

Appointing Mills & Reeve Trust Corporation Limited as a professional trustee



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 a trustee of a lifetime or Will trust (and if the trustees wish to appoint Mills & Reeve LLP to carry out the underlying work, if appropriate).

Appointment of trustees

When creating a trust, the person setting up the trust (the **'Settlor'**) is entitled to appoint any person¹ to be the initial trustees. Those trustees as a group (the **'Trustees'**) will then be free to engage the services of a professional to carry out the work associated with the administration of the trust.

The Settlor might choose to appoint a professional trustee alone or together with one or more individuals. Non-professional trustees are often called 'lay' trustees.

Settlors frequently choose to appoint a professional trustee to act alone or jointly with lay trustees for the following reasons:

- To ensure independent and objective decisions are made in relation to the investment and distribution of the trust assets.
- 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 trust to a chosen and trusted source of professional advice and to ensure legislation and compliance obligations are complied with.

Alternatively, a professional trustee may be chosen, during the lifetime of a trust, to become an additional or replacement trustee. Depending on the terms of the

individual trust, quite often the power to do so is with the Trustees.

There is no obligation to appoint a professional trustee. In many circumstances, lay trustees can ensure that all the obligations and duties are complied with, often by instructing appropriate professionals to advise them.

Choice of a professional trustee

The settlor (or the Trustees) may appoint an individual member of Mills & Reeve LLP to act as a professional trustee or, more commonly, could choose to appoint Mills & Reeve Trust Corporation Limited in that capacity.

The appointment of the Trust Corporation, rather than an individual member of the firm, provides continuity and ensures that there will always be a professional trustee to act on behalf of the trust. The appointment of the Trust Corporation is our preferred method for that reason.

The Trust Corporation is a UK incorporated company, registered at Companies House. 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 trust fund. The sole purpose of the Trust Corporation is to act as a corporate trustee, executor and attorney.

The information below would apply to either the Trust Corporation or an individual member of Mills & Reeve LLP acting as a trustee.

¹ An adult, with full mental capacity, with certain restrictions relating to convictions or bankruptcy or a company. A company acting as a trustee would commonly be a formal 'trust corporation'.

Instructing professionals to carry out the work

As noted above the decision to appoint the initial trustees is with the Settlor but the Trustees will then decide which professionals they want to instruct to help them. This is a separate decision.

The Trustees can usually² choose to instruct Mills & Reeve LLP to carry out legal and compliance work in relation to a trust of which they are a trustee. However, alternatively, the Trustees may agree to instruct another professional. It is important to note that there is no obligation for the Trustees (whether they include the Trust Corporation) to instruct Mills & Reeve LLP to carry out the underlying work.

There are therefore two types of cost to consider:

1 Trust Corporation professional trustee costs

1.1 The directors of the Trust Corporation will charge for their time spent in acting as a trustee (decision making, instructing professionals, liaising with co-trustees and beneficiaries etc). The ability of Trustees to charge in this situation is governed by the terms of the trust and the statutory rules³.

1.2 This cost will be charged through Mills & Reeve LLP and terms of engagement would be sent out for approval to co-trustees and in some cases the beneficiaries of the trust.

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 trust.

2.2 If this work is carried out by Mills & Reeve LLP it will also be subject to formal instructions and an agreement as to the scope of the work and the cost.

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

Cost principles

The basis on which the cost of work is calculated at Mills & Reeve (whether for the professional trustee 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.

Where possible, we will offer fixed fees for suitable aspects of the work to provide certainty of costs for the benefit of the Trustees 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 and on an annual basis;
- the Trustees 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% ⁴	Hourly rates exclusive of VAT at 20%
Trust manager/paralegal/legal executive/trainee solicitor	£240 - £480	(£200 - £400 plus VAT)
Associate/senior associate/principal associate	£318 - £576	(£265 - £480 plus VAT)
Partner	£612 - £696 ⁵	(£510 - £580 plus VAT)

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

⁵ Excluding partners working in our London office on complex international matters.

² The terms of the trust would need to permit this.

³ When deciding whether to accept an instruction to act as trustee, the Trust Corporation will need to check that the terms of the trust allow them to charge for their services.

