

Final Decision

on the breach and penalty in respect of
BRISK's compliance with the Electronic
Communications Code (Conditions and
Restrictions) Regulations 2003/2533 (as
amended)

Non-confidential version – redactions are indicated with [X]

Issue date: 4 July 2025

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1. Overview

- 1.1 This is the Office of Communications' ("Ofcom") Final Decision on breach and penalty under section 110 of the Communications Act 2003 (the 'Act') in respect of BRSK Limited ("BRSK"), whose registered company number is 12792126 and registered office is Unit H The Courtyard, Tewkesbury Business Park, Tewkesbury, United Kingdom, GL20 8GD. This document constitutes Ofcom's enforcement notification for the purposes of Section 110 of the Act.
- 1.2 On 30 September 2024, Ofcom opened an investigation into BRSK's compliance with the conditions and restrictions set out in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003/2533 (as amended) (the 'Regulations'). This investigation was opened after receiving a complaint from Birmingham City's Local Planning Authority¹ which gave Ofcom reasonable grounds to suspect that BRSK may have breached Regulations 3(1)(b) and 5(1) when installing electronic communications apparatus to build its broadband network in the Birmingham City area.

Ofcom's Final Decision – in brief

Ofcom's Final Decision is that there are reasonable grounds to believe that BRSK has contravened its duties under the following sections of the Regulations:

- a) Regulation 3(1)(b), which states that *"a code operator shall consult – planning authorities in relation to the installation of electronic communications apparatus"...* and
- b) Regulation 5(1)(a), which states that *"a code operator must give 28 days' notice, in writing, to the planning authority for the area in question where the code operator has not previously installed electronic communications apparatus in the area and (subject to paragraph 1A) is intending to install such apparatus in the area."*

Ofcom decided to impose a penalty on BRSK of £10,000 per contravention, totalling £20,000. Ofcom applied a discount of 30% per contravention following BRSK's settlement of the case, as a result of which the final penalty amounted to £7,000 per contravention, totalling £14,000. This discount reflects resource savings achieved by Ofcom as a result of BRSK's agreement to settle by admitting full liability.

Our view is that this penalty is appropriate and proportionate to the contraventions, having regard to all the evidence referred to in this document and our published Penalty Guidelines.²

The overview section in this document is a simplified high-level summary only. The enforcement notification containing our Final Decision, and reasoning is set out in the full document.

¹ Birmingham City's local planning authority is the department with Birmingham City Council who are responsible for determining planning applications and planning enforcement, within the Birmingham City area.

² Ofcom, [Penalty Guidelines](#), 14 September 2017.

2. Introduction

- 2.1 This enforcement notification containing Ofcom's Final Decision³ concerns BRSK's compliance with Regulations 3(1)(b) and 5(1)(a) of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003/2533 (as amended) (the 'Regulations'). These place an obligation on BRSK to consult with local planning authorities and provide them with 28 days written notice prior to installing electronic communications apparatus in an area.
- 2.2 This document sets out our Final Decision that there are reasonable grounds for believing that BRSK has contravened its duties to:
- (a) consult with Birmingham City's Local Planning Authority prior to installing electronic communications apparatus,⁴ and
 - (b) give Birmingham City's Local Planning Authority 28 days' written notice prior to installing 672 poles and 21 street cabinets in the Birmingham City area from July 2023 until 3 April 2024 (the 'Relevant Period').⁵
- 2.3 In reaching our Final Decision, we considered information provided by BRSK in response to a statutory information request sent pursuant to s135 of the Act (the 'RFI response').⁶ In the RFI response, BRSK admitted that it did not comply with Regulations 3(1)(b) and 5(1)(a). In response to Ofcom's investigation, BRSK also told Ofcom that it is taking the necessary steps to improve its processes and remedying its actions in relation to all electronic communications apparatus covered by the investigation.
- 2.4 In accordance with Ofcom's [regulatory enforcement guidelines](#), Ofcom considered this was a case appropriate to settle. This is a voluntary process which leads to a formal, legally binding regulatory decision. On 13 June 2025, BRSK confirmed that it wanted to settle. In accordance with Ofcom's settlement process, BRSK stated that it understood by doing so it was waiving its procedural rights, including its right to make written representations or have an oral hearing on the substance of the Provisional Decision. It also confirmed that it would not challenge or appeal against this Final Decision.
- 2.5 Having considered our Penalty Guidelines, Ofcom decided to impose a penalty of £10,000 per contravention, totalling £20,000, on BRSK. We consider the maximum penalty for both contraventions to be proportionate having considered the seriousness of the breach. We applied a discount of 30% per contravention following BRSK's settlement of the case, so the final penalty amount was £7,000 per contravention, totalling £14,000. The basis for our penalty decision is explained in section 6 of this document.

