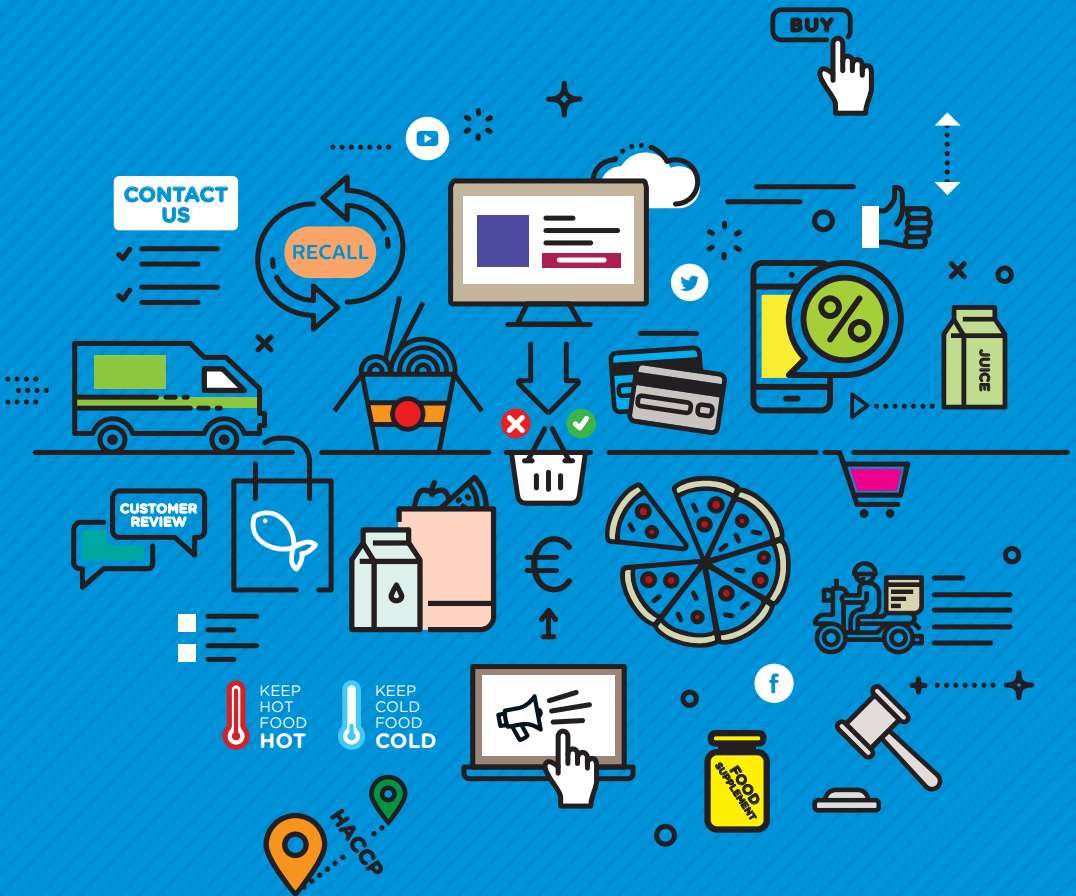


Selling or Advertising Food Online



Selling or Advertising Food Online

If you sell or advertise food¹ online, you are responsible for the food information you provide to the consumer.

This leaflet lists the mandatory information you must provide to the consumer when selling food online. It covers the types of claims you can – and can't – make about food. It also highlights other legal requirements such as: registering your food business; notifying food supplements; food safety management; traceability and product recall. Although this leaflet focuses on the rules for selling food online, the rules also apply to food sold or advertised by any other means of distance communication.

