



**FCM Travel Solution's role as *data controller* for purposes of
the General Data Protection Regulation**

2021

Review of the role of FCM as data controller

In the leadup to the General Data Protection Regulation (GDPR) coming into effect on the 25th of May 2018, Flight Centre Travel Group (FCTG) adopted the position that we were a data processor for the processing operations undertaken by our corporate travel business, FCM Travel Solutions (FCM). This decision was based on the information and advice available to FCTG at the time, and we were confident with this initial conclusion.

Nevertheless, despite this confidence we also recognise that data protection across Europe and under the GDPR is not a static concept. It is constantly evolving and maturing in line with interpretations from the European Data Protection Board, national supervisory authorities and courts. As such, FCTG's internal regulatory and data protection functions are constantly reviewing our data protection programme to ensure all previous positions are aligned with current best practices.

As part of this ongoing review process, recent updates to guidance by supervisory authorities and court judgements have given us cause to critically evaluate our position as processor now that the GDPR has been operationalised for over a year. This coincides with a noticed shift in the position of both existing and prospective clients whereby they are requesting or requiring FCTG act as the controller for the provision of corporate travel services.

Our review was led by our internal data protection and legal teams, assisted by external legal counsel with specialisation in the flight industry. The outcome of this review is that FCM is processing personal data as a controller when providing travel services to our corporate clients. As a reaction to this conclusion, we have made the

necessary changes to our processes, privacy notices and documentation to ensure we are correctly positioned as a data controller when servicing corporate clients. We are also making necessary adjustments to existing contracts with clients to reflect the operational reality of our role as a data controller.

Defining controllers and processors under GDPR

The roles of controller and processor are defined within Article 4 GDPR. A controller is an individual or entity which alone or jointly with others *determines the purposes and means of the processing of personal data*. A processor is an individual or legal entity which processes personal data on behalf of the controller. It is important to note that an organisation will be a controller or a processor in respect of each of its processing functions as a matter of objective fact, irrespective of how it might have labelled itself. Simply contracting as a processor does not make an organisation a processor.

To place the concept of *determining the purpose and means of processing* in context, essentially controllers are the main decision makers in the processing of personal data, whereby a processor does not have any purpose of their own for processing that data. Rather, processors act on behalf of, and only on the instructions of, the controller. It is the controller who makes overarching decisions, such as what types of personal data to collect and the purpose(s) for which the personal data will be used. While a processor may still make technical decisions about how to process the data, they will not take these key decisions.

FCM acting as the controller by determining the purpose and means of processing

To assist organisations in determining whether they are acting as a controller or processor for their processing of personal data, the UK's Information Commissioner's Office (ICO) has issued detailed guidance on this topic. This includes a non-exhaustive list of factors that can be utilised to evaluate whether an organisation is a controller or processor. Applying these factors as part of an objective assessment of the data processing operations undertaken by FCM, it is clear we are operating as a controller for the provision of corporate travel services. A selection of these factors is set out below along with the justifying rationale based on the business processes designed and implemented by FCM.

- *FCM decides both to collect and process the personal data, as well as the purpose or outcome of the processing itself.*

The service offerings provided by FCM are ultimately determined solely by FCM, and in this regard we are deciding the purposes of the personal data we choose to process. Mandatory data elements required to be provided before we can offer contracted corporate travel services to clients and their employees are also set by FCM. Finally, the development of our technical offerings such as online booking tools, including their functionality and data processing requirements, is also determined solely by FCM

- *FCM decides what personal data should be collected.*

To provide corporate travel services, FCM sets the mandatory minimum data elements to be provided for all travellers that are prerequisites for setting up each traveller's

profile, being first-name, last-name and unique email address. While additional personal data elements are optional for the traveller to provide (e.g. emergency contacts, meal preferences, frequent flyer programmes, special assistance requirements, etc.) the data elements themselves are options set by FCM.

- *FCM make decisions about the individuals concerned as part of or as a result of the processing.*

The provision of global travel services utilising a massive network of third party suppliers with a vast range of options, while operating within the constraints of the client's travel policy, is a complex and specialised endeavour. It involves FCM staff constantly making independent decisions over the processing of each traveller's personal data to ensure their contracted services are provided.

- *FCM exercise professional judgement in the processing of the personal data.*

While a client may choose to implement their travel policy (i.e., the booking rules governing the nature of the travel services that each of their employees may utilise), both the client and their travellers are relying upon the expertise of FCM staff to ensure the smooth operation of this policy. Indeed, the true value-add provided by FCM's corporate travel offerings is the professional judgement and expertise of our staff, enabling clients to realise saving and their staff to enjoy frictionless travel.