³ Ofcom may send an enforcement notification which sets out our determination, as specified by Section 110A(2) of the Act and see paragraph 3.15. This Final Decision is Ofcom's Final Determination.

⁴ Section 3(1)(b), the [Regulations](#).

⁵ Section 5(1), the [Regulations](#).

⁶ Letter and attachments sent from [BRSK] (BRSK) to [Ofcom] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response')

2.6 This document sets out the evidence that underpins our Final Decision in respect of each contravention, our assessment of the appropriate penalty for those contraventions and the remedial actions that we consider that BRSK must take. The structure of this document is as follows:

Section 3: regulatory framework;

Section 4: factual background;

Section 5: Final Decision on contravention;

Section 6: Final Decision on proposed financial penalty and remedial action;

3. Regulatory framework

- 3.1 In this section, we set out the regulatory and legal framework relevant to our investigation, explaining Ofcom’s general duties and the statutory framework that underpins the conditions and restrictions imposed on Code Operators. We also explain Ofcom’s enforcement powers.

Our general duties

- 3.2 Section 3(1) of the Act states that it shall be Ofcom’s principal duty, in carrying out our functions:

- (a) to further the interests of citizens in relation to communication matters; and*
- (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.*

- 3.3 In carrying out its functions, Ofcom must secure, amongst other things, the availability throughout the United Kingdom of a wide range of electronic communications services. Ofcom must also have regard, in particular and where appropriate, to the desirability of encouraging investment and innovation in relevant markets and to the desirability of encouraging the availability and use of high-speed data transfer services throughout the United Kingdom.

The Electronic Communication Code and The Regulations

- 3.4 The Electronic Communications Code is set out in Schedule 3A of the Act. The Code is designed to facilitate the installation and maintenance of electronic communications networks across the United Kingdom and confers rights on providers of such networks and on providers of systems of infrastructure to install and maintain apparatus on, under and over land.
- 3.5 The Code has effect in the case of a person to whom it is applied by a direction given by Ofcom and results in considerably simplified planning procedures for Code Operators.⁷
- 3.6 BRSK is a Code Operator pursuant to a direction given by Ofcom on 23 March 2021⁸ and has been included in the register of Code Operators on Ofcom’s website since that date.⁹
- 3.7 In accordance with section 109 of the Act the Code has effect in the case of any operator to whom it has been applied subject to such restrictions and conditions as are set out in the Regulations referred to in paragraph 2.1 above. Accordingly, as a Code Operator, BRSK is required to comply with the conditions and restrictions imposed by the Regulations.
- 3.8 Regulation 3(1)(b) requires:
- “(1) A code operator shall consult planning authorities in relation to the installation of electronic communications apparatus, including installation in a local nature reserve”.*

⁷ A code operator means a person in whose case the electronic communications code is applied by a direction under section 106(3)(a) of the [Act](#).

⁸ Section 106 of the Act.

⁹ [Register of persons with powers under the Electronic Communications Code](#)

3.9 Regulation 5(1)(a) requires:

“A code operator must give 28 days’ notice, in writing, to the planning authority for the area in questions where the code operator has not previously installed electronic communications apparatus in the area and (subject to paragraph 1A¹⁰) is intending to install such apparatus in the area.”

3.10 In relation to the obligation in Regulation 5(1)(a), Regulation 5(3) sets out:

“Where a code operator has given notice under paragraph (1), the planning authority may, within 28 days of the receipt of that notice, give the code operator written notice of conditions with which the planning authority wishes him to comply in respect of the installation, alteration or replacement of the apparatus, but he is not obliged to comply with those conditions to the extent that they are unreasonable in all the circumstances.”

3.11 Regulation 5(4) exempts Code Operators from the requirement to give 28 days’ notice under Regulation 5(1) in any of the circumstances described in paragraphs (a) to (d).¹¹

3.12 The electronic communications apparatus referred to in the Regulations has the same meaning as it does in the Code, as defined in paragraph 5:

“(1) In this code “electronic communications apparatus” means -

- (a) apparatus designed or adapted for use in connection with the provision of an electronic communications network,*
- (b) apparatus designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network,*
- (c) lines, and*
- (d) other structures or things designed or adapted for use in connection with the provision of an electronic communications network.”*

Ofcom’s enforcement powers

3.13 Section 110 of the Act gives Ofcom powers to enforce compliance by Code Operators with any requirements imposed by virtue of any restrictions or conditions under the Regulations.

¹⁰ This sets out that the requirement in Regulation 5(1)(a) to give 28 days’ written notice does not apply where the apparatus is an underground line or service line or a line permitted to be installed above ground pursuant to regulation 4(1)(a) to (d), including under 4(1)(e) where it is not in all the circumstances reasonably practicable to do so.

