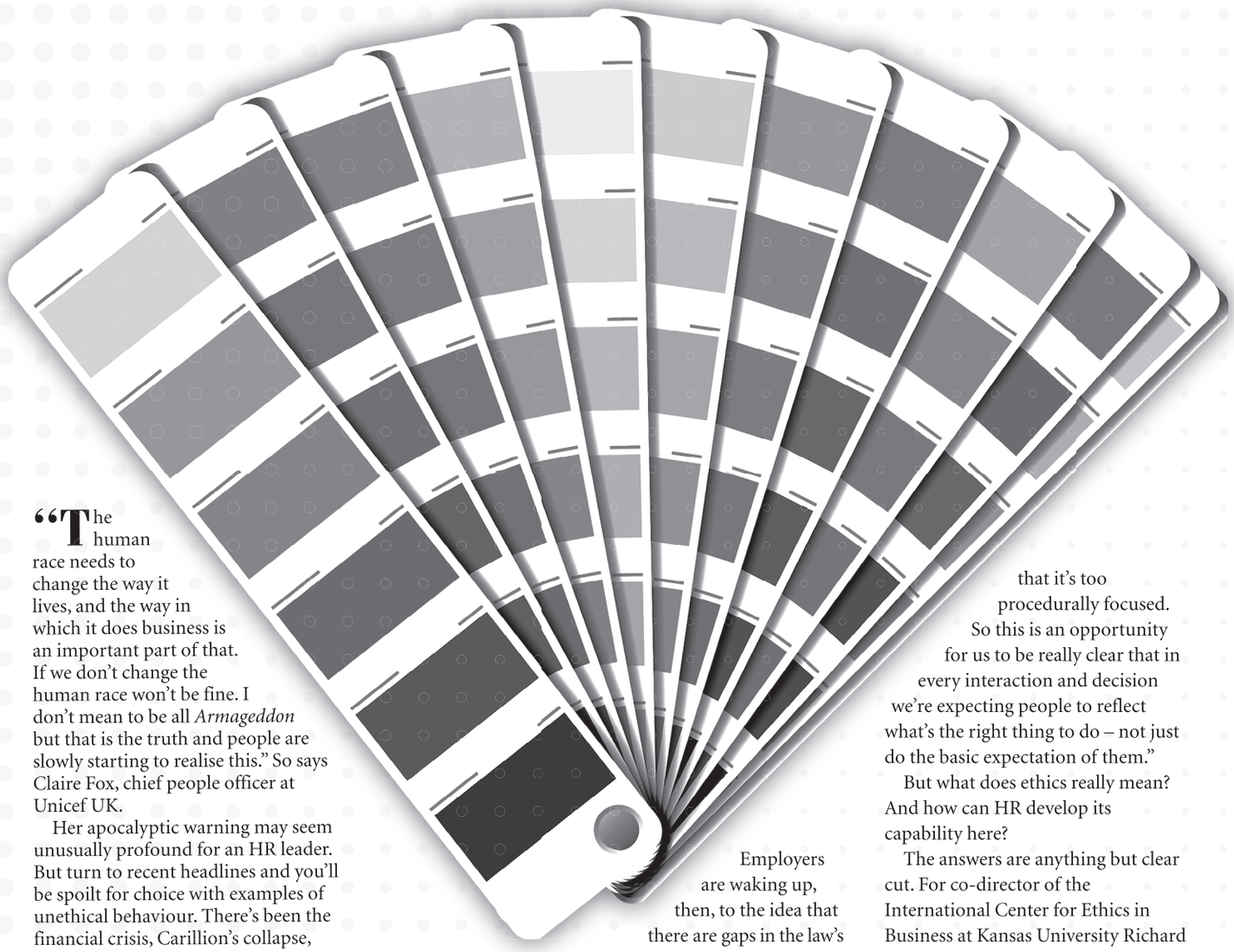
Shades of grey

There's no such thing as a black and white ethical dilemma. So how can HR practitioners develop their personal ethics so they can help their organisations navigate the grey areas? RACHEL SHARP explores



"The human race needs to change the way it lives, and the way in which it does business is an important part of that. If we don't change the human race won't be fine. I don't mean to be all *Armageddon* but that is the truth and people are slowly starting to realise this." So says Claire Fox, chief people officer at Unicef UK.