¹ Food includes alcoholic and non-alcoholic beverages



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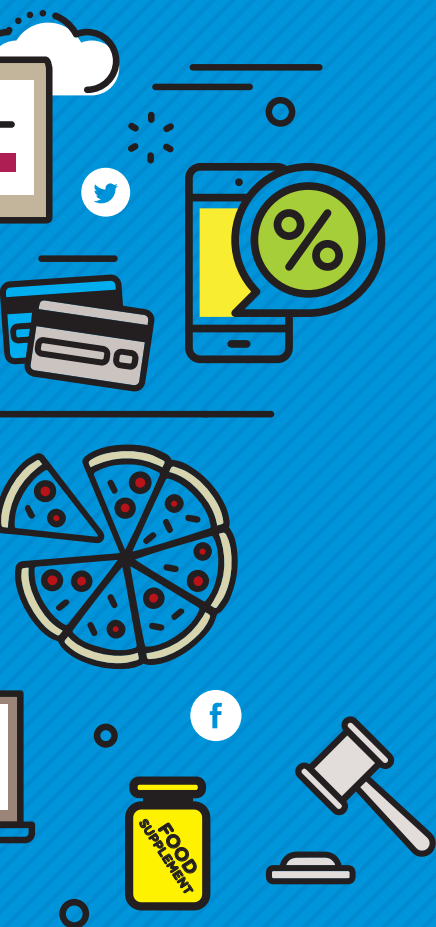
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Selling food by means of distance communication

If you sell food by means of ‘distance communication’², it means that you and your customer are not in the same place at the same time the food is purchased – as would be the case when selling from a shop or market stall.

Common methods of selling food by means of distance communication include:

- Websites
- Social media pages
- Online market places³
- Mail order
- Telephone
- Text message
- Catalogues
- Newspapers
- Magazines
- Leaflets

Food law

If you sell food online, you must comply with the relevant food law.

The main purpose of food law is to ensure that food available for consumers to buy is safe. It also requires food businesses to provide consumers with the necessary information about food, so that they can make an informed choice at the time of purchase. Food law prohibits the use of misleading information.

The main pieces of food law relevant to selling or advertising food online are:

- Regulation (EC) No 178/2002 laying down the general principles and requirements of food law
- Regulation (EC) No 852/2004 on the hygiene of foodstuffs
- Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin
- Regulation (EU) No 1169/2011 on the provision of food information to consumers
- Regulation (EC) No 1924/2006 on nutrition and health claims made on food

² Regulation (EU) No 1169/2011 on the provision of food information to consumers (Article 2(u)); ‘means of distance communication’ means any means which, without the simultaneous physical presence of the supplier and consumer, may be used for the conclusion of a contract between those parties. See www.fsai.ie/uploadedFiles/Consol_Reg1169_2011.pdf

³ An ‘online marketplace’ is a type of e-commerce site where products and/or services are provided by multiple third parties, while the transaction itself is fully processed on the marketplace platform. One example is ebay.

Registering your food business

If you sell food online, you must register your food business with a competent authority before you start. Registration is required even if you operate from home or only sell online.

Registration is a simple process to notify the relevant competent authority that you want to start a food business. If you intend to handle or process foods of animal origin, you may need to apply for approval.

If your business is based in Ireland, the competent authority you need to contact for registration or approval depends on the type of food you sell and the activities you carry out.

Competent authorities include:

- Health Service Executive
- Department of Agriculture, Food and the Marine
- Local authority
- Sea-Fisheries Protection Authority

TOP TIP

If you sell food online, you must register your food business with a competent authority.

For more information on registering your food business or applying for approval, see the Food Safety Authority of Ireland's (FSAI) information on starting a food business: www.fsai.ie/food_businesses/starting_business.html

Existing Food Businesses

If you have already registered or received approval for your food business, but want to start selling online, you should inform your competent authority about this change in your activities. Your inspector can check your business's website or social media page before, during or after inspections.



Provision of food information to consumers

When selling food online, Regulation (EU) No 1169/2011 requires that you provide consumers with certain information about the food before the purchase is concluded. This information should allow consumers to make an informed choice about the food before they complete the purchase online.

Prepacked Food – Mandatory Information

For prepacked food, you must provide the following mandatory information before the purchase is concluded:

1. Name of the food
2. List of ingredients
3. Emphasise any ingredients that cause allergies or intolerances⁴
4. The quantity of certain ingredients or categories of ingredients
5. The net quantity of the food
6. Any special storage conditions and/or conditions of use
7. Your name or business name and address – this is also required under Consumer Protection Law
8. The country of origin or place of provenance, where its absence may mislead the consumer as to the true origin or provenance of the food, or where country of origin is specifically required under legislation
9. Instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions
10. The actual alcoholic strength by volume for alcoholic beverages that contain more than 1.2% by volume of alcohol
11. A nutrition declaration⁵

⁴ Annex II to Regulation (EU) No 1169/2011 lists 14 substances or products that can cause allergies or intolerances, which must be emphasised in the ingredients list.