¹¹ These are:

- “(a) where the electronic communications apparatus the operator intends to install is to be installed inside a building or other permanent structure;*
- (b) where the apparatus is to be installed for the purpose of providing a temporary electronic communications network under Regulation 15;*
- (c) where the apparatus the operator intends to install is to be attached to or supported by poles or pylons which are used for the transport of electricity at a nominal voltage of at least 6000 volts; or*
- (d) he is undertaking emergency works and he has provided the planning authority with an expected date of completion and a statement of the grounds for the need to execute the works.”*

- 3.14 Where Ofcom considers that there are reasonable grounds for believing that the subject of an investigation is contravening or has contravened the relevant regulatory requirements, it may issue an enforcement notification under section 110 of the Act.
- 3.15 An enforcement notification is a notification which:
- (a) sets out the determination made by Ofcom;
 - (b) specifies the requirement and the contravention in respect of which that determination has been made;
 - (c) specifies the period during which the person notified has an opportunity to make representations;
 - (d) specifies the steps that Ofcom think should be taken by the person in order to (i) comply with the requirement and (ii) remedy the consequences of the contravention; and
 - (e) specifies any penalty which Ofcom are minded to impose in accordance with section 110A.
- 3.16 Where the contravention is serious, the enforcement notification may also specify any direction which Ofcom is minded to give under section 113(4) of the Act.
- 3.17 In determining the amount of any penalty Ofcom is minded to impose we will have regard to our Penalty Guidelines¹² as well as Section 110A of the Act, which states –
- “(4)...in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after –*
- (a) the giving of a confirmation decision under section 111(4)(c) which requires immediate action; or*
 - (b) the expiry of any period specified in the confirmation decision for complying with a requirement so specified.*
- (5) The amount of a penalty under subsection (4) is to be such amount not exceeding £100 per day as OFCOM determine to be*
- (a) appropriate; and*
 - (b) proportionate to the contravention in respect of which it is imposed.*
- (6)...the amount of any other penalty specified in a notification under section 110 is to be such amount not exceeding £10,000 as Ofcom determine to be – (a) appropriate, and (b) proportionate to the contravention in respect of which it is imposed.”¹³*

¹² Ofcom, [Penalty Guidelines](#), 14 September 2017.

¹³ Section 110A(4) -(6) of the Act

4. Factual background

BRSK

- 4.1 Since 23 March 2021, BRSK has been a Code Operator¹⁴ and required to comply with the conditions and restrictions imposed by the Regulations. BRSK has been installing its full fibre broadband network in several areas throughout the UK. BRSK says it *'recognises the challenges that the UK economy faces in delivering both its digital sector objectives and the wider growth objectives and is committed to playing its part in Project Gigabit by helping deliver, through private investment, the target of at least 99% full fibre coverage of UK premises by 2030.'*¹⁵
- 4.2 On 4 May 2022, BRSK contacted Birmingham City's Highways Authority¹⁶ by email to let them know that BRSK would be *'looking to roll out its fibre broadband in [its] local authority area.'*¹⁷ BRSK advised the Highways Authority that it was due to commence building its network in the summer and explained that the Highways Authority should expect to receive necessary permit requests in the *'not-too-distant future'*. A further email was sent on 25 November 2022 to Birmingham City's Highways Authority confirming that BRSK was due to begin its *'network rollout soon, proposing to begin in the Selly Oak region.'*¹⁸
- 4.3 On 29 June 2023 BRSK raised the first street works permit for the installation of five new BRSK telegraph poles on Tiverton Road, Selly Oak, which was approved by Birmingham City's Highways Authority on 5 July 2023.¹⁹

Birmingham City Local Planning Authority's complaint

- 4.4 On 30 April 2024, Birmingham City's Local Planning Authority submitted a complaint to Ofcom which alleged that *'BRSK have installed a large number of broadband poles without giving [them] the necessary 28-day notification.'*²⁰
- 4.5 As part of their complaint, Birmingham City's Local Planning Authority provided Ofcom with a list of addresses where 877 poles had been installed, which they may not have received notice for. The list of addresses had been compiled and sent to Birmingham City's Local Planning Authority by BRSK.
- 4.6 Ofcom met with Birmingham City's Local Planning Authority to better understand their concerns. They stated they had had *'significant complaints raised by elected members and residents relating to BRSK's installation of its network in the area.'*

¹⁴ As set out in Section 106 of the Act.

¹⁵ (Confidential) PowerPoint presentation sent to [redacted] (Ofcom) from [redacted] (BRSK), on 14 January 2025.

¹⁶ Birmingham City's Highways Authority is a separate department to the Local Planning Authority, within Birmingham City Council. Birmingham City's Highways Authority is responsible for keeping the highway network within Birmingham City Council's remit, including roads, pavements, and cycle paths, safe.