Her apocalyptic warning may seem unusually profound for an HR leader. But turn to recent headlines and you'll be spoilt for choice with examples of unethical behaviour. There's been the financial crisis, Carillion's collapse, Persimmon's boss' disproportionate bonus, the VW emissions scandal, #MeToo… need we go on?

But in almost all of these scandals the damaging behaviours weren't illegal, points out Gary Cookson, founder and director of EPIC HR and former associate HRD at the Disclosure and Barring Service. "Go back to the financial crisis and the things bankers were doing were perfectly legal. They weren't breaking any laws but it caused the recession and did a lot of harm to society," he says.

Employers are waking up, then, to the idea that there are gaps in the law's definition of right and wrong. Such gaps are where ethics come in, and many are looking to HR to fill them.

Indeed when the CIPD launched its new profession map at the end of 2018, setting out the knowledge, behaviours and values underpinning HR, it added 'ethical practice' to its core behaviours for the first time. The body's membership director David D'Souza explains the rationale: "One of the historical accusations of HR is that it's too procedurally focused. So this is an opportunity for us to be really clear that in every interaction and decision we're expecting people to reflect what's the right thing to do – not just do the basic expectation of them."

But what does ethics really mean? And how can HR develop its capability here?

The answers are anything but clear cut. For co-director of the International Center for Ethics in Business at Kansas University Richard DeGeorge, business ethics is "simply treating people with respect and considering everybody who might be affected by one's own actions".

"Most people get a sense of ethics from being raised by their family, from society and their surroundings, that's what we call conventional ethics – things like don't steal, don't kill people. Then when put into an HR-specific business context it's how you translate these general norms and apply them to your work."

Illustration: **Ben Leon**

> **"A typical day-to-day challenge is holding line managers to account on performance management. They make decisions using gut instinct, which they'd argue is based on years of experience but is actually probably based on unconscious biases"**

D'Souza says the CIPD has defined ethical behaviour as "weighing up the short-term and long-term impact of your decision-making and reflecting on what that means for the different stakeholder groups you serve". So this could be thinking about the impact of a large-scale redundancy programme on the local community, or the effect of fair-hiring offers on employees, he reports.

Grey matter

The whole point is that ethics aren't black and white. "It's a woolly area – you and I would have a different view on what the ethically-sound decision is," says Cookson.

"Ethics plays in the grey world so you have to make a choice between two things. One might seem more right than the other but still might not be the ideal solution. You might be faced with two difficult choices and have to choose the least wrong thing based on your values," says Philippa Foster Back, director of the Institute of Business Ethics.

Which means the really important areas for HR to get to grips with don't necessarily concern the headline-grabbing instances of bad behaviour outlined above, D'Souza explains. There's a key difference, he adds, between macro-level ethical issues in organisations and the micro-level ethical dilemmas HR faces on a daily basis.

> **"A member of staff had drug and alcohol dependency issues. When you work for an organisation that works with vulnerable people this leaves you in a predicament over how to support the employee"**

While there's a tendency to focus on the big picture stories of toxic behaviour, "cases like bullying and sexual harassment aren't ethical dilemmas in themselves because you'd hope it's cut and dried that we have an obligation to take action. There should be no question how much bullying you allow in an organisation – that's zero tolerance," he says. "Often the extent you push to change those behaviours and how is the challenge, but it's not a dilemma over what's right and wrong."

Ethical dilemmas arise, D'Souza explains, in complex situations where there are multiple different viewpoints: "HR is the kind of job where every single day something will cross your desk and you need to pause and reflect on what to do."

