their role as executor, would charge for instructing, checking and approving the work. Therefore, there would still be a cost involved.

## Experience

At Mills & Reeve LLP, all estate administration work is supervised at a partner level, but most of the Delegated Work is dealt with by experienced probate managers or legal executives. Straight-forward matters may be managed by senior associates or associates (with appropriate supervision) and members of the team may be assisted by a paralegal or trainee solicitor, to keep costs down.

### Different roles

- Our partners have typically been working as qualified lawyers specialising in private client for a minimum of 14 years, with frequent involvement in estate administration work for the duration of that time.
- Our probate managers/legal executives typically have more than 10 years' dedicated experience in the administration of estates and collaborate to share their impressive body of technical expertise.
- Principal associates, senior associates, and associates involved in estate administration handle matters that correspond to their years of legal qualification and level of seniority.
- Paralegals and trainees (who spend four months in the team) always work under the supervision of a suitable team member.

## Costs and financial processes

The basis on which the cost of work is calculated at Mills & Reeve (whether for the professional executor work or the Delegated Work) is either based on:

- a fixed fee for a particular element; or

- time spent on the work at specified hourly rates.

Unlike some firms, we do not charge a percentage of the estate for dealing with the administration.

Where possible, we will offer fixed fees for suitable aspects of the work to provide certainty of costs for the benefit of the Executors and beneficiaries.

If it is not possible to give a fixed fee and an 'estimated time' approach is more appropriate:

- we will give a clear estimate of the likely costs at the beginning of the instructions;
- the Executors will also be informed on an annual basis if there is a change to hourly rates; and
- revised estimates will be given where circumstances change or where issues arise.

When working on a 'time spent' basis, the current hourly rates for the people who will typically be involved in this work are as follows: -

	Hourly rates inclusive of VAT at 20% <sup>2</sup>	Hourly rates exclusive of VAT at 20%
<b>Probate manager/paralegal/legal executive/trainee solicitor</b>	£240 - £480	(£200 - £400 plus VAT)
<b>Associate/senior associate/principal associate</b>	£318 - £576	(£265 - £480 plus VAT)
<b>Partner</b>	£612 - £696 <sup>3</sup>	(£510 - £580 plus VAT)

There are various factors that can affect the overall costs; including whether inheritance tax is payable and the extent, nature and number of assets in the estate. Therefore, it is difficult to provide an accurate estimate of costs without detailed information.

However, our experience shows that costs for the administration of an estate typically fall within the ranges listed below:

Type of estate	Likely fees based on time spent
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<sup>2</sup> The hourly rates quoted inclusive of VAT are based on VAT at 20%. If during the course of a matter the rate of VAT changes, the inclusive hourly rates will be adjusted accordingly.

<sup>3</sup> Excluding partners working in our London office on complex international matters.

Simple UK estate	£6,000 – £24,000 (which is £5,000 – £20,000 plus VAT at 20% <sup>4</sup> )
Complex estate	£24,000 – £60,000 (which is £20,000 – £50,000 plus VAT at 20%)
Highly complex estate	£60,000 - £120,000 (which is £50,000 - £100,000 plus VAT at 20%)

### Example of a simple estate

- This would usually have a valid will with easily identifiable beneficiaries.
- Assets might be one UK residential property, a range of bank accounts but no business assets.
- There would be no inheritance tax to pay.
- Mills & Reeve LLP may be instructed to prepare any inheritance tax return and the application for a grant, rather than the full estate administration.

### Example of a complex or highly complex estate

- There might be a Will including a number of specific and cash legacies and trusts.
- The assets might include business assets, investments, and/or insurance policies.
- Tax would usually be payable and claims for available reliefs may need to be made.
- Reporting requirements would be needed together with financial accounts.

### Additional issues

There may be factors which necessitate extra work or cause the estate to become protracted. This can add to the costs involved. The above example of costs does not take account of extraordinary matters, such as:

- Disputes and litigation
- Overseas issues
- Complex tax issues
- Variations and other alterations to the terms and trusts established by the Will

Discrete pieces of work are quoted for separately. These may include:

<sup>4</sup> The hourly rates quoted inclusive of VAT are based on VAT at 20%. If during the course of a matter the rate of VAT changes, the inclusive hourly rates will be adjusted accordingly.

- Conveyancing charges in connection with the sale of property
- Consideration of tax planning issues for beneficiaries of the estate
- Litigation affecting the administration of the estate

### Financial processes

When instructed in relation to the administration of an estate, Mills & Reeve LLP will send detailed terms of engagement are sent out for approval to the Executors and, in some cases, to residuary beneficiaries of the estate.

Once the administration work has started, our standard terms are to bill monthly, and bills are due on receipt.

Issuing bills at monthly intervals enables the Executors and/or beneficiaries to monitor expenditure as the administration progresses.

We accept that, in some circumstances, it may not be initially possible for the Executors to pay the legal costs on a monthly basis as standard (usually because there are no funds available and they are unable to arrange a loan from a third party or bridging finance, so it is necessary to wait until the grant of probate has been issued to access estate funds). In these circumstances, we may need to agree alternative timing for raising the first invoice.

### Disbursements

### Get in touch

Our experienced team operates nationwide. For further advice, please get in touch with your local contact.

Disbursements are costs related to the administration of an estate which are payable to third parties. Typical disbursements include:

- Probate court fee – £300 (for an estate worth over £5,000) plus £1.50 for each additional copy of the grant of probate (both of which do not attract VAT)
- Land Registry search – £3.60 (£3 plus VAT at 20%)
- Legal and public notices – £240 to £360 (£200 to £300 plus VAT at 20%)

These costs are approximate.

### Timing

On average, if instructions are given promptly, the following timings are indicative:

- **Stages 1 and 2** – The time to obtain the Grant of Representation usually takes 6-12 months. This includes a wait of 3-4 months for the Probate Court to process the grant application for a simple estate (for more complex applications, this wait can often be 7 months or longer).
- **Stage 3** - collecting assets can take 3-6 months after the grant has been received; and
- **Stages 4 and 5** - distributing estate funds can take a further 6-12 months.

We would expect that, for a simple estate, the majority of the work involved should be concluded within 18 months of the date of instruction.

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