¹⁷ Email from [redacted], Street Works Performance Manager (BRSK) to [redacted] (Birmingham City's local planning authority), dated 4 May 2022.

¹⁸ Email from [redacted], Street Works Performance Manager (BRSK) to [redacted], (Birmingham City's local planning authority), dated 25 November 2022.

¹⁹ Copy of permit raised (Permit reference [redacted]) provided by email from [redacted] (BRSK) to [redacted] (Ofcom), on 5 July 2024.

²⁰ Email from [redacted], (Birmingham City's Local Authority) to Ofcom, dated 30 April 2024.

BRSK's initial response

- 4.7 On 24 June 2024, Ofcom wrote to BRISK about the complaint²¹ and in response (the 'Initial Response') BRISK provided Ofcom with a timeline of events and copies of BRISK's correspondence with Birmingham City's Local Planning Authority and other departments which fall under Birmingham City Council, such as the Birmingham City's Highways Authority.²²
- 4.8 As part of its response, BRISK provided evidence that in May 2022 it had contacted Birmingham City's Highways Authority to let them know about the upcoming rollout of their network in the area. However, BRISK did not provide evidence that it had consulted with or provided 28 days' notice to Birmingham City's Local Planning Authority, prior to installing poles.
- 4.9 The timeline shows that it was not until March 2024, following complaints from residents to Birmingham City's Local Planning Authority, that discussions between Birmingham City's Local Planning Authority and BRISK took place, after which BRISK agreed to start sending notice to the planning department.²³
- 4.10 BRISK was unable to evidence that it had consulted and provided 28 days' notice to Birmingham City's Local Planning Authority, prior to it installing its network, which gave Ofcom reasonable grounds to believe it had not complied with its regulatory requirements to do so.

BRISK investigation

- 4.11 On 30 September 2024, Ofcom opened an investigation into BRISK's compliance with Section 3(1)(b) and 5(1)(a) of the Regulations.²⁴
- 4.12 As part of our investigation, on 14 November 2024, Ofcom issued a statutory information request to BRISK and received further evidence in BRISK's response on 6 December 2024, (the 'RFI response'). Within the RFI response BRISK said -
- 'BRISK did not consult directly with the Local Planning Authority during the Initial Period with respect to any of the items of Apparatus (including those of relevant Apparatus) ...and BRISK did not provide the Local Planning Authority with any of the requisite written notices (either as a 'grouped' submission, or as individual submissions) 28 days in advance of the installation of its relevant Apparatus pursuant to Regulation 5(1) of the Regulations during the Initial Period.'*²⁵
- 4.13 Within the RFI response, BRISK said "the total number of poles installed over the Initial Period is 542" and not 877 as communicated to Birmingham City's Local Planning Authority by BRISK previously.²⁶ BRISK explained that the reason for the differing numbers of poles noted on the spreadsheet provided to Ofcom by Birmingham City's Local Planning Authority

²¹ Letter sent from [redacted] (Ofcom) to [redacted] (BRISK), dated 24 June 2024.

²² Email sent from [redacted] (BRISK) to [redacted] (Ofcom), dated 5 July 2024.

²³ Email sent from [redacted] to BRISK and Birmingham City's local planning authority, dated 21 March 2024.

²⁴ [Investigation into BRISK Limited's compliance with the Electronic Communications Code - Ofcom](#)

²⁵ Letter from [redacted] (BRISK) to [redacted] (Ofcom), dated 6 December 2024.

²⁶ Letter and attachments sent from [redacted] (BRISK) to [redacted] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response'), page 5.

was due to some of the poles being outside of Birmingham City's Local Planning Authority's area and in some cases, poles had not yet actually been installed by BRSK at that time.²⁷

BRSK internal review

- 4.14 On 19 December 2024, BRSK wrote to Ofcom to inform us that as a result of this investigation BRSK had decided to carry out a comprehensive review of its operational practices.

BRSK meeting

- 4.15 Ofcom met with BRSK on 10 January 2025 to discuss the information it had provided and the comprehensive review it had undertaken. During this meeting BRSK confirmed the number of poles it said it had installed within its RFI response, was incorrect. It clarified that it had failed to provide notice of its intention to install 672 poles and 21 street cabinets in the Birmingham City area.²⁸
- 4.16 During the meeting BRSK also shared the steps it proposed to take to remedy the contraventions it had identified. These steps included -
- (a) *"providing [Birmingham City's Local Planning Authority] with retrospective consultation and notices in respect of all pole and cabinet apparatus installed.*
 - (b) *BRSK will make an upfront commitment to [Birmingham City's Local Planning Authority] that they will meet any objections raised by the Local Planning Authority function.*
 - (c) *Regarding issues raised by local residents and business owners relating to BRSK's pole and cabinet apparatus BRSK undertakes to work closely with them to address any concerns."*²⁹

²⁷ Letter and attachments sent from [redacted] (BRSK) to [redacted] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response'), page 5.