He gives the example of dealing with under-performance or redundancies "where you have to weigh up the impact of a number of different dimensions on all sides".

Tackling workplace misconduct can also push HR into the grey areas, says Martyn Dicker, founder of The POD Consultancy. "People like to think it's black and white and there's an easy answer but it's more complex; there's different sides to it and it relates not just to the behaviour of the person."

Personal development

Which all begs the question of whether it's even possible to accurately measure the ethical capability of HR professionals, and in turn accredit this 'skill' and develop it in practitioners. And are HR professionals currently up to the job?

According to Cookson the "honest answer" is no. "We're starting from a very low base; mainly because it hasn't been the focus until the past few years so you've got large swathes of HR staff coming into organisations who have never had a conversation before about ethics," he says.

Much of the gap comes down to how HR professionals start their careers, says Carrie Birmingham, founder of Carrie Birmingham Consult and former HRD at News UK: "Training early on tends to be about serving the business and running legal processes in a compliant way. What's interesting is how you move from that into dealing with the greyness where there isn't one right answer."

Birmingham feels HR practitioners need to be honest with themselves about whether they're up to the task: "If you're going to sit in the boardroom as an HR person my question is: to what end? What's your purpose?"

It's time the profession was more rigorous in ensuring only those capable of this enter it, she adds: "In good HR people it's the natural thing to do to think about the people affected and what's fair and reasonable."

Which is not to say this muscle can't be developed and honed over time. But how to do this is a grey area in itself.

"If you were to ask me to write an essay on ethics I could do that, but that doesn't show if I have the courage to do what I say in the workplace when the shit hits the fan," muses Cookson. For him courage and not knowledge is the metric of choice. "But it's really difficult to measure an individual's courage to speak up, challenge and have difficult conversations," he adds.

It's a sticking point D'Souza admits the CIPD is still navigating as it embeds ethics into its framework and qualifications. "There's a raft of contextual elements that go into any decision so it's important for us to understand the challenges HR practitioners face and the context they're working in," he says.

"You cannot go on a course to be ethical," argues Lynne Weedall, NED and RemCo chair, business advisor and former group HRD at Selfridges Group. "The world is evolving rapidly and what felt right once upon a time may no longer be right today – we have to stay open-minded, curious and most of all listen to all points of ▸

views, not stick rigidly to past experiences and judgements."

For Bernd Irlenbusch, professor of corporate development and business ethics at the University of Cologne, this capability can be taught but "not in everyone". His key advice is to role play rather than focus on theory, and to always bring personal ethics into business ethics.

Shakil Butt, founder of HR Hero for Hire and former HR and OD director at Islamic Relief Worldwide, feels it's "more about developing your voice and having the courage to speak up, as it's the easiest thing to come into a new role and just conform".

Business acumen is also critical, so HR can explain why the ethical course of action is beneficial to the business in the long run, he says. He adds his "acid test" to the mix: four questions HR leaders should ask themselves any time an ethical dilemma is thrown their way.

These are: "Is it legal? What's my individual ethical code and that of the sector I'm in? What would my mother think? (As if you can't talk about the issue with a family member without feeling shame then something isn't right…) And the final, biggest one: if this issue came out on the front page of tomorrow's newspapers how would you feel?"

"Build influential relationships," advises Birmingham. "So you can sit down with someone and have a conversation about [an ethical dilemma]. Which can be intimidating because people might not like you for what you'll say."

Clearly HR isn't going to win any popularity contests here, which can make being an HR leader "lonely", says Julie Dennis, Acas' head of diversity and inclusion.

Rather than holding oneself to impossible standards it's important to remember "we're human beings as well so we sometimes get it wrong", she says.

"Sometimes your gut is telling you it's the right answer but you question it. We need to not be afraid to reach out to a colleague or someone else in HR as we may find a different solution we've not tried before."