See: www.fsai.ie/uploadedFiles/Consol_Reg1169_2011.pdf

⁵ Some foods are exempt from the mandatory nutrition declaration – see Annex V to Regulation (EU) No 1169/2011. However, if a nutrition or health claim is made about these foods, a nutrition declaration must be provided

The ‘best-before’ or ‘use-by’ date does not need to be provided before the customer purchases the food. However, all mandatory food information, including the ‘best-before’ or ‘use-by’ date⁶, must be provided on the label of the food delivered to the customer.

For more information, see the FSAI’s leaflet on food information on prepacked food: www.fsai.ie/publications_labelling_FIC/

Non-prepacked Food – Mandatory Information

Typically, non-prepacked food sold online is packed for direct sale or supply to consumers.

Examples include:

- Supermarket deli counters and bakeries
- Pizza shops
- Fish and chip shops
- Chinese or Indian restaurants
- Businesses that make food such as bread, cakes, chocolates, juices, and ethnic food at home⁷ and sell directly to the consumer online

- Butchers that supply ‘meat boxes’
- Traders or growers that supply ‘fruit and vegetable boxes’
- Menu planning/recipe box services

The rules are slightly different if the food you sell online is not prepacked⁸. In this case, the only information that must be provided before the purchase is concluded, is information on ingredients that cause allergies or intolerances. This information must also be provided on delivery. It must be provided in writing at one of the two stages: before the purchase is concluded or on delivery.

Note: if the name of the food clearly refers to the allergen concerned, there is no obligation to separately provide information on that allergen.

See the FSAI’s guidance on providing allergen information for non-prepacked foods: www.fsai.ie/publications/allergen_non_prepacked/

⁶ Some foods are exempt from indicating the ‘best-before’ or ‘use-by’ date – see Annex X to Regulation (EU) No 1169/2011

⁷ Remember food businesses operating from home must be registered – see the FSAI’s information on starting a food business: www.fsai.ie/food_businesses/starting_business.html

⁸ Health (Provision of food allergen information to consumers in respect of non-prepacked food) Regulations, 2014 (S.I. No. 489 of 2014): www.fsai.ie/uploadedFiles/SI489_2014.pdf

Product-specific legislation

Mandatory information required under product-specific legislation must also be provided before the purchase is concluded. The rules may apply to both prepacked and non-prepacked food.

Additional product-specific rules apply to some foods such as: beef, bottled water, chocolate, eggs, fish, food supplements, infant formula, fruit and vegetables, fruit juices, honey, jams, novel foods, olive oil, organic food, poultry meat, spirit drinks and wine. This is not a complete list. For more information, see the legislation section of the FSAI's website: www.fsai.ie/legislation.html

Displaying mandatory food information

Mandatory food information must be available before the purchase is concluded. It should appear on the website or social media page from which you are selling the food. If this isn't possible, you can provide the mandatory information using another appropriate means, so long as:

- You provide your customer with clear direction where to find the information, and
- Your customer doesn't incur any additional charge to obtain the information

The mandatory information must be available in English. It must be accurate, clear and easy to understand for the consumer. It must not be misleading.

TOP TIP

When selling food online, Regulation (EU) No 1169/2011 requires that you provide consumers with certain information about the food before the purchase is concluded.



Making claims about food

A claim is a voluntary piece of information you provide about a food. Examples include:

- Low-salt
- Calcium is needed for the maintenance of normal bones
- Gluten-free⁹
- Artisan
- Natural
- Organic

The food information you provide must be accurate, clear and easy to understand. It must not be misleading. You must be able to substantiate any claims you make. This includes any claims made in customer testimonials or blogs you host on your website or social media page.

Nutrition and Health Claims

Any nutrition or health claims you make about food must comply with Regulation (EC) No 1924/2006 on nutrition and health claims made on food. The Regulation lists the nutrition claims that may be made, and explains the conditions under which they can be used.