Where input is needed from other legal disciplines within Mills & Reeve LLP or for individuals linked to the trust, this work will be quoted for separately. Such work might include: -

- conveyancing charges in connection with the sale of property;
- any litigation affecting the administration of the trust; or
- consideration of tax planning issues for the beneficiaries of the trust.

Ongoing work

The professional trustee work is carried out by the directors of the Trust Corporation, who are all partners. This might include decisions regarding investment of trust assets or distribution among the beneficiaries of the trust, which will be made together with the other Trustees and having considered the wishes of the Settlor and the circumstances of the trust's beneficiaries.

For cost efficiency, most of the Delegated Work would be dealt with by an experienced Trust Manager or Legal Executive, with additional legal input on specific matters (particularly strategy and succession) from other experienced team members. Where the Trust Corporation is acting as a trustee, ultimate supervision will rest with the partner director.

Ad-hoc work

If the Trust Corporation is asked to consider taking on a new trustee role, in some circumstances, it may be necessary to undertake an initial due diligence exercise to establish whether it is appropriate for the Trust Corporation to act. A fixed fee of £300 (which is £250 plus VAT at 20%⁶) is charged for the time involved in carrying out this work.

In some cases, it may be appropriate for the Trust Corporation to retire as a trustee at some point in the future (or disclaim if no action has yet been taken). This would only be considered as a potential action if it were in the best interests of the beneficiaries and if the professional trustee was satisfied that the Trust would continue to be appropriately administered thereafter. In this situation, there may be a reasonable charge for dealing with the retirement and any appointment of replacement trustees or the disclaimer.

Cost ranges

It is difficult to provide an accurate estimate of the costs involved for either the professional trustee role or for the Delegated Work, as there are many varying factors in the administration of a trust which will affect the overall charges, including: -

- The nature of the trust itself – are there multiple beneficiaries? Are they resident overseas? Is the structure particularly complicated?
- The nature of the beneficiaries – do they agree amongst themselves or are there points of contention which the trustee must negotiate?
- The nature of the co-trustees – are there other trustees with whom the Trust Corporation or M&R individual member must act unanimously? Are they prepared to undertake some of the administrative work?
- The extent, nature and location of different assets in the trust - property, stocks and shares, loans, business property.
- Whether any planning advice is necessary and will advisers need to deal with implementation as well as dealing with the trust compliance work or only some of that work.

If instructed to carry out the compliance work as part of the Delegated Work, Mills & Reeve LLP would typically prepare annual accounts and tax returns for the trust but, in some instances, this may not be necessary, or the work may be undertaken by another professional. All of these factors will have a bearing on the time spent.

Billing

Mills & Reeve LLP's current terms of engagement usually provide that we will issue bills:

- on a monthly basis for any planning work, although if costs are low in any month, they will usually not be billed until the following month; and
- on a quarterly basis for general trust compliance work.

Issuing bills at regular intervals enables the Trustees or beneficiaries to monitor expenditure of the trust.

Detailed reports of the time involved will be provided for work charged on a time spent basis. For work carried

⁶ If the rate of VAT changes, the total fixed fee will be adjusted accordingly.

out for a fixed fee, the records of time recorded against that matter are for internal purposes only and will not be provided to the Trustees.

Get in touch

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

Mills & Reeve LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority (SRA authorisation number 464604) and registered in England and Wales with registered number OC326165. Its registered office is at 7th & 8th floors, 24 King William Street, London, EC4R 9AT, which is the London office of Mills & Reeve LLP. A list of members may be inspected at any of the LLP's offices. The term "partner" is used to refer to a member of Mills & Reeve LLP.

The contents of this document are copyright © Mills & Reeve LLP. All rights reserved. This document contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances. Where hyperlinks are provided to third party websites, Mills & Reeve LLP is not responsible for the content of such sites.

Mills & Reeve LLP will process your personal data in accordance with data protection and privacy laws applicable to the firm (including, as applicable: the Data Protection Act 2018, the UK GDPR and the EU GDPR), and you can find out more about our processing of your data, including in relation to marketing communications, at [Information and Privacy | Mills & Reeve](#). You can unsubscribe from marketing communications by emailing preferences@mills-reeve.com T +44(0)344 880 2666