Ask the *HR* c

Dilemma: Redundancies a

"An employee accepted voluntary redundancy and had a long notice period of six months. Then two weeks before they were due to leave they discovered they had leukaemia, so their financial situation suddenly became very different and they wanted to rescind their redundancy. The organisation had already banked on them going, the job wasn't there. However, if the individual had previously said they didn't want to take it they probably would have survived the round of redundancies. What's the right, most ethical path to take?"

The first step is to have a "human conversation" with the employee to understand their situation, believes Carrie Birmingham Consult's Carrie Birmingham. "Junior HR people resort to process because it feels safe whereas great HR people sit down with people who are in pain and talk to them," she says, adding that because redundancies have become a fact of life for HR the danger is "we detach from it".

Having faced a similar dilemma Birmingham found the employee another role, deferring redundancy for six months. "Challenge the business to see what's possible," she encourages.

And even if the employee's preferred outcome isn't possible, "there's a big difference between saying 'no' in writing once you've thought about it for 30 seconds and listening to their story and making a genuine effort to try and make it work".

Sometimes redundancies are unavoidable, agrees Charles Stanley's Kate Griffiths-Lambeth. But how they are handled is critical. It comes back to the link between the human and commercial sides of the business, she says: "If you behave in the right way, when the market picks up and you want to recruit people will say: 'I want to work there as look how they behaved

The moral compass

Which brings us to the knotty issue of how involved the rest of the business should be in being the stewards of good ethics and in navigating ethical dilemmas. If there is one thing guaranteed to spark debate among HR professionals it's whether or not it is their job to be the moral compass of their organisations.

On one side sit those who believe HR has to step up to the mark. "I've irritated people on social media for saying it but I genuinely feel if HR isn't prepared to speak out then who will?" says Kate Griffiths-Lambeth, group HRD at Charles Stanley.

On the other side is the view that HR is being scapegoated by the business. "I rebel against the idea," says Birmingham. "We're jointly responsible with the people who work for and run the business."

As far as Dicker is concerned there's something of a "mixed answer" to the debate. "Is it just HR's role to speak truth to power? Absolutely not. But I do think HR often plays the role as the organisation's conscience if we think of all the things we need in place like wellbeing policies, governance and compliance… But if we take the collapse of Carillion, I don't think we can simply say 'if HR had acted differently that wouldn't have happened'."

"What if we saw someone sexually harassing staff in a restaurant? My view is that it doesn't matter that we're HR for somewhere else, if we see something happening we have to act"

The problem, he believes, is that the business often passes responsibility for ethics into HR's hands. "I was once given an article about ethics at work from a CEO who hadn't read it but just said 'that must be for you'. They didn't even think to read it. They just thought that was my job."

An uncomfortable position

The other well-trodden, but critical, debate when it comes to HR's role in ethics is how the profession treads that fine line between supporting both the business and its employees.

agony aunt...

s and personal situations

when times were tough'. The ripples are wider than the immediate individual."

However, making special allowances for one employee isn't necessarily fair for all.

"When you go through redundancies terrible personal stories often come out of the woodwork for many people," says Unicef UK's Claire Fox. "You have to remember it's about more than just that one person because what about the other people in a similar situation that you don't know about?

"To do a U-turn, totally undermining all your policies, could be really kind to that one person while being unfair to everyone else."

"The reality is there's more than one human side to that story," agrees Dan Peyton, managing partner at McGuireWoods. "If by rescinding redundancy for that employee you are depriving another person of their job that's another difficult human situation."

Taking the human approach in the short term may not be the most ethical response for the individual in the long term either. "The difficulty with the knee-jerk reaction to take the more emotionally-appealing popular step is that it's not always the right one," Peyton explains. "I suspect any HR professional could relay a time where as an act of compassion they haven't terminated somebody's employment, only for that person's eventual departure to be more painful as a consequence of not being done at the appropriate time.