If you wish to make a health claim about the food you sell, you should check that the claim is authorised, and that the food meets the conditions of use to make this claim. A list of authorised (and non-authorised) health claims is available from the European Commission's website: http://ec.europa.eu/food/safety/labelling_nutrition/claims/register

For more information on using nutrition and health claims, see the FSAI's booklet on nutrition and health claims: www.fsai.ie/publications_nutrition_healthclaims/

⁹ Rules on declaring the absence or reduced presence of gluten in food are set in Regulation (EU) No 828/2014. See: www.fsai.ie/uploadedFiles/Reg828_2014.pdf

Medicinal Claims

You can't claim that food can prevent, treat or cure a human disease. If such a claim is made, the food may be classified as a medicine and therefore, regulated under medicines law. The Health Products Regulatory Authority¹⁰ enforces medicines law in Ireland.

Marketing Terms

The FSAI's Guidance Note No.29 provides direction on the use of the marketing terms:

- Artisan
- Farmhouse
- Traditional
- Natural

See: www.fsai.ie/publications_food_marketing_terms/

TOP TIP



You can't claim that food can prevent, treat or cure a human disease.

Organic

Food may only be labelled or marketed as 'Organic'; 'Bio' or 'Eco' if it is produced on a farm that has been certified as organic following inspection by an official certification body. Information on registering as an organic operator is available from the Department of Agriculture, Food and the Marine: www.agriculture.gov.ie/farmingsectors/organicfarming/organicproducerprocessorinformation

TOP TIP



Food may only be labelled or marketed as 'Organic'; 'Bio' or 'Eco' if it is produced on a farm that has been certified as organic following inspection by an official certification body.

¹⁰ Health Products Regulatory Authority, Kevin O'Malley House, Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland D02 XP77



TOP TIP

Food safety management

If you sell food online, you must follow the rules in Regulation (EC) No 852/2004 which sets out minimum hygiene requirements referred to as prerequisite programmes (PRPs). This includes operating a food safety management system that is based on the principles of HACCP.

HACCP stands for Hazard Analysis and Critical Control Point. More information about HACCP and PRPs is available on the FSAI's website: www.fsai.ie/food_businesses/haccp/haccp.html

Temperature Control for Perishable Foods during Storage, Transport and Delivery

Extra care must be taken if you sell perishable foods. If perishable foods are not held at a safe temperature during storage, transport and delivery, harmful bacteria may increase in numbers or produce toxins, making the food unsafe to eat.

If perishable foods are not held at a safe temperature during storage, transport and delivery, harmful bacteria may increase in numbers or produce toxins, making the food unsafe to eat.

You must make sure that the delivery system you use for perishable foods will keep the food at a safe temperature during transport and delivery to the consumer.

Recommended temperatures are:

- Food that requires refrigeration should be kept at 5°C or colder
- Hot food should be kept at 63°C or hotter
- Frozen food should be kept at -18°C or colder

The packing used to transport the food should be suitable to use with food. It should prevent contamination and be capable of keeping the food at the correct temperature.

Notifying food supplements to the FSAI

Food supplements sold in Ireland must be notified to the FSAI¹¹. Ask your supplier if the food supplements you buy from them have been notified. If they have, you do not need to complete a separate notification, but you should request a copy of the notification number(s) to keep as part of your records. The notification numbers may be requested by your environmental health officer.

If the food supplement(s) you sell have not been notified, you will need to complete the notification yourself. The online notification form and guidance note on making a food supplement notification are available on the FSAI's website: https://www.fsai.ie/legislation/food_legislation/food_supplement.html

Traceability

All food businesses must have a one step forward, one step back traceability system in place. You must be able to identify all the food businesses that supply you with food, and what food they supplied to you. If you supply other food businesses, you must be able to trace the food you supplied to them¹².

As traceability information must be documented, your traceability records should include:

- Name and address of supplier
- Name and address of the business to which you have supplied food
- Date of transaction
- Product name
- Quantity of product
- Identifier, such as 'best-before' date, lot number etc.
- Approval number, where relevant



¹¹ Regulation 6 of European Communities (Food Supplements) Regulations, 2007 (S.I. No. 506 of 2007) as amended: [www.fsai.ie/uploadedFiles/SI_506_2007\(1\).pdf](http://www.fsai.ie/uploadedFiles/SI_506_2007(1).pdf)

¹² Food businesses are not required to retain the contact details of final consumers to which they have supplied food. However, the contact details a customer provides when they purchase food online should be used to inform them if that food is later recalled.