²⁸ (Confidential) PowerPoint presentation sent to [redacted] (Ofcom) from [redacted] (BRSK) on 14 January 2025.

²⁹ (Confidential) PowerPoint presentation sent to [redacted] (Ofcom) from [redacted] (BRSK), on 14 January 2025.

5. Final Decision on contravention

- 5.1 For the reasons set out below, our decision is that there are reasonable grounds for believing that BRSK has contravened the requirements to:
- (a) consult with Birmingham City’s Local Planning Authority prior to installing electronic communications apparatus in the Birmingham City area,³⁰ and
 - (b) give Birmingham City’s Local Planning Authority 28 days’ written notice prior to installing certain electronic communications equipment in the Birmingham city area during the Relevant Period.³¹
- 5.2 In this section we set out the evidence and reasoning that underpins our Final breach findings.

Contravention of Regulation 3(1)(b)

- 5.3 As a code operator, BRSK is required to act in accordance with Regulation 3(1)(b), under which it must ‘consult’ with the Local Planning Authority ‘*in relation to the installation of electronic communications apparatus...*’³²
- 5.4 ‘Consult’ is not defined in the Act, but taking its ordinary dictionary meaning, it requires operators:
- (a) *to engage with relevant parties, such as local authorities or landowners, before carrying out certain activities, and*
 - (b) *to discuss the activities proposed to ensure the interests of parties are considered and addressed appropriately.*³³
- 5.5 On 15 November 2023, BRSK extended a meeting invitation³⁴ inviting Birmingham City’s Local Planning Authority to a meeting titled ‘BRSK & [X]’ to discuss concerns raised by [X]. The main body of the invitation simply states ‘*call invite to discuss BRSK and residents queries.*’³⁵ BRSK contends that “*it did have initial engagement (rather than consultation) with Birmingham City’s Local Planning Authority that is evidenced by a single email attempting to establish contact regarding roll out on 15 November 2023, (however the proposed meeting was rejected).*”³⁶

³⁰ Section 3(1)(b), the [Regulations](#).

³¹ Section 5(1), the [Regulations](#).

³² Section 3(1)(b), the [Regulations](#).

³³ [Cambridge Dictionary Definition](#).

³⁴ Birmingham City’s local planning authority’s email address on 15 November 2023.

³⁵ Copy of meeting invite contained in BRSK’s response to Ofcom’s Statutory Information Notice, dated 6 December 2024, Annex 1.

³⁶ Letter and attachments sent from [X] (BRSK) to [X] (Ofcom) by managed file transfer, dated 6 December 2024 (‘RFI response’), page 3.

- 5.6 BRSK indicated that it was not able to agree a process with Birmingham City's Local Planning Authority, and so it did not consult with the planning authority on its plans for the Birmingham City area, prior to installing its network. Ofcom considers the email invitation sent to Birmingham City's Local Planning Authority, was not a clear attempt to engage the local authority on its network rollout plans for the area, nor was it an attempt to consult.
- 5.7 BRSK has acknowledged that it *"did not prepare specific materials for direct consultation (consistent with Regulation 3(1)(b)) with the Local Planning Authority"* in advance of installing electronic communications apparatus in the area.³⁷
- 5.8 Since Ofcom opened its investigation on 30 September 2024, BRSK has acknowledged that *"there was a failure with BRSK's internal processes to ensure the necessary consultation took place with the Local Planning Authority prior to the installation of its Apparatus..."*
- 5.9 BRSK also now accepts that *"in advance of its deployment it should have taken further steps to escalate the matter with senior officers in Birmingham City Council's planning function, and if that did not serve to establish a formal process to allow meaningful engagement and consultation then the matter should have been further escalated to the Council's Executive."*³⁸
- 5.10 In light of the facts and evidence set out above, we have found that BRSK failed to consult with Birmingham City's Local Planning Authority in relation to the installation of all the electronic communications apparatus installed in the Birmingham City area during the Relevant Period. We therefore have determined that BRSK has contravened Regulation 3(1)(b).
- 5.11 We set out our consideration of whether to impose a penalty, and the proposed financial penalty amount in section 6 below.

Contravention of Regulation 5(1)

- 5.12 In accordance with Regulation 5(1), BRSK was under an obligation to -
(1)(a) 'give 28 days' notice, in writing to the planning authority for the area in questions where -
the code operator has not previously installed electronic communications apparatus in the area and (subject to paragraph 1A) is intending to install such apparatus in the area."
- 5.13 BRSK began installing electronic communications apparatus in the Birmingham City area around June 2023.³⁹ Prior to this, BRSK had not installed any electronic communications equipment in the area.
- 5.14 In its 'Initial Response' to Ofcom, BRSK provided a copy of an email sent on 21 March 2024, which stated *"going forward no poles will be installed without BRSK supplying Birmingham Planning with 28 days prior notice"*. This gave Ofcom reasonable grounds to suspect poles had been installed prior to this date without the required written notice.⁴⁰

³⁷ Letter and attachments sent from [redacted] (BRSK) to [redacted] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response'), page 3.