"Sometimes the obvious ethical thing to do isn't [in fact the most ethical] – that's why we have policies."

There's also the "thorny" matter of being too paternalistic in this scenario, believes the British Council's Ian Williams.

"We have to be careful around the parent-child relationship. Are organisations responsible for propping up shortcomings in the social care system?"

Ian Williams, HRD global network at the British Council, says that HR has typically tended to side with the business: "If we think about the role of the business partner I think HR would tend to say it's there to support line managers more than employees. But I worry we've focused too much on the business and forgotten there are people behind those decisions – we need to be more holistic."

> **"A high-performing individual got drunk and was abusive to members of the senior team at a company party. It was a laddish culture so some of the senior team may have found it amusing and wanted to brush it under the carpet. But everyone knew about it and many people reported it. I told the CEO I'd be tackling that person – they didn't want me to but I said it is important to be seen to tackle situations like this"**

"Sometimes we develop high tolerance levels and detach ourselves from the reality when we need to take a step back and look at the individual," says Dennis.

So is striking the right balance the most crucial ethical dilemma for the profession? "It's often painted this way," concedes D'Souza.

But he feels it's "the wrong question". The right question is: "how do we weigh up our obligations to the organisation, the people in it and broader society?" he says.

"It's a different way of framing it but I think it's an incredibly important one as otherwise you end up with a binary situation; which is either you're working for the people and ironically you might do something not in the long-term interests of the people – for instance you lobby to double everyone's pay but that doesn't lead to a sustainable successful business.

"Or if you're just working for the organisation you might attempt to minimise everyone's pay. But that's not going to be the optimal result in terms of morale, so it's a false choice."

Griffiths-Lambeth agrees. "I think the two are entwined – the ideal place to get to is where the right answer is the right answer for both," she says. "There's a commercial angle to being ethical and if you can shift away from a short-term to a long-term view then behaving ethically will help you have a sustainable business in the long run. It's no longer the case that you need to take a financial hit to do the right thing."

Stay or go?

But what if you find yourself in an organisation whose ethics don't align with your own? The ultimate ethical dilemma perhaps arises: should the HR professional stay and try to improve the situation, or should they go?

DeGeorge asserts that an HR leader's ethics inside and outside the business should align: "People need to remember when they go into the business that they don't take off their ethical hats. You have to keep it on at all times and the rules that apply outside should also apply inside."

The risk is that an HR practitioner will find themselves bending at best (violating at worst) their personal ethics if they're working in an unethical environment.

"If you're surrounded by people who are making decisions that maybe aren't the most ethical it can be easy to be led astray," Dicker warns. Take the famous Milgram psychological experiment: where people administered electric shocks to someone up until the person's 'death' because they were following orders. As Dicker says: "Good people have the potential to be led astray and do bad things."

Irlenbusch warns of the psychological phenomenon of moral self-licensing bias when there is a breakdown of personal ethics within the business context. "If we think we are very ethical today we might think we can then allow ourselves a little unethical behaviour tomorrow – people should be aware of this," he says.

It's a dilemma Griffiths-Lambeth once faced; she opted to resign. "They weren't prepared to listen and were

Ask the *HR agony aunt...*

Dilemma: Unearthing illicit behaviour through ethically-dubious actions

"A manager was off sick and there was an important document that we needed in his emails. Only he had access to it and he refused to give us his email password. We overrode his refusal and got the document. However, once in his inbox we discovered evidence of gross misconduct on his part. We stumbled across this gross misconduct while doing something unethical ourselves. So should we act on it?"

What's black and white here, believes Unicef UK's Claire Fox, is that work email is work property so employers have every right to access it. "Therefore if you come across information that points to gross misconduct you go through the normal channels and decide an outcome after a fair investigation," she says.

It's a sentiment shared by the British Council's Ian Williams: "Once you see something you can't unsee it."