Product recall

If you have reason to believe that food you sell or have sold is unsafe, you must start the process of removing it from the market and inform your competent authority. You can inform the FSAI by completing an online food incident notification form.¹³

Informing Consumers

If you have supplied consumers with the unsafe food, you must inform them and if necessary, recall it from them¹⁴.

Retailers often place a point-of-sale notice in their shop to inform consumers that the product is being recalled. However, if the consumer has purchased the food from you online, they may not see an in-store notice. Therefore, you should display a point-of-sale notice in a prominent position on the website or social media page from which the product was sold.

It is recommended that you contact consumers who purchased the food online to inform them that it is being recalled. This should be possible as they will have submitted their contact details when making the purchase.

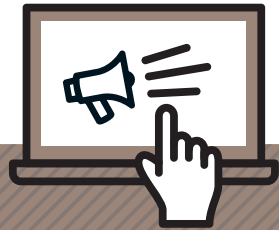
TOP TIP

If you have supplied consumers with the unsafe food, you must inform them and if necessary, recall it from them.



¹³ https://www.fsai.ie/template_form.aspx?ekfrm=7702

¹⁴ Advice on product recall and traceability, including template point-of-sale notices, are provided in the FSAI's Guidance Note No. 10: www.fsai.ie/publications_guidancenote10_recall/

TOP TIP

The rules on making medicinal, nutrition and health claims, also apply when advertising food. The information you provide about the food must not be misleading.

Advertising food online

If your website or social media page is only being used to advertise food – and doesn't provide the facility to purchase the food – you do not need to provide the mandatory food information explained earlier. Advertising is about promoting the fact that your business sells a food, not closing the contract for a sale.

However, the rules on making medicinal, nutrition and health claims, described above, also apply when advertising food. The information you provide about the food must not be misleading.

Advertising and marketing in Ireland is monitored by the Advertising Standards Authority for Ireland (ASAI). The ASAI is an independent, self-regulatory body which aims to ensure that commercial marketing communications are 'legal, decent, honest and truthful' and abide by rules set out in the Code of Standards for Advertising and Marketing Communications in Ireland. The ASAI uses the FSAI's Guidance Note No.29 on marketing terms when assessing compliance with Section 8 of its Code of Standards, which deals with the advertising of food and non-alcoholic beverages.

For more information, contact:

**Advertising Standards
Authority of Ireland**

Ferry House, 48 Lower Mount St,
Dublin 2

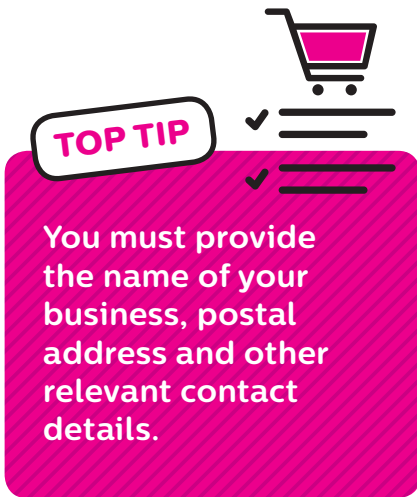
Tel: 01 6137040

Email: standards@asai.ie

www.asai.ie

Consumer protection law

You must also comply with consumer protection legislation when selling food online. In Ireland, the European Union (Consumer Information, Cancellation and Other Rights) Regulations, 2013 (S.I. No. 484 of 2013) – **the CRD Regulations** – gives effect to Directive 2011/83/EU on Consumer Rights.



Mandatory Information

The CRD Regulations provide protections for consumers when they shop online. The Regulations require that before you conclude a distance contract¹⁵ with a consumer, you must provide the following key information:

- The name of your business, including any trading names
- Your postal address and other relevant contact details
- A truthful and accurate description of what you are selling
- The total price, including any taxes
- Delivery or other unavoidable costs (consumers will not have to pay extra charges if the trader does not inform them of these costs in advance)
- The process for calculating total costs if this is not known in advance
- Arrangements for payment and delivery, including time of delivery
- The cost of ordering, e.g. the cost of a premium rate phone call if orders are made this way