³⁸ Letter and attachments sent from [redacted] (BRSK) to [redacted] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response'), page 3.

³⁹ Date estimated from first street works permit raised provided by email from [redacted] (BRSK) to [redacted] (Ofcom), on 5 July 2024. Permit reference [redacted].

⁴⁰ Email sent from [redacted] to BRSK and Birmingham City's local planning authority, dated 21 March 2024.

- 5.15 In its response to the RFI, BRSK acknowledged that it *“did not provide the Local Planning Authority with any of the requisite written notices...28 days in advance of the installation of its relevant apparatus pursuant to Regulation 5(1) during the initial period.”*⁴¹
- 5.16 In light of the facts and evidence set out above, Ofcom considers that it was incumbent on BRSK to comply with Regulation 5(1)(a) in circumstances where it was intending to install electronic communications apparatus in the Birmingham City area where it had not previously installed such apparatus.⁴² Accordingly, we have found that BRSK contravened Regulation 5(1) as a result of its failure to provide Birmingham City’s Local Planning Authority with any written notices in relation to 21 cabinets and 672 poles deployed in the Birmingham City Area during the Relevant Period.⁴³

Summary and number of contraventions

- 5.17 Meaningfully engaging with local planning authorities through consultation and by providing 28 days’ notice, are some of the most important elements of the regulatory framework.
- 5.18 Ofcom considers that BRSK’s failure to consult with and provide 28 days’ written notice to Birmingham City’s Local Planning Authority, undermines the safeguards put in place by the Regulations, which are intended to allow for meaningful engagement that allow local authorities to draw considerations to the Code Operators’ attention and set certain conditions governing the installation of certain electronic communications apparatus.
- 5.19 Taking all of the above into account, we have determined that BRSK contravened the following requirements:
- (a) Regulation 3(1)(b): BRSK failed to consult Birmingham City’s Local Planning Authority in relation to the installation of electronic communications apparatus installed within the Relevant Period.
 - (b) Regulation 5(1)(a): BRSK failed to give 28 days’ notice, in writing, to Birmingham City’s Local Planning Authority, where it had not previously installed electronic communications in the area, within the Relevant Period.

⁴¹ Letter and attachments sent from [REDACTED] (BRSK) to [REDACTED] (Ofcom) by managed file transfer, dated 6 December 2024 (‘RFI response’), page 9. Initial Period defined as, from 1 November 2023 to 3 April 2024.

⁴² The exemptions under Regulation 5(1A) and 5(4) do not apply here. See footnote 9 and paragraph 3.11 above.

⁴³ Slide 7 on the PowerPoint provided by [REDACTED] (BRSK) to [REDACTED] (Ofcom), sent by email on 14 January 2025 (confidential).

6. Final Decision on the appropriate level of penalty and remedial action

Summary

- 6.1 Ofcom's decision is that BRSK's contravention of Regulations 3(1)(b) and 5(1) is a serious breach, and therefore it is appropriate to impose penalty of £10,000 per contravention, totalling £20,000, on BRSK. We consider the maximum penalty for both contraventions to be proportionate having considered the seriousness of the breach. We applied a discount of 30% per contravention following BRSK's settlement of the case, so the final penalty amount was £7,000 per contravention, totalling £14,000.
- 6.2 Ofcom considers this to be an appropriate and proportionate penalty in this case. In reaching this view, we have considered all the factors set out in our Penalty Guidelines, which we discuss in more detail below, as well as the maximum penalty which can be imposed under section 110A of the Act, which in this case is up to £10,000 per contravention.⁴⁴ ⁴⁵
- 6.3 The approach taken to determine the penalty in this Final Decision has been decided based on the specific facts presented in this case, and what is proportionate given the two regulations Ofcom has considered BRSK to be in breach of.

Consideration on whether to impose a penalty

- 6.4 As a Code Operator, BRSK is afforded considerably simplified planning procedures, when deploying its network. It is, however, still subject to conditions and restrictions as set out in the Regulations. These obligations are paramount in ensuring there is limited impact from any deployment on the environment and local communities.
- 6.5 The provision of full fibre networks is critical to the nationwide deployment of high-speed broadband connectivity and contributing to the UK Government's wider growth objectives to be met. However, BRSK's failure to consult with Birmingham City's Local Planning Authority, in accordance with Regulation 3(1)(b) and to provide the authority with 28 days' written notice in accordance with Regulation 5(1)(a), prevented the opportunity for meaningful engagement with the Local Planning Authority to understand local considerations prior to installing the relevant electronic communications apparatus in the Birmingham City area.
- 6.6 Ofcom considers that this represents a serious failure as it resulted in hundreds of pieces of electronic communications apparatus being installed without the knowledge of the local authority and, therefore, without a proper understanding of how BRSK's deployment might potentially impact local considerations.