Where the grey area comes in, however, is if HR doesn't have policies around email access. "If your IT and HR policies don't line up then that's where you have dilemmas," Williams explains. "That builds different expectations among employees."

Managing employee expectations is just one part of the picture though. Some question the invasion of employees' privacy.

"They've actively gone against the employee's wishes," says Carrie Birmingham Consult's Carrie Birmingham, who believes HR's own ethically-dubious behaviour could have far-reaching long-term ramifications. She raises concerns of a *Big Brother* scenario where the employer is checking up on its workforce. "Are you happy with other people knowing you've done that?" questions Birmingham, suggesting HR professionals ask themselves if they'd be comfortable with their behaviour making newspaper headlines.

HR Hero for Hire's Shakil Butt agrees HR should "hold up its hands and take responsibility for how [it] came across the information".

"All of us are prone to mistakes and do things that another person might consider unethical," he says. "Take ownership of what you've done – you must allow others to hold you to task otherwise you'll lose credibility."

Charles Stanley's Kate Griffiths-Lambeth points to a similar experience when, upon accessing the emails of two employees, it came to light that they "were deliberately plotting to make the workplace untenable for another individual". HR investigated and parted ways with them, but not without "a breakdown of trust" among the remaining workforce due to how the information was gathered.

Communicating the action HR took was key to regaining trust. "I couldn't tell [everyone] all about the messages as that would have been more damaging. But I did the best I could to calm the situation," she says.

Beyond this, Griffiths-Lambeth says HR needs to hold a mirror up to the organisation itself to determine why such behaviour happened in the first place. "We had a lengthy heart to heart [with the perpetrators] on what drove them to behave in that manner and we as an organisation learnt from it and changed things," she says. "Yes what they wrote was terrible. But they also felt marginalised and miserable."

There's always two sides to every story, Griffiths-Lambeth points out. And HR must listen to both sides as it also has a duty of care to the employees exhibiting bad behaviour.

doing short-term commercial over what made sense long term, and I said 'if that's the organisation you want then that's not an organisation I want to work for'."

Williams, however, believes there will be times HR has to compromise. "When you join the leadership team they'll often make decisions you don't always agree with, but you have to be seen as a collective," he says.

"That's not saying you have to compromise your values. But sometimes you have to accept cabinet responsibility and as long as you've done everything you can to influence then that's fine. If you're not willing to do that then perhaps being in a leadership role isn't right for you."

HR's position is to force the conversation with the organisation and advise the right course of action, says Birmingham, proposing three key questions HR should put to senior decision-makers: "Are you comfortable making that choice knowing it could become public knowledge? Secondly what's the most important thing here – it feels like we're fixing the short-term problem but we could be creating a problem down the track. And thirdly what does our website [say] about what type of organisation we are and how far away are we from that in making this decision?"

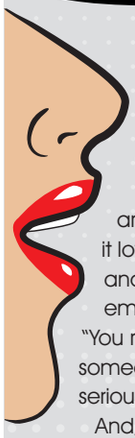
And if they still go against HR's advice? "You've got a choice of learning how to make sure it doesn't happen again by doing something

"Karren Brady resigned recently as chairman of Philip Green's business. I suspect the seat got too uncomfortable for her to stay on the grounds of her ethics. That's a real-life example where someone decided it was untenable to stay, based on their values"

Ask the *HR agony aunt…*

Dilemma: Being overruled in a sexual harassment case – to stay or go?

"An employee made a sexual harassment allegation about a senior manager. I investigated it and it was upheld. The victim wanted to keep it low key and not go further than HR as she didn't want it to get back to her husband. The perpetrator was senior management and a good friend of the trustees. When it got to the point where it was classed as gross misconduct, because of his seniority I had to get sign-off from the trustees. They bypassed me and did a deal with him. The victim carried on in the organisation. But the perpetrator walked away with a sum of money whereas I was ready to dismiss. An NDA [non-disclosure agreement] was also used; it wasn't requested by the victim and was decided on by the board without my involvement. I pushed back and made it very clear how I felt about the outcome – I think that's what led to me being restructured out a short while later. What should I have done?"