Continued overleaf

¹⁵ **Distance contract** means a contract concluded between a trader and a consumer under an organised distance sales or services-provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

- Details of any deposit to be paid by the consumer and conditions relating to it
- Where duration of the contract is indeterminate or to be extended automatically, the conditions for terminating the contract
- The minimum duration of the consumer's obligations under the contract
- Details of how to cancel an order. In certain cases, the right to cancel does not apply. If so, the consumer must be informed (see 'The Right of Cancellation')
- Information that the consumer must bear the cost of returning the goods if they cancel the contract, unless the goods are faulty

The Right of Cancellation

Consumers have the right to cancel an online order within 14 days of receiving the goods. If they purchase a service, the withdrawal period ends 14 days from when the contract was concluded.

You are responsible for informing the consumer of their right to cancel and the conditions, time limit and procedures for exercising the right to cancel. The consumer does not have to give a reason for cancelling the contract. You must provide consumers with access to the model cancellation form which can be found in Schedule 3 to the CRD Regulations. You don't have to send a hard copy with each delivery, but you must make the form available to consumers online.

If you do not inform the consumer of their right to cancel, the cancellation period will be extended to 12 months from the date on which it would have expired. However, once you provide the consumer with information on the right to cancel, they then have 14 days from the date the consumer receives the information, to exercise their right to cancel.



Consumers must be informed in advance if they do not have a right to cancel.

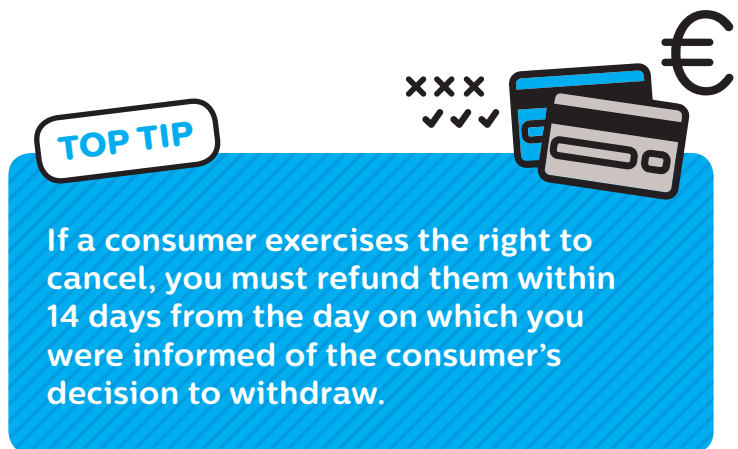
A consumer's right to cancel does not apply in certain circumstances¹⁶, some of the exclusions are:

- The goods are perishable or will deteriorate quickly, for example refrigerated items
- Goods not suitable for return for health/hygiene reasons and unsealed after delivery
- The contract relates to catering and provides for a specific date or period of performance

Consumers must be informed in advance if they do not have a right to cancel.

Refunds

If a consumer exercises the right to cancel, you must refund them within 14 days from the day on which you were informed of the consumer's decision to withdraw. The only circumstances in which you can postpone refunding the consumer, is to wait to receive returned goods or proof of their return. Once you receive either of those, the consumer must be refunded.



¹⁶ A full list of exclusions from the right to cancel distance contracts, is laid out in Regulation 13 of the CRD Regulations.

Other Provisions

Other provisions you need to be aware of include:

- You are prohibited from having boxes pre-ticked during the purchasing process, as this may cause some consumers to inadvertently pay for extras that they do not require
- You must make it clear when a consumer incurs a charge. If placing an order online or over the phone involves pushing a button, or some similar automated function, you must make it very clear to the consumer that placing that order means they will have to pay, e.g. the button should be labelled 'Pay Now'. If you do not make it clear, the consumer is not bound by the contract or order

Enforcement

The CRD Regulations are enforced by the Competition and Consumer Protection Commission. A copy of the CCPC's guidelines, '*The Consumer Rights Directive – A guide for trader's dealing with consumers*' is available at: www.ccpc.ie

For more information contact:

Competition and Consumer Protection Commission

Parnell House,
14 Parnell Square,
Dublin 1

Tel: 1890 432 432

01 402 5555

Web: www.ccpc.ie



Email: info@fsai.ie
Website: www.fsai.ie



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