- *FCM has a direct relationship with the travellers (data subjects).*

Our account managers and booking teams for corporate clients directly manage both the relationship with the clients' representatives, but they also deal directly with the travellers (being the data subjects). This is to book travel services for those travellers who

choose to make off-line bookings (i.e., bookings made outside of online booking tools), to providing travel advice and to troubleshoot any issues that may arise at any point from booking through travel and post-trip.

- *FCM has appointed processors to process personal data on our behalf.*

The establishment of a network capable of providing global travel services to clients ranging from micro-enterprises through to multinational conglomerates would not be possible without the involvement of third-party suppliers. Given travel services often require the transfer of personal data, it is unavoidable that some of these vendors will operate as processors of FCM. Each of these processors have been appointed by FCM subject to strict due diligence, meeting all the requirements for appointing processors as set out in the GDPR.

FCM provides contracted travel services for clients as a controller

The fact that our corporate businesses process personal data in the performance of contracted travel services for clients does not negate our status as a controller. This is because a service relationship does not, in and of itself, mean that the service provider is a processor. As stated in the GDPR, whether an entity is operating as a controller or processor is a determination of fact where the overall context of the processing activities and relationships must be evaluated. Based on the contextual analysis of the factors set out above, FCM is a controller in respect of the data it processes in its corporate businesses regardless of the fact we are providing contracted services to clients.

In addition, should the client choose to provide their employee data directly to FCM

(e.g., via HR feeds, our API, SFTP, protected CSV files, etc.) this will have no impact on our role as controller as a data controller can obtain the data that it processes from a third party. Indeed, Article 14 of the GDPR was specifically intended to cover scenarios where an entity processes personal data in the capacity of a controller in situations where the data was obtained from a third party (such as an employer) rather than the data subject directly.

Responsibilities of FCM as the data controller

As a data controller, FCM is responsible for ensuring all data processing we undertake complies with the GDPR. This includes any processing undertaken by our contracted data processors. These responsibilities include, but are not limited to, the following:

- Complying with the overarching principles of data protection principles as listed in Article 5 of the GDPR.
- Ensuring individual data subjects can exercise their rights regarding our processing of their personal data.
- Implementing appropriate technical and organisational measures to ensure the security of personal data.
- Only engaging processors under binding contracts that; (i) contain the compulsory provisions specified within Article 28(3) of the GDPR, and (ii) provide sufficient guarantees on implementing appropriate technical and organisational measures.
- Notifying personal data breaches to relevant supervisory authorities in the EU and affected individuals, in accordance with GDPR requirements.
- Complying with all accountability obligations under the GDPR, including but not limited to maintaining all

required records, data protection impact assessments and appointing a data protection officer.

- Ensuring all international transfers of personal data comply with the restrictions set out in Chapter V of the GDPR.
- Appointing and maintaining a representative within the European Union where required.
- Cooperating with supervisory authorities and helping them perform their duties.

Benefits to clients of FCM operating as a controller

The GDPR imposes substantive risks and obligations on data controllers. When outsourcing their corporate travel, by contracting the services of an expert travel management company that operates as an independent controller, our clients benefit from the fact that these risks and obligations are necessarily assumed by FCM. Key benefits enjoyed by our clients include the following:

- *Reduction in assessment and mapping obligations:* As the data controller, FCM takes ownership of the obligation to undertake and maintain accurate data flow mapping within the complex ecosystem of global travel systems. Linked to these personal data flows, FCM also acquires the responsibility to conduct all required data protection impact assessments.
- *Reduction in ongoing compliance obligations:* Clients reduce their overall compliance burden for their travel programme, as it falls to FCM as the data controller to fully produce and maintain all registers, policies, processes, etc., in accordance with the GDPR. FCM is

responsible both for ensuring all personal data is processed in accordance with the principles set out in Art.5 GDPR, as well as being able to demonstrate such compliance.

- *Transfer of risk:* As the data controller, FCM assumes the responsibility for the data collected from the client, including meeting all GDPR obligations in relation to the appointment of data processors. It becomes the responsibility of FCM to conduct risk assessments of both our internal systems as well as those of our vendors.
- *Transfer of legal and technical obligations:* FCM becomes directly responsible for all assessments and actions in the event of a data breach, including reporting to supervisory authorities and impacted individuals. FCM also has the obligation to ensure appropriate technical and organisational measures are implemented across all our systems (and those of our selected processors) to maintain the confidentiality, integrity and availability of the personal data.

Other controllers in the provision of travel services

Due to the inherent complexity of providing travel services, and the requirement to make independent decisions on the purpose and means of processing personal data, most entities within this ecosystem are necessarily controllers. In addition to corporate travel providers (i.e., FCM), other independent controllers include global distribution systems (GDS), online booking tools, airlines, hotels, rail companies, car hire providers and cruise operators.