For McGuireWoods' Dan Peyton this HRD took the correct approach by investigating the matter and recommending dismissal.

The first ethical dilemma arises around the victim's wish to keep it low key. "You have to push hard and ultimately take it out of the employee's hands," says Peyton. "You respect their concerns, but if someone has told you something serious you have to deal with it."

And, despite the victim's wishes, HR has to take it beyond the function, agrees the British Council's Ian Williams. "You can't not have [the alleged perpetrator's] manager involved as that undermines trust in us as a function. But be clear with [alleged victims] – we shouldn't give them a false sense of security we're not going to tell anyone else as that's unrealistic."

Things become greyer around whether this bad behaviour should be publicly exposed in the name of organisational transparency (and preventing potential further wrongdoing by the perpetrator), or kept quiet in line with the victim's wishes and to preserve the reputation and prosperity of the wider business and its stakeholders.

After all, if consumers boycott Philip Green's stores and profits slump because of allegations against him don't innocent retail workers and their job security stand to suffer most?

"It's something that needs to be thought about," says Charles Stanley's Kate Griffiths-Lambeth. "Frequently one incident is one pebble in a much wider pond – you need to look at where the ripples go."

The transparency debate brings us to the topical issue of NDA use. (The government recently announced new legislation that would prevent these being used to stop victims reporting serious complaints to the police.) "If we've gone through an investigation and the outcome is gross misconduct it's totally inappropriate to pay that individual money and do an NDA – that breaches any sort of ethics," argues Unicef UK's Claire Fox.

But to say NDAs should be banned altogether is "too blunt", says Williams. "An NDA is an option if the victim doesn't want it to go public – if that also means the accusation is kept confidential that's an acceptable outcome."

Neutrality is the best stance for HR, believes Williams. "You give the victim options and show them the pros and cons but they have to make the choice – we mustn't encourage one particular route over another."

HR has an ethical responsibility to the alleged perpetrator too, points out Peyton. "If someone's career would be in tatters in relation to something that's never been proved there may be merit in using a settlement agreement to give both parties something out of the situation," he explains.

NDAs aside, the real ethical test comes down to what the HRD does after being overruled by the trustees. "If that was me and the trustees intervened and overruled me I'd go to the Charity Commission or other relevant regulatory body (depending on sector)," says Fox. "The trustees should not have the governance to overrule that because it's an executive process not a governance process."

The ultimate dilemma – to stay or go – is also at play here.

"If you're seeing behaviour that doesn't sit comfortably with you, at what point do you become embroiled in it?" asks Martyn Dicker, founder of The POD Consultancy. The danger is that, in staying at an unethical firm, the HR professional becomes complicit in unethical behaviour. "Stay and do what you can to influence, but you may come to the conclusion that you can't influence it and that's bloody tough," he says.

In the scenario above the choice was taken out of the HRD's hands. But HR Hero for Hire's Shakil Butt believes that's the price HR sometimes has to pay to maintain personal ethics. "Some HRDs have said to me 'but we risk losing our livelihood'. We either risk losing our livelihood or losing our dignity. And in that situation it's either the right thing to do or it's not the right thing to do," he says.

"Behaving ethically isn't easy – if it was everyone would be doing it."

differently and as a result becoming a better HR practitioner; or you can leave; or you can think is there someone more powerful to have a conversation with?"

"We should try to focus the conversation in the organisation on ethics and, if you can, codify it into a code of ethics. But if you're working in an organisation that you don't ethically agree with and it's not listening to you, then go work somewhere that will," says Cookson.

"Ultimately if your organisation has ethics you don't agree with then you shouldn't be working there." **HR**

Read our box-outs to explore some real-life ethical dilemmas faced by HR directors HR magazine spoke to