⁴⁴ Ofcom, [Penalty Guidelines](#), 14 September 2017.

⁴⁵ Section 110A(5)-(6) of the Act.

- 6.7 For these reasons, our decision is that a penalty is appropriate in this case. Although we recognise that BRSK has reviewed its approach to ensuring compliance with Regulations 3(1)(b) and 5(1)(a) going forwards, we consider that the penalty should be set at a sufficient level to recognise the seriousness of the breach and ensure a clear message and to effectively deter the wider industry from contravening regulatory requirements that are critical to understanding local considerations and appropriately taking these into account when installing electronic communications apparatus. As noted at paragraph 6.20, we are satisfied that BRSK's conduct is not ongoing and therefore Ofcom's decision on the amount of the penalty is based on section 110A(6) under which the maximum amount of penalty Ofcom can impose in respect of each contravention is an amount not exceeding £10,000.

Amount of penalty

- 6.8 Ofcom has published Penalty Guidelines which set out the factors we may take into account when determining the appropriate amount of a financial penalty.⁴⁶

Deterrence

- 6.9 As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. Any penalty that we set should therefore be high enough to discourage bad conduct and incentivise BRSK to engage in good practice and compliance with all its regulatory obligations when installing apparatus going forward. As noted above, it is also important that the penalty imposed serves to deter the wider industry from contravening the regulatory framework.

Seriousness, harm and culpability

- 6.10 Our Penalty Guidelines describe seriousness and harm as specific examples of factors we may consider when determining a penalty.⁴⁷ As noted above, a contravention of the requirement to consult with local planning authorities and provide the required notice is inherently serious, since it is only through engagement that planning authorities can draw relevant local considerations to a code operator's attention, such as possible hazards or visual amenity concerns.
- 6.11 BRSK installed 672 poles and 21 street cabinets in the Birmingham City area, without a proper understanding of how BRSK's deployment might impact local considerations. The large volume of apparatus installed, without consultation or notification, was an important factor when we considered the seriousness of the contraventions here.
- 6.12 Where a code operator has given notice under Regulation 5(1), *"the planning authority may, within 28 days of the receipt of that notice, give the code operator written notice of conditions with which the planning authority wishes him to comply in respect of the installation of apparatus, but is he not obliged to comply with those conditions to the extent that they are unreasonable in all the circumstances."*⁴⁸

⁴⁶ Ofcom, [Penalty Guidelines](#), 14 September 2017.

⁴⁷ Ofcom, [Penalty Guidelines](#), 14 September 2017, see paragraph 1.12.

⁴⁸ Section 5(3), the [Regulations](#).

- 6.13 BRSK has acknowledged that *“there was a failure with BRSK’s internal processes to ensure the necessary consultation took place with the Local Planning Authority prior to the installation of its Apparatus.”* As a code operator BRSK should have ensured it understood all its regulatory obligations prior to rolling out its network.

Culpability and remedy of breach

- 6.14 There is no evidence that the breach occurred deliberately, and we have no reason to believe the contraventions identified in this investigation occurred because BRSK sought to make a financial gain.
- 6.15 In light of this investigation, BRSK has said that it intends to take steps to significantly strengthen its current notification process which it uses to manage its consultation with relevant UK authorities. Specifically, BRSK has told Ofcom it will implement new operational processes, which include:
- (a) *“engagement with the local authorities’ executives....*
 - (b) *consulting with officials within the highways and planning authorities who have operational responsibility for the respective functions...and*
 - (c) *updating its internal training and risk management processes.”*⁴⁹

- 6.16 While we welcome BRSK’s commitment to improve its processes, we consider that such an approach should have taken place and have been considered when BRSK began planning its network installation.

History of contraventions

- 6.17 Our Penalty Guidelines state that we may consider whether the regulated body has a history of contraventions and repeated contraventions may lead to significantly increased penalties.⁵⁰ We note that this is the first occasion where we have found BRSK in breach of the Regulations.

Co-operation and remedial actions

- 6.18 We note that BRSK has co-operated with Ofcom over the course of the investigation into this matter to date and it is proactively taking steps to improve its processes to ensure compliance in the future.
- 6.19 Since Birmingham City’s Local Planning Authority raised this issue with BRSK in April 2024 and requested 28 days’ notice be provided for all planned poles in the area, BRSK have complied with the Regulations and provided 28 days’ written notice.⁵¹

⁴⁹ Letter and attachments sent from [X] (BRSK) to [X] (Ofcom) by managed file transfer, dated 6 December 2024 (‘RFI response’), steps set out across pages 6-9.

⁵⁰ Ofcom, [Penalty Guidelines](#), 14 September 2017, see paragraph 1.12

⁵¹ Evidence provided by letter and attachments sent from [X] (BRSK) to [X] (Ofcom) by managed file transfer, dated 6 December 2024 (‘RFI response’).

- 6.20 Since opening this investigation BRSK has demonstrated that it is taking the necessary steps to improve its processes and remedying its actions in relation to all the electronic communications apparatus that has been installed within Birmingham City's Local Planning Authority's remit. Therefore, Ofcom is satisfied BRSK's conduct is not ongoing.
- 6.21 It is important that code operators take compliance with their regulatory responsibilities seriously and when things go wrong, they recognise this and act quickly and responsibly to remedy any harm caused. Being open and transparent with the regulator is a critical part of effective regulation, and as such we strongly encourage regulated entities to self-report concerns or potential compliance failures. Notwithstanding the failings we have found in this case, we strongly encourage other code operators to take note of BRSK's conduct in this respect.

Final Decision on penalty

- 6.22 As noted above in paragraph 6.7, the maximum penalty Ofcom may determine in this case is such amount not exceeding £10,000 as Ofcom determine to be (a) appropriate, and (b) proportionate to the contravention in respect of which it is imposed.⁵² Where the notification relates to more than one contravention, a separate penalty may be specified in respect of each contravention.⁵³ This penalty relates to two contraventions and Ofcom proposes to issue two penalties, one for each breach.

BRSK's size and turnover

- 6.23 The level of penalty must be sufficient, having regard to the turnover of the regulated body, to have a material impact on the regulated body so that it is incentivised to bring itself into compliance and avoid recurrences of the contraventions in future.⁵⁴
- 6.24 To that regard, we note the turnover of BRSK's relevant business is £[REDACTED].⁵⁵ This figure has been taken into account when considering setting a penalty that is within the statutory limits, but which will deter BRSK from future contraventions.

Summary of factors

- 6.25 In deciding the appropriate penalty, we have considered, amongst other factors -
- (a) BRSK's compliance with our investigation and the steps it has already taken to bring itself into compliance and avoid future recurrences when installing electronic communications apparatus.
 - (b) This is the first occasion where we have found BRSK in breach of the Regulations.
- 6.26 Considering the specific circumstances of this case and all the relevant factors above, we have decided to impose a penalty of £10,000 per contravention, totalling £20,000, on BRSK. We applied a discount of 30% per contravention following BRSK's settlement of the case, so the final penalty amount was £7,000 per contravention, totalling £14,000.

⁵² Section 110A (6) of the [Act](#).

⁵³ Section 110(2) of the [Act](#).

⁵⁴ Ofcom, [Penalty Guidelines](#), 14 September 2017, see paragraph 1.6.

⁵⁵ Letter and attachments sent from [REDACTED] (BRSK) to [REDACTED] (Ofcom) by managed file transfer, dated 6 December 2024 ('RFI response'), page 11.

- 6.27 Ofcom's decision is that the penalty imposed per contravention is appropriate and proportionate. Our objective in setting the two penalties at this level is to impose an appropriate and proportionate sanction that reflects:
- (a) BRSK's contravention of important Regulations which are intended to provide safeguards to local communities and the environment.
 - (b) The need to deter BRSK and other Code Operators from contravening the Regulations, in particular Regulation 3(1)(b) and 5(1) in the future.
- 6.28 Having regard to BRSK's turnover, the penalty needs to be sufficiently high for each contravention, within the statutory limit, to achieve the objective of acting as a deterrent. The statutory maximum penalty Ofcom can impose for each contravention of the Regulations is £10,000. We note that BRSK's turnover is £[X] and therefore we consider it proportionate to impose the statutory maximum fine of £10,000 for each of the two contraventions in this case. Ofcom considers a total of £20,000 for the two contraventions appropriately reflects each of the factors described above and is within the statutory limit. As a result of BRSK admitting full liability and agreeing to settle this matter, a 30% discount has been applied to the penalty figure of £10,000 per contravention, meaning a penalty of £7,000 per contravention, totalling £14,000, has been imposed on BRSK.

Remedial action

- 6.29 Due to BRSK's assurance that it will complete the remedial steps noted at paragraph 4.14 above, we are not specifying any further steps to remedy the consequences of the contraventions, in accordance with Section 110(2)(d) of the Act.

Interpretation

- 6.30 Words or expressions used in this Final Decision on the breach and penalty have the same meaning as in the Act except as otherwise stated in this Final Decision on the breach and penalty.

Signed:

[X]

Ian Strawhorne
Director of Enforcement

4 